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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Martha Rivers, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALVIN ARTIS, IV,

APPELLANT

APPELLATE CASE NO. 2025-001967

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in holding that re-trial was not barred by constitutional double jeopardy protections?
- II. Whether the trial court erred in failing to exclude rap lyrics written by Appellant when those rap lyrics were substantially more prejudicial than probative?
- III. Whether the trial court gave an unconstitutional charge on the facts by charging the jury that a self-defense claimant cannot continue to shoot to hasten the victim's death?
- IV. Whether the trial court erred in sentencing Appellant to five years' imprisonment for possession of a weapon during the commission of a violent crime when it had already sentenced Appellant to life imprisonment?

STATEMENT OF THE CASE

An Aiken County grand jury indicted Appellant for three counts of murder, possession of a machine gun, and possession of a weapon during the commission of a violent crime. R.*(Indictments). The case was tried from September 15 – 19, 2025, before the Honorable Martha M. Rivers and a jury. Tr. 1. Assistant public defenders Nicholas McCarley and Auline Middleton Ponder represented Appellant; assistant solicitors Hurmayonne Morgan and Brandy Dodds represented the state. Tr. 1. The jury convicted Appellant as indicted. Tr. 886-887. Judge Rivers sentenced Appellant to life imprisonment for each murder and five years for both weapons offenses, to run concurrently. Tr. 898.

This appeal follows.

STATEMENT OF FACTS

On June 26, 2022, during a confrontation outside of the home of Larry Carroll, Appellant shot and killed three individuals in self-defense and defense of his friends.

Background

At some point prior to the shooting incident, someone broke into Joshua Smith's (a/k/a "Pun") house. Tr. 297, ll. 12-17. On the morning of the shooting, Fantasia Carroll, Richard Carroll, Heavenly Reedy, Xabian Bailey, Antonio Jones, and Appellant were together at Xabian Bailey's grandfather's house. Tr. 608, ll. 4-6. The group received a FaceTime call from "D-Lo," who informed them that Larry Carroll wanted them to come discuss a break-in at Joshua Smith's house. Tr. 645, l. 25 – 646, l. 2. Carroll was under the impression that Appellant and his friends had committed the break-in. Tr. 662, ll. 6-8. Appellant wanted to go speak with Carroll to clear up the misunderstanding, even believing they would "laugh about it afterwards." Tr. 649, ll. 17-19.

The group walked to Larry Carroll's house. When they arrived, they encountered Larry Carroll, Tywaine Carroll, and Joshua Smith. Tr. 611, ll. 1-2. At first, the atmosphere was relatively friendly. Larry Carroll's daughter, Fantasia Carroll, started the encounter by hugging Larry and Tywaine. Tr. 611, l. 17. Appellant asked Larry Carroll to see security camera footage from the break-in at Joshua Smith's house, so that Appellant could assist him in figuring out who had done the robbery. Tr. 662, ll. 6-8. However, then Larry "spazzed" on him, saying, "n***a shut the fuck up. I know you did that shit." Tr. 662, ll. 14-15.

At that point, Cameron Carroll, Willie Garrett, and Ivan Perry came from the right side of Larry Carroll's house. Tr. 612, ll. 10-11, 18. They asked Xabian Bailey "where his gun was." Tr. 612, ll. 10-11. Cameron, Willie, and Ivan each had guns. Tr. 612, l. 25. Cameron came out first holding an AR pistol. Tr. 664, ll. 13-19. He pointed that gun at Antonio. Tr. 664, l. 21. Willie and

Ivan came from behind him. Tr. 664, ll. 21-22. Willie walked up on Appellant; Ivan walked up on Xabian. Tr. 665, ll. 1-2. Cameron asked Antonio, “where your gun at now?” Tr. 681, l. 3. Antonio responded, “All right bro, you got it, bro,” which Appellant understood to mean “I don’t have no gun. I don’t want no problem.” Tr. 681, ll. 4, 7. In response, Cameron said “huh-uh, it’s too late now. Ain’t going nowhere now.” Tr. 681, ll. 10-11. Appellant understood this to be a death threat. Tr. 681, l. 13. Willie pointed a gun at Appellant and said “oh, yeah, what’s up now,” which Appellant also perceived as a threat. Tr. 682, ll. 16-19.

Appellant put his hands up, at which time he saw Joshua Smith come from around one of the vehicles in the yard with a shotgun. Tr. 683, ll. 6-8. When Appellant saw that, out of fear for his and his friends’ lives, he pulled out his gun. Tr. 683, ll. 8-10, 16-18. Joshua Smith shot first at Xabian Bailey, then Appellant began shooting. Tr. 684, ll. 11-14. Appellant pulled his trigger eleven times,¹ and shot and killed Ivan, Cam, and Willie. Tr. 685, ll. 17-20.

First Trial

The case was first tried from March 17 – 20, 2025, before the Honorable Martha Rivers and a jury. Mistrial Tr. 1. During the state’s case-in-chief, the state introduced Appellant’s verbatim testimony from a prior hearing in a related case by reading the transcript aloud with the solicitor reading the questions and the state’s witness reading the answers. Mistrial Tr. 678-694. During that testimony, the following was read to the jury:

- Q. “You are facing the same three counts of murder...correct?”
A. “Yes, ma’am.”
Q. “And you know that you are facing anywhere the – the judge could give you 30 years, all the way to life?”

¹ Appellant’s gun was modified with a “binary trigger,” which is a mechanism that causes the gun to fire a bullet upon both the pulling *and* releasing of the trigger, rather than just the pulling of the trigger. The gun retains its classification as semi-automatic rather than fully automatic because a single pull of the trigger does not cause the gun to continue firing. Tr. 445, l. 18 – 446, l. 6.

A. “Yes, ma’am.”

Mistrial Tr. 693, l. 22 – 694, l. 1. After another question regarding the sentencing ranges on the firearms offenses, the trial court requested a bench conference and ultimately sent the jury from the courtroom. The trial court chided the state for reading the potential sentences Appellant was facing to the jury, which was “completely inappropriate and outside the purview of the jury in a fair trial.” Mistrial Tr. 696, ll. 1-2. The trial court also stated that, in a pre-trial ruling, it had ordered that there would be no mention of Xabian Bailey during Appellant’s trial but that during the transcript reading, there were several mentions of Bailey being on trial, who his attorney was, and why he was on trial, which the trial court again complained did not comply with its ruling. Mistrial Tr. 696, ll. 12-21. The trial court adjourned for the day and told the parties to come back the next morning prepared to present arguments regarding whether the trial court needed to declare a mistrial. Mistrial Tr. 696, ll. 8-11.

The next morning, Appellant moved for a mistrial “with prejudice.” Mistrial Tr. 705, ll. 10-11. Referring to *State v. Mizzell*² and *State v. Parker*,³ Appellant asserted that the state’s conduct constituted goading. Mistrial Tr. 706, ll. 18-22. Beyond the issue of revealing the potential sentence to the jury, Appellant complained of several more instances of conduct by the solicitor that constituted goading. Mistrial Tr. 705-09. Appellant also pointed out that the term “facing life” had been redacted from jail letters written by Appellant, which should have put the solicitor on notice and reminded them that sentencing issues were not to be presented to the jury. Mistrial Tr. 710, ll. 19-22. The state responded that it had no intention of forcing Appellant to move for a mistrial. Mistrial Tr. 715, ll. 23-25. Appellant responded that he did not “believe in my heart of

² 349 S.C. 326, 563 S.E.2d 315 (2002).

³ 391 S.C. 606, 707 S.E.2d 799 (2011).

hearts as just a human being that the state is trying to spike mistrial,” however, he asserted that the state’s actions merited a mistrial with prejudice. Mistrial Tr. 719, ll. 5-12.

The trial court held that sentencing issues were never proper for jury consideration outside of capital trials. Mistrial Tr. 721, ll. 18-20. The trial court was also “disturbed” that the improper evidence had come in during the state’s case-in-chief. Mistrial Tr. 722, ll. 4-5. Because the trial court was not aware of a way to fix the issue, she declared a mistrial. Mistrial Tr. 722, ll. 21-23. However, the trial court found that the state had not committed any intentional misconduct, and thus, re-trial would not be barred. Mistrial Tr. 722, ll. 23-25.

Second Trial

Appellant’s case was retried from September 15 – 19, 2025, again before Judge Rivers. Tr.

1.

Motion to Dismiss

Prior to Appellant’s re-trial, Appellant filed a written motion to dismiss on largely the same grounds as his prior motion for mistrial with prejudice. R.*(Motion to Dismiss). In that motion, Appellant outlined fourteen instances of prosecutorial misconduct that he asserted amounted to goading behavior. Specifically, Appellant asserted the state had:

- Seated a juror, then asked for that juror’s removal due to that juror’s pending criminal charges which should have been known by the solicitor prior to jury selection.
- Improperly moved to clear the courtroom to proffer testimony from Joshua Smith.
- Elicited testimony that “contraband” was found in Appellant’s jail cell.
- Failed to redact a line from an exhibit that the trial court ordered redacted.
- Called a witness to “translate” each line of Appellant’s writings—the exhibit mentioned in the last bullet point—exacerbating the problem.
- Read Appellant’s sentencing exposure into the record.
- Failed to redact another line from Appellant’s jail writings despite agreeing to do so.
- Allowed one of its witnesses to testify about “the last time” he testified.
- Referred to the trial of Appellant’s co-defendants in another question.
- Allowed its witness to refer to other jail writings that were not in evidence.
- Allowed its witness to refer to matters in the jail writings that were not entered into evidence.

- Breached its agreement with Appellant and asked one of its witnesses to attempt to identify people through nicknames.
- Failed to comply with its obligations to provide Appellant with a criminal conviction of one of its witnesses.
- Failed to redact improper evidence from the transcript of Appellant's prior testimony.

R.*(Motion to Dismiss). Appellant argued that his prior motion for mistrial was based on all these errors, not the one single sentencing exposure error that the trial court ordered a mistrial for. *Id.* In fact, the entry of the sentencing exposure was not prejudicial to Appellant at all, and thus, the trial court had improvidently granted the mistrial, because there was no "manifest necessity" for the mistrial. *Id.* Further, Appellant asserted that the numerous errors made by the state left Appellant no choice but to move for mistrial, such that the state had engaged in "goading" conduct. *Id.* The trial court stood by its prior ruling and denied the motion to dismiss. Tr. 98, l. 22.

Rap Lyrics

The state sought to introduce the redacted lyrics of a rap song that Appellant wrote while incarcerated pre-trial. R.*(State's Exhibit 45A). Before trial, Appellant moved *in limine* to exclude the exhibit, *inter alia*, under Rule 403, SCRE. Tr. 81, ll. 5-17. Specifically, Appellant argued that "under 403...it is prejudicial. [Appellant] has told everybody, and they have prior testimony that he said that he did shoot these people. This is nothing more than just to inflame the jury." Tr. 81, ll. 14-17. The state responded that the rap lyrics were specific enough to the facts of the case that they were probative and "admitted under case law." Tr. 83, ll. 1-14, 25. The trial court overruled the objection, finding that the lyrics were admissible as redacted. Tr. 86, ll. 8-10.

The state introduced the exhibit, and it was admitted, with Appellant reasserting his prior objections. Tr. 429, ll. 11-17. The state published the lyrics through Jessica Abdullah of the Aiken County Sheriff's Office. The state initially wanted Abdullah to be qualified as an expert in "interpreting rap music," but the trial court sustained Appellant's objection to the same under Rule

703, SCRE. Tr. 552, ll. 20-23; 565, ll. 14-16. Therefore, Abdullah was permitted only to read the exhibit aloud, without attempting to explain the meaning of Appellant's words. The lyrics, as redacted, were as follows:

Murder He Wrote

Man this shit here crazy [redacted] because I killed some niggas say they had some money on my head so fuck it now they missing. Sko was right beside me had to flip 'em cause them niggas trippen dropped 'em left to right and they life this shit got kinda wicked. [redacted]. Zay gotta big stick up on em. [redacted]. But its kinda late he shouldntna did it put dat witch up on 'em. Laughin at 'em cause he went out sad [redacted] Shot Lil Willie bout 8 fucking times but shoulda made it 10. Ain't tryin' to sell us guns no mo because I killed his friends. Little he know [redacted] walked down on they ass in broad day and did it with no mask. Kam had tried to run and his chest bullets came out his back. Willie talkin shit [redacted] who toting locks I just put a switch on da back. I know what my kills like. [redacted] 3 niggas dead shot in the head [redacted] Call me Mr. Up the scoc [sic] cause I know what my kills like. [redacted]. Ohh here come Mr. Walkdown I'm the one who did the shit. [redacted]. Bitch I grip this steel tight. Boughta switch now I feel ight. Bitch I up da scoc [sic] I'm 3-0 but what yo kills like. 2 um died on scene but Lil Cam he tried to put up a fight. Left 'em dead in Shiloh Heights did all that wolfin took they life. [remainder redacted].

R.*(State's Exhibit 45A). The state referenced the lyrics in its closing argument. Tr. 831, ll. 12-18.

Jury charges

During the charge conference, defense counsel requested a charge on "degree of force and continuing until the threat has ended." Tr. 803, ll. 3-4. The state requested the additional language of: "a person who fatally wounds another, even in self-defense is not entitled to hasten the victim's death by continuing to pump bullets into the victim's body." Tr. 803, ll. 13-15. Appellant objected to the request, on the grounds that it is "unduly prejudicial and very inflammatory" and not "an

appropriate jury charge.” Tr. 804, ll. 10-12. The trial court sustained the objection because it felt that the charge was a charge on the facts. Tr. 806, ll. 7-14. However, the trial court then doubled-back, stating that the charge was a correct statement of law. Tr. 808, ll. 18-20. Ultimately, the trial court agreed to charge “he’s not entitled to continue to shoot to hasten the death” but would omit “the language of pump bullets into the victim’s body” on the grounds that that portion of the charge was unsupported by the evidence. Tr. 809, ll. 6-15. Defense counsel objected again, this time adding that the state’s requested language had never been used as a jury charge. Tr. 810, ll. 5-8, 21-22. The trial court stated that it found “the language troubling” but charged it anyway. Tr. 810, l. 23. The trial court ultimately charged the jury as follows:

If the Defendant is justified in defending himself or others and in firing the first shot, then the Defendant is, also, justified in continuing to shoot until it is apparent that the danger or death or serious bodily injury has completely ended. *A person is not entitled to continue to shoot to hasten the death after a fatal wound.*

Tr. 877, ll. 1-6 (emphasis added).

Sentencing

Appellant was convicted as indicted. The trial court sentenced Appellant to concurrent terms of lifetime imprisonment on all three murders. Tr. 898. The trial court also sentenced Appellant to five years for possession of a weapon during the commission of a violent offense. Tr. 898.

This appeal follows.

STANDARDS OF REVIEW

As to Issue I, the determination of whether jeopardy has attached is a pure question of law which this Court reviews *de novo*. *State v. Erb*, 447 S.C. 84, 89, 924 S.E.2d 100, 103 (2025). A trial court's factual finding that a solicitor did not intentionally goad a mistrial is reviewed for clear error. *State v. Parker*, 391 S.C. 606, 611, 707 S.E.2d 799, 801 (2011). A factual finding is clearly erroneous if there is no evidence to support it. *State v. Provet*, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013).

As to Issue II, a trial court's evidentiary rulings are reviewed for abuse of discretion. *State v. Gibbs*, 431 S.C. 313, 320, 847 S.E.2d 495, 498 (Ct. App. 2020). "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).

As to Issue III, whether a given jury charge constitutes an unconstitutional comment on the facts should be reviewed *de novo* as a question of law. *See State v. Frasier*, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022) (holding constitutional criminal procedure questions of law are reviewed *de novo*); *State v. Miller*, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023) (extending *Frasier* to voluntariness of a confession); *cf. Powell v. Keel*, 433 S.C. 457, 462, 860 S.E.2d 344, 346 (2021) (interpretation of a statute is reviewed *de novo*).

As to Issue IV, the trial court has broad discretion when sentencing a defendant within statutory limits. *State v. Sidell*, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974). However, the trial court abuses that discretion when its ruling is based on an error of law. *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

ARGUMENTS

I.

Re-trial was barred by double jeopardy.

The trial court granted a mistrial based on the state's reading of Appellant's sentencing exposure to the jury. Although Appellant moved for a mistrial, he made the motion on different grounds which the trial court found insufficient to warrant mistrial. Had the trial court granted mistrial on one of Appellant's grounds, there would have been substantial evidence that Appellant had been goaded into moving for a mistrial by the state, thus triggering double jeopardy. However, since the trial court granted a mistrial on the grounds that the jury was told Appellant's sentencing exposure, a ground that did not provide manifest necessity for a mistrial, the trial court improvidently granted a mistrial. Thus, re-trial violated Appellant's rights under the Double Jeopardy Clauses of the Fifth Amendment and South Carolina Constitution. His conviction must be vacated.

The Fifth Amendment provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb...." *See also* S.C. Const. art. I, § 12 ("No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself."). "This guarantee consists of three separate constitutional safeguards: (1) protection from prosecution for the same offense after acquittal; (2) protection against prosecution for the same offense after conviction; and (3) protection from multiple prosecution for the same offense after an improvidently granted mistrial." *State v. Kirby*, 269 S.C. 25, 27-28, 236 S.E.2d 33, 34 (1977). A salient feature of the Double Jeopardy Clauses' protections is to protect the "valued right to have [a defendant's] trial completed by a particular tribunal." *Wade v. Hunter*, 336 U.S. 684, 689 (1949).

A mistrial should not be granted unless there is “an absolute necessity for it.” *State v. Robinson*, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004) (*quoting State v. Bilton*, 156 S.C. 324, 342, 153 S.E. 269, 176 (1930)). A mistrial declared without “absolute necessity...is equivalent to an acquittal.” *Bilton*, 156 S.C. at 342, 153 S.E. at 176. “Absolute necessity” means there was “manifest necessity” to declare a mistrial; that is, “a high degree of necessity to further the ends of justice and preserve public confidence in fair trials.” *State v. Benton*, 443 S.C. 1, 6, 901 S.E.2d 701, 703 (2024) (*quoting Renico v. Lett*, 559 U.S. 766, 774-75 (2010)). “A mistrial should be declared cautiously and only in the most urgent circumstances for plain and obvious reasons.” *Id.* The “most urgent circumstances” is a high bar, such as when “the ends of public justice would otherwise be defeated.” *United States v. Perez*, 22 U.S. (9 Wheat.) 579, 580 (1824). “The power ought to be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes.” *Id.* “The circumstances thereabout must be *extraordinary*.” *Bilton*, 156 S.C. 324, 153 S.E. at 276 (emphasis in original) (*citing State v. Briggs*, 27 S.C. 80, 2 S.E. 854 (1887)).

Here, the trial court declared a mistrial because the jury was permitted to learn of the sentencing range that Appellant faced for murder; specifically, that he was facing “30 years, all the way to life.” It is true that, generally, the jury should not be told the possible sentence of a criminal defendant in a non-capital trial. *State v. Pradubsri*, 403 S.C. 270, 276, 743 S.E.2d 98, 101 (Ct. App. 2013). However, the fact that the jury was told that Appellant faced a potential sentence of 30 years to life does not provide manifest necessity for a mistrial. Every lay juror who listens to music⁴ or watches television would be generally aware that a murder charge carries a potential life sentence.⁵ Jurors being exposed to information that they already knew, and is a matter of public

⁴ See, e.g., Merle Haggard, *Life in Prison* (Nelson 1967).

⁵ Especially with the rise of the “true crime” genre of media, it is a fair—if not obvious—assumption that at least some of the jurors in Appellant’s case have been exposed to the potential

knowledge, cannot constitute “the most urgent” or “extraordinary” circumstances. *Perez*, 22 U.S. (9 Wheat.) at 580; *Bilton*, 156 S.C. 324, 153 S.E. at 276.

An analogous example can be found in *State v. Moore*, 257 S.C. 147, 184 S.E.2d 546 (1971). In that case, our Supreme Court reviewed the trial court’s denial of a mistrial on the ground that the defendants had been seen by the jury while being shackled and prepared to be taken to the county jail. *Id.* at 151, 184 S.E.2d at 548. Relying on a Wisconsin case, our Supreme Court found no error in denying the mistrial, because jurors “normally expect to see a prisoner under some restraints.” *Id.* at 153, 184 S.E.2d at 549 (*quoting State v. Cassel*, 180 N.W.2d 607, 611 (Wis. 1970)). Because seeing the defendants in shackles while being transported was a mere meeting of the jury’s expectations, a mistrial needed not be declared. *Id.* In this case, a jury that is told that a person on trial for murder faces a life sentence is not a jury that is told any information they did not already know. That Appellant faced a life sentence for murder was consistent with the expectations of the average person. Therefore, a mistrial in this case was not necessary.⁶

Moreover, there are exceptions to the general rule that a jury must not be told a defendant’s sentencing exposure. *See, e.g., State v. Mizzell*, 349 S.C. 326, 331-32, 563 S.E.2d 315, 318 (2002) (rule that jury must not hear about defendant’s sentencing exposure does not apply when a defendant cross-examines a co-conspirator about their sentencing exposure, even when that cross-

sentencing range for a murder sentence, most likely even in South Carolina. *Cf., e.g.,* Dianna Gallagher, *What you should know as Alex Murdaugh’s attorneys take the appeal of his murder convictions to South Carolina’s highest court*, CNN (Feb. 10, 2026), <https://www.cnn.com/2026/02/10/us/alex-murdaugh-murders-appeal-trial> (last accessed Aug. 19, 2026).

⁶ Further, none of this is to mention the fact that the jury hearing information about the potential sentence is generally favorable to the *defense*, not the state. *See* J. Colin Bradley & Elanor Gordon-Smith, *Must Jurors Know the Stakes of Conviction? Sentencing, Encroachment, and Legal Proof*, 2 POLITICAL PHILOSOPHY 319, 341 (2025).

examination effectively reveals the defendant's sentencing exposure to the jury because the rule is outweighed by a defendant's Confrontation Clause right to cross-examine state's witnesses). Since the jury *is* permitted to hear of a defendant's sentencing exposure in certain circumstances, it hardly constitutes automatic "manifest necessity" for a mistrial if the jury hears about a defendant's sentencing exposure improperly. A curative instruction would have more than sufficed. *Cf. State v. Patterson*, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999) (curative instruction generally cures any alleged error); *cf. Moore*, 257 S.C. at 153, 184 S.E.2d at 549 (instruction that the jury's "duty as jurors [was] to decide this case solely on the basis of the sworn testimony in the courtroom" was sufficient to cure any prejudice from jurors seeing defendants in shackles while being transported to the county jail).

There is an interesting procedural wrinkle in this case; that Appellant moved for a mistrial, albeit on other grounds. However, this fact alone does not save the trial court's improvident grant of a mistrial for two reasons.

First, had the trial court granted a mistrial on the grounds that Appellant moved for a mistrial on, there would have been substantial evidence that the state goaded Appellant into moving for a mistrial, thus barring re-trial. When the state intentionally "goads" the defendant into moving for a mistrial, jeopardy attaches, and re-trial is barred. *Oregon v. Kennedy*, 456 U.S. 667, 676 (1982). Whether jeopardy attaches "depends upon whether the prosecutorial conduct was undertaken with the intent to subvert the Double Jeopardy Clause." *State v. Parker*, 391 S.C. 606, 613, 707 S.E.2d 799, 802 (2011). The question turns on "the prosecutor's subjective intent to cause a mistrial in order to retry the case." *Id.* (quoting *United States v. Williams*, 472 F.3d 81, 85-86 (3rd Cir. 2007)).

Here, Appellant identified thirteen different errors committed by the state, apart from the inexcusable blunder of reading Appellant's sentencing exposure into the record. Three of the errors identified were violations of court orders or prior agreements between the state and Appellant. R.*(Motion to Dismiss, at ¶¶ 4, 9, and 12). The state agreed that the errors were "numerous" but asserted that they were "natural consequences of courtroom jury trials." R.*(State's Response to Motion to Renew Mistrial, at 3). "Natural consequences" these errors were not.⁷ Their sheer numerosity would have been excellent evidence that the solicitor intended to goad Appellant into moving for a mistrial. *See Parker*, 391 S.C. at 615, 707 S.E.2d at 803 ("Standing alone, any one of these actions might not show subjective intent on the part of the solicitor to goad the defense into seeking a mistrial. Rather...the totality of what occurred in the first trial leads to the conclusion that it was the intent of the solicitor to goad defense counsel to move for a mistrial.").

Parker provides an illustrative example. In that case, the solicitor made two distinct errors that led the trial court to declare a mistrial. First, she provided defense counsel with a redacted version of a video tape which erased graphic images of the victim's body but then showed the unredacted version of the tape to the jury. 391 S.C. at 609, 707 S.E.2d at 800. Then, during closing argument, she accused defense counsel of coaching witnesses and implied to the jury that it was "their community duty to convict." *Id.* The trial court declared a mistrial, finding that "the defendant was almost goaded into the position of asking for a mistrial" and that the solicitor had committed prosecutorial misconduct. *Id.* at 610, 707 S.E.2d at 801. That decision was ultimately endorsed by the *Parker* Court. *Id.* at 613-14, 707 S.E.2d at 802. Reviewing the totality of the solicitor's errors, that Court found, "in this case, if we do not hold the solicitor intentionally caused

⁷ The trial judge's statement that she was "disturbed" by the errors also suggests that these were not routine trial errors. Mistrial Tr. 722, ll. 4-5.

the defense to move for a mistrial, then it would seem the only possible way to find that a solicitor intentionally goaded the defense would be for a solicitor to admit he or she took certain actions in an effort to goad the defense.” *Id.*

Here, the solicitor did not make two distinct errors; she made fourteen. Including multiple errors surrounding failure to redact exhibits pursuant to agreements with defense counsel or court orders, similarly to the solicitor in *Parker*. However, because the trial court declared a mistrial on entirely separate grounds, it never properly analyzed whether the solicitor’s conduct in the first trial constituted goading. Thus, it should not be held against Appellant that he moved for a mistrial. He did not move for a mistrial on the grounds upon which the mistrial was declared, and those grounds were insufficient to constitute manifest necessity as a matter of law.

Second, double jeopardy jurisprudence disapproves of any “prejudice balancing” analysis. Therefore, it is without relevance that Appellant was granted a mistrial upon different grounds than he asked for. The United States Supreme Court has long held that attempting to answer the question of which side “benefit[ted]” from a mistrial is “nothing more than an exercise in pure speculation.” *United States v. Jorn*, 400 U.S. 470, 483 (1971). A “lack of apparent harm to the defendant from the declaration of a mistrial [does] not itself justify the mistrial.” *Illinois v. Somerville*, 410 U.S. 458, 469 (1973). In *Benton*, the Supreme Court affirmed this Court’s analysis on whether a mistrial had been improvidently declared. 443 S.C. at 7, 901 S.E.2d at 704. However, this Court went further in its analysis and held: “Benton suffered no prejudice upon the granting of a mistrial because he was able to present his alibi witnesses at the subsequent trial.” *State v. Benton*, 435 S.C. 250, 260, 865 S.E.2d 919, 924 (Ct. App. 2021). The Supreme Court vacated that portion of this Court’s opinion, reaffirming that a prejudice analysis is never proper when considering

whether the double jeopardy rights of a defendant have been violated. 443 S.C. at 8, 901 S.E.2d at 704.

The issues in the present case are similar to those in *Benton*. The argument that Appellant asked for a mistrial, and thus, suffered no harm by the declaration of a mistrial on other grounds admittedly possesses logical appeal. But despite that appeal, it is a position that has been consistently rejected by the United States Supreme Court and the Supreme Court of this state. *Jorn*, 400 U.S. at 483; *Somerville*, 410 U.S. at 469; *Benton*, 443 S.C. at 8, 901 S.E.2d at 704. Thus, it is of no event that Appellant moved for a mistrial on other grounds. The trial court did not grant his motions. Rather, the trial court declared a mistrial on grounds that did not provide manifest necessity therefor. In so doing, the trial court essentially deprived Appellant to litigate his very strong contention that the state had goaded him into moving for a mistrial on the other grounds he identified. Accordingly, the trial court improvidently granted a mistrial. Appellant's re-trial violated his rights under the Double Jeopardy Clauses of the federal and state constitutions. He is entitled to vacatur of his convictions and sentences.

II.

The trial court erred by failing to exclude rap lyrics written by Appellant when those rap lyrics were substantially more prejudicial than probative.

The trial court permitted the state to publish hand-written rap lyrics authored by Appellant. Those lyrics proved nothing of consequence, as they did not reference any contested fact about the shooting. On the other hand, the lyrics were little more than a general glorification of violence and were substantially prejudicial to Appellant. This Court should reverse.

Evidence should be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE. Probative value is “the measure of the importance of that tendency to the outcome of the case.” *State v. Gray*, 408 S.C. 601, 610, 759 S.E.2d 160, 165 (Ct. App. 2014). “It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues.” *Id.* Probative value must be examined in context, considering the issues at stake in the trial in an individual case. *Id.* (citing *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)). The probative value of a given piece of evidence will necessarily depend on the “scarcity or abundance of other evidence of the same point.” *State v. James*, 355 S.C. 25, 35, 583 S.E.2d 745, 750 (2003) (quoting *Old Chief v. United States*, 519 U.S. 172, 185 (1997)). The more evidence there is of a particular fact, the less probative additional pieces of evidence proving that same fact become. *See id.*

Probative value must be weighed against the danger of unfair prejudice. Rule 403, SCRE. “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.” *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998)

(quoting *United States v. Bonds*, 12 F.3d 540, 567 (6th Cir. 1993) (internal quotation marks omitted)). Like probative value, prejudice “should be evaluated in the practical context of the issues at stake in the trial of the case.” *Gray*, 408 S.C. at 617, 759 S.E.2d at 169. “Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.” *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001). Unfair prejudice “speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” *Old Chief*, 519 U.S. at 180.

In *Cheeseboro*, our Supreme Court reviewed the admission of rap lyrics in a murder trial. 346 S.C. at 549, 552 S.E.2d at 312. In that case, the defendant shot three victims execution style after perpetrating an armed robbery at a barber shop. *Id.* at 534, 552 S.E.2d at 304. At trial, the state was permitted to introduce the lyrics of a rap song written by the defendant, entitled “The Ruckus” that he had written while incarcerated pre-trial. *Id.* at 549, 552 S.E.2d at 312. The lyrics read as follows:

Ruckus, I believe you're a perpetrator, gold and platinum hater,
cause me and J.D. is a force like Dark Vador. Who do you despise a
strong enterprise? Do the greed in your eyes lead you to tell lies?
Victimize me and Jermain Dupri, don't let me see or else there'll be
death in this industry. Want let go, set it fo' sho', I get hype like Mike
put yo' blood on the dance flo'. Blow fo' blow, toe to toe, with that
no mo'. Like the 4th of July, I spray fire in the sky. If I hear your
voice, better run like horses or like metamorphis, turn all y'all to
corpses. No fingerprints or evidence at your residence. Fools leave
clues, all I leave is a blood pool. Ten murder cases, why the sad
faces? Cause when I skipped town, I left a trail [of] bodies on the
ground. Your whole click ain't nothing but tricks, bitch pulling
sticks, grown men sucking dicks. No one bring ruckus like King
Justice, but toughest the So So Def most corruptest.

Id. at 549-50, 552 S.E.2d at 312. The Supreme Court held that the song should not have been admitted. *Id.* The trial court had admitted the song as a statement against interest under Rule 801(d)(2), SCRE, because the song “reference[d]...leaving no prints and bodies left in a pool of blood.” *Id.* However, the Supreme Court found that those references were “too vague in context” to support the admission of the evidence, which rendered their probative value “minimal.” *Id.* By contrast, the lyrics were highly prejudicial “as evidence of appellant’s bad character, *i.e.* his propensity for violence in general.” *Id.* The lyrics, rather than containing identifying details, “only contain[ed] general references glorifying violence.” *Id.*

“As courts...have explained, the visceral reaction to...lyrics may well impact the jury’s ability to understand that rap lyrics are not necessarily autobiographical statements, but rather, a well-recognized musical genre that often utilizes exaggeration, metaphor, and braggadocio for the purpose of artistic expression.” *United States v. Williams*, 663 F.Supp.3d 1085, 1137 (D. Ariz. 2023). For that reason, the probative value of rap lyrics can be low unless the lyrics “mirror or exhibit an unmistakable factual connection to the charged crimes.” *Id.* at 1140. Further, these sorts of lyrics will nearly always carry with them some danger of unfair prejudice. “A juror, after hearing profane, offensive, and violent rap lyrics written by a defendant, might conclude that the defendant is a bad person and might be more willing to convict on that impermissible ground.” *United States v. Stuckey*, 253 Fed. Appx. 468, 483 (6th Cir. 2007) (unpublished).

Here, the lyrics were substantially less probative than prejudicial to Appellant. Admittedly, the lyrics bear some resemblance to the facts of the case, at least in part. The lyrics, for example, make references to “Zay” having “a big stick up on ‘em,” and Appellant “sho[o]t[ing] Lil Willie bout 8 fuckin times.” R.*(State’s Exhibit 45A). However, the lyrics do not address any fact that was not conclusively established at trial. Appellant raised self-defense. He did not contest that he

killed the three decedents; in fact, he freely admitted it during his testimony, in addition to admitting that he fired his gun until it was empty. The fact that the lyrics provide evidence only of facts that were not at issue renders their probative value essentially non-existent. *Old Chief*, 519 U.S. at 185; *Gray*, 408 S.C. at 617, 759 S.E.2d at 169 (probative value “should be evaluated in the practical context of the issues at stake in the trial of the case.”); *contra, e.g., Bryant v. State*, 802 N.E.2d 486, 499 (Ind. Ct. App. 2004) (rap lyrics particularly relevant when defendant accused someone else of committing crime).

By contrast, the danger of unfair prejudice that the rap lyrics create is extraordinarily high, for myriad different reasons. The admission of rap lyrics at trial presents “a serious risk of inflaming the jurors and influencing them to convict a defendant on impermissible grounds.” *Williams*, 663 F.Supp.3d at 1133. Rap lyrics “interact closely with...implicit stereotypes” of “Black criminality.” Reyna Araibi, “*Every Rhyme I Write*”: *Rap Music as Evidence in Criminal Trials*, 62 ARIZ. L. REV. 805, 822 (2020). As a result, the introduction of rap lyrics creates a real risk that considerations of race, which have no place in a criminal trial, will pervade the jury’s considerations of the issues. *See Buck v. Davis*, 580 U.S. 100, 109 (2017) (“it is inappropriate to allow race to be considered as a factor in our criminal justice system.”).

Further, rap music is mere creative expression; expression that is protected by the Constitution. *See Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989). “Rap music features fictional imagery, metaphors, and exaggerated story lines.” *State v. Britton*, 710 S.W.3d 177, 206 (Tenn. Crim. App. 2025). “The danger associated with playing these [lyrics] to the jury is that the jury might regard creative expression as proof that Appellant engaged in criminal behavior based upon his rap [lyrics] instead of regarding them as nothing more than creative expression.” *Hart v. State*, 688 S.W.3d 883, 895 (Tex. Crim. App. 2024). “Most song lyrics are often fictitious or

exaggerations of real events.... Holding song lyrics to their literal meaning would lead to the following conclusions: Freddie Mercury ‘killed a man,’ Bob Marley ‘shot the sheriff,’ Macy Gray ‘committed a murder and ... got away,’ the band formerly known as The Dixie Chicks killed Earl, and classically, Johnny Cash ‘shot a man just to watch him die.’” *Id.* (footnotes omitted). “It is difficult to identify the probative value in fictional or other forms of self-expressive endeavors because it cannot be presumed that the author has acted in accordance with the views that he wrote about.” *Britton*, 710 S.E.2d at 207 (*quoting Williams*, 663 F.Supp.3d at 1133).

Appellant’s rap lyrics “include the use of the N-word and profanity and contain language and imagery of guns, violence, and murder.” *Id.* at 208. Therefore, the introduction of the lyrics “presented a serious risk of inflaming the jurors and influencing them to convict [him] on improper grounds.” *Id.*; *see also, United States v. Gamory*, 635 F.3d 480, 493 (11th Cir. 2011) (“The lyrics presented a substantial danger of unfair prejudice because they contained violence, profanity, sex, promiscuity, and misogyny and could reasonably be understood as promoting a violent and unlawful lifestyle.”). Further, the jury likely had substantial difficulty separating Appellant from his music, given that Appellant is not known as a musician. In other words, “Appellant lacked the inherent familiarity of a popular artist that provides the ability to disassociate the artist with the individual.” *Hart*, 688 S.W.3d at 895.

In sum, because the general facts of the shooting were uncontested, the probative value of Appellant’s rap lyrics was low. *See State v. Skinner*, 95 A.3d 236, 253 (N.J. 2014) (In weighing whether to admit rap lyrics, “the trial court should consider the existence of other evidence that can be used to make the same point”). By contrast, due to the myriad concerns identified by several different courts, discussed above, the risk that the rap lyrics would work unfair prejudice was extraordinarily high. “We don’t convict people for murder simply because they have written lyrics

about murder.” *Stuckey*, 253 Fed. Appx. at 483. Accordingly, the trial court abused its discretion in concluding that the rap lyrics were not substantially more prejudicial than probative.

Further, the error was not harmless. “To show prejudice, there must be a reasonable probability that the jury’s verdict was influenced by the challenged evidence or lack thereof.” *Lyles*, 379 S.C. at 334, 665 S.E.2d at 204. Error is not harmless unless it “could not reasonably have affected the result of the trial.” *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (quoting *State v. Key*, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971)). Here, Appellant’s credibility was central to his defense. Appellant admitted that he shot the three decedents. His contention was that they threatened him with firearms. The jury, upon hearing the extremely prejudicial and improper rap lyrics, would have been far less likely to believe him, for no other reason than the rap lyrics made him out to be a bad person. Due to the centrality of Appellant’s credibility to this case, it cannot be said that the error in admitting the rap lyrics “could not reasonably have affected the result of the trial.” *Mitchell, supra*. Accordingly, Appellant is entitled to a new trial. This Court should reverse.

III.

The trial court gave an unconstitutional charge on the facts by charging the jury that a self-defense claimant cannot continue to shoot to hasten the victim's death.

The trial court charged the jury that a self-defense defendant cannot continue to shoot in order to hasten the victim's death. That charge to the jury was an unconstitutional charge on the facts. Appellant's convictions should be reversed.

"Judges shall not charge juries in respect to matters of fact but shall declare the law." S.C. Const. art. V, § 21; *see State v. Brown*, 443 S.C. 196, 198-99, 904 S.E.2d 448-449-50 (2024) (collecting cases). The Constitution "forbid[s] the judge, unqualifiedly, from charging the jury in respect to matters of fact, and thus leaving such matters exclusively to the jury, unaided by any suggestions from the judge." *State v. Mitchell*, 56 S.C. 524, 35 S.E. 210, 213 (1900). The question this Court must ask is "simply whether the circuit judge erred in giving any advice or suggestion to the jury as to how they might deal with the facts." *Id.* at 214. Article V, § 21 is a limitation on judicial power itself; the provision "prohibit[s] courts from commenting to the jury on the facts of a case." *State v. Stukes*, 416 S.C. 493, 499, 787 S.E.2d 480, 483 (2016). "Accordingly, it is not within the province of the court to express an opinion to the jury on its view of the facts." *Id.*

It is a correct statement of law that "a person who fatally wounds another, even in self-defense, is not entitled to hasten the victim's death by continuing to pump bullets into the victim's body." *State v. Chhith-Berry*, 437 S.C. 527, 543-44, 878 S.E.2d 352, 361 (Ct. App. 2022) (*quoting State v. Hendrix*, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978)). However, the fact that a jury charge is a correct statement of law does not mean it is not a comment on the facts. After all, the Constitution does not provide that judges shall not comment on the facts *unless its comments are legally accurate*; it provides "Judges *shall not* charge juries in respect to matters of fact, but shall

declare the law.” S.C. Const. art. V, § 21 (emphasis added). It is also correct as a matter of law that “The testimony of a victim [in a criminal sexual conduct trial] need not be corroborated....” S.C. Code Ann. § 16-3-657. However, charging the jury as much constitutes reversible error. *Stukes*, 416 S.C. at 499, 787 S.E.2d at 483. It is also true as a matter of law that jurors may infer a murder defendant acted with malice because he used a deadly weapon, but charging the same to the jury is strictly prohibited. *State v. Burdette*, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019). While the trial court’s charge here was correct as a matter of law, it “unduly emphasize[d]” the evidence that Appellant fired his gun multiple times, “and deprive[d] the jury of its prerogative both to draw inferences and to weigh evidence.” *State v. Cheeks*, 401 S.C. 322, 328-29, 737 S.E.2d 480, 484 (2013).

Here, the trial court instructed the jury that Appellant was not entitled to continue to fire his weapon in order to hasten the decedents’ deaths. Whether Appellant used excessive force, and is thus not entitled to claim self-defense, is a pure question of fact that must be decided by the jury. However, by instructing the jury that Appellant could not continue to fire to hasten the decedents’ deaths, the trial court invaded the jury’s province to decide a crucial issue of fact. The state was free to argue this point in closing, but without help from the trial court—who the jury look to as the ultimate authority in the courtroom. *Cf. State v. Taylor*, 427 S.C. 208, 215-16, 829 S.E.2d 723, 727 (Ct. App. 2019) (“Because the trial judge is the authority figure in the courtroom, jurors look to the trial judge for guidance not only on the law, but for matters such as courtroom conduct and protocol, even permission for breaks, meals, and telephone calls. Recognizing the enormous power such influence can wield and its capacity to compromise impartiality, our constitution forbids the trial judge from commenting on the facts.”). The state is similarly allowed to argue, and the jury authorized to find, that it can infer malice from the use of a deadly weapon, or that it can believe

a sexual assault victim's testimony without corroboration. *Burdette*, 427 S.C. at 503, 832 S.E.2d at 582; *Stukes*, 416 S.C. at 499, 787 S.E.2d at 483. But by instructing the jury as much, the trial court placed significant emphasis on the existence of one single fact – the number of bullets Appellant fired – to the extent that the jury may have believed it was required as a matter of law to find Appellant guilty. That is the exact evil at which the constitutional prohibition on charging matters of facts is aimed. *See, e.g., Cheeks*, 401 S.C. at 328-29, 737 S.E.2d at 484.

In fact, the charge here serves no purpose except to place improper emphasis on an issue of fact. The first part of the charge stated: “If the Defendant is justified in defending himself or others and in firing the first shot, then the Defendant is, also, justified in continuing to shoot until it is apparent that the danger or death or serious bodily injury has completely ended.” *See State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (“when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased.”). This charge conveyed to the jury the important point that the defendant may continue to shoot “*until* it is apparent that the danger...has completely ended.” Necessarily, therefore, the charge was sufficient to convey to the jury that the defendant would not be justified in shooting *after* the danger “completely ended.” *Cf. id.* at 483, 783 S.E.2d at 813 (finding no error in trial court’s failure to charge “continuing to shoot” language when it charged “a person may use such force as is reasonably necessary....”). The add-on sentence, which told the jury that Appellant was not entitled to hasten the victims’ deaths, served only as an unconstitutional “example.” *See State v. Hughey*, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000) (trial court properly refused to provide “examples of legal provocation” in a voluntary manslaughter prosecution because the same would have been a comment on the facts), *overruled on other grounds by Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009). The state was free to argue to the jury that Appellant kept firing

after the danger had ended, and that those actions either negated self-defense, *see Chhith-Berry*, 437 S.C. at 543-44, 878 S.E.2d at 361, or implied malice, *Burdette*, 427 S.C. at 503, 832 S.E.2d at 582, or both. The state was not, however, entitled to the trial court's assistance in making those arguments. *See* 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND ch. 27 (1769) (Wallachia Publishers 2015) ("if the judge's opinion must rule the verdict, the trial by jury would be useless"). But by giving a charge on the facts, assistance is exactly what the trial court provided.

For these reasons, the trial court's jury charge constituted an unconstitutional comment on the facts. This Court should reverse.

IV.

The trial court erred by imposing a five-year sentence for possession of a weapon during the commission of a violent crime when it had already imposed a life sentence.

The five-year sentence required by S.C. Code Ann. § 16-23-490(A) expressly does not apply when the person sentenced is also sentenced to life imprisonment. The trial court's sentence to that effect should be vacated.

A person convicted of possession of a weapon during the commission of a violent crime faces a mandatory five-year sentence “in addition to the punishment provided for the principal crime.” S.C. Code Ann. § 16-23-490(A). The “five-year sentence does *not* apply,” however, “where...a life sentence without parole is imposed for the violent crime.” *Id.* (emphasis added). It is well settled that the sentence imposed by the trial court in this case is an unlawful sentence. *State v. Plumer*, 439 S.C. 346, 350, 887 S.E.2d 134, 137 (2023). Further, although the sentence was not objected to, this Court is empowered to correct the sentence anyway. *Id.* (“it is inefficient and a waste of judicial resources to delay the inevitable by requiring the appellant to file a post-conviction relief action or petition for a writ of habeas corpus”); *State v. Sledge*, 428 S.C. 40, 59-60, 832 S.E.2d 633, 644 (Ct. App. 2019) (vacating five-year sentence for possession of a weapon during a violent crime despite no objection from trial defense attorney).

For these reasons, this Court should vacate the five-year sentence imposed for possession of a weapon during the commission of a violent crime.

CONCLUSION

For the foregoing reasons, Appellant's convictions and sentences should be reversed. In the alternative, Appellant's convictions and sentences should be reversed and the case remanded for a new trial. In the second alternative, Appellant's conviction and sentence for possession of a weapon during the commission of a violent crime should be vacated.



W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of August, 2026.