

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO JEROME GREEN, JR.,

APPELLANT

APPELLATE CASE NO. 2025-001730

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
STANDARDS OF REVIEW	7
ARGUMENTS	
I.	
The trial court erred by refusing to instruct the jury on the lesser-included offense of voluntary manslaughter where there was some evidence of provocation and the solicitor “opened the door” to the charge in her opening statement.	8
II.	
The trial court erred in failing to exercise discretion when denying Appellant’s request for time-served credit for the period of time he spent on monitored house arrest.	12
CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases

<i>Leggette v. State</i> , 440 S.C. 590, 892 S.E.2d 153 (Ct. App. 2023)	8
<i>Robertson v. State</i> , 276 S.C. 356, 278 S.E.2d 770 (1981).	13
<i>Samples v. Mitchell</i> , 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997)	14
<i>State v. Alexander</i> , 303 S.C. 377, 401 S.E.2d 146 (1991).	11
<i>State v. Black</i> , 400 S.C. 10, 732 S.E.2d 880 (2012).	7
<i>State v. Cole</i> , 338 S.C. 97, 525 S.E.2d 511 (2000).	7, 8
<i>State v. Davis</i> , 50 S.C. 405, 27 S.E. 905 (1897)	9
<i>State v. Field</i> , 429 S.C. 578, 840 S.E.2d 548 (2020)	12
<i>State v. Foster</i> , 354 S.C. 614, 582 S.E.2d 426 (2003).	11
<i>State v. Franklin</i> , 267 S.C. 240, 226 S.E.2d 896 (1976).....	13
<i>State v. Hawes</i> , 411 S.C. 188, 767 S.E.2d 707 (2015).....	14
<i>State v. Herring</i> , 118 S.C. 386, 110 S.E. 668 (1922).....	10
<i>State v. Higgins</i> , 357 S.C. 382, 593 S.E.2d 180 (Ct. App. 2004)	12
<i>State v. Hill</i> , 314 S.C. 330, 444 S.E.2d 255 (1994)	14
<i>State v. Hudson</i> , 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999)	13
<i>State v. Kornahrens</i> , 290 S.C. 281, 350 S.E.2d 180 (1986)	8
<i>State v. Larumbo</i> , 16 S.C.L. 183 (1824)	11
<i>State v. Lowry</i> , 315 S.C. 396, 434 S.E.2d 272 (1993).	9
<i>State v. Martin</i> , 216 S.C. 129, 57 S.E.2d 55 (1949)	9, 10
<i>State v. Pogue</i> , 430 S.C. 384, 844 S.E.2d 397 (Ct. App. 2020).....	7
<i>State v. Rice</i> , 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007).....	11

<i>State v. Sams</i> , 410 S.C. 303, 764 S.E.2d 511 (2014).....	7
<i>State v. Smith</i> , 44 S.C.L. 341 (1857).....	8
<i>State v. Starnes</i> , 388 S.C. 590, 698 S.E.2d 604 (2010).....	8
<i>State v. Wharton</i> , 381 S.C. 209, 672 S.E.2d 786 (2009).....	9
Rules	
Rule 403, SCORE.....	15
Statutes	
S.C. Code Ann. § 24-13-40.....	12, 13
S.C. Code Ann. § 24-23-1540.....	13
Other Authorities	
2 WHARTON’S CRIMINAL LAW § 22 (16th ed.) (Sept. 2025 update).....	9, 10

STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court erred by refusing to instruct the jury on the lesser-included offense of voluntary manslaughter where there was some evidence of provocation and the solicitor “opened the door” to the charge in her opening statement?

II.

Whether the trial court erred in failing to exercise discretion when denying Appellant’s request for time-served credit for the period of time he spent on monitored house arrest?

STATEMENT OF THE CASE

The September 2023 term of the Charleston County grand jury indicted Appellant for the offenses murder, armed robbery, and possession of a weapon during the commission of a violent crime. R. *(Indictments). Appellant's case was called to trial on August 11, 2025, before the Honorable Donald B. Hocker and a jury. Tr. 1. Melisa Gay and Sarah Norton represented Appellant; assistant solicitors Cassity Brewer and R. Hunt Russell represented the state. Tr. 1. On August 15, 2025, the jury convicted Appellant as indicted. Tr. 762-763. Judge Hocker sentenced Appellant to concurrent prison terms of thirty-three (23) years for murder, fifteen (15) years for armed robbery, and five (5) years for the weapons charge. Tr. 778.

This appeal follows.

STATEMENT OF FACTS

The state alleged that Appellant, alongside two other individuals, shot and killed Appellant's cousin during an armed robbery. Appellant was ultimately convicted of murder, armed robbery, and possession of a weapon during the commission of a violent crime.

Facts

Appellant and Travis Green were cousins. The two had a close relationship, until they had a falling out caused by Green owing Appellant money. Tr. 352, l. 23 – 354, l. 2; (State's Exhibit No. 103) (screenshot) (on file with the Court). On October 29, 2021, Appellant reached out to Derrick Stewart, telling Stewart that Green had just "reupped," meaning that Green, a drug dealer, had just received a new supply of marijuana. Tr. 357, ll. 1-5. Appellant and Stewart agreed to set up a drug deal between Stewart and Green, at which time Appellant and Stewart would "lick," or rob, Green. Tr. 363, l. 2 – 364, l. 25. Appellant and Stewart picked up Brian Sease, and the three went to Pinecrest Green Apartments to meet Green. Tr. 392, ll. 6-11. Green was sitting in his car when the three arrived. Sease got into the car with Green. Tr. 400, ll. 4-13. Green gave Sease a price for the marijuana that was different from the price they previously discussed. Tr. 403, ll. 11-20. Sease began pretending to count out money in the backseat, then pulled out a gun and held it to Green's head. Tr. 403, ll. 11-23. Stewart testified that Appellant then pulled out his own gun and pointed it at Green. Tr. 404, l. 2.

The facts of what happened next are contested, but all agree that someone took Green's backpack containing marijuana out of Green's car, and then Green was shot and killed. Tr. 410, l. 7. After the shooting, Appellant asked Sease whether he had killed Green, and Sease replied "yeah...he had to." Tr. 419, l. 11.

J. Lamont Tomlin, a resident at the Pinecrest Green Apartments, was sitting in his home the day of the shooting. Tr. 144, l. 24. Tomlin testified that he heard “a rumble” and “somebody arguing.” Tr. 147, l. 1. Then, he heard gunshots: one followed by two more. Tr. 147, ll. 4-5. Dr. Nicholas Batalis, the pathologist who performed Green’s autopsy, concluded that Green had suffered four gunshot wounds to the chest, back, and left hand. Tr. 164, ll. 16-18. A .40 caliber handgun was found in the front passenger seat of Green’s vehicle. Tr. 184, ll. 18-19; 191, l. 4.¹

Trial

Prior to trial, defense counsel informed the trial court about Appellant’s behavior while on bond, in an effort to convince the trial court to allow Appellant to remain on bond during the trial. Defense counsel informed the court that Appellant had worn an electronic monitor the entire time on bond and had not violated the conditions of his bond. Tr. 59, ll. 22-25. The trial court permitted Appellant to remain on bond. Tr. 62, ll. 5-10.

During her opening statement, the solicitor laid out her theory that Appellant was guilty under the theory of accomplice liability. Specifically, the solicitor stated:

South Carolina also has a law that’s called “the hand of one is the hand of all.” And this is something that gets a little bit complicated and difficult to explain. I’m going to do my best.

But where there’s two or more people who are acting with a common intent or plan who are present at the commission of a crime, it does not matter who ultimately commits that crime if the criminal act – which here is murder and armed robbery – is a probable consequence of the acts done in pursuant to the common plan or intent. So all who are present, all who participated, and all who undertook that act are as guilty as the person or persons who committed the fatal act. So no matter – no matter which of those three fired a gun on that date, *all three are guilty*.

¹ A SLED analyst could not locate Green’s DNA on the firearm, but she was unable to perform any analysis of swabs taken from the slide or the grip of the firearm. Tr. 564, ll. 17-19; 570-571.

Tr. 104, l. 16 – 105, l. 4 (emphasis added). The defense opening statement addressed these statements directly. Defense counsel told the jury that co-defendant Derrick Stewart pleaded guilty to voluntary manslaughter. Therefore, if “all three of these people...are guilty of the same thing,” then Appellant was guilty of voluntary manslaughter and not murder, if anything. Tr. 108, l. 20 – 109, l. 8.

At the charge conference, defense counsel requested a charge on voluntary manslaughter. Counsel argued that the solicitor “said all three of these people are the same; all three of these people have done the same thing.” Tr. 683, ll. 17-19. Since the jury was presented with evidence that Stewart had been convicted of voluntary manslaughter, it would be a “travesty...and an injustice” for the jury to be barred from considering voluntary manslaughter for Appellant. Tr. 684, ll. 1-3. Defense counsel also asserted that there was evidence to support the charge. Counsel pointed to inconsistencies between Stewart’s testimony and various pieces of physical evidence and the fact that there was evidence presented that Green was shot in the hand—which supported the inference that he was trying to “shove off something or possibly even to grab back a bag that’s being taken from him.” Tr. 685, ll. 3-18. Defense counsel argued that the evidence allowed the jury to infer that there was a struggle between Green, Appellant, and the other co-defendants immediately prior to the shooting, which supported voluntary manslaughter. Tr. 684-686.

The trial court declined to charge voluntary manslaughter. Tr. 690, ll. 17-18. It held that the solicitor’s opening statement was not evidence, so any ruling could not be based on the solicitor’s words. Tr. 690, ll. 1-6. Further, the trial court believed that voluntary manslaughter could not be charged “based upon speculation or inference.” Tr. 690, ll. 16-17. The jury convicted Appellant of murder. Tr. 762-763.

After his arrest, Appellant spent 135 days in pre-trial detention. R.*(Sentencing Sheet). On March 10, 2022, he was granted a \$150,000 surety bond by the Honorable Bentley Price. R.*(Bond Order). The conditions of this bond were: (1) Appellant “shall at all times wear an electronic monitor;” (2) Appellant was “kept under strict house arrest;” (3) and the only exceptions to Appellant’s house arrest were traveling to work, for medical treatments, to court appearances, or to meetings with his attorney. R.*(Bond Order). During sentencing, trial counsel reiterated that Appellant had not violated the conditions of his bond during the pendency of the case. She stated:

[H]is bondsman, as she told you, she never had any problems with him. He never had any type of – any type of violations. I don’t know if maybe the Court could give him credit for his time on monitor [...] But he has been on bond since he made the bond and posted it and was able to get out.

Tr. 774, l. 20 – 775, l. 1. At the end of her presentation in mitigation, defense counsel asked the trial court, “Are you at all willing to give him the monitor time?” Tr. 777, ll. 4-5. The trial court responded, “No. I don’t give monitor time. And I’m sorry.” Tr. 777, ll. 6-7. The trial court proceeded to credit Appellant with 135 days’ time-served credit for the time he spent in pre-trial detention. R. *(Sentence Sheets).

STANDARDS OF REVIEW

Issue I: “In determining whether the evidence requires a charge on voluntary manslaughter, this Court must view the facts in the light most favorable to the defendant.” *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 512-13 (2000). “The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense. *State v. Sams*, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014). A charge on a lesser-included offense is only properly rejected if there is no evidence tending to show the defendant was guilty of the lesser-included offense. *Id.*

Issue II: A sentencing decision is reviewed for abuse of discretion. *State v. Pogue*, 430 S.C. 384, 386, 844 S.E.2d 397, 398 (Ct. App. 2020). “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).

ARGUMENT

I.

The trial court erred by refusing to instruct the jury on the lesser-included offense of voluntary manslaughter where there was some evidence of provocation and the solicitor “opened the door” to the charge in her opening statement.

The jury heard evidence that Green varied on an agreed upon price for the marijuana that Appellant, Sease, and Stewart were there to buy from him. The jury also heard evidence that immediately prior to the shooting, there was “a rumble” and “somebody arguing.” Further, the autopsy revealed that Green was shot in the hand, which could support and inference that he was reaching for the shooter. This, combined with Stewart’s conviction for voluntary manslaughter and the solicitor’s opening statement that all co-defendants were guilty of the same thing, supports an inference that Appellant was guilty of voluntary manslaughter rather than murder. The trial court’s refusal to charge the jury on manslaughter was therefore erroneous and should be reversed.

“Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation.” *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000) (citing *State v. Kornahrens*, 290 S.C. 281, 350 S.E.2d 180 (1986)). “Both heat of passion and sufficient legal provocation must be present at the time of the killing.” *Leggette v. State*, 440 S.C. 590, 602, 892 S.E.2d 153, 160 (Ct. App. 2023) (citing *State v. Starnes*, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010)). Heat of passion has been described as “temporary frenzy, excited by sufficient legal provocation.” *State v. Smith*, 44 S.C.L. 341, 347 (1857) (changed to American English spelling). The “sudden heat of passion upon sufficient legal provocation...need not dethrone reason entirely, or shut out knowledge and volition,” but it “must be such as would

naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.” *State v. Davis*, 50 S.C. 405, 27 S.E. 905, 911 (1897) (internal quotation marks omitted). “Passion” need not necessarily be “anger, rage, or resentment;” it could also “include fear, terror, or...excitement or nervousness.” 2 WHARTON’S CRIMINAL LAW § 22:4 (16th ed.) (Sept. 2025 update) (internal citations omitted). “To warrant the court in eliminating the offense of manslaughter it should *very clearly* appear that there is *no evidence whatsoever* tending to reduce the crime from murder to manslaughter.” *State v. Wharton*, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009) (emphasis added).

“Heated arguments” can, when combined with other circumstances, form the basis for voluntary manslaughter. In *State v. Lowry*, our Supreme Court held that, because there was “testimony which, if believed, tends to show that the decedent and [defendant] were in a heated argument and that the decedent was about to initiate a physical encounter when the shooting occurred,” the trial court erred in refusing to charge voluntary manslaughter. 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993).

While adequate legal provocation most commonly involves some sort of violence by the decedent against the defendant, that is not a requirement. Other examples of adequate legal provocation involve no violence by the decedent towards the defendant at all. For example, when the evidence showed that the decedent came to the defendant’s house after the defendant learned that the decedent had raped defendant’s wife, and defendant shot and killed decedent, our Supreme Court held that voluntary manslaughter should have been charged to the jury. *See generally, State v. Martin*, 216 S.C. 129, 57 S.E.2d 55 (1949). Another example is a defendant who comes upon his spouse and paramour in the act of having an affair. *State v. Herring*, 118

S.C. 386, 110 S.E. 668, 669 (1922). And often, the “sudden disclosure” of an adequate event “may be the equivalent of the event presently occurring.” *Compare* 2 WHARTON’S CRIMINAL LAW, *supra* § 22:6 with *Martin*, 216 S.C. 129, 57 S.E.2d 55. Furthermore, the prior acts of a decedent, even those past the point where the defendant should have cooled off, can form part of the basis for adequate legal provocation. *See generally, Martin*, 216 S.C. at 138-39, 57 S.E.2d at 59 (finding it relevant that, at the time of the killing, the defendant was “in a highly nervous state from the near to incredible...indignities his wife and he had suffered from [decedent]....”).

Here, the jury heard evidence that: (1) Appellant, his co-defendants, and Green were engaged in “a rumble” and “argu[ment];” (2) a firearm was found in the passenger seat of Green’s car; (3) Green was shot in the left hand; (4) Green owed Appellant money, which caused bad blood between them; and (5) Green attempted to increase the price of the marijuana that Appellant’s group was attempting to purchase. This constitutes at least some evidence of voluntary manslaughter.

The jury could have reasonably inferred that Green was reaching for someone, or perhaps the firearm, which is why he was shot in the left hand. This inference would be bolstered by the jury hearing that the group was engaged in “a rumble,” which it could have taken to mean physical altercation, immediately prior to the shooting. Further, the jury could have inferred that Appellant was already in a “nervous state of mind,” *see Martin*, 216 S.C. at 139, 57 S.E.2d at 59, from the fact that Green owed him money and the fact that Green attempted to cheat Appellant and his friends out of more money than agreed to for their marijuana transaction may have added to that nervousness. *See* 2 WHARTON’S CRIMINAL LAW, *supra* § 22:4 (“nervousness” can, in some cases, form the basis for adequate legal provocation). While different people may come to

different conclusions about whether a reasonable person in Appellant's position would have shot Green, that is for the jury, not the court, to determine.

Furthermore, by telling the jury that Appellant and his co-defendants were all guilty of the same act, the solicitor opened the door to the jury charge. Otherwise inadmissible evidence may become admissible when one party "opens the door" to that evidence. *State v. Rice*, 375 S.C. 302, 328, 652 S.E.2d 409, 422 (Ct. App. 2007). A party opens the door to evidence by introducing evidence which the other party may explain or rebut, even if the explanatory or rebuttal evidence was originally inadmissible. *State v. Foster*, 354 S.C. 614, 623, 582 S.E.2d 426, 431 (2003). While the concept of opening the door appears to have never been applied to a jury instruction rather than the introduction of evidence, there is no reason to depart from that standard in this case. The state was able to tell the jury that all three co-defendants were guilty of the same thing because it tried its case with an accomplice liability theory. The allegation of accomplice liability is the only reason why the state was able to introduce evidence of the criminal conduct of other people and tell the jury specifically that Stewart had pleaded guilty to voluntary manslaughter. Because the jury was told all co-defendants were guilty and was told that one of the co-defendants was guilty of voluntary manslaughter, not murder, the jury should have been permitted to decide whether Appellant was also guilty of voluntary manslaughter rather than murder. *Cf. State v. Larumbo*, 16 S.C.L. 183, 183 (1824) (when two co-defendants were convicted, one of grand larceny and the other of petit larceny, the defendant convicted of grand larceny was entitled to a new trial); *apparently abrogated by State v. Alexander*, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991).

Accordingly, this Court should reverse and remand for a new trial.

II.

The trial court erred in failing to exercise discretion when denying Appellant's request for time-served credit for the period of time he spent on monitored house arrest.

The trial court denied Appellant's request for time-served credit for the time he spent on monitored house arrest. In support of its ruling, the trial court stated simply "I don't give monitor time." However, because the General Assembly has authorized the granting of time-served credit for time spent on monitored house arrest, the trial court was required to exercise discretion in reviewing Appellant's request. The trial court's refusal to do so in every case, regardless of circumstance, is not an exercise of discretion. This Court should reverse and remand for a hearing on Appellant's request to be credited for his time on monitored house arrest.

"In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest." S.C. Code Ann. § 24-13-40. Previous versions of the statute only provided for "time served prior to trial," without reference to time on house arrest. In *State v. Higgins*, 357 S.C. 382, 593 S.E.2d 180 (Ct. App. 2004), this Court held that time-served credit under the statute could only be given to inmates who served time in a penal institution, not those on house arrest. However, the General Assembly amended the statute in 2013, allowing the grant of time-served credit for house arrest time. 2013 Act No. 31 (eff. June 7, 2023).

At the outset, for Appellant to be eligible for time-served credit, he must have been on "monitored house arrest," rather than simply on bond with a condition being that he must wear an electronic ankle monitor. *See State v. Field*, 429 S.C. 578, 580-81, 840 S.E.2d 548, 549-550 (2020) (suggesting, in *dicta*, that a defendant who was not subject to house arrest but was wearing an ankle monitor was not entitled to time-served credit for that time but ultimately

deciding the case on error preservation grounds). In this case, however, Appellant was on house arrest. While S.C. Code Ann. § 24-13-40 does not define “house arrest,” another statute in the same chapter does. *See State v. Hudson*, 336 S.C. 237, 246, 519 S.E.2d 577, 581 (Ct. App. 1999) (“Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.”). According to the South Carolina “Home Detention Act,” a “home detention” must “require that the participant remain within the interior premises or within the property boundaries of his residence at all times during the hours designated....” S.C. Code Ann. § 24-23-1540. However, the home detention statute includes exceptions for, *inter alia*, “hours in employment...or traveling to or from approved employment,” “medical...treatment.” *Id.* §§ 1540(1, 3).

Here, Appellant’s bond required that he remain on “strict house arrest,” with exceptions only allowing him to work, seek medical care, or go to court or his attorney’s office. Further, Appellant was required to wear an electronic monitoring device. Therefore, Appellant was on “monitored house arrest” as that term is properly understood when considering the entire statutory scheme.

The statute states that time spent on house arrest “*may* be” credited. S.C. Code Ann. § 24-13-40 (emphasis added). “Ordinarily, the use of the word ‘may’ in a statute signifies permission and generally means the action spoken of is optional or discretionary.” *Robertson v. State*, 276 S.C. 356, 358, 278 S.E.2d 770, 771 (1981). Therefore, like all other sentencing decisions, whether to award credit for time-served on home detention is within the “wide discretion” of the trial court. *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). However, to properly comply with a statutory grant of discretion, the trial court must *use* that discretion. “A

failure to exercise discretion amounts to an abuse of that discretion.” *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (quoting *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997)).

Here, the trial court did not exercise discretion. It did not consider Appellant’s exemplary behavior on bond, nor did it weigh the pros and cons of granting time-served credit to Appellant. Rather, the trial court simply responded to Appellant’s request with “I don’t give monitor time.” The trial court’s refusal to consider an award of time-served credit for home detention represents its refusal, in all cases, to consider granting the award. This is wholly inconsistent with the grant of discretion given to trial courts by the General Assembly.

The General Assembly could have left the statute as it was, which would result in no person being awarded credit for the time they spent on house arrest. Conversely, the General Assembly could have required the award of time-served credit for time spent on house arrest, as it does for time spent in a pre-trial detention facility. By providing that time spent on house arrest *may* be credited, however, the General Assembly necessarily anticipated trial courts to make case-by-case determinations of the wisdom of granting such credit in a specific case. The trial court’s personal rule—that no case justifies an award of time-served credit for house arrest—is directly contradictory to the General Assembly’s policy for the state. Accordingly, the trial court abused its discretion by failing to even consider granting Appellant’s request.

While the statute grants the discretion to award time-served credit for house arrest time to the trial court, this Court has the authority to correct failures to properly exercise that discretion. South Carolina appellate courts can and previously have vacated orders that were ostensibly within the sole discretion of the trial court. *See generally, e.g., State v. Hill*, 314 S.C. 330, 333, 444 S.E.2d 255, 257 (1994) (vacating award of bond to capital defendant because the circuit

court did not make specific findings of fact, even while recognizing the Constitution grants the circuit court discretion to set bond in capital cases). While it is true that the statute's permissive language never *requires* the award of time-served credit under these circumstances, the same could be said for several other decisions within the discretionary authority of the trial court. The exact same reading of Rule 403, SCRE, would tell the reader that a trial court is never *required* to exclude relevant evidence that is substantially more prejudicial than probative. *See id.* ("evidence *may* be excluded if its probative value is substantially outweighed by the danger of unfair prejudice...." (emphasis added)). However, this Court frequently reviews the trial courts' use of discretion when admitting evidence.

For these reasons, the trial court did not properly exercise its discretion when ruling on Appellant's request that he be credited with the time he spent on electronic monitoring. Because a failure to exercise discretion is an abuse of discretion, this Court should reverse so the trial court can consider Appellant's request in the first instance.

CONCLUSION

For the foregoing reasons, this Court should reverse Appellant's convictions and sentences and remand this case for a new trial. Alternatively, this Court should reverse the trial court's sentence and remand for a new sentencing hearing limited to whether Appellant should be credited for the time he spent on electronic monitoring.



W. Chandler Norville
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of September, 2026.

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APPELLATE CASE NO. 2025-001730

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 4th day of September, 2026.



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