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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2024-001930

THE STATE,

Respondent,

vs.

JASON CONNELL PALMER,

Appellant.

INITIAL BRIEF OF RESPONDENT

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II.

"Whether the trial court erred in denying Appellant's third motion for a mistrial where the cumulative impact of numerous errors, including the two prior mistrial motions, adversely impacted Appellant's right a fair trial?"

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

Did the trial judge correctly decline to grant a directed verdict on the assault and battery of a high and aggravated nature charge when the evidence and testimony presented during trial supported a rational and logical conclusion Appellant unlawfully injured another person in a manner resulting in great bodily injury to that person and, thus, was guilty of all the required elements of the offense?

II.

Did the trial judge correctly deny all the mistrial motions presented to him—including the third one—when none of the insignificant grounds identified as support for the various mistrial motions that were made during trial actually warranted the grant of the extreme remedy of a mistrial regardless of whether those identified grounds were viewed individually or as a whole?

STATEMENT OF THE CASE

In July of 2022, Appellant Jason Connell Palmer was arrested after he caused a vehicle crash that resulted in the death of a seven-year-old child along with severe injuries to the child's father. Between January of 2023 and October of 2024, the Chester County Grand Jury indicted Appellant for reckless homicide, assault and battery of a high and aggravated nature ("ABHAN"), possession of crack cocaine, and possession of marijuana. On October 28, 2024, a jury trial was commenced in the Chester County Court of General Sessions with the Honorable Brian M. Gibbons, circuit court judge, presiding. At the conclusion of the five-day trial, the jury convicted Appellant of reckless homicide and ABHAN. Meanwhile, the jury acquitted Appellant of the two drug charges. Following the verdict, the trial judge sentenced Appellant to consecutive terms of imprisonment of twenty years for ABHAN and ten years for reckless homicide. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Around 5:15 p.m. on the rainy evening of Sunday, July 10, 2022, Jessica Shanks—a resident of North Carolina—was driving her family's Ford Explorer along Interstate 77's right lane in Chester County headed in a northbound direction with her husband, Corey, in the front passenger seat and their two sons, seven-year-old Max and four-year-old Griffin, properly secured in the rear. (Tr. p. 247; pp. 334-335; p. 399; p. 587; pp. 645-646; pp. 710-711; p. 769; p. 773; p. 775; p. 779). By that point in the day, traffic was heavy on the interstate since it was the weekend after a holiday, and the Shanks had only been on the roadway—which was "pretty wet" from rainfall—for a few minutes because they had just finished having dinner with Jessica's parents at a restaurant located off Exit 65. (Tr. p. 293; p. 339; p. 772; pp. 777-780).

Unfortunately, at the same time, Appellant was *also* driving along Interstate 77 in his Chevrolet Express cargo van. (Tr. p. 178; pp. 334-335; p. 577). However, unlike Jessica, Appellant was not simply driving along in a single lane at a speed relatively close to the speed limit. (Tr. pp. 697-698; p. 700; pp. 778-779). Instead, although he would later falsely insist otherwise, Appellant was driving his large cargo van at roughly *97 to 98 miles per hour*—which was 27 to 28 miles per hour over the posted speed limit—while erratically veering and "zigzagging" between lanes without signaling, "swerving" all over the roadway, and getting close to the bumpers of the vehicles in front of him. (Tr. pp. 138-139; p. 144; pp. 151-152; pp. 156-157; p. 481; pp. 699-700; pp. 865-866; p. 885).

Appellant's shocking driving led one frightened motorist to believe Appellant was "trying to run [her] off the road." (Tr. p. 137). Similarly, multiple others who witnessed how Appellant was driving that day immediately thought—and audibly remarked—he was going to cause a wreck. (Tr. p. 151; p. 181). Sadly, they were right. (Tr. p. 152; p. 168; p. 182).

Around Mile Marker 67, Appellant rapidly caught up[1] to the Shanks' Explorer and—without braking[2] or taking any other evasive action—"plowed" his van "straight into" the left rear of their vehicle. (Tr. p. 152; p. 159; p. 168; p. 172; p. 181; p. 185; p. 188; p. 292; p. 701; p. 782). Based on the force involved and the tremendous difference in speed between the two vehicles at the time, the Explorer was—despite Jessica's immediate application of her brakes—propelled to a speed of 86 miles per hour, which was 10 miles per hour faster than it had been travelling prior to being struck from behind, and violently pushed off the roadway to the right. (Tr. p. 152; p. 175; p. 182; pp. 590-591; pp. 697-698; pp. 706-707). Meanwhile, Appellant's van careened in the other direction and crashed into the cable barrier in the median,[3] which caused a separate collision on the southbound side of the highway. (Tr. p. 139; p. 152; p. 175; p. 182; p. 293; p. 303; p. 400).

After being suddenly forced off the roadway, Jessica desperately fought to regain control of the Explorer. (Tr. pp. 708-710). Unfortunately, despite her valiant efforts, the Explorer struck a tree while still travelling at 59 miles per hour and violently spun around. (Tr. p. 152; p. 408; pp. 707-710). As could be expected, the force involved in that high-speed collision was "catastrophic," and it caused severe damage inside and outside the vehicle. (Tr. p. 707).

As a result of the crash, Jessica broke several ribs, her jaw was dislocated, and she bit through her lip. (Tr. p. 789; p. 792). However, despite her injuries, she—with the assistance of

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[1] Based on Appellant's speed leading up to the collision, Appellant's van was moving at 143 feet per *second* and was gaining on the Shanks' vehicle at a rate of 30 feet per second. (Tr. pp. 711-713). As an expert would later aptly note, Appellant's speed left him with a "very narrow margin of error." (Tr. p. 690; pp. 710-713).

[2] In the seconds leading up to the crash, Appellant solely used his van's accelerator pedal. (Tr. p. 703).

[3] Although he did not do so before ramming into the Shanks' Explorer, Appellant began to brake before he crashed his own vehicle into the cable barrier. (Tr. p. 701; p. 704).

other motorists who rushed to provide aid—was able to get out and walk away from the Explorer along with Griffin, who miraculously suffered only minor bruising. (Tr. p. 153; p. 155; p. 468; pp. 784-785; p. 792). Meanwhile, Corey was rendered unconscious by the crash, was grievously wounded, and had to be extricated from the badly-damaged vehicle. (Tr. pp. 153-154; p. 170; p. 409; p. 466; p. 471; pp. 490-492). Sadly, his terrible injuries were not the worst ones sustained in the crash. (Tr. p. 218; p. 248). Max's head appeared to have hit a tree during the crash, and he was instantly killed. (Tr. p. 154; p. 249; p. 392). Due to their severity, it was immediately apparent to those at the scene his injuries were incompatible with life. (Tr. p. 168; p. 183; pp. 248-249; pp. 467-468; p. 490). His cause of death at the age of just seven was crash-related blunt force trauma. (Tr. p. 248).

In the aftermath of the crash, troopers with the South Carolina Highway Patrol, medical personnel, and other first responders promptly rushed to the scene. (Tr. p. 292; p. 330; p. 334; p. 390; pp. 465-466; pp. 477-478; p. 489). The coroner came, too. (Tr. p. 235; p. 237; pp. 462-463). Jessica, Griffin, and Corey were all swiftly transported to the hospital. (Tr. p. 391; p. 470; pp. 493-494). Along with that, the troopers began investigating and interviewing witnesses in an effort to ascertain what had occurred. (Tr. pp. 155-156; p. 303; p. 334; p. 338; pp. 393-395).

Amongst the interviews conducted, Trooper Cyteco Dye[4] spoke with Appellant, who was crying but had not suffered any serious injuries in the crash. (Tr. p. 330; p. 336; p. 479). At that time, Appellant reported he did not know what happened in the crash and claimed he simply looked down, looked back up, and then hit the other vehicle. (Tr. p. 336). Appellant further asserted he could not remember how fast he was going at the time of the collision. (Tr. p. 336).

[4] By the time of trial, Dye was no longer employed by the South Carolina Highway Patrol based on an incident in an unrelated case that led to him resigning in lieu of termination and losing his law enforcement certification. (Tr. pp. 331-333).

Due to the extensive damage sustained by the vehicles involved in the crash, both the Explorer and Appellant's van had to be towed from the scene. (Tr. p. 341). Before that occurred, troopers conducted routine inventories of the vehicles. (Tr. pp. 342-346; p. 357; p. 359; p. 402). During the inventory of Appellant's van, Trooper Dye located a sunglasses case that contained what appeared to be—and was later confirmed to be—a small quantity of marijuana and crack cocaine along with some drug paraphernalia, including rolling papers.[5] (Tr. p. 250; pp. 342-343; p. 358; p. 376; pp. 402-404; pp. 527-528; pp. 540-541). In addition to that, a backpack containing beer was found near Appellant's van. (Tr. pp. 344-346; p. 359). By his own later admission, the beer was Appellant's, and he had tossed it from his van after the crash because he knew the investigating officers were "gonna assume" if they found it inside.[6] (Tr. p. 860).

Around 6:00 p.m., a paramedic checked with Appellant, who was sitting on the ground at the time, to see if he needed any medical assistance. (Tr. pp. 477-478; p. 483). Appellant, who had no obvious injuries, responded he did not think he did.[7] (Tr. p. 479). However, roughly thirty minutes after that, Appellant changed his mind and decided he did, in fact, want to go the hospital. (Tr. pp. 483-484; p. 865). In response, the paramedic transported him there via ambulance, and Appellant began to fall asleep along the way. (Tr. pp. 483-484; p. 865).

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[5] Supposedly, Appellant lived in that van, and he later claimed no one else lived in it with him. (Tr. p. 877). He did, however, report he spent time with a heroin user the night before the incident, though. (Tr. pp. 877-878).

[6] During trial, Appellant informed the jury he did not actually know the marijuana and crack cocaine were present in the van and, had he known they were, he would have chucked them out, too, just like he did with his beer. (Tr. p. 873).

[7] At the scene, Appellant also advised the paramedic he "did not mean to kill the child" and claimed—falsely—he had only been travelling at approximately 75 miles per hour at the time of the crash. (Tr. pp. 480-481).

Upon arriving at the hospital, Appellant started displaying drastic mood changes and became angry when people mentioned the collision. (Tr. p. 222; p. 484; p. 487). At various points, he alternated between weeping, sobbing, speaking normally and conversationally, screaming, yelling, and using vulgar language. (Tr. p. 222; p. 230; p. 315; p. 352). In addition to that, his eyes appeared to be red and watery, and his speech was slurred. (Tr. p. 313). Based on those circumstances, Lieutenant Scott Darby[8] of the South Carolina Highway Patrol conducted a horizontal gaze nystagmus test on Appellant to check for signs of impairment and observed a lack of eye convergence, which was a potential indicator of the presence of drugs in Appellant's system. (Tr. pp. 214-215; pp. 218-219; pp. 869-870). Lieutenant Darby also discovered Appellant's conjunctivas were red instead of pink, which was another indicator of the possible presence of drugs. (Tr. pp. 219-220; p. 231).

In light of all that coupled with the presence of the hidden drugs in Appellant's van, Appellant was arrested for multiple counts of felony driving under the influence, and a search warrant was obtained for samples of his blood and urine. (Tr. p. 220; p. 222). Upon being alerted of his arrest and the related search warrant, Appellant responded by becoming aggressive. (Tr. p. 322; p. 349; p. 361). Furthermore, Appellant—although seemingly cooperative at least initially—refused to voluntarily provide a sample and began directing threats toward both law enforcement officers and the hospital's nursing staff. (Tr. pp. 349-351). Beyond that, Appellant made statements such as: "I killed a white kid, so what."[9] (Tr. p. 315; p. 352). Nevertheless,

[8] By the time of trial, Darby had reached the rank of captain. (Tr. p. 214).

[9] Later on, Appellant readily acknowledged making similar horrendous statements but claimed he only did so as part of a bizarre attempt to get the troopers *not* to criminally charge him. (Tr. p. 872; pp. 893-894). His efforts in that regard were unsuccessful. (Arrest Warrants).

despite Appellant's reluctance and resistance, the blood and urine samples were eventually collected from him. (Tr. pp. 209-210; p. 351).

Meanwhile, Corey, whose injuries could have been fatal, was fortunately able to be stabilized at the hospital and was then transferred to a "trauma one center" for advanced treatment and care. (Tr. p. 515; p. 520; pp. 790-792). He remained in a coma for several days, and he was then hospitalized for approximately three to four more weeks. (Tr. p. 505; p. 515; p. 794). As a direct result of the crash, Corey sustained multiple arm fractures, his shoulder blade was "degloved," and he experienced significant nerve damage. (Tr. pp. 507-508; pp. 792-793). Corey also sustained multiple rib and facial fractures, and one of his lungs collapsed. (Tr. p. 507; p. 793). Furthermore, Corey sustained a severe traumatic brain injury. (Tr. p. 506; p. 793). Due to that brain injury, Corey was left with *permanent* consequences, including mood and cognitive disturbances, memory loss, vision issues, and neurogenic bladder control issues. (Tr. pp. 508-512; p. 521; p. 797).

A few days after the wreck, Appellant voluntarily agreed to provide another statement about what occurred. (Tr. pp. 646-647; p. 658). During his ensuing interview with law enforcement, Appellant claimed he had noticed an "obnoxious" noise while he was driving along the roadway on the date of the incident, and he indicated it may have been caused by a damaged brake light cover.[10] (Tr. p. 648). Tellingly, Appellant further reported the "obnoxious" noise would stop when he drove at 80 to 90 miles per hour. (Tr. p. 649). Beyond that, Appellant candidly acknowledged he was responsible for the collision. (Tr. p. 649).

As the investigation into the wreck continued, investigators examined the Shanks' Explorer and Appellant's van. (Tr. pp. 573-606; pp. 615-659). Through that examination, it was

[10] Upon inspection of the van, an investigator was able to confirm one of its brake light covers was displaced. (Tr. p. 659).

confirmed the van was functioning properly at the time of the crash and there were no mechanical defects with it that would have contributed to the collision. (Tr. pp. 583-584; p. 634; pp. 641-642). In addition to that, event data was obtained from both vehicles, and, through it, investigators were able to confirm Appellant was travelling at 98 miles per hour just before the crash and did not brake at all before ramming into the Shanks' vehicle. (Tr. pp. 598-599; pp. 693-710). That data coupled with the other evidence uncovered in the investigation established Appellant was unquestionably the cause of the fatal wreck. (Tr. p. 710).

Likewise, as part of the investigation, the blood sample collected from Appellant was also analyzed. (Tr. p. 549). Notably, the initial screening results were positive for the presence of fentanyl and marijuana. (Tr. p. 556). However, subsequent confirmatory testing only showed the presence of an inactive metabolite of marijuana, which supported a conclusion Appellant did not have any active drugs in his system at the time of the blood draw several hours after the collision. (Tr. p. 210; pp. 556-557; p. 559; pp. 560-561; pp. 563-565).

Based on those analysis results along with everything else uncovered in the investigation up to that point, Appellant was indicted for reckless homicide and ABHAN along with two drug charges stemming from the substances found in his van after wreck. (Tr. pp. 42-43; Indictments). Ultimately, Appellant elected to proceed forward to trial on all four charges. (Tr. pp. 42-43; Indictments).

During trial, evidence and testimony—including eyewitness testimony—was presented recounting the details of Appellant's shocking driving along a rainy roadway on the date of the incident and high-speed collision with back with the Shanks' Explorer, which resulted in the catastrophic wreck. (Tr. pp. 136-147; pp. 149-161; pp. 166-189; pp. 291-303; pp. 769-806). Additionally, evidence and testimony was presented outlining the fatal nature of the injuries

sustained by Max along with the significant and permanent nature injuries sustained by Corey, which could have been fatal, as a direct consequence of the collision. (Tr. pp. 235-255; pp. 465-471; pp. 489-494; pp. 502-521; pp. 769-806). Likewise, evidence and testimony was presented about Appellant's actions *after* the crash, including regarding his bizarre statements and behavior at the hospital. (Tr. pp. 207-234; pp. 304-322; pp. 330-371; pp. 477-487). Furthermore, evidence and testimony was presented recounting what was uncovered through the investigation into the incident, including about Appellant's established speed at the time of the wreck, failure to brake or take any other evasive actions prior to the collision, and ultimate responsibility for everything that occurred. (Tr. pp. 573-606; pp. 615-659; 661-674; pp. 685-713).

Following the presentation of that testimony and evidence by the State, Appellant chose to testify in his own defense,[11] claimed he was *not* actually driving 98 miles per hour at the time of the collision, explained he simply disagreed with the vehicle event data evidence that had been introduced, and opined he probably was truly only going 78 miles per hour when he rammed into his victims' vehicle.[12] (Tr. pp. 846-894). Appellant further characterized his driving on the date of the incident as "aggressive" instead of reckless[13] and lamented the fatal collision was simply a "horrible . . . accident." (Tr. pp. 874-875).

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[11] Two other witnesses also testified for the defense, but neither offered any testimony that was particularly pertinent to the issue of Appellant's guilt or innocence for the charged offenses. (Tr. pp. 834-844).

[12] During his testimony, Appellant also openly admitted he was an occasional marijuana user, asserted he had *attempted* to smoke marijuana on the night before the incident, and claimed his attempt ended up being unsuccessful because his joint purportedly "collapsed on" him as he tried to roll it up. (Tr. p. 871; pp. 878-879).

[13] Later on during the sentencing proceedings, Appellant acknowledged he was "maybe reckless[.]" (Tr. p. 1014).

After all the testimony and evidence was presented, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (Tr. pp. 907-986). In doing so, the trial judge expressly instructed the jury on the "defense of accident." (Tr. pp. 981-982). Following that, the case was submitted to the jury, and the jury unanimously convicted Appellant solely of reckless homicide and ABHAN. (Tr. pp. 987-988).

ARGUMENT

I.

The trial judge correctly declined to grant a directed verdict on the assault and battery of a high and aggravated nature charge because the evidence and testimony presented during trial supported a rational and logical conclusion Appellant unlawfully injured another person in a manner resulting in great bodily injury to that person and, thus, was guilty of all the required elements of the offense.

Appellant contends the trial judge reversibly erred by refusing to grant a directed verdict on the ABHAN charge. As support for that contention, Appellant raises a wide variety of arguments. However, at its core, Appellant's position is ABHAN simply cannot be established without proof of a specific intent to injure or at least strike another. Thus, in his view, no matter how recklessly he drove, no matter how much he jeopardized the safety of others, and no matter how great the risks he consciously and unjustifiably chose to disregard, he could not be convicted of ABHAN for the non-fatal harm he caused to his grievously-injured victim unless he *meant* to ram his van into something. Importantly though, Appellant's envisioned specific intent requirement appears nowhere in the statutory provision defining ABHAN. Instead, when given their plain and ordinary meaning, the words used by our legislature to define that offense allow for an ABHAN to be committed with specific *or* general criminal intent, which would encompass the mental state of recklessness. Therefore, since the evidence and testimony presented during Appellant's trial established Appellant unlawfully injured another while acting in a criminally-culpable reckless manner and great bodily injury inevitably resulted, a rational factfinder could find Appellant guilty from that evidence and testimony of each and every element of ABHAN, including the requisite men rea. Under such circumstances, the trial judge was required to deny the directed verdict motion, and he committed no conceivable error by

applying the law as written and doing just that. All Appellant's convictions, including his ABHAN conviction, should be affirmed.

Relevant Facts

As previously noted, Appellant—on the date of the incident—intentionally chose to drive his large cargo van along a congested interstate highway in rainy conditions at the extraordinary speed of 98 miles per hour. (Tr. pp. 136-147; pp. 149-161; pp. 166-189; p. 293; pp. 685-713; pp. 769-806). Even though traffic was heavy and the roadway was wet that day, Appellant—by his own volition—continued to dangerously rocket down the highway in his van, erratically swerving in and out of lanes and terrifying other motorists. (Tr. pp. 136-147; pp. 149-161; pp. 166-189; p. 853; p. 866; p. 874; p. 882). Appellant was the one steering the van that day, Appellant was the one consciously controlling the van's shockingly-excessive speed, and there was nothing mechanically wrong with the van. (Tr. p. 139; p. 178; p. 181; pp. 641-642). Without braking, Appellant, while still at the wheel, then crashed his van into the rear of the Shanks' vehicle, causing a catastrophic wreck that claimed the life of Max, a seven-year-old child, and resulted in *permanent* traumatic injuries to Max's father, Corey. (Tr. p. 152; p. 172; p. 182; pp. 248-249; p. 335; p. 392; pp. 466-468; p. 490; pp. 502-521; pp. 590-591; pp. 866-867). Significantly, all those tragic details were thoroughly established and proven during Appellant's trial by virtue of the testimony and evidence presented. (Tr. pp. 136-147; pp. 149-161; pp. 166-189; pp. 207-255; pp. 291-322; pp. 330-371; pp. 465-471; pp. 489-494; pp. 502-521; pp. 573-606; pp. 615-659; pp. 661-674; pp. 769-806).

In light of that testimony and evidence, defense counsel readily *conceded* what had been presented was sufficient to demonstrate Appellant's actions were criminally reckless. (Tr. p.

807; p. 812). For that reason, defense counsel did not seek a directed verdict on the charge of reckless homicide at the conclusion of the State's case. (Tr. p. 807).

Nevertheless, defense counsel moved for a directed verdict on the ABHAN charge.[14] (Tr. pp. 807-810). As support for that motion, defense counsel contended the offense of ABHAN "should" require proof of some sort of specific intent since it was a lesser-included offense of attempted murder, which required proof of a specific intent to kill.[15] (Tr. pp. 807-808). Similarly, defense counsel claimed "there [we]re cases that suggest[ed]" first-degree and second-degree assault and battery "probably should require specific intent[,]" too. (Tr. p. 808). Furthermore, defense counsel noted the legislature had not included the word "recklessness" anywhere in the ABHAN statute even though it could have done so. (Tr. pp. 819-820). Based on that coupled with the legislature's abolition of the former common law assault and battery offenses, defense counsel maintained a conviction for ABHAN could not be sustained by proof of recklessness and, instead, required proof of a specific intent to unlawfully injure another person. (Tr. pp. 809-810). And, because no such proof of specific intent was presented in Appellant's case, defense counsel argued a directed verdict had to be granted. (Tr. p. 810).

Conversely, the solicitor argued the directed verdict motion should be denied. (Tr. pp. 812-818). Aptly relying on our Supreme Court's recent decision in United States v. Clemons, 442 S.C. 670, 901 S.E.2d 280 (2024), the solicitor explained proof of a specific intent was not, in fact, necessary to establish the elements of ABHAN since the "unlawfully injures" language

[14] Defense counsel supplemented his motion with a written memorandum outlining his views on the level of intent needed to prove ABHAN. (Tr. pp. 808-810; Court's Ex. # 2 (Memorandum)).

[15] Earlier during trial, defense counsel also made similar arguments as part of an unsuccessful attempt to have the ABHAN indictment quashed. (Tr. pp. 89-94; p. 109).

from Section 16-3-600 of the South Carolina Code of Laws had been recognized as being capable of establishment through proof of recklessness. (Tr. pp. 812-818).

Upon considering the arguments of counsel in conjunction with the statutory language setting out the offense of ABHAN, the trial judge denied the directed verdict motion. (Tr. pp. 821-823). In doing so, the trial judge—consistent with the Clemons decision—found the "unlawfully injures" element of ABHAN could be established in multiple ways, including through proof the defendant acted with a mens reas of recklessness. (Tr. pp. 821-823).

Following that ruling, the trial proceeded forward,[16] and all the indicted charges—including ABHAN—were submitted to jury. (Tr. pp. 969-986). After deliberating on the matter, the jury unanimously found Appellant guilty of ABHAN beyond a reasonable doubt. (Tr. pp. 987-988).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see Cavazos v. Smith, 565 U.S. 1, 2 (2011) ("[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury."). In other

[16] Defense counsel later renewed all his motions, which presumably included his directed verdict motion, after the defense rested. (Tr. p. 894; p. 905).

words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see United States v. Ashley, 606 F.3d 135, 138 (4th Cir. 2010) ("Reversal for insufficient evidence is reserved for the rare case where the prosecution's failure is clear." (citation and internal quotations omitted)).

Analysis

When presented with a motion for a directed verdict challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is not permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Franklin, 80 S.C. 332, __, 60 S.E. 953, 955 (1908) ("The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.").

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced,

the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, evaluate witness credibility, determine what inferences should be drawn from the facts, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 ("[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts.").

In the case sub judice, there was no dispute Appellant was acting in a criminally reckless manner at the time of the incident. Indeed, defense counsel conceded as much during trial, and no real argument to the contrary could reasonably be made. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (explaining an issue conceded at trial cannot be asserted later on appeal). Nonetheless, as he did at trial, Appellant continues to insist he simply could not properly have been convicted of the statutory offense of ABHAN based on the shocking things

he did because, in his view, that offense can *only* be established through proof of a specific intent to injure or at least strike another. Appellant is wrong.

With the enactment of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, various statutory assault and battery offenses—including ABHAN—were created. Act No. 273, 2010 S.C. Acts & Joint Resolutions; State v. Hernandez, 428 S.C. 257, 260, 834 S.E.2d 462, 463 (2019). ABHAN is statutorily defined as follows:

> A person commits the offense of assault and battery of a high and aggravated nature if the person *unlawfully injures* another person, and:
>
> (a) great bodily injury to another person *results*; or
>
> (b) the act is accomplished by means likely to produce death or great bodily injury.

S.C. Code Ann. § 16-3-600(B)(1) (emphasis added). Thus, as is true with most of South Carolina's other statutory assault and battery offenses, ABHAN is committed by "unlawfully injur[ing]" another. Id. Meanwhile, what primarily distinguishing that offense from lesser assault and battery offenses—such as second-degree assault and battery—is the level of bodily injury that "results." Id.; see S.C. Code Ann. § 16-3-600(D)(1) (setting out the offense of second-degree assault and battery, which—pursuant to one manner by which the offense can be committed—occurs when a person unlawfully injures another and moderate bodily injury results); S.C. Code Ann. § 16-3-600(E)(1) (setting out the offense of third-degree assault and battery, which occurs when a person either unlawfully injures another or offers or attempts to injure another with the present ability to do so); see also Collins English Dictionary 1697 (13th ed. 2018) (defining "result" as "to be the outcome or consequence (of)").

Looking to statutory language largely identical in most ways to the statutory language setting out the offense of ABHAN, our Supreme Court concluded the offense of second-degree

assault and battery—along with its accompanying "unlawfully injures" element—"may be committed with general criminal intent, including the mental state of recklessness[.]" United States v. Clemons, 442 S.C. 670, 676, 901 S.E.2d 280, 283 (2024). And, since no logical reason could exist for ABHAN to be treated differently simply because it can result in the imposition of a higher penalty than could second-degree assault and battery, a person can validly be convicted of ABHAN based on proof establishing a reckless mental state due to the plain and ordinary meaning of the words "unlawfully injures" coupled with the fact the legislature elected *not* to include a specific—and more-restrictive—mental state requirement with that language. See Black's Law Dictionary 251 (9th ed. 2009) (defining "cause" as "[t]o bring about or effect"); Collins English Dictionary 1004 (13th ed. 2018) (defining "injure" as "to cause physical or mental harm or suffering to; hurt or wound" or "to offend, esp by an injustice"); cf. Voisine v. United States, 579 U.S. 686, 698-699 (2016) (concluding, when "naturally read," the phrase " 'use . . . of physical force' . . . encompasses acts of force undertaken recklessly—i.e., with conscious disregard of a substantial risk of harm."); Jones v. United States, 36 F.4th 974, 986 (9th Cir. 2022) (instructing the federal crime of assault resulting in serious bodily injury "can be committed recklessly"); United States v. Eagle, 586 F.2d 1193, 1196 (8th Cir. 1978) (explaining a federal statute criminalizing "[a]ssault resulting in serious bodily injury" did not require proof of specific intent and, instead, "require[d] only that the assault shall have resulted in serious bodily harm; the assault need not have been committed with a dangerous weapon, *or with intent to do bodily harm*" (emphasis added)).

Further supporting a conclusion ABHAN can be established without proof of a specific intent to injure, South Carolina has a long history of criminalizing volitional acts—including ones similar in many ways to Appellant's—that result in death or injury regardless of whether

those acts were committed in a reckless or even just criminally-negligent manner. See State v. Mouzon, 231 S.C. 655, 662, 99 S.E.2d 672, 675 (1957) (concluding evidence establishing Mouzon struck and killed a pedestrian while intoxicated and driving a vehicle at a speed of 70 to 80 miles per hour in an area with a posted speed limit of 35 miles per hour supported a conviction for *murder*); State v. Sussewell, 149 S.C. 128, __, 146 S.E. 697, 703 (1929) (affirming Sussewell's common law ABHAN conviction after concluding his act of striking a pedestrian with his car while driving at a "rapid rate of speed" could support findings of gross negligence, recklessness, or willfulness and could not support a conclusion he was only guilty of simple assault and battery); see also State v. Ferguson, 302 S.C. 269, 272, 395 S.E.2d 182, 183 (1990) (recognizing the following mental states may be sufficient to prove a crime in South Carolina depending on the particular offense involved: (1) purpose or intent; (2) knowledge; (3) recklessness; and (4) criminal negligence); William Shepard McAninch et al., The Criminal Law of South Carolina 212 (5th ed. 2007) (expressing the view there is no reason why both simple battery and aggravated battery should not be capable of being committed via criminal negligence in South Carolina and explaining that "appears to be the rule in the majority of jurisdictions"); William Shepard McAninch et al., The Criminal Law of South Carolina 243 (6th ed. 2013) (expressing the same view for the same reasons *after* the enactment of the Omnibus Crime Reduction and Sentencing Reform Act of 2010); cf. S.C. Code Ann. § 16-3-60 ("With regard to the crime of involuntary manslaughter, criminal negligence is defined as the reckless disregard of the safety of others."); S.C. Code Ann. § 16-3-95 (recognizing the felony offense of infliction of great bodily injury upon a child, which is defined simply as "inflict[ing] great bodily injury upon a child," does not apply to a traffic accident "*unless* the accident was caused by the driver's *reckless disregard for the safety of others*" (emphasis added)). And, South Carolina's long

history in that regard is fully consistent with that of most other jurisdictions. See Voisine, 579 U.S. at 695 ("Then, as now, a significant majority of jurisdictions—34 States plus the District of Columbia—defined such misdemeanor offenses to include the reckless infliction of bodily harm. That agreement was not coincidence. Several decades earlier, the Model Penal Code had taken the position that a mens rea of recklessness should generally suffice to establish criminal liability, including for assault." (citations omitted)); see also State v. Guderyon, 438 S.C. 476, 494, 884 S.E.2d 202, 211 (Ct. App. 2022) (citing to a legal encyclopedia for the principle "battery is a general intent crime, and thus the required mental state entails only an intent to do the act that causes the harm" (internal quotations omitted)), rev'd on other grounds, Op. No. 2025-MO-028 (S.C. Sup. Ct. filed Feb. 12, 2025); Model Penal Code § 2.02(3) ("When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly or recklessly with respect thereto.").

Accordingly, with that in mind, the proof presented during Appellant's trial unquestionably established: (1) Appellant "unlawfully injure[d]" Corey while acting with the criminally-culpable mental state of recklessness; and (2) the *permanent* injuries Corey sustained as a direct result of Appellant's reckless actions constituted "great bodily injury." S.C. Code Ann. § 16-3-600(B)(1); see S.C. Code Ann. § 16-3-600(A)(1) (" 'Great bodily injury' means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ."). Thus, that proof was sufficient to establish each and every element of ABHAN, including the requisite mens rea. Cf. Clemons, 442 S.C. at 676, 901 S.E.2d at 283 (concluding second-degree assault and battery can—under some circumstances—be committed with the mental state of

recklessness and instructing courts have to be careful to avoid narrowing the prosecutorial reach of a statute "designed to widely sweep").

Because the evidence and testimony presented during trial supported a fair and reasonable conclusion Appellant was guilty of all the elements of ABHAN, the trial judge was required to submit Appellant's case to the jury so it could carry out its fact-finding role. See State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is "required" to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused's guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015). Accordingly, the trial judge correctly declined to grant a directed verdict in Appellant's case, and there are no legitimate grounds upon which that ruling can be disturbed on appeal. See Bennett, 415 S.C. at 236-237, 781 S.E.2d at 354 ("[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and *must* submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." (emphasis added and citation and internal quotations omitted)). All Appellant's convictions, including his ABHAN conviction, should be affirmed.

II.

The trial judge did not abuse his broad discretion or otherwise err by denying any of the mistrial motions presented to him—including the third one—because none of the insignificant grounds identified as support for the various mistrial motions that were made during trial actually warranted the grant of the extreme remedy of a mistrial regardless of whether those identified grounds were viewed individually or as a whole.

Appellant contends the trial judge abused his discretion and reversibly erred by failing to grant a mistrial in his case based on the "cumulative impact" of numerous supposed errors that occurred during trial, including ones that were neither objected to nor referenced by defense counsel as support for his various mistrial motions. More specifically, Appellant maintains the grant of a mistrial was collectively warranted in his case because: (1) a witness testified in a manner that suggested Appellant had previously been jailed and, although an objection to that testimony was immediately sustained, the trial judge only instructed the jury it could not give any consideration whatsoever to that testimony when deciding the case, which was purportedly too "vague" of a curative instruction to truly cure the "incredibl[e]" prejudice caused by the objected-to testimony; (2) two jurors were removed and replaced with alternate jurors during the trial, which somehow "taint[ed]" the other jurors and was allegedly prejudicial in some unclear manner since defense counsel used all his peremptory challenges during the jury selection process; (3) another juror "potentially" saw Appellant in jail attire and handcuffs, which was somehow prejudicial even though the trial judge made a credibility-based determination the juror credibly did *not* see Appellant; (4) despite the fact defense counsel did not object or seek a mistrial based on them, "there were at least some outbursts by members of" the victims' family; and (5) there was alleged "improper conduct" between a testifying witness and a member of the victims' family, which—much like Appellant's newly-advanced claim related to the alleged "outbursts"—did not draw an objection from defense counsel and was not identified as a ground

warranting the grant of a mistrial. To the extent Appellant now seeks to—for the first time on appeal—rely upon unobjected-to occurrences during trial as support for his attempt to obtain an appellate reversal of his convictions, Appellant's arguments in that regard are patently unpreserved for appellate review because they were neither raised to nor ruled upon by the trial judge. Meanwhile, to the extent Appellant contends the trial judge should have granted a mistrial based on the various grounds defense counsel actually identified during trial, Appellant is fundamentally incorrect. Whether viewed in isolation or collectively, the trial judge appropriately addressed every issue raised to his attention throughout the trial and correctly declined to grant the drastic sanction of a mistrial because nothing that occurred resulted in any improper prejudice to Appellant or otherwise rendered his trial fundamentally unfair. Appellant's convictions should be affirmed.

Relevant Facts

Early on during Appellant's trial, Felicia Logan, one of the motorists who witnessed Appellant violently ram into the Shanks' vehicle and cause the fatal crash, testified about her shocking observations on the date of the incident. (Tr. pp. 179-189). As part of the State's direct examination of her, the solicitor asked Logan whether Appellant said anything about his own phone when he asked if he could use hers after the collision. (Tr. p. 189). Logan responded: "He was kind of mumbling and saying I -- I can't go back to jail. I can't go back to jail." (Tr. p. 189). At that point, defense counsel objected, and the trial judge immediately sustained the objection. (Tr. p. 189).

Thereafter, during the ensuing in camera discussion that quickly took place, defense counsel moved for a mistrial, arguing the objected-to remark made by the witness was "inappropriate," unfairly prejudicial, and *may* have been a reference to the fact Appellant was on

bond in connection to pending criminal charges out of North Carolina at the time of the collision. (Tr. p. 190; p. 198). Defense counsel further opined no curative instruction could "unring that bell." (Tr. p. 190). In rebuttal, the solicitor argued the unsolicited remark—which apparently had never previously been revealed by Logan prior to her testimony on the witness stand—was wholly non-specific and, thus, could properly be remedied through the issuance of a curative instruction. (Tr. pp. 191-192; pp. 200-201).

Ultimately, upon considering the matter, the trial judge denied the mistrial motion and—over defense counsel's objection—instructed the jurors they could not consider the witness's remark "in any manner whatsoever" when deciding the case because the objection to it had been sustained and, therefore, the remark was not in evidence.[17] (Tr. p. 201; pp. 203-204). In the trial judge's view, that curative instruction "removed" any possible prejudice that could have resulted from Logan's unsolicited remark. (Tr. p. 324). The trial then continued forward. (Tr. p. 204).

Thereafter, toward the outset of the trial's second day, the solicitor noted Dye, who was identified by name as a potential witness during the jury voir dire process, had alerted her he was present in the courtroom that morning when the jury was brought out and recognized two seated jurors—Juror # 26 and Juror # 50—as his first cousins.[18] (Tr. pp. 46-47; pp. 272-274). In addition to that, defense counsel noted the jury list reflected Juror # 26 and Juror # 50 shared the same address. (Tr. p. 274).

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[17] Notably, the trial judge's curative instruction was largely consistent with what he had earlier communicated to the jury through his preliminary remarks about the significance of a sustained objection during trial. (Tr. pp. 121-122). Moreover, as part of his jury instructions later on, the trial judge reiterated to the jurors they could not give any consideration to evidence to which an objection had been sustained. (Tr. pp. 970-971).

[18] Juror # 50 also later indicated he worked at the same tire company as Dye. (Tr. p. 277).

Based on those dual issues, the solicitor contended replacing the two jurors with alternate jurors was the "safest" course of action. (Tr. pp. 274-275). Contrastingly, defense counsel suggested questioning the jurors about whether their relationship with Dye—who had not yet testified—and the fact they lived together would affect their ability to be fair and impartial. (Tr. p. 275; pp. 330-371). The trial judge agreed to defense counsel's request. (Tr. p. 275).

Following that, both jurors were questioned individually, and, in response, both explained they did not reveal their relationship to Dye when earlier asked because they did not know or recognize him by his actual name.[19] (Tr. p. 276; pp. 280-281). Both jurors further confirmed they had not discussed the case was each other and could, in fact, remain fair and impartial when deciding the case. (Tr. p. 278; pp. 281).

After that questioning had concluded, defense counsel indicated he was not certain the two jurors could truly remain fair and impartial despite their direct assurances they could, and, in light of that, the trial judge indicated he was inclined to simply replace them both with alternate jurors. (Tr. p. 282). Hearing nothing else from counsel,[20] the trial judge then removed Juror # 26 and Juror # 50 from the jury. (Tr. pp. 283-284).

Immediately after the trial judge did so, defense counsel once again moved for a mistrial. (Tr. p. 285). As support for his latest motion, defense counsel asserted he "probably" would have exercised his strikes differently had the jurors disclosed the information earlier.[21] (Tr. p. 285). In rebuttal, the solicitor quickly responded a theoretical possibility peremptory challenges

[19] Apparently, Dye went by "Teet." (Tr. pp. 280-281).

[20] Before the jurors were excused, defense counsel explicitly confirmed to the trial judge he had nothing else on the matter. (Tr. p. 283).

[21] For what it's worth, defense counsel did, in fact, have peremptory strikes available when Juror # 50 was seated on the jury. (Tr. pp. 70-75). However, by the time Juror # 26 was seated on the jury, defense counsel had exhausted all his peremptory challenges. (Tr. pp. 70-75).

may have been exercised differently was not an actual basis warranting the grant of a mistrial since the replacement of the two jurors with qualified alternate jurors would remedy any conceivable issue the two removed jurors' presence on the jury could cause. (Tr. pp. 285-287).

Again, the trial judge agreed with the solicitor, declined to grant the drastic sanction of a mistrial, and placed the two available alternate jurors on the jury, which the trial judge explained—quite correctly—"cured" any possible prejudice that could have existed. (Tr. pp. 288-289; p. 328). Once again, the trial continued forward after that. (Tr. p. 290).

Subsequently, at the beginning of the fourth day of trial, defense counsel indicated Appellant was now claiming he saw a juror smoking toward the back of the courthouse parking lot when he was transported back to the detention center on the preceding night in a jumpsuit and shackles. (Tr. p. 738). In response to that statement, the solicitor indicated she, too, had seen one of the jurors waiting for a ride outside following the conclusion of the preceding day's proceedings. (Tr. pp. 739-740). She further confirmed a transport officer—who was identified as "Mr. McKenzie"—alerted her Appellant mentioned he may have seen a juror after he was loaded into the transport van. (Tr. pp. 740-742). Based on that, the solicitor proposed conducting questioning to determine what—if anything—the juror actually saw. (Tr. p. 742).

Following that, McKenzie testified during an in camera hearing about what had happened on the preceding day. (Tr. pp. 743-747). During his brief testimony, the transport officer noted Appellant was handcuffed and placed back into a jumpsuit after court ended for the day. (Tr. pp. 743-744). McKenzie indicated he then—after checking to make sure it was clear—directed Appellant outside and into the transport van, which was parked directly next to the sidewalk. (Tr. p. 744). As Appellant was getting into the van, McKenzie stated Appellant remarked he thought he could see a juror. (Tr. p. 744). McKenzie indicated he then looked and spotted a

juror looking in the direction of a different street, and he confirmed he neither saw the juror look in their direction at any point nor had any interactions with the juror. (Tr. pp. 745-746).

Once that testimony had been presented, the trial judge questioned whether a juror's brief view of a handcuffed defendant in a jumpsuit was something that would even be sufficiently prejudicial to warrant a mistrial. (Tr. pp. 752-753). Defense counsel responded by claiming the case law was "clear" that a juror seeing a defendant in handcuffs and a jumpsuit was, in fact, "prejudicial" and contending the trial judge would "likely be in a position" to grant a mistrial "if" the juror did actually see Appellant. (Tr. p. 754). A recess was then taken to continue exploring the matter and review—at defense counsel's suggestion—surveillance footage from the courthouse's security cameras. (Tr. p. 747; p. 755).

After that recess, the trial judge noted he—along with counsel—had reviewed the security footage, which contained "nothing of any significance." (Tr. p. 755). In addition to that, the trial judge confirmed he interviewed the juror—Juror # 96—in chambers with the consent of counsel and the juror stated he saw nothing on the preceding day other than a person riding a bicycle and some court personnel who told him to have a good day.[22] (Tr. p. 755). Both defense counsel and the solicitor agreed the trial judge's summary accurately reflected what had occurred. (Tr. pp. 755-756). Nevertheless, defense counsel noted he personally observed a shadow on the security footage and opined that shadow "possibly" could have been the juror's. (Tr. p. 759). Based on that, defense counsel asserted granting a mistrial would be the "fundamentally fair thing" to do in light of that occurrence coupled with the other things that he had already complained about prior to that point. (Tr. p. 760). In rebuttal, the solicitor argued

[22] That interview was digitally recorded by the trial judge, and the recording of it was made a part of the record by being played in the courtroom. (Tr. pp. 755-758).

the trial judge appropriately addressed each and every issue that arose during trial, including the latest one, and, thus, there were no grounds warranting a mistrial. (Tr. pp. 760-763).

Yet again, the trial judge agreed with the solicitor and rejected defense counsel's most-recent attempt to have the trial aborted. (Tr. p. 763). In declining to grant a mistrial, the trial judge confirmed he addressed and remedied the earlier issues when they arose and he further confirmed he found Juror # 96's denial of seeing anything that concerned Appellant was credible. (Tr. pp. 763-765). The trial then again continued forward, and, this time, it was able to reach a conclusion a day later without any new mistrial motions being made. (Tr. p. 766; pp. 987-988).

Standard of Review

When reviewing a decision regarding a mistrial, an appellate court will not disturb a trial judge's discretionary ruling on such a matter absent a prejudicial abuse of discretion. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627-628 (2000); see State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998) ("In order to receive a mistrial, the defendant must show error and resulting prejudice."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Patterson, 425 S.C. 500, 507, 823 S.E.2d 217, 221 (Ct. App. 2019) (citation and internal quotations omitted).

Analysis

In every criminal case tried in South Carolina, a defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); see Harris, 340 S.C. at 63, 530 S.E.2d at 627 ("The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors."). To protect that

right, a trial judge is typically afforded broad discretion over the manner in which a criminal trial is conducted. State v. Humphery, 276 S.C. 42, 43, 274 S.E.2d 918, 918 (1981).

In conducting a criminal trial, the trial judge will almost certainly be confronted with some sort of error or irregularity at some point during the proceedings. See Delaware v. Van Arsdall, 475 U.S. 673, 681 (1986) (recognizing the occurrence of an error at some point during a criminal trial is "virtually inevitable"). When an error occurs, one potential course of action available to a trial judge is to grant a mistrial. State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). However, a mistrial is an *extreme* remedy that should *only* be granted when absolutely necessary. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). In determining whether to grant a mistrial, the trial judge should consider whether the mistrial is dictated by manifest necessity *and* no other legitimate courses of action remain available. State v. Simmons, 352 S.C. 342, 354, 573 S.E.2d 856, 862 (Ct. App. 2002); see State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983) ("The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment.").

In the case sub judice, Appellant—now relying on a combination of preserved and unpreserved issues—contends the trial judge reversibly erred by failing to grant a mistrial. Importantly though, none of the grounds identified by defense counsel at trial or by Appellant on appeal—regardless of whether viewed individually *or* collectively—could have validly justified the grant of a mistrial in Appellant's case. Therefore, the trial judge did exactly what he was supposed to do by declining to grant a mistrial in response to the matters called to his attention, and there are no legitimate grounds upon which the trial judge's sound discretionary ruling could now be disturbed on appeal.

First, to the extent Appellant contended—and now continues to contend—a mistrial was warranted based on Logan's testimony revealing Appellant lamented he could not go *back* to jail after that crash, Appellant did not suffer any meaningful improper prejudice as a result of that testimony and, even if he did, any conceivable prejudice he could have suffered was swiftly cured by the corrective measures employed by the trial judge. Demonstrating that fact, the challenged testimony itself was vague, unspecific, and never repeated again at any point during Appellant's trial, which helped minimize any unfair prejudice that could have resulted from it. See Council, 335 S.C. at 13, 515 S.E.2d at 514 (finding no prejudice resulted from the admission of testimony establishing law enforcement already had Council's fingerprints on record at the time of his arrest for the charged offense); State v. Singleton, 284 S.C. 388, 392, 326 S.E.2d 153, 156 (1985) (finding an arresting officer's vague references to prior crimes in the jury's presence did not warrant the granting of a mistrial), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Robinson, 238 S.C. 140, 150-151, 119 S.E.2d 671, 676 (1961) (finding a witness's testimony Robinson told him he was on the way to the "probition office" did not create an inference Robinson had been convicted of another crime), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Relatedly, no actual evidence about Appellant previously being jailed before the date of the incident was ever introduced during trial and the jury likewise never learned any specific details about Appellant having a prior criminal record, which similarly helped to minimize or eliminate any possible prejudice that could have resulted. See State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) ("[A] vague reference to a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes."); cf. State v. Wiley, 387 S.C. 490, 496, 692 S.E.2d 560, 563

(Ct. App. 2010) ("[W]e believe the State's comment regarding Wiley's warrant was merely a vague reference to his prior criminal record that did not justify granting his motion for mistrial. Furthermore, even if the jury inferred that Wiley committed another crime from the State's opening statement, we believe Wiley was not prejudiced because the State never attempted to prove Wiley was convicted of some other crime. Therefore, we conclude the State's opening statement regarding Wiley's unrelated outstanding warrant was not sufficiently prejudicial to warrant a mistrial." (citations omitted)). Finally and perhaps most significantly, the trial judge sustained defense counsel's objection to Logan's testimony and—consistent with preliminary remarks he had already made—swiftly provided an easy-to-understand curative instruction emphasizing the testimony to which the objection had been sustained could not be considered "in any manner whatsoever," which ensured the jurors would not improperly consider the objected-to testimony when deciding Appellant's case. See State v. Herring, 387 S.C. 201, 216, 692 S.E.2d 490, 498 (2009) ("Generally, a curative instruction to disregard the testimony is deemed to have cured any alleged error."); see also Foye v. State, 335 S.C. 586, 590 n. 1, 518 S.E.2d 265, 267 n. 1 (1999) ("A jury is presumed to follow instructions. Therefore, without some showing the jurors disregarded these instructions, this Court declines to presume prejudice." (citations omitted)); cf. State v. Arther, 290 S.C. 291, 295, 350 S.E.2d 187, 189 (1986) ("The trial judge did charge the jury not to consider anything heard outside the courtroom. This charge was adequate under the circumstances to ensure the jury would render a verdict based upon the evidence presented."). Therefore, just as the trial judge wisely recognized, any possible prejudice that could have resulted from Logan's unexpected testimony about Appellant's self-pitying lamentations after the wreck was eliminated through the prompt curative measures

employed, which meant a mistrial simply was not warranted based on that all-too-common occurrence during the trial.

Second, to the extent he contended—and now continues to contend—he was entitled to a mistrial based on the late discovery of two jurors' familiar connection to a witness and each other, Appellant simply could not have been entitled to a mistrial as a result of that occurrence since he suffered no prejudice whatsoever from it. That is true because the two jurors were *removed* and *replaced* with qualified alternate jurors as soon as the previously-unknown information[23] came to light. Critically, by removing both jurors and replacing them with qualified alternate jurors, the trial judge prevented even a possibility of prejudice from arising and protected—as opposed to hindered—Appellant's right to a fair trial by a fair and impartial jury, which, notably, did *not* entitle Appellant to a trial by any *particular* jurors. See State v. Stanko, 376 S.C. 571, 576, 658 S.E.2d 94, 96-97 (2008) ("While . . . a defendant [has] the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury."); State v. Evins, 373 S.C. 404, 416, 645 S.E.2d 904, 910 (2007) ("[A] defendant has no right to trial by a particular jury."); see also Green v. Maynard, 349 S.C. 535, 543, 564 S.E.2d 83, 87 (2002) (concluding a criminal defendant being erroneously forced to use a peremptory strike was not something that constituted a violation of any constitutional rights or resulted in a denial of fundamental fairness); cf. State v. Williams, 321 S.C. 455, 460, 469 S.E.2d

[23] For what it's worth, the previously-unknown information about the jurors' connection to Dye was not even something that would have unyieldingly precluded the jurors from serving on the jury. See State v. Gulledge, 277 S.C. 368, 370, 287 S.E.2d 488, 489 (1982) ("Solely because a juror is related by blood or marriage to a police officer or deputy sheriff does not automatically disqualify the juror[.]"); cf. State v. Burgess, 391 S.C. 15, 18, 703 S.E.2d 512, 514 (Ct. App. 2010) ("We find no error in the judge's decision not to remove the juror. First, the fact that a juror has some relationship with the victim does not automatically require the trial judge to remove the juror. Second, the juror did not conceal any information requested during voir dire. Finally, the judge acted within his discretion in finding the juror could be fair and impartial." (citations and footnote omitted)).

49, 52 (1996) (finding no reversible prejudice resulted from the removal and replacement of a juror at the end of the second day of trial); State v. McDaniel, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980) ("[T]he procedure employed by the trial court, however irregular, was not sufficient to deprive appellant of his right to a jury trial. There is no right to be tried by a jury composed of particular individuals. The alternate juror had been approved by both sides at the inception of the trial, and there is no showing that the appellant withdrew that approval at the time of substitution. Moreover, appellant has failed to establish in what manner this procedure prejudiced him." (citations omitted)). Therefore, just as the trial judge correctly recognized, that non-prejudicial occurrence did not—and could not have—warranted the grant of a mistrial.

Third, to the extent Appellant contended—and now continues to contend—he was entitled to a mistrial based on the speculative possibility a juror saw him in a jail jumpsuit and handcuffs as he was being transported to the detention center at the end of one day during trial, Appellant once again is wholly incorrect for several reasons. Initially, even assuming the juror *had* actually glimpsed Appellant in a jumpsuit and handcuffs, such an occurrence has repeatedly been recognized by courts all over the nation, including in South Carolina, as being—at worst—minimally prejudicial if prejudicial at all. See State v. Moore, 257 S.C. 147, 152-153, 184 S.E.2d 546, 548-549 (1971) (concluding a mistrial was not warranted even though some jurors saw the defendants being shackled and prepared for transport to jail and "in chains" when returned to the courtroom after a lunch break); see also United States v. Chrzanowski, 502 F.2d 573, 576 (3d Cir. 1974) ("The fact that jurors may briefly see a defendant in handcuffs is not so inherently prejudicial as to require a mistrial."); United States v. Jackson, 423 F. App'x 329, 331 (4th Cir. 2011) (concluding jurors' brief and inadvertent view of a defendant in a jail jumpsuit and shackles while he was being transported to the courthouse on the second day of trial did not

amount to prejudice requiring reversal); United States v. Lattner, 385 F.3d 947, 959 (6th Cir. 2004) (instructing a brief juror observation of a defendant in handcuffs while the defendant is being escorted outside the courtroom does not create the level of prejudice necessary to warrant a new trial); United States v. Fahnbulleh, 748 F.2d 473, 477 (8th Cir. 1984) ("The danger of prejudice to defendants is slight where a juror's view of defendants in custody is brief, inadvertent and outside of the courtroom."); State v. Apelt, 681 P.2d 634, 646 (Ariz. 1993) ("[T]he brief and inadvertent exposure of a handcuffed or shackled defendant to members of the jury outside the courtroom is not inherently prejudicial, and the defendant is not entitled to a new trial absent a showing of actual prejudice."); Knight v. State, 76 So. 3d 879, 886-887 (Fla. 2011) (reiterating a juror's brief or inadvertent view of a defendant in shackles is not so prejudicial as to warrant a mistrial); State v. McMillian, 779 S.W.2d 670, 672 (Mo. Ct. App. 1989) ("It has long been recognized in this state that 'a brief, inadvertent exposure of the jury of a handcuffed defendant while he is being taken from one place to another does not deprive defendant of a fair trial." (citation and internal quotations omitted)); State v. Blankenship, 657 N.E.2d 559, 571 (Ohio Ct. App. 1995) ("A defendant's right to a fair trial is *not prejudiced* by the use of handcuffs or shackles where the jurors' view of the defendant in custody is brief, inadvertent, and outside of the courtroom." (emphasis added)); Commonwealth v. Johnson, 500 A.2d 173, 175 (Pa. Super. Ct. 1985) ("[I]t is clear that a brief, accidental sighting of a defendant in custodial trappings, without more, is not so inherently prejudicial as to significantly impair the presumption of innocence to which a defendant is entitled." (citation and internal quotations omitted)). Indeed, even if Juror # 96 had directly seen Appellant in some form of custodial restraints while he was being transported from the courthouse, such an occurrence would have in no way revealed anything to the juror outside of what is commonly known and expected for a

defendant whose criminal trial is ongoing. See Holbrook v. Flynn, 475 U.S. 560, 567 (1986) ("[J]urors are quite aware that the defendant appearing before them did not arrive there by choice or happenstance."); Dupont v. Hall, 555 F.2d 15, 17 (1st Cir. 1977) ("With the plethora of court news appearing daily in the press, even the most unsophisticated juror must know that defendants indicted for serious crimes, and often even for minor ones, may have to post bail. They must also know that many defendants lack the resources to accomplish this. Under these circumstances we cannot think that the emotional impact of seeing the defendant in custody is necessarily hostile[;] it may be quite the reverse."); United States v. Leach, 429 F.2d 956, 962 (8th Cir. 1970) ("It is a normal and regular as well as a highly desirable and necessary practice to handcuff prisoners when they are being taken from one place to another, and *the jury is aware of this*." (emphasis added)); Wharton v. Chappell, 765 F.3d 953, 965 (9th Cir. 2014) ("[J]urors know that, as a matter of routine, some defendants are in custody during trial and that security needs during transport demand restraints."). However, even more significantly, the trial judge in Appellant's case found Juror # 96 was credible when he stated he did *not* see anything remarkable during the incident in question, which meant Appellant could not have been prejudiced at all since the juror never actually saw him in a jumpsuit or handcuffs. See State v. Maxey, 218 S.C. 106, __, 111, 62 S.E.2d 100, 102 (1950) ("The findings of the trial court on questions of fact relating to the fitness of a juror are conclusive, and will not be disturbed on review unless manifestly erroneous. This principle of law is so well established that it hardly becomes necessary to cite authority to sustain it."). Therefore, just as the trial judge recognized, Appellant could not have been prejudiced by something that simply did not occur, and, for the same reason, the total absence of prejudice from that non-occurrence could not have impacted or added to a properly-conducted cumulative error analysis.

Fourth and finally, to the extent Appellant now contends—for the first time on appeal—he was entitled to a mistrial based on the "outbursts"[24] that supposedly occurred during trial coupled with a purported "breach of rules"[25] involving a witness and a member of the Shanks family, that particular argument was plainly not properly preserved for appellate review and cannot now appropriately be considered on appeal because it was neither raised to nor ruled upon by the trial judge. Significantly, pursuant to South Carolina law, an issue must be presented to the trial judge before it can properly be raised on appeal. See State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005) ("The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (instructing an appellant is limited solely to the grounds raised at trial); Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004) (recognizing South Carolina's issue preservation requirements are a fundamental component of appellate procedure). And, that remains true when an appellant's appellate argument is premised on a claim of cumulative error. See State v. Sheppard, 391 S.C.

[24] Although the trial judge discussed steps to prevent any "outbursts" from occurring during the trial, it is not clear from the record whether and to what extent any actual outbursts occurred in the jury's presence, which may be exactly why defense counsel—who was willing to rely upon rank speculation about *shadows*—did not raise any objections about or try to rely upon "outbursts" when repeatedly seeking the grant of mistrial from the trial judge. (Tr. pp. 262-263; pp. 267-270; p. 759).

[25] The purported "breach of rules" was a member of the Shanks family approached and embraced one of the troopers involved in the response to the fatal collision during a break in the proceedings. (Tr. p. 413). After that occurred, defense counsel called it to the trial judge's attention because he personally noticed the interaction but, based on what he saw, did not know "if they had a conversation or not[.]" (Tr. p. 413). In response, the trial judge swiftly permitted defense counsel to question the trooper, and the trooper confirmed the person he interacted with "just thanked [him] for coming to testify today" and said "she's sorry [he was having] to go through this again." (Tr. p. 413). After eliciting that testimony, defense counsel—perhaps recognizing it was a total non-issue—stated "[a]ll right" and then dropped the matter completely without ever asking the trial judge to take any further actions. (Tr. p. 413).

415, 421, 706 S.E.2d 16, 19 (2011) ("[T]he plain error rule does not apply in South Carolina state courts."); cf. State v. Beekman, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013) ("[W]e have already found no errors in regard to the first two issues raised by Beekman on appeal. In regard to the other three specific instances he references under his cumulative error argument, we find no error on the part of the trial court, because no prejudicial evidence was admitted in one instance and no further motion was made or objection asserted on that matter, and *because the alleged errors were not brought to the trial court's attention in the other two instances*. In effect, Beekman is asking this court to apply the plain error doctrine by combing the record for unpreserved issues and arguing the cumulative effect of these unpreserved matters deprived him of a fair trial. However, our appellate courts do not apply the plain error rule." (emphasis added and citations omitted)), aff'd, 415 S.C. 632, 785 S.E.2d 202 (2016). Therefore, notwithstanding the fact the record does not suggest Appellant's right to a fair trial was abridged by *anything* that occurred during his trial, the trial judge simply cannot be faulted for failing to grant a mistrial based on alleged errors he was never asked to rule upon. See State v. Stone, 376 S.C. 32, 36, 655 S.E.2d 487, 489 (2007) ("If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.").

Accordingly, since the various occurrences identified by Appellant as warranting the grant of a mistrial in his case either were not objected to, were non-prejudicial, were cured through corrective measures, or did not even truly happen at all, those insignificant matters—even when considered cumulatively—simply did not warrant the drastic sanction of the grant of a mistrial, and Appellant wholly failed to meet his burden of demonstrating otherwise. See Beckham, 334 S.C. at 310, 513 S.E.2d at 610 ("The granting of a motion for mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial

effect can be removed in no other way."); City of Columbia v. Wilson, 324 S.C. 459, 464, 478 S.E.2d 88, 90 (Ct. App. 1996) ("A mistrial should not be granted except in cases of manifest necessity and ought to be granted with the greatest caution for only very plain and obvious reasons. The burden is on the movant to demonstrate error and resulting prejudice in order to justify a mistrial." (citations omitted)); see also State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (instructing a criminal defendant "must demonstrate more than error in order to qualify for reversal on" the basis of cumulative error and must show the errors "adversely affect[ed] his right to a fair trial"). Resultantly, the trial judge did not abuse his broad discretion by declining to grant a mistrial in Appellant's case. See State v. Carrigan, 284 S.C. 610, 614, 328 S.E.2d 119, 121 (Ct. App. 1985) ("The power to declare a mistrial is generally left to the sound discretion of the trial judge and ought to be exercised with the greatest of caution, only for plain and obvious causes."). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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