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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Honorable Robert J. Bonds, Circuit Court Judge
Appellate Case No. 2024-001238

THE STATE,

RESPONDENT

v.

TYRASE AKIL COLLINS,

APPELLANT

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in denying appellant a directed verdict when the state failed to present substantial circumstantial evidence of guilt?
2. Did the trial court impose an unconstitutional sentence in violation of the 8th Amendment to the United States Constitution and Article I Section 15 of the South Carolina Constitution by sentencing appellant to three life sentences without parole, served consecutively, without properly considering and addressing the impact of applicant's youth as outlined in *Aiken v. Byars*?
3. Whether the trial court erred in sentencing appellant under S.C. Code §16-23-490 (2010) in clear violation of the statutory prohibition on such a sentence following a life without parole sentence for murder?
4. Did the trial court improperly focus on a juror's bare assertion of lack of bias instead of objectively analyzing whether the juror's prior knowledge and dealings with the co-defendant would have made an objectively material difference in appellant's use of a peremptory strike or resulted in a successful challenge for cause of the juror?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in failing to grant the Appellant a directed verdict since the circumstantial evidence presented revealed the Appellant's guilt and the court is obligated to look at the existence of evidence and not its weight?
2. Did the trial court consider the *Aiken v. Byars* factors during the sentencing hearing prior to the sentencing of the Appellant to a term of incarceration for the remainder of his natural life without the possibility of parole?
3. Did the trial court err in sentencing the Appellant under S.C. Code §16-23-490 after the Appellant was sentenced to life without parole?
4. Did the court err in its determination that there was no evidence that a juror was biased and intentionally answered questions falsely during *voir dire*? Was there any prejudice of this juror being on the jury? Would the Appellant's trial counsel be able to use one of his preemptory strikes or challenge for cause after being told by the Appellant that he possibly knew the juror?

STATEMENT OF THE CASE

On June 8, 2018, Tyrase Akil Collins (Appellant) was indicted by the Hampton County Grand Jury for three counts of murder (Indictment Nos: 2018-GS-25-00132,133,134)(R*); armed robbery (Indictment No. 2018-GS-25-00131)(R*); and possession of a weapon during the commission of a violent crime. (Indictment No. 2018-GS-25-00130)(R*).

On November 6, 2023, the Appellant's case was called for trial simultaneously with his co-defendant Lorenzo Boles, before the Honorable Robert J. Bonds. Appearing with the Appellant was his counsel Charlie J. Johnson. Representing Mr. Boles was his counsel Christopher Gibbs, and representing the State of South Carolina was Assistant Solicitor Reed Evans of the Fourteenth Circuit Solicitor's Office.

After four days of testimony, a jury of his peers found the Appellant guilty of all three counts of murder (Tr. p. 848 l. 14 – p. 849 l. 1); armed robbery (Tr. p. 849 l. 2-4) and possession of a weapon during the commission of a violent crime (Tr. p. 849 l. 5-7). Since the Appellant was seventeen years of age when he committed this offense, the trial judge decided that he would be sentenced after a hearing pursuant to the South Carolina Supreme Court decision of *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

On May 23, 2024, all parties appeared before Judge Bonds for a hearing pursuant to *Aiken v. Byars*. Present before the court was the Appellant along with his counsel Charlie J. Johnson. Once again representing the State of South Carolina was Assistant Solicitor Reed Evans. During this hearing the only person to testify was mitigation expert, Katie King Crosby. At the conclusion of this hearing the trial court acknowledged the five factors pursuant to *Aiken v. Byars*. After the consideration of all of these factors, the trial court decided to sentence the Appellant on all three counts of murder to a term of incarceration for the remainder of his natural life without the

possibility for parole. (Jan. 22 Tr. p. 91 l. 2-12). The Appellant also received a thirty-year sentence for armed robbery (Jan. 22 Tr. p. 91 l. 12-14), and five years for possession of a weapon during a crime of violence (Jan. 22 Tr. p.91 l. 14-17). The trial judge ordered that each of these sentences were to be served consecutively. (Jan. 22 Tr. p. 91 l. 17-18).

Due to information discovered by mitigation specialist Katie Crosby that the jury foreman possibly knew the Appellant, the Appellant decided to make a motion for a new trial. On July 22, 2024, another hearing addressing this motion was held before Judge Bonds. Appearing before the trial judge was the Appellant along with his counsel Charlie Johnson and appearing on behalf of the State of South Carolina was Assistant Solicitor, Reed Evans. Appellant made an accusation that the jury foreman Mr. Conrad Grant, knew he and his co-defendant. Appellant accused Mr. Grant of being biased toward the defendants. Appellant alleged that if he had been aware of this information during jury selection he would not have selected him for the jury. (Jan. 22 Tr. p. 4 l. 3-10).

During this hearing the Mr. Grant, co-defendant's mother, Juanita Boles; Christopher Williams, a former drug dealer who once sold Mr. Grant drugs; Melissa Daughtry mother of one of the victims, and the Appellant testified. At the conclusion of this hearing the trial judge determined the witnesses and their credibility. The Judge did not believe that the defense proved any prejudice from the withheld information. (Jan. 22 Tr. p. 85 l. 5-11). The trial court decided to deny the Appellant's motion for a new trial. (Jan. 22 Tr. p. 85 l. 11-13).

STATEMENT OF FACTS

On March 26, 2018, Ms. Khadajah Williams was asleep in her home located in Varnville, South Carolina. She lived with her boyfriend Frankie Johnson, and two other people Ghazi Duckett and his girlfriend Lamekia Fields. (Tr. p. 201 l. 15-18; p. 202 l. 7-16). While in her bed asleep Khadajah woke and heard Ghazi say “what’s up bro” then she heard the sound of gunfire. (Tr. p. 204 l. 9-12; p. 206 l. 13-15). Khadajah got out of bed and walked out of the bedroom. She heard gagging. (Tr. p. 207 l. 3-7). Khadajah went back to her bedroom with her cell phone and went into the bedroom closet and dialed 911. (Tr. p. 207 l. 23 – p. 208 l. 4).

Officer Michael Smith of the Varnville Police Department received the call around 5:30 am. (Tr. p. 224 l. 17-21). On his way to the crime scene a red Dodge Charger with Texas license plates passed him. (Tr. p. 227 l. 5-7; l. 13-15). Once Officer Smith got to the residence he spoke to Khadajah outside who told him that “everyone in the house was shot.” (Tr. p. 228 l. 21-23). Officer Smith then entered the residence and saw Frankie Johnson who appeared deceased. (Tr. p. 233 l. 16-18). Officer Smith saw victims Ghazi and Lamekia in another room, Ghazi appeared to be still alive, Lamekia was deceased. (Tr. p. 234 l. 16-21). Ghazi was taken by EMS to the hospital, and Officer Smith followed. (Tr. p. 234 l. 23-24; p. 235 l. 17-19). Ghazi later was pronounced dead at the hospital. (Tr. p. 280 l. 1-4).

Deputy Stacy Loadholt of the Hampton County Sheriff’s Department also responded to the scene. Deputy Loadholt entered the residence and witnessed Frankie in a chair slumped over covered in blood. (Tr. p. 251 l. 22-24). Deputy Loadholt saw Ghazi lying on the floor gasping for air and Lamekia was unresponsive. (Tr. p. 251 l. 6-12).

Investigator Marty Clapp spoke to Officer Smith who informed him that while responding to the scene he witnessed a Red Dodge Charger on the road with Texas license plates. (Tr. p. 329

l. 6-9). Investigator Clapp knew that there was only one Dodge Charger in that area with Texas plates and that vehicle belonged to Appellant's co-defendant Lorenzo Boles. (Tr. p. 329 l. 12-14). He knew that Mr. Boles was related to the Appellant's family, so he obtained a search warrant for the Appellant's residence. Law enforcement went to the home on March 26, 2018. (Tr. p. 331 l. 3-4; l. 9-12; 332 l. 5-7). The Red Charger was at the residence. It was impounded and taken to the Sheriff's Department. (Tr. p. 334 l. 15-17). During the search at the residence, inside a bedroom, they found the Appellant's school ID. (Tr. p. 18 – p. 335 l. 3). They also found a bag hanging on a nail. (Tr. p. 336 l. 7-10). In that bag officers found two Glock handguns and a green leafy like substance. (Tr. p. 336 l. 12-15). One of the guns was a Glock 23 .40 caliber. (Tr. p. 342 l. 16-18). Officers knew that the shell casings found at the crime scene came from a .40 caliber handgun. (Tr. p. 337 l. 2-4). Officers also found a Draco in the Appellant's bedroom.¹ (Tr. p. 337 l. 13-15). The Appellant's mother, Ms. Viola Thomas, testified during the trial. Ms. Thomas testified that she was the owner of the mobile home that was searched. (Tr. p. 380 l. 21 – p. 381 l. 1). She also admitted that the Appellant was living at the residence and the bedroom where these guns were found was the Appellant's bedroom. (Tr. p. 379 l. 20 – p. 380 l. 1).

Ms. Rashina Collins testified that she knew the Appellant's co-defendant Mr. Lorenzo Boles, and that in fact he did drive a Red Dodge Charger. (Tr. p. 389 l. 7-11). Ms. Collins also testified that she bought the Draco for Frankie Johnson on February 13, 2018. (Tr. p. 390 l. 22-25). Ms. Collins stated that she saw Frankie in possession of this Draco consistently between the day she gave it to him and the day he died. (Tr. p. 391 l. 12-15).

During trial, South Carolina Law Enforcement Division agent Michelle Eichenmiller testified. Agent Eichenmiller was found qualified as an expert in the field of firearms identification.

¹ A Draco is considered a compact AK-47.

(Tr. p. 463 l. 23 – p. 464 l. 4). Agent Eichenmiller testified that she received the spent shell casings found at the crime scene. Each of these shell casings was from a .40 caliber handgun. (Tr. p. 473 l. 18-21). All the shell casings recovered at the crime scene were fired from the same weapon, the .40 caliber handgun found in the Appellant's bedroom. (Tr. p. 477 l. 8-14; Tr. p. 478 l. 20-23).

SLED agent Courtney Thompson also testified. Agent Thompson was found to be qualified as an expert in the field of forensic serology. (Tr. p. 501 l. 2-6). Agent Thompson was given the Draco to swab for DNA and the presence of blood. She found the presence of blood on the Draco. (Tr. p. 513 l. 25 – p. 514 l. 1; p. 513 l. 3-8). There was also the presence of blood from the exterior of the gun's cartridge case. (Tr. p. 522 l. 2-5; p. 522 l. 20-23). Officer Sara Goodman from the Greenville Department of Public Safety also testified. Officer Goodman was found qualified as an expert in the field of DNA analysis and serology. (Tr. p. 552 l. 13-16; p. 553 l. 15-17). During trial Officer Goodman testified that she tested the swabs taken from the handguns, the Draco, and from the inside of the red Dodge Charger. Officer Goodman found that on the Draco's exterior was DNA that matched the victim, Frank Johnson. (Tr. p. 564 l. 7-10). The exterior of the cartridge was a DNA mixture, however, the major contributor was the victim, Frankie Johnson. (Tr. p. 565 l. 12-18). Officer Goodman found that the swab of the trigger of the Glock that was found to be the murder weapon had the DNA of four individuals, the major contributor being the Appellant. Inside the Dodge Charger at the rear passenger armrest was DNA that belonged to the Appellant. (Tr. p. 579 l. 15; l. 23-24). The rear passenger armrest also tested positive for the presence of blood. (Tr. p. 580 l. 18-20). There was a mixture of DNA on the passenger armrest, but the major contributor was Frankie Johnson. (Tr. p. 581 l. 23 – p. 582 l. 14). The rear window button was positive for blood also and the DNA major contributor was Frankie Johnson. (Tr. p. 582 l. 18-24). The rear passenger door below the window was also positive for blood. (Tr. p. 584 l. 12-14). That DNA was

a mixture of at least three individuals; however, the partial major contributor was the victim Frankie Johnson. (Tr. p. 584 l. 13-16). On the rear passenger door at the armrest handle there was a DNA mixture of two individuals, victim Frankie Johnson and the Appellant. (Tr. p. 593 l. 8-20). The major contributor of DNA on the Glock that was the murder weapon belonged to the Appellant. (Tr. p. 595 l. 8-11).

Dr. Cynthia Schandl also testified. Dr. Schandl was found qualified as an expert in the field of forensic pathology. (Tr. p. 628 l. 8-10). Dr. Schandl performed the autopsy on all three victims. (Tr. p. 637 l. 22-25). For Ghazi, the bullet entered his head and went through his skull. (Tr. p. 643 l. 9-10). There were no other contributing factors to his death. (Tr. p. 644 l. 23-25). Frankie was also shot in the head with the bullet exiting his skull. (Tr. p. 648 l. 3-8). Lamekia had thirty-five (35) gunshot wounds. (Tr. p. 653 l. 21-22). Lamekia had gunshot wounds to her left hip, femur, left arm that fractured her humerus, neck, right shoulder and arm, right lower leg, right foot, multiple wounds to her left leg, right pelvis, and ten gunshot wounds to her chest and abdomen. (Tr. p. 654 l. 6-7; p. 654 l. 11-17; p. 655 l. 1-3; p. 655 l. 5; p. 655 l. 15-16; p. 655 l. 21; p. 656 l. 11; 663 l. 16-20).

Dr. Schandl determined Ghazi cause of death was a gunshot wound to the head. (Tr. p. 667 l. 20-22). That was the identical cause of death for Frankie. (Tr. p. 667 l. 24 – p. 668 l. 1). Lamekia's cause of death was multiple gunshot wounds to the neck, torso, and extremities. (Tr. p. 667 l. 3-6).

ARGUMENTS

- 1. The trial court did not err in failing to grant a directed verdict on behalf of the Appellant since ample evidence was provided proving the Appellant's guilt, and the court is obligated to look at the existence of evidence and not its weight.**

Relevant Facts

At the close of the State's case the Appellant's counsel made a motion for a direct verdict. It was his position that the State failed to present sufficient evidence revealing that the Appellant committed this crime. The Appellant argued that none of the evidence pointed to him being at the scene of the crime; therefore, this case should not be decided by a jury. The Appellant argued that the trial court should end this case by granting a directed verdict.

At the conclusion of the motion the trial judge made the following conclusion,

"I think that the evidence is outlined by the Solicitor. I think the fact that, that his DNA is in the evidence, that they've produced evidence. I'm not passing any judgment on the strength of the evidence. It's not my job, and that's not the issue of this Court.

"You've given me – you've provided me a lot of information, Mr. Johnson, which I believe goes to the strength of the evidence, or the lack of evidence, but at this point, I'm charged with looking at the existence of evidence, and I believe that evidence exists, based on what's been provided that a jury could conclude, based upon the evidence, that the evidence was amongst other things, that your client's DNA is found on one of the murder weapons, that it was the very next day, that it was in his bedroom, at his home."

"I think that's enough sir to allow this matter. Now there's other evidence that the Solicitor's gotten into, that he says that they provided, but I just think that – I think based on those facts alone, I'm gonna adopt his arguments, incorporate those into what I've just said, but I believe there is enough for the case to go forward." (Tr. p. 701 l. 1 – p. 702 l. 3).

Standard of Review

In criminal cases the appellate court sits to review errors of law only *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827 (2001). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence not its weight. *State v. Morgan*, 352 S.C.

359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). On an appeal from the trial court of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling. *State v Lindsey*, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003). When reviewing a denial of a directed verdict at the trial level, the appellate court, "views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). In criminal cases, the appellate court is bound by factual findings of the trial court unless an abuse of discretion is shown. *State v. Blackwell-Selim*, 392 S.C. 1, 3, 707 S.E.2d 426, 427 (2011). Trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions. *Stokes – Craven Holding Corp. v. Robinson*, 416 S.C. 517, 536, 787 S.E.2d 485, 495 (2016).

Discussion

The Appellant argues that the trial court erred in denying his motion for a directed verdict. The Appellant asserts that the State lacked evidence proving his guilt. The Respondent argues that ample evidence was presented so the trial court was obligated to deny this directed verdict and allow the jury to make the determination of innocence or guilt. In order for this court to make a determination that the trial court did not err in their decision, the Respondent just needs to present evidence of guilt. This is because in the determination of a directed verdict the obligation of the trial court is not to look at the weight of the evidence but only its existence.

During the trial it was established that Officer Michael Smith of the Varnville Police Department was the first person to answer the 911 call. While on the way to the crime scene,

Officer Smith saw a Dodge Charger with Texas license plates pass him. (Tr. p. 227 l. 13-15). This was at 5:30 am. Officer Smith testified that there were no other cars on the road except for police vehicles. (Tr. p. 227 l. 19-20). Investigator Marty Clapp of the Hampton County Sheriff's Department knew that locally there was only one Dodge Charger with Texas plates, and it belonged to the co-defendant Lorenzo Boles. (Tr. p. 329 l. 12-14). Upon securing a search warrant they searched the residence where both defendants resided, in the bedroom of the Appellant they found two Glock handguns. (Tr. p. 336 l. 21-22). One of the weapons was a .40 caliber Glock 23. (Tr. p. 342 l. 16-18). All the shell casings found at the scene came from a .40 caliber weapon. (Tr. p. 473 l. 18-21). A Draco was also found in the Appellant's bedroom. (Tr. p. 337 l. 13-15).

Rashina Collins testified that she bought victim Frankie Johnson a Draco on February 13, 2018. (Tr. p. 390 l. 22-25). This was a month before the murder occurred. Rashina also testified that she saw Frankie with that gun before the murder. (Tr. p. 391 l. 12-15).

SLED Agent Michelle Eichenmiller an expert in firearms identification testified that all the shell casings were fired by the same weapon a .40 caliber. (Tr. p. 478 l. 16-17; p. 473 l. 18-21). SLED agent Courtney Thompson an expert in forensic serology also testified that she found the presence of human blood on the Draco. (Tr. p. 514 l. 1; p. 513 l. 3-8). Sara Goodman a DNA expert from the Greenville Department of Public Safety examined swabs taken from the .40 caliber Glock 23 which was the murder weapon. Officer Goodman also examined swabs taken from the Draco and from the Dodge Charger which the police thought was the getaway vehicle.

Officer Goodman's results were that blood from the exterior of the Draco was a positive DNA match for victim Frankie Johnson. (Tr. p. 565 l. 12-18). There was also DNA of the Appellant found in the rear of the Dodge Charger. There was blood found in the rear of the vehicle in which the major contributor was the victim Frankie Johnson. (Tr. p. 584 l. 22 – p. 585 l. 3). On the rear

passenger armrest there was a DNA mixture belonging to the Appellant and the victim Frankie Johnson. (Tr. p. 593 l. 8-20). Officer Goodman also found the Appellant's DNA on the trigger of the Glock 23. Officer Goodman determined that the major DNA contributor on the murder weapon was the Appellant.

The Appellant argues that there is no direct evidence revealing that he committed this crime, that all the evidence presented is circumstantial. Circumstantial and direct evidence inherently possess the same probative value. *State v. Cherry*, 361 S.C. 588, 600, 606 S.E.2d 475, 483 (2004). Although the entire case relies on circumstantial evidence the amount of circumstantial evidence is overwhelming. When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, "the trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove guilt of the accused, or from which his guilt may be fairly and logically deduced." *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001), quoting, *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000).

The trial court was correct when it ruled that the court cannot be concerned with the weight of the evidence but only its existence. The South Carolina rules of Criminal Procedure specifically state,

On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is closed, if there is a failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, **the trial judge shall consider only the existence or non-existence of the evidence and not its weight.**

Rule 19, SCRrimP. (emphasis added).

If evidence of guilt exists, regardless if it is direct or circumstantial, that evidence is properly presented in order to make a determination as to innocence or guilt, that determination should not

be taken away from the jury. The trial court made the correct decision by denying the Appellant's directed verdict and allowing the jury to make a decision regarding the innocence or guilt of the Appellant.

- 2. The trial court did reveal that there was a consideration of the *Aiken v. Byars* factors at the trial prior to the sentencing of the Appellant to a term of incarceration for the remainder of his natural life without the possibility of parole.**

Relevant Facts

When the Appellant committed this crime he was 17 years old. Therefore, after the verdict, the trial judge decided not to go forward with sentencing due to the South Carolina Supreme Court case of *Aiken v. Byars*. In *Aiken* the court cannot sentence a juvenile to life without parole without considering the five factors listed within the opinion, and a hearing is conducted for the court to determine the hallmark features of youth.

On May 23, 2024, all interested parties appeared before the trial judge for a hearing pursuant to *Aiken v. Byars*. The only person that testified during this hearing was a mitigation expert, Katie King Crosby. Upon the conclusion of her testimony, the trial judge took all the evidence into consideration. On June 22, 2024, after the conclusion of the motion for new trial raised by the Appellant, the trial judge listed on the record each consideration of the *Aiken* factors and proceeded to sentence the Appellant to a period of incarceration for the remainder of his natural life without the possibility of parole for all three counts of murder.

Standard of Review

On appeal, the trial court ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. *State v. Smickevich*, 268 S.C. 411, 234 S.E.2d 230 (1977). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). When considering

whether a sentence violates the Eighth Amendment’s prohibition on cruel and unusual punishment, the appellate court’s standard of review extends only to the correction of errors of law. *State v. Finley*, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019).

Discussion

In the United States Supreme Court case of *Miller v. Alabama*, the Court held that a mandatory life sentence without the possibility of parole for a juvenile offender violated the Eighth Amendment’s prohibition against cruel and unusual punishment. *Miller v. Alabama*, 567 U.S. 460, 465, 132 S.Ct. 2455, 2460, 2463 (2012). In *Miller* the United States Supreme Court stated:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth – for example his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.

Id., 567 U.S. at 477, 478, 132 S.Ct. at 2467, 2468.

In the case of *Aiken v. Byars*, the South Carolina Supreme Court applied the *Miller* analysis to South Carolina juveniles sentenced to life without parole. In *Aiken*, the South Carolina Supreme Court determined, “whether their sentence is mandatory or permissible, any juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment guarantee against cruel and unusual punishment. *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577.

In *Aiken* the Supreme Court established factors that must be considered at a hearing prior to sentencing to life without parole. These factors include: (1) the chronological age of the offender

and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth – for example, [the offender’s] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender’s] incapacity to assist his own attorney’s; and (5) the “possibility of rehabilitation.” *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577, quoting, *Miller*, 567 U.S. at 2468.

The Appellant was given an individualized hearing that occurred on May 23, 2024. During this hearing the only witness was the mitigation expert called by the Appellant, Ms. Katie King Crosby. The Appellant argues that the trial court failed to consider the impact of the appellant’s youth in connection to the crime committed. The Respondent disagrees, the trial court did consider the age and immaturity of the Appellant, however, this crime was so heinous that the court decided that the crime overrode the immaturity of the Appellant, which *Aiken v. Byars* allows. In consideration of the five *Aiken v. Byars* factors the trial court placed the following as an explanation of his consideration of each of these factors,

1. the chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence – “The Defendant was less than 90 days as I calculate it from his 18th birthday at the time he committed these heinous acts. He was convicted of the murders of three individuals, two via headshots that what can only be described as point-blank range execution type of hit. The remaining individual was shot, I believe, close to 35 times. This was not a spontaneous killing. This killing had to have been planned. No hallmark feature of youth can erase the plan. Three people were killed, and this cannot be attributed to or mitigated by the failure of the 17-year-old not to appreciate the risk and consequences of the act.” (Jan. 22 Tr. p. 87 l. 14 – p. 88 l. 1).

2. the family and home environment that surrounded the offender – “The Court acknowledges the concerns that were discussed regarding his upbringing. No father figure, a mother who worked to provide for the family, the special needs brother that he often took care of, and a mother that left him to often raise himself, and who did not – quite frankly didn’t speak on his behalf at the

sentencing or at the hearing he had. Now, the court acknowledges that those – acknowledges those concerns play a role in all of the factors that the Court is asked to consider.” (Jan. 22 Tr. p. 88 l. 2 – 12)

3. the circumstances of the homicide offense, including the extent of the offender’s participation in the conduct and how familial and peer pressures may have affected him –

“The circumstances of this homicide were beyond brutal, and the Court would concede that the exact level of the offender’s participation is unknown, primarily, because this was circumstantial evidence case. The mitigation specialist provided the Court with information about his family and peers, and she opined the Defendant was not a leader in the crime, and the Court accepts that may in fact be the case.... And I take that into consideration the fact that, you know, his exact nature of involvement in the crime perhaps, again, is unknown in a sense that there’s no direct evidence, but certainly circumstantial evidence existed, circumstantial evidence to the point the jury concluded of his guilt beyond a reasonable doubt.” (Jan. 22 Tr. p. 88 l. 13 – p. 89 l. 6).

4. the incompetencies associated with youth – for example, the offender’s inability to deal with police officers or prosecutors including on a plea agreement or the offender’s incapacity to assist his own attorneys –

“The mitigation specialist indicated that he is a high school graduate, and had an academic foundation that would allow him to further his education. In fact, he had enough credits to graduate early, as I recollect her saying in the report. This convinces the Court that he had the ability to assist his attorney in the defense of the case and was competent to deal with and understand the charges that he was – all aspects of the charge – the charges that he was facing.” (Jan. 22 Tr. p. 89 l. 7 -16).

5. The possibility of rehabilitation – “And finally, regarding rehabilitation, the mitigation specialist outlined that he had the tools necessary to be a productive member of society, the education and ability to continue his education, work ethic. And this Court would acknowledge that there is, in fact, and I believe there is a chance or a possibility of rehabilitation that it exists.” (Jan. 22 Tr. p. 90 l. 3-9).

This reveals that the trial court considered each of the *Aiken* factors prior to sentencing. However, at the end the trial court made the following conclusion,

“And so when taking all of these matters into account, this Court concludes that Mr. Collins was almost 18 when he murdered three individuals. He willingly – willingly participated in the murders. This was a conscious decision that involved some degree of planning on his part. He had a high school education and was capable of furthering his education. He is someone who knew what was going on, knew what was about to happen, and someone who was aware of his consequences – aware of the consequences. And for those reasons this Court believes that in this case that the appropriate sentence, having considered all of these factors, the appropriate sentence in this matter is life without parole.” (Jan. 22 Tr. p. 90 l. 10-24).

It is clear by the statements of the trial court during and at the conclusion of this hearing, the judge took this sentencing very seriously and took the testimony of the mitigation expert into consideration. The sentencing judge made it very clear how much attention he placed on the *Aiken* factors and applied them to the present case. The Appellant argues that the sentencing judge wrongfully considered the fact the Appellant was 90 days from his eighteenth birthday in the consideration of sentencing. The record never revealed that this was a factor in the sentencing judge decision. This was just a fact mentioned during sentencing.

Within his brief the Appellant referred to evidence that was favorable to the Appellant. Through his statement on the record, the Sentencing judge did take this information into consideration, however, this does not totally absolve the actions of the Appellant in the murder of three people. The Appellant was given a hearing pursuant to *Aiken v. Byars* where he presented evidence in mitigation. This evidence was clearly considered by the Sentencing judge proven by his statements on the record. The court had sufficient information to make a reasoned decision, and the decision that was made included each of the factors found in *Aiken*. However, the sentencing judge could not ignore the deaths of three people and the methods used in their murder. Using the *Aiken* factors, the court decided that although the Appellant was only seventeen years old at the time of the offense, the only fair and proper sentence would be life without parole. The consideration of these factors does not deny the trial court the ability to sentence a juvenile to a lifetime period of incarceration without the possibility of parole. The *Aiken* factors have to be considered prior to giving this sentence, and they were. As stated in *Aiken*,

Without question, the judge may still determine that life without parole is the appropriate sentence in some of these cases in light of other aggravating circumstances. Our General Assembly has made the decision that juvenile offenders may be sentenced to life without parole, and we honor that decision. However, *Miller* requires that before a life without parole is imposed upon a juvenile offender,

he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored.

Id., 410 S.C. at 545, 765 S.E.2d at 578.

The Appellant presented mitigating evidence at a hearing. It was clear by the record that each of the *Aiken* factors were considered. The sentencing judge made the determination that the offense overrode the hallmark features of youth and decided the appropriate sentence was a life without parole, which both *Miller* nor *Aiken* allows for a juvenile. The factors were considered. There exists no error in the life sentence without possibility of parole given to the Appellant; therefore, this decision should be upheld.

3. The Respondent would concede that the sentencing regarding the weapons offense pursuant to S.C. Code §16-23-490 was incorrect.

Relevant Facts

At the conclusion of the *Aiken v. Byars* factors determination the trial judge sentenced the Appellant for three counts of murder to a life sentence without the possibility of parole. (Jan. 22 Tr. p. 91 l. 2-12). The trial judge also sentenced the Appellant to a thirty-year period of incarceration for the offense of armed robbery. (Jan. 22 Tr. p. 91 l. 12-14), For the offense of possession of a weapon during the commission of a violent crime the Appellant was sentenced to a five-year period of incarceration. (Jan. 22 Tr. p. 91 l. 14-17).

Standard of Review

If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years in addition to the punishment provided for the principal crime. This five-year sentence does

not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime. S.C. Code Ann. §16-23-490 (2010).

Discussion

It is clear that the sentencing judge erred in giving the Appellant an additional five-year sentence consecutively to the life sentence given for the three murders the Appellant was convicted of committing. Therefore, the State would concede that this five-year sentence for the weapons offense was in error.

- 4. There exists no evidence that the juror was biased or intentionally answered a question during *voir dire* falsely, and the Appellant informed his counsel that there was a possibility that he knew the juror, and his counsel failed to use one of his preemptory strikes or challenge for cause, therefore, waived any right to appeal this issue.**

Relevant Facts

After the trial ended and while preparing for the *Aiken v. Byars* sentencing hearing, the Appellant's mitigation specialist found information regarding the jury foreman Conrad Grant. There was a possibility that Mr. Grant knew the Appellant and co-defendant. After being made aware of this information the Appellant filed a motion for a new trial based on after discovered evidence. The Appellant's counsel argued that he was never made aware of Mr. Grant knowing the Appellant because if he did know he would have either challenged for cause or used one of his preemptory strikes to deny Mr. Grant to sit on the jury.

A hearing was held regarding this matter on July 22, 2024, before trial judge, the Honorable Robert Bonds. Appearing before the court was the Appellant with his counsel Charlie Johnson, and again representing the State of South Carolina was Assistant Solicitor Reed Evans of the Fourteenth Circuit Solicitor's office. At the conclusion of the hearing the trial judge determined

that the Appellant failed to reveal any prejudice from the withheld information regarding Mr. Grant. So, the trial judge decided to deny the Appellant's motion.

Standard of Review

Motions for new trial on the ground of after-discovered evidence are left to the sound discretion of the judge. *State v. Mathis*, 174 S.C. 344, 177 S.E. 318 (1935). The general test for evaluating alleged juror misconduct is whether there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence. *State v. Zeigler*, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005). Where a defendant seeks a new trial on the basis of juror misconduct, he is required to prove both the alleged misconduct and the resulting prejudice. *State v. Galbreath*, 359 S.C. 398, 402, 597 S.E.2d 845, 847 (2004). Generally, the denial of a new trial motion will be disturbed only upon a showing of an abuse of discretion. *State v. Smith*, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993). Where a new trial motion is based upon allegations that a juror gave misleading and incomplete answers on voir dire, the trial court's denial of that motion will be affirmed absent a prejudicial abuse of discretion. *State v. Kelly*, 331 S.C. 132, 145, 502 S.E.2d 99, 106 (1998).

Discussion

The Appellant argues that the trial court committed error in evaluating the impact of the foreperson's failure to disclose his prior relationship with the Appellant's co-defendant Lorenzo Boles, and if it would have made a difference in the use of a peremptory strike or a challenge that could have been made by the Appellant. However, during his testimony Mr. Grant stated he did not know Lorenzo or the Appellant. He stated that he only knew the mother of the co-defendant because they attended the same church. (Jan. 22 Tr. p. 7 l. 4-5; p. 7 l. 11-15) However, Juanita Boles was not a witness to the trial and was not present in the courtroom during voir dire. So, the

juror did not fail to disclose any relationship with Applicant. He did not know any of the witnesses personally, nor did he know the Appellant or his co-defendant.

During his testimony Mr. Grant stated that he had known the mother of Appellant's co-defendant Lorenzo Boles for about nine or ten years. (Jan. 22 Tr. p. 7 l. 11-15). Mr. Grant also admitted that at one time he used drugs. However, he never bought drugs from the Appellant. (Jan. 22 Tr. p. 10 l. 16-21). During the hearing when asked why he did not inform the court that he knew the co-defendant's mother, Mr. Grant stated that Juanita Boles was not in the courtroom during voir dire and if she was, he would have spoken up. (Jan. 22 Tr. p. 11 l. 21-24). Mr. Grant testified that he did not know the co-defendant. Mr. Grant specifically stated that, "I don't know these young people." (Jan. 22 Tr. p. 11 l. 25).

During the hearing Christopher Williams, a former drug dealer, testified. He stated that he used to sell Mr. Grant drugs and that Mr. Grant knows Lorenzo because Lorenzo was present when Mr. Grant bought drugs. (Jan. 22 Tr. p. 35 l. 8-11). The Appellant also testified. During his testimony he stated that during voir dire he told his counsel that Mr. Grant looked familiar but did not know for sure if he knew him. (Jan. 22Tr. p. 43 l. 1-3). The Appellant stated that he did bring this up to his lawyer, who told him if he was not sure there was nothing he could do. (Jan. 22 Tr. p. 46 l. 13-16). The Appellant also testified that he does not know if Mr. Grant remembers him, because the Appellant was not made aware of who he was until later. (Jan. 22 Tr. p. 43 l. 16-18).

After the Appellant rested Mr. Grant was recalled to the stand to testify. During this testimony Mr. Grant reiterated that Ms. Boles testified that everyone in their church knew her son, but he did not. (Jan. 22 Tr. p. 54 l. 10-14). Mr. Grant stated he did not remember buying drugs from Lorenzo, but he had a lot going on at that time, there is a lot of stuff he does not recall. (Jan. 22 Tr. p. 55 l. 8-10).

At the conclusion of this hearing the trial judge concluded that after evaluating the witnesses, their credibility, the interest they may have in this matter, he believed the Appellant failed to prove prejudice by demonstrating the withheld information suggested potential bias. (Jan. 22 Tr. p. 85 l. 6-11). Where a party claims a juror had withheld material information in response to voir dire question, the trial court must determine, preferably after a hearing, whether the juror's withholding suggests bias. *State v. Rowell*, 444 S.C. 109, 115, 906 S.E.2d 554, 557 (2024). The juror's intent may bear on the inquiry, but the ultimate question remains whether the juror was biased and whether the bias, in turn, caused prejudice. *Id.*

This motion had no physical evidence. It all relied on the testimony of the witnesses. So, it was up to the judge to make a determination as to credibility. And when you look at the witnesses there was the co-defendant's mother and a former drug dealer that were acquaintances with the Appellant and you have the jury foreman who had nothing to gain by lying. Mr. Grant admitted his former drug use and that he bought drugs from Christopher Williams. Mr. Grant even admitted to knowing Ms. Boles. However, he stated that she was not in the courtroom during voir dire, and there were no questions raised by the judge during voir dire that mentioned Ms. Boles. So, it was possible that he did not know the co-defendant was her son since she was not in the courtroom at the time. So, the court made the correct determination that Mr. Grant was more credible than the other witnesses, which is the responsibility of the trial court. The trial court has the authority to determine if a witness is credible. *State v. Johnson*, 413 S.C. 458, 468, 776 S.E.2d 367, 372 (2015).

The Court made the determination that Mr. Grant did not purposely mislead the Court during voir dire; therefore, the court does not have to make a determination that the Appellant deserves a new trial. Only if the trial court finds a juror guilty of misconduct must the judge

determine whether misconduct affected the verdict by warranting a new trial. *State v. Covington*, 343 S.C. 157, 164, 539 S.E.2d 67, 70 (2000).

The Appellant argues that the trial court erred in their conclusions because the trial court determined that the Appellant was not prejudiced by the information presented during the motion. The Appellant argues that the trial court should have considered whether Appellant's counsel would have been able to challenge for cause or use one of their preemptory strikes to not allow Mr. Grant to sit on the jury if counsel knew Mr. Grant knew the Appellant. First, Mr. Grant testified that he did not know either defendant. Second, the Appellant testified that he told his counsel that he thought he knew Mr. Grant, at that time since he had only used two strikes. Appellant's counsel could have struck Mr. Grant at that time. Appellant's counsel decided not to use any strike or challenge for cause so there is no prejudice. As to allegations that a juror intentionally provided misleading, false, or incomplete answers on voir dire, a new trial is only necessary where the juror purposefully concealed information that would have been a material factor in the party's use of preemptory challenges or would have supported a challenge for cause. *Id.* The Appellant testified that he informed his counsel of the possibility of knowing Mr. Grant, so he could have used a strike or challenge for cause at that time and refused to do so. Even knowing that Mr. Grant could have possibly known the defendant's Appellant's counsel decided to seat him anyway. Therefore, any challenge to Mr. Grant being seated on the jury was waived once trial counsel decided not to strike Mr. Grant even after being informed by the Appellant that he thought Mr. Grant looked familiar.

The Appellant failed to prove that Mr. Grant intentionally deceived the court during voir dire. They accused Mr. Grant of buying drugs from the Appellant's co-defendant eight years prior to trial. Mr. Grant admitted that he had a lot of stuff going on at that time and there is a lot of stuff he did not remember. So, since they could not meet their burden of proof the Appellant was not

entitled to a new trial. The trial court did not err in denying this motion, the decision of the trial court regarding this motion for a new trial should be upheld.

CONCLUSION

The Respondent argues that decisions made by the trial court were lawful and should be affirmed by this court.

Respectfully submitted,

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