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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA IN
THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
(Unpublished Opinion No. 2026-UP-177 (Ct.App. filed April 22, 2026))

Appeal from Sumter County
The Honorable R. Kirk Griffin, Circuit Court Judge

THE STATE,

Respondent,

v.

DIONTRAE TRAVON EPPS,

Petitioner.

Appellate Case No. 2026-001323

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

Post Office Box 11549 Columbia,
South Carolina 29211 (803) 734-
6305

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
215 N. Harvin St.
Sumter, S.C. 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

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PETITIONER'S QUESTIONS PRESENTED

1. Did the Court of Appeals err in finding the Trial Court did not abuse its discretion by granting the State's motion for continuance to investigate the State's failure to disclose exculpatory evidence when the resulting unfair prejudice denied his right to a fair trial?
2. Did the Court of Appeals err in finding the Trial Court did not abuse its discretion in refusing to suppress the Facebook video clip of Petitioner purportedly threatening the Decedent because the untimely disclosure by the State resulted in unfair prejudice denying Petitioner's right to a fair trial?
3. Did the Court of Appeals err in finding the Trial Court did not abuse its discretion by admitting a Face book video clip of Petitioner purportedly threatening the Decedent because the State's witness did not have sufficient knowledge to authenticate the video?
4. Did the Court of Appeals err in finding the Trial Court did not abuse its discretion by admitting a Face book video clip of Petitioner purportedly threatening the Decedent because of the inherent unfair prejudice in the misleading impression created by taking Petitioner's statement out of context?

(Pet. p. 1).

STATEMENT OF THE CASE

A Sumter County grand jury indicted Petitioner Diontrae Travon Epps (Epps) at a July 2020 term of general sessions for murder and possession of a weapon during the commission of a violent crime. (R. p. 939). Shaun Kent, Esq., with the assistance of Jack Furse, Esq., represented Epps on the charges. The case was first called to trial on August 14, 2023, but the trial judge, the Honorable R. Kirk Griffin, continued the matter to the next month's term. A jury trial was held September 25-29, 2023, with Judge Griffin presiding. The jury convicted Epps as indicted. (R. 902). Judge Griffin sentenced him to life imprisonment for murder, with no sentence imposed on the weapons charge consistent with S.C. Code Ann. §16-23-0490. (R. 911). Epps timely appealed.

Dayne C. Phillips, Esq., assumed representation of Epps on appeal. Counsel filed a final brief of appellant on September 23, 2024, and raised the following questions in the appeal:

- I. Did the Trial Court err by granting the State's motion for continuance to investigate the State's failure to disclose exculpatory evidence and by denying Appellant's motion to dismiss when the resulting unfair prejudice denied his right to a fair trial?
- II. Did the Trial Court err in refusing to suppress the Facebook video clip of Appellant purportedly threatening the Decedent because the untimely disclosure by the State resulted in unfair prejudice denying Appellant's right to a fair trial?
- III. Did the Trial Court err by admitting a Facebook video clip of Appellant purportedly threatening the Decedent because the State's witness did not have sufficient knowledge to authenticate the video?
- IV. Did the Trial Court err by admitting a Facebook video clip of Appellant purportedly threatening the Decedent because of the inherent unfair prejudice in the misleading impression created by taking Appellant's statement out of context?

After briefing, but without oral argument, the Court of Appeals affirmed in an unpublished opinion: *State v. Epps*, Unpublished Opinion No. 2026-UP-177 (S.C.Ct.App. filed April 22, 2026).

Epps filed a timely petition for rehearing that the Court of Appeals denied on May 12, 2026.

Epps filed a petition for writ of certiorari on June 11, 2026. This return follows.

RESPONDENT'S STATEMENT OF FACTS

In the late evening hours of September 8, 2019, the victim, “Killa Mike” Rodgers, had planned to go to a club with a cousin, Timothy Scarborough, and two others. (R. 378, line 5- p. 382, line 25). The victim had been uneasy and had stayed closed to his home for several weeks prior to the murder according to his girlfriend and had alluded to a fear of encountering difficulties because “[e]very time he went out, it was something.” (R. 626, lines 1-15). The decision to go out on September 8, 2019, proved to be a fatal one.

The four rode together in one car and on the way to their destination pulled into a gas station across the street from the club. It was a crowded scene with multiple individuals in their vehicles or standing by vehicles, playing music and “chilling.” Many of those individuals were carrying guns. (R. 383, lines 3-18; p. 401, lines 7-8). Timothy Scarborough testified that when they arrived at the station, he saw an individual with the nickname “Bean” and went to confront him about a matter, but that resolved without a fight. (R. 384, line 19 – p. 387, line 20). However, when Mr. Scarborough “looked to the left” he saw Epps. (R. 387, lines 18-21; p. 388, lines 2-15). Epps had made it known that he wanted to confront the victim by stating his intention in a Facebook video rap-like song routine. The video shows Epps as the primary figure/singer and he indicates that he was going to confront, and/or have others confront, the victim. (R. 630, lines 9-23; State’s Exhibit 1). Aware of the potential for conflict from Epps toward the victim, Mr. Scarborough attempted to “diffuse” the situation at the station. (R. 388, lines 13-18; p. 397, lines 16-23).

A video from the gas station cameras, and a cell phone video, showed multiple individuals on the scene, including Mr. Scarborough. Mr. Scarborough could point to the images from the recordings in his trial testimony to explain the shooting as it unfolded. (*See* R. 386, lines 9-16;

391, line 10- 395, line 11; p. 406, line 4 – 408, line 2). Mr. Scarborough testified that Epps approached the victim, threw a punch with his left hand, then with his right hand “upped the gun” and shot the victim. (R. 398, line 4 – p. 400, line 12). Mr. Scarborough testified that the victim never attempted to hit Epps and that he never saw the victim fire his gun but added that at that point he had turned and ran across the street. (R. 400, lines 2-4; p. 401, lines 11-20). When Mr. Scarborough ran from the scene, he did not know that either the victim or Epps had been shot. (R. 403, lines 5-10).

Forensic pathologist Dr. Nicholas Batalis testified the cause of death “was a gunshot wound to the trunk.” He found two wounds. The gunshot wound to the chest, the fatal wound, entered on the right side and traveled between two ribs, through the right lung and along the spine, and had caused “massive bleeding ... due to the lung injury.” The other wound was located “on the upper right side of the back, kind of between the neck and the back of [the] shoulder.” While the bullet in the fatal wound passed through the body, the bullet from the second was recovered. (R. 423, lines 4-5; 424, line 2 – 425, line 14). The doctor testified that he reviewed the gas station video showing the victim “in the parking lot area in a confrontation and then falling to the concrete some seconds later,” and, having observed the relative positions of the individuals (the victim and Epps), opined “the pathway of the injuries in this decedent would be consistent with the relationship that they were in the video. (R. 428, line 23 – 429, line 15). Dr. Batalis explained that the bullet did not sever the spinal cord, but damaged it, so limited movement was possible as demonstrated on the video. (R. 436, line 6- p. 437, line 10).

All in all, multiple guns were fired at the gas station that night causing injury to several individuals. The investigation netted multiple shell casings that, upon examination, confirmed they were fired by multiple guns. (*See* R. 464, lines 1-11; 470, line 11-479, line 23; 488, lines 2-

6).¹ One gun, a Taurus, was also collected from the scene. (R. 470, lines 2-9; 517, lines 16-24). That was the victim's gun. (R. 520, lines 17-19). SLED ballistics expert Paul Greer could match seven shells as being fired by that Taurus. (R. 537, lines 9-11). The remaining casings submitted indicated nine different weapons were fired. (R. 539, line 6-540, line 21). He testified that while he could determine the markings on other recovered casings would show groups of casings coming from the same gun, he did not have a gun to compare for a possible match. (R. 540, line 22 – p. 541, lines 10). Agent Greer also received the bullet recovered at the autopsy, and could opine it was most consistent with being 9mm; however, there is no a way for SLED to match a bullet to a shell case. (R. 543, line 19 – p. 544, line 17).

Epps was also shot at the scene and went to the hospital. Hospital recordings showed that Epps was accompanied by Joquell Myers and Jay McBride. (R. 502, line 1–p. 503, line 3; 667, lines 1-20; p. 668, lines 2-15; p. 672, lines 12-20). Both Myers and McBride had been in the Facebook video with Epps where Epps threatened the victim, and both Myers and McBride were at the shoot-out. (R. 672, lines 18-20). Epps had sustained a gunshot to his abdomen, but the bullet could not be removed without risking further damage thus could not be compared to any weapon for identification. (R. 666, lines 5-15).

Sumter County Police Department Detectives Willie McFadden and Irene Culick investigated the mass shooting with Detective McFadden taking lead and having primary responsibility. (R. 559, line 13 – p. 560, line 3). The detectives, after providing Miranda warnings, interviewed Epps at his mother's home on September 15, 2019. (R. 561, lines 6-23; 564, line 4 –

¹ Moreover, a SLED ballistics expert's testimony supported that other guns could have been fired such as revolvers that typically do not leave casings. (See R. 551, line 22 – p. 552, line 9). As Mr. Scarborough testified, "there was a lot guns out there" that night. (R. 401, lines 7-8).

p. 565, line 19).² Epps indicated that he was using his phone in the car in the parking lot at the gas station, and “rolling a blunt,” when “he heard a commotion and saw a group of people that were at the front corner of the store” then heard shots. (R. 576, line 16 – p. 577, line 16). Though he initially stated that he was in the car, he told the detectives that he left the car and “took off running” and was hit by gunfire, though he “didn’t see who did what.” (R. 577, lines 12 – 21; p. 654, line 2 – p. 655, line 10). When asked if he had prior difficulties with the victim, he admitted “that he made a comment on Facebook after Killa Mike was jumped in a club,” but then stated, “That didn’t have nothing to do with it.” (R. 578, lines 14-19; 657, lines 2-4). Notably, that was the first time the detectives had any knowledge about the threatening Facebook video. (R. 657, lines 9-18). Epps also clearly stated to the officers that “he did not fire a gun that night.” (T. 578, line 25 – p. 579, line 2; p. 655, lines 11-14). He declined to give details or names of anyone who could aid in the investigation. (R. 579, lines 3 – 19; p. 654, lines 17-19).

When asked what people were telling him, he responded: “I’m going to feel like people telling me Killa Mike shot me. I say, How Killa Mike shot me, I didn’t even see him?” (R. 579, line 25 – p. 580, line 2; p. 656, lines 17-21). When “asked why would people say Killa Mike shot him, he stated he didn’t remember anything else.” (R. 580, lines 2-4). Epps eventually confirmed one name of an individual at the shootout (“Polo”), but “went on to say” he, Epps, “was in the wrong place, wrong time.” (R. 580, lines 20-24). “Polo” is Sheldon Benjamin and was with Epps as he arrived at the hospital. (R. 668, lines 2-8).

² Though had had been in the hospital for his injury, Epps was responsive to questioning and gave no indication of physical or mental impairment. The defense placed on the record during pre-trial motions that there was no “valid challenge to” the voluntariness of the statement taken on September 15, 2019. (R. 562, lines 9-24; p. 351, lines 15-17).

The detectives had a “second contact” with Epps on September 17, 2019, when Epps went to the police department to meet with a victim’s advocate. (R. 581, lines 18-25). At that time, Epps was attempting to obtain “victim’s assistance funds” for his hospital costs. (R. 582, lines 1-3). The detectives asked for a DNA sample, and Epps agreed. (R. 582, lines 4-8). They also asked to interview him again, but he declined. (R. 582, lines 8-13). Detective McFadden then served Epps with a warrant for his arrest. (R. 582, lines 16-25). When he was being read the basis for murder and gun charges, Epps spontaneously asserted that he “never had a gun ... never shot no gun.” (R. 582, line 23 – p. 583, line 2; p. 659, line 19 – p. 660, line 11). He also spontaneously asserted that “he never punched Rodgers and” that the police “don’t have [him] on video,” but then he was advised the detectives were not referencing “a female’s video” from the scene, but the “store footage video.” (R. 583, lines 3-8; 585, lines 20-24; p. 660, lines 14-22). The detectives had not shared that there was store video available prior to that point, and “[w]hen he was advised about the video from the store, he sat back in the chair and just [started] pouring sweat.” (R. p. 586, lines 4-12; p. 660, line 19 – p. 661, line 7). Epps repeated that he did not have a gun and did not shoot anyone. (R. 661, lines 7-9).

Epps admitted that he “did swing on” Rodgers and further asserted that “Killa Mike pulled out a gun and he took off running,” yet maintained that he would not give names of others at the shoot-out and that he did not know who shot him, or who shot the victim. (R. 583, lines 9-13; 586, lines 12-13). Then, as he was being taken to a car for transport to the detention center, Epps not only asserted that he “did swing on Killa Mike” but also demonstrated the punch and further asserted “that Killa Mike came up to him aggressively and did, like, a chest bump and that’s when he swung on him.” (R. 583, lines 19-24). Epps asked to speak with Detective McFadden alone. (R. 584, lines 1-2). He admitted taking a “swing” at the victim and asserted that the victim “pulled

a gun out on him, but he said when he saw that, he said” he pulled his own gun and began “firing behind him trying to get away and take cover.” (R. 663, line 24 – p. 664, line 5). After describing that version of events, Epps asked if he could “still get charged for murder for that,” and the detective informed him that he could. (R. 664, lines 2-6).

Detective McFadden testified that after he obtained the store video, he began comparing statements and the visual evidence obviously in the video. (R. 643, lines 7-22). The video reflected, in part, that Epps, “swung on” the victim “then pulled out a firearm and fired numerous times at” the victim. (R. 647, line 16- p. 649, line 9).

The defense presented expert testimony on crime scene reconstruction from Kenneth Kinsey. Mr. Kinsey, in review of the evidence, slowed the videos and considered each frame, and also reviewed autopsy findings and the incident reports, along with visiting the crime scene. (R. 738, line 21 – p. 739, line 5). He opined that Epps could not have fired the shots inflicted on the victim who was retreating away from Epps and turning. (R. p. 740, line 19- p. 471, line 4). Part of his opinion was based on a belief that the fatal shot would cause the victim to immediately drop. (R. 755, lines 17-19). He also opined that the victim’s gun was in his hand before he is shown on the video falling, though he could not tell when the victim pulled the gun since Epps’s arm was in the way. (R. p. 763, lines 5-24; p. 783, lines 7-14). Mr. Kinsey candidly admitted the video showed that Epps shot multiple times, and there was no muzzle flash from victim’s gun. (R. p. 781, line 23 – p. 782, line 13). He also admitted that Epps’s story that he never shot a gun at the scene was plainly refuted by the video, (R. p. 794, lines 17-19), and Epps’s story that the victim approached and “chest bumped” him was not on the video. (R. p. 780, lines 4-22).

After the close of testimony, the defense placed the basis for its directed verdict motion on the record. (R. 804, lines 5-21). In denying the motion for a directed verdict, the trial judge noted

“... in this case, the video tells the story.” (R. 806, line 18). He noted that the video showed Epps “swing on the victim, at least, once then we see these shots fired,” and that was direct evidence to submit the charges to the jury. (R. 806, lines 18-22). Further, because the judge acknowledged the video does not show the aggression by the victim, he struggled with the correctness of giving a self-defense charge; however, he ultimately resolved the jury should decide between the video and Epps’s contrary statement, thus charged the jury on the elements of self- defense. (R. 817, line 9-p. 819, line 1; p. 880, line 20 – p. 882, line 25).

As noted, the jury found that the State carried its burden of proof of showing guilt beyond a reasonable doubt and returned a guilty verdict on both charges.

STANDARD OF REVIEW

Certiorari Review

“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR.

Continuances

An appellate court reviews the trial court’s ruling on a motion for continuance under the abuse of discretion standard. *State v. Yarborough*, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct.App.2005) (“The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion.”).

Brady Claims

An appellate court reviews the lower court ruling on *Brady* issues for abuse of discretion. *State v. Durant*, 430 S.C. 98, 110, 844 S.E.2d 49, 55 (2020) (citing *State v. Bryant*, 372 S.C. 305, 316, 642 S.E.2d 582, 588 (2007)). “In determining the materiality of nondisclosed evidence, the reviewing court’s function is to determine whether the appellant’s right to a fair trial has been impaired.” *Id.*, (citing *Kyles v. Whitley*, 514 U.S. 419 (1995); *State v. Taylor*, 333 S.C. 159, 508 S.E.2d 870 (1998)).

Evidence Rulings

Evidence rulings are similarly reviewed for abuse of discretion “and will not be reversed absent an abuse of discretion.” *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Id.* (quoting *Pagan*, 369 S.C. at 208, 631 S.E.2d at 265).

DISCUSSION

Epps fails to raise a question that presents any “special and important reasons” to warrant certiorari review. *See* Rule 242(b), SCACR. Rather, Epps seeks review of an unpublished opinion resolving case-specific determinations. Moreover, Epps cannot show any error by the Court of Appeals. The opinion reflects merely the application of clearly established standards of review in consideration of controlling precedent based on the facts appearing in the record. In short, Epps has shown no cause for further review and no case for relief. The petition should be denied.

- I. **The Court of Appeals reasonably found no abuse of discretion in granting a continuance to the State for one month to allow the State to address Epps’s assertion that it had failed to disclose a federal form regarding a witness statement (the Billups statement) when the court did so to ensure a fair proceeding and subsequently determined that there was no *Brady* violation.**

The gist of Epps’s complaint seems to be that by allowing the continuance, the trial court allowed the State to cure a *Brady* violation regarding the Billups statement. (Pet. p. 21). Therefore, there was an abuse of discretion that the Court of Appeals failed to recognize. (Pet. p. 21). Epps fails to show error in the Court of Appeals disposition.

How the Issue was Presented at the Trial Level:

This case was initially called to trial on August 14, 2023. After selection of the jury, but before the jury was sworn, Epps relayed to the trial judge that the previous night he had received a tip from another defense attorney that the federal government may have “potential exculpatory information.” (R. 39, lines 8-18). As it turns out, this information was only a portion of the information concerning the defense’s knowledge, but that was not revealed until later. Defense counsel asserted “that we still would be willing and ready and wanted to go forward with the trial” at that time. (R. 41, lines 2-10). The court asked the State to weigh in and the State moved for a

continuance “so that these matters can be investigated.” (R. 42, lines 9-13). The State anticipated only a 30-day continuance to the next term of court. (R. 42, lines 21-24).³

The court granted a short continuance, observing that “in its present stance, this case can’t go forward given these issues which have been brought before the Court” and in light of the court’s responsibility to “ensure Mr. Epps is” afforded his “right to a fair trial and to ensure that the Court is doing whatever the court can do to ensure that justice is done....” (R. 48, line 15 – 48, line 8).

As expected, the case was called again the following month, and proceedings began again on September 25, 2023. After a jury was selected, the trial court heard the defense’s motion to dismiss for prosecutorial misconduct. (R. 109, lines 7-11). Counsel continued to argue that the State suppressed the Billups statement. In support, counsel called another defense attorney, Cameron Blazer, Esq., who testified that she reached out to Epps’s counsel to essentially settle whether Billups would be used at trial as being called to testify in the state proceedings would be “very valuable” to Billups. This would have been between an April 2022 interview and June 2022. (R. 143, lines 16-22). According to the witness, defense counsel advised, essentially, that the information “does not matter” because counsel already had a defense. (R. 130, lines 1-6). After additional testimony from several witnesses, the trial court resolved that though the facts were not clear and the discovery process was “messy,” the defense had the information and “they can do with that evidence whatever they see fit.” (R. 253-255). Thus, the court denied the motion finding no due process violation. (R. 255-256).

Treatment in the Court of Appeals:

The Court of Appeals found no abuse of discretion in allowing the continuance to the next

³ Defense counsel stated: “Solicitor Finney and Solicitor Corbit correctly and properly thought that this information needed to be vetted out and more detail” presented. (R. 41, lines 10-19).

month noting the emphasis the trial court placed on primary focus of “the *Brady* jurisprudence” which “is to ensure, first and foremost, that the defendant receives a fair trial [.]” (Opinion, at p. 4). The court also observed that “the trial was ultimately held approximately one month later, and the trial court determined that no *Brady* violation had occurred.” (Opinion, at p. 4).

In addressing the separate appellate issue of the denial of a motion to dismiss based on the alleged *Brady* violation, the Court of Appeals reasoned that “[a]lthough the Billups statement was arguably exculpatory, we find it was not material because, even without the continuance, Epps discovered it in time to use at trial.” (Opinion, at p. 5, citing *State v. Moses*, 390 S.C. 502, 515, 702 S.E.2d 395, 402 (Ct. App. 2010) (explaining that one element of a *Brady* claim is that the contested evidence “was material to the accused’s guilt or innocence or was impeaching”)); *State v. Kennerly*, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct.App. 1998), *aff’d*, 337 S.C. 617, 524 S.E.2d 837 (1999) (“[I]nformation is not deemed ‘material’ if the defense discovers the information in time to adequately use it at trial.”); *id.* (“The definition of ‘material’ for purposes of Rule 5 is the same as the definition used in the *Brady* context.”)). The court referenced the “testimony from Billups’s attorney and Epps’s own attorney showed that counsel had been alerted to the existence of the statement over a year prior to the original trial date and was uninterested in it because he ‘already had a defense.’” (Opinion, at p. 5 (emphasis in original), citing *United States v. Smith Grading & Paving, Inc.*, 760 F.2d 527, 532 n.6 (4th Cir. 1985) (“[T]he fact that disclosure came from a source other than the prosecutor is of no consequence. When determining the constitutional validity of a belated *Brady* disclosure, the relevant inquiry is solely whether the defendant was able to effectively use the exculpatory information.”)). It also underscored that the defense opted not to “use the statement at trial.” (Opinion, at p. 6, citing *State v. Geer*, 391 S.C. 179, 192-93, 705 S.E.2d 441, 448 (Ct. App. 2010) (holding Geer failed to establish a *Brady*

violation “such that there is a reasonable probability the result of her trial would have been different had she received the evidence earlier” because “[t]he audiotape was not played during trial nor did Geer attempt to use its contents to establish a defense’’)). Thus, the Court of Appeals affirmed the trial court’s denial of relief. (Opinion at 5-6).

Reasons to Deny the Petition:

Both law and facts support the Court of Appeals’ disposition. “The holding in *Brady v. Maryland* requires disclosure only of evidence that is both favorable to the accused and ‘material either to guilt or to punishment.’” *United States v. Bagley*, 473 U.S. 667, 674 (1985) (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). “The *Brady* rule is based on the requirement of due process.” *Id.*, at 675. “Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur.” *Id.* The goal: a fair trial. *Id.*; see also *Kennerly*, 331 S.C. at 452, 503 S.E.2d at 219–20 (“The *Brady* disclosure rule is grounded in the defendant’s fundamental right to a fair trial mandated by the Due Process Clause of the Fifth and Fourteenth Amendments.”). Simply, in regard to the continuance issue, the duty to ensure fairness in the trial proceedings, and a reliable result, transcended Epps’s desire to go forward. Epps cannot show any abuse of discretion in the grant of the brief continuance.⁴

Further, as an additional sustaining ground, Respondent notes that Epps’s defense counsel *objected* to the continuance and asserted the defense was ready for trial; thus, he can show no prejudice. A defendant’s “acknowledgment to the trial court that the absence of certain documents would not be prejudicial to the defense goes squarely against” his later request for relief on appeal.

⁴ Epps also references this Court’s General Sessions Document Order in making the argument. (Pet. at 20). The Court of Appeals summarily found no merit to Epps argument relying on the order given the provision that “the order is ‘not intended to create an independent basis for a claim of prosecutorial misconduct if there is a shortcoming in the production of discovery.’” Epps does not claim error in the Court of Appeals’ resolution on this point.

State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007). In such a case, where the defendant “conceded that the court’s ruling was not prejudicial, he may not later assert that ruling denied him a fair trial.” *Id.*, at 316, 642 S.E.2d at 588. This is so in here. Moreover, in this particular case, the defendant was not surprised by the State’s disclosure of the Billups federal interview – he knew from communication with Billups’ defense counsel sometime in the summer of 2022, (R. 143, lines 16-22; *see also* R. p. 145, lines 1-5), that some “favorable” evidence may have been available, (R. 134, line 13 – p. 135, line 3).

And, as another sustaining ground, the State points to this Court’s recognized, and logical, corollary to the *Brady* line of cases that the evidence at issue must be unavailable to the defense: “it is implicit that the Brady rule applies only to favorable evidence which the prosecution has but which is unavailable to the defendant.” *Anderson v. Leeke*, 271 S.C. 435, 438, 248 S.E.2d 120, 122 (1978); *State v. Penland*, 275 S.C. 537, 540, 273 S.E.2d 765, 766–67 (1981) (applying *Anderson*). *See also Smith Grading & Paving, Inc., supra* (“the fact that disclosure came from a source other than the prosecutor is of no consequence”). *Accord United States v. Roane*, 378 F.3d 382, 402 (4th Cir. 2004)(“We have explained that information actually known by the defendant falls outside the ambit of the *Brady* rule.”). That logic is applicable here to avoid a windfall when there could be no injury to the defense or the fairness of the proceedings. The record shows that the defense was aware of the Billips information well before even the continuance motion was made. No relief is due.

Even so, for the reasons cited above, there is no “special or important” need to review the Court of Appeals opinion. The petition should be denied.

II. The Court of Appeals reasonably found no abuse of discretion in admitting the inculpatory Facebook video that Epps created when the clip was authenticated by an individual who watched the clip when it was shown on Facebook. [Questions II, III, and IV].

Epps argues three separate challenges to the Facebook video. First, he asserts that the clip, which was provided before the August proceeding, was not timely disclosed. (Pet. 20). Second, he challenges the sufficiency of the authentication. (Pet. 23). And, third, he argues there was error in not playing the entire video. (Pet. 24). Again, Epps failed to show any cause to review the Court of Appeals disposition finding no abuse of discretion in the evidence ruling.

How the Issue was Presented at the Trial Level:

When objecting to the continuance of the August 2023 trial, defense counsel objected to “one Facebook video that was given to us on Friday morning,” based on his assertion that “the new chief administrative order” supported that it must be assumed if the trial is placed on the roster that all discovery has been provided. (R. 45, lines 10-20). Defense counsel argued that he did not want the State to have an opportunity to cure any potential discovery issue, and, thus, have an argument that the late disclosed material was received in time for trial. As such, he requested that “this to be a snapshot that the discovery, no matter what was not provided, was on the docket and not provided [until] the Friday before trial.” (R. 46, lines 5-11). Then, at the September proceedings concerning the Billups federal statement, defense counsel added, in summary fashion, “please understand that” in addition to the Billups statement, Epps was “complaining about the delayed discovery, also.” (R. 237, lines 14-17). The next day the trial judge ruled on the motion to dismiss, finding no prejudice given the defense had the information and could use the information as it would deem proper for the case. (R. p. 254, line 13 – 256, line 1).

The pre-trial motions continued and the State advised the trial judge that Ms. Arkell Eaglin, who was the victim’s girlfriend, would authenticate the Facebook Live clip in which Epps is

making threats against the victim approximately one month before the murder. (R. 258, lines 11-19). Ms. Eaglin was called at the pre-trial proceedings. She testified that she had previously testified in the Joquell Myers trial and had also reviewed the Facebook clip for that trial. (R. 276, lines 21 – p. 277, line 4). Ms. Eaglin testified that she saw the clip before the victim but showed the clip to the victim and they discussed it. (R. 279, line 24- p. 280, line 14). Her advice to the victim was “[t]o just stay away and stay inside, stay inside and stay out of the way.” (R. p. 281, lines 1-5). She saw the video right before a birthday beach trip for the victim, and they discussed after they returned. (R. p. 280, line 3 – p. 281, line 8). The victim’s birthday was August the 9th and he was killed just a month later on September the 8th. (R. p. 283, lines 18-24). She identified Epps as the lead singer. (R. 282, lines 7-13). She did not know any of the other men who walked through the video as he was singing. (R. 284, lines 6-13). On cross-examination, she agreed with defense counsel that she had not made the video; did not know who made the video; “cannot testify to the authenticity of who made it or when,” and did not personally know the individuals in the video. (R. 286, line 6 – p. 288, line 11). Though she testified that she did not watch “live,” i.e., as it recorded, she testified that she did watch it that day. (R. 285, line 24 – p. 286, line 2).

The State also called Detective Willie McFadden. The detective testified that it was Epps “singing the song and doing most of the talking,” and also recognized Jay McBride (deceased) and Joquell Myers. (R. p. 290, lines 13-25). Both McBride and Myers were at the gas station during the shout-out, and, with others, accompanied Epps to the hospital. (R. 291, lines 3-25). He testified that during the first interview the detective had with Epps, when asked about the victim and any problems with the victim, Epps

... stated that he made a comment on Facebook ... after Killa Mike was jumped in a club, but went on to say that he didn’t - - that didn’t have nothing to do with it.

(R. 293, lines 3-8).

It was only later that the video clip was provided anonymously by someone in the victim's family. (R. 293, line 9 – p. 298, line 4; p. 299, lines 2-4). He also agreed with defense counsel that it appears the clip is part of a longer video. (R. 298, lines 15-17).

The State argued that the video was “within 30 days” of the murder; and “kind of speaks for itself in terms of the taunting and the unfriendliness of the tone[.]” (R. 299, lines 18-25).

The defense reiterated its position that the video disclosure was late then. (R. 301, line 19- p. 302, line 23). Then the defense argued that the video could not be properly authenticated by a person with personal knowledge. (R. 302, line 24 – p. 304, line 11). Counsel also argued that the rule of completeness necessitates the State contact Facebook, obtain the full video, and provide it to the defense before it may be admitted. (R. 304, line 12 – 305, line 10).⁵ The defense also argued that the time was unknown since there was no testimony offered as to when the video was made. (R. 306, line 10- 307, line 12).

The State responded underscoring that the assertions captured on the video demonstrated malice, and motive, though not an element, may be “germane” to the case. (R. 307, lines 16-18; p. 307, line 25 – p. 308, line 4). The State responded that the remaining arguments offered by the defense merely went to weight of the evidence and could be argued to the jury. (R. 307, lines 19-25). The State noted the concept of the video being longer does not show support for an argument that whatever the remainder is claimed to be, there is anything in the remainder that would be relevant. (R. 308, lines 5-11).

⁵ Defense counsel additionally argued “a confrontation clause problem and a possible hearsay problem,” since no one with personal knowledge would testify, (R. 305, lines 11-18), but that argument was not raised in the appeal.

The trial judge found that Ms. Eaglin's testimony that she received the video as a member of Facebook, and Detective McFadden's personal identification of the individuals supported the authentication requirement was met. (R. 309, line 20 – 310, line 10). Further, the video contains admission which would be admissible under Rule 801(d)(2), SCRE. (R. 310, lines 11-17). As To completeness, the State turned over the entirety of the recording that it had, thus, the defense could argue there was more to the jury, but nothing would prevent its admissibility. (R. 311, lines 7-21). Lastly, given the defense had the video prior to the August motion, there would be no prejudice or denial of due process, *i.e.*, "the analysis is the same" as that of the other materials. (R. 311, line 25 – p. 312, line 6). Defense counsel objected to the video during the trial. (R. 629, lines 18-25).

Court of Appeals Ruling:

The Court of Appeals correctly applied the abuse of discretion standard of review. (Opinion, at pp. 6-7). Factually, the Court of Appeals noted there was no evidence presented that the defense was somehow hampered in investigation or challenge to the video. (Opinion, at p. 7). Moreover, the court noted that the video was not simply of Epps, but a video made by Epps with Epps making the initial disclosure of its existence to investigating detectives. (Opinion, p. at 7). As to authentication, the Court of Appeals found no abuse of discretion in light of the witness's testimony that she watched the video in addition to receiving it from another person through Facebook. (Opinion, at p. 7). Lastly, the Court of Appeals rejected Epps's position that the rule of completeness supported suppression, finding that position was expressly rejected in *State v. Oglesby*, 384 S.C. 289, 294, 681 S.E.2d 620, 622 (Ct. App. 2009). (Opinion, at p. 8).

Reasons to Deny the Petition:

Epps shows only an ordinary review of evidence rulings under the lenient abuse of discretion standard. The arguments presented in his petition amount to mere disagreement with

the rulings and fail to demonstrate an abuse of discretion. “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). Epps shows neither.

Though referenced with the Billups statement, the video was even more clearly well-known to the defense. Epps *made* the video and Epps was the first person to key detectives in on the fact that he made the video about the victim. (*See* R. 578, lines 14-19; p. 657, lines 2-18). “The evidence is admissible to show the animus of the parties and to aid the jury in deciding who was the probable aggressor.” *State v. Taylor*, 333 S.C. 159, 168, 508 S.E.2d 870, 874 (1998). Moreover, the evidence was highly probative, and its admission was not in the least “unfair.” *See, e.g., State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (“Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.”) (quoting *United States v. Bonds*, 12 F.3d 540, 567 (6th Cir.1993)). Further, Epps fails to show an abuse of discretion in the trial court finding the clip adequately authenticated.

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” *State v. Brown*, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018) (quoting Rule 901(a), SCRE). The defense “can always argue case-specific facts bearing on th[e] risk” the offered evidence is not accurate or true. *State v. Green*, 427 S.C. 223, 234, 830 S.E.2d 711, 716 (Ct. App. 2019). Here, the trial court did not abuse its discretion in finding that the video was sent via Facebook to Ms. Eaglin, and she identified the clip as reflecting the images that she saw. That supports authentication. *State v. Hall*, 437 S.C. 107, 120, 876 S.E.2d 328, 335 (Ct. App. 2022) (considering authentication of Snapchat messages resolving that the witness offered

“received the messages from Elmore; therefore, she could have authenticated the messages with personal knowledge under Rule 901(b)(1), SCRE.”); *see also Upson v. State*, 442 S.C. 359, 367, 897 S.E.2d 564, 569 (Ct. App. 2024) (describing the use of Facebook friends listing to identify a defendant); *see also* Rule 901(b)(1) (authentication by testimony from a witness with knowledge). Lastly, Epps’s reliance on the rule of completeness is misplaced.

“Rule 106, SCRE, stands for the proposition that when a part of a recorded statement is introduced, the opposing party may require the admission of other portions to ensure the partial statements are not taken out of context.” *State v. Oglesby*, 384 S.C. 289, 294, 681 S.E.2d 620, 622 (Ct. App. 2009) (citing *State v. Cabrera–Pena*, 361 S.C. 372, 379, 605 S.E.2d 522, 525 (2004)). The right to have the remainder introduced is limited to that which the party can show is relevant to “explain[] or clarif[y]” the admitted portion; that may also be admitted. *Id.* Epps has never shown that portions of additional video could “explain[] or clarif[y]” the admitted portion. Further, the rule of completeness is not to be used to suppress the relevant matter where the remainder is not available. *Id.*, at 294, 681 S.E.2d at 623. *Accord State v. Moses*, 390 S.C. 502, 519, 702 S.E.2d 395, 404 (Ct. App. 2010) (where remainder of tape not preserved, the defense’s speculation that had it been available for the defense to review it may have allowed identification of other witnesses or other favorable evidence was “insufficient” to show a due process violation).

Again, Epps has demonstrated no cause for further review.

CONCLUSION

For all the foregoing reasons, this Court should deny the petition.

Respectfully submitted,

ALAN WILSON
Attorney General

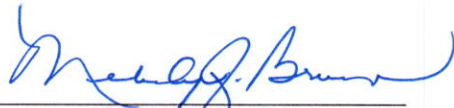
DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit
215 N. Harvin St.
Sumter, S.C. 29150
(803) 436-2185

By:



MELODY J. BROWN

S.C. Bar No. 14244

ATTORNEYS FOR RESPONDENT

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