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**May 12 2026**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Lexington County

Honorable Diane Schafer Goodstein, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DYSHAWN TITUS HINES,

APPELLANT

APPELLATE CASE NO. 2025-000815

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INITIAL BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial court err in admitting Karim Hampton's identification of appellant where neither Hampton nor any other eyewitness gave a physical description of appellant and where police used an impermissibly suggestive procedure pursuant to *Neil v. Biggers*<sup>1</sup>?

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<sup>1</sup> 409 U.S. 188 (1972).

## STATEMENT OF THE CASE

On July 8, 2024, a Lexington County grand jury indicted appellant for two counts of attempted murder. Indictments. Appellant's case was called to trial on April 7-11, 2025, before the Honorable Diane S. Goodstein, and a jury. Tr. 1. Appellant was tried jointly with two co-defendants Altariq Cole and Vernon Jenkins. Tr. 1. Debra Moore represented appellant. Tr. 1. Elnora Dean represented Mr. Cole. Tr. 1. Tivis Sutherland, IV, represented Vernon Jenkins. Tr. 1. Sutania Fuller and Robert McNair, III, prosecuted for the state. Tr. 1.

The jury found appellant guilty of both counts of attempted murder. Tr. 1078, ll. 17-24. Judge Goodstein sentenced appellant to concurrent terms of thirty years' imprisonment for each count of attempted murder.<sup>2</sup> Tr. 1095, ll. 18-24; 1096, ll. 20-21.

This appeal follows.

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<sup>2</sup> Mr. Cole and Mr. Jenkins were also found guilty of two counts of attempted murder. Tr. 1079, ll. 1-18. Judge Goodstein sentenced both men to concurrent terms of thirty years' imprisonment for each count of attempted murder. Tr. 1095, l. 25—1096, l. 23.

## STANDARD OF REVIEW

“[W]hether an eyewitness identification is sufficiently reliable is a mixed question of law and fact.” *State v. Moore*, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000) (finding show-up identification unreliable as a matter of law); *see also State v. Traylor*, 360 S.C. 74, 81-82, 600 S.E.2d 523, 526-27 (2004) (*citing Moore* and holding that photographic line-up procedure was “patently suggestive”). “Generally, the decision to admit an eyewitness identification is at the trial judge’s discretion and will not be disturbed on appeal absent an abuse of such, or the commission of prejudicial legal error.” *Moore* at 288, 540 S.E.2d at 448. “In reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court.” *Id.* Questions of law are reviewed *de novo*. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016).

## ARGUMENT

The trial court erred in admitting Karim Hampton’s identification of appellant where neither Hampton nor any other eyewitness gave a physical description of appellant and where police used an impermissibly suggestive procedure pursuant to *Neil v. Biggers*.

### **Introductory facts**

On February 20, 2023, Kenneth Washington and Tyreka Cain were in the back of Washington’s car having sex when three or four men approached the car and began shooting into the car. Tr. 352, l. 24—354, l. 11; 354, l. 12—359, l. 25. Washington was shot multiple times, Cain was uninjured. Tr. 360, ll. 1-19. Security cameras at Country Inn and Suites where their car was parked show two cars leaving the parking lot after the shooting and two men running. State’s exhibit 114.<sup>3</sup>

### **Relevant facts**

During the course of trial, a *Biggers* hearing was held to determine if state’s witness, Karim Hampton’s, identification of appellant was admissible. Tr. 535—545. Stephanie Cobb, the lead investigator, testified regarding Hampton’s out-of-court identification of appellant. Tr. 535—543.

Investigator Cobb testified Karim Hampton told police one of the individuals involved in the shooting was called “Body.” She claimed she “obtained information to identify” Body as appellant and prepared a photographic lineup, including appellant’s photo, to show Hampton. Cobb testified Hampton told her if he saw a photograph he could point out the man introduced to him as Body. Tr. 535, l. 13—536, l. 4.

Cobb stated Hampton had seen Body when he jumped in Hampton’s car with Vernon

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<sup>3</sup> State’s exhibit 114, surveillance video from Country Inn and Suites is on file with this Court .

Jenkins following the shooting. She testified Hampton was in the car with this man for “the time it took for them to get from the incident location to the Pine Arbor Court address.”<sup>4</sup> Tr. 536, ll.7-17. Hampton told her he first saw Body at the gas station where they met before the shooting. Tr. 537, ll. 8-15.

Cobb testified that she requested the South Carolina Law Enforcement Division (SLED) prepare a lineup for her to use. Tr. 538, ll. 17-25. Cobb went to Hampton’s workplace to show him the photographic lineup on April 20, 2023. Tr. 535, ll. 13-15; 539, ll. 3-6. Before showing Hampton the photographic lineup Cobb told him he would be shown photographs that may or may not depict the person being investigated. Tr. 538, ll. 6-13. Cobb stated that Hampton identified the person in the lineup, number three, as Body from the night of the incident. Tr. 539, ll. 7-25.

On cross-examination Cobb admitted Hampton never described Body physically to her prior to identifying appellant as Body in the lineup. Cobb agreed the only information Hampton supplied prior to his identification of appellant was that there was a man named Body present at the shooting. Tr. 541, ll. 6-19. Hampton told law enforcement he met Body for the first time on February 20, 2023, in the evening. Tr. 543, ll. 4-15.

Defense counsel argued the procedure used when Hampton identified appellant as Body was impermissibly suggestive where Hampton was told to “pick out Body, who he claimed was Body, and without ever giving a description of” him. Counsel asserted Hampton was told who to choose, not asked to identify the man that was in his car. Counsel contended the lineup was unduly suggestive where three of the men shown in the photographic lineup were dark skinned and appellant was light skinned. Tr. 544, ll. 11-20.

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<sup>4</sup> There is no evidence in the record regarding how long it would take to travel from the incident location to this address.

The court found, based on the photographic lineup and Cobb's testimony, there was nothing unduly suggestive and ruled identification was admissible. Tr. 545, ll. 14-22.

Karim Hampton testified for the state regarding the incident that he was admittedly present for and for which he had only recently been charged. Tr. 554—639. During Hampton's testimony the state offered the photographic lineup, State's 68,<sup>5</sup> in evidence over defense counsel's objection. Tr. 583, ll. 15-25. Hampton testified that earlier in the evening he met Vernon Jenkins and three other men at a gas station on Bush River Road. Tr. 559, l. 23—560, l. 10. The three other men were "Riq," "Body," and another guy who never got out of the car to introduce himself and whom Hampton did not describe. Tr. 560, ll. 13-22. Hampton knew Riq but had never met Body before that day. Tr. 561, l. 7—562, l. 10.

He claimed he learned Body got robbed by someone the day before the incident. Tr. 563, ll. 1-24. He stated they found the car of the person believed to have robbed Body the day before and pulled up to the car. Tr. 568, l. 3—569, l. 22; 570, ll. 6-25. Hampton alleged everyone but him got out of the car and "started shooting." Tr. 572, ll. 9-22. Hampton contended he tried to leave but Body and Jenkins ran over and got in his car. Tr. 574, ll. 8-18.

During cross-examination Hampton admitted the description he gave of Body was "short and had a candy corn shaped head." Tr. 601, ll. 1-16.

### **Discussion**

The trial court erred admitting Karim Hampton's out-of-court identification and subsequent in-court identification of appellant as Body where the photographic lineup used was suggestive and created a substantial likelihood of irreparable misidentification.

An out-of-court identification of the defendant violates due process and must be

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<sup>5</sup> State's exhibit 68, photographic lineup is on file with this Court.

suppressed when the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification. *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012). A witness's subsequent in-court identification is inadmissible “if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.” *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (emphasis added); see also *Neil v. Biggers*, 409 U.S. 188, 198, 93 S.Ct. 375, 381, 34 L.Ed.2d 401, 410 (1972).

Trial courts use a two-pronged inquiry to determine whether due process requires suppression of an out-of-court eyewitness identification. *Liverman*, 398 S.C. at 138, 727 S.E.2d at 426. First, the court must determine whether the identification resulted from “unnecessarily suggestive” police procedures. *Biggers*, 409 U.S. at 198–99, 93. If the court finds, however, that the police used an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless “so reliable that no substantial likelihood of misidentification existed.” *Liverman*, 398 S.C. at 138, 727 S.E.2d at 426 (citing *Biggers*, 409 U.S. at 199, 93).

To determine whether an identification is reliable, it is necessary to consider the factors set forth in *Biggers*: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the amount of time between the crime and the confrontation. *Biggers* at 199-200.

Investigator Cobb acknowledged Hampton had not given law enforcement a physical description of Body prior to his viewing the photographic lineup. Additionally three of the men depicted in the photographic lineup had noticeably different complexions. Accordingly, the

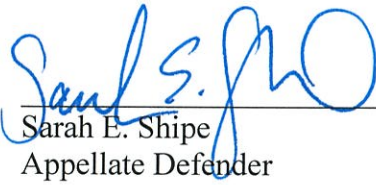
photographic lineup was suggestive where half of the men looked strikingly different and where Hampton had not given any physical description of Body prior to being shown the photographic lineup.

Furthermore, the identification was not reliable under the *Biggers* factors. Considering the factors below Hampton's identification of appellant as Body was not reliable. Hampton did not have a substantial opportunity to view Body, where he described that he met Body for the first time on the evening of the incident very briefly and then for some amount of time after he was in his car while Hampton was driving. Similar to the first factor Hampton's degree of attention would be very minimal as he was meeting his friend, Jenkins, and was in the car with only Jenkins most of the evening until right after the incident when he was driving and his attention was surely focused on the road and not on Body. There is nothing to compare regarding the accuracy of Hampton's prior description where Cobb testified he did not give a description and Hampton testified he described Body as "short and had a candy corn shaped head." Hampton's minimal and unhelpful description could not be compared to appellant or any of the men depicted in the photographic lineup. Cobb testified Hampton was very certain in his selection of appellant as Body two months after the incident occurred. However, Hampton's certainty weighed against the other factors still shows the identification was unreliable.

The state offered little other evidence that pointed towards appellant's guilt, making Hampton's identification of appellant incredibly damaging. The out-of-court identification of appellant by Hampton violated appellant's right to due process and should have been suppressed where the photographic lineup was impermissibly suggestive and conducive to a substantial likelihood of misidentification.

**CONCLUSION**

Based on the foregoing, appellant respectfully requests this Court reverse his convictions and sentences and remand his case to the circuit court for a new trial.

  
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Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of May, 2026.