RECEIVED
Sep 17 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Abbeville County

Frank R. Addy, Jr., Circuit Court Judge

Court of Appeals Appellate Case No. 2023-001843

THE STATE,

Petitioner,

v.

KENDRICK MONTREZ LEE,

Respondent.

THE STATE'S PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

BRIAN H. GIBBS
Assistant Attorney General
S.C. Bar No. 104137

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Phone: 803-734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

Post Office Box 516
Greenwood, South Carolina 29648

Attorneys for Petitioner

TABLE OF CONTENTS

STATEMENT OF ISSUE ON CERTIORARI 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 6

ARGUMENT 7

I. The trial court properly exercised its discretion in excusing an alternate juror before trial upon learning that the alternate juror had hearing problems, which the alternate juror did not disclose until after voir dire and selection as the second alternate juror. 7

A. Juror 191 belatedly informing the trial court of his hearing difficulty was a large part of why the trial court excused him, which is supported by the record. 8

B. Section 14-7-1020 of the South Carolina Code is not applicable to this case. 11

C. Respondent was not prejudiced by the trial court's excusal of Juror 191. . 12

CONCLUSION 13

STATEMENT OF ISSUE ON CERTIORARI

I. Whether the trial court abused its discretion in excusing an alternate juror before trial upon learning that the alternate juror had hearing problems and informed the trial court that he had only heard some of the questions posed to the jury panel in voir dire.

STATEMENT OF THE CASE

In April 2021, an Abbeville County grand jury indicted both Respondent and his uncle, Travis Arnett Lee ("Travis"),[1] for assault and battery of a high and aggravated nature (ABHAN). (R. 11-12, 13-14). On September 25-28, 2023, Respondent and Travis proceeded to a jury trial before the Honorable Frank R. Addy, Jr. (R. 25, 101, 207, 297, 538).

After a jury and two alternate jurors were selected but before they were sworn, Respondent made a *Batson* motion based on the State striking the sole Black juror—Juror 191—presented from the jury panel.[2] (R. 52-53). After lengthy discussions concerning why the State struck Juror 191, the trial court noted that Juror 191 would have been the second alternate juror if the State had not struck him and asked the State to reconsider allowing Juror 191 to sit as the second alternate juror. (R. 74). The State responded that if that was what was needed to move the case forward, then the State would not object. (R. 75). The State reemphasized that striking Juror 191 had nothing to do with race but was rather based on his two prior convictions for assault. (R. 75).

When the jury and the remaining jury panel returned to the courtroom, the trial court informed Juror 191 that he would be an alternate juror. (R. 77-78). Juror 191 had trouble hearing the trial court and informed the trial court that he could only hear out of one ear. (R. 78). The trial court asked Juror 191 whether he had been able to hear everything that had been going on in the courtroom, to which he replied "[s]ome of it." (R. 78-79). The trial court instructed Juror 191 to rejoin the jury panel and then dismissed the jury panel, including Juror 191. (R. 79-80). After the jury panel left, the trial court stated:

> The record will reflect that in conversing with [Juror 191], I think it already reflects that [Juror 191] was extremely hard of hearing, that

[1] Travis did not appeal his conviction or sentence.
[2] The trial court moved the jury and the two alternate jurors to the jury room before hearing this motion. (R. 51-52).

> did not come to the attention of the Court, obviously, until the Court was toying with the idea, or looking to put him on [the jury] in order to—to address the—the alleged *Batson* violation. He obviously remarked that he only heard some of what was said during the course of voir dire.
>
> [Respondent's counsel] did indicate that in other cases, judges have made accommodations to people who are hard of hearing. And I'm certainly open to such an accommodation if feasible. But based on [Juror 191's] difficulty hearing me, and based upon the fact that I could not be sure that he had heard all the voir dire, that he had heard all the names of the witnesses called, that he had been able to physically answer correctly, I went back on my initial idea of sitting him as an alternate juror.
>
> And the Court does find that the State's stated reasons for excusing the jurors that they excused were not pretext. There was no *Batson* violation, there was no discrimination. The fact that juror 191 had previously been convicted of several assaults as well as other crimes and because this is an assault case as well, that is a—the Court finds that that is a racially neutral reason to strike him.
>
> And that the seating and—or that the seating of juror 188, that that was because she had that disorderly conduct conviction that the strike against juror 191 was not pretextual. It's an apples and oranges comparison in this Court's mind.
>
> And of course[,] I've had a chance to consider the credibility of the proponents of the strike. And do find that there are reasons for excusing the jurors that they excused. I do find that those were valid and not in violation of *Batson*. Obviously fraudulent checks as we used to describe it is a crime of moral turpitude and in involves dishonesty. That's a different animal from a simple disorderly conduct where maybe somebody's had a little bit too much to drink. But obviously the defendant's objection is noted.
>
> And the Court wishes to note that as a practical matter, juror 191 was—may not be a—may not have been as deaf as a fence post, but he was darn—darn close.

(R. 82-83).

The following day, during discussion of Respondent's motion to quash the jury for a different reason, the trial court also stated that "if [Juror 191] couldn't hear the voir dire that I posed to him, that creates a problem if he were to become an alternate." (R. 117). Respondent did not

agree that Juror 191 was "deaf as a fence post" and took issue that the trial court did not entertain accommodating Juror 191's hearing issues. (R. 118-119). The trial court responded that even if Juror 191 could have been accommodated, Juror 191 had indicated that he did not hear all of the voir dire, which was a problem. (R. 119).

The jury found both Respondent and Travis guilty of ABHAN. (R. 669-670). The trial court sentenced Respondent to LWOP under section 17-25-45(B) of the South Carolina Code. (R. 1).

Respondent timely filed a notice of appeal in the Court of Appeals. On appeal, Respondent argued the trial court erred by (1) denying his request for a continuance; (2) denying his *Batson* motion; (3) failing to determine whether Juror 191's hearing issues could be accommodated; (4) failing to grant a mistrial based on the trial court's allegedly improper opening remarks; (5) failing to charge the jury under *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930); (6) providing the jury with a "cascading" verdict form; and (7) failing to quash the State's notice of intent to seek life without the possibility of parole under the two/three strikes law. *State v. Lee*, Op. No. 6151 at *1 n.1 (S.C. Ct. App. filed July 1, 2026).

In its published opinion, the Court of Appeals held that the trial court "erred by failing to determine whether [Juror 191's] hearing issues could be accommodated." *Lee*, Op. No. 6151 at *1. The Court of Appeals correctly noted that in South Carolina, the determination of a juror's competence is within a trial court's discretion and *not reviewable* on appeal unless wholly unsupported by the evidence. *Lee*, Op. No. 6151 at *5. The Court of Appeals then reviewed the trial court's determination of Juror 191's competence, reversing the trial court's determination despite evidence provided by Juror 191 to support that determination. *Id*. The Court of Appeals noted the trial court's "valid concern" about whether Juror 191 heard all the voir dire questioning

but found error as the trial court did not make an effort to conduct an individual voir dire for this second alternate juror. *Id*. The Court of Appeals held that because the trial court failed to engage in an inquiry of whether Juror 191's obvious hearing issues could be accommodated, the record did not indicate whether a reasonable accommodation would have allowed that juror to render efficient service; thus, the record lacked evidence to support the trial court's disqualification of Juror 191. *Id*. at *5-*6. The Court of Appeals reversed the determination of the trial court and remanded the case for a new trial. *Id*. at *6. The Court of Appeals declined to rule on the remaining six issues because its ruling on the trial court's disqualification of Juror 191 was dispositive. *Id*. at *6 n.4.

The State filed a timely petition for rehearing on the merits of the Court of Appeals opinion, and Respondent filed a timely cross-petition for rehearing arguing that the Court of Appeals should have ruled on all seven issues. (State's PFR; App. PFR). The Court of Appeals denied both petitions. (PFR Or.).

This appeal followed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only and are bound by the trial court's factual findings unless those findings are clearly erroneous. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Thus, on review, appellate courts are limited to determining whether the trial court abused its discretion. *Id*. An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). An appellate court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Edwards*, 384 S.C. at 508, 682 S.E.2d at 822.

ARGUMENT

I. The trial court properly exercised its discretion in excusing an alternate juror before trial upon learning that the alternate juror had hearing problems, which the alternate juror did not disclose until after voir dire and selection as the second alternate juror.

Section 14-7-810 of the South Carolina Code sets forth: "[N]o person is qualified to serve as a juror in any court in this State if: . . . (3) He is incapable by reason of . . . physical infirmities to render efficient jury service." Section 14-7-810 goes on to state: "The trial judge must make the final determination of the qualifications of a juror as set out in this section and his decision must not be disturbed on appeal."

Here, when the trial court went to inform Juror 191 that he would be seated as the second alternate juror after the State conceded to have him seated, Juror 191 informed the trial court that he had trouble hearing due to a "growth in the ear." (R. 78-79). The trial court determined that Juror 191 was "extremely hard of hearing" and "darn close" to being "deaf as a fence post" based on the court's conversation with Juror 191. (R. 82-83). Further, Juror 191, by his own admission, heard only some of the voir dire questioning, and the trial court noted that not hearing all of voir dire was problematic. (R. 78-79, 117). *See Skilling v. United States*, 561 U.S. 358, 386-87 (2010) ("In contrast to the cold transcript received by the appellate court, the in-the-moment voir dire affords the trial court a more intimate and immediate basis for assessing a venire member's fitness for jury service."). Importantly, Juror 191 did not disclose his hearing issues before or during voir dire, which gave rise rise to the trial court's concern because it indicates Juror 191 would not speak up during trial if he had similar trouble hearing arguments, instructions, and testimony or otherwise realized he had some other disqualifying knowledge, bias, or prejudice.

The trial court stated that some judges had previously made accommodations for individuals who were hard of hearing but determined that such accommodation was not feasible for Juror 191. (R. 82). When Respondent argued that the trial court had not entertained such

accommodation, the trial court responded that even if Juror 191 could be accommodated, the issue of Juror 191 not hearing all the voir dire questioning remained problematic. (R. 118-119).

A. Juror 191 belatedly informing the trial court of his hearing difficulty was a large part of why the trial court excused him, which is supported by the record.

The trial court's determination that Juror 191 was disqualified to serve was based not solely on Juror 191's hearing difficulties, but rather also on Juror 191 belatedly informing the trial court that he only heard *some unidentified part* of the voir dire questioning due to his hearing difficulties. As a trial court is only required to conduct an individual voir dire at the request of either party when such additional questioning relates to biases or prejudice, the trial court here had no obligation to conduct additional voir dire questioning on Juror 191's hearing ability, which notably does not count as a prejudice or bias. *See* S.C. Code Ann. § 14-7-1020 ("The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection.").

South Carolina law states that a trial court has the final determination regarding a juror's qualification to serve which must not be disturbed on appeal. *See* S.C. Code Ann. § 14-7-1010 ("The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law."); S.C. Code Ann. § 14-7-810 ("[N]o person is qualified to serve as a juror in any court in this State if: . . . [h]e is incapable by reason of . . . physical infirmities to render efficient jury service . . . . *The trial judge must make the final determination of the qualifications of a juror* as set out in this section and his decision must not be disturbed on appeal." (emphasis added)).

Further, the South Carolina law states that a juror's competence is within the trial court's discretion and is not reviewable—much less reversible—on appeal unless **wholly unsupported** by the record. *See State v. Gaskins*, 284 S.C. 105, 113, 326 S.E.2d 132, 138 (1985) ("A juror's competence is with the trial judge's discretion and not reviewable unless *wholly unsupported* by the evidence." (emphasis added) (quoting *State v. Spann*, 279 S.C. 399, 402, 308 S.E.2d 518, 520 (1983))).

Moreover, South Carolina law also specifically states that if a reasonable basis exists from which the trial court could have concluded the potential juror would not have been able to discharge their duties as a juror, then appellate courts will not disturb the disqualification. *See State v. Wise*, 359 S.C. 14, 23-24, 596 S.E.2d 475, 479 (2004) ("An appellate court will not disturb the trial court's disqualification of a prospective juror when there is a *reasonable basis* from which the trial court could have concluded the juror would not have been able to faithfully discharge his responsibilities as a juror under the law."). Trial courts have wide discretion in conducting voir dire. *See State v. Dawkins*, 268 S.C. 110, 111, 232 S.E.2d 228, 228 (1977) (noting that a trial court has wide discretion in conducting voir dire examination).

Here, as the trial court stated, the issue was not whether Juror 191 could hear. (R. 78-79). Instead, the issue was that Juror 191, by his own **late** admission after he had been selected as the second alternate juror, did not hear all the voir dire questioning. (R. 78-79, 117). As the trial court indicated, it could not be sure that Juror 191 did not have a disqualification based on potential witnesses or other disqualifying attributes because Juror 191 did not hear all voir dire questions. Respondent did not request the trial court to ask Juror 191 about those potential biases or prejudices; instead, Respondent focused on whether Juror 191 could be accommodated despite Juror 191 not speaking up when he did not hear the voir dire questioning initially. (R. 117).

Moreover, the trial court had a conversation with Juror 191 on the record where the trial court would have been able to assess, in an informal capacity, Juror 191's hearing ability. (R. 78-79). Juror 191 stated, without prompting, that he had a growth in his ear that caused his hearing impairment. (R. 79). Thus, the trial court inquired and determined that Juror 191 could not discharge the duties of a juror based on Juror 191's own admission that he did not hear everything that was asked of him during voir dire questioning.

The record supports the trial court's determination that Juror 191 was not qualified to sit as the second alternate juror based on Juror 191's *late* admission that he did not hear all of voir dire. The trial court had a reasonable basis to conclude Juror 191 would not have been able to discharge his duties because Juror 191 did not inform the trial court at any time during voir dire that he was unable to hear any part of the questioning. Instead, Juror 191 waited until specifically asked by the trial court at the end of jury selection, which indicated that Juror 191 likely would not speak up if he did not hear something at trial unless specifically asked.

This should have been the end of the Court of Appeals' analysis because South Carolina law does not permit further invasion of the trial court's discretion on appeal when the record supports the trial court's decision and where a reasonable basis exists to conclude the potential juror would not be able to discharge their duties. *See State v. Maxey*, 218 S.C. 106, 110, 62 S.E.2d 100, 102 (1950) ("The findings of the trial court on questions of fact relating to the fitness of a juror are conclusive, and will not be disturbed on review unless manifestly erroneous. This principle of law is so well established it hardly becomes necessary to cite authority to sustain it.").

Moreover, the Court of Appeals' reliance on foreign authority to impose a new requirement on the trial court to further inquire if Juror 191's hearing loss could be accommodated after Juror 191 did not hear all the original voir dire questioning is also without merit. This Court need not

look further than established South Carolina law because the record supports the trial court's decision and Juror 191 provided a reasonable basis for that decision by his lack of timely disclosure and admission that he did not hear all the voir dire questioning.

Therefore, the Court of Appeals erred by holding that the trial court abused its discretion in finding Juror 191 disqualified to serve as the second alternate juror because Juror 191 himself provided the support for the trial court's decision, which also served as a reasonable basis to conclude Juror 191 could not faithfully discharge his duties as a juror.

B. Section 14-7-1020 of the South Carolina Code is not applicable to this case.

The Court of Appeals' reliance on section 14-7-1020 of the South Carolina Code to support its holding is misplaced. The Court of Appeals determined that because either party can request the trial court to conduct further voir dire questioning, the trial court abused its discretion by making no effort to engage in a sua sponte voir dire questioning of Juror 191. *See* S.C. Code Ann. § 14-7-1020 ("The court shall*, on motion of either party in the suit*, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection." (emphasis added)). However, section 14-7-1020 limits such additional voir dire questioning to biases, prejudices, and indifference, which notably does not include hearing abilities.

Here, Respondent did not request additional voir dire questioning of Juror 191. Instead, his only request was for the trial court to inquire if Juror 191's abundantly apparent hearing impairment could be accommodated. These are not the same request. As the trial court noted, an accommodation inquiry would not have cured or addressed the concerns about Juror 191 not hearing the voir dire questioning posed to the pool of potential jurors. (R. 117). Thus, because the

statute only requires further voir dire questioning *when requested* for bias, indifference, or prejudice, none of which were the grounds on which that Respondent based his request, any reliance on section 14-7-1020 is inappropriate.

C. Respondent was not prejudiced by the trial court's excusal of Juror 191.

As Juror 191 would have served as the *second* alternate juror had he been allowed to serve on the jury and as no alternate jurors replaced any of the twelve jurors in this case, Respondent cannot show that he was denied a fair trial or that he was otherwise prejudiced by Juror 191's absence as the second of two non-utilized alternate jurors. (R. 666). *See State v. Bonneau*, 276 S.C. 122, 125, 276 S.E.2d 300, 301 (1981) ("It is, of course, incumbent on an appellant [on appeal] to prove that he was denied a fair trial."); *see also State v. Grovenstein*, 335 S.C. 347, 352, 517 S.E.2d 216, 218 (1999) (holding the burden was on the defendant to demonstrate prejudice on appeal where an alternate juror participated in jury deliberations). Therefore, as Respondent could not possibly have been prejudiced by Juror 191's disqualification to sit as the second alternate juror because no alternate jurors were needed, the Court of Appeals erred in reversing Respondent's conviction and sentence on this issue.

[*conclusion and signature block on following page*]

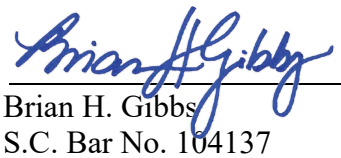
CONCLUSION

Based on the foregoing, the State requests that this Court grant certiorari, reverse the opinion of the Court of Appeals, and remand this case to the Court of Appeals for consideration of the six remaining issues on appeal.

ALAN WILSON
Attorney General

BRIAN H. GIBBS
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

By: 
Brian H. Gibbs
S.C. Bar No. 104137

Attorneys for Petitioner

September 17, 2026
Columbia, South Carolina

RECEIVED
Sep 17 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Abbeville County

Frank R. Addy, Jr., Circuit Court Judge

Court of Appeals Appellate Case No. 2023-001843

THE STATE,

Petitioner,

v.

KENDRICK MONTREZ LEE,

Respondent.

PROOF OF SERVICE

I, Stephen King, certify that I have served the State's Petition for Writ of Certiorari on E. Charles Grose, Esq., counsel of record for the Respondent, by electronic mail to the address listed for counsel in South Carolina Attorney Information System.

I further certify that all parties required by Rule 262(c) of the South Carolina Appellate Court Rules to be served have been served.

This 17th day of September 2026.

Stephen King

Stephen King
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727