

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Aug 24 2026
SC Court of Appeals

Appeal from Dorchester County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LATOYA LASHAY FLUDD,

APPELLANT

APPELLATE CASE NO. 2025-002175

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court's decision to allow the State to amend the indictment to change the identity of the alleged victim of a vehicular homicide charge over appellant's objection and motion to quash was an error of law requiring reversal?

II. Did the trial court err in admitting an irrelevant photograph of an empty beer bottle found inside Appellant's automobile without any proof or evidence of impairment when any claimed nominal probative value was substantially outweighed by its prejudicial effect?

III. Did the trial court abuse its discretion in failing to grant a mistrial when a family member of the decedent disrupted testimony of a key witness for the State through an emotional outburst during presentation?

STATEMENT OF THE CASE

Appellant Latoya Fludd was originally indicted by a Dorchester County grand jury for the death of Kiawanna Burgess arising from a motor vehicle accident on May 5, 2023. R. *indictment. Appellant was tried before the Honorable Maite Murphy and a jury from October 20-22, 2025. R. *. Jim Adams and Christel Purvis represented Appellant and W. Baker Allen and Tyler Jenkins appeared on behalf of the State. R. *. At the start of trial, and over Appellant's objection, the trial court allowed the State to amend the indictment to reflect Heather Cox as the decedent. Tr. 5, l. 11 – 7, l. 20.

The jury convicted Appellant as charged in the amended indictment and the lower court sentenced Appellant to serve nine years' incarceration. Tr. 307, l. 22 – 308, l. 1; 323, ll. 16 – 22.

This appeal follows.

STATEMENT OF THE FACTS

In the early morning hours of May 5, 2023, Ann Mizzell was traveling in her vehicle with the intention of turning onto Highway 17-A. Tr. 144, ll. 2 – 19. Due to an approaching vehicle Mizzell identified as a "white" or "silver" SUV, Mizzell allowed it to pass her and she turned and followed this car. Tr. 144, l. 5 – 145, l. 2; State's Exhibit 25¹ (0:25:17-0:25:28). Mizzell pulled behind this "white" or "silver" vehicle and was driving behind it when the accident occurred as a vehicle coming in the other direction crossed the center line. Tr. 145, ll. 9 – 13; 146, l. 18 – 2; State's Ex. 25 (0:25:17-0:25:30). At the time of the collision, Appellant was driving a light silver 2018 Nissan Pathfinder SUV. Tr. 79, ll. 1 – 9. By contrast, decedent was driving a red 2013 Dodge Dart sedan. Tr. 79, ll. 1 – 9. Initial investigation by law enforcement indicated the decedent had crossed the center line of the highway and caused the collision. State's Ex. 25 (0:29:30; 0:35:40; 1:58:43). This conclusion conformed to Mizzell's description of the vehicle she was following being a white or silver SUV type and the decedent's car being a red sedan.

The investigators expressed confusion over the position of the vehicles following the accident, though Mizzell and her son² indicated the vehicles collided with such velocity as to make Appellant's vehicle airborne and spinning as it passed the Mizzell vehicle. Tr. 148, l. 16 – 149, l. 23; State's Ex. 25 (0:25:00-0:25:41). Following the investigation of the accident, the State adopted a theory that the vehicle Mizzell was following was in fact the small, red Dodge sedan and not the large white or silver SUV driven by Appellant.

¹ State's Exhibit 25 is body camera recording from the accident investigation which was admitted into evidence will be transported to this Court for review if required.

² Mizzell's son was not called during trial, but he confirmed his mother's eyewitness and he was driving directly behind her at the time of the accident. Tr. 148, ll. 9-12; State's Ex. 25 (0:25:00-0:29:37).

Now, Ms. Mizzell, I told you in opening, that the devil's in the details with her, right? Because I don't think -- I don't think that she is not telling the truth, certainly. I think those details are important. I think she did get behind a white SUV in Cottageville, and she saw the defendant's car. She passed her when the accident happened.

But as she testified, there were plenty of places where that car could have turned off. It's the middle of the night. She's looking out for deer. She keeps a distance behind, so she can't tell you what the color that car is when she's behind it. The only reason she thinks it's a white car -- or the only reason she thinks it's the same white car is because she got -- she got behind one there, and she saw one here.

The only thing that makes sense -- and she even conceded, she can't tell you that for sure. I mean, she doesn't know. The only thing that makes sense here is that, at some point, that car turned off, right?

Tr. 278, ll. 2 – 20.

To bolster their case, the State sought to enter a photograph taken of the inside of Appellant's vehicle that showed a beer bottle. State's Ex. 3. This photograph was introduced despite the State's acknowledgement that there was no evidence that Appellant was impaired by alcohol at the time of the collision. Tr. 281, ll. 7 – 21.

The jury convicted Appellant as charged in the amended indictment and the lower court sentenced Appellant to serve nine years' incarceration. Tr. 307, l. 22–308, l. 1; 323, ll. 16–22.

This appeal follows.

STANDARDS OF REVIEW

For the grant of the State's motion to amend the indictment and deny appellant's motion to quash.

An indictment is sufficient if the offense is stated with [enough] certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet.

State v. Tumbleston, 376 S.C. 90, 97–98, 654 S.E.2d 849, 853 (Ct. App. 2007). "A ruling on a timely objection, before the jury is sworn, that an indictment is not sufficient will result in the quashing of the indictment unless the defendant waives presentment to the grand jury and pleads guilty." Id.

For the admission of a photograph of empty beer bottle found in appellant's car.

"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. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010). "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, 732 S.E.2d 880, 884 (2012). In evaluating the preliminary facts, the trial court should use a preponderance of the evidence standard. *See* State v. Brewer, 438 S.C. 37, 882 S.E.2d 156 (2022).

For the denial of the mistrial motion.

This court reviews “a trial court's mistrial decision for abuse of discretion.” State v. Benton, 443 S.C. 1, 6, 901 S.E.2d 701, 703 (2024). “A mistrial should be declared cautiously and only in the most urgent circumstances for plain and obvious reasons.” Id.

ARGUMENTS

I. The trial court's decision to allow the State to amend the indictment to change the identity of the alleged victim of a vehicular homicide charge over appellant's objection and motion to quash was an error of law requiring reversal.

A. The indictment was fatally defective and the issue was timely raised to the lower court.

Prior to the jury being sworn, the sufficiency of the indictment was raised to the lower court. Either by design or neglect, the indictment alleged appellant violated S.C. Code Ann. § 56-5-2910(A) (2012) by causing the death of Kiawann Burgess. R.* (indictment). The State moved to amend the indictment, not to correct the spelling of the victim's name but to substitute an entirely different person, Heather Cox. Tr. 6, ll. 1 -3. Appellant's counsel objected and moved to quash the indictment. Tr. 6, l. 20 – 7, l. 2. Describing the change as akin to a scrivener's error, the trial court granted the State's motion and refused to quash the indictment. Tr. 7, ll. 9 – 20.

B. Indictments matter and the trial court committed an error of law in allowing the State's amendment over Appellant's objection and constitutional right to be tried only if properly indicted by a grand jury.

Indictments matter. In criminal trials, where the weight of the government comes to bear against an individual citizen, indictments are a foundational part of that citizen's constitutional right to due process: they put the citizen on formal notice of the charges against him and the theories the government intends to present at trial to show the citizen violated the law, thereby allowing the citizen to prepare a defense. A conviction based on unindicted conduct cannot stand.

State v. Dent, 446 S.C. 121, 125, 919 S.E.2d 394, 396 (2025). “No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury.” S.C. Code

Ann. § 17-19-10; S.C. Const. Art. I, § 11 and Art. V, § 22. “A defendant has a constitutional and statutory right to demand that a grand jury consider his case and decide whether to issue a sufficient indictment.” State v. Means, 367 S.C. 374, 383, 626 S.E.2d 348, 353 (2006).

Here, Appellant was charged under S.C. Code Ann. § 56-5-2910(A) (2012) for causing the "death of a person" which ensues "within three years as a proximate result of injury received by the driving of a vehicle in reckless disregard of the safety of others . . ." By its very nature, the statute makes the specific identity of the deceased material to the offense charged by designating a three year window from which a death may be charged under the statute. As such, the name of the victim under S.C. Code Ann. § 56-5-2910(A) (2012) is material to the underlying criminal charge.

"Amendments to an indictment are permissible if: (1) they do not change the nature of the offense; (2) the charge is a lesser included offense of the crime charged in the indictment; or (3) the defendant waives presentment to the grand jury and pleads guilty." State v. Means, 367 S.C. 374, 385-286, 626 S.E.2d 348, 355 (2006) (*citing State v. Myers*, 313 S.C. 391, 438 S.E.2d 236 (1993); see also S.C. Code Ann. § 17-19-100 (trial court “may amend the indictment ... if such amendment does not change the nature of the offense charged”)).

The State's argument that the name change was akin to a scrivener's error making the late amendment proper is an improper application of the common law concept of *idem sonans*.

The phrase "idem sonans" means "of the same sound," and if the allegation and proof of the names are capable of being sounded the same, a variance in the spelling is immaterial. Generally, if the name of a victim as written in the indictment may be pronounced in substantially the same way as the name given in the evidence, although it may not be the strictly correct pronunciation, the variance is not fatal, unless the variant orthography would likely mislead the defendant in preparing his or her defense.

40A Am. Jur. 2d Homicide § 218.

In dealing with problems created by improperly named victims in indictments, South Carolina courts have traditionally followed this concept when variances in the name of the victim in an indictment are nominal or the actual identity of the victim of the crime was not an element of the offense charged. *Compare State v. Johnson*, 314 S.C. 161, 166, 442 S.E.2d 191, 194 (Ct. App. 1994) (holding "the nature of the crime charged in the original indictments was not changed by the substitution of the victim in the amended indictments" in ruling on amending an indictment changing the victim from a corporation to an interconnect foundation) *with State v. Hutchinson*, 197 S.C. 154, 14 S.E.2d 898, 900 (1941) (holding that an indictment alleging "no such person in esse connected with this case as Gary Hutchinson, and there being insufficient similarity with the name 'Harrington' to come within the doctrine of *idem sonans*, it follows that the trial judge was in error in admitting the testimony hereinabove referred to, and in permitting the indictment to be amended in the particular aforementioned . . .").

The present case falls in line with Hutchinson and not Johnson. The identity of the victim in an action under S.C. Code Ann. § 56-5-2910(A) (2012) is material to the underlying criminal charge. The trial court erred in finding *idem sonans* justified the material alteration of the indictment. The fact that Appellant's trial counsel admitted the discovery provided the correct victim identification does not alter or change the fact that Appellant was tried under a facially defective indictment and was deprived of her constitutional right to presentment. S.C. Code Ann. § 17-19-10; S.C. Const. Art. I, § 11 and Art. V, § 22. Since Appellant declined to waive presentment, the proper course for the trial court under the facts presented here was to quash the indictment and require the State to properly present the justification for prosecution to

a grand jury. This Court should reverse Appellant's conviction and quash the indictment as originally drafted.

II. The trial court erred in admitting an irrelevant photograph of an empty beer bottle found inside Appellant's automobile without any proof or evidence of impairment since any claimed nominal probative value was substantially outweighed by its prejudicial effect.

A. The State acknowledged the prejudicial nature and the lack of other evidence which could have made the photograph relevant.

The State informed the trial court of its intention to introduce the photograph and acknowledged it would be prejudicial without proper relevance:

I guess first State's motion in limine concerns the pictures that were taken at the scene and at the tow yard, where it has a Heineken bottle in the car. Reason I bring that up in limine is I understand that that could be a -- a prejudicial thing if it's brought up without any context.

Tr. 39, ll. 6 – 11. The State signaled its intended use of the prejudicial photograph to the trial court, noting "this is not felony DUI, but alcohol intoxication is obviously a factor when it comes to reckless indifference to folks on the road." Tr. 40, ll. 16 – 18. In objecting, Appellant's counsel noted that intoxication was not investigated as a source of the accident, with no field sobriety tests, smell of alcohol testimony, or blood tests being performed, and no evidence connecting the bottle to the driver of the vehicle other than its location in the car. Tr. 41, l. 8 – 42, l. 13. Thus, the photograph lacked relevance under Rule 401 and 402, SCRE. Tr. 42, ll. 14 – 22. Counsel also noted any potential relevance was far outweighed by the prejudicial impact it would have on the jury under Rule 403, SCRE. Tr. 42, l. 23 – 43, l. 6. The trial court ruled in

favor of the State, in part on the basis that the photograph was relevant because Appellant had admitted to drinking a couple of mimosas earlier in the evening before the accident.³ In her interview with law enforcement weeks after the accident, Appellant acknowledged having "two mimosas" before 10:00 p.m. on the day of the fatal accident.⁴ State's 26 (0:14:50-0:15:16). Appellant's counsel renewed the objection during trial and the photograph was admitted to the jury as State's Exhibit 3. Tr. 79, l. 18 – 80, l. 7.⁵

B. Due to the lack of connection between the consumption of alcohol hours before the accident and the cause of the collision, the trial court's admission of the photograph was reversible error.

Courts in this state have consistently ruled that admission of evidence of intoxicants, like State's Exhibit 3, is irrelevant unless other evidence is offered to indicate impairment as a factor in an automotive collision. In Lee v. Bunch, 373 S.C. 654, 647 S.E.2d 197 (2007), our Supreme Court followed this rule noting:

Although Lee's blood alcohol level did not implicate a criminal DUI offense, *testimony of Bunch's experts constituted probative evidence of Lee's impairment that arguably contributed to the accident.* Bunch's experts, relying on the blood alcohol level of 0.036% taken several hours after the accident occurred, estimated that Lee's blood alcohol level at the time of the collision was closer to 0.066%–0.096%. At that level, according to Bunch's experts, Lee's alcohol consumption would have negatively affected Lee's judgment and his ability to multi-task, thus impairing his motorcycle driving skills.

Id., 373 at 658–59, 647 S.E.2d at 199–200. Likewise, this Court in Kennedy v. Griffin, 358 S.C. 122, 595 S.E.2d 248 (Ct. App. 2004) held that "evidence of the mere presence of marijuana,

³ State's Exhibit 26 (Interview with Appellant) will be transported and available for review by this Court.

⁴ The accident occurred at approximately 3:07 a.m. Tr. 200, ll. 19 – 22.

⁵ State's Exhibit 3 (photograph) will be transported and available for review by this Court.

without further indication of impairment, could mislead the jury. The admission of this evidence was more prejudicial than probative because there was no correlation between the marijuana and the accident." Id., 358 S.C. at 128, 595 S.E.2d at 251.

In the present case, the State offered no evidence of impairment from alcohol as a contributing factor to the collision. Under Lee and Kennedy, the absence of such a connection made State's Exhibit 3 irrelevant under Rules 401 and 402, SCRE. The trial court committed an error of law in admitting irrelevant evidence.

C. Even if remotely relevant, State's Exhibit 3 should have been excluded under Rule 403, SCRE.

Even if remotely relevant due to Appellant's acknowledged consumption of a couple of mimosas hours before the fatal collision, any such relevance, absent the connecting evidence required by Lee and Kennedy, was substantially outweighed by the prejudicial impact of State's Exhibit 3. As noted above, there was no evidence connecting any impairment of Appellant as being a factor in the collision. However, the introduction of State's Exhibit 3 allowed the jury to not just speculate that Appellant was impaired during the accident but was actively consuming alcohol at the time of the accident. The solicitor used alcohol to explain the "why" of the accident as the reason for Appellant's alleged crossing of the center line and driving at a high speed. Tr. 281, ll. 7 - 21.

As noted, this was not a case of overwhelming evidence of guilt. In fact, the eyewitness to the event placed the blame on the decedent crossing the center line since she had been following a vehicle that matched Appellant's car and not that of the decedent. As such, the trial court abused its discretion in admitting State's Exhibit 3 as lacking probative value and allowing

the jury to speculate that alcohol played a role in the accident as unduly prejudicial. This Court should reverse Appellant's conviction and remand for a new trial.

III. The trial court abused its discretion in failing to grant a mistrial when a family member of the decedent disrupted the testimony of a key witness for the State through an emotional outburst during presentation.

A. How the matter impacted trial.

The State called Sergeant Dave Thomas of the South Carolina Highway Patrol to testify regarding the response to the collision. Tr. 173, ll. 2 – 23. As part of Thomas' testimony, the State admitted several photographs of the accident scene. Tr. 175, ll. 20 – 25.⁶ To display the photographs for the jury, they were projected on screen during Thomas' testimony. Tr. 177, ll. 19 – 25. During this portion of Thomas' testimony, a family member of the decedent caused a disturbance that required a break in proceedings. Following a sidebar conference, the trial court in the presence of the jury warned the gallery:

THE JUDGE: Ladies and gentlemen of the gallery, I must warn you that I understand that this is an emotional case for both sides, but if you're unable to control your emotions, you must leave the courtroom. So no further emotions will be tolerated. I know it's difficult for both sides, but if you don't feel that you are able to do so, I'm going to go ahead and ask that you leave the courtroom now.

Tr. 179, l. 23 – 180, l. 5. Appellant's counsel asked to address the matter outside the presence of the jury, and the trial court excused the jury. Tr. 180, ll. 7 – 14. Counsel for Appellant moved for a mistrial on the basis of the disturbance and its prejudicial impact on Appellant's right to a verdict free of the emotional impact of the decedent's family.

⁶ State's Exhibits 16 – 24 will be transported and are available for review by this Court.

Your Honor, at this point, I believe I need to make a motion for a mistrial, as I'm very worried that the the jury prej--- the jury's been prejudiced -- or my client's been prejudiced by this. And I'm worried that the -- the -- you know, emotions of the jury are now heightened based off the inflammatory situation in the gallery. Based off also 403. I believe that's absolutely prejudicial and and beyond prohibitive any value there, and I would say -- yes.

And also, I -- I worry that the curative instruction is not sufficient here, based off what just happened and what was perceived by the jury.

Tr. 180, l. 16 – 181, l. 3.

The trial court denied the motion for a mistrial and gave a curative instruction to the jury.

I must remind you that you must disregard any expressions of emotion that were expressed in the courtroom, because you are to make your determination of the facts solely from the evidence that you hear from the witness stand, and not through any type of passion or sympathy.

Obviously, you must make your determination of the facts solely from the evidence that is presented and properly introduced into this Court. So you are instructed to disregard any expressions of emotion.

Tr. 184, ll. 15 – 24. Appellant's counsel renewed the motion and asserted the curative instruction would not remove the taint of the outburst. Tr. 185, ll. 3 – 6.

B. How the trial court erred.

The nature of the outburst was described by the trial court in some detail.

I would just call it more of an expression of emotion upon seeing a picture of the car from where the decedent was located, and just so the record is clear, there was no body or anything of that nature. It was basically a picture of a car on the side of the road. So I would not classify quite as much as an outburst, though the person stood up, obviously upset at seeing the victim's car in the water, but she didn't say anything or point or do anything of that nature. It was -- it was noticeable, obviously, that she was upset, but she left the courtroom immediately upon being upset.

So I did not think that that warranted a mistrial. And I think the curative instruction certainly fixed that, and no further curative instruction has been requested.

Tr. 243, ll. 9 – 24.

While the trial court attempted to reduce the impact of the event on the jury, the emotional response from the decedent's family in a case where the credibility of the Appellant and the eyewitness against the circumstantial evidence of guilt produced by the State's investigation weighed strongly in favor of granting the mistrial.

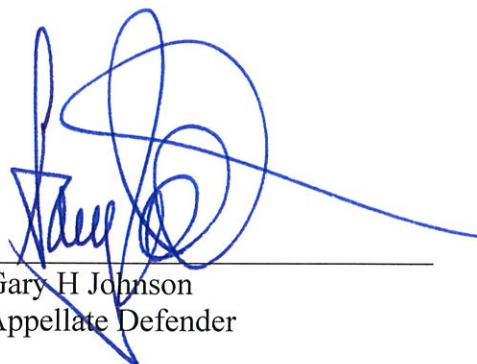
Guidance here can be found in cases in which disruptive behavior was found not to justify granting a mistrial. In State v. Anderson, 322 S.C. 89, 470 S.E.2d 103 (1996), our Supreme Court found no reversible error in the denial of a mistrial due to an outburst from the witness stand since it occurred at the beginning of trial and was very limited. Anderson was cited with approval in State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999), which also found no error during the guilt phase of a capital case since the family member's feelings and grief were already known by the jury since they had testified during trial.

Here, unlike in Anderson and Hughes, the outburst was neither early and limited nor after the jury had determined guilt. The source of the outburst, a family member in the gallery during trial, never testified. The outburst was sufficient that the trial court admonished the gallery before the mistrial request was made. “The right to a fair trial by an impartial jury in a criminal prosecution is guaranteed by the Sixth Amendment to the U.S. Constitution and by Article I, § 14, of the S.C. Constitution.” State v. Stewart, 278 S.C. 296, 303, 295 S.E.2d 627, 630-631 (1982). “[T]he very heart of a ‘fair trial’ embodies a disciplined courtroom wherein an accused’s fate is determined solely through the exercise of calm and informed judgment.” Id. at 303, 295 S.E.2d at 631. A trial court should grant a mistrial when “dictated by manifest necessity or the

ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment.” State v. Prince, 279 S.C. 30, 32-33, 301 S.E.2d 471, 472 (1983). Here, due to the unique nature of the trial of this case between the testimony of Appellant and the eyewitness version of events and the reconstructed version pushed by the State, the trial court abused its discretion in failing to grant the mistrial motion. This Court should reverse and remand this matter for a new trial.

CONCLUSION

For the reasons set forth herein, Appellant respectfully requests that her conviction be reversed and the matter remanded to the lower court for further proceedings.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of August, 2026.