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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Sumter County
Kristi F. Curtis, Circuit Court Judge

Opinion No. (S.C. Ct. App. Submitted September 1, 2025-Filed September 17, 2025, Withdrawn, Substituted, and Refiled October 29, 2025)

THE STATE,

RESPONDENT,

V.

DEMETRIUS ALEXANDER BROWN,

PETITIONER.

APPELLATE CASE NO. 2025-002378

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMETRIUS ALEXANDER BROWN,

APPELLANT.

APPELLATE CASE NO. 2022-001360

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this self-defense case, did the trial court err in upholding the State's objection to evidence that contradicted the State's main witness's testimony that the decedent had a gun on the day of the shooting?

STATEMENT OF THE CASE

Appellant Demetrius Brown was indicted in Sumter County for murder and weapons charges and on February 14, 2022, he was tried before the Honorable Kristi F. Curtis and a jury. R. 1. Ernest A, Finney, Jr. represented the State. R. 1. Deborah J. Butcher and Robert J. Butcher represented appellant. R. 1. The jury convicted appellant of murder and on both weapons charges. R. 666 – 667. Judge Curtis sentenced appellant to the mandatory minimum sentence of thirty years' imprisonment for murder and concurrent sentences on the weapons charges. R. 673. This appeal follows.

STANDARD OF REVIEW

The evidentiary issue in this appeal is governed by the abuse of discretion standard. State v. Washington, 431 S.C. 394, 405–06, 848 S.E.2d 779, 785 (2020). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." Id. (internal quotations and citations omitted).

ARGUMENT

In this self-defense case, the trial court erred in upholding the State's objection to evidence that contradicted the State's main witness's testimony that the decedent had a gun on the day of the shooting.

Appellant Demetrius Brown ("Brown") shot the decedent, Lonnie Pack ("Pack") in self-defense. R. 505 – 508. Brown was at work at a garage when Pack and two other men pulled up in a Chrysler 300 sedan. R. 505. Brown was in his SUV. R. 505. Brown's SUV was blocked in. R. 508. Pack came up to the door of his SUV. R. 505. The two other men went to the back of Brown's SUV. R. 547.

Brown asked Pack what was going on and Pack told him to "hold up a second." R. 505. Pack pulled out his cell phone and made a call on speakerphone. R. 505. When the person on the other end answered, Pack said, "I got that nigga D. right here, what you want me to do with him?" R. 505. The other person said, "why the F you calling me. Do what I tell you to do." R. 505.

The man Brown heard on the other end of the phone was Seneca Moore. R. 559. Brown and Seneca had a disagreement over a car that Brown sold him. R. 528 – 530. Text messages between Brown and Seneca from the day before the shooting were admitted as Defendant's Exhibit 45. Brown texted Seneca a greeting and Seneca replied for Brown to call him "911." R. 683. After the call, Brown sent a text to Seneca telling him not to call him with "that bullshit" and denying that he did any wrong in their business transaction. R. 683. Seneca replied, "You broke Mother fucker you call me when you were in jam dude, I'm nobody bitch nigga I'm see you Tonight get ready." R. 684. Brown replied that he had always been straight in business with him, asked him "where all the aggression coming from" and that he needed to check who was feeding him the "bullshit because we never had any bad blood." R. 684.

When Pack hung up with Seneca, Pack told Brown to get out of his car. R. 506. Brown refused. R. 506. Pack tried to pull the car door open and Brown tried to hold it closed. R. 506. Pack then pulled a gun. R. 565. Brown grabbed for the gun and they "tussled" over it. R. 565. R. 506. The gun went off during the tussle. R. 506.

Pack started backpedaling towards the Chrysler 300. R. 566. R. 506. Brown had control of the gun. R. 506. Brown told Pack not to move because Brown was afraid that Pack was going for another gun in his car. R. 506. R. 539. Pack did not comply, so Brown shot him. R. 506. R. 539. Pack died from two gunshot wounds. R. 262 – 263.

The other two men with Pack were gone and Brown was afraid they had guns. R. 507. Brown dropped Pack's gun and left the scene in his SUV. R. 540. Brown texted Seneca right after the shooting, "So u put hit on a real bro huh." R. 685. Seneca replied, "Don't text me dude I'm out here daily keep my name out your mouth." R. 686. Brown wrote, "Naw don't try to back out now Lonnie just rolled on me n called u n asked what to do with me n I heard your voice stafallah." R. 686. Seneca wrote back: "I'm prepared for whatever dude stay there nigga. I'm not sucker. Otw." R. 686.

The police retrieved Pack's cell phone and the contents of his instant messages were entered as Defendant's Exhibit 40.[1] An incoming message said, "Got major lil job buddy for you fake Ass Muslim dude." R. 723. Appellant is a practicing Muslim and Seneca and Pack knew this. R. 504. Pack wrote back, "Where and when." R. 723. Seneca wrote that it was about appellant selling a car that was stolen. R. 724. Pack wrote, "Ill get him now." R. 724.

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[1] The court reporter's index shows Defendant's Ex. 40 marked, but not entered, but this is a mistake. R. 9. Appellant marked Exhibit 39 for identification on page 422. R. 335. Appellant moved Exhibit 40 into evidence along with several other exhibits and the solicitor objected to Exhibit 40. R. 353 – 354. Judge Curtis admitted Defendant's Exhibit 40. R. 354.

No gun was found at the scene or during the investigation. R. 431. The police did find a red iPhone belonging to Anfernee Bradley ("Bradley"), who was in the car with Pack. R. 79. Also in the car was a man named "D.V." who the police did not identify. R. 446. The police found 37.2 grams of marijuana, a scale, and baggies in the car. R. 480. R. 228 - 232. The police did not enter any evidence from Bradley's phone and did not allow the defense to examine the phone. R. 425 – 426. Instead, they gave Bradley back his phone per the elected Solicitor. R. 611 – 612. R. 447. Appellant asked for and received a spoliation charge from Judge Curtis because of the State's actions regarding Bradley's phone. R. 659 – 660.

Bradley testified for the State and said Pack did not have a gun on the day of the shooting. R. 96. Bradley said the three men got out of the car and he saw Pack talking on the phone. R. 84. After Pack hung up the phone, Bradley heard Pack and Brown talking which escalated to yelling. R. 86. Brown was sitting in his truck and the door was pushed. R. 86 – 88. Bradley saw Brown with a gun, heard gunshots, and ran. R. 88. Bradley claimed Brown got the gun from his SUV. R. 89. Bradley was impeached with a video statement in which he said he did not see the gun "until it was up in the air being fumbled." R. 129 – 130.

During cross-examination, defense counsel asked Bradley if he ever told a man named Bennie Haynesworth that Pack brought the gun. R. 123. Bradley replied, "I don't even know who that is." R. 123. Defense counsel asked Bradley another question about Bennie Haynesworth and Bradley repeated, "I don't even know who that is." R. 123.

The defense called Bennie Haynesworth ("Haynesworth") as a witness. R. 488. R. 490. Haynesworth said he knew Bradley as "A.J." and had seen him a couple of times after the shooting. R. 488. Defense counsel asked Haynesworth about his recall of something Bradley told him about Pack and the solicitor objected on hearsay grounds. R. 488 – 489. Defense counsel replied that

the questioning was allowed by Rule 613(b), extrinsic evidence of a prior statement by a witness. R. 489. Judge Curtis excused the jury and heard a proffer. R. 489.

Defense counsel asked Haynesworth if Bradley told him that Pack had a gun when he got out of the car at the garage. R. 490. Haynesworth said no, and then added he had suffered "several head injuries since then." R. 490. He again said he did not recall telling the police that Bradley saw Pack with a gun that day. R. 491. He denied remembering the policeman even though the policeman was in the courtroom. R. 491 – 492.

Defense counsel then played video clips from Defendant's Exhibit 52 "to refresh his memory." R. 492 – 494. When the clips were being played, Haynesworth asked to "state something for the record." R. 493. He alluded to "an incident" regarding "a portion of my folk" and said he "really felt something against, against the family at the—at that particular time given that statement also." R. 493. He then immediately denied remembering giving the statement. R. 493.

The video clips played to Haynesworth were Haynesworth being interviewed by two police officers. Def. Ex. 52. On Clip #1 of Exhibit 52, at approximately the 2:27 mark, one of the officers asks Haynesworth, "Did anybody ever say anything about [Pack] having any weapons?" Def. Ex. 52. Haynesworth replied, "They say Lonnie had a gun when he got out the car." Def. Ex. 52. The officer asks, "Who said that?" Def. Ex. 52. Haynesworth said, "A.J." Def. Ex. 52. The other officer clarified, "He told you that or that's what you heard he was saying?" Def. Ex. 52. Haynesworth said, "That's what he told me. He said [Pack] had the gun when he got out the car." Def. Ex. 52.

Judge Curtis said she thought the statement was hearsay and was not a prior inconsistent statement. R. 494 – 495. Defense counsel argued that the questioning and extrinsic evidence were

allowed under Rule 613 and was inconsistent with Bradley's testimony. R. 495. The court said she would agree if it were Bradley's statement, but that it was Haynesworth's statement. R. 495. Appellant continued to argue that it was the extrinsic evidence contemplated by Rule 613 and cited State v. Blalock, 357 S.C. 74, 591 S.E.2d 632 (Ct. App. 2003). The court then said she only heard that Pack sometimes carried a gun but not that Pack had a gun that day. R. 496. Defense counsel offered to replay "those exact parts." R. 496. After hearing from the solicitor, the court said she had reviewed Blalock and was not allowing the evidence. R. 497 – 498. Appellant motion for a new trial on this issue was denied in a written order. R.752. R. 767.

The court erred in not allowing this important impeachment evidence. Rule 613(b), SCRE, states:

> **(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.

Rule 613(b), SCRE. Two levels of Rule 613(b) evidence exist, and both are admissible.

The first level is Bradley's denial of his statement to Haynesworth. Appellant asked Bradley if he ever told Haynesworth that Pack had a gun that day. R. 123. Bradley twice denied even knowing who Haynesworth was. R. 123. Bradley's denial made extrinsic evidence of his statement admissible under the rule.

The extrinsic evidence was Haynesworth's testimony. Had Haynesworth testified, "Yes, Bradley told me Pack had a gun that day," the trial judge likely would have had no trouble admitting it as a straightforward application of Rule 613(b). The problem was that Haynesworth

either denied making the statement or said he couldn't remember it, even after the video was used to refresh his recollection.

Haynesworth's denial or inability to remember led to the second level of the Rule 613 issue—extrinsic evidence of Haynesworth's statement to the police. Defense counsel properly gave Haynesworth the chance to explain the statement, played it for him to refresh his recollection, and still Haynesworth persisted in claiming he did not remember or alluded to making it up. R. 493. At this point, the video became admissible as extrinsic evidence under Rule 613. Alternatively, defense counsel should have been able to refresh Haynesworth's recollection and had him admit making the statement on the video in front of the jury.

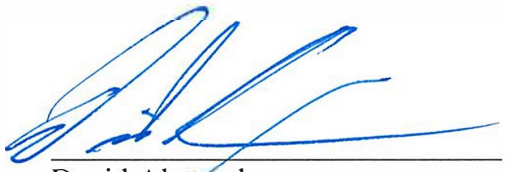
"[A] witness's failure to fully recall her prior statement has been found to be a sufficient denial to allow extrinsic evidence." Blalock at 80, 591 S.E.2d at 636. "Extrinsic evidence is also usually admitted when the witness simply avoids any direct answer." Id. "The rule does not require extrinsic evidence of the prior statement be admitted immediately. It merely authorizes the use of extrinsic evidence to prove the inconsistency. Because the impeaching evidence is "extrinsic," the avenue of its admissibility may not always run through the witness to be impeached by it, for that witness may not be competent to authenticate the extrinsic evidence." State v. Barnes, 421 S.C. 47, 58, 804 S.E.2d 301, 307 (Ct. App. 2017).

The statement by Bradley to Haynesworth was enormously relevant to two main issues in the trial: (1) who brought the gun, and (2) Bradley's credibility. Bradley testified that Brown had the gun and that he did not see Pack with a gun that day. Bradley's testimony was in direct contradiction to Brown's, who said he wrestled the gun from Pack after Pack pulled the gun on him. Hearing the video recording of Haynesworth would have shown Bradley to be a liar. It would have shown that Bradley lied about the gun and about knowing Haynesworth. Allowing

this important impeachment evidence was crucial to appellant's self-defense case. This Court should reverse and grant appellant a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand for a new trial.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of November, 2023.

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."

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November 8, 2023.

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Appeal from Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

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APPELLANT.

APPELLATE CASE NO. 2022-001360

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 8th day of November, 2023.

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In this self-defense case, did the trial court err in upholding the State's objection to evidence that contradicted the State's main witness's testimony that the decedent had a gun on the day of the shooting?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

Did the trial court err in not allowing hearsay evidence due to the fact it was not included under one of the hearsay exceptions found in the rules of evidence thereby not admissible under Rule 613(b) of the South Carolina Rules of Evidence?

STATEMENT OF THE CASE

On August 11, 2018, Demetruis Brown (Appellant) was in a possible partnership with George McClain at a place called Auto Doctors. (R. p. 26). The deal was that the Appellant would help repair the cars that were at the shop. (R. p. 26). On this date, when Mr. McClain was working on another vehicle, Mr. Lonnie Pack (victim) came to the business. Riding with him was Anfernee Bradley and another individual whose nickname was DV.[1] (R. p. 79). When they got to the business, they found the Appellant sitting in his black Ford Expedition. (R. p. 37, 88). The victim was talking on the phone, and when he got off of the phone he got out of his vehicle and walked up to Appellant. The victim was then shot twice by Appellant (R. p. 87-88). Both Mr. Bradley and DV ran from the scene. The Appellant also took off and fled the scene, in his truck. (R. p. 50).

When the shots rang out Mr. McClain ran inside the business and made his daughter go into the office for her safety. (R. p. 32). Mr. McClain then dialed 911. (R. p. 33). During the trial Mr. McClain testified that he looked out of the window and saw the Appellant with a gun. Mr. McClain told him "Don't shoot." Mr. McClain saw the Appellant shoot two more times then drive off in his Expedition. (R. p. 50).

Investigator Charles Bonner of the Sumter County Sheriff's Department arrived at the scene. During the investigation he was informed that Mr. Bradley's I.D. was found in the back seat of the victim's vehicle, this was a good indicator that he was at the crime scene. (Rr. p. 397). Investigator Bonner spoke with Mr. McClain and his daughter who informed him that Appellant was involved in the shooting and left in his Ford Expedition. (R. p. 398). The Sumter County Sheriff's Department working with other agencies later found Appellant in Florida. (R. p. 392).

[1] D.V. was never found by law enforcement; therefore, his actual identity was never discovered.

Appellant was later charged with the offenses of murder and possession of a firearm during the commission of a violent crime.

During the September 2019 term, the Sumter County Grand Jury indicted Appellant both for murder and possession of a weapon during the commission of a violent crime. On December 14, 2022, his case was called for trial before the Honorable Kristi F. Curtis. Representing the State of South Carolina was Third Circuit Solicitor Ernest A. Finney, III, representing the Appellant was attorney Deborah J. Butcher.

Mr. Anfernee Bradley testified that the victim came by his house and told him to come ride with him. (R. p. 77). When he got to the victim's car, D.V. was in the passenger seat, so he got into the back seat. (R p. 79). While they were riding the victim was on the phone and when they got to the garage the victim got off the phone. The victim began speaking with the Appellant who was sitting in his truck. (R. p. 86). Mr. Bradley then testified that he heard gunshots and saw the Appellant with a gun. (R. p. 88). Mr. Bradley and D.V. got out of the car and ran. Mr. Bradley also testified that he never saw the victim with a gun. (R. p. 96).

During the trial Dr. Janice Ross testified. She was found to be an expert in forensic pathology by the trial court. (R. p. 260). Dr. Ross was the person who performed the autopsy on the victim. Dr. Ross testified that the victim suffered two gunshot wounds. (R. p. 262). One shot entered just above the right nipple traveling right to left downward coming out under his armpit. (R. p. 262). This bullet went through the victim's heart and the lower lobe of the right lung. (R. p. 262). The second bullet went into the right abdomen, traveled right to left downward through the liver and blood vessels around the stomach and intestines. This bullet was found lodged inside the victim's pelvic bone. (R. p. 263).

Dr. Ross testified that the victim died due to the laceration of the organs causing them to hemorrhage into the chest cavity. (R. p. 263). Dr. Ross determined that the cause of death was exsanguination due to a laceration of the heart, lung, and liver from the victim's gunshot wound to the chest. (R. p. 265). Dr. Ross found no soot or powder near the wounds, so she determined the victim was shot at a distance of about eighteen to twenty-four inches or further. (R. p. 265).

Also testifying was Agent Tracy Thrower of the South Carolina Law Enforcement Division. Agent Thrower was found to be an expert in firearms and tool mark examination by the trial court. (R. p. 304). Agent Thrower testified that he was given bullets for testing and they both were fired from the same firearm. (R. p. 307). Agent Thrower determined that these bullets were fired from a .380 auto-caliber cartridge. (R. p. 308).

After five days of testimony, Appellant was found guilty by a jury of his peers of murder and possession of a weapon during the commission of a violent crime. (R. p. 666). After the reading of the verdicts Appellant appeared before the trial judge for sentencing. Appellant was sentenced to a thirty-year term of incarceration for the offense of murder, and five years for possession of a weapon during the commission of a violent crime. The trial judge ordered that these sentences were to be served concurrently. (R. p. 673).

ARGUMENTS

1. **Trial court did not err in upholding the State's objection due to the fact the evidence being presented was hearsay, not within any of the exceptions; therefore, not admissible.**

Relevant Facts

During their case the defense called as a witness, Mr. Bennie Haynesworth, who testified that he knew of Mr. Bradley. (R. p. 488). Defense counsel then asked Mr. Haynesworth if he remembered Mr. Bradley telling him that the victim possessed a gun that day. That question was objected to by Solicitor Finney due to it being hearsay. At that time defense counsel argued that this line of questioning is proper pursuant to Rule 613(b) of the South Carolina Rules of Evidence. The trial judge excused the jury and allowed defense counsel to proffer this evidence.

During his testimony, Mr. Haynesworth testified that he didn't remember Mr. Bradley telling him that the victim had a gun in his possession that day. Mr. Haynesworth was also asked if he told police that the victim carries a gun at times when he wants to "get something done," (R. p. 490), Mr. Haynesworth did not remember that either. (R. p. 491). A statement that Mr. Haynesworth made to law enforcement was then played for the trial judge. Mr. Haynesworth then explained to the trial judge that he had some head injuries since this incident and also that he "felt something" against the victim's family, and that he does not remember giving this statement. (R. p. 493). Defense counsel continued their request to pursue this questioning before the jury pursuant to Rule 613(b). That request was denied due to the fact the trial court ruled that this statement is hearsay, not fitting under any of the exceptions; therefore, not admissible. The trial court ruled that in order for a statement to come into evidence under Rule 613(b) it had to be admissible first.

Standard of Review

In criminal cases the appellate court sits to review errors in law only. *State v. Wilson,* 345 S.C. 1, 545 S.E.2d 827, 829 (2001). The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose discretion will not be reversed on appeal absent an abuse of discretion. *State v. Tucker,* 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995). An abuse of discretion occurs when the trial court's ruling is based on an error or law or, when grounded in factual conclusions, without evidentiary support. *Clark v. Cantrell,* 339 S.C. 389, 529 S.E.2d 528, 539 (2000).

Discussion

The Appellant argues that the trial court has been granted wide latitude to allow extrinsic evidence proving a statement. *State v. Blalock,* 357 S.C. 74, 80, 591 S.E.2d 632, 636 (2003). However, the trial court has never been allowed to ignore the rules of evidence, allowing hearsay testimony into evidence without it meeting one of the exceptions found under Rule 803 or 804 of the South Carolina rules of evidence.

The Appellant argues that Rule 613(b) allows for this testimony even though it is clearly hearsay. Rule 613(b) of the South Carolina Rules of Evidence states:

> Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.

Rule 613(b) SCRE.

However, this rule does not apply to hearsay testimony. Rule 613(b) also states, "This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2)." Rule 613(b)

SCRE. If all hearsay testimony was allowed, this rule would not have specifically mentioned one of the hearsay exceptions, it would have allowed all hearsay testimony. This one exception was carved out due to the fact this rule was not created to allow hearsay testimony into evidence. Hearsay is inadmissible except as provided by the South Carolina Rules of Evidence, by other court rule or by statute. *State v. Jennings,* 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011), *quoting,* Rule 802 SCRE. It is clear that if the Appellant was allowed to present hearsay evidence it would have been stated in Rule 613(b).

Hearsay is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. *State v. Simmons,* 423 S.C. 552. 564, 816 S.E.2d 566, 573 (2018), *quoting,* Rule 801(c) SCRE. The Appellant was attempting to enter into evidence a statement made by Mr. Haynesworth, that he does not even remember, of Mr. Bradley telling him that the victim possessed a gun that day. That is clearly hearsay, and this statement does not fall under any one of the exceptions. Appellant argues that the trial court has wide latitude to allow such extrinsic evidence proving a statement. The appellant courts nor the rules of evidence have ever given trial courts so much latitude that they can completely ignore those rules.

In previous decisions regarding Rule 613(b) it was a statement made by the witness himself or herself that was in question and not inadmissible hearsay testimony. *State v. Blalock,* 357 S.C. 74, 591 S.E.2d 632 (2003)(Defendant's wife did not make clear unequivocal admission that her prior statement was inconsistent with her trial testimony); *State v. Starnes,* 388 S.C. 590, 698 S.E.2d 604 (2010)(victims fiancée was impeached by providing a prior transcript from Appellant's first trial of her mentioning that the victim did have a gun on the night of the murder); *State v. Bixby,* 388 S.C. 528, 698 S.E.2d 572 (2010)(Appellant's wife was impeached twice due to her not

remembering incriminating statements previously given to law enforcement and her son's girlfriend); *State v. Fossick,* 333 S.C. 66, 508 S.E.2d 32 (1998)(witness impeached on prior statement made threatening his girlfriend). If the defense was attempting to enter extrinsic evidence of a previous statement made by Mr. Bradley that would have been allowed under Rule 613(b), once the proper foundation was laid. However, that is not what they were attempting. What they attempted to do was to get the trial court to allow evidence that was supposedly said by Mr. Bailey to Mr. Haynesworth. This is clearly hearsay which does not fall under any of the exceptions found in Rule 803 or 804. Therefore, these statements are clearly inadmissible. The trial court made the correct ruling in not allowing this evidence to be presented to the jury.

2. If this Court determines that the trial court erred in not allowing the evidence before the jury this error should be considered harmless.

Although the Respondent argues that the trial court made no error in not allowing the hearsay statement of Mr. Haynesworth, any error that might have been made by this decision should be considered harmless. If the statement of Mr. Haynesworth was allowed into evidence there was so much evidence submitted proving Appellant's guilt beyond a reasonable doubt, the outcome would not have changed. Error is harmless when it could not reasonably have affected the result of the trial. *Simmons,* 423 S.C. at 566, 816 S.E.2d at 573.

There were two eyewitnesses that testified that the Appellant fired a gun, one stated that he saw the Appellant actually shoot the victim, the other testified he witnessed him firing the weapon. There is also the fact that no gun was found on the victim nor in his vehicle. All of the individuals that were in the vehicle ran after the shooting and they did not take a gun with them. Appellant also fled to Florida which also reveals his guilt. Since there was ample evidence presented proving his guilt beyond a reasonable doubt, if there was any error it would not have changed the outcome of this trial, so it should be considered harmless.

CONCLUSION

The trial court made the proper decision regarding this matter and the State respectfully request this Court to affirm the decision of the trial court.

Respectfully submitted,

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November 1, 2023

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THE STATE,..……RESPONDENT

v.

DEMETRIUS ALEXANDER BROWN,……APPELLANT

CERTIFICATE OF COMPLIANCE

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

This 1st day of November 2023.

s/Tommy Evans, Jr.
Tommy Evans, Jr.
Assistant Attorney General

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Demetrius Alexander Brown, Appellant.

Appellate Case No. 2022-001360

Appeal From Sumter County
Kristi F. Curtis, Circuit Court Judge

Unpublished Opinion No. 2025-UP-314
Submitted September 1, 2025 – Filed September 17, 2025
Withdrawn, Substituted, and Refiled October 29, 2025

AFFIRMED

Deputy Chief Attorney for Capital Appeals David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General Mark Reynolds Farthing, both of Columbia; and Solicitor Ernest Adolphus Finney, III, of Sumter, all for Respondent.

PER CURIAM: Demetrius Alexander Brown appeals his convictions for murder, possession of a weapon during the commission of a violent crime, and the unlawful possession of a pistol and aggregate sentence of thirty years' imprisonment. On appeal, Brown argues the trial court erred by sustaining the State's objection to extrinsic evidence, on the basis of hearsay, that would have impeached the State's main witness, Anfernee Bradley. We affirm pursuant to Rule 220(b), SCACR.

We hold the trial court did not abuse its discretion by sustaining the State's objection to Bennie Haynesworth's proffered testimony because although Haynesworth had made a prior inconsistent video-recorded statement which may otherwise have been admissible under Rule 613(b) of the South Carolina Rules of Evidence, the content of the statement was inadmissible hearsay. Further, the video-recorded inconsistent statement was a statement made by Haynesworth; thus, the statement could not be admissible under Rule 613(b) as extrinsic evidence of a prior inconsistent statement of Bradley. *See State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *id.* (stating "[a]n abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law"); Rule 801(c), SCRE ("'Hearsay' is 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 802, SCRE (explaining "hearsay is not admissible except as provided by [the South Carolina Rules of Evidence] or by other rules prescribed by the Supreme Court of this State or by statute"); Rule 613(b), SCRE ("If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible."); Rule 801(d)(1)(A), SCRE ("A statement is not hearsay if . . . [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is [] inconsistent with the declarant's testimony . . . ."); *cf.* Rule 803(5), SCRE (holding "[a] memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness'[s] memory and to reflect that knowledge correctly" is not excluded by the hearsay rule).

AFFIRMED.[1]

MCDONALD, HEWITT, and TURNER, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

Opinion No. 2025-UP-314

THE STATE,

RESPONDENT,

V.

DEMETRIUS ALEXANDER BROWN,

APPELLANT.

APPELLATE CASE NO. 2022-001360

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Demetrius A. Brown petitions this Court for rehearing. This Court should grant rehearing and hear oral argument on this interesting evidentiary issue. This Court overlooked that the legal issue is a double-layered Rule 613 analysis. This Court's holding, as it now stands, would prevent a full application of Rule 613 and take away an important tool for parties to cross-examine recalcitrant witnesses. Appellant was entitled to use Rule 613 to expose a witness's lies about whether the decedent brought a gun.

Whether Lonnie Pack brought a gun when he came to appellant's garage looking for trouble was an important factual issue on this self-defense case. Brown testified that Pack pulled

a gun on him. R. 565. Pack's cell phone messages indicated that someone hired Pack to shoot Brown. Def. Ex. 40. R. 723-24. No gun was found at the scene. R. 431.

The police found Anfernee Bradley's phone at the scene. R. 79. Bradley testified for the State and said Pack did not have a gun. R. 96. Appellant's cross-examination of Bradley was the first layer of Rule 613. During cross-examination, defense counsel asked Bradley if he ever told a man named Bennie Haynesworth that Pack brought the gun. R. 123. Bradley replied, "I don't even know who that is." R. 123. Defense counsel asked Bradley another question about Bennie Haynesworth and Bradley repeated, "I don't even know who that is." R. 123.

Under Rule 613, appellant was then entitled to use extrinsic evidence to prove that Bradley told Haynesworth that Pack had a gun. Appellant called Haynesworth and when he began to ask the Rule 613 questions, the solicitor made a hearsay objection. R. 488-89. During the proffer, defense counsel asked Haynesworth if Bradley told him that Pack had a gun when he got out of the car at the garage. R. 490. Haynesworth said no, and then added he had suffered "several head injuries since then." R. 490. He again said he did not recall telling the police that Bradley saw Pack with a gun that day. R. 491. He denied remembering the policeman even though the policeman was in the courtroom. R. 491 – 492.

Because of Haynesworth's denials, appellant now needed to use Rule 613 extrinsic evidence to impeach Haynesworth. The impeachment of Haynesworth is the second layer of Rule 613.

Had Haynesworth admitted that Bradley told him Pack had a gun, that evidence would have been admissible as extrinsic evidence under Rule 613. Because Haynesworth did not remember and denied making the statement, it became necessary for appellant to use Rule 613 to impeach Haynesworth with extrinsic evidence.

That extrinsic evidence was on video and is reliable. Defense counsel played video clips from Defendant's Exhibit 52 "to refresh his memory." R. 492 – 494. When the clips were being played, Haynesworth asked to "state something for the record." R. 493. He alluded to "an incident" regarding "a portion of my folk" and said he "really felt something against, against the family at the—at that particular time given that statement also." R. 493. He then immediately denied remembering giving the statement. R. 493.

The video clips played to Haynesworth were Haynesworth being interviewed by two police officers. Def. Ex. 52. On Clip #1 of Exhibit 52, at approximately the 2:27 mark, one of the officers asks Haynesworth, "Did anybody ever say anything about [Pack] having any weapons?" Def. Ex. 52. Haynesworth replied, "They say Lonnie had a gun when he got out the car." Def. Ex. 52. The officer asks, "Who said that?" Def. Ex. 52. Haynesworth said, "A.J." Def. Ex. 52. The other officer clarified, "He told you that or that's what you heard he was saying?" Def. Ex. 52. Haynesworth said, "That's what he told me. He said [Pack] had the gun when he got out the car." Def. Ex. 52. This powerful extrinsic evidence was admissible under Rule 613 as extrinsic evidence to impeach Haynesworth and Bradley.

This Court erred in holding the video statement was "inadmissible hearsay." The cases and rules cited in the Opinion favor admission of the extrinsic evidence. The Opinion cites Rule 801(d)(1)(A), SCRE. This rule makes Haynesworth's prior recorded statement **not hearsay**. This portion of the rule is called, "Statements Which Are Not Hearsay." Rule 801(d), SCRE. "A statement is not hearsay if—(1) *Prior Statement by Witness*. 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." Rule 801(d)(1)(A), SCRE.

The video of Haynesworth telling the police that Bradley told him Pack had a gun is not hearsay because of this rule. The declarant is Bradley. Bradley testified at the trial and was subject to cross-examination. The statement is inconsistent with Bradley's testimony. Bradley said Pack did not have a gun and that he did not know Haynesworth.

The Rule also works the same if Haynesworth is the declarant. Haynesworth testified at trial and was subject to cross-examination. Haynesworth denied that Bradley told him he had a gun and Haynesworth also said he had memory problems. The video statement directly contradicted Haynesworth's claims. Rule 801 makes this statement not hearsay and it was critical, admissible impeachment evidence.

The Opinion also cites Rule 803(5), SCRE, which supports appellant's position. Haynesworth initially denied that Bradley said Pack had a gun, but then claimed trouble with his memory. R. 490. Rule 803(5) allows a party to use a "record conerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly." Rule 803(5), SCRE. The video statement is the record. It was made when Haynesworth's memory was fresh. It is a video and reflects the knowledge correctly. Rule 803(5) also allows the record to be admitted if offered by an adverse party. This rule cited by the Court supports admission of Haynesworth's video statement.

State v. Barnes, 421 S.C. 47, 804 S.E.2d 301 (Ct. App. 2017) is instructive. In Barnes, the State wanted to impeach the defendant's mother with a prior inconsistent statement. The defendant's mother "flatly denied she had stated Barnes was the one in the surveillance video wearing the grey sweatshirt" during a recorded phone conversation with McCoy, a policeman.

Barnes at 57, 804 S.E.2d at 306-07. The State called McCoy and played his recorded interview with Barnes' mother in which she identified Barnes wearing a grey sweatshirt. Id.

The only difference between Barnes and appellant's case is that McCoy did not deny hearing Barnes' mother's recorded identification. If McCoy had lost his memory or lied about the interview, the interview would not then become inadmissible hearsay. The State would have been able to either referesh McCoy's recollection or impeach McCoy (and Barnes' mother) with the interview under Rule 613 or Rule 803(5).

But under this Court's analysis in the Opinion, admissibility hinges on the witness's willingness to tell the truth or the witness's memory. We do not place the keys to admissibility in the hands of recalcitrant witnesses. The Rules of Evidence place those keys in the hands of lawyers and judges so that cross-examination can be an instrument for discovering the truth. This Court's Opinion errs in its analysis and rehearing and oral argument should be granted.

David Alexander
Deputy Chief Attorney for Capital Appeals

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ATTORNEY FOR APPELLANT

This 1st day of October, 2025.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

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DEMETRIUS ALEXANDER BROWN,

APPELLANT.

APPELLATE CASE NO. 2022-001360

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Demetrius Alexander Brown, #378276, at Turbeville Correctional Institution, 1578 Clarence Coker Hwy, Turbeville, SC 29162, this 1st day of October, 2025.

David Alexander
Deputy Chief Attorney for Capital Appeals

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ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

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Appellate Case No. 2022-001360

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the petition for rehearing be denied, but that the attached opinion be substituted for the previous opinion, which is withdrawn.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Ernest Adolphus Finney, III, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
David Alexander, Esquire

FILED
Oct 29 2025

Tommy Evans, Jr., Esquire
The Honorable Kristi F. Curtis