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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Jane H. Merrill, Circuit Court Judge

Appellate Case No. 2025-002337
Trial Court Case No. 2023-GS-23-00988

The State,

Respondent,

v.

Aaron Messiah Hodari Harper,

Appellant.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court err by improperly weighing the evidence and refusing to instruct the jury on the lesser included offense of voluntary manslaughter when there was evidence to support the charge?
2. Did the circuit court err by refusing to grant a mistrial when the Solicitor improperly argued during closing argument for the jury to show no mercy?
3. Did the circuit court err by refusing to grant a mistrial when a juror experiencing obvious emotional turmoil expressed clear hesitancy in her verdict, signaling a non-unanimous verdict, during improper jury polling and individualized questioning of the juror?

STATEMENT OF THE CASE

A Greenville County grand jury indicted Appellant Aaron Harper on February 14, 2023 for murder and possession of a weapon during the commission of a violent crime. R. * (indictments). His case was called to trial on November 3, 2025, before the Honorable Jane H. Merrill and a jury. Tr. 1. Assistant Solicitors Jesse Williams and Doug Richardson represented the State. *Id.* Jacob Goldstein and Morgan Shankle represented Aaron. *Id.*

On November 7, 2025, the jury found Aaron guilty as indicted. Tr. 657, ll. 10-16. He was sentenced concurrently to forty-three years' imprisonment for murder and five years' imprisonment for possession of a weapon during the commission of a violent crime. Tr. 675, l. 20 – 676, l. 5; sentence sheets.

This appeal follows.

STATEMENT OF FACTS

On September 6, 2021, ten months after surviving a shooting outside of Club Legends, Aaron Harper was out with friends at Kream Bistro and Lounge in Greenville, South Carolina, when he unexpectedly encountered the three assailants responsible for the bullet that was still inside of him. Tr. 360, l. 19 – Tr. 362, l. 16; Tr. 431, l. 1-23; Tr. 437, ll. 8-12; Tr. 498, l. 19 – 500, l. 18; State’s Exh. 25 at 55:23 to 56:30; 57:03 to 57:30. That night, Aaron was having a normal night out with friends, listening to music and performing at Kream, when he went to the bathroom, not realizing the threat he faced inside. Tr. 492, ll. 13-21; Tr. 497, l. 16 – 498, l. 2; State’s Exh. 25 at 27:45 to 28:35; 49:52 to 50:15; 53:43 to 53:58; State’s Exh. 22 at 4:20. As he went to exit the bathroom, the three assailants responsible for shooting him at Club Legends were all standing by the door of this small bathroom, forcing Aaron to walk past them to exit the bathroom; as he walked to the door, each one of them threateningly pulled guns out on him. Tr. 224, l. 3; Tr. 502, l. 6 – 503, l. 18; State’s Exh. 25 at 29:30 to 30:00; 31:35 to 31:40; 33:28 to 33:35. The eventual victim, Elijah McDuffie, was friends with these three assailants and was standing with them when they threatened Aaron with firearms as he went to exit the bathroom. Tr. 502, l. 13 – 503, l. 6; State’s Exh. 25 at 28:15 to 28:50; 29:30 to 30:00; 31:35 to 31:45; 33:28 to 33:35.

Seventeen seconds later, propelled by the threat these individuals presented to him that night, the fear and fury this threat caused, the trauma he experienced from the shooting ten months earlier, and the determination to not get shot again, Aaron “blanked out” and stormed back to the bathroom and fired five gunshots. Tr. 225, ll. 14-25, Tr. 232, ll. 14-16; Tr. 426, l. 13 – 427, l. 5; State’s Exh. 22 at 5:23 to 5:42; State’s Exh. 25 at 29:30 to 30:30; 32:31 to 33:15; 53:10 to 53:17. Tragically, all five bullets hit Mr. McDuffie, killing him. Tr. 221, ll. 12-15; Tr.

261, ll. 6-13; Tr. 404, l. 9 – 418, ll. 20. Aaron then ran from the club and later admitted to throwing the gun he used in a lake. Tr. 287, ll. 3-9; Tr. 427, l. 17-18; State's Exh. 22 at 5:42 to 5:45; State's Exh. 25 at 38:10 to 39:00.

Law enforcement responded to Kream and ultimately collected surveillance footage from several interior cameras, including views of the entrance and metal detector and just outside the bathroom area. Tr. 277, l. 3 – 279, l. 3; Tr. 287, ll. 3-9; State's Exh. 21 (video surveillance from entrance); State's Exh. 22 (video surveillance from bathroom area). Through the surveillance video, cell phone video, and videos obtained from Snapchat, law enforcement was able to identify Aaron as the shooter and obtained an arrest warrant for murder.¹ Tr. 364, ll. 21-23; Tr. 377, l. 1 – 380, l. 4; Tr. 425, ll. 16-25; Tr. 428, l. 24 – 436, l. 20; State's Exh. 25 at 49:54 to 50:10. Aaron was ultimately arrested on September 11, 2021, after fleeing from a vehicle during a traffic stop initiated by an officer with the City of Greenwood Police Department. Tr. 363, l. 25 – 370 l. 2; Tr. 437, ll. 3-21.

The State introduced Aaron's interview by Investigator Shannon McHale of the Greenville County Sheriff's Office, which was published to the jury. Tr. 452, ll. 10-23; Tr. 459, l. 2 – 514, l. 12; State's Exh. 25 (Aaron's interview).² Investigator McHale was familiar with the Club Legends shooting as she had been one of the assigned investigators at the time, and she had actually interviewed Aaron at the hospital³ following that shooting. Tr. 431, ll. 1-17; State's Exh.

¹ Aaron is wearing a white shirt with some type of graphic on it and a red Phillies hat and is first seen entering the bathroom at the video time stamp of 13:21:30. State's Exh. 22 at 4:20; Tr. 425, l. 20 – 426, l.1.

² The State introduced into evidence a single combined file during the trial, but the interview itself was conducted in two parts, with a portion depicted with audio and video, and the remainder depicted with just audio. Tr. 468, l. 7 – 469, l. 14; State's Exh. 25.

³ Aaron suffered a gunshot wound to the hip, and the bullet remains inside of him because doctors refused to remove it out of fear the procedure would kill him and his life remains in

25 at 41:43 to 42:20. During the interview after Aaron's arrest, after initially denying that he had been at Kream the night of the shooting, Aaron ultimately admitted to Investigator McHale that he was the shooter and elaborated extensively on what led to the shooting. See State's Exh. 25.

Specifically, Aaron explained that he was with Devonte Lark and Tienna Smith that night at Kream.⁴ Tr. 470, ll. 11-20. Aaron had gone to see a rapper named Young Nudi, who was scheduled to perform at Kream that night. Tr. 497, ll. 13-18; State's Exh. 25 at 53:43 to 54:00. Ultimately, Young Nudi did not end up performing, but various people, including Aaron, performed at the club during the night, as seen on surveillance video and Snapchat video collected by law enforcement. Tr. 497, l. 16 – 498, l. 2; State's Exh. 25 at 53:43 to 54:20; 1:02:23 to 1:04:00. Shortly after performing, Aaron locked eyes with the three assailants from Club Legends standing in the VIP area, as they looked at him with animosity, which Aaron perceived as a threat and made him specifically concerned that they were going to wait for him outside the club to shoot him. Tr. 501, l. 16 – 502, l. 5; State's Exh. 25 at 1:02:23 to 1:04:00. Right at that moment, Lark told Aaron that he needed to go to the bathroom and felt like he was going to throw up, and Aaron agreed to join him, unaware that decision would forever alter his life. Tr. 470, ll. 11-12; State's Exh. 25 at 27:50 to 28:20; 1:03:30 to 1:04:00.

Aaron then unknowingly entered what turned out to be a dangerous place where these three people, who shot him ten months earlier and who gave him a look of animosity when they

danger due to the bullet's proximity to an artery. Tr. 431, ll. 13-17; State's Exh. 25 at 55:23 to 56:30.

⁴ Devonte Lark is dressed in the white t-shirt and light blue jeans, and he can be seen outside the bathroom with his hand on Aaron's shoulder immediately before the shooting at the video time stamp of 13:22:51. Tr. 506, ll. 17-20; State's Exh. 22 at 5:36. Tienna Smith ("Tie") is dressed in a white shirt and light blue jeans and can be seen talking to Aaron immediately prior to the shooting at the video time stamp of 13:22:47. Tr. 510, ll. 10-13; State's Exh. 22 at 5:25 to 5:40.

saw him at Kream earlier that night, each threatened him with guns, as Aaron explained to Investigator McHale:

- “Just so happened we go to the bathroom, all of them [the people who shot him] in there. I don’t know them by name, to be honest. I don’t know them like that. They always with each other, they always together.” State’s Exh. 25 at 28:12 to 28:27.
- “Fuck yeah.” *Id.* at 57:05 to 57:13 (in response to Investigator McHale’s question about whether the shooters from Legends were at Kream and saw him).
- “We went into the bathroom. Me and Lark, we peeing. . . . When we in the bathroom, Lark went to the far stallIf you come in, the far stall to the right. Lark went in that one. I’m behind Lark, like this. All them [the assailants] right there by the door, though, so for me to get out, I have to pass them. And they know that.” *Id.* at 29:00 to 29:35.
- “As soon as we get by the door, one of them pulled out [a gun] like that, then the next one just pulled out like that, then one more pulled out. *Id.* at 29:45 to 29:55.
- “When I turned around in the bathroom, they were like, they had, yeah, we got your ass now. My heart dropped in my ass, I ain’t going to lie to you. They got a gun at me.” *Id.* at 25:05 to 25:20.
- “When I turned around, three niggas pulled out their guns. Boom. Boom. Boom.” *Id.* at 33:28 to 33:35.
- “I turn around. I see people fidgeting. Doing like this. Ain’t too much of this. That’s a gun. I ain’t a fool, you feel me.” *Id.* at 1:04:00 to 1:04:10.
- “The dude who shot me was in there.” *Id.* at 57:01 to 57:05.
- “Three of them had guns.” *Id.* at 1:01:15 to 1:01:25

Watching the surveillance from outside the bathroom (State’s Exh. 22), the jury was able to see the mere *seventeen seconds* that passed from the time Aaron exited the bathroom after these individuals threatened him with guns, with their friend and the eventual victim Mr. McDuffie standing right next to them and possibly pointing Aaron out, to the point Aaron was propelled back to that bathroom and started firing the gunshots. Tr. 225, ll. 16-25; Tr. 232, ll. 14-16; Tr. 502, l. 13 – 503, l. 6; State’s Exh. 22 at 5:23 to 5:42; State’s Exh. 25 at 25:05 to 25:20; 28:28 to 30:10; 31:35 to 31:45; 33:28 to 33:35; 33:47 to 34:15. Speaking to Investigator McHale, Aaron repeatedly explained his state of mind after these three individuals threatened him with guns and what drove him back to the bathroom:

- “*I just blanked out, I ain’t know what the fuck happened. I’m just like, I see gun. Motherfucker point a gun at me. Boom boom boom boom boom, go on and get the fuck out.*” State’s Exh. 25 at 53:10 to 53:17 (emphases added).

- “If somebody come and point a gun at you, what you gonna do. You gonna pop they ass. I was protecting myself.” *Id.* at 22:15 to 22:22.
- “I did what I had to do, if I wouldn’t have did that, I would’ve been dead. If I wouldn’t have shot, I would’ve been dead.” *Id.* at 24:17 to 24:30.
- “Once you pull a gun on me though, *I have no choice but to shoot you.*” *Id.* at 24:45 to 24:55 (emphasis added).
- “If I wouldn’t have did what I did, it would be me in that casket. That’s all I need you to understand.” *Id.* at 25:55 to 26:05.
- “If you go somewhere and someone pull out a gun on you, you got all right to shoot they ass right. They pull out a gun on you, you gonna pop they ass.” *Id.* at 26:05 to 26:20.
- “As I go out the door like this, I go outside, I tell Tie, get out. Get out. I open the door back up and I just start shooting. I ain’t know who got hit.” *Id.* at 29:55 to 30:12.
- “Once y’all pull your guns out, like y’all fitting to do something to me, *I’m not going for it. I done been shot already.* I got a bullet hole in me still. If they remove the bullet hole, I’m going to die. *I’m not going for this shit again.*” *Id.* at 30:12 to 30:30 (emphases added).
- “I ain’t never wanted to kill nobody though man. I really didn’t. This shit hurt me. This my life I’m playing with. I hate the fact I had to do that shit just for me to make it home. If I wouldn’t have did that, they was gonna wait on me. Just like they always did. Just like what happened at Legends.” *Id.* at 30:38 to 31:02.
- “If it wouldn’t have been him or somebody in within them. It was gonna be me. If I wouldn’t have shot my gun and gave them the ups, it would have been another return of Legends. I probably would’ve been dead though. It won’t gonna be none ‘y’all talk to me this time and I don’t wanna talk to y’all.’ It was gonna be ‘y’all wanna talk to me but I can’t talk to y’all.’ *I’m not letting that happen again . . .* Damn near the same scenario [as Legends]. *You pull your gun out on me, I just didn’t give your ass a chance to shoot me this time.*” *Id.* at 32:31 to 33:15 (emphases added).
- “I come out the bathroom. When I’m coming out the bathroom. I turn around like that. Before I even open the door. I turn around like that. *I just realizing, like damn, who the fuck these niggas really is. These niggas done, they done pulled out on me.* Phew phew phew. So I go outside. I do just like this. I tell Tie. . . . Tie, like Go. Leave. Right now. Leave.” *Id.* at 33:47 to 34:15 (emphasis added).
- “I shot protecting myself. I did, ya feel me. That’s what happened. I ain’t telling no lies. I telling you straight truth. If I wouldn’t have shot, y’all never been talking to me.” *Id.* at 39:05 to 39:25.
- “I been telling people, don’t pull no gun on me. I don’t want to have to take nobody life. Now look what happened, someone pulled a gun on me and I had to take somebody life.” *Id.* at 42:45 to 43:03.
- “I hate I had to do that shit man. If I wouldn’t have did it. It was gonna be me. Not fitting to go for that shit again.” *Id.* at 50:40 to 50:51.

- “Once I opened the bathroom door and you got a fucking gun pointed at me, bro, I’m fitting to let off. You better go ahead and bust. Cause if you don’t I’m fitting to bust.” *Id.* at 57:20 to 57:30.
- “God damn, what the fuck. [inaudible]. *Come back in blowing that bitch. Don’t play with them, make sure they don’t pull no gun on you.* That’s exactly what I did.” *Id.* at 58:30 to 59:01 (describing his state of mind and the hypothetical scenario that he has to go back in the bathroom again to wash his hands or get a tissue (emphasis added)).
- “At the end of the day, I did what I had to do to make it home. If I wouldn’t have did that, there’s no telling what would’ve fucking happened, to be honest. There’s not no telling. There’s really not no telling what would’ve happened. Yeah, we probably could’ve made it out the club, got to the parking lot, but who’s to say on down the street, the boys wouldn’t have followed me and shot my shit up and shot me in the head or whoever in the car with me and all killed us. Who’s to say that wouldn’t have happened. But I did what I had to do. All of us made it home safe.” *Id.* at 59:10 to 59:40.

Aaron also described the connection between these three assailants⁵ who shot him outside of Club Legends and threatened him with firearms the night of this shooting, and the victim in this case, Mr. McDuffie, and his role in what happened in that bathroom:

- “Yeah, he hang with them niggas. Yeah he hang with them. But me and him personally ain’t never had problems. . . . I swear to God I hate that man was there.” *Id.* at 31:15 to 31:45 (in response to Investigator McHale asking if the three assailants were the same people who shot him at Legends).
- “He [Mr. McDuffie] used to always be around them [the shooters from Club Legends]. He was always around them. To be honest, he wasn’t even supposed to get hit. That shit was not meant for him. That’s what really hurt me the most. They just left him in there for dead too. That being your homeboy, you’re not supposed to just leave him. You pull out a gun on a man, and a man get to firing off on y’all ass, and y’all just leave. Y’all got guns, why not bust back? Why not protect, you feel me? Y’all just left that man in there to die, that’s fucked up.” *Id.* at 28:25 to 29:00.
- “When me and Lark was in there, they pulled out their gun then. Boom, Boom. I guess, when I opened the door, bruh [Mr. McDuffie] had told them like, there he go or some shit like that, you feel me. Cause I ain’t gonna cap, He wasn’t no angel or no saint or nothing. But he just was one of the ones who, if y’all see each other by y’allself, it’s no problem. *But if he’s with his homeboys, and you with your homeboys,*

⁵ Notably, three individuals—the exact number of people who Aaron told Investigator McHale threatened him with firearms inside the bathroom and the number of people involved in his shooting ten months earlier—fled from inside the bathroom forty seconds after the shooting, but law enforcement never identified or interviewed these individuals. State’s Exh. 22 at 6:20 to 6:30; Tr. 507, l. 12 – 511, l. 21.

alright we fitting to clash, you feel me. It's like that. He probably told them, shit, there the nigga go right there. But when they did like that [pulled out their guns], while they was in the bathroom, I just, Boom Boom Boom Boom Boom. And took my gun and got on through. If I wouldn't have, they were gonna shoot me dead in my face." *Id.* at 34:57 to 35:45 (emphasis added).

- "I looked right down the barrel of a gun. . . . I don't think [Mr. McDuffie] had the gun. The dude beside him though, I think, he had the gun." *Id.* at 35:45 to 36:00.

The State rested its case following Investigator McHale's testimony and the introduction and publication of Aaron's interview. Tr. 514, ll. 12-17. Aaron did not call any witnesses or introduce any exhibits. The jury charge conference centered largely on Aaron's request for a jury instruction on voluntary manslaughter and spanned over three hours over the course of the late afternoon of the fourth day of the trial and much of the morning of the fifth day. Tr. 519, l. 23 – 585, l.2.

Aaron cited three primary cases in support of his request for a voluntary manslaughter instruction—*State v. Fennell*, 340 S.C. 266, 531 S.E.2d 512 (2000); *State v. Clark*, 446 S.C. 640, 922 S.E.2d 239 (Ct. App. 2025); *Leggette v. State*, 440 S.C. 590, 892 S.E.2d 153 (Ct. App. 2022).

So the three cases that I provided to the Court, starting with *State v. Fennell* which still remains good law, Your Honor, a quote from that case says: "A person can be found guilty of murder or manslaughter in a case of bad or mistaken aim." In other words, if you shoot sort of, quote-unquote, the wrong person.

And then that Court of Appeals case that just came out, *State v. Clark*, is sort of trying to make all that make sense with the law for voluntary manslaughter, and it says that's true, I mean, "*Fennell* remains good law in our state; however, you have to spur [sp] it with the requirement of voluntary manslaughter that the sufficient legal provocation must either come from the victim or related to the victim." And that's very important. And that's just - - that's in our general jury charge.

And I think the case that really brings it all together, and *State v. Clark* cites this case sort of at the end of their opinion, they start, they talk about, on *Leggette v. State*, Your Honor - - and in that

case it's pretty much precisely what we have here. There's two people that are following the Defendant, and the main provoker doesn't get shot and killed, he just gets injured, and he [the Defendant in *Leggette*] shoots sort of the unintended person, but the Court says it was still proper to charge voluntary manslaughter in that case because the person he shot and killed was still part of the threatening group. He's not the direct provoker but he's part of that overall threatening group, Your Honor.

And then in that case what we also have, which is similar to ours, there is a history of sort of prior difficulties between the defendant and this group. So I think this is exactly what the law in our state says. I think it's all good law. And I think when it comes to something like this and my client's ability to put up a defense, I think the law says if there is any evidence of any of these elements on voluntary manslaughter, the Court is really bound to charge it.

And we would just ask that we be allowed to present a defense in this case, Your Honor.

Tr. 528, l. 24 – 530, l. 8. In response to a question from the circuit court about the evidence of Mr. McDuffie “acting in part of the group that was threatening, Aaron noted that his statement to Investigator McHale makes clear that Mr. McDuffie ran with this group, that they were friends and together all the time, and Mr. McDuffie was with them in the club and specifically standing right next to his three prior assailants as they threatened Aaron with a firearm. Tr. 530, l. 14 – 531, l. 7.

The State objected to a charge on voluntary manslaughter, arguing there was no evidence on any element of the charge, and particularly contending there was a lack of evidence of heat of passion or that Mr. McDuffie was the source of the provocation. Tr. 532, l. 4 – 533, l. 20. The circuit court, after several hours of argument, ultimately agreed with the State. Tr. 528, l. 23 – 585, l. 2. The circuit court found there was evidence of sufficient legal provocation but no evidence of heat of passion and no evidence the provocation came from the victim, Mr. McDuffie. Tr. 566, l. 16 – 567, l. 13; Tr. 582, l. 20 – 583, l. 4. The circuit court relied

predominantly on the fact that Aaron tells Investigator McHale that Mr. McDuffie did not have a gun and did not expressly threaten him, and the fact that Aaron told Tie to leave and the circuit court's impression of State's Exhibit 25. Tr. 557, ll. 16-19; 582, l. 20 – 583, l. 4. Based on these findings, the circuit court refused to instruct the jury on voluntary manslaughter. Tr. 551, 7-11; Tr. 583, ll. 18-24; Tr. 643, l. 11 – 654, l. 18.

During the State's closing argument, the Solicitor improperly argued for the jury "to show this Defendant, Aaron Harper, the same level of mercy that he showed Elijah McDuffie, which is absolutely none," drawing an immediate objection. Tr. 615, ll. 8-23. Additionally, once the jury had exited the room, Aaron moved for a mistrial, arguing the Solicitor's comment at the end of his closing argument was inappropriate and an inflammatory appeal to prejudice. Tr. 616, ll. 8-18. Aaron also objected to any curative instruction as insufficient to cure the prejudice and requested a mistrial, which the circuit court denied, but acknowledging the "comment might have gone a little too far." Tr. 616, l. 19 – 617, l. 12.

The jury ultimately convicted Aaron of murder. Tr. 656, l. 19 – 665, l. 10. Following the announcement of the verdict, Aaron requested a polling of the jury, which the clerk of court conducted in a mandatory, declarative and confusing, compound manner rather than as an inquiry, and a juror responded in an ambiguous and equivocal manner:

The Clerk: The verdict - - I'm going to start over again. When I say your number, *then you will answer with yes*. The verdict that was just published *was the verdict you reached* in your deliberation room. I ask you, was it your verdict then, *and* is it your verdict now? When I call your number, please answer yes or no. Juror No. 201.

Juror No. 201: It's my verdict now.

Tr. 657, l. 11 – 658, l. 5 (emphases added). The remaining jurors responded with "yes." Tr. 658, l. 6 – 659, l. 5. After the jury left the courtroom, Aaron indicated he had a motion:

Yes, Your Honor. So we asked to have the jury polled and then I believe it was the first juror, maybe it was Juror 201, and I think the response was supposed to be yes, that's my verdict. And what I heard was like marked hesitation, and then she said something to the effect of "It is now." And, you know, the verdict has to be unanimous. Everyone else seemed to say yes. And I don't know what was going on with that first juror. So I'd like to have her brought back in and asked the question again and maybe questioned. It has been [sic] to be unanimous. That didn't sound unanimous to me. I don't know.

Tr. 660, ll. 1-12. The circuit court agreed "out of complete abundance of caution and fairness" to "bring that one juror out and the clerk will ask the question the exact same way." Tr. 660, ll. 20-

25. The subsequent questioning was also fraught and convoluted:

The Court: Ma'am we just have one question for you, please.
Madam Clerk.

The Clerk: The verdict that was published was the verdict you reached in your deliberation room. I ask you, was it your verdict then and is it your verdict now? Please answer yes or no.

Juror No. 201: It's my verdict now but not my verdict then. It's my verdict now. It's - - my verdict in the deliberation room.

The Court: Was it your verdict - -

Juror No. 201: Then.

The Court: Was it your verdict when the - -

Juror No. 201: I told him - -

The Court: Hang on. Let me ask you real quick, was it your verdict when the verdict form was filled out in the jury room?

Juror No. 201: (Nods head.)

The Court: Is that a yes?

Juror No. 201: (Nods heads.)

The Court: Okay. And is it still your verdict?

Juror No. 201: Yes.

Tr. 661, l. 7 – 662, l. 1. Aaron then moved for a mistrial, arguing that her responses were “very equivocal,” noting that the juror was “sobbing,” and that her responses did not appear to indicate that she had rendered a guilty verdict, eliminating the verdict from being unanimous, and raising the concern that she felt like she was being forced under duress to render a guilty verdict. Tr. 662, ll. 5-9. The circuit court agreed that the juror was upset but denied the motion for a mistrial and found that the individual polling of Juror 201 indicated that the guilty verdict was and is her verdict. Tr. 662, l. 16 – 663, l. 8. The circuit court then reviewed *State v. Erb*, 447 S.C. 84, 924 S.E.2d 100 (2025), and distinguished the circumstances there by reasoning that Juror 201 responded “it wasn’t then” and finding, without any evidentiary support, that “maybe she meant when she initially went in.” Tr. 664, l. 3 – 665, l. 2 (finding “the procedure was handled properly” and Juror 201 felt no undue pressure due to the absence of any jurors in the room during the individual questioning).

The circuit court sentenced Aaron to 43 years’ imprisonment on the murder conviction and a concurrent 5 years’ imprisonment on the weapons conviction. Tr. 675, l. 20 – 676, l. 6. This appeal follows.

ARGUMENT

I. The circuit court erred by improperly weighing the evidence and refusing to instruct the jury on the lesser included offense of voluntary manslaughter when there was evidence to support the charge

Over the course of the multi-hour charge conference that focused almost exclusively on whether to instruct the jury on voluntary manslaughter, the circuit court improperly ignored and weighed evidence, rather than simply determining whether there was the existence of *any* evidence on the elements of the lesser included offense of voluntary manslaughter. *See* Tr. 567, ll. 8-11 (“I still - - I don’t know that him, the statement, ‘I just blanked out’ is sufficient - -, or, I don’t want to say sufficient. I don’t know that that’s evidence of the heat of passion”); Tr. 582, l. 21 – 583, l. 4 (“I don’t think there is any evidence in this situation of the heat of passion. But if I am wrong on that there is, if the statement, ‘I blanked out.’, if that, alone, to say that that is the heat of passion, I then look at the *State v. Clark* case. And I will say there is absolutely no evidence that sufficient legal provocation came from the victim. And, in fact, the evidence that is in the record of that says, is from the Defendant which says that Mr. McDuffie did not have a gun and did not threaten him.”).⁶

⁶ Similarly, the State’s arguments during the charge conference entirely minimized and disregarded Aaron’s statement—which was admitted as evidence and published to the jury and in which Aaron repeatedly explained his experience in the bathroom, the moments that followed, and Mr. McDuffie’s connection to his prior assailants and the people who threatened him that night with firearms—as evidence that can and *must* be considered in the circuit court’s proper application of the any evidence standard in deciding whether to instruct the jury on voluntary manslaughter. *See* Tr. 532, ll. 6-8 (“But there’s no evidence in the record that it was related, that these people [the assailants] were related to victim himself.”); Tr. 535, l. 25 – 536, l. 1 (“Everything is supposition that happened in that bathroom.”); Tr. 543, ll. 18-20 (“There’s no evidence of that [that three people in the bathroom had firearms], Judge. Once again, this has got to be sufficient evidence. There’s no evidence of that in the record.”); Tr. 577, l. 22 – 578, l. 18 (arguing why the video surveillance demonstrates a lack of heat of passion while completely disregarding the existence of Aaron’s statements that he “blanked out”); Tr. 579, ll. 8-10 (“And again I point to the fact that there has been absolutely zero evidence, zero evidence that anyone in the club had a gun except for the Defendant.”); Tr. 582, ll. 12-15 (solicitor stating “That is not

During the trial, the jury was presented evidence that Aaron had a prior violent encounter with the group of individuals that Mr. McDuffie was with the night of the killing and that Mr. McDuffie was a regular member of this group. The jury also heard that these individuals, including Mr. McDuffie, were in the bathroom at the same time as Aaron, and that three of the individuals—the same three who were responsible for the bullet still in his body and that could still kill him—threatened Aaron with firearms as Mr. McDuffie stood with them. Finally, the jury heard that a mere seventeen seconds later, propelled by his fear and his belief that they would kill him if he didn’t act, Aaron “blanked out,” stormed back to the bathroom, and fired the five gunshots intended for those three threatening individuals, but which mistakenly killed Mr. McDuffie, who according to Aaron’s statement was clearly part of the overall threatening group.

Yet, the circuit court disregarded all of this evidence and improperly weighed other aspects of Aaron’s statement as more important in ultimately erroneously finding a lack of evidence to instruct the jury on voluntary manslaughter. This error significantly prejudiced Aaron’s defense and requires reversal and a new trial.

LAW

“The law to be charged must be determined from the evidence presented at trial.” *State v. Crosby*, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003) (citing *State v. Cole*, 338 S.C. 97, 525 S.E.2d 511 (2000)). “If there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed, the defendant is entitled to such charge.” *State v. Starnes*, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010). “A trial court should refuse to charge a lesser included offense only where there is no evidence the defendant committed the lesser rather

evidence” to reference to Aaron’s comment that he “blanked out” that was admitted into evidence).

than the greater offense.” *Cole*, 338 S.C. at 51, 525 S.E.2d at 112. “In determining whether the evidence requires a charge on a lesser included offense, we view the facts in the light most favorable to the defendant.” *State v. Williams*, 427 S.C. 148, 156, 829 S.E.2d 702, 706 (2019) (citing *State v. Byrd*, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996)). “[A] trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993) (citing *Frasier v. State*, 306 S.C. 158, 410 S.E.2d 572 (1991); *State v. Lee*, 298 S.C. 362, 380 S.E.2d 834 (1989)).

“To warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is *no evidence whatsoever* tending to reducing the crime from murder to manslaughter.” *State v. Wharton*, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009) (emphasis added). “Whether a voluntary manslaughter charge is warranted turns on the facts. If the facts disclose *any basis* for the charge, the charge *must* be given.” *Starnes*, 388 S.C. at 597, 698 S.E.2d at 608 (emphases added).

“Voluntary manslaughter is the unlawful killing of a human being in [a] sudden heat of passion upon sufficient legal provocation.” *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001). “[B]oth heat of passion and sufficient legal provocation must be present at the time of the killing.” *Starnes*, 388 S.C. at 596, 698 S.E.2d at 608. Further, “there must be evidence that the heat of passion was caused by [the] sufficient legal provocation.” *Id.* at 597, 698 S.E.2d at 608.

The sudden heat of passion need not dethrone reason entirely or shut out knowledge and volition, but it must be such as would naturally disturb the sway of reason and render the mind of an ordinary person incapable of cool reflection and produce what may be called an uncontrollable impulse to do violence.

State v. Sams, 410 S.C. 303, 309, 764, S.E.2d 511, 514 (2014).

“[A]n unprovoked attack with a deadly weapon or an overt threatening act can constitute sufficient legal provocation,” and “fear resulting from an attack can constitute a basis for voluntary manslaughter.” *Starnes*, 388 S.C. at 598, 698 S.E.2d at 608-09. While the presence of fear *alone* is insufficient, when the fear is the result of sufficient legal provocation *and* causes “the defendant to lose control and create[s] an uncontrollable impulse to do violence,” voluntary manslaughter must be charged. *Id.* at 598, 698 S.E.2d at 609. “[I]n determining whether an act [that] caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing.” *State v. Pittman*, 373 S.C. 527, 575, 647 S.E.2d 144, 169 (2007) (quoting *State v. Norris*, 253 S.C. 31, 35, 168 S.E.2d 564, 566 (1969)).

Ultimately, the circuit court here found that sufficient legal provocation existed based on Aaron’s statement that he was in fear when he was looking down the barrel of a gun when he went to the bathroom a second time but found no evidence that Aaron was out of control as a result of his fear or that he was acting under an uncontrollable impulse to do violence, and therefore that there was no heat of passion. *See* Tr. 550, ll. 11-23. Additionally, the circuit court found that the provocation did not come from the victim because of the circuit court’s understanding that Aaron stated several times that he had no problems with Mr. McDuffie, that he hated he was the one who died, that he didn’t threaten him, and that he didn’t have a gun. Tr. 552, ll. 1-10. It was these findings that served as the foundation for the circuit court’s erroneous ruling that no evidence existed to charge the jury on voluntary manslaughter.

While the State wanted to exclusively point to the surveillance video as the sole evidence on the element of heat of passion (except when Aaron’s statements in his interview were helpful

to the State's position), the circuit court had to account for the entirety of Aaron's statement to Investigator McHale, during which he exhaustively described what happened in the bathroom, his state of mind at that time and in the seventeen seconds that followed, and Mr. McDuffie's location and role in the bathroom where he stood with his friends as they threatened Aaron with firearms. *See* State's Exh. 25. Yet, the circuit court failed to do so.

Problematically, the circuit court instead narrowly focused on mere snippets of Aaron's hour-long interview while ignoring significant other aspects of what he told Investigator McHale. Distilled from *everything* that Aaron told Investigator McHale, Aaron was a man who was deeply haunted by the experience of being shot ten months earlier with a bullet so close to an artery that doctors refused to remove it out of fear that the procedure would kill him, who locked eyes with the same people who had shot him when they saw him perform at Kream and looked at him with animosity, and who was threatened with firearms inside a small bathroom at Kream by these same people who nearly killed him, while Mr. McDuffie stood by the bathroom door with those assailants as they threatened Aaron with guns. State's Exh. 25 at 22:15 to 22:22; 24:17 to 26:20; 27:50 to 31:45; 32:31 to 36:00; 39:05 to 39:25; 41:43 to 43:03; 50:40 to 50:51; 53:10 to 54:20; 55:23 to 59:40; 1:00:00 to 1:04:10. For a miniscule *seventeen seconds* after exiting the bathroom where these previous shooters threatened him with firearms, Aaron could not escape the terror and intense fear that these same people would follow him and kill him and the people he was with, and then he "blanked out," stormed back to the bathroom, started shooting, and "ain't know what the fuck happened." State's Exh. 25 at 53:10 to 53:17; State's Exh. 22 at 5:23 to 5:42.

The three cases cited by the Defense during the charge conference—*Fennell*, *Clark*, and *Leggette*—stand for the proposition that a defendant is entitled to an instruction on voluntary

manslaughter under the circumstances when the defendant intends to kill one person but unintentionally kills a different person if (1) there was sufficient legal provocation, (2) the sufficient legal provocation came “from some act of or related to the victim,” *Leggette*, 440 S.C. at 604, 892 S.E.2d at 161 (quoting *State v. Locklair*, 341 S.C. 352, 362, 535 S.E.2d 420, 425 (2000)), and (3) the sufficient legal provocation caused the defendant to act under a sudden heat of passion. See *Fennell*, 340 S.C. 266, 531 S.E.2d 512 (2000); *Clark*, 446 S.C. 640, 922 S.E.2d 239 (Ct. App. 2025); *Leggette*, 440 S.C. 590, 892 S.E.2d 153 (Ct. App. 2022).

The circuit court downplayed and disregarded the existence of evidence that supported all of the elements of a voluntary manslaughter instruction and misapplied binding precedent in assessing whether to instruct the jury on the lesser included offense. See *Wharton*, 381 S.C. at 214, 672 S.E.2d at 788 (“To warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is *no evidence whatsoever* tending to reducing the crime from murder to manslaughter.” (emphasis added)); *Williams*, 427 S.C. at 156, 829 S.E.2d at 706 (“In determining whether the evidence requires a charge on a lesser included offense, we view the facts in the light most favorable to the defendant.” (citing *Byrd*, 323 S.C. at 321, 474 S.E.2d at 431)). By improperly applying the any evidence standard, the trial court erroneously prevented the jury from considering whether Aaron was instead guilty of voluntary manslaughter.

1. Sufficient Legal Provocation

The circuit court found there was evidence of sufficient legal provocation based on the evidence from Aaron’s interview that he was threatened with guns. Tr. 550, ll. 11-23. Although the circuit court appears to focus on Aaron’s comment that he was “looking down the barrel of a gun” when he re-entered the bathroom, ample evidence exists that Aaron was threatened with firearms while *inside* the bathroom, as Aaron repeatedly described during his interview. See *id.*;

State’s Exh. 25. “[A]n unprovoked attack with a deadly weapon or an overt threatening act can constitute sufficient legal provocation,” and “fear resulting from an attack can constitute a basis for voluntary manslaughter.” *Starnes*, 388 S.C. at 598, 698 S.E.2d at 608-09. The repeated threats with firearms by the same three people who shot him previously while they stood in front of the exit of a small space is the quintessential “unprovoked attack with a deadly weapon,” and nothing constitutes sufficient legal provocation if that does not.

2. Source of the Provocation

The circuit court misapplied precedent and ignored evidence in concluding that no evidence existed that the victim was a source of the sufficient legal provocation. *See* Tr. 582, l. 21 – 583, l. 4 (“I then look at the *State v. Clark* case. And I will say there is absolutely no evidence that sufficient legal provocation came from the victim. And, in fact, the evidence that is in the record of that says, is from the Defendant which says that Mr. McDuffie did not have a gun and did not threaten him.”).

In *Clark*, this Court held that the circuit court properly refused to instruct the jury on voluntary manslaughter and explicitly analyzed several cases that dealt with the issue of the victim’s role in the provocation. *Clark*, 446 S.C. 640, 922 S.E.2d 239. Critically, in *Clark*, the victim was completely and indisputably unrelated to any alleged source of the provocation; in fact, the victim was an eleven-year-old child who was inside of her home and not remotely connected to the people allegedly shooting at the defendant. *Id.* at 646, 922 S.E.2d at 242. “[B]ecause it is undisputed that Victim was an innocent bystander who was not the source of the provocation, we hold *Clark* was not entitled to a voluntary manslaughter instruction.” *Id.* at 654, 922 S.E.2d at 247.

Contrary to the circuit court’s erroneous analogizing the circumstances in *Clark* to what happened at Kream, Aaron did not shoot and kill a completely unrelated, innocent bystander who happened to be in the wrong place at the wrong time. Mr. McDuffie’s killing was and is indisputably tragic, and he was indisputably not Aaron’s intended target. However, unlike the “innocent bystander” in *Clark*—an eleven-year-old child who was inside her home and entirely unrelated to the person the defendant allegedly saw shooting at him—Mr. McDuffie was standing with his friends, who were the precise people who had shot Aaron ten months earlier, during the moments that they threatened Aaron with guns as he tried to simply exit the bathroom at a club where he was trying to have a normal, fun night out. Tr. 492, ll. 13-21; Tr. 497, l. 16 – 498, l. 2; Tr. 502, l. 13 – 503, l. 6; State’s Exh. 25 at 27:45 to 29:00; 29:30 to 30:00; 31:15 to 31:45; 33:28 to 33:35; 34:57 to 36:00; 49:52 to 50:15; 53:43 to 53:38.

The circuit court here failed to account for these circumstances clearly distinguishable from *Clark* and the ample evidence in the record. As Aaron told Investigator McHale, Aaron knew Mr. McDuffie to be friends with and to frequently accompany the three men who shot him ten months earlier and who threatened him that night at Kream. *See e.g.*, State’s Exh. 25 at 28:25 to 28:35 (“He used to always be around them [the shooters from Club Legends]. He was always around them. . . . That being your homeboy, you’re not supposed to leave him. You pull out a gun on a man, and a man get to firing off on y’all ass, and you just leave.”); *id.* at 31:15 to 31:45 (“Yeah, he hang with them niggas. Yeah he hang with them.” (in response to Investigator McHale asking if the three assailants were the same people who shot him at Legends)); *id.* at 35:45 to 36:00 (“I don’t think he had the gun. *The dude beside him though, I think, he had the gun.*” (emphasis added))

Additionally, the circuit court placed too much importance on the fact that Aaron expressed remorse that Mr. McDuffie was the victim and that he never had problems with him personally, effectively weighing the evidence. *See* Tr. 552, ll. 3-10 (misinterpreting *Clark* and overemphasizing Aaron's statements of remorse). Such expressions of remorse and a recognition that he and Mr. McDuffie did not have issues prior to that night does not mean that Mr. McDuffie did not "at least contribute to the provocation" that night at Kream. Aaron explained to Investigator McHale the nature of his relationship with Mr. McDuffie: "He wasn't no angel or no saint or nothing. But he just was one of the ones who, if y'all see each other by y'allself, it's no problem. *But if he's with his homeboys, and you with your homeboys, alright we fitting to clash, you feel me. It's like that.*" State's Exh. 25 at 34:57 to 35:40 (emphasis added). Aaron's hindsight remorse about who he killed or his comment that Mr. McDuffie did not *expressly* threaten him does not alter the reality that a person who is "always around" people who had previously shot somebody and is standing directly next to those same people as they threaten a person with firearms is far from an innocent bystander comparable to an eleven-year-old child inside her own home.

The circuit court here also ignored other more comparable precedent in *Leggette*. There, this Court found counsel was not ineffective for failing to object to the trial court's instruction on voluntary manslaughter. *Leggette*, 440 S.C. at 594, 892 S.E.2d at 155. *Leggette* shot and killed Antonio Tisdale during the course of a longstanding and frequently violent conflict between their two neighborhoods, and specifically between *Leggette* and another individual named Al Ingram, including physical altercations between the two a year earlier as well as two and four nights prior to the shooting. *Id.* at 594-98, 892 S.E.2d at 155-58.

On the night of the shooting, testimony from Leggette and others indicated that a group that included Tisdale and Ingram “rushed up on [Leggette] out of nowhere,” that Leggette heard someone behind him make a threatening comment, and when he turned around Ingram and Tisdale were a few feet away, and Leggette saw Ingram reach for his waist, which prompted Leggette to pull his gun and shoot several times. *Id.* This Court found a voluntary manslaughter charge was appropriate despite the fact that Ingram, and not the victim, Tisdale, was the one that Leggette believed was reaching for a gun because “[a]lthough Petitioner’s testimony established the main provocation on the night of the shooting came from Ingram, *Tisdale accompanied Ingram* in following Petitioner and both were *clearly part of the approaching, threatening westside group.*” *Id.* at 604, 892 S.E.2d at 161 (emphases added).

Notably, this Court in *Clark* explicitly distinguished the circumstances there to those in *Leggette*, noting the key distinction for the differing outcomes was that “Tisdale *at least contributed to the provocation by accompanying Ingram . . .* despite Tisdale not being the intended target.” *Clark*, 446 S.C. at 646, 922 S.E.2d at 246. (emphasis added). Yet, the circuit court here misapplied *Clark* and ignored *Leggette*. Mr. McDuffie’s role here is far more analogous to the role of Tisdale than a completely innocent, unrelated eleven-year-old child inside her home. Like Tisdale accompanied Ingram at the time Ingram made his threatening, overt act, Mr. McDuffie accompanied that night—and frequently accompanied—the three individuals who threatened Aaron with firearms just seventeen seconds before Aaron stormed back to the bathroom. *See id.*; *Leggette*, 440 S.C. at 604, 892 S.E.2d at 161.

The circuit court’s failure to recognize the existence of such evidence here, the distinction with *Clark*, and the far more analogous precedent in *Leggette* resulted in its erroneous refusal to instruct the jury on voluntary manslaughter.

3. Sudden Heat of Passion

Finally, the circuit court erred by ignoring the vast amount of evidence from Aaron's interview as to his state of mind and his sudden heat of passion in the moments before he fired those five gunshots when it limited its assessment to the single statement "I blanked out." Beyond improperly weighing the significance of such statement, ignoring the other evidence from Aaron's statement resulted in the circuit court's refusal to allow the jury to consider whether Aaron was guilty of voluntary manslaughter rather than murder.

The circuit court again erred in disregarding *Leggette*. There, this Court found that the voluntary manslaughter instruction was appropriate despite being a "close" question because the standard is simply "any evidence." 440 S.C. at 603, 892 S.E.2d at 160. This Court noted that Leggette and Ingram both testified to prior altercations between their respective neighborhoods, including incidents two and four days before the shooting, as well as the fact that there was evidence that Leggette had been threateningly surrounded by several people associated with the rival neighborhood. *Id.* Additionally, evidence was presented that Ingram and Tisdale followed after Leggette, and they were just a few feet away from Leggette when he turned around after hearing a threatening comment. *Id.* at 604, 892 S.E.2d at 160-61.

Similarly, the jury here heard that Aaron had a previous violent encounter with the same people who he shot at that night—that these three assailants Mr. McDuffie was standing next to inside that bathroom had shot him ten months earlier with a bullet that could still kill him at any moment and affected his day-to-date life experience. The jury heard that Aaron knew these three assailants, who Mr. McDuffie "was always around," had made a rap song bragging about trying to kill him. The jury heard that Aaron saw these men threateningly look at him when they locked eyes after he finished performing at Kream that night, and the jury heard that these three men

threatened Aaron with firearms as he had to walk past them to exit the bathroom. *See Pittman*, 373 S.C. at 575, 647 S.E.2d at 169 (“[I]n determining whether an act [that] caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing.” (quoting *Norris*, 253 S.C. at 35, 168 S.E.2d at 566)); *see* State’s Exh. 25 at 22:15 to 22:22; 24:17 to 26:20; 27:50 to 31:45; 32:31 to 36:00; 39:05 to 39:25; 41:43 to 43:03; 50:40 to 50:51; 53:10 to 54:20; 55:23 to 59:40; 1:00:00 to 1:04:10.

Aaron’s statement also included countless descriptions of his state of mind in those seventeen seconds from the time he exited the bathroom to the point he stormed back and fired the fatal shots. *See* State’s Exh. 25 at 53:10 to 53:17 (“*I just blanked out, I ain’t know what the fuck happened. I’m just like, I see gun. Motherfucker point a gun at me. Boom boom boom boom boom, go on and get the fuck out.*” (emphases added)); *id.* at 24:45 to 24:55 (“Once you pull a gun on me though, I have no choice but to shoot you.”); *id.* at 30:12 to 30:30 (“Once y’all pull your guns out, like y’all fitting to do something to me, *I’m not going for it. I done been shot already.* I got a bullet hole in me still. If they remove the bullet hole, I’m going to die. *I’m not going for this shit again.*” (emphases added)). *id.* at 32:31 to 33:15 (“I’m not letting [Legends shooting] happen again Damn near the same scenario [as Legends]. You pull your gun out on me, I just didn’t give your ass a chance to shoot me this time.” (emphases added)).

Each of these comments reflect a person whose mind was “incapable of *cool* reflection” and who had an “uncontrollable impulse to do violence.” *See Sams*, 410 S.C. at 309, 764, S.E.2d at 514 (emphasis added). As Aaron walked away from being threatened with guns by the same people who nearly killed him ten months earlier, he was grappling with that overwhelming terror

but it tragically propelled him back to that bathroom in just seventeen seconds; the video of the shooting itself reflects someone who is seeing red, who ignores his friend, Lark, as he tries to interact with him. *See State's Exh. 25; Locklair*, 341 S.C. at 362, 535 S.E.2d at 425 (“The provocation of the deceased must be such as naturally and instantly produces in the mind of a person ordinarily constituted the highest degree of exasperation, rage, anger, sudden resentment, or *terror*, rendering the mind incapable of cool reflection.” (quoting *State v. Franklin*, 310 S.C. 122, 125, 425 S.E.2d 758, 760 (Ct. App. 1993))).

When Aaron fired those five fatal gunshots, he was acting under the heat of passion and an uncontrollable impulse to do violence caused by the sufficient legal provocation of being threatened with guns by the same people who had previously shot him and that legal provocation came from an act of or relating to Mr. McDuffie, who was in the company of those assailants.

II. The circuit court erred in refusing to grant a mistrial due to the solicitor's inflammatory comment during closing argument to show no mercy.

“The test of granting a new trial for alleged improper closing argument of counsel is whether the defendant was prejudiced to the extent that he was denied a fair trial.” *State v. Durden*, 264, S.C. 86, 93, 212 S.E.2d 587, 590, 91 (1975). “A solicitor's closing argument must not appeal to the personal biases of the jurors. In addition, the argument may not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it.” *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996).

The Solicitor's improper and inflammatory argument for the jury “to show this Defendant, Aaron Harper, the same level of mercy that he showed Mr. McDuffie, which is absolutely none,” justified a mistrial. Tr. 614, ll. 8-23. This comment is designed solely to appeal to the passions and prejudices of the jurors so that the jury would convict Aaron based on an inappropriate argument that Aaron “showed no mercy” and deserved the same, rather than based

on evidence presented at trial that he killed Mr. McDuffie *with malice*. Given that the sole issue for the jury was whether Mr. McDuffie's killing was murder due to the presence of malice aforethought, the suggestion that Aaron showed him "no mercy" and should therefore receive none was wholly improper. The fact that the jury was prevented from determining whether Aaron's killing of Mr. McDuffie constituted voluntary manslaughter rather than murder exacerbated the prejudice of this comment by the Solicitor at the end of the State's closing argument.

Because the Solicitor's improper argument "so infected the trial with unfairness as to make the resulting conviction a denial of due process," *see State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997), the circuit court erred in denying Aaron's motion for a mistrial.

III. The circuit court erred in refusing to grant a mistrial when a juror experiencing obvious emotional turmoil expressed clear hesitancy in her verdict, signaling a non-unanimous verdict, during improper jury polling and individualized questioning of the juror.

The cumulative effect of declarative and mandatory statements and confusing compound questions by the clerk of court during the juror polling followed by the interruptive individualized polling of Juror 201, who was obviously upset and emotional, created a coercive environment in which Juror 201 felt compelled to convey that she had rendered a guilty verdict. The circuit court abused its discretion in its denial of Aaron's mistrial motion.

"The granting or refusing of a motion for a mistrial lies within the sound discretion of the trial court and its ruling will not be disturbed on appeal absent an abuse of discretion." *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 627-28 (2000). "A mistrial should be declared only when absolutely necessary. In order to receive a mistrial, the defendant must show error and resulting prejudice." *State v. Kelly*, 372 S.C. 167, 170, 641 S.E.2d 468, 470 (Ct. App. 2007) (citing *Harris*, 340 S.C. at 63, 530 S.E.2d at 627-28).

“The trial judge must be satisfied that the verdict is unanimous and must conduct a jury poll at the request of either party.” *Id.* “Polling is a practice whereby the court determines from the jurors individually whether they assented and still assent to the verdict. *State v. Linder*, 276 S.C. 304, 308, 278 S.E.2d 335, 338 (1981). “If it is made known to the court when it is time to render the verdict that any juror does not assent to it, the verdict cannot be received and the jury should retire to their room until they have agreed.” *State v. Singleton*, 319 S.C. 312, 316, 460 S.E.2d 573, 576 (1995). A judge has a duty to urge the jury to reach a verdict but the judge may not coerce them. *Id.*

At first blush, *Singleton* appears to be identical to the circumstances that occurred during the polling of the jury and Juror 201 in Aaron’s trial. *See id.* at 315, 460 S.E.2d at 575 (outlining the questioning of the juror during the polling when the juror initially states it is not his verdict and when asked a follow up question, informs the court that “it is now”). However, a closer examination reveals several key distinctions that require reversal here when the court in *Singleton* found no abuse of discretion. *Id.* at 316, 460 S.E.2d at 576.

First, the clerk of court here began the initial polling in a manner that was declaratory and effectively commanded the jury to answer affirmatively. Tr. 657, l. 25 – 658, l. 3 (“When I say your number, *then you will answer with yes*. The verdict that was just published *was the verdict you reached* in your deliberation room. I ask you, *was it your verdict then, and is it your verdict now?*” (emphases added)). The conclusive mandate to the jury that they “will answer with yes” when their number is called is alone troubling, given the special significance that jurors give to court staff. *See State v. Murdaugh*, Op. No. 28329 (S.C. Sup. Ct. filed May 13, 2026) (Howard Adv. Sh. No. 18 at 8, 27) (recognizing that the official character of “an officer of the court”

carries significant weight with a jury and can amplify the impact of their comments on a jury (quoting *Parker v. Gladden*, 388 U.S. 363, 365 (1966))).

This special significance that jurors place on officials related to the court itself is especially heightened when the clerk of court's comments here constituted a command to the jury to reaffirm a guilty verdict just announced in court with the imprimatur of the judge sitting behind the clerk of court. *See* Tr. 657, ll. 8-25 (reciting the announcement of the verdict, the circuit court's comment immediately before indicating that "the verdict form appears to be in order," followed by the clerk of court's command to "answer with yes" during the polling). While the clerk of court's mandatory language was undoubtedly innocent and unintentional, the language used had a coercive effect on the jury, in particular Juror 201, as reflected by her initial response and her emotional reaction during the individualized polling.

Second, the clerk of court's instructions ahead of the polling again utilized a confusing compound question form. Tr. 658, ll. 2-3 ("I ask you, was it your verdict then, *and* is it your verdict now?" (emphasis added)). In *Singleton*, the clerk of court asked each juror "was this your verdict," allowed the juror to answer, and *then* asked "is it still your verdict?" 319 S.C. at 315, 460 S.E.2d at 575. The division of these questions allows the juror to clearly express their verdict and its status. Juror 201 was the first juror polled and she responded equivocally, "It's my verdict now." Tr. 658, ll. 1-5. The fact that she responded in such an ambiguous manner demonstrates the confusing nature of the question, likely exacerbated by the fact that Juror 201 was the first juror to be called. *Id.*

Third, the individualized questioning of Juror 201 did not cure the issue. The clerk of court first repeated the compound question again, which prompted another ambiguous and confusing answer by Juror 201: "It's my verdict now but not my verdict then. It's my verdict

now. It's - - my verdict in the deliberation room." Tr. 661, ll. 9-15. This response calls into question just exactly *when* it was *not* her verdict if the verdict—guilty—was her verdict both in the deliberation room and now, and raises the concern that her verdict is being coerced in some manner. Further, the subsequent questioning by the circuit court of Juror 201 was also confusing and resulted in several interruptions of both the circuit court's questions and Juror 201's answer. See Tr. 661, ll. 16-21. Finally, the ultimate questions by the circuit court of whether the guilty verdict was her verdict in the jury room and then before the circuit court produced largely non-verbal nodding by Juror 201, who was upset and actively sobbing during this questioning. Tr. 661, l. 7 – 662, l. 9.⁷

The circuit court also misinterpreted the Supreme Court's recent decision in *Erb*, in which the supreme court admonished the "trial court's misguided decision to question Juror 16 individually" following the juror's "no" response during jury polling. 447 S.C. at 89, 924 S.E.2d at 103. The supreme court found that, based on the juror's response during polling, "the trial court should have stated to the jury that it was apparent the jury had not reached a unanimous verdict" and to instruct the jury to continue deliberating until that point, and this was the proper course of action "regardless of whether Juror 16 was the first, fifth, eleventh, or last juror polled." *Id.* Here, the clerk of court's mandatory, declarative manner of polling the jury problematically signaled that "yes" was the only correct response, but the circuit court erred in not sending the jury back to deliberate when Juror 201 initially expressed hesitation as the first juror polled and erred in engaging in the subsequent individualized questioning given the apparent "split" revealed by Juror 201's equivocal response.

⁷ Given the emotional turmoil demonstrated by Juror 201, the Solicitor's inflammatory comment to show no mercy to Aaron during the closing should also be considered in conjunction with the Juror 201's response and the improper jury polling conducted here.

The combination of the circuit court's express approval of the verdict form, the clerk of court's mandatory language directing the jury to affirm the guilty verdict just announced, the confusing compound form of the polling question, and the interruptive nature of the circuit court's individualized questioning of Juror 201 created a coercive environment in which Juror 201 affirmed the guilty verdict. Juror 201's ambiguous responses and severe emotional reaction during this questioning highlights the coerciveness of the circumstances and raises serious doubts about her verdict, and therefore, the unanimity of the jury's guilty verdict.

The circuit court abused its discretion in denying the motion for mistrial under these circumstances.

CONCLUSION

This Court should find that the circuit court improperly applied the any evidence standard when determining whether to instruct the jury on the lesser included offense of voluntary manslaughter and should therefore reverse Aaron's convictions and remand for a new trial. Additionally, this Court should find the circuit court erred in denying the motions for a mistrial for the solicitor's improper closing argument and in light of the juror's responses to polling and individualized questioning following the verdict.

Respectfully submitted,

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