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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEROD DE'QUIN GOODWIN,

APPELLANT

APPELLATE CASE NO. 2025-000260

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Appellant Jerod Goodwin was convicted of murder, use of a vehicle without permission, and possession of a weapon during the commission of a violent crime during the December 2023 term of the Richland County General Sessions Court before Judge Jocelyn Newman. Appellant was sentenced to an aggregate thirty-year prison term. Defense Attorneys Nathaniel Brady, Megan Eigenbrot, and Tracy Pinnock represented appellant at trial, and Assistant Solicitors Samuel McGlothlin, Nicholas Fowler, and Dale Scott prosecuted the case.

Appellant appealed his convictions and sentences. This brief follows.

STANDARD OF REVIEW

In criminal cases an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion. Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law or when the grounded in factual conclusions is without evidentiary support. Id.

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (212); State v. Clasby, 385 S.C. 148, 682 S,E,2d 892 (2009). In order to admit evidence of prior bad acts not resulting in a conviction, the trial court must determine whether the proffered evidence is relevant. State v Clasby, supra. If the trial judge finds the evidence is relevant, the judge must then determine whether the bad act evidence is admissible under Rule 404(b). If the testimony is relevant and proffered for a permissible purpose, the trial court must conduct a balancing test pursuant to Rule 403 to discern whether the probative value is substantially outweighed by the danger of unfair prejudice, and the trial court may exclude evidence if the probative value is substantially outweighed by the danger of unfair prejudice. State v. Gilliams, 373 S.C. 601, 646 S.E.2d 872 (2007).

The appropriateness of a solicitor's closing argument is a matter left to the trial court's sound discretion. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). An appellate court will not disturb a trial court's ruling regarding closing argument unless there is an abuse of that discretion. State v. Penland, 275 S.C. 537, 273 S.E.2d 765 (1981).

QUESTION I

The trial judge erred in failing to charge the jury on the law of voluntary manslaughter because appellant responded after being attacked in a violent and physical manner on four separate occasions prior to the shooting that occurred in the case.

On August 15, 2021, Genesis Williams was shot by gunfire and died from his injuries. The shooting occurred in Richland County, South Carolina. Only two eyewitnesses were present at the shooting: appellant and Artiz Adeyinka. Both appellant and Adeyinka testified at trial.

Adeyinka testified that he, appellant, and Genesis Williams were all riding together in the same vehicle on the night in question. At some point, Adeyinka stated that they stopped in the Greene Street area. While there, many extraneous people and bystanders approached, and thereafter various fights erupted, many of which included assaults against Willams. When the Greene Street melee ended, the trio resumed riding around and traveled to an area near Leesburg Road and Garners Ferry Road. Adeyinka, who was driving at that time, stated that when he stopped the vehicle at a Citgo gas station in that area, Williams got out of the vehicle and demanded that appellant exit the vehicle. Then, Williams began pulling appellant out of the vehicle. Next, gunshots were fired by appellant. Williams was struck by gunfire. Adeyinka stated that appellant was in possession of a weapon on the night in question. Tr. 114, l.19-p. 154, l.24.

Appellant testified at trial and explained what happened in the case. Appellant stated that he, Williams, and Adeyinke were riding around on that night and at some point ended up near Greene Street where a crowd ultimately gathered. Appellant stated that Williams and Danny Sims were among the people who were arguing and fighting during the Greene Street brawl. Appellant added that he had migrated to his residence nearby to retrieve a weapon. Appellant testified that their next stop was near the Leesburg Road and Garners Ferry Road area, and that at

that stop, Williams loudly ordered him (appellant) to exit the vehicle and commenced **four separate attempts to violently pull him (appellant) out of the vehicle. See a detailed description of the violence perpetrated upon appellant at the hands of Williams on page seven of this brief.** Thereafter, Williams tried to grab his (appellant's) gun. Appellant fired his gun at Williams in self-defense. Apparently, appellant surmised that Willimas was angry over the perceived notion that appellant was not supportive of him (Williams) when he (Williams) and Sims fought during the Greene Street incident. Tr. 385, l.12-p. 407, l.25.

Defense counsel requested a voluntary manslaughter jury charge in the case. Tr. 604, l. 18 – p. 607, l. 13. The trial judge denied the request. Tr. 607, lines 4-14.

To warrant the court eliminating the charge of manslaughter, there must be evidence whatsoever tending to reduce the crime from murder to manslaughter. State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000). In determining whether the evidence requires a charge of voluntary manslaughter, the court views the facts in the light most favorable to the defendant. State v. Byrd, 323 S.C. 319, 474 S.E.2d 430 (1996). Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Cole, supra. Although sudden heat of passion upon sufficient legal provocation need not dethrone reason entirely or shut out knowledge or volition, the same must be such that it would naturally disturb the sway of reason and render the mind of an ordinary person incapable of cool reflection and produce what according to human experience may be called an uncontrollable impulse to do violence. State v. Cole, supra.

Compare the case State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001), where the Court held that the trial judge erred in failing to charge voluntary manslaughter where the evidence revealed that the defendant was cut by the deceased twice before the defendant responded by

using a pipe to strike the deceased. Compare also State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993), where the Court held the trial judge erred in failing to charge voluntary manslaughter where the deceased and defendant were in a heated argument and the deceased was about to initiate physical contact. In determining whether the act which caused death was impelled by heat of passion, all surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing. State v. Smith, 391, S.C. 408, 706 S.C.12 (2011). See also, State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981), where the Court held that voluntary manslaughter should have been charged where the defendant stated that the police officer began to fire on him (defendant). Note that evidence of self-defense and voluntary manslaughter may coexist, and that a charge on both may be warranted also. State v. Starnes, 388 S.C. 590, 698, S.E.2d 604 (2010). In addition, fear immediately followed an attack may cause sudden heat of passion. State v. Starnes, supra.

In the case at bar, appellant was clearly acting under sudden heat of passion upon sufficient legal provocation. Williams' violent behavior toward appellant on that night was apparent during he fighting on Greene Street, and Williams' violent behavior escalated out of control at the Leesburg and Garners Ferry Roads stop. Actually, Williams began his violent behavior prior to both stops. Previously, the trio stopped at Club Felicities where Williams argued vehemently with the manager of the club after being denied entry. Tr. 391, l.16 - p. 392, l.20. Furthermore, note that appellant attempted to calm Williams when he (Williams) began arguing and fighting with Danny Sims at the Greene Street location; and that Willimas' response to appellant's move to de-escalate was to engage in a physical fight (mushing) with appellant. Tr. 392, l.21-p. 397, l.24. Note further that appellant believed to the best of his knowledge that

Williams was in possession of a gun on that night. Tr. 399, l.1-2. After the Greene Street brawl ended, Williams' hyperviolent state of being continued and grew exponentially. Williams ranted, raved, and railed against appellant inferring betrayal because he (appellant) appeared loyal to Sims' position instead of his (Williams' position) during their fight. When the final stop occurred, Williams' mental and physical posturing had reached a frenzied fever pitch whereinafter he ultimately demanded that appellant exit the vehicle. Williams actually exited the car and attempted to physically pull appellant out of the vehicle. Then, Williams moved to the other side of the vehicle and made a second attempt to physically pull appellant out of the vehicle. Next, Williams started pacing around the vehicle screaming for appellant to "get the f---- - out." Following this, Williams began a third attempt to pull appellant out of the vehicle, but this time in a far more aggressive manner than before. Appellant exited the vehicle and begged Williams to stop (in effect). Appellant re-entered the vehicle and Williams grew angrier. On Williams' fourth attempt to pull appellant out of the vehicle, Williams reached and "went for [appellant's] gun after Williams performed a "waist check" to feel for appellant's gun, while all the time simultaneously yelling to appellant to get out of the vehicle. Tr. 399, l.8-p. 403, l.24. Appellant's testimony below is a description of how the last of the events unfolded prior to the shooting:

> SOLICITOR: How does it make you feel when he tapped your gun when he went for you waist
>
> APPELLANT: He alerted me. He alerted me. I'm like why did he touch my gun.
>
> SOLICITOR: What did you do then?
>
> APPELLANT: So now I took all precautions like for next time I basically like blocked my gun so he wouldn't' be able to grab it, try to snatch it out of my waist.

SOLICITOR: What did you do with the car door?

APPELLANT: This time I wasn't able—this would be the fourth time. I got back into the car. This would be the fourth time I'm back into the car, so I wasn't able to shut the door this time. It was too fast. This fourth time, he came in, went straight to my waist.

SOLICITOR: How does he grab you or go for you at that point?

APPELLANT: He grabbed my upper body there, came under my arm, tried to tug and went for the gun.

SOLICITOR: What was going on through your head?

APPELLANT: Scared, I was scared he was going to grab my gun, what would he have done.

SOLICITOR: What did you think he was going to do?

APPELLANT: Shoot me, kill me.

SOLICITOR: Why did you think that?

APPELLANT: I know what he do. He was already a hot head. He was already mad at that time.

SOLICITOR: Jerod, you've known him far a little while. What is his reputation?

APPELLANT: He has a bad reputation, not bad but especially with me, I don't think he has a bad reputation, but I know he does with other people.

SOLICITOR: Was that something you were thinking about?

APPELLANT: Yes, ma'am.

SOLICITOR: And at this moment, what do you do?

APPELLANT: It's him going for my gun. I'm trying to pull him off of me, but in the meantime shots went from here.

SOLICITOR: How many times did you shoot?

APPELLANT: To my knowledge, I struggled. I only though I pulled—I shot two times. Tr. 404, l. 8 – p. 405, l. 21.

Clearly, the facts as outlined above support the existence of sudden heat of passion upon sufficient legal provocation on appellant's behalf to the extent that a voluntary manslaughter jury charge was warranted in the case. Note further that Williams had a reputation of possessing and using firearms. Compare the case of Leggette v. State, 440 S.C. 590, 892 S.E.2d 153 (2023), where the Court upheld the trial judge's voluntary manslaughter charge as properly given where similar facts were successfully presented in support of such a charge. In Legette, there were prior ongoing difficulties, and threats, and arguing between the defendant and the deceased beginning two to four days prior to the incident; and the final approach to Legette made by the decedent and the decedent's friends ended in gunshots being fired after there was a waistband reach (from the decedent's friends) that occurred during all of the activities that culminated at the scene. The Court's analysis set forth in Legette in support of a voluntary manslaughter charge follows:

We acknowledge the question of whether Petitioner acted in a sudden heat of passion is a close one. But instruction on a lesser offense is appropriate when "any evidence" supports the lesser charge. Both Petitioner and Ingram testified as to prior altercations between their respective neighborhoods, referencing separate incidents two and four days prior to the shooting. Regarding the night of the shooting, Petitioner and Gardner both testified they were surrounded in a threatening manner by several westside men after they arrived at Carnell's, and Petitioner feared he was about to be jumped when the group formed a semi-circle around him. Both Petitioner and Gardner were scared. Several witnesses testified people pointed Petitioner out to Ingram when Ingram and Tisdale arrived, and Ingram believed people were encouraging him to fight Petitioner.

Witnesses also testified that as Petitioner either walked or ran away from the group of westside men, Ingram and Tisdale followed closely behind him, with Gardner testifying Ingram and Tisdale "went after" Petitioner immediately after he started towards the Super Chic store. Jackson continued to watch after the men walked off because he thought he was about the see a fight. Petitioner testified that when he heard someone come up behind him and ask, "What's up now?" he turned and saw Ingram and Tisdale just three feet from him. Petitioner recalled he was scared when he saw Ingram reach toward his waist because Ingram was known to carry a weapon, "So, I proceeded to pull my gun out and shot two, two to three times. Petitioner admitted that Tisdale and Ingram running after him caused him to be fearful and frightened; he was already scared and did not know what to do because the prior incidents indicated hostilities between the opposing groups were escalating.

Although Petitioner's testimony established the main provocation on the night of the shooting came from Ingram, Tisdale accompanied Ingram in following Petitioner and both were clearly part of the approaching, threatening westside group. See State v. Locklair, 341 S.C. 352, 362, 535 S.E.2d 420, 425 (2000) ("Provocation necessary to support a voluntary manslaughter charge must come from some act of or related to the victim in order to constitute sufficient legal provocation." (emphasis added)); id. ("The provocation of the deceased must be such as naturally and instantly produces in the mind of a person ordinarily constituted the highest degree of exasperation, rage, anger, sudden resentment, or terror, rendering the mind incapable of cool reflection." (second emphasis added) (quoting State v. Franklin, 310 S.C. 122, 125, 425 S.E.2d 758, 760 (Ct. App. 1993))). In light of the prior troubles between Petitioner and the westside group and the menacing actions of the various westside men on the night of the shooting, we find evidence exists to support the PCR court's finding that trial counsel was not deficient in failing to object to the voluntary manslaughter instruction as a lesser-included offense. See, e.g., Starnes, 388 S.C. at 596, 698 S.E.2d at 608 ("If there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed, the defendant is entitled to such charge.").

Likewise, as in Leggete, the facts here supported a voluntary manslaughter jury charge. The trial judge erred in failing to charge the jury in the law of voluntary manslaughter in the case at bar.

QUESTION II

The trial judge erred in denying appellant's request for the removal of his shackles at trial because of the prejudicial impact of the jury's probable understanding that appellant was shackled, particularly where this error was exacerbated during the solicitor's cross-examination of appellant at which time he engaged appellant in a mock re-enactment of the events that led to the shooing as this highlighted the presence of the shackles to a greater extent inasmuch as the jury could certainly hear the noise of the shackles and surmise that appellant was restrained.

Prior to trial, defense counsel requested that appellant's shackles be removed in order to eliminate the prejudicial impact of the jury's view of this at trial. The colloquy regarding this matter follows:

> DEFENSE COUNSEL: So, your Honor, this morning a motion regarding shackling in front of the jurors; there has been a series of recent cases that has really emphasized the need to have defendants

unshackled so that there is not this prejudicial effect about the jurors potentially seeing or hearing the shackles, and therefore creating an inference that that person is dangerous and can't be in the courtroom without that type of apparatus around them. Your Honor, I'll make that an exhibit of that. I'll get it to you with the rest of the motions we will have in these hearings. Mr. Goodwin is currently wearing the leg shackles that have been taken off, the belt that they have that goes around him. We're objecting to all forms of shackling throughout the trial.

Tr. 8 lines 8-21.

THE COURT: That's just based on the potential that jurors may

see it?

DEFENSE COUNSEL: Yes, Your Honor. I just never quite know how this goes. In a little bit that jury is going to come in here. We're all going to be asked to stand. At that point, you know, if we can't control that, when they start hearing that clinking and they realize that person may be in shackles. So again, we're asking since we can't really control when that happens, it's based on people moving around, leaning overtalking to counsel, we are asking that you order the shackles to be removed whenever the jury is present.

THE COURT: Okay. What's the State's position?

SOLICITOR: Your Honor, I can sit down and introduce myself, if need be, but I heard from courtroom security it's a concern of theirs. So I'd defer to the professionals in that regard.

THE COURT: I tend to defer to the professionals, as well. I had spoken to Deputy Kelly this morning, actually prior to the Court even being aware that there was a motion pending. We tend to discuss security matters, and so I defer to security for security matters to the extent that it does not trample on the defendant's Constitutional rights. The solution worked out for this particular phase of voir dire is to remove the belly chain, keep the leg shackles, and I suggested to counsel that perhaps the entire defense team move their chairs to the opposite side of counsel table to face the jury panel. That would require less movement on the part of the defendant if he were to stand. I'm happy not to ask anyone to stand, and that includes the prosecution to solve that issue. I think throughout the trial, it would be inappropriate for the defendant to randomly without warning stand or make too many sudden movements anyway. So the belly chains will be placed back on the

defendant for the duration of the trial with the exception of his dominant hand so that he can write, move, touch, communicate, but that hand will be unshackled so that he can make whatever movements necessary. I've not had a problem with it in the past. I don't foresee a problem in this trial, and so the state or the defense motion is denied.

DEFENSE COUNSEL: And Ms. Pinnock just pointed out to me that we can't move to that side because as soon as they're selected and seated, they'll see him in shackles.

THE COURT: That's a good point. I hadn't thought that.

DEFENSE COUNSEL: No problem.

DEFENSE COUNSEL: I would just as soon we don't stand.

THE COURT: That's fine with me.

DEFENSE COUNSEL: In terms of the belly chains specifically, throughout the trial, it's going to limit his ability to kind of gather our attention without probably exposing the chains to the jury. He's probably going to reach over to Ms. Pinnock or Ms. Eigenbrot or myself. In doing that, the rattling chains, as well as probably exposing it to the jury whenever he needs to talk to us, needs to in any way communicate with us, that's usually how it goes but physically alerting first. I think that will physically alert the jury to what's going on.

THE COURT: That's the reason that his dominant hand will remain unshackled throughout the duration of the trial, so that he can use that hand to reach, if necessary, but he is in custody. He is charged with murder, and as I said I tend to defer to security for security matters. I'm not going to instruct them that he remain totally unshackled if they're not comfortable with that because that makes me uncomfortable with that because that is their job here. So I think that having the one hand unshackled is a reasonable solution. The jury will be all the way across the courtroom at that point not seated behind him or near him in any way, so that should remedy that.

Tr. 8, l. 22 – p.12, l. 9.

Nonetheless, the shackling issue was addressed once more prior to trial as follows:

DEFENSE COUNSEL: Your Honor, if we could briefly revisit the shackling motion. My co-counsel has informed me that you can see Mr. Goodwin's shackles from the jury box whenever he reaches over to Ms. Pinnock. He sat through all jury selection without issues, without having the belts and the chains. I think it ' s going to become inevitable that the jury sees that he is shackled throughout the course of the trial.

DEFENSE COUNSEL: Your Honor, the way Jerad sits in the chair, it's high enough that if he is backed up at all while he is at rest sitting on his lap, you can see the top part of his shackles from the jury box.

THE COURT: I can't see anything from here.

DEFENSE COUNSEL: He's sitting closer. He's further back at this time. I have noticed a few times as we ve
been doing these motions that he's accidentally hit the
table with his shackle, as well, and has always raised his
wrist. It's going to take a force of a lot of will to make
sure he doesn't lift it if he backs it up at all. I know
when I stood in the jury box, and he backed up a little
bit sitting in his lap, I could see the shackles.

THE COURT: Would you stand up, Mr. Goodwin? (Complies). Okay. Since you can't use that left hand, what is the necessity of moving the left hand?

THE DEFENDANT: I just hit it on my left hand.

THE COURT: And then the other -- you have a right handcuff that is not around your wrist. Can that not be tucked? I mean, the sweater covers the chain. (Complies). I believe that solves the problem. I'm sure counsel disagrees, but I mean, I can't see it as I sit here. Let me make sure. (Putting on glasses). (Pause).
Lift your right arm. I mean, I can see a little bit of a chain, but it doesn't look any different than like a wallet chain or a I mean, not that you look particularly like an emo kind of guy but -- or a biker, necessarily, but I can barely see it, and that's with him standing. Within him seated, Ms. Pinnock?

DEFENSE COUNSEL: I think the portion of the shackles that Ms. Eigenbrot is talking about is his wrist. These chairs sit higher than the old ones that were in here. As he scoots back from the table, his lap -- you can see his arm if he makes any sort of movement. I

think that's what she's referring to, this part. As we're sitting here with Mr. Brady going through the motions, he
was just trying to take the cap off, you know, on and off his pen. He's hitting the bottom of the table.

THE COURT: Well, he needs to leave it off then. mean seriously. I

DEFENSE COUNSEL: But my concern is any movement that he makes, he's going to be touching the bottom of this table. There's not a whole bunch of room for those of us with longer legs with the height of the chair, and I think that's what the concern is.

DEFENSE COUNSEL: I think this will probably be the clearest advantage point for him. Can you see it over here?

DEFENSE COUNSEL: You can see it over there.

THE COURT: Listen I - - right. He's pushed back from the table, but also - - and I can see something obviously, my vision isn't the best. glasses on. I've had to put my I can with him pushed back, I can see something around his wrist, but I could not tell you whether that was a watch or a bracelet of some kind. to me that it's a handcuff. It is not clear I certainly wouldn't think that it was a handcuff when his right arm is free, so I think he has got to make sure not to push back too far from the table. And this is on the back row where the alternates would sit

THE BAILIFF: That's correct, Your Honor.

THE COURT: -- if I'm further down, I can't see anything. I mean, I do see some metal near his wrist, but it does not appear any different to me than the metal of Ms. Pinnock's Apple watch.

DEFENSE COUNSEL: I wish I had an Apple watch.

THE COURT: Well, whatever that is. I can see like a rose gold on your wrist from here, and I can see a bit of silver on Mr. Goodwin's wrist. That's with him pushed back from the table. I'll go back to the microphone, but it's designed not for him to have complete freedom of movement, right. So any amount of shackling would be evident if he shows it to the jury. He's got to take care not to show it to the jury. There is a way that he can maneuver, sit at that table, be shackled without the jury being aware of that. If he tries to lift his wrist and wave it around, that would be him showing the handcuff to the jury or, you know, they may hear the shackles around his ankles. That's only if he has got nervous legs

> and is shaking his legs around or otherwise not being still. So there's a mechanism here I think that we solved the issue as long as Mr. Goodwin does what he needs to do.
>
> MR. BRADY: Yes. Tr. 63, l. 17 – p. 67, l. 16.

Clearly, it was prejudicial error for the trial judge to allow appellant to remain shackled at trial, which was certainly readily apparent for the jury to view. It is inherently unfair and improper for a defendant to appear in front of a jury at trial in prison garb. Ryals v. State, 439 S.C. 230, 886 S.E.2d 239 (2023), citing to Deck v. Missouri, 544 U.S. 622 (2005). In Ryals, the defendant wore handcuffs and shackles at trial, and the Court held that trial counsel's failure to object to the same constituted ineffective assistance and prejudice resulted. In State v. Heyward, 441 S.C. 484, 895 S.E.2d 658 2023), the Court held that the sight of shackles constituted inherent prejudice and that a defendant need not show prejudice to demonstrate a due process violation. Compare also Reese v. State, 441 SC 392, 894 S.E.2d 295 (2023), where the Court held that counsel erred in failing to object to the defendant wearing shackles at trial, particularly where the defendant walked from the defense table to the witness stand and the jury viewed the shackles.

There is inherent harm connected to the jury's viewing of a shackled defendant as this suggests that the justice system sees a need to separate the defendant from the community at large. Deck v. Mission, supra, Estelle v. Williams, 425 U.S. 510 (1976). Seen shackles suggest that the defendant is dangerous and guilty, which undermines the presumption of innocence and the related fairness of the fact-finding process. See Reese citing to Deck v. Mission, supra, and United States v. Bell, 819 F.3d 310 (7th Cir. 2016) See also State v. Heyward, where the Court held that the failure to remove the defendant's visible shackles violated due process. Here, just as in Reese, the belly chains were removed from appellant before he testified, but the shackles remained.

In the instant case, note that the shackles error was exacerbated by the solicitor's questioning appellant on cross-examination with what was the equivalent of an enactment of the shooting by forcing appellant to show how the incident unfolded, which certainly exposed his leg shackles to the extent that the activity resulted in the jury hearing the shackles and thus understanding that that the restraints existed. During the cross-examination of appellant, the solicitor engaged appellant into the following reenactment of the shooting that made his shackles all the more obvious (they could hear) to the jury. The colloquy and exchange follow:

> SOLICITOR: And then you get out of the car. "You think I'm playing? You think I'm playing? And you shot him?
>
> APPELLANT: No.
>
> SOLICITOR: You didn't shoot him?
>
> APPELLANT: I didn't say I did. It didn't go like that.
>
> SOLICITOR: How did it do?
>
> APPELLANT: As he went for my gun, that's when I shot him.
>
> SOLICITOR: Okay.
>
> APPELLANT: And the struggle of him getting—the struggle of me getting him off my gun, that's when I shot him.
>
> SOLICITOR: The struggle for getting you gun ,and you go out and shot him?
>
> APPELLANT: A mix of him going for my gun, and me trying to fight him off. That's where shots were when it came about.
>
> SOLICITOR: But you were outside the car when you shot him?
>
> APPELLANT: No. I was getting outside the car when shots came out.
>
> SOLICITOR: So you were getting outside of the car. What does that mean? You were outside of the car?

APPELLANT: My foot went out there, my whole body went out.

SOLICITOR: You said you have one foot out and you're shooting?

APPELLANT: I'm trying to get him off of me. That's when shots came.

SOLICITOR: You pulled the gun out of your waistband and shoot him?

APPELLANT: I had—yes, sir.

SOLICITOR: Okay. So you're fighting him. You're digging in your pants at the same time, and then you step out and shoot him?

APPELLANT: Me and him are fighting for possession of the gun.

SOLICITOR: Okay. And if you're sitting right here, the gun is over here, right, because you're on your right side. It says—is he reaching over your body trying to grab it?

APPELLANT: He's reaching around me.

SOLICITOR: Okay. But you have it tucked in your underwear, right?

APPELLANT: As far as the gun, came out.

SOLICITOR: Okay. And how quick did you do it? Did you just pull it and shoot it right there?

APPELLANT: No, sir. It's a tussle, struggle.

SOLICITOR: I'm apparently not doing a good job of describing this. Tell us step by step what happened.

DEFENSE COUNSEL: Your Honor, I'm going to object at this point. He's answered the question.

The COURT: Overruled.

Tr. 450, l.4-p. 451, l.23.

Clearly, this demonstration uncovered the existence of appellant's shackles obvious because the jury surely heard that sound of the shackles during the mock reenactment of the shooting event. Therefore, the shackles error and prejudice here cannot be denied.

QUESTION III

The trial judge erred in allowing prior bad acts information (stolen gun connected to appellant) into evidence at trial because the same was irrelevant and prejudicial to the case, particularly where the prejudice was exacerbated when the solicitor used the gun issue to advance improper conscious of the community remarks at closing argument with respect to local gun dangers and in effect tied the same to a jury duty to help by issuing appropriate verdicts.

Prior to trial, defense counsel moved to exclude any reference to two firearms found in the vicinity of appellant in a bedroom where he was arrested as stolen because any mention of this would violate Rules 401, 403, and 404, SCRE. The solicitor explained that an assault rifle and the weapon used to kill Williams were found near appellant at the time of his arrest. The Court granted the motion to exclude testimony regarding a stolen assault rifle found at the time of appellant's arrest, but ruled that the state could establish that the weapon in appellant's possession found at the time his arrest (used to kill Williams) was indeed stolen. Tr. 50, l.6-p. 521, l.11; Tr. 54, l.20-p.57, l.1.

Police Officer Sean Kilcoyne testified at trial and explained that he and other officers arrested appellant inside a bedroom at a residence where appellant was present temporarily, and that a pistol and rifle were near appellant at that time. Tr. 274, l.19-p. 281, l.25. The pistol retrieved near appellant was subsequently found to have been a stolen weapon according to results of a database NCIC investigation. Tr. 282, l.8-p. 284, l.11.

During the solicitor's cross examination of appellant, the gun issue was relentlessly pursued. For example, repeated questions were asked of appellant regarding his gun possession habits including questions as to whether carrying guns affected his private parts. The following excerpts illustrate this dogged line of questioning:

> SOLICITOR: Okay. All right. There was some talk—let's get this out of the way. Do you have a concealed Weapons Permit?
>
> A: No, Sir.
>
> SOLICITOR: Have you ever applied for one?
>
> A: No, Sir.
>
> SOLICITOR: Okay. Has it ever occurred to you that that might be something that you ought to do?
>
> A: Yes, Sir.
>
> SOLICITOR: Okay. Why didn't you do it?
>
> A: I guess I never had.
> SOLICITOR: Speak up.
>
> A: Around the age, around the age. I was too young.
>
> SOLICITOR: During this time, you weren't, right?
>
> A: No.
>
> SOLICITOR: Because if you're 19 you can get a CWP, right?
>
> A: I don't know nothing about that.
>
> DEFENSE COUNSEL: Objection. Your Honor, may we
>
> SOLICITOR: You're in the practice of carrying guns on you, correct?
>
> A: I did have one with this.
>
> SOLICITOR: I'm sorry?

A: I did have a gun with this.

SOLICITOR: You did have a gun what?

A: Within this situation

SOLICITOR: Was that the only time you ever carried a gun on your waist?

DEFENSE COUNSEL: Objection, Your Honor.

THE COURT: Overruled

SOLICITOR: Okay. Are you in the practice of carrying guns in your waistband?

A: Can you explain that more—

SOLICITOR: Okay

A: --to my knowledge?

SOLICITOR: This night was not the first night you walked around with guns in your pants?

A: That was the first time anybody had guns in their pants.

SOLICITOR: Okay. That's all I'm asking you. It's not a trick question, but you were in habit of carrying guns in your waist?

...I also want to ask you again are you in the habit of carrying guns in your waist?

APPELLANT: I do have these.

SOLICITOR: Speak up.

APPELLANT: I do have these in these.

SOLICITOR: So that was something you would do from time to time was carrying a gun in your waist?

APPELLANT: Yes, sir.

SOLICITOR: Okay. How many guns do you own?

APPELLANT: None.

SOLICITOR: None? How many guns have you owned?

APPELLANT: I don't know.

SOLICITOR: You've never owned a gun?

APPELLANT: I said I don't know.

SOLICITOR: Okay. More than the two you were found with?

APPELLANT: No.

SOLICITOR: No? Those were the only two you've ever owned?

APPELLANT: No, sir.

SOLICITOR: Let me ask you this, when you do carry a gun, how do you typically—how do you typically carry?

APPELLANT: In my waistline.

SOLICITOR: In your waistline. Okay. Do you put it inside your underwear or between your underwear and your waist?
APPELLANT: Inside my underwear.

SOLICITOR: Inside your underwear. And what keeps it up, just your belt buckle?

APPELLANT: My draws.

SOLICITOR: Say what?

APPELLANT: Draws

SOLICITOR: Draws?

APPELLANT: Draw, that's what holds it up/

SOLICITOR: Okay. Can I—let me see. Do this again. Now, you're right handed?

APPELLANT: Uh-huh.
SOLICITOR: So you keep it on your right side?
APPELLANT: Yes, sir.

SOLICITOR: And is it kind of like that?

APPELLANT: Uh-huh.

SOLICITOR: Okay. And when you sit down, what happens?

APPELLANT: All you have to do is adjust it.

SOLICITOR: How do you adjust it?

APPELLANT: Put it in the front.

SOLICITOR: You put it here?

APPELLANT: Yes, sir.

SOLICITOR: So you're sitting there with it digging into your penis?

APPELLANT: Yes. Tr. 413, l. 8 – p. 417, l. 25.

The solicitor continued to badger appellant by repeatedly asking why he (appellant) armed himself. Tr. 437, lines 1-25.

Prior Bad Acts Error

Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence. Rule 401, SCRE. In other words, evidence is relevant if it has a direct bearing upon or tends to establish or make more or less probable the matter in controversy. State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (2009). Here, appellant was not charged with any stolen pistol offenses. Possession of a weapon was the only weapon offense charged against appellant in the case. Therefore, informing the jury of the characterization of the weapon in appellant's possession as stolen was irrelevant and prejudicial as it portrayed appellant's character (one who steals) in a negative light.

The exclusion of irrelevant evidence is a proper remedy in case where there is no connection or link between the evidence and proof of a crime. See State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (2008), where the Court upheld the trial judge's refusal to allow the defendant to present evidence that solicitations at the deceased's apartment occurred frequently in order to lend credibility to the defendant's claim that he only went there to purchase drugs only rather than commit murder, attempted degree burglary and attempted armed robbery. See also State v. Peake, 302 S.C. 378, 396 S.E.2d 362 (1990), where the Court held that the trial judge erred in allowing into evidence information that the defendant, who was on trial for the murder of the deceased, offered to sell marijuana to the deceased approximately a week before the day of the murder as there was no connection between the prior offer to sell the drugs and the circumstances of the murder. Compare State v. Bell 430 S.C. 499, 845 S.E.2d 514 (2020), where the Court held that evidence that the defendant was previously stealing from the decedent held no relevance to the charge brought by the state that the defendant allegedly murdered the deceased. See also State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999), where the Court held that the allegation that the defendant stole from a relative had no bearing on the matter of another relative that the defendant was accused of killing. See State v. Hamilton, 344 S.C. 344 543 S.E.2d 586 (2001), where the Court upheld the trial judge's decision to apply Rule 403, SCRE, and exclude a psychiatrist's testimony about the defendant's anti-social personality disorder because the same would have confused the jury as this was irrelevant to the assault offense charged against the defendant.

Clearly, here, the assertion that appellant was in possession of a stolen gun was prejudicial and irrelevant where the question was only whether he was in possession of a gun during the commission of a violent crime and not whether he was in possession o f a stolen gun

during the commission of a violent crime. The characterization of the weapon as stolen constituted inadmissible prejudicial prior bad acts evidence in violation of Rule 404 (b), SCRE. Prior bad acts evidence is inadmissible to show criminal propensity or to demonstrate that the accused is guilty of the crime charged. State v. Bell, Supra. Rule 404 (b) SCRE reads as follows:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

Evidence of prior criminal acts which are independent of an unconnected to the crime for which an accused is on trial is inadmissible for the purpose of proving that the accused possesses a criminal character or has the propensity to commit the crime with which he is charged: State v. Peake, supra, and such evidence is admitted only if used to establish: 1.) motive, 2.) Intent, 3.) absence of mistake or accident; 4.) Common scheme or plan; or 5.) identity. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Here, none of the Lyle exceptions applied in this case.

Clearly, appellant's defense was prejudiced when the status of the weapon in his possession upon his arrest was classified as stolen because this was certainly information that painted appellant in an unfavorable light. This stolen gun information suggested a negative character trait associated with appellant and herein lies the prejudice. Rule 403, SCRE, mandates evidence must be excluded when its prejudicial value is outweighed by its probative value. See State v. King, 416S.C. 92, 784, S.E.2d 252 (2016).

Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis. State v. Stearns, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013). Moreover, evidence of prior bad acts is inadmissible to suggest that the accused has the propensity to commit the crime charged. State v. Peake, 302 SC 378, 396 S.E. 2d 362 (1990). State v. Smith 309 SC 409,

419 S.E. 2d 816 (1992). Prior bad acts evidence is not admissible to show that the accused in a bad person. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989). Also, even if prior crimes are considered under the Lyle[1] exceptions; nonetheless, the value of the priors must outweigh the prejudicial value, i.e., the prior crimes cannot be used to show that the accused is a bad person. State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). Prior crime evidence must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. State v. Spears, 403 S.C. 247, 742 S.E.2d 878 (2013). Also, to be admissible, the bad act must logically relate to the crime with which the defendant has been charged, and even if admissible as relevant under Rule 401, SCRE[2], and under the Lyle exceptions stated under Rule 404(b), SCRE (to show identity in this case); nonetheless, said evidence must be excluded if its probative value is outweighed by its prejudicial value under Rule 403, SCRE.[3] See State v. King, 416 S.C. 92, 784 S.E.2d 252 (2016).

Improper Community Consciousness Closing Argument Regarding Guns

Then, to complicate and worsen the error and prejudice regarding the prior bad acts gun evidence revealed to the jury, note that the prejudice was exacerbated by the solicitor's use of the gun matter to connect it to a community consciousness rally cry during his closing argument to solve the local gun problem gun by action, preferably staring with appropriate verdict in the case against appellant. Portions of the solicitor's improper community conscious closing follow:

---

1 Prior crimes can only be used in order to show motive, intent, identity, absence of mistake or accident or common scheme or plan. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

2 Relevant evidence under Rule 401, SCRE is evidence having any tendency to make the existence of any fact that it of consequence to the determination of the action more probable or less probable than it would be without the evidence.

3 Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, if the issues or misleading the jury, or by considerations of undue delay, waste of time, or needless combative evidence.

Too many gun-toting people having a gun, no training, knowing they ' re not supposed to have one walking around with one waiting to use it. Tr. 647, l.2-5

So what about Richland County? How do we feel about killing here in Richland County? Have we gotten so used to the killing that we begin turning our heads? Are we not to be bothered by people killing one another over the most minor things, needles s things? Can we accept someone to be killed because they post something disrespectful on social media? Do we believe that? What if someone owes you $ 200, and they don't pay you back immediately? Do they deserve to die? What if someone says something to you that you perceive as disrespectful, is that a license to kill? If someone demands you get off their property, they tell you get off their property? And I say that, every one of those fact patterns has been the basis of a murder I tried in this courtroom.

> MR . BRADY: Objection, that ' s outside the case.
>
> THE COURT: Overruled.
>
> MR . SCOTT: That ' s what happens . People die over every day in Richland County.
>
> MR . BRADY: Objection again, community.
>
> THE COURT: Overruled. Continue.
>
> MR . SCOTT: What value do we have here? Do we still hold human life to be valuable in Richland County? Do any of those reasons mean you get to kill somebody? The answer is no. Human life should be invaluable. It should be something you can't put a price tag on. We hope in Richland County we still hold that value. Hopefully we believe that our fellow citizens shouldn't be killed for trivial disputes because of the whims of gun-toting murderers. August 15th, 2021, that's the day Genesis Williams was gunned down in the street and left to die on the asphalt by somebody he thought was his friend, left to die like a dog, like road kill. That's him. You'll have the picture . Look how he was left to die. Over what? Why is there a mother without a son? Why is there a father without a son?
>
> MR . BRADY: Objection.
>
> THE COURT: Overruled.
>
> MR. SCOTT: Why is there a brother without a brother? Why is there a daughter without a father? In Richland County, we don't believe somebody should die based on the whims of a gun toting

> murderer strapped within a gun he knows he's not supposed to have, stolen gun, tucked in his waist with a bullet in the chamber.

Tr. 612, l.12 - p. 614, l.6.

During closing argument, the solicitor continually referenced gun violence and prolific gun possession problems in Richland County, which in turn would subconsciously or consciously suggest that a remedy for the same would in effect begin with handing down verdicts against appellant as a strategy starting point to help solve these local gun problems. Compare, by analogy, the case of State v. Liberte, 336 S.C. 648, 521 S.E.2d 744 (1991), where a similar community consciousness argument was presented with respect to the impact of drugs (rather than guns) in our communities and how community consciousness (beginning with the jury in that case) should be invoked to address drug problems. The solicitor in Liberte asked the jurors whether reasonable doubt should used as "a sword to attack law and order, to attack law enforcement, to attack people who are trying to keep drugs off our streets." The Liberte Court reversed and held as follows:

> In our view, the argument was calculated to appeal to the jury's passions and prejudices by playing on the jury's fear of the impact of drugs on our society. The argument invited the jury to convict the Defendants even if the evidence did not prove their guilt beyond a reasonable doubt, in order to keep the streets from the scourge of drugs. Such an appeal is clearly improper.
>
> A prosecutor may not urge jurors to convict a criminal defendant in order to protect community values, preserve civil order, or deter future lawbreaking. The evil lurking in such prosecutorial appeals is that the defendant will be convicted for reasons wholly irrelevant to his own guilt or innocence. Jurors may be persuaded by such appeals to believe that, by convicting a defendant, they will assist in the solution of some pressing social problem. The amelioration of society's woes is far too heavy a burden for the individual criminal defendant to bear. United States v. Monaghan, 741 F.2d 1434 (D.C.Cir. 1984) Cert denied 470 U.S. 1085 (1985).

See United States v. Barker, 553 F.2d 1013 (6th Cir. 1977), where the Court held that it is beyond the bounds of propriety for a prosecutor to suggest that unless this defendant is convicted it will be impossible to maintain law and order in the jurors' communities. See also United States v. Hawkins, 595 F.2d 751, (D.C.Cir. 1978), where the Court held that prosecutors are not at liberty to substitute emotion for evidence by equating directly or by innuendo, a verdict of guilty to a blow against the drug problem.

As a rule, a solicitor's closing argument must not appeal to the personal biases of the jurors. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). The Liberte Court held that the solicitor's erroneous argument was calculated to appeal to the "jury's passions and prejudices by playing on the jury's fear of the impact of drugs on our society." Here, the solicitor's placement of local gun problems at the feet of the jury was tantamount to a prompting signal to the jury to rise to action via their verdicts. This community conscious argument by the solicitor in the case at bar created a level of prejudice so great that it infected the trial with sufficient unfairness as to deprive appellant of his right to a fair trial. See State v. Hawkins, 292 S.C. 418, 357 S.E.2d 10 (1987); Donnelly v. DeChristoforo, 416 U.S. 637 (1974).

The trial judge erred in allowing stolen gun prior bad acts information into evidence.

QUESTION IV

The lower court erred in allowing the solicitor to present victim impact statements during closing argument.

At closing, the solicitor made multiple references to statements regarding the impact of the deceased's absence on his family and friends, specifically with respect to the deceased's permanent absence at family events. Also, the solicitor pointed out the deceased's supporters who were present

at trial. Tr. 671, lines 21-23. Pertinent portions of the argument that addressed these objectionable statements follow:

> SOLICITOR: August 15, 2021, that's the day [the deceased] was gunned down in the street and left to die on the asphalt by somebody he thought was his friend, left to die like a dog, like roadkill…You'll have the picture. Look how he was left to die over what? Why is there a mother without a son? Why is there a father without a son?
>
> DEFENSE COUNSEL: Objection.
>
> THE COURT: Overruled.
>
> SOLICITOR: Why is there a brother without a brother? Why is there a brother without a daughter?

Tr. 613, l.17-p. 614, l.2.

> SOLICITOR: You don't have to have people without a loved one, but we do. We do.

Tr. 647, lines 1-2.

> SOLICITOR: You know the last few Christmases there has been an empty seat at the table at the Goodwin household, and it will forever be, Okay. There's never going to be there's never going to be a Christmas again where they give to enjoy it with Dad.
>
> DEFENSE COUNSEL: Objection.
>
> THE COURT: Overruled.
>
> SOLICITOR: Never going to be another Christmas a daughter gets to see her daddy. Never going to be another Christmas where Mom or Dad get to see her son, ever they will never spend another Christmas with their brother, okay. So he's right Christmas is next week. There's going to be a family member without a loved one.
>
> DEFENSE COUNSEL: Objection.
>
> THE COURT: Overruled.
>
> SOLICITOR: There's going to be family without a loved one. IT hurts to hear but it's true

DEFENSE COUNSEL: Objection.

THE COURT: Sustained. Tr. 667, l. 17 – p. 668, l. 13.

Counsel reiterated his objections to the solicitor's improper victim impact comments presented at closing arguments. Victim impact evidence has little, if any probative value at the guilt phase of a trial because it inflames the passions and prejudices of the jury. State v. Bowman, 118 N.C. App. 635, 656 S.E.2d 638 (2008). Victim impact evidence is not admissible if it is so unduly prejudicial that it renders a trial fundamentally unfair. See Hall v. Catoe, 360 S.C. 353, 601, S.E.2d 335 (2004). In Hall v. Catoe, supra, the Court found error where the solicitor's victim impact argument asking the jurors to weigh the worth of the defendant's life against the lives of the two girls the defendant fatally shot and killed by asking "what are the lives of these two girls worth...are they worth the life of this man, the psychopath, this killer who stabs and stabs and kills." The Court in Hall v. Catoe, supra reversed and held that comparing the victim's lives to the defendant's life was so emotionally inflammatory that it became a material part of the jury's deliberation process.

The test of whether a solicitor's closing comments are improper hinges on whether the same infected the trial with such unfairness to the point where there was a denial of due process. Donnelly v. DeChristoforo, 416, U.S. 637 (1979); State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990). A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury, or arouse the jurors' passions or prejudices. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). Compare Von Dohlen v. State, 360 S.C. 598, 602 S.E.2d 738 (2004), where the Court held that the solicitor's argument asking the jurors to place themselves in the deceased victim's shoes was improper and that trial counsel erred in failing to object to the same.

Compare State v. Reese, 370 S.C. 31, 633 S.E.2d 898 (2006), where the Court reversed because the solicitor at closing commented "who speaks for [the deceased]" because this Golden Rule violation asked the jury to view the evidence from the deceased point of view on a personal level, which was an inflammatory and erroneous remark; particularly where there was a question as to whether there was malice associated with the killing in the case. Compare State v. McDaniel, 320, S.C.33, 462 S.E.2d 882 (1995), where the Court reversed because of the prosecutor's repeated use of the word "you" at closing thereby asking the jurors to place themselves in place of the assaulted female in the case. In McDaniel, the Court held as follows:

The South Carolina Supreme Court in State v. White, 246 S.C. 502, 144, S.E.2d 481 (1965), reversed a death sentence for rape because the solicitor told the jury:

I don't know whether you have got daughters or not, I believe one or two of you are not married. But everybody has got a mother. Not everybody, but most everybody has got a sister, daughters...How, if this young lady was your sister, how would you feel? How, if she was your wife, how would you feel? Gentlemen, she is all of that to somebody...And but for the grace of God that could be your sister, your daughter or your wife...But when you get back there...think about your wife, think about your daughters, think about your sister or your mother, being in the same position as this young lady...

The Court, quoting State v. Gilstrap, 205 S.C. 412, 416, 32 S.E.2d 163, 164-65 (1944), reasoned:

"The rule followed in this State, and we think in most jurisdictions, is that if upon the whole case, it appears to the Court that the defendant was prejudiced by the language used, as the result of which he did not have a fair and impartial trial, it would be the duty of the Court to *37 reverse the case and remand it for a new trial."

The Court further opined:

"An argument of this nature addressed to the jury tends to completely destroy and nullify all sense of impartiality in a case of this kind. Its logical effect is to arouse passion and prejudice. Jurors are sworn to be governed by the evidence and it is their duty to regard the facts of a case impersonally."

Id. At 417, 144 S.E.2d at 165 (quoting State v. Gilstrap). Statements such as those made in White, the court noted, were "well calculated" to arouse prejudice and passion.

Clearly, in the case at bar, prejudicial error occurred when the trial judge allowed the solicitor to

make victim impact statements during closing argument.

QUESTION V

The trial judge erred in giving a malice instruction that referenced "the intentional doing of a wrongful act without just cause or excuse" in connection with the definition of malice because this charge was burden shifting and confusing in light of appellant's self-defense claim.

At trial, defense counsel objected to the instruction where the jury was allowed to infer malice based on illegal acts because such a charge was burden shifting in light of his self-defense claim and information provided to the jury that the gun used by appellant was stolen and that he (appellant) was not permitted to carry a gun. Tr. 603, l. 6 – p. 604, l. 17. The objectionable malice instruction follows:

Malice is hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict or under circumstance that the law will infer an evil intent. Tr. 687, lines 10-14.

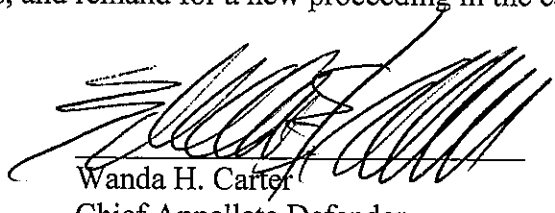
The issue was addressed in State v. Sellers, 442 S.C. 140, 898 S.E.2d 116 (2024), where the defendant was accused of beating the deceased during a robbery, and the Court held that the jury instruction that defined malice as "the intentional doing of a wrongful act without just cause or excuse" was not a burden shifting charge that violated due process as interpreted by Sandstrom v. Montana, 442 U.S. 510 (1991), to the extent that the state's burden of proof was relieved because there was no other justification for the killing. However, the Sellers Court left open the question of whether the charge in question was indeed violative of due process in the context of a murder trial where a self-defense claim was raised. The Sellers Court held as follows:

The Sellers Court referred to the Court below in State v. Sellers, Unpublished Op. No. 2021-UP-254 (S.C. Ct. App. filed 7, 2021), for its position of unsureness on what the challenged phrase adds to a malice charge, and how a wrongful act can be said to be done with malice if all that is proven is that the act was done with intent, and how an intentional act that is justified or excusable by law could be a crime. The Sellers Court went on to hold that instructing a jury on any point of law is difficult, but it can be particularly so on the principle of malice as in some cases, such as where there is evidence the defendant acted in self-defense...and thus, like the Court of Appeals, we question what the phrase "without just cause or excuse" add[s] to the jury's understanding of the legal principle of malice.

Clearly in light of the facts of this case, the challenged malice instruction at issue resulted in the possibility of confusing the jury and presenting a burden shifting instruction in violation of appellant's right to due process. The trial erred in charging the improper malice instruction.

CONCLUSION

Based on the foregoing arguments, counsel for appellant would request that this Court reverse appellant's convictions and sentences, and remand for a new proceeding in the case.



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of January, 2026.