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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
The Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

Respondent,

v.

JEROD DE'QUIN GOODWIN,

Appellant.

Appellate Case No. 2025-000260

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. The trial judge erred in failing to charge the jury on the law of voluntary manslaughter because appellant responded after being attacked in a violent and physical manner on four separate occasions prior to the shooting that occurred in the case.
- II. The trial judge erred in denying appellant's request for the removal of his shackles at trial because of the prejudicial impact of the jury's probable understanding that appellant was shackled, particularly where this error was exacerbated during the solicitor's cross-examination of appellant at which time he engaged appellant in a mock re-enactment of the events that led to the shooting as this highlighted the presence of the shackles to a greater extent inasmuch as the jury could certainly hear the noise of the shackles and surmise that appellant was restrained.
- III. The trial judge erred in allowing prior bad acts information (stolen gun connected to appellant) into evidence at trial because the same was irrelevant and prejudicial to the case, particularly where the prejudice was exacerbated when the solicitor used the gun issue to advance improper conscious of the community remarks at closing argument with respect to local gun dangers and in effect tied the same to a jury duty to help by issuing appropriate verdicts.
- IV. The lower court erred in allowing the solicitor to present victim impact statements during closing argument.
- V. The trial judge erred in giving a malice instruction that referenced "the intentional doing of a wrongful act without just cause or excuse" in connection with the definition of malice because this charge was burden shifting and confusing in light of appellant's self-defense claim.

STATEMENT OF THE CASE

Jerod Goodwin (hereinafter “Appellant”) was indicted for the murder of Genesis Williams (hereinafter “Victim”), grand larceny, and possession of a weapon during the commission of a violent crime. Appellant was represented by attorneys Nathaniel Brady, Megan Eigenbrot, and Tracey Pinnock. The case was prosecuted by Assistant Solicitors Dale Scott, Samuel McGlothlin, and Nicholas Fowler. He proceeded to a jury trial before the Honorable Judge Jocelyn Newman on December 18-21, 2023. At the conclusion of his trial, the jury found him guilty of murder and the possession of a weapon charge, and found him guilty of the lesser included offense of use of a vehicle without permission. (R. p. 618). The trial court sentenced Appellant to three years for the vehicle conviction, five years for the weapon conviction, and thirty years for murder.

Appellant filed a timely notice of appeal, and Wanda H. Carter, Esquire, filed the Initial Brief of Appellant on January 6, 2026. Appellant now seeks to challenge his convictions on appeal. This Brief of Respondent now follows.

STATEMENT OF FACTS

In the early morning hours of August 15, 2021, Officer Beau Gabriel responded to a call for a possible shooting victim on Dominion Drive, in Richland County. When he arrived he found Victim laying in the street, accompanied by his friend Artiz Gibson-Adeyinka (hereinafter “Artiz”). (R. p. 38-41; 83). Victim had suffered three gunshot wounds, the two wounds to his lower abdomen and groin were ultimately fatal. (R. p. 155-166). Artiz informed police that Appellant had committed the shooting, but at the time all he knew was Appellant’s nickname. He further informed police that Appellant had stolen Victim’s girlfriend’s white sedan that the three of them had been using that night. Law enforcement put out a BOLO notice (be-on-the-lookout) for the white sedan. (R. p. 45).

A police chase ensued soon after in the Woodfield Park area, wherein a white Chrysler Sedan was pursued by law enforcement. However, the chase ended without arrest. A white Chrysler sedan was later found reverse-parked in an apartment complex off of Faraway Drive. The plates were checked and the car had been reported stolen. No one returned for the vehicle and it was later seized by police. The Fugitive Task Force was contacted and a manhunt ensued. (R. p. 196-198).

On November 30, 2021, 107 days after the shooting, the fugitive task force executed an arrest warrant at a trailer park off of Hidden Valley Road, in Lexington County. The female resident, Appellant’s aunt, allowed officers to enter and they found Appellant in bed. There was a pistol on the bed at his feet, as well as a rifle. Both guns were confiscated. (R. p. 202-204; 323).

At trial, Artiz testified to the events of the night Victim was murdered. He and Victim were best friends, and on that night Victim had driven to his home to pick him up to “chill” and “ride around”. Appellant, who was also hanging out with Victim, was with Victim when they picked up

Artiz. The three young men proceeded to drink and smoke weed together as they drove around Columbia. (R. p. 50-61). During the night Artiz saw that Appellant was in possession of a gun. (R. p. 60).

Their travels brought them to Appellant's home on Greene Street in Columbia in the early morning hours. Appellant's home had a vacant lot next door that basically served as a local gathering for the neighborhood. (R. p. 62-63; 307). Artiz testified that while there, Victim got into an argument with one of the other individuals from the neighborhood. Victim was called names and ultimately Appellant joined in on taunting Victim.¹ (R. p. 62-64). Artiz saw multiple guns pulled out that night, but no shots were fired and the arguments did not devolve into physical violence. (R. p. 62-64).

Artiz recognized that people were drunk, and the situation made him nervous, so he asked Victim to take him home. (R. p. 65-66). Despite already being at Appellant's home at a very late hour, Appellant got back into the vehicle with Artiz and Victim. Appellant was seated in the back, Victim was seated in the front, and Artiz was driving. (R. p. 65-67). Artiz testified that Appellant was still armed at this time; Artiz testified that Appellant's presence and his possession of a weapon concerned him. (R. p. 68-69). Everyone was initially quiet for a time, but toward the end of the drive back to Artiz's house, the argument between Appellant and Victim about the taunting and name-calling renewed. As they drew close to Artiz's home on Dominion Drive, he stopped the car a few houses short of his own and told the two of them that he was not bringing their argument to his driveway and potentially waking up his mother. (R. p. 68-70).

¹ Both Artiz and Appellant's testimony confirmed that the nature of the name calling was that of Victim being called "a bitch" or "a pussy." (R. p. 63; 313).

Artiz got out of the car, and Victim angrily told Appellant to get out of the car too. However, Appellant refused. Victim got out of the car and repeated the demand multiple times, then followed with an effort to pull Appellant out by the shirt. (R. p. 72-74). This dispute went on for a while, and Artiz noted that Appellant had his gun in his hand. (R. p. 74-75). He attempted to get the two to calm down, but the Appellant escalated the argument by saying: “You think I’m playing with you? You think I’m playing” and then he started shooting. (R. p. 76-77). Artiz heard three gunshots. (R. p. 78).

Artiz rushed to Victim’s aid; Victim was still alive and was gasping for air. (R. p. 80). Meanwhile, he saw Appellant jump into the driver’s seat, turn the car around at Artiz’s mother’s driveway, and drive back toward where he and Victim were on the road. Appellant stopped and said something like “Come on Gen, come on Gen” and then sped away. (R. p. 80-81). Appellant did not attempt to help or call 911. (R. p. 79). Artiz had not seen Victim with a firearm that night, he did not see Victim attempt to grab Appellant’s firearm, Victim had not threatened Appellant, and though Victim had attempted to pull Appellant out of the car he had not become violent with Appellant. (R. p. 74; 78-79).

On cross-examination, Artiz conceded that his testimony differed in certain ways to the information he provided police shortly after the shooting. He had not mentioned their group’s visit to the hookah lounge that night, nor the visit to Greene Street.² (R. p. 107-109; 124). He likewise acknowledged his initial reluctance to snitch on Appellant given the death threats he might receive. Artiz repeatedly indicated that the differences were attributable to his emotional and mental state following the crime, and having just watched his friend die. (R. p. 124-125; 132-133; 137-138).

² Defense counsel also crossed Artiz on whether he had told police that he was in the backseat, as opposed to driving home. Artiz never conceded this, but his answer appeared evasive. (R. p. 124).

The forensic investigation revealed soot on Victim's clothing, which indicated that one of the shots was fired from a distance of no more than six inches away. Also, this wound demonstrated that he was shot from behind, with the bullet exiting the front of Victim's hip. (R. p. 158-159; 167). Victim's toxicology report showed that he had a BAC of .177 and had THC in his system, but no other drugs were present. (R. p. 168). Police at the scene found a shell casing, which was later matched to the stolen pistol found with Appellant at this arrest. (R. p. 186-187; 211-212; 230).

For the defense's case in chief, Appellant testified that he lives in a rough neighborhood on Greene Street, and that after driving around that night they went to the open lot beside his house where it was common for people to park, drink, and smoke. While there, he changed clothes and Victim got into a heated argument with a guy named Danny Sims. (R. p. 306-309). Appellant testified that he tried to calm everyone down, and told Victim that he needed to calm down and have respect for Appellant's home. According to Appellant, Victim believed Appellant was siding with Danny so the argument continued against Appellant. They pushed each other, and Appellant's mom ultimately came out and dispersed the gathering. From there, Appellant got back into the car with Artiz and Victim. (R. p. 310-312).

Appellant testified that though no guns were pulled on Greene Street, Victim had a gun with him that night but that it was taken from him during the confrontations on Greene Street. (R. p. 312-313). Despite Appellant's testimony, multiple witnesses – including witnesses called by the defense – claimed that they had never seen Victim with a firearm. (See R. p. 63, lines 19-24; p. 116, lines 14-19; p. 118, lines 20-21; p. 221, lines 10-16; p. 267, line 19 through p. 268, line 13; p. 450 line 18 through 451, line 7). After leaving Greene Street to take Artiz home, Appellant testified that Victim started bringing up the dispute again, protesting the people who insulted him, calling Appellant "a B word" and asking Appellant "who is he with?" (R. p. 313). Appellant

testified that he at first ignored Victim's gibes. However, before reaching Artiz's home, they stopped at the CITGO and Appellant began to respond by saying "I'm not one (a bitch) either." (R. p. 314).

The group continued on and Artiz stopped the car near his home. Once there, and to Appellant's alleged confusion, Victim started telling him to "get the fuck out of the car." Appellant refused because he was so far from his home, and Victim became angrier. He testified that Victim got out of the car, began to pull on his arm to try and pull Appellant out of the car, and repeated his demands for Appellant to get out. Appellant testified that he pushed Victim away, got out of the car and asked Artiz to drive him home. When Artiz did not respond, Appellant got back in the car and the demands and pulling resumed. Appellant testified that he got out a second time and got back in again a second time as well. (R. p. 314-317). Appellant then repeated this behavior a third time, but testified that Victim began to reach for his gun that was in his waistband. (R. p. 317).

Appellant testified that he blocked Victim's access to his gun and exited the vehicle for a third time, but then got back in the car, informed Victim that he had been on his side the whole night, and did not understand what the problem was. On this fourth entry into the vehicle, he was unable to close his door, and he testified that Victim attempted to grab his gun a second time. Appellant testified that Victim was a hothead and that he was fearful Victim would grab his gun and shoot him. In that moment he stated: "It's him going for my gun. I'm trying to pull him off of me, but in the meantime shots went from here." (R. p. 318-319).

Appellant admitted that he jumped into the driver's seat of the car and turned the car around. He testified that he told Artiz to put Victim in the car, but that he ultimately panicked and drove off. (R. p. 320-321). Appellant's testimony then reads as follows:

Q Why did you jump into the car and drive away?

A Because I was panicked. I just kind of did it. I shot a friend. I had never been in a situation like this. I don't know what to think.

Q Why did you turn around?

A Because he's a friend. I did want to help. I just didn't know how to help.

Q But you stopped; is that right? You said Artiz was out of the picture. Where was he at that point?

A As I was pulling back in, he was coming – I can't really tell you'll where he's coming from, but as I was pulling up, I seen him coming.

Q And what did you say to him at that time?

A I told Artiz, "Put him in the car. I'll take him to the hospital."

Q When you pulled up, is Gen talking?

A He's talking. Me and him are talking. I'm talking back to him (indicating).

Q And what was your understanding of what he said?

A You³ told me to leave him.

Q And said you told Artiz to put him in the car?

A Yes, ma'am.

Q What was his response?

A He didn't even try.

Q Why did you not get out and help?

A He's saying I couldn't even move, but I did open the door enough. I pulled the car right beside him, opened the door myself to tell him to put him in the car.

Q Once you do that, what do you do then?

A I guess – I guess I'm panicking. He's just sitting there, and Artiz is not doing nothing. I guess I panicked, and I just pulled off.

Q Did you pull all the way off?

A At first I just pulled up to the beginning of the road. I was saying, "Gen, come on. Come on. Gen, come on, come on." Then I end up pulling off.

Q Where did you go?

A I went home.

Q Now, Jerod, when you drive home and you're away from this whole thing, did you call 9-1-1?

A No, but I did get in touch with my lawyer. So at that time, I asked the lawyer, I gave him things that was going on with the case. I told them what was going on. They read my name. They Looked me up, and I didn't have no warrant. I wasn't a person of interest at

³ It is uncertain if this was a misspoken word or a transcription error. However, Appellant was clearly discussing Victim talking to him, and the question references what his understanding was of what Victim said. Therefore, it would appear that Appellant has testified that Victim told him to leave him in the street after having been shot multiple times.

that time, so at that time I went basically went – I went to go hide from people.

(R. p. 320-323). Appellant claims he went into hiding because he started receiving death threats, and that his mother's house had been burglarized. For that reason he fled to his Aunt's home in Lexington. (R. p. 322-324). Appellant testified that he told his ex-girlfriend that the shooting was an accident. He then testified that he fired in self-defense, out of fear for his life. (R. p. 323-324).

On cross-examination, Appellant agreed that he is a former athlete and is much larger than Victim. He conceded that he does not have a concealed weapons permit and is not legally able to own a firearm. (R. 329; 351). He then contradictorily claimed that he 1) owns no guns, 2) does not know how many guns he owns, 3) denies owning more than the two he was found with, and 4) denies that those are the only two guns he's ever owned. (R. p. 329-330). Appellant then conceded that he had been drinking Patron and smoking weed that night. (R. p. 335-336). He reiterated that Victim was armed earlier that night, but in contradiction to his direct testimony, he testified that he does not know what happened to the Victim's alleged gun but also testified that he knew Victim was (allegedly) armed at the time of the crime. (R. p. 348; 363). He further conceded that he did not have the right to remain in the vehicle after Victim demanded he get out. (R. p. 359-361).

Appellant then asserted that Victim "didn't give me time to get out the car before he began to tug on me," but agreed that he got out of the car three or four times prior to the shooting. (R. p. 361-363). He then testified that he was getting out of the car when he pulled the gun out of his waistband and fired. (R. p. 364-365). Appellant agreed that Artiz appeared to ask for help with Victim, but that he did not provide any. He testified: "I couldn't help him right then." (R. p. 371). Appellant's cross-examination concluded with his admission that Victim would still be alive if he had not illegally armed himself that night, and that he could have just walked away and avoided the entire dispute. (R. p. 371; 387; 391).

Appellant's testimony also included a discussion of his call to an attorney following the shooting. Appellant testified on direct: "I asked the lawyer, I gave him things that was going on with the case. I told them what was going on. They read my name. They looked me up, and I didn't have no warrant. I wasn't a person of interest at that time, so at that time I went basically went – I went to go hide from people." (R. p. 322). On cross, he added: "I told her what was going on. She told me in the mix of that I didn't have a warrant and wasn't a person of interest, so just lay low until she finds something out or I do have a warrant." (R. p. 374). Attorney Laura Young testified that she did not instruct Appellant to hide out. Instead, she wanted him to obtain a private attorney so that his assertion of self-defense could be made known to police. She then provided him with referrals for other attorneys.⁴ (R. p. 399). Appellant conceded that he never attempted to speak to police about the incident, despite nearly four months passing before his arrest by the fugitive task force.⁵ (R. p. 380; 455).

⁴ As a public defender, Ms. Young was not able to simply take Appellant on as a client when he called asking for advice. (R. p. 402).

⁵ Appellant provided additional witnesses on the topic of DNA from Victim's fingernail scrapings; the likelihood ratio supported Appellant's DNA being present. On cross, the witness confirmed that how and when such DNA was transferred cannot be determined and that such was demonstrated to be potentially consistent with the described tussle that took place before the shooting. (R. p. 420; 424-426). Appellant also provided the testimony of Officer Jordan regarding police's investigative efforts. It was revealed that Appellant could provide only nicknames; no names, addresses, phone numbers, or information of that sort was provided by Appellant and Officer Jordan did not hear the names Danny Sims and Joseph Jacobs until spoken of in court by Appellant. (R. p. 445; 448-449). Appellant's mother testified that Danny Sims was on Greene Street that night and tried to get Victim to calm down. (R. p. 475-476). She testified that her house had been burglarized, but that she never reported it. She testified that she soon left her home to stay with her boyfriend due to threats from others. (R. p. 477-478).

ARGUMENT

I. Appellant did not present evidence that would warrant a voluntary manslaughter charge, and as such the trial court rightfully denied the requested charge.

Standard of Review

“An appellate court will not reverse the trial judge’s decision regarding a jury charge absent an abuse of discretion.” *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). An abuse of discretion “means nothing more or less than that the ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of appellant, and therefore, in the circumstances, amounted to error of law.” *Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961). “If there is any evidence *to warrant a jury instruction*, a trial court must, upon request, give the instruction.” *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011) (emphasis added). “To justify charging the lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense. The court looks to the totality of the evidence in evaluating whether such an inference has been created.” *State v. Geiger*, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006) (internal citations omitted) “A jury charge which is substantially correct and covers the law does not require reversal.” *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010).

Analysis

Appellant’s argument is not properly preserved as the basis for the requested charge at trial differs from the argument raised on appeal. Regardless, the record does not support the “any evidence” standard for warranting a voluntary manslaughter charge in this case. The trial court therefore did not err in denying the requested charge during the charge conference.

a. Record clarifications

While Respondent has provided a detailed factual recitation above, the inconsistencies between the record and Appellant's stated facts set forth under Issue I warrant *specific* attention.

First, Appellant asserts that according to Artiz's testimony, the demand to exit the vehicle and the ensuing struggle took place at the Citgo. (See Brief of Appellant, page 5). This is not accurate. Both Artiz and Appellant testified that the demand to get out of the vehicle and the ensuing crime took place on Dominion Drive, a few houses away from Artiz's home.

Second, Appellant asserts that "Williams had a reputation of possessing and using firearms." Nowhere in the record is this established – even Appellant's own testimony and his own witnesses at trial contradict this assertion.⁶ (See R. p. 63, lines 19-24; p. 116, lines 14-19; p. 118, lines 20-21; p. 221, lines 10-16; p. 267, line 19 through p. 268, line 13; p. 450 line 18 through 451, line 7; R. p. 319, lines 10-12).

Third, Appellant's description of the events on Greene Street is simply not supported by the record, and the inconsistencies dangerously bolster the basis for which Appellant argues error concerning the denied voluntary manslaughter charge. Appellant characterizes that portion of the night as "fights erupt[ing]," the "Greene Street melee," and "the Green Street brawl." After those descriptors are given, Appellant asserts as part of his argument that Appellant went into his house to retrieve his weapon. Though Appellant does not overtly state it, the assertion is such that it would suggest Appellant armed himself as a result of the supposed "brawl" involving Victim.

Collectively and independently, these are gross misunderstandings of the record.

⁶ Appellant, who is charged with murder and attempting to convince a jury that he acted in self-defense, claimed that Victim was armed on the night of the crime. The record does not support such further than Appellant's own assertions (R. p. 313; 348-349; 440) and the Facebook video of Victim holding someone else's gun. (R. p. 119). Such does not establish "a reputation" for possessing and using firearms.

Appellant's own testimony demonstrated that upon arriving home they are talking and laughing and the "first thing" he did when he arrived home, was to go inside and change clothes. He was still in his club clothing and wanted to put on something more comfortable, which included putting on slides (a type of sandal). While inside changing, he chose to arm himself (according to Appellant). (R. p. 307-308; 347). Notwithstanding the fact that this testimony is contrary to that of his own mother (See R. p. 484-485), none of the testimony offered at trial⁷ demonstrated that his choice to arm himself was correlated to the arguments that took place on Greene Street.

Next, the description of the events that took place on Greene Street simply does not match the record facts. Appellant describes their presence at Greene Street as one of chilling and relaxing with friends while they drank and smoked. (R. p. 308-309). He then testified that some friends pulled up, which included "Danny." He described Danny as being really close to Victim, believed them to be cousins, but that Danny and Victim had a disagreement or "something going on prior to us being there that day." (R. p. 309). He then testified that Danny and Victim got "into a heated argument, a scuffle" that involved cussing, name calling, and "put[ing] their hands on each other, wrapped up, just for confirmation." (R. p. 309, lines 21-22). According to Appellant, when he made efforts to calm Victim down Victim became angry with Appellant as he believed Appellant was "tak[ing] off with Danny (or, taking Danny's side). (R. p. 309-310). This resulted in Appellant and Victim having words, calling each other names, and "mushing" each other (pressing one's hand into somebody's face). Appellant testified "it didn't go too far between us" and did not go beyond mushing. (R. p. 311; 342). Ultimately, the gathering got loud which caused Appellant's

⁷ Respondent would also note that Artiz saw Appellant with a gun in his lap while Appellant was driving earlier in the night. This was while they were at a gas station off of Fontaine Rd and Two Notch *before* they drove to Greene Street. (R. p. 56-59; 68; 109). This gas station cannot be confused with the later referenced CITGO, as Appellant testified that the CITGO was on Leesburg Road, near Artiz's house. (R. p. 355).

mother to become angry about the late-night noise. He described that they got things calmed down, and they “continued laughing, drinking, smoking around.” This calm lasted for nearly an hour, after which Artiz got tired and wanted to go home. (R. p. 311-312). Appellant testified that while he knew many of the people gathered had guns, he never saw anyone pull and point them.

Artiz’s description, though differing on certain points, likewise does not present a night like the one characterized by Appellant in briefing. Artiz testified that they were standing by the car while at Greene Street, and that there was commotion and arguing, which included people pulling out guns – though he never saw Victim with a gun that night. (R. p. 62-63). He then testified that Victim got into an argument because people had been insulting him and calling him names; Appellant ultimately joined in on this behavior. Though there was a lot of posturing and talking, Artiz testified that the night never got physical. (R. 63-64). *Neither witnesses’ account of the events on Greene Street come remotely close to the characterizations used by Appellant to build a case that Victim was acting with escalated violence throughout the night.* What the record shows is that Victim argued a lot, but despite arguing with multiple people he had restrained from physical fights or the use of force until he attempted to pull Appellant out of his girlfriend’s vehicle once he refused ejection.

As demonstrated, the collective errors in the statement of facts were severe and were specifically relevant to the argument. The facts of record simply do not, indeed, cannot support the argument.

b. The argument is not preserved for appellate review because Appellant attempts to argue different grounds on appeal than those presented to the trial court.

Appellant’s argument that the trial court erred in denying a voluntary manslaughter charge is not preserved for appellate review. A defendant is not permitted to argue one ground below and

another on appeal. *State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (citing *State v. Byram*, 326 S.C. 107, 485 S.E.2d 360 (1997); *State v. Caldwell*, 378 S.C. 268, 283, 662 S.E.2d 474, 482 (Ct. App. 2008)). Appellant appears to have done precisely that. He makes no reference to Appellant's anger, which was the basis for the requested charge at trial. He instead focuses upon Victim's actions, and inferentially, the fear such might cause. Appellant's argument is not preserved.

At trial Appellant's argument for a voluntary manslaughter charge was based upon "anger."

Though hardly a strong argument, defense counsel asserted:

I think there's been a good bit of testimony that the State has produced and that Mr. Adeyinka has talked about those prior difficulties and certainly that everyone agrees that Mr. Williams was reaching into the backseat, grabbing at him, pulling at him and trying to remove him from the vehicle. I think that in combination, if the jury is to believe that Mr. Adeyinka's testimony and Mr. Gibson's testimony is truthful, that Jerod was still standing from this issue over at Greene Street and then that continued and never interrupted which is what Mr. Adeyinka provided was kind of ***Jerod still being mad*** about that, and then this provocation leading to an incident, bit of aggression. You know, once he starts getting grabbed. I think exact words that are Mr. Gibson Adeyinka used were, ***"You think I'm playing? You think I'm playing?"*** Which I think again goes towards whether or not this is an escalating heat of passion scenario with provocation as to being physically grabbed or carried over from earlier as Mr. Gibson Adeyinka also testified. So I do think that there's been evidence presented through testimony that would go towards a manslaughter charge.

(R. p. 520(emphasis added)). In response the trial court disagreed, noting that the record demonstrated Appellant stewed in his dispute with Victim, and that even if Artiz's testimony is believed, that testimony demonstrated that there was malice in Appellant's actions.⁸ However, on appeal, Appellant 1) fails to clearly identify and discuss the emotional basis from which his heat

⁸ Such was appropriate under *State v. Funchess*, 267 S.C. 427, 430, 229 S.E.2d 331, 332 (1976).

of passion allegedly arose, and 2) absence explicit discussion, appears to rely solely on the actions of Victim as a basis for demonstrating a fearful circumstance. Appellant has attempted to switch the basis for voluntary manslaughter from anger to fear. Such is not permissible and this Court should find Issue I unpreserved for appellate review.

c. The record facts fail to constitute evidence establishing either element for voluntary manslaughter.

The record evidence and testimony fail to demonstrate any basis for which voluntary manslaughter could be charged. Appellant first characterized his shooting as an accident when he called his ex-girlfriend. Appellant then characterized it as self-defense when contacting an attorney and then testified to the same explanation at trial. Appellant even argues such in brief. (See Brief of Appellant, p. 6). However, he now argues that he should have received a voluntary manslaughter charge. In the record, evidence of legal provocation is questionable at best, and evidence of an uncontrollable impulse to do harm is non-existent. This case is a straight-forward, albeit unconvincing, argument for self-defense, and as such it was correct for the court to deny the requested jury instruction.

Voluntary manslaughter is the unlawful killing of another human being in a sudden heat of passion, brought upon by sufficient legal provocation. *State v. Walker*, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). This heat of passion must carry such sway that it would produce an “uncontrollable impulse to do violence.” *State v. Cole*, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000). It is true that our Supreme Court has ruled that self-defense and voluntary manslaughter are not mutually exclusive, but likewise our Court has found that a self-defense case can lack the necessary evidence to support voluntary manslaughter. *State v. Starnes*, 388 S.C. 590, 698 S.E.2d 604, 608–09 (2010). “Whether a voluntary manslaughter charge is warranted turns on the facts.” *Id.* at 597. As a result, the basis for sufficient legal provocation can be difficult to discern and has

led to our courts' frequent struggle to delineate it from evidence sounding in self-defense. *Id.* at 597-598. Our courts have held that an unprovoked attack can constitute sufficient legal provocation for a heat of passion killing, but they have also found that a defendant's fear alone is insufficient to satisfy an entitlement to voluntary manslaughter. *State v. Starnes*, 388 S.C. 590, 698 S.E.2d 604 (2010); See *State v. Childers*, 373 S.C. 367, 645 S.E.2d 233 (2007). "The evidence must demonstrate that the fear manifested itself in an uncontrollable impulse to do violence. *Id.* at 598-599. A jury instruction for voluntary manslaughter is only proper if there is evidence to demonstrate *both* a sudden heat of passion *and* sufficient legal provocation under the circumstances presented. *State v. Starnes*, 388 S.C. 590, 597, 698 S.E.2d 604, 608 (2010); *State v. Cole*, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000); *State v. Byrd*, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996).

The "any evidence" standard utilized in determining whether a jury charge should be given, is not one that can disregard reason and rational inference; any evidence means any evidence creating a *reasonable inference*. Numerous cases speak to this legal principle. See *State v. Moore*, 245 S.C. 416, 421, 140 S.E.2d 779, 781 (1965); *State v. Lambright*, 279 S.C. 535, 537, 309 S.E.2d 7, 8 (1983); *State v. Gilmore*, 396 S.C. 72, 82, 719 S.E.2d 688, 693 (Ct. App. 2011); *State v. Geiger*, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006) *State v. Small*, 307 S.C. 92, 94, 413 S.E.2d 870, 871 (Ct. App. 1992). As such, Appellant must do more than conjure a theoretical view of the facts to support an otherwise unsupportable inference from the evidence.

At trial, Appellant conceded that he had no lawful right to be in the car. Nevertheless, he disregarded Victim's demands to exit the vehicle and inexplicably got back into the vehicle multiple times after Victim attempted to pull him out by force. He even did so again even after Victim allegedly "waist checked" him by tapping his gun.

Victim had the right to eject Appellant from his vehicle, and he began by verbally demanding Appellant leave the vehicle. He then attempted to use nonharmful, albeit physical force. Then, if Appellant's testimony is believed, he attempted to obtain Appellant's firearm. However, at no time do the facts establish an effort by Victim to harm Appellant, as even the effort to obtain the weapon is subject to inference and could just have easily been Victim wanting to *disarm* Appellant. Respondent argues that such is not sufficient to constitute legal provocation under the circumstances.

Appellant's argument for heat of passion is even weaker. First, Appellant's exclusive focus upon Victim and his behavior is entirely misplaced. Appellant attempts to characterize Victim as being out of control and violent, but nowhere in the argument does Appellant attempt to describe *Appellant's reaction* to Victim's behavior. There is no argument establishing the requisite emotional state, heat of passion, or uncontrollable actions which voluntary manslaughter requires. He instead insinuates that Appellant's decision to shoot as being an act of fear in light of Victim's alleged behavior and simply presumes the second element is satisfied. The law requires much more, and the record cannot suffice.

When the record is fully evaluated, Appellant's testimony is simply that he was confused by Victim's anger and became fearful when Victim allegedly attempted to grab his gun. He attempted to get Victim off of him, "but in the meantime shots went from here." (R. p. 319). Here, on direct examination, Appellant barely even assigned himself agency to purposefully pulling the trigger, to say nothing of the absence of testimony tending to show that he was overcome by fear in such a way that he had an uncontrollable impulse to do harm. See *State v. Starnes*, 388 S.C. 590, 698 S.E.2d 604 (2010); See *State v. Childers*, 373 S.C. 367, 645 S.E.2d 233 (2007). On cross, Appellant indicated that he fired as part of the fight to gain control of the gun and get Victim off

of him. (R. p. 363-365). Nothing about Appellant's description of the shooting demonstrates an uncontrolled urge for violence, and Appellant therefore fails to satisfy the second element for warranting a voluntary manslaughter charge.

Appellant's argument for a voluntary manslaughter charge lacks both of the elements required. A voluntary manslaughter charge was not warranted.

II. The trial court did not abuse its discretion in requiring Appellant to remain in *nonvisible* shackles during the trial. Such was ruled upon as being necessary for courtroom security, and the court made considerable efforts to assure the shackles remained hidden.

Standard of Review

“Whether a defendant is restrained during trial is within the trial judge's discretion. The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security.” *State v. Tucker*, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995) (citing *Illinois v. Allen*, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970)). “The trial judge is the best equipped to decide the extent to which security measures should be adopted to prevent disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes.” *State v. Tucker*, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995). ““An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.”” *State v. Black*, 400 S.C. 10, 16–17, 732 S.E.2d 880, 884 (2012) (citing *State v. Jennings*, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011) (citation omitted)). “To warrant reversal, an error must result in prejudice to the appealing party.” *Id.* (citing *State v. Commander*, 396 S.C. 254, 721 S.E.2d 413 (2011)).

How the Issue was Presented at Trial

Pretrial matters began with Appellant's motion to have *all* of his shackles removed, out of concern that the jury might see or hear them. (R. p. 1). The court responded by noting that he tends to defer to the professionals in charge of security in the courthouse. To that end, he had personally spoken to Deputy Kelly as a matter of course for the day's needs in balance with respect to defendant's constitutional rights. After doing so, the trial court noted that for voir dire, the chosen solution was to remove the belly chain, keep the leg shackles, and arrange defense counsel to the other side of counsel's table to limit the need for movement on the part of the defendant. (R. p. 2-3). The court noted that those solutions had worked in the past, and the court believed them appropriate for Appellant's trial as well. He therefore denied the motion. (R. p. 3).

After further consideration of the defense's arguments, the court also agreed not to instruct counsel to stand when the court enters to further ensure the shackles remained concealed. (R. p. 4). This resolution appeared to appease the concerns for voir dire.

Counsel then addressed the belly chain and defense counsel's argument that in instances where Appellant might reach over to gain counsel's attention, he was likely to expose or rattle the chains. The court noted that these concerns are alleviated by his allowing Appellant's dominant hand to remain unshackled. The court reiterated that this resolution was pursuant to the deference to security personnel's needs, and that such was a reasonable solution. The court also noted that the jury would be on the other side of the courtroom, further reducing any concern. With that the motion was denied.

The matter was again revisited later during pretrial matters. Defense counsel asserted that when Appellant reaches for co-counsel Pinnock and is sitting back from the table, the shackles are visible from the jury box. (R. p. 16-17). The court then made additional efforts to evaluate the

circumstances. It found that *when pushed back from the table* a small amount of metal which the court could not identify as shackles (rather than a wristwatch) could be seen at the extremities of the jury box. (R. p. 17-20). It was also made known that part of the issue arose because Appellant was removing the cap of his pen. The court first noted the simple solution of keeping the pen cap off during trial. (R. p. 17-18). Then, the court noted that it is incumbent upon Appellant to remain seated closely, not actively reveal his shackling to the jury, and to keep his legs fairly still to ensure his chains do not rattle. With this, Defense counsel agreed. (R. p. 20, lines 3-10). The court then later added for the record that one of the older chairs that sits lower to the table was provided to Appellant to *further* ensure his shackles remained hidden. (R. p. 22).

Analysis

The trial court properly exercised its discretion in balancing the need for security with the constitutional rights of Appellant and ensured that the shackles were not visible to the jurors at trial. Furthermore, though *visible* shackling was not utilized, the court still placed its rationale for its decision on the record. As such, the court appropriately exercised and explained its use of discretion for shackling in this case.

“[T]he Fifth and Fourteenth Amendments prohibit the use of physical restraints *visible to the jury* absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial. *Deck v. Missouri*, 544 U.S. 622, 629, 125 S. Ct. 2007, 2012, 161 L. Ed. 2d 953 (2005)(emphasis added). The law requires a balancing of interests between the need for shackling and the defendant’s constitutional rights – and this is a matter that is within the discretion of the trial court and is well settled law. *State v. Heyward*, 441 S.C. 484, 492, 895 S.E.2d 658, 662 (2023). Our Supreme Court recently held:

This careful balancing of the competing interests—and articulation of the balancing on the record for the benefit of appellate courts—is

necessary to honor the defendant's due process rights whenever the State seeks to restrain the defendant in the jury's presence. In *United States v. Samuel*, 431 F.2d 610 (4th Cir. 1970), the United States Court of Appeals for the Fourth Circuit held, “Whenever unusual visible security measures in jury cases are to be employed, we will require the district judge to state for the record, out of the presence of the jury, the reasons therefor and give counsel an opportunity to comment thereon, as well as to persuade him that such measures are unnecessary.” 431 F.2d at 615. Similarly, the Supreme Court of the United States recognized the necessity the trial court “s[ee] the matter as one calling for discretion,” *Deck*, 544 U.S. at 634, 125 S. Ct. at 2015, 161 L. Ed. 2d at 966, and refused to sanction the “discretionary” use of shackles when the trial court did not articulate a valid reason for them and “did [not] explain why, if shackles were necessary, he chose not to provide for shackles that the jury could not see,” 544 U.S. at 634-35, 125 S. Ct. at 2015, 161 L. Ed. 2d at 966. This Court required balancing of the competing interests in *Tucker*, stating, “The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security.” 320 S.C. at 209, 464 S.E.2d at 107 (citing *Illinois v. Allen*, 397 U.S. 337, 343, 90 S. Ct. 1057, 1061, 25 L. Ed. 2d 353, 359 (1970)).

Thus, a defendant in a criminal trial may not be required to wear handcuffs, leg shackles, or other restraints in the presence of the jury unless the trial court makes specific findings on the record as to the particular reasons the restraints are necessary. If the court finds restraints are necessary, it must make every reasonable effort to ensure the restraints are not visible to the jury. See *Deck*, 544 U.S. at 629, 125 S. Ct. at 2012, 161 L. Ed. 2d at 963 (stating the Due Process Clauses of “the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial”).

Id., at 663. *Here, we do not have any indication that Appellant’s shackles were visible to the jury.*

And, as such, the trial court was well within its discretion to require the nonvisible shackles that he did. As the court noted, he conferred with security personnel to determine what restraints were needed for security personnel. He deferred to their needs and expertise, as is customary. The record shows that the court then went to considerable lengths to ensure those restraints were not visible.

The trial court fully satisfied the requirements set forth in *Deck* and reiterated by our Supreme Court in *Heyward*.

On the topic of “audible” shackles, contrary to the assertions of defense counsel, there is no authority, recent or otherwise, that extends *Deck* to cover shackles that might be heard by the jury. While some concern was addressed generally at the beginning of trial, the court noted that Appellant should be able to keep his chains from rattling by being careful and deliberate with his movements at the table. Appellant also argued that the solicitor “forc[ed] Appellant to show how the incident unfolded, which certainly exposed his leg shackles to the extent that the activity resulted in the jury hearing the shackles and thus understanding that the restraints existed.” Appellant then block quoted the questions and answers from a portion of the record. Yet, nowhere does the Solicitor force or even request Appellant to show how the shooting unfolded. Nor does the record indicate that Appellant’s leg shackles became audible to the jury. Finally, the portion of transcript cited by Appellant does not contain an objection reflective of its argument on appeal. As such, Respondent would additionally argue a lack of preservation of the issue.

Appellant has failed to demonstrate an abuse of discretion on the part of the trial court in how shackling was addressed at trial. The record demonstrates that the court made considerable efforts to keep the shackles nonvisible and allowed Appellant to have his dominant hand free for use. Nothing from the record demonstrates any abuse of discretion by the court and Appellant has failed to demonstrate a basis for prejudice arising from the court’s arrangements.

III. The trial court did not err in admitting testimony that the murder weapon was a stolen firearm. Such was not propensity evidence, it was relevant to disproving self-defense, and it also constituted the res gestae of the crime, particularly Appellant's decision to flee. Additionally, reference to the stolen firearm in connection with community conscious arguments did not rise to a level that warranted mistrial, given the facts and evidence presented.

Standard of Review

“The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.” *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). An abuse of discretion occurs when the trial court's ruling is based on an error of law or is based on findings of fact that are without evidentiary support. *State v. Perez*, 423 S.C. 491, 496–97, 816 S.E.2d 550, 553 (2018). A trial judge has considerable latitude in ruling on the admissibility of evidence, and his rulings will not be disturbed absent a showing of probable prejudice. *State v. Kelley*, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995). Likewise, “[t]he decision to grant or deny a mistrial is within the sound discretion of the trial court. The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law.” *State v. Wilson*, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010) (*State v. Harris*, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct.App.2009)).

How the Issue Was Presented at Trial

The murder weapon in this case was a stolen pistol found with Appellant at the time of his arrest. Appellant made a pretrial motion to exclude any description of the firearm as being stolen and made the same argument for an unrelated rifle. Appellant argued for exclusion under rule 404(b) and 403 and further argued a lack of relevance of the evidence. (R. p. 6-8).

In response, the solicitor noted that the facts of the case demonstrate that Appellant used the stolen firearm to commit the murder, then took Victim's car and fled the scene with the stolen weapon and was later arrested with the pistol. The NCIC database was checked, as is required of

law enforcement, and the investigation revealed that the pistol was a stolen firearm. Those are the facts of the case that the State must present. The solicitor then argued that every indication from the defense is that they would be presenting a case of self-defense, the elements of which the State is required to disprove at trial. To that end, the solicitor argued that Appellant must be without fault in bringing on the difficulty, and part of their case is to demonstrate that Appellant was unlawfully carrying a stolen firearm which he used on an unarmed Victim. As such, the evidence was relevant. (R. p. 7-8). In response, Appellant argued that such does not relate to the nexus of the crime. (R. p. 9).

The court ruled that it would allow discussion of the weapon used in the crime as being stolen but excluded any such mention relating to the rifle.

Analysis

The trial court did not abuse its discretion in admitting the evidence of the murder weapon being a stolen firearm. The evidence was relevant to the State's case to disprove the elements of self-defense and to fully explain the res gestae of Appellant's crimes that morning. Additionally, while the solicitor did invoke some community consciousness arguments related to the gun, in the context of this case, they did not rise to the level warranting the extreme measure of a mistrial. The court was within its discretion to rule as it did.

a. Admission of evidence showing the murder weapon was a stolen firearm was proper.

Rule 404 restricts the use of evidence designed to prove propensity. However, contrary to Appellant's argument, the fact that the gun was stolen does not create propensity evidence because there is nothing to link Appellant with a propensity to steal in this case. The evidence does not offend the rule and was simply relevant to the elements of self-defense and the res gestae of the

case. The court's analysis did not venture into consideration of Rule 404, because such was simply not necessary.

In order to defeat a claim of self-defense, the State must disprove that Appellant was without fault in bringing on the difficulty. The State was entitled to demonstrate fault to the jury by Appellant illegally arming himself with a stolen firearm in advance of arguments with Victim. Additionally, the fact that the weapon was stolen is particularly relevant to Appellant's behavior following the shooting. Self-defense or not, Appellant had used a stolen firearm to commit the shooting. If he stayed at the scene of the crime that fact would have inevitably been discovered. As such, that evidence relates to the State's charge of grand larceny and to the evidence of Appellant fleeing the scene. Ultimately, Appellant chose to arm himself with a stolen weapon and then use that weapon to perpetrate a crime. The stolen nature of the weapon is relevant evidence against Appellant's defense and relevant evidence to understanding the crimes that followed the shooting. Lastly, Appellant testified that he bought the gun from a friend, so the jury was informed that Appellant did not personally steal the firearm. (R. p. 308). Any prejudice from this issue is drastically reduced in light of that testimony.

b. The trial court did not err in denying Appellant's motion for mistrial, given the limited prejudice that would arise in the context of this case and the admitted evidence.

The solicitor is permitted to discuss the testimony and evidence admitted at trial and the inferences that can be drawn from such. As such, some of the complained of references to gun violence, and specifically the stolen gun used in the crime, were not improper, and the argument for including evidence of the stolen gun was likewise argued to the jury. (R. p. 553; 560). However, there are portions of the closing that ventured away from discussing the senselessness of the crime and the foolish machismo that created the dispute between Appellant and Victim and ventured into

arguments of “community consciousness.” Objections were raised and the request for a mistrial was denied. That denial was not an abuse of discretion by the trial court.

First, Appellant too broadly relies upon *State v. Liberte* in this matter. In *Liberte*, the critical issue was whether the improper community consciousness argument diluted the State’s burden of proof. That is not the issue on appeal here. The more consequential holding in *Liberte* is that “[n]ot all improper closing arguments, however, mandate reversal. ‘A new trial will not be granted unless the prosecutor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.’” *State v. Liberte*, 336 S.C. 648, 655, 521 S.E.2d 744, 748 (Ct. App. 1999) (quoting *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997)). Instead, what must occur is a review of the disputed argument “‘in the context of the entire record.’” *Id.*, (quoting *State v. Linder*, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981)). A mistrial should only be granted when absolutely necessary and is an extreme measure. *State v. Wilson*, 389 S.C. 579, 585–86, 698 S.E.2d 862, 865–66 (Ct. App. 2010); *State v. Cook*, 440 S.C. 308, 317, 891 S.E.2d 35, 39 (Ct. App. 2023). “Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence.” *State v. White*, 371 S.C. 439, 448, 639 S.E.2d 160, 164 (Ct. App. 2006)

This is not a case of gang violence. This is not a drug deal or a weapons sale. This was two friends who let their ill formed egos become bruised by insults and Appellant chose to react with the gun he had illegally armed himself with. That was the purpose of the closing argument, and in the context of the case and the evidence presented, the trial court did not abuse its discretion in denying the motion for mistrial and any error would be harmless.

This case for the jury is unmistakably a question of which story holds water. With Artiz, the jury is asked to believe that two friends got into a heated argument, and that Appellant stewed

in his anger for some time before the argument resurfaced. This caused Victim to demand Appellant get out of his vehicle and then attempt to use physical force to pull Appellant out of the backseat. Appellant refused to comply, became angry, exclaimed his malicious intent, and then fired his weapon at Victim.

Appellant, on the other hand, argued that Victim became furious with him for previously taking Danny's side in the argument and demanded he exit the vehicle. Appellant then asked the jury to believe that he got in and out of the vehicle three separate times, while in a dispute with someone *he claims had his own firearm*, and that he ultimately shot his own friend in self-defense out of fear that his armed friend might gain control of his gun and use it against him. Appellant then asked the jury to continue believing that argument for self-defense, despite 1) firing his gun three times, 2) firing one of those gunshots into his friend's *back* hip from a distance of six inches or less, 3) taking his friend's car, 4) leaving his friend in the street to die without helping or even calling 911, 5) fleeing the scene, 6) hiding out for nearly four months at his aunt's residence instead of his own, and 7) never attempting to contact police to explain his use of self-defense. Notwithstanding the numerous instances where Appellant did not appear credible, this explanation of the shooting is simply not believable.

The alleged prejudice from improper closing arguments is insubstantial. It simply cannot hide the inadequacy of Appellant's version of events and his evidence of guilt. The trial court did not abuse its discretion in denying the motion for mistrial.

IV. The trial court did not abuse its discretion in denying the motion for mistrial in light of the victim impact testimony presented during closing.

Standard of Review

“The decision to grant or deny a mistrial is within the sound discretion of the trial court. The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting

to an error of law.’” *State v. Wilson*, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010) (quoting *State v. Harris*, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct.App.2009)).

Analysis

Similar to the community consciousness argument, Appellant argues that the solicitor presented improper closing arguments that included victim impact matters. These were objected to and sustained, but the trial court denied the motion for mistrial. Again, the trial court did not abuse its discretion in its ruling.

Here, the argument for upholding the trial court’s decision to deny the motion for mistrial is the same as is argued under Issue III. Rather than reiterate the entire argument, Respondent would seek to incorporate by reference.⁹ (*Supra*, Brief of Respondent, p. 26-28). Respondent would add that the court was sure to include instructions to the jury that they are not to be swayed by passions, prejudices, or improper sympathies in evaluating this case and reaching a verdict. (R. p. 611). In light of the evidence presented at trial and the inherent nature of this case, it is trusted that they followed that instruction. This case should not succumb to reversal due to the alleged prejudice from closing arguments. Appellant received a fair trial and was rightfully convicted. That conviction should be affirmed.

⁹ Respondent would also add that some of the victim impact arguments were the consequence of an invited response. Defense counsel closed with a solemn acknowledgment that both he and the jury were going to soon be with their friends and family for the holidays, but that they would all likely be thinking about this case, and that their decision would last the rest of their lives, and the rest of Appellant’s. Invoking the Christmas holidays and the coming time with family invited a response. (R. p. 569-570).

V. The trial court did not abuse its discretion in its charge of malice to the jury. *Sellers* demonstrates that no error arises from the disputed language of the charge.

Standard of Review

“An appellate court will not reverse the trial judge’s decision regarding a jury charge absent an abuse of discretion.” *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). “A jury charge which is substantially correct and covers the law does not require reversal.” *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010).

How the Issue Was Presented at Trial

At trial, though the parties had not discussed any specific language on the topic, defense counsel raised objection to the following potential language for the court’s jury charge: “malice is a legal term implying wickedness and excluding a just cause or excuse. The term malice indicates a forum, purpose or design to do a wrongful act under the circumstances that exclude any legal right to do it.” He noted that it was a “continuing issue” that is being litigated on the basis of confusing and burden shifting language. However, he conceded that at the time of trial there was no case establishing an authority that would forbid it, only an unpublished opinion currently pending review with the South Carolina Supreme Court: *State v. Sellers*. (R. p. 517). In response, the court stated: “Understood. And I don’t even know that I charge it using that specific language.” The court further noted that it is on the record as preserved for appellate review. (R. p. 518)

During the court’s jury instructions, it charged the jury that:

[m]alice is hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict injury or under circumstances that the law will infer an evil intent. In its legal sense, however, malice does not necessarily mean ill will towards the individual injured but signifies a general malignant recklessness of the lives and safety of others or a condition of the mind which shows a depraved heart

regardless of social duty and fatally bent on mischief. In other words, a malicious killing is where the act is done without legal justification, with excuse or extenuation, and malice has frequently substantially been so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse.

(R. p. 601-602).

At the conclusion of the jury charges, Appellant simply renewed its prior objections to the discussed charges.

Analysis

The issue is not preserved, as the contested language differs substantially from the language that defense counsel referenced to the court in his preemptive objection. In any case, *Sellers* holds that language of this sort is appropriate, and there is no authority requiring the court to refrain from giving this type of instruction in a self-defense case.

Appellant argues that the court erred in giving its instruction on malice, specifically the language “the intentional doing of a wrongful act without just cause or excuse.” He argues that the Supreme Court’s decision in *Sellers* left open the question of whether such language is violative of due process when in conjunction with a self-defense case. For multiple reasons, Appellant is mistaken.

First, the manner in which the court was informed of the issue did not properly preserve the matter because the charge alerted to by defense counsel differs substantially from the charge the court gave at trial. During the pre-charge conference, the court even noted that he did not think his charges included the language argued against by counsel. The failure of counsel to raise a specific objection to the language now challenged on appeal renders the claim unpreserved for review.

Secondly, even if preserved, Appellant misinterprets *Sellers*. Appellant suggests that *Sellers* leaves open the question of whether such language is appropriate in self-defense cases, arguing essentially that this language would be *more* problematic than it was in *Sellers*. The holding in *Sellers*, however, articulates the opposite. The Court noted that the problem in *Sellers* arises because of the absence of a self-defense element to the case. Such gave rise to the question of whether the disputed charge would be confusing or risk burden shifting because it was essentially unnecessary or inapplicable. *State v. Sellers*, 442 S.C. 140, 147, 898 S.E.2d 116, 120 (2024). Ultimately, the Court concluded that it did not, but its ruling is juxtaposed to self-defense cases where such a charge is applicable and appropriate. *Id.*, at 119. (Noting the relevance of the charge because “where there is evidence the defendant acted in self-defense, it is true the State must prove the defendant acted without just cause or excuse.”).

The remaining portions of the charge also demonstrate the utility of the charge in this case. That charge of malice coincides with a court’s instruction that “if the defendant is justified in defending himself by firing a weapon, then the defendant is also justified in continuing to shoot until it is apparent that the danger of death or serious bodily injury has completely ended.” Moreover, any argument for confusion is nullified by the court further instructing the jury that “the State carries the burden to disprove self-defense beyond a reasonable doubt,” and “a person can be acting in self-defense even if he is unlawfully possessing a weapon if he was entitled to arm himself in self-defense at the time of the shooting.” (R. p. 604; 608).

There was no error on the part of the trial court in its instruction to the jury. Appellant’s conviction should therefore be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that Appellant's convictions and sentences be affirmed.

Respectfully submitted,

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