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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Aiken County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

XABIAN URONIE BAILEY,

APPELLANT

APPELLATE CASE NO. 2024-001526

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# FINAL BRIEF OF APPELLANT

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GARY H. JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

1. Did the trial court commit reversible error in failing to grant a mistrial when the state elicited evidence of a consent search of Twaine Carroll's residence that undercut the claims of appellant's counsel that no such search was conducted for firearms removed from the crime scene before police arrived when the state misled the trial court that the search had been disclosed to appellant's counsel during a prior hearing?

2. Did the trial court err in restricting appellant's counsel cross-examination of the state's rebuttal witness to only the material elicited by the state on direct examination even though the witness had not previously testified during trial?

## STATEMENT OF THE CASE

Appellant was indicted by an Aiken County grand jury on three counts of murder and possession of a weapon during a violent crime arising from a shooting that occurred on June 26, 2022. R. 619. Appellant was tried before the Honorable Courtney Clybrun-Pope and a jury from September 3 – 6, 2024. William McKellar and Bill Thompson appeared on behalf of appellant and Jacueline Charbonneau and Hurmayonne Wygina Morgan represented the state. R. 2. The jury returned a guilty verdict on all charges. R. 595, l. 18 - 596, l. 23. The trial court sentenced appellant to life for each count of murder. R. 617, ll. 15 – 24.

This appeal follows.

## STATEMENT OF FACTS

On June 26, 2022, I.P., W.G., and C.C. were shot and killed by the same handgun, a 9 mm that left a distinct mark on the shell casings it fired. R. 372, l. 23 – 373, l. 17.[1] Alvin Artis waived his right to remain silent and testified during trial that he fired all the fatal shots. R. 483, ll. 17 – 24; 489, ll. 12 – 21. This testimony was supported by both the forensic evidence and the state's witnesses. R. 95, ll. 2 – 8; 102, ll. 3 – 18; 166, l. 19 – 167, l. 10; 372, l. 23 – 373, l. 17.

As to appellant being an active participant in the shooting, there was conflicting evidence. According to the state's witnesses, appellant fired some shots as he ran across the yard after the shooting started. R. 115, l. 21 – 116, l. 5; 243, l. 24 – 244, l. 6. However, there was no physical evidence that appellant fired a weapon during the incident. Gun shot residue (GSR) testing showed traces of GSR on the back of his t-shirt, but not on the front of his clothing or his hands. R. 304, ll. 17 – 23; 339, l. 19 – 340, l. 4. There was physical evidence that at some point in time other firearms were fired at the scene, notably a shell casing from an unknown 9 mm handgun and four shell casings from an unknown .40 caliber handgun. R. 357, ll. 1 – 23. Several witnesses, including Artis, denied appellant ever fired a weapon. R. 397, ll. 6 – 15; 434, ll. 4 – 16; 486, ll. 14 – 18.

A central question before the jury was whether the Artis shots were fired in self-defense. The various parties to the incident were known to each other through familial relationships. Larry Carroll, Twaine Carroll, and Smith testified on behalf of the state. All denied the decedents were armed or provoked the shooting. R. 118, ll. 10 -20; 172, ll. 9 – 18. All three

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[1] At least one other 9 mm firearm left a shell casing at some point in time at the scene and four .40 caliber shell casings fired at some point in time by a third handgun were also found at the scene. R. 357, ll. 1 – 23.

testified that Artis used a rapid-fire handgun that sounded like a machine gun.[2] R. 187, ll. 2 -10; 230, ll. 3 - 21.

Larry Carroll's daughter, Fantasia Carroll, was dating appellant at the time of the shooting. R. 386, ll. 18 – 21; 402, ll. 11 – 19; 359, l. 11 – 405, l. 14. On the day of the shooting, Fantasia Carroll, Alvin Artis, Richard Carroll, Heavenly Reedy, Antonio Jones, and appellant were at appellant's residence but walked to Larry Carroll's house to speak to Fantasia's father, Larry Carroll, about allegations that members of her group were responsible for a burglary of the home of Joshua Smith. R. 387, l. 3 – 391, l. 25. The group walked to Larry Carroll's house at the request of Fantasia's father Larry to explain the group was not involved in the burglary. R. 388, l. 14 – 391, l. 25; 404, l. 16 – 405, l. 13. The group understood that Larry Carroll was upset and had taken steps to put a bounty on appellant over the alleged burglary. R. 389, l. 19 – 390, l. 5; 424, ll. 3 – 12; 429, l. 1 – 430, l. 6. While discussing the alleged burglary of the Smith home, the three decedents came from the side of the Carroll residence with weapons displayed. R. 395, l. 1 – 396, l. 25; 433, l. 1 – 434, l. 25. The three decedents made verbal threats to appellant's group and raised their weapons to fire. R. 395, l. 1 – 396, l. 25; 433, l. 1 – 434, l. 25. Artis fired his weapon in response until all three were down on the ground. R. 482, l. 9 – 485, l. 15. Appellant's group then ran, except for Fantasia Carroll. R. 397, l. 16 – 398, l. 17.

Fantasia stayed at her father's house and called 911. R. 397, l. 16 – 398, l. 17. While on the phone with 911, her father and uncle, Larry and Twaine, along with Joshua Smith removed the weapons the decedents had been holding and hid them inside Twaine Carroll's mobile

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[2] Artis admitted to using a binary trigger 9 mm, with the weapon firing twice with each pull of the trigger. R. 484, l. 22 – 485, l. 9.

home.[3] R. 407, l. 2 - 19. During the 911 call, a reference to the *presence of guns after the appellant's group left the scene* can be heard in the background. State's Exhibit 3.[4]

The case centered on which group the jury chose to believe. The members of the group with appellant who presented evidence indicating the decedents were armed and made threats prior to the shooting. The members of the group with the decedents claimed the decedents were unarmed and the shooting was not provoked.

[3] Twaine Carroll and Larry Carroll were neighbors on the cul-de-sac where the shooting occurred.

[4] State's Exhibit 3 has been transported and is on file for this Court's review.

## STANDARD OF REVIEW

*For the denial of a mistrial under the first issue presented.*

This court reviews "a trial court's mistrial decision for abuse of discretion." State v. Benton, 443 S.C. 1, 6, 901 S.E.2d 701, 703 (2024). "A mistrial should be declared cautiously and only in the most urgent circumstances for plain and obvious reasons." Id.

*For the improper restriction on cross-examination under the second issue presented.*

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012).

## ARGUMENT

1. The trial court committed reversible error in failing to grant a mistrial when the state elicited evidence of a consent search of Twaine Carroll's residence that undercut the claims of appellant's counsel that no such search was conducted for firearms removed from the crime scene before police arrived when the state misled the trial court that the search had been disclosed to appellant's counsel during a prior hearing.

A. How the matter was addressed at trial.

A central factual dispute concerned the disposal by Larry and Twaine Carroll of the weapons held by the decedents at the time of the shooting. During his opening statement, counsel for appellant noted the failure of the police to search Twaine Carroll's residence after the shooting supported the assertion that the weapons were removed from the scene and hidden in Twaine's adjacent home:

> Now, after that shooting, just about everybody ran off their own ways, their own direction, with the exception of one person, Fantasia Carroll. Fantasia Carroll who -- whose dad is Larry Carroll stuck around. And you will hear Fantasia Carroll testify that her father, Larry Carroll directed Twaine Carroll and Joshua Smith to remove the weapons . . . and go hide them in Twaine's house. That's why the weapon was [sic] found. They were hidden.

R. 78, ll. 5 – 13.

Unknown to appellant's counsel, since it was never disclosed by the state, Twaine Carroll consented to a search of his property by law enforcement. During trial, the state elicited this information initially from Twaine Carroll:

> Q. Were you there when the -- when the police first arrived?
>
> A. Yes, I was.
>
> Q. Okay. And did -- at any time, did you talk to the police that day?
>
> A. Yes, they came and talked to me.

Q. Now, did there come a time that the police searched your home?

A. Yes, they did.

*Q. Did they search your home? Do you know -- do you recall when they searched your –*

*A. I don't know what day they searched, but they searched my home.*

*Q. Okay. And now, did they find any guns in your home?*

*A. No, they did not.*

R. 191, ll. 6 – 21 (emphasis added).

Appellant's counsel brought the discovery violation to the trial court's attention immediately:

MR. MCKELLAR: Your Honor, we have a matter –

THE COURT: All right. Can you please excuse the jury to the jury room?

(Jury exits the courtroom.)

THE COURT: All right. Please be seated.

MR. MCKELLAR: Your Honor, we just heard for the first time that Mr. Twaine's Carroll's house was searched. That is, to my knowledge not mentioned anywhere in discovery. And I've consulted with my Co-Counsel and Counsel for Alvin Artis attorneys. They're not aware that any mention in discovery of his house ever being searched. Now, if that's true, that would be it happen. I believe that would be a discovery violation.

R. 191, l. 25 – 192, l. 12.

The solicitor admitted this information was known to the state from the early days of the investigation.

Judge, *I've always known that that house was searched, so I'm not sure, I can't point to something standing right here right now as*

> *far as how it was, but that's something that I've always known.* He gave verbal consent. It was the day that he did his photo lineup. So whatever date is on his photo lineup was the day that they searched his home. Investigator Neel was the one who did it.

R. 192, ll. 14-20 (emphasis added).

Rather than admit the information was not disclosed, in response to appellant's request for a mistrial, the solicitor misled the trial court by claiming the search was disclosed during a motion hearing earlier in the proceedings:

> MR. MCKELLAR: Your Honor, just to perfect the record I would move for a mistrial on the basis of the State not providing any documentation of this house ever searched.
>
> THE COURT: All right. Madam Solicitor any response to the motion for mistrial?
>
> MS. MORGAN: Your Honor.
>
> MS. CHARBONNEAU: Judge, this was -- this was cured as of the serna [sic] motion back in April of 2024. If there was any violation as of the date that Investigator Neel testified under oath that his house was searched, just not on the day of the incident. Any -- any inadvertent violation would've been cured on that day.
>
> THE COURT: Thank you, Madam Solicitor. Mr. McKellar, I'm going to deny the motion for mistrial. I am going to make sure that -- that is documented in record. Your motion for mistrial.

R. 198, l. 24 – 199, l. 14.

In reality, during the April 18, 2024, hearing, Neel never testified a search had occurred and indicated that no such search was ever conducted:

> Q Okay. Was there any evidence in this case that the three decedents were also armed?
>
> A Not that we found, no.
>
> Q Now, when I say -- was there no eyewitness testimony that the three decedents were armed?

A There were from one witness and a second witness, I believe, yes.

Q Okay. Who was that witness?

A Bear with me one second.

Q Let me ask you this. Was it Fantasia Carroll?

A Fantasia Carroll, yes.

Q And what was her recollection of the events?

A She stated that the three victims had firearms as well.

Q Okay. And she was an eyewitness to this?

A Yes, sir.

Q Did she say what happened to those three victims' firearms?

A She claimed that they were picked up and hidden prior to our arrival.

Q Did she say where they were hidden?

A She stated they were hidden in her uncle's (indiscernible).

Q And her uncle is who?

A Tywaine [phonetic] Carroll.

*Q And did y'all get a search warrant for Tywaine Carroll's house?*

*A No, sir.*

*Q Why not?*

*A I wasn't aware that she had said that the day that this incident happened.*

Supp. R. 22, l. 13 – Supp. R. 23, l. 18 (emphasis added).

Later during trial, the state had Neel describe his search of the Twaine Carroll residence a few days after the shooting. R. 306, l. 20 – 307, l. 13. When Neel was challenged about his lack of documentation concerning the alleged search, the solicitor compounded her misrepresentation to the trial court that the search had been disclosed by repeating it for the jury:

> Q. Mr. McKellar asked you about not documenting the search of Twaine Carroll's house. *Have you testified to Mr. McKellar's questions about the search of Twaine Carroll's house prior to this week?*
>
> A. Yes, ma'am.

R. 326, ll. 15 – 19 (emphasis added).

B. How the trial court erred.

The state had an obligation to disclose the search and its results under the provisions of Rule 5, SCRCrimP. "Rule 5 permits inspection of evidence in the State's possession 'which [is] material to the preparation of his defense or [is] intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant' upon request by the defendant. Rule 5(a)(1)(C), SCRCrimP." Hines v. State, 435 S.C. 476, 489, 868 S.E.2d 387, 393 (Ct. App. 2021), aff'd, 443 S.C. 32, 902 S.E.2d 377 (2024); *see also* State v. Gulledge, 326 S.C. 220, 487 S.E.2d 590 (1997) (requiring disclosure of material or evidence actually in prosecution's possession or in the possession of another government agency).

In the present case, officer Neel testified that no search warrant had been obtained for the Twaine Carroll residence. Supp. R. 22, l. 13 – Supp. R. 23, l. 18. Counsel for appellant relied upon the lack of a search as part of his trial strategy and opened in front of the jury with the clear statement that no such search had been conducted. R. 78, ll. 5 – 13. During the case in chief, the state solicited evidence from Twaine Carroll that his residence had been searched and that police

found no weapons hidden in his home. R. 191, ll. 6 – 21. The state compounded the lack of disclosure of this evidence by soliciting from its investigator that this information had been disclosed to appellant's counsel prior to trial which was in direct contradiction of the prior sworn testimony. *Compare* R. 326, ll. 15 – 19 *with* Supp. R. 22, l. 13 – Supp. R. 23, l. 18. The solicitor admitted knowing of the search from the beginning of the case and then mislead the trial court regarding the former testimony from Neel at the prior hearing, flatly telling the trial court the exact opposite of Neel's prior testimony. R. 198, l. 24 – 199, l. 14.

Our appellate courts have held that an abuse of discretion occurs when a mistrial is denied due to the unexpected absence of a key witness. *See* State v. Nelson, 431 S.C. 287, 308, 847 S.E.2d 480, 492 (Ct. App. 2020) (holding "the trial court abused its discretion in failing to grant a continuance or mistrial, resulting in prejudice" when a key witness for the defendant was unable to attend trial). Our Courts have approved the granting of a mistrial in cases in which a violation of Rule 5, SCRCrimP, adversely impacts either party's ability to be fairly heard on an issue. *See* State v. Benton, 443 S.C. 1, 901 S.E.2d 701 (2024) (noting the trial court did not err in granting a mistrial due to a failure to disclose alibi witnesses). Improper comments by the solicitor during summation warrants a mistrial when the evidence of guilt is not overwhelming. *See* State v. Holcomb, 426 S.C. 557, 567, 827 S.E.2d 367, 372 (Ct. App. 2019).

Here, the reason behind the trial court's refusal to grant a mistrial, that the search had been previously disclosed at an earlier hearing, is not supported in the record. In fact, the record demonstrates the exact opposite: confirming that the search was not disclosed during the prior hearing and that the solicitor misrepresented that disclosure both to the trial court and to the jury.

As such, the trial court committed reversible error, due in no small part to the misrepresentations of the state, and this Court should reverse the denial of a mistrial and remand

this matter for a new trial. In determining when "the actions of the Solicitor rise to the level of prosecutorial misconduct, the question of whether a mistrial is warranted "'is determined by (1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court.'" Earley v. State, 418 S.C. 255, 267, 792 S.E.2d 226, 232 (2016) (*quoting* State v. Inman, 395 S.C. 539, 720 S.E.2d 31 (2011). As this Court noted in Earley, "whether a mistrial would have been required to redress the Rule 5 violation, we find the prejudice attributable to the State's nondisclosure to be incremental under the facts of this case and would not have compelled the trial court to declare a mistrial." Id., 418 S.C. at 272, 792 S.E.2d at 235. While the lack of disclosure in Earley was deemed incremental, no such conclusion is presented by the facts of this case.

Here, appellant's counsel relied upon the lack of disclosure of a search of the Twaine Carroll residence as an important aspect of the defense case. The case centered on credibility, and appellant's counsel lost credibility in the eyes of the jury when the state elicited testimony that the Twaine Carroll residence had been searched. The state compounded the prejudicial impact by eliciting testimony from the investigator that the search had previously been disclosed to appellant's counsel when the exact opposite had actually occurred. This false revelation, based upon a misrepresentation of the facts to both the court and the jury by the state, created a manifest necessity to granting a mistrial and the trial court committed reversible error in refusing the motion.

2. The trial court erred in restricting appellant's counsel cross-examination of the state's rebuttal witness to only the material elicited by the state on direct examination even though the witness had not previously testified during trial.

A. How the matter was addressed at trial.

After the state called Faulkner to introduce the prior inconsistent statements made by Fantasia Carroll, it objected to counsel for Appellant's cross-examination.

> Q. Good afternoon, Investigator Faulkner.
>
> A. Good afternoon.
>
> Q. I might change gears a little bit. You interviewed Fantasia Carroll on day of the shooting, right?
>
> A. Yes, ma'am. Yes, sir. Sorry.
>
> Q. And you were informed that weapons used at the incident may have been hid in Twaine's –
>
> MS. MORGAN: Objection.
>
> BY MR. MCKELLAR:
>
> Q. -- house, correct?
>
> THE COURT: What's the basis?
>
> MS. MORGAN: It's beyond the scope.
>
> THE COURT: What's your question, Mr. McKellar?
>
> MR. MCKELLAR: It is -- Your Honor, I will be beyond the scope of my cross. I'm -- I'm allowed a thorough –thorough cross-examination –
>
> THE COURT: Let's sidebar -- let's sidebar.
> (Bench conference.)
>
> THE COURT: All right.
>
> MR. MCKELLAR: Thank you, Your Honor. It's not stated that you have sustained same objections to resolve the question.

THE COURT: Yes, sir.

MR. MCKELLAR: And I have no other questions.

R. 509, l. 10 – 510, l. 8.

B. How the trial court erred.

"[W]hen a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." State v. Foster, 354 S.C 614, 623, 582 S.E.2d 426, 431 (2003) (*quoting* State v. Beam, 336 S.C. 45, 52, 518 S.E.2d 297, 301 (Ct.App.1999)). In addition, when a party introduces "portions of a conversation" the "rule of completeness requires the defendant be permitted to inquire into the full substance of that conversation." State v. Cabrera-Pena, 361 S.C. 372, 380, 605 S.E.2d 522, 526 (2004); *see also* Rule 106, SCRE ("When a writing, or recorded statement, or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.").[5]

Here, appellant's trial counsel attempted to elicit from the state's rebuttal witness a more complete portrayal of the pre-trial statements provided by Fantasia Carroll. It was the state's decision to call Faulkner to admit the portions of these pre-trial statements that suited its case. The Confrontation Clause provides "in all criminal prosecutions, the accused shall enjoy the

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[5] While Rule 106, SCRE, mentions written or recorded statements, that limitation "merely requires that an oral or unrecorded conversation be brought out upon cross-examination, rather than on direct examination; the rule does not, however, prohibit introduction of oral statements or otherwise vitiate the rule of completeness as it applies to such statements." State v. Cabrera-Pena, 361 S.C. 372, 379–80, 605 S.E.2d 522, 526 (2004). Regardless, the Fantasia Carroll interview was recorded. R. 508, ll. 4 – 9.

right to ... be confronted with the witnesses against him." U.S. Const. amend. VI. "The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." State v. Mizzell, 349 S.C. 326, 330, 563 S.E.2d 315, 317 (2002) (*quoting* State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994)). The right to be fully heard in his defense is protected by S.C. Const. art. I, § 14. Thus, a trial court abuses its discretion when it improperly impairs or limits a defendant's right to effectively cross-examine the witnesses against him. *See* State v. McMillian, 349 S.C. 17, 24, 561 S.E.2d 602, 605–06 (2002).

> The right to meaningful cross-examination of an adverse witness is included in the defendant's Sixth Amendment right to confront his accuser. State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994); State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994). The trial judge retains wide latitude, however, to impose reasonable limits on cross-examination that is only marginally relevant. State v. Aleksey, *supra*; State v. Smith, 315 S.C. at 552, 446 S.E.2d at 411 (*quoting* Delaware v. VanArsdall, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

State v. Cheeseboro, 346 S.C. 526, 544, 552 S.E.2d 300, 309 (2001).

The trial court's limitation on counsel for appellant's cross-examination of the state's rebuttal witness regarding the complete statements of Fantasia Carroll violated the rule of completeness and improperly limited appellant's Constitutional right to present a complete defense protected by both the United State Constitution and the South Carolina Constitution.

C. Prejudice.

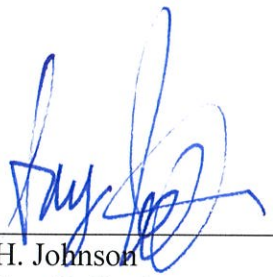
A case that depends on the credibility of the witnesses does not lend itself to a finding of harmless error. *See* State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012) (holding the state's reliance on circumstantial evidence and credibility of witnesses negated a finding of harmless error). As in Gracely, the credibility of many of the witnesses called during this trial could raise a concern with the jury. The jury was presented with two alternatives, believe the group associated with the decedents or believe the group associated with appellant. One group of witnesses testified that the decedents were armed before Artis fired the fatal shots. One group of witnesses testified that the decedents were unarmed. The jury was faced with the question of accepting the credibility of Heavenly Reedy, Fantasia Carroll and Alvin Artis or the credibility of Larry Carroll, Twaine Carroll, and Joshua Smith. In judging prejudice, for the evidence of guilty to be

> "overwhelming" such that it categorically precludes a finding of prejudice—as we found it did in Rosemond and Harris—the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the Strickland standard of "a reasonable probability ... the factfinder would have had a reasonable doubt" cannot possibly be met.

Smalls v. State, 422 S.C. 174, 191, 810 S.E.2d 836, 845 (2018). Here, there is no conclusive physical evidence, and guilt depends on the jury's judgment on the credibility of the two competing versions of the shooting: either the initial shots were fired in self-defense against armed aggressors, or the shots were fired at unarmed individuals without sufficient legal provocation. The trial court's improper restriction on appellant's cross-examination to fully explore the state's effort to impeach a key witness for the defense was prejudicial.

## CONCLUSION

Based upon the foregoing arguments, appellant's convictions should be reversed, and this matter remanded to the Court of General Sessions for Aiken County for further proceedings.



Gary H. Johnson
Appellate Defender
SC Bar #8898

ATTORNEY FOR APPELLANT

This 3rd day of February, 2026.