

STATE OF SOUTH CAROLINA FILED

COUNTY OF LEXINGTON 2025 DEC 22 AM 11:05

STATE,

v.

VERNON JENKINS, JR.,

DEFENDANT.

LISA M. COMBR
CLERK OF COURT
LEXINGTON SC

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case Nos.: 2024-GS-32-02743, 2744
Warrant Nos. 2023A3210201315, 1317

**ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL**

RECEIVED

Mar 30 2026

SC Court of Appeals

This matter comes before the Court by way of a timely filed Motion for a New Trial pursuant to Rule 29(a) of the South Carolina Rules of Criminal Procedure. The State called this case for trial on April 7, 2025, before this Court. Senior Assistant Solicitors Sutania A. Fuller and Robby McNair appeared on behalf of the State at trial. Tivis Sutherland, Esquire, represented the Defendant at trial.

Procedural History

The Defendant is incarcerated in the South Carolina Department of Corrections (SCDC) pursuant to the Lexington County Clerk of Court's Order of Commitment. On May 23, 2023, the Defendant was arrested in Halifax County, North Carolina, based on Lexington County Sheriff's Department's warrants regarding the shooting that took place on February 20, 2023. The Defendant refused extradition. A Governor's Warrant was obtained on July 10, 2023. The Defendant was brought back to Lexington County, South Carolina, on August 22, 2023. On May 7, 2024, and December 18, 2024, bond hearings were held in General Sessions Court and bond was denied.

The Lexington County Grand Jury indicted the Defendant at the July 2024 term for two counts of Attempted Murder, Possession of a Firearm during the Commission of a Violent Crime, and Criminal Conspiracy. The State called the two Attempted Murder indictments for trial on April

7, 2025, and similarly called two Attempted Murder indictments for the Co-Defendants, Altariq Cole and Dyshawn Hines, during this joint trial. On April 11, 2025, the jury convicted the Defendant, and both Co-Defendants, of two counts of Attempted Murder. This Court sentenced the Defendant to 30 years on the two counts, both to run concurrently. The Co-Defendants received the same sentence. On April 21, 2025, the Defendant filed this Motion for a New Trial and supporting arguments with the Lexington County Clerk of Court. The Court held a hearing on the Motion on September 29, 2025.

Facts

On February 20, 2023, around 7:30 p.m., the two victims in this case were sitting in a vehicle in the side parking lot of the Country Inn & Suites on Piney Grove Road in Columbia, in Lexington County, when they were blocked in by two other vehicles driven by the Defendant's group. A member of the group ordered the victims to exit their vehicle, and the group surrounded the victims' car with firearms drawn. When the victims did not comply, gunfire erupted from both the sides and rear of the vehicle. Witnesses stated they saw four individuals surrounding the car, with at least two of them actively firing weapons. One victim sustained five gunshot wounds; the other was unharmed. A passerby who witnessed the incident called 911 and reported the license plate of one of the vehicles fleeing the scene. This tip led law enforcement to the registered owner, Karim Hampton, who was interviewed and later charged on March 28, 2025. That interview, along with cell phone evidence, and Facebook records, ultimately led to the identification and arrest of Jenkins, Cole, and Hines.

Hines was selling drugs on behalf of Jenkins the day before the shooting and he was robbed. Facebook messages indicated that the group was attempting to locate a woman believed to have helped set up the robbery. All three of the trial Co-Defendants are originally from New Jersey, at

the time of the incident Jenkins was living in Roanoke Rapids, North Carolina; Cole in Greensboro, North Carolina; and Hines in South Carolina. Cellular analysis reflected that Jenkins and Cole met in Roanoke Rapids on February 19, then traveled to Greensboro. Cell phone data and messages placed them arriving in Lexington County on the afternoon of the shooting in the Gaston area at an address provided to Jenkins by Hines. Records confirmed that Jenkins and Cole were connected to cell towers near the Country Inn & Suites at the time of the shooting. Less than five hours later, the pair fled back to North Carolina.

The victims in this case were targeted because their car resembled the vehicle used in the drug robbery the day before. After the shooting, Jenkins admitted to the cooperating co-defendant, Hampton, that they shot at the wrong people. Jenkins acknowledged his presence at the scene and confirmed that the robbery involved his drugs during a recorded conversation in the Lexington County Detention Center.

Issues

- 1. The Defendant argues that the Court erred by charging implied malice as a whole and specifically: "Inferred malice may also arise when the deed is done with a deadly weapon."**
- 2. The Defendant argues that the Court abused its discretion by allowing Sgt. Cobb to testify about Karim Hampton's prior consistent statement arguing that the State impermissibly attempted to rehabilitate Karim Hampton.**
- 3. The Defendant argues that the Court erred in denying his Motion for Suppression of the fruits of the Search Warrant.**
- 4. The Defendant argues that the Court abused its discretion by allowing hearsay testimony in the form of text originating from devices associated with non-testifying codefendants.**

Standard

"Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence." Rule 29(a), SCRCrimP.

The grant or refusal of a new trial motion is within the trial court's discretion. *State v. Simmons*, 279 S.C. 165, 303 S.E.2d 857 (1983).

A trial court's denial of a new trial motion will not be disturbed on review absent a showing of an abuse of discretion that results in prejudice to a defendant. *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998); *Simmons*, 279 S.C. 165, 303 S.E.2d 857.

Findings

- 1. The erroneous and inadvertent inclusion of the phrase "inferred malice may also arise when the deed is done with a deadly weapon" was harmless and the Court did not err by charging generally that malice can be implied.**

The Court held an in chambers charge conference to draft the Attempted Murder charge with all attorneys present to ensure that specific intent to kill was accurately charged to the jury pursuant to *State v. Geter*, 445 S.C. 139, 912 S.E.2d 255 (2025). At trial, the Defendant objected to the portion of the Attempted Murder charge that referred to the fact that malice can be inferred but did not raise the deadly weapon inference specifically and it was not discussed by all parties prior to charging the jury.

Attempted murder requires the specific intent to kill with malice aforethought either expressed or implied. S.C. Code Ann § 16-3-29. In South Carolina, the courts historically allowed a permissive inference when a deadly weapon was used, and the jury could infer malice by the use of a deadly weapon. The Court in *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), held that the "use of a deadly weapon" implied malice jury instruction was not to be given to a jury where evidence is presented that would reduce, mitigate, excuse, or justify the killing. The Court in *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019), held that the trial court should no longer instruct the jury that malice may be inferred when the deed was done with a deadly weapon, overruling the prior permissive inference.

The appellate courts have reviewed cases when this instruction is given to the jury. The Court in *State v. Smith*, 430 S.C. 226, 845 S.E.2d 495 (2020), reversed the conviction for attempted murder and reaffirmed that the implied malice charge could not be given when there has been evidence presented that the defendant acted in self-defense. The deadly weapon inference jury instruction in the *Smith* case was compounded due to other portions of the instructions. In *State v. Campbell*, 443 S.C. 182, 904 S.E.2d 441 (2024), the Court reinstated the convictions that were reversed by the Court of Appeals on this issue. The Supreme Court agreed with the Court of Appeals that the instruction on the deadly weapon inference was erroneous, however, the Court found the error to be harmless beyond a reasonable doubt because of “overwhelming evidence of malice apart from the mere use of a weapon.” *Id.*

The deadly weapon inference instruction given at trial was error under *Burdette*. *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019). However, the error was harmless beyond a reasonable doubt. Under *Campbell*, an erroneous deadly weapon inference instruction does not mandate reversal where “overwhelming evidence of malice existed apart from the use of a deadly weapon,” and where the error “could not have contributed to the verdict.” *Id.*

The evidence presented of malice was overwhelming in this case. At trial, the State presented substantial and compelling evidence establishing malice beyond the mere use of a deadly weapon. The evidence showed that the Defendant and one of the trial Co-Defendants traveled from out of state to retaliate a robbery of drugs the day prior, blocked in the victims’ vehicle, surrounded the vehicle with firearms drawn, and discharged approximately ten shots at the victims from multiple angles with one victim having sustained five gunshot wounds. Trial testimony and digital forensic evidence established that the shooting was motivated by the prior drug robbery involving

the Defendant's drugs. A recorded conversation of the Defendant was introduced where he acknowledged his presence at the shooting and that his drugs were the cause.

During the trial, there was no testimony or evidence presented that suggested any legal provocation, heat of passion, self-defense, or accidental or justified use of deadly force nor evidence of a struggle. The testimony established that the victims were unarmed and sitting in a parked vehicle at the time of the shooting. The jury heard testimony about coordinated travel plans, cell phone data placing the Defendant at the scene, the Defendant's messages about the plan to travel and his search for the person responsible for setting up the robbery, and witness testimony identifying multiple shooters actively shooting. Trial testimony revealed that the Defendant acknowledged shooting at the wrong people but did not express any regard.

The general charge to the jury that malice can be inferred as it relates to attempted murder is appropriate because that is the law as written. S.C. Code Ann § 16-3-29. Moreover, based on the facts, there was overwhelming evidence about the disregard for life that proves malice directly.

Additionally, the jury was instructed on lesser-included offenses that it rejected. The jury had to determine if the Defendant had a specific intent to kill or a lesser intent to injure. These lesser-included assault offenses did not involve a finding of malice or lack thereof. The deadly weapon inference instruction could not have impacted the verdict because it was inapplicable to the assault charges. The inclusion of these lesser-included offenses does not change the harmless error analysis but adds strength to the analysis. The evidence presented at trial overwhelmingly demonstrated a coordinated ambush of the unarmed victims and no evidence presented supported merely an intent to injure.

The harmless error analysis considers the concerns of the *Belcher* court – evidence that would reduce, mitigate, excuse, or justify the killing – even though the Court ultimately banned

the inference's use as it relates to deadly weapons. Given the overwhelming evidence of premeditated retaliation, planning, admissions of guilt, and absence of any mitigating evidence, the Court finds beyond a reasonable doubt that the erroneous instruction did not contribute to the jury's decision and was harmless. Additionally, generally charging the jury that malice can be inferred was not error.

As to this ground, the Motion for a New Trial should be denied.

2. The Court did not abuse its discretion by allowing Sgt. Cobb to testify about Karim Hampton's prior consistent statement.

The admission of evidence is within the discretion of the trial court, and upon review, the Court only checks that discretion if it is abused. *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). An abuse of discretion occurs when the decision of the trial court is controlled by an error of law or lacks evidentiary support. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

A statement is not hearsay if the declarant "testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; provided, however, the statement must have been made before the alleged fabrication, or before the alleged improper influence or motive arose, ..." 801(d)(1), SCRE. The mode or manner regarding how the State should offer this type of testimony is not dictated by the rule. Of significance, the defense theories were different for each offender on trial.

During Karim Hampton's testimony, he was subjected to cross examination by all three defense attorneys that individually focused on portions of Karim Hampton's in court testimony and prior statements that advanced each's theory. This caused Karim Hampton's testimony to be

attacked in competing arguments causing the State to address each occurrence and rebut the allegation of potential improper motive or recent fabrication of his trial testimony because he was now charged for his role in this shooting.

In *State v. Winkler*, 388 S.C. 574, 698 S.E.2d 596 (2010), a taped statement witness made to police was admitted as a prior consistent statement where defense counsel accused the witness of lying during the trial about who he said committed the crime. Similarly, Karim Hampton was essentially accused of changing this story. The prior consistent statement was not offered to bolster the testimony but to rebut the suggestion that the story changed. The statement was clearly made before the alleged recent fabrication or improper motive. Simply questioning a witness's credibility and his prior inconsistent statements does not open the door to allow the other party to put in a prior consistent statement where there is no accusation of recent fabrication or improper motive. *State v. Saltz*, 346 S.C. 114, 551 S.E.2d 240 (2001). A witness is improperly bolstering another witness's testimony if: (1) she directly states an opinion about the other witness's credibility; (2) the sole purpose of the testimony is to convey her opinion about the other witness's credibility; or (3) there is no way to interpret his testimony other than to mean that he believes the other witness is telling the truth. *Chappell v. State*, 429 S.C. 68, 837 S.E.2d 496 (2000). The Court does not find that Karim Hampton was improperly bolstered by the introduction of his prior consistent statement.

As to this ground, the Motion for a New Trial should be denied.

3. The Court did not err by not suppressing the evidence seized during the search of the Defendant's house.

The Court denied the Motion to suppress the evidence obtained during the search of the Defendant's house in North Carolina. The Defendant argues that this denial was done in error and the Defendant is entitled to a new trial because of this error. The Court has broad discretionary

powers in the granting or denying of motions. In this case, the denial of this motion at the time of trial is not a valid ground for the Court to grant this Motion for New Trial as no error on behalf of the Court was committed.

South Carolina Code Section 17-13-140 requires that a search warrant “shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record...” A magistrate may issue a search warrant only upon a finding of probable cause. *State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997); S.C. Code Section 17-13-140.

Alternatively, inevitable discovery is an exception to the exclusionary rule, which excludes from evidence items seized improperly. *See Nix v. Williams*, 467 U.S. 431, 446-47, 104 S. Ct. 2501, 2510 (1984). “Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial.... Suppression, in these circumstances, would do nothing whatever to promote the integrity of the trial process, but would inflict a wholly unacceptable burden on the administration of justice.” *Nix v. Williams*, 467 U.S. at 446-47, 104 S. Ct. at 2510.

If the State can show by a preponderance of the evidence that the information it sought would ultimately or inevitably have been discovered by lawful means, then the evidence is admissible. *Id.* at 444, 104 S. Ct. at 2509. The State does not have to prove the absence of bad faith on the part of the police. *Id.* at 445, 104 S. Ct. at 2510 (where police would have discovered victim’s body even if defendant had not given information as result of improper interrogation).

Additionally, law enforcement may search based on valid consent. The State must show that the third party had the authority to give consent to search. The party must have a common authority over or some other sufficient relationship to the premises or effects to be searched. *State v. Brockman*, 339 S.C. 57, 528 S.E.2d 661 (2000). If it is objectively reasonable for officers to

conclude that a third party had apparent authority to consent to a search, it will be valid even though the person did not have the authority to consent. *State v. Laux*, 344 S.C. 374, 544 S.E.2d 276 (2001) (where the Court held that defendant's girlfriend had apparent authority to consent to search of his apartment.) In this instant, the evidence demonstrated that the Defendant's girlfriend was living in the home suggesting the mutual use of the home as well as joint access or control. Moreover, there was no valid basis to suggest that the consent given was invalid. The Court watched the body watch camera of the consent given at the time of the search and found no coercion.

In this case, the Defendant moved to suppress specifically the gun used in this shooting that was seized during the search of his home arguing that the search warrant was defective and that the consent given by his girlfriend was invalid due to coercion. The same arguments were raised during the trial and considered by this Court. The Court finds that there was no error in denying the Motion for Suppression of the gun. The denial of the Motion is not a valid ground for the grant of this Motion for New Trial.

4. The Court did not abuse its discretion by allowing hearsay testimony in the form of text originating from devices associated with non-testifying codefendants.

At trial, the Defendant objected to the admissibility of several text messages the State sought to introduce and the Court held an *in camera* hearing. The Defendant raised the same issues regarding these messages during the trial as raised in this Motion. After hearing arguments from both parties, the Court ruled that the text messages were admissible. The Court finds that it did not abuse its discretion by allowing into evidence texts associated with the Defendant and Co-Defendants as the messages were admissible either as not hearsay or hearsay subject to an exception in the joint trial. Additionally, the messages were not testimonial statements subject to

the Confrontation Clause of the Constitution. The Defendant also took issue with the potential impact on the messages on his interests in this joint trial.

During the *in camera* hearing, the State offered each message for the Court to review. The Facebook messages attributed to Dyshawn Hines and Vernon Jenkins contained messages between the two prior to the shooting and indicated a plan to meet up. Vernon Jenkins also had messages with Karim Hampton that the State presented. Generally, the messages included conversations about a girl involved in the robbery of Dyshawn Hines that Karim Hampton additionally put into context during his testimony. The cell phone attributed to Dyshawn Hines at the time of his arrest was examined. The selected text messages offered by the State referenced the shooting, guns, and laying low. The cell phone attributed to Altariq Cole at the time of his arrest was examined. The selected text messages offered by the State referred to the selling of a .380 firearm and being on the run.

Under Rule 801(a), SCRE, a “statement” is defined as “(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.” Rule 801(c), SCRE, defines “hearsay” as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(d), SCRE, states that a statement is not hearsay if “the statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.” Rule 804(b)(3), SCRE, is an exception to the hearsay

rule and states that a “statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true.” The Defendant’s challenge primarily rests on the admissibility of these messages as a coconspirator statement or generally a statement against interest.

As stated above, the admission of evidence is within the discretion of the trial court, and upon review, the Court only checks that discretion if it is abused. *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). An abuse of discretion occurs when the decision of the trial court is controlled by an error of law or lacks evidentiary support. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

The Sixth Amendment states that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.” In *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004), the United States Supreme Court held the Confrontation Clause applies to certain statements. Specifically, the Court held the Confrontation Clause prohibits the admission of testimonial, out-of-court statements unless the witness is unavailable at trial and the defendant had a prior opportunity to cross-examine the witness. *See Id.* at 68, 124 S. Ct. at 1374.

The United States Supreme Court has since developed the “primary purpose analysis” to determine if a statement is testimonial holding where the primary purpose of an out-of-court statement is to serve as evidence or “an out-of-court substitute for trial testimony,” the statement is testimonial. *See Bullcoming v. New Mexico*, 564 U.S. 647, 131 S. Ct. 2705 (2011) (Sotomayor, J., concurring). However, “where no such primary purpose exists, the admissibility of a statement

is the concern of state and federal rules of evidence, not the Confrontation Clause.” *Michigan v. Bryant*, 562 U.S. 344, 357-358, 131 S. Ct. 1143, 1155.

In this case, the primary purpose of admitting the messages was not for the purpose of being an “out-of-court substitute for trial testimony.” Most importantly, the messages objected to were not offered against the Defendant. The Court took great care to ensure that the messages were individually admissible against the declarant on trial. The Facebook messages admitted against the Defendant were messages authored by the Defendant during separate message threads with Co-Defendants Dyshawn Hines and Karim Hampton, separately. These messages were admissible pursuant to 801(d), SCRE, or 804(b)(3), SCRE, as either not hearsay or hearsay subject to an exception.

The spill-over effect that concerned the Defendant due to admissible evidence against a Co-Defendant in this joint trial is well-settled in South Carolina. The nature of a joint trial is that evidence admissible and relevant as to one defendant often ^{DSE} times is inadmissible and irrelevant as to the other. *State v. Harvey*, 253 S.C. 328, 170 S.E.2d 657 (1969). This Court instructed the jury that the evidence admitted as to one of the Co-Defendants should only be considered as it relates to that Co-Defendant. Summarizing its holding, the Court concluded that, “The Confrontation Clause ensures that defendants have the opportunity to confront witnesses against them, but it does not provide a freestanding guarantee against the risk of potential prejudice that may arise inferentially in a joint trial.” *Samia v. United States*, 599 U.S. 635, 143 S.Ct. 2004 (2023).

Additionally, the Court gleans guidance from authority regarding the redaction of statements written by non-testifying co-defendants that would trigger more heightened scrutiny than the messages offered in this instant. When dealing with statements of non-testifying co-defendants, the Supreme Court does not take a position that would unjustifiably shackle the state

in presenting an admissible confession. *State v. Evans*, 316 S.C. 303, 450 S.E.2d 47 (1994). In cases where a co-defendant's version of the facts would otherwise be admissible, to require the State to redact completely anything that could be viewed in combination with other evidence as a reference or allusion to the defendant, would "unduly handcuff the government's ability to introduce admissible confessions and statements against a declarant in a joint trial." *Id.* at 307 n. 2, 450 S.E.2d at 50 n. 2 (where the co-defendant's statement that he was not driving did not incriminate the defendant on its face was admissible, even though it was clear if there were only two people in the vehicle, the other was obviously the defendant).

In *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620 (1968), the Supreme Court held that a defendant's rights under the Confrontation Clause are violated by the admission of a non-testifying co-defendant's statement that expressly inculcates a defendant, even if a cautionary instruction is given. The Court, in *Richardson v. Marsh*, 481 U.S. 200, 107 S.Ct. 1702 (1987), specifically declined to extend this rule to the situation when the defendant's name or any reference to the defendant is redacted, and held that as long as a statement on its face does not incriminate the defendant, it can be properly admitted. Considering this guidance and the specific messages admitted in this trial that surrounded the robbery, the plan to travel, laying low, and selling a gun with no specific reference to the Defendant, the Court did not abuse its discretion in admitting the messages offered by the State.

As to this ground, the Motion for a New Trial should be denied.

Conclusion

The Defendant's Motion for a New Trial should be denied. Based on the reasons set forth above, the Court finds that any error was harmless. The evidence in this case was overwhelming and the testimony allowed was admissible. The Defendant has failed to raise a valid ground for the grant of a new trial.

Therefore, the Defendant's Motion for a New Trial is hereby **DENIED**.

AND, IT IS SO ORDERED.


Diane Goodstein
Circuit Court Judge

12-8-, 2025
at Chambers South Carolina

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CLERK OF COURT
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