

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State,Respondent,

v.

Kendrick Montrez Lee,Appellant.

CROSS-PETITION FOR REHEARING

On July 1, 2026, this Court reversed Kendrick Lee’s conviction and sentence and remanded this case for a new trial. *State v. Lee*, No. 2023-001843, 2026 WL 1884535, (S.C. Ct. App. July 1, 2026). On July 15, 2026, the State petitioned for rehearing.¹ This cross-petition for rehearing follows, and Mr. Lee respectfully petitions this Court to decide all the questions presented on appeal.

Mr. Lee presented seven questions for review:

¹ Although a return to a petition for rehearing is not required unless requested by the appellate court, Rule 221(a), SCACR, Mr. Lee cannot help but point out a factual error by the State in its petition for rehearing. The State argues, “As a trial court is only required to conduct an individual voir dire at the request of either party, the trial court here had no obligation to conduct additional voir dire questioning, *which Appellant notably never requested.*” State’s Petition, pp. 1-2 (citing S.C. Code Ann. § 14-7-1020) (emphasis added). The trial judge addressed Juror 191’s service at a sidebar (R. 79) and placed the discussion on the record (R. 82). Later, Mr. Lee elaborated on the sidebar, noted accommodations “include[] asking the juror what circumstances would ensure that they would be able to hear what was going on in the courtroom,” and pointed out the trial court “didn’t even entertain asking the juror about whether or not he could be accommodated.” R. 118-19.

1. Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?
2. Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?
3. Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?
4. Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?
5. Did the trial court err by not providing an instruction pursuant to *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused, when that jury instruction was not required but permissible?
6. Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening instructions and ensured the jurors gave due consideration the lesser included offenses?
7. Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

This Court's opinion resolved only the third issue, and this Court additionally held, "Because our disposition of this issue is dispositive, we decline to address Lee's remaining issues on appeal." *Lee*, at *3, n. 4. Not addressing all questions presented on appeal is contrary to Rule 220(b), SCACR, which provides:

In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly

arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case. This rule does not apply to the following:

(1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

(2) The Court of Appeals need not address a point which is manifestly without merit.

Rule 220(b), SCACR.

Additionally, not addressing all issues presented in an appeal is contrary to judicial economy and risks unnecessarily extending the appellate review process. *See, e.g., State v. Dent*, 446 S.C. 121, 130, 919 S.E.2d 394, 398 (2025) (“The State and Dent cross-appealed, with the State raising the circumstantial-evidence jury charge ruling and Dent raising his remaining ten issues on appeal as additional sustaining grounds. We granted the State’s petition for a writ of certiorari and reversed the court of appeals’ decision, remanding the matter to the court of appeals to address Dent’s remaining ten issues on appeal.”). In the event the State appeals this Court’s opinion, the Supreme Court should have the benefit of this Court’s consideration and rulings on all questions presented.

The first three questions presented involve structural error in the jury selection, including the judicial system’s failure to ensure that a cross-section of the community responded to juror summons and prosecutors’ pretextual use of minor criminal records to

exclude minority jurors. Both are capable of reptation, and the bench and bar would benefit from the Court's guidance. Indeed, the failure to ensure jurors respond to juror summons is a customary practice in Abbeville County. The fourth issue continues to reoccur despite the Supreme Court's guidance in *Beaty* and *Daniels*. The fifth and sixth issues present important concerns regarding trial courts' obligations to ensure jurors follow instructions regarding the burden of proof and resolving reasonable doubt in favor of an accused. Although, as noted at oral argument, this Court lacks jurisdiction to decide the seventh issue, a statement to this effect in an opinion would ripen this issue for the Supreme Court.

For the foregoing reasons, this Court should decide all issues raised by Mr. Lee in this appeal.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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Greenwood, South Carolina

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Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

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