STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYRASE AKIL COLLINS,

APPELLANT

APPELLATE CASE NO. 2024-001238

FINAL BRIEF OF APPELLANT

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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1. Whether the trial court erred in denying appellant a directed verdict when the state failed to present substantial circumstantial evidence of guilt?

2. Did the trial court impose an unconstitutional sentence in violation of the 8th Amendment to the United States Constitution and Article I Section 15 of the South Carolina Constitution by sentencing appellant to three life sentences without parole, served consecutively, without properly considering and addressing the impact of appellant's youth as outlined in *Aiken v. Byars*?

3. Whether the trial court erred in sentencing appellant under S.C. Code § 16-23-490 (2010) in clear violation of the statutory prohibition on such a sentence following a life without parole sentence for murder?

4. Did the trial court improperly focus on a juror's bare assertion of lack of bias instead of objectively analyzing whether the juror's prior knowledge and dealings with the co-defendant would have made an objectively material difference in appellant's use of a peremptory strike or resulted in a successful challenge for cause of the juror?

STATEMENT OF THE CASE

A Hampton County grand jury indicted Appellant for three counts of murder and one count of armed robbery. R. 930-939. His case was called to trial on November 6, 2023, before the Honorable Robert J. Bonds, and a jury. R. 1. Appellant was tried jointly with his codefendant, Lorenzo Boles.[1] R. 1. Assistant Solicitor Reed Evans appeared on behalf of the state. Charlie J. Johnson, Jr., represented appellant and Christopher Gibbes represented Boles. R. 2.

On November 10, 2023, the jury found appellant guilty as indicted. R. 748, l. 14 – 749, l. 9. Since appellant was a minor at the time of the crime, the trial court scheduled a sentencing hearing to consider the factors outlined in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). R. 762, l. 8 – 765, l. 25. A sentencing hearing was held on May 23, 2024. R. 775. At the conclusion of the hearing, the trial court took sentencing under advisement. Supp. R. 13, l. 3 – 14, l. 1. Prior to the sentencing hearing, appellant's counsel filed a motion for a mistrial due to juror misconduct. R. 917. An additional hearing was held on July 22, 2024. R. 824. The trial court denied appellant's motion for a mistrial and sentenced appellant to three life sentences without the possibility of parole for the murder convictions, thirty years for the armed robbery conviction, and an additional five year sentence for the weapon offense, all sentences to run consecutively. R. 914, ll. 2 – 24.

This appeal follows.

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[1] Boles was indicted, tried, and convicted of three counts of accessory before the fact of murder and one count of accessory before the fact of armed robbery. R. 749, l. 11 – 750, l. 4.

STATEMENT OF FACTS

The trial facts.

Frankie Johnson, Ghazi Duckett, and Lamekia Warren were shot and killed in Johnson's trailer during the early morning hours of March 25, 2018. R. 172, l. 25 – 178, l. 18; State's Exhibit No. 200 (911 Call). The trailer was located in an isolated area near Varnville, South Carolina. R. 150, l. 25 – 151, l. 8. Duckett and Warren were a couple and lived with Johnson and his girlfriend, Khadajah Williams. Duckett and Warren shared the front bedroom and Johnson and Williams shared the back bedroom. R. 170, l. 15 – 172, l. 24.

Williams testified at trial that heard gunshots but was not initially alarmed because gunfire was not unusual in the area. R. 175, ll. 6 – 17. After Williams heard at least one gunshot, she heard Duckett say, "What's up, bro?" and began walking toward the living room. to see what was going on. R. 172, l. 25 – 178, l. 18. After hearing a "gagging" noise, Williams became alarmed and walked back into the bedroom and hid in a closet. Williams recognized the voice of Fuquan Harris in the residence.[2] She also heard a woman's voice that she did not recognize. R. 190, l. 24 – 192, l. 20; R. 293, ll. 7-16. Williams called 911 when she felt it was safe. R. 172, l. 25 – 178, l. 18.

Michael Smith, with the Varnville Police Department, responded to the scene and passed a red Dodge Charger and a second vehicle on the way. R. 213, l. 1 – 215, l. 11. Smith and Deputy Stacy Loadholt encountered Williams in the yard of the trailer who reported that three people were shot inside the trailer. R. 193, l. 23 – 198, l. 23; R. 217, l. 22 – 220, l. 8. Smith and Loadholt entered the trailer and found Johnson deceased in the living room. R. 203, l. 4 – 204, l.

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[2] Harris was originally charged in the case based on Williams's statement that she heard his voice in the trailer during the shooting, but charges were ultimately dismissed. R. 296, l. 3 – 298, l. 24.

5. In the front bedroom, they found Duckett and Warren both lying on the floor, with Warren also appearing to be deceased. R. 204, ll. 8 – 21. Duckett made a "gurgling noise" and EMS transported Duckett to the hospital where he was pronounced dead. R. 203, l. 7 – 205, l. 5; R. 220, l. 10 – 222, l. 11; R. 247, l. 4 – 250, l. 14. The pathologist who conducted the autopsies determined that Johnson and Duckett both suffered a single gunshot wound to the head. Warren, however, had multiple gunshot wounds. R. 629, l. 12 – 630, l. 6; R. 615, ll. 19-22.

Melissa Fields, Warren's mother, claimed that she saw a red Dodge Charger followed by another vehicle turn left toward the Johnson trailer sometime between 5:15 and 5:45 that morning. While Fields did not see inside the vehicles, she recognized the red Dodge Charger as the vehicle that Boles regularly drove. R. 229, l. 21 – 244, l. 8. Boles therefore became a person of interest and law enforcement began searching for Boles with the intent to arrest him on the unrelated charges to question him about the murders. R. 364, l. 2 – 365, l. 19.

Investigators obtained a search warrant for 53 Crews Street in Varnville. Officers responded to the residence around 11:00 a.m. on March 26, 2018, about thirty hours after the murders, to execute the warrant. R. 298, l. 25 – 301, l. 24. When law enforcement arrived, there were "several people" at the trailer with some running away from the scene as officers arrived, including a figure officers suspected was Boles. R. 365, l. 25 – 367, l. 22. Appellant lived at the trailer at 53 Crews Street along with his older brother Hassan Collins.[3] R. 340, l. 8 – 342, l. 11. When law enforcement arrived at 53 Crews Street, Hassan was in the front yard, but appellant was at school. R. 333, l. 4 – 334, l. 19. During the search, investigators found Albert Crittington, Jr. hiding under the bed in appellant's bedroom. R. 333, l. 4 – 334, l. 17. They also found three firearms in appellant's bedroom: two Glock handguns, a .40 caliber (Model 23) and

[3] Hassan Collins died in a car accident after the crime but before appellant's trial. R. 344, ll. 13-25.

a .45 caliber (Model 38) and a third firearm, a 7.62 caliber, "commonly known on the streets as a Draco." R. 305, l. 17 – 307, l. 24. Outside in the yard, investigators found and collected five fired cartridge casings. R. 317, ll. 4-24.

A red Charger was also found parked outside 53 Crews Street. The vehicle was towed to the Hampton County Sheriff's Office impound lot where it was eventually searched pursuant to a warrant. R. 308, l. 15 – 310, l. 9. In the vehicle, investigators found a receipt from the Dollar General dated March 26, 2018, at 10:06 a.m., roughly an hour before law enforcement arrived at 53 Crews Street to execute the search warrant. R. 324, ll. 1 – 23. Law enforcement obtained security footage from the Dollar General around that timeframe. The footage showed a red Dodge Charger pull into the parking lot and a person identified as Boles get out of the vehicle. R. 323, l. 20 – 325, l. 10. Boles was eventually located and arrested in Savannah, Georgia, staying at a Motel 6, along with appellant's brother, Hassan, who was also taken into custody. R. 368, l. 10 – 369, l. 20; 372, ll. 2-23. Boles and Hassan were known associates to law enforcement. R. 331, ll. 18 – 24.

Rashina Collins[4] testified that she bought Johnson a "Draco" firearm on February 13, 2018, because Johnson asked her to purchase it for him. R. 350, l. 6 – 353, l. 22. Rashina identified the "Draco" firearm found in the dresser drawer in Collins's bedroom as the gun she purchased and gave to Johnson. R. 350, l. 6 – 353, l. 22.[5] Samuel Shepard testified that he loaned the Glock Molde 38 to Ghazi Duckett and that he saw the gun in Duckett's possession

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[4] Many of the witnesses called during trial were related, either through blood or marriage, with some of the victims and appellant.

[5] Rashina also testified that several other people in addition to Boles drove the Charger. R. 350, l. 21 – 351, l. 11; R. 356, l. 11 – 357, l. 2; R. 359, l. 20 – 360, l. 7.

sometime between when he loaned the gun to Duckett and Duckett's death. R. 378, l. 12 – 382, l. 16.

The third firearm found in appellant's bedroom, the .40 caliber Glock Model 23, had been stolen before the homicide with the owner reporting the theft to law enforcement. R. 506, l. 2 – 509, l. 25. Twenty .40 caliber cartridge casings and five projectiles and been located at the crime scene. R. 279, ll. 4 – 21. Ten of the .40 caliber cartridge casings found in Johnson's trailer were fired by the .40 caliber Glock Model 23 found in a bag in appellant's bedroom. R. 439, l. 4 – 441, l. 22; R. 453, l. 3 – 454, l. 5. The other ten fired .40 casings found in Johnson's trailer were fired by an unidentified firearm. R. 439, l. 4 – 441, l. 22; R. 453, l. 3 – 454, l. 5. The five .40 caliber cartridge casings found in the yard of 53 Crews Street were also fired by this second, unrecovered and unidentified firearm. R. 439, l. 4 – 441, l. 22; R. 453, l. 3 – 454, l. 5.

DNA analysis was performed on a swab collected from the trigger of the .40 caliber Glock Model 23 handgun found in appellant's bedroom showed a mixture of DNA from at least four individuals with the DNA profile of the major contributor to the mixture matching the profile of appellant.[6] R. 531, l. 8 – 532, l. 16; R. 556, l. 23 – 557, l. 11. The DNA profile developed from blood swabs collected from the "Draco" rifle found in appellant's bedroom matched the DNA profile of decedent Johnson. R. 526, ll. 7-13. A mixture of DNA from at least three individuals was found on the magazine from the Draco rifle, with a partial DNA profile of the major contributor matching the DNA profile of Johnson. R. 527, ll. 12-22. After initial

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6 "The probability of randomly selecting an ***unrelated individual*** having a DNA profile matching the major contributor is approximately one in 3.4 septillion." R. 531, ll. 16 - 19 (emphasis added). Appellant's brother, who was present at and resided in the Crews Street residence at the time of the search, was not a DNA sample tested by the state's expert. The state's expert could not testify as to the impact on the DNA results if appellant's brother had also been in contact with the material tested. R. 563, l. 9 – 564, l. 15.

testing, SLED performed additional STRmix analysis at a later time. R. 548, l. 4 – 549, l. 16. The original DNA testing and the later STRmix testing revealed DNA from appellant and Johnson in the rear seat area of the red Charger. R. 391, l. 5 – 397, l. 9; R. 399, l. 3-400, l. 18. 580, l. 18 – 583, l. 2; 584, l. 11 – 585, l. 6; 593, l. 7 – 594, l. 22. The magazine of the Draco rifle revealed appellant's DNA profile as a minor contributor in this later testing. R. 583, l. 21 – 584, l. 4.

Despite the circumstantial nature of the case against both defendants, the jury took approximately two hours to reach a verdict of guilty on all charges. R. 761, ll. 8 – 16.

The sentencing hearing.

During the sentencing hearing, the trial court heard from the appellant's mitigation expert, Katie King-Crosby.[7] King-Crosby testified that appellant did not have a stable home environment. R. 799, ll. 8 – 24. Appellant excelled in school and could have graduated from High School early. R. 800, ll. 2 – 8. When appellant was fifteen, his mother moved out of the family home, leaving appellant to his own devices with his older brother. R. 802, ll. 14 – 22. Negative influences and crime surrounded appellant's formative years. R. 802, l. 19 – 803, l. 12. These negative influences also came from his older brother. R. 809, ll. 17 – 24. King-Crosby noted that the delayed development of the adolescent brain was widely acknowledged. R. 801, ll. 9 – 19. She noted the prospects of rehabilitation were real and meaningful:

> I think that he would be a great candidate for that simply based on the fact that he doesn't have a prior record. He had never been in trouble before.

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[7] King-Crosby was qualified as a mitigation expert, having been appointed in over 50 capital cases involving mitigation. R. 793, l. 12 – 794, l. 9.

> He did well in school. All of the things that would make a person a good candidate, he's not losing his place. He's ahead of his peers already, because like I said, I can tell just from initially assessing him that he's already gained a lot more insight and judgment and executive functioning that he didn't have those years ago.
>
> He's going to only continue to gain those skills in the next year, you know, 14 months until he hits the age of 25.
>
> So I think we're going to just continue to see improvement. I'd say should he get an opportunity like that though and then not do what he's supposed to do, then it falls directly on him.
>
> But I think he's absolutely somebody that should be given a chance and have that consideration based on everything that I've seen.

R. 813, l. 13 – 814, l. 7. King-Crosby's mitigation report was entered into evidence without objection and is included for the Court's review as a part of the record on appeal. Mitigation Report.

Juror misconduct.

After trial, appellant's counsel became aware of a connection between the foreperson of the jury and co-defendant Boles. Based upon the foreperson's failure to disclose these connections during jury selection, counsel for appellant filed a motion for a mistrial before sentencing. Mistrial Motion. A hearing was conducted, at which time the foreperson acknowledged attending church with co-defendant's mother, Juanita Boles, "every Sunday." R. 830, l. 4 – 832, l. 16. However, the foreperson denied knowing co-defendant Boles and denied being involved in any drug sales or purchases involving co-defendant Boles. R. 835, l. 4 – 836, l. 8.

Juanita Boles, co-defendant Boles' mother, testified that she had known the foreperson for 20 years. R. 849, l. 8 – 850, l. 10.[8] In contrast to the foreperson's testimony, Juanita testified that everyone in the church knew her son and the church congregation discussed the crime and held a prayer session. R. 850, ll. 14 – 19; 854, l. 15 – 855, l. 16. Juanita testified about the foreperson buying drugs from her son. R. 850, l. 20 – 851, l. 7.

Christopher Williams also testified about the connections between the foreperson and co-defendant Boles. Williams testified about interactions between co-defendant Boles and the foreperson on more than one occasion. R.858, ll. 2 – 24. This included a drug transaction between the foreperson and Boles. R. 859, ll. 3 – 25. Williams also testified about an incident in which the foreperson contacted law enforcement out of anger towards Boles and Williams due to excessive noise. R. 860, ll. 1- 24.

[8] Juanita testified that she was also related to appellant (aunt). R. 849, ll. 13 – 14.

ARGUMENTS

1. **The trial court erred in failing to grant a directed verdict at the close of the state's case since it failed to introduce substantial circumstantial evidence that appellant was involved as a principal or accomplice during the commission of the crimes.**

A. Standard of Review.

This Court reviews the denial of a directed verdict motion in a criminal case under the any evidence standard of review. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." State v. Harris, 413 S.C. 454, 457, 776 S.E.2d 365, 366 (2015). "When reviewing a denial of a directed verdict, this Court views 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). "A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (*citing* State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984).

B. Discussion.

The case against appellant was circumstantial in nature. DNA evidence connected appellant to a vehicle seen in the area of the crime and that contained DNA material from at least one of the victims of the crime. Appellant's DNA was found on a weapon used during the commission of the crime (along with other contributors). That firearm, and two other firearms stolen from the crime scene, were found in appellant's bedroom during a search. However, several people had access to appellant's home, including another person of interest in the crime that was found hiding under appellant's bed at the time of the search. Numerous other people were directly connected to appellant's home, including his older brother and co-defendant Boles.

There was no DNA evidence placing appellant at the scene of the crime when it occurred. The surviving witness identified another individual, Harris, along with a female voice as committing the crime. R. 190, l. 25 – 192, l. 20; 293, ll. 7 - 16. While the state's circumstantial evidence placed appellant, at some point in time, as a passenger in the rear seat of the Dodge Charger, no witness placed appellant in the vehicle on the morning of the shooting. The state's circumstantial evidence showed appellant at least touched two of the firearms connected to the crime at some point, or appellant's DNA was transferred to the firearms when they were placed in his bedroom.[9] The state's circumstantial evidence showed three firearms connected to the crime were hidden in appellant's room and found by police while appellant was not present at the home, but numerous other persons of interest were present.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the victim was struck in the head in her own home which was set on fire with a petroleum product. Police found items belonging to the victim in a burn pile behind the home of Bostick's mother which had been ignited with a heavy petroleum product. Bostick's shoes contained fresh patterns that matched gasoline and a blood stain on his jeans that, while not a conclusive match to victim, did exclude 99% of the population. Our Supreme Court noted:

> The evidence presented by the State raised, at most, a mere suspicion that Bostick committed this crime. Under settled principles, the trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt.

Bostick, 392 S.C. at 142, 708 S.E.2d at 778.

In State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), circumstantial evidence placed the accused (through his fingerprint) inside a BMW in which victim was last seen alive on the

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[9] The state's expert noted transfer of DNA happens and that touch DNA results can be caused by transfer rather than direct handling. R. 412, ll. 2 – 20.

day of his disappearance. The vehicle was later found in another state in close proximity to the accused when he was arrested a few days after victim's disappearance. Evidence was presented that the accused and victim had recently met and engaged in a sexual relationship. Our Supreme Court noted that the physical evidence merely placed the accused inside the vehicle on the day the victim was last seen alive and that there was no evidence that placed the accused at the scene of the crime when the murder occurred. Id., 361 S.C. at 390, 605 S.E.2d at 531.

Recently, our Supreme Court has emphasized that the circumstantial evidence need not eliminate every other possible explanation for a given element of the crime charged, but still must be "sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Pearson, 415 S.C. 463, 473, 783 S.E.2d 802, 807 (2016) (quoting State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016).

Here, the evidence does not allow a reasonable juror to find appellant was at the scene of the crime when the crime occurred. The only evidence presented at trial as to who was at the scene of the crime was Harris and an unknown female, not appellant. While direct evidence placed the red Charger automobile in the vicinity of the crime when it occurred, the circumstantial evidence presented only allowed a reasonable juror to find appellant had been, at some point, a passenger in the rear seat of the vehicle. This places the present case firmly within the failed circumstantial evidence cases outlined in State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004).

The trial court erred in failing to grant appellant a directed verdict and this Court should reverse and enter its judgement accordingly.

2. **The trial court imposed an unconstitutional sentence in violation of the 8th Amendment to the United States Constitution and Article I Section 15 of the South Carolina Constitution by sentencing appellant to three life sentences without parole, served consecutively, without properly considering and addressing the impact of appellant's youth as outlined in *Aiken v. Byars.***

A. Standard of Review.

This Court has recently reviewed the standard of review as it relates to an alleged unconstitutional sentence of a minor.

> When considering whether a sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments, the appellate court's standard of review extends only to the correction of errors of law. Therefore, this court will not disturb the circuit court's findings absent a manifest abuse of discretion. An abuse of discretion occurs when the circuit court's finding is based on an error of law or grounded in factual conclusions without evidentiary support.

State v. Mack, 441 S.C. 526, 535–36, 894 S.E.2d 820, 825 (Ct. App. 2023) (*quoting* State v. Finley, 427 S.C. 419, 423, 831 S.E.2d 158, 160 (Ct. App. 2019)).

However, other states have provided greater scrutiny than the traditional abuse of discretion framework cited in Mack for sentencing of juveniles. For example, in Davis v. State, 415 P.3d 666, 688 (Wyo. 2018), the Supreme Court of Wyoming determined that its review would be "an abuse of discretion, but [it would] not be lenient." The Court explained it would "view the sentence as inherently suspect and demand rigor from the sentencing court in its factual findings, its application of the *Miller* factors, and the ensuing sentence." Id.

Appellant respectfully requests this Court consider the standard of review for appeals involving juveniles facing a life without parole sentence or its functional equivalent. Appellant suggests such sentences are inherently suspect and should be reviewed *de novo* on all legal

conclusions made by the sentencing court and a heightened abuse of discretion review to the court's factual findings.

B. Discussion.

"[C]hildren are constitutionally different from adults for purposes of sentencing." Miller v. Alabama, 567 U.S. 460, 471 (2012). In Aiken v. Byars, 410 S.C. 534, 540-541, 765 S.E.2d 572, 575-576 (2014), the South Carolina Supreme Court held that "Miller does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." The Court held the sentencing judge must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" and that this requirement "deserves universal application." Aiken, 410 S.C. at 543, 765 S.E.2d at 577. The Miller Court repeatedly focused on the notion that the character traits of children are "more transitory and less fixed." Miller, 567 U.S. at 471. Children by definition lack maturity and responsibility; thus, they are more likely to act with "recklessness, impulsivity, and needless risk-taking." Id. (internal quotation omitted). Due to the innate characteristics of children at large, there is a "great difficulty ... of distinguishing at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." Id. at 479 (internal quotation omitted). In fact, the Court stated, "incorrigibility is inconsistent with youth." Id. at 473. Emphasizing the potential for reform present in all juveniles, the Court discussed the mitigating qualities of youth and noted "[i]t is a time of immaturity, irresponsibility, 'impetuousness[,] and recklessness.'" Id. at 476 (*quoting* Johnson v. Texas, 509 U.S. 350, 368 (1982)).

Children "have diminished culpability and greater prospects for reform," and therefore, "'they are less deserving of the most severe punishments.'" Id. at 471. "[T]he distinctive attributes of youth diminish penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." Id. at 472. The Court required sentencers "to take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 480.

Our Supreme Court held it "must give effect to the proportionality rationale integral to Miller's holding – youth has constitutional significance." Aiken, 410 S.C. at 542-543, 765 S.E.2d at 576. Therefore, youth "must be afforded adequate weight in sentencing." Id., at 543, 765 S.E.2d at 576. The Court found it was "clear that it is the failure of a sentencing court to consider the hallmark features of youth prior to sentencing that offends the Constitution." Id. at 543, 765 S.E.2d at 576-577. As such, our Supreme Court required the sentencing court to consider the following factors in crafting a sentence proportional to the offense and the juvenile offender:

> (1) the chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence; (2) the family and home environment that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the incompetencies associated with youth—for example, the offender's inability to deal with police officers or prosecutors (including on a plea agreement) or the offender's incapacity to assist his own attorneys; and (5) the possibility of rehabilitation.

Id. at 544, 765 S.E.2d at 577 (internal quotations omitted).

Recently, this Court has outlined the need for sentencing courts to provide more than mere lip service to the Aiken factors:

> The inquiry does not ask the court to use the success of others in overcoming their circumstances as the yardstick when considering the defendant's circumstances. Certainly, there are untold numbers of individuals—both public and private—who have been successful in overcoming abject poverty and a myriad of hardships and traumatic childhoods. And, others have failed. Nonetheless, this is not the appropriate rubric to be applied under the Aiken factors. *The inquiry requires the court to consider the impact of the defendant's family and home environment on his crimes. It is a specific and individualized inquiry.*

State v. Mack, 441 S.C. 526, 544, 894 S.E.2d 820, 829–30 (Ct. App. 2023).

The lower court's treatment of the Aiken factors, as noted below, does not reflect a consideration of the impact of appellant's youth in connection to the crimes committed and instead focuses an excessively harsh punishment on the sole person the trial court could impose a sentence for the three murders since appellant was the only individual convicted for the admittedly horrific homicides.[10]

i. The chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence.

Here, the trial court failed to acknowledge any impact of the chronological age of the appellant and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate the risks and consequence, other than in passing. There was no "specific and individualized inquiry" on this factor as required by this Court in State v. Mack, 441 S.C. at 544, 894 S.E.2d at 829–30. In fact, as in Mack, the trial court simply focused on the fact that appellant was close to being 18 when the crime occurred. As this Court noted in Mack, this focus is misplaced.

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[10] There are two operative hearings regarding the sentence imposed on appellant. The evidentiary hearing under *Aiken v. Byars* was held on May 23, 2024. Actual sentence was imposed at the evidentiary hearing on appellant's motion for a mistrial on July 22, 2024.

> *The Defendant was less than 90 days as I calculate it from his 18th birthday at the time that he committed these heinous acts.* He was convicted of the murders of three individuals, two via headshots that what can only be described as point-blank range execution type of hit. The remaining individual was shot, I believe, close to 35 times. This was not a spontaneous killing. This killing had to have been planned. *No hallmark feature of youth can erase the plan.*

R. 910, ll. 14 – 23 (emphasis added).

ii. The family and home environment that surrounded the offender.

Appellant's family and home environment were also mentioned, but in passing. As with the hallmark features of youth, the sentencing court simply makes a vague acknowledgment of appellant's environment without considering its impact on appellant. The trial court makes nominal mention of some of these facts but fails to provide a "specific and individualized inquiry" on this factor's impact on the sentencing decision as required by this Court in Mack, 441 S.C. at 544, 894 S.E.2d at 829–30.

The trial court was provided extensive testimonial evidence and documentary evidence that appellant's home environment was a substantial factor in his response to stressors, such as shows of authority and response to peer pressure. Sentencing R. 28, l. 2 – 29, l. 24; Mitigation Report. In response, the trial court simply noted:

> The Court acknowledges the concerns that were discussed regarding his upbringing. No father figure, a mother who worked to provide for the family, the special needs brother that he often took care of, and a mother that left him to often raise himself, and who did not -- quite frankly didn't speak on his behalf at the sentencing or at the hearing he had.

R. 911, ll. 2 – 9. The trial court spent no effort or time related how this upbringing impacted appellant and impacted appellant's criminal responsibility requiring three life sentences without the possibility of parole, running consecutively.

iii. The circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him.

While the nature of the crime was indefensible, the culpability of appellant in the actual homicides should have given the trial court pause in sentencing appellant to three consecutive life sentences without the possibility of parole. As has been noted, the evidence connecting appellant to participation in the murders was entirely circumstantial: appellant's DNA was inside a vehicle seen in the area of the crime, two weapons taken from the crime scene were found in appellant's room after the murders, and appellant's DNA was found on one of those weapons and a third weapon which was used in the crime. While the nature of the crime favors a harsh penalty, the lack of direct evidence connecting appellant to the actual commission of the crime should have played some role in mitigating this element.

The trial court referenced this lack of evidence of appellant's active participation in the crime, but elected to impose this excessively harsh punishment despite acknowledging appellant's actual role in the crimes was in doubt:

> The circumstances of this homicide were beyond brutal, *and the Court would concede that the exact level of the offender's participation is unknown*, primarily, because this was a circumstantial evidence case.

R. 911, ll. 13 – 17 (emphasis added).

Despite acknowledging this factor favored mercy, ultimately the trial court applied it in the exact opposite direction:

> He is someone who knew what was going on, knew what was about to happen, and someone who was aware of his consequences -- aware of the consequences.

R. 913, ll. 17 – 20. This inconsistent factual finding indicates the trial judge conflated the brutal nature of the crime from appellant's role, further compounding the trial court's sentencing error.

iv. The incompetencies associated with youth—for example, the offender's inability to deal with police officers or prosecutors (including on a plea agreement) or the offender's incapacity to assist his own attorneys.

Here, appellant acknowledges the trial court properly determined he was competent from a legal standpoint.

> Concerning interpretations of certainty of youth, the mitigation specialist indicated that he is a high school graduate, and had an academic foundation that would allow him to further his education. In fact, he had enough credits to graduate early, as I recollect her saying in the report. This convinces the Court that he had the ability to assist his attorney in the defense of the case and was competent to deal with and understand the charges that he was -- all aspects of the charge -- charges that he was facing.

R. 912, ll. 6 – 16.

v. The possibility of rehabilitation.

Here, the trial court affirmatively found rehabilitation for appellant was a reasonable expectation: "And this Court would acknowledge that there is, in fact, and I believe there is a chance or a possibility of rehabilitation that it exists." R. 913, ll. 7 – 9. This factor favored mercy. As previously noted, the trial court's next words indicated the nature of the crime overrode all other considerations since it was inherently inconsistent with the trial court's own findings of fact:

> He is someone who knew what was going on, knew what was about to happen, and someone who was aware of his consequences -- aware of the consequences. And for those reasons this Court believes that in this case that the appropriate sentence, having considered all of these factors, the appropriate sentence in this matter is life without parole.

R. 913, ll. 17 – 20.[11]

In light of the trial court's failure to consider, in a meaningful manner, a number of the Aiken v. Byars factors during sentencing, the trial court's sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments and Article I, Section 15, of the South Carolina Constitution and is based upon an error of law. In addition, the failure to apply a "specific and individualized inquiry" on the factors as required by Aiken v. Byars and State v. Mack outlined above mandate to a new sentencing hearing.

3. The trial court erred in sentencing appellant under S.C. Code § 16-23-490 (2010) in clear violation of the statutory prohibition on such a sentence following a life without parole sentence for murder.

A. Standard of Review.

"In criminal cases, the appellate court sits to review errors of law only." State v. Johnson, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015). "A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support." In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). "Generally, a challenge to sentencing must be raised at trial or the issue will not be preserved for appellate

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[11] It is likely that the long delay between the charges being filed and the sentencing hearing, a six year gap, played a significant role in the court's sentencing decision. Appellant was not the youth of 17 from the time of the crime at his sentencing hearing over six years later, but a full adult male.

review." State v. Davis-Kocsis, 443 S.C. 127, 134, 903 S.E.2d 491, 495 (2024). However, this preservation requirement may be waived in "exceptional circumstances." Id.

B. Discussion.

The trial court sentenced appellant to an additional five year sentence under S.C. Code § 16-23-490 (2010) despite the statute's clear limitation that the "five-year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime." Appellant acknowledges that trial counsel did not object to the improper sentence. While this omission by trial counsel raises an issue preservation concern for this Court's review, appellant would argue that, with the consent of the state, this matter may be addressed on direct appeal. *See* State v. Plumer, 439 S.C. 346, 351, 887 S.E.2d 134, 137 (2023) (holding that an illegal sentence may be addressed on direct even in absence of an objection at sentencing).

The sentence here mirrors the South Carolina Supreme Court's decision in Plumer. As the Supreme Court noted in Plumer:

> In such cases, it is inefficient and a waste of judicial resources to delay the inevitable by requiring the appellant to file a post-conviction relief action or petition for a writ of habeas corpus. Therefore, we modify *Johnston* and hold that when a trial court imposes what the State concedes is an illegal sentence, the appellate court may correct that sentence on direct appeal or remand the issue to the trial court even if the defendant did not object to the sentence at trial and even if there is no real threat of incarceration beyond the limits of a legal sentence.

Plumer, 439 S.C. at 351, 887 S.E.2d at 137.

This Court should vacate appellant's sentence under S.C. Code § 16-23-490 (2010).

4. The trial court improperly focused on a juror's bare assertion of lack of bias instead of objectively analyzing whether the juror's prior knowledge and dealings with the co-defendant would have made an objectively material difference in appellant's use of a peremptory strike or resulted in a successful challenge for cause of the juror.

A. Standard of Review.

"Where a party claims a juror has withheld material information in response to a *voir dire* question, the trial court must determine, preferably after a hearing, whether the juror's withholding suggests bias. This will typically turn on the nature of the information withheld, rather than the nature of the juror's state of mind in not disclosing it. The nature of the fox's disguise matters little to the chicken." State v. Rowell, 444 S.C. 109, 115, 906 S.E.2d 554, 557 (2024).[12]

"[W]hen a juror untruthfully answers or fails to answer a material *voir dire* question, the juror's bias may not be presumed, and a new trial may be ordered only when prejudice is proven by showing the concealed information reveals a potential for bias and would have made an objectively material difference in the moving party's use of a peremptory strike or resulted in a successful challenge for cause." Id., 444 S.C. at 115–16, 906 S.E.2d at 557.

B. Discussion.

The foreperson did not dispute knowing co-defendant Boles' mother. R. 830, l. 4 – 832, l. 16. The foreperson did not dispute knowing and purchasing drugs from Christopher Williams. Despite the testimony from the foreperson acknowledging he purchased drugs from Williams,

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[12] Our Supreme Court's initial opinion in Rowell had been issued shortly before the mistrial hearing in the present case and was referenced during the hearing. R. 882, ll. 12 – 15. While the original opinion in Rowell was withdrawn, the general guidance and substance of the opinion was consistent. *Compare* State v. Rowell, No. 2022-000571 (S.C. July 17, 2024) with State v. Rowell, 444 S.C. 109, 906 S.E.2d 554 (2024).

the trial court found Williams not credible as it related to the foreperson interacting and actively purchasing drugs from co-defendant Boles and calling police on Boles and Williams. R. 906, l. 22 – 908, l. 10. When called in reply by the state, the foreperson conveniently claimed not to recall the drug transactions with Boles as related by Williams, but did not deny the testimony from Williams. R. 878, ll. 5 – 23.

That the foreperson actively purchased drugs from co-defendant Boles was certainly information that should have been disclosed during *voir dire*. At the time the foreperson's name was selected, counsel for appellant would have had been justified in having foreperson stricken for cause. Moreover, objectively, "a reasonable party would have exercised a strike had the requested information been disclosed" about the foreperson's prior dealings with Boles. *See* Rowell, 444 S.C. at 117, 906 S.E.2d at 558. The trial court also improperly focused on the lack of any direct evidence that the foreperson was motivated by bias, which ignores the proper inquiry outline in Rowell in favor of prior decisions, many of which were cited to the trial court by the state, that focused on the motivation of the juror rather than the objective analysis outlined in Rowell.

There was potential motivation for Boles to take the risk that the relationship between the foreperson and his other and his own prior drug dealings with the foreperson would be favorable as argued by the solicitor. R, ll. 8 – 21. However, that same motivation would not have applied objectively to appellant since his charges were in no way dependent on the outcome of the case against Boles. In fact, objectively speaking, it would be more likely that jurors favorable to Boles would have been inclined to split the verdict to hold someone responsible for the triple homicides. R, ll. 6 – 25. The foreperson was called early in the jury selection process, and that appellant had strikes available to use. R. 119, l. 22 – 122, l. 19. The foreperson's name was the

ninth name pulled the third juror selected, with appellant's counsel having used two strikes at this stage of jury selection. R. 119, l. 22 – 122, l. 19. Appellant's counsel only used five of his allotted ten strikes R. 116, l. 11 – 128, l. 6. As such, the withheld information [relationship with co-defendant's mother and prior drug transactions involving co-defendant] do objectively suggest a potential bias of the foreperson such that it would have supported a challenge for cause by appellant during jury selection and would have been material to appellant's use of his available peremptory strikes. R. 902, ll. 2 – 13.

The trial court should have focused on whether appellant established prejudice by "demonstrating the withheld information suggests a potential bias [of the juror], and, if so, whether it would have supported a challenge for cause or would have been material to [appellant's] use of peremptory strikes. Materiality is to be judged by an objective standard, i.e. whether a reasonable party would have exercised a strike had the requested information been disclosed." Rowell, 444 S.C. at 117, 906 S.E.2d at 558. The trial court committed reversible error in interpreting Rowell and evaluating the impact on the foreperson's failure to disclose the prior relationship with co-defendant Boles. This court should reverse and remand this matter for a new trial.

CONCLUSION

Based upon the foregoing arguments, this Court should reverse the rulings of the lower court and enter appropriate relief as outlined herein.

Gary H Johnson
Appellate Defender

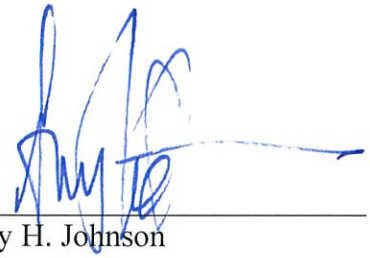
ATTORNEY FOR APPELLANT

This 17th day of February, 2026.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 17, 2026.



Gary H. Johnson
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589