The South Carolina Court of Appeals

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September 23, 2026

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Re: The State v. Devante L. White
Appellate Case No. 2022-001793

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jasmine D. Smith, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
Isaac McDuffie Stone, III, Esquire
The Honorable Brooks P. Goldsmith

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Devante Lamont White, Appellant.

Appellate Case No. 2022-001793

Appeal From Beaufort County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2026-UP-439
Submitted September 17, 2026 – Filed September 23, 2026

AFFIRMED

Chief Appellate Defender Wanda H. Carter, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, and Senior Assistant Deputy Attorney General Melody Jane Brown, all of Columbia; and Solicitor Isaac McDuffie Stone, III, of Bluffton, all for Respondent.

PER CURIAM: Devante Lamont White appeals his convictions for murder, kidnapping, and possession of a weapon during the commission of a violent crime

along with his respective concurrent sentences of forty years, thirty years, and five years of imprisonment. On appeal, White argues the trial court erred by instructing the jury (1) "kidnapping is considered a felony" and (2) "the inference of malice may arise" if "one intentionally kills another during the commission of a felony." We affirm pursuant to Rule 220(b), SCACR.

We find the trial court did not err in charging the jury that "kidnapping is a felony" because the instruction was an accurate statement of law which did not emphasize any particular evidence presented at trial. *See* S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact[] but shall declare the law."); S.C. Code Ann. § 16-3-910 (Supp. 2025) ("A person who unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away any other person by any means whatsoever without authority of law . . . is guilty of a felony . . . ."); *State v. Campbell*, 443 S.C. 182, 189-90, 904 S.E.2d 441, 445 (2024) (holding a trial court "correctly instructed the jury" that "[m]alice may be inferred from conduct showing a total disregard for human life" but that its charge that "[i]nferred malice may also arise when the deed is done with a deadly weapon" improperly emphasized a fact of the case).

We agree with White that the trial court's instruction that "the inference of malice may arise" if "one intentionally kills another during the commission of a felony" was an improper comment on the facts of his case. *See State v. Brown*, 443 S.C. 196, 198-99, 904 S.E.2d 448, 449 (2024) (holding a trial court erred by instructing a jury that "malice can be inferred if one kills another during the commission of a felony" because, by doing so, it "improperly elevated and commented to the jury upon a particular fact—the commission of a felony"). However, we find this error harmless because it did not contribute to the murder conviction. *See Campbell*, 443 S.C. at 191, 904 S.E.2d at 445 ("Erroneous jury instructions are subject to a harmless error analysis."); *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) ("When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" (quoting *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998)); *id.* ("[W]hether or not the error was harmless is a fact-intensive inquiry."). Although the trial court should have abstained from providing the jury with the instruction in question, the State presented overwhelming evidence of malice, apart from the commission of a felony, including testimony indicating White took a leading role in planning the crimes and displayed anger and frustration at the victim immediately before the shooting, video footage of White shooting the victim at close range, and White's flight from the scene and destruction of evidence. *See State v. Kelsey*, 331 S.C. 50,

62, 502 S.E.2d 63, 69 (1998) ("'Malice' is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong."); *Campbell*, 443 S.C. at 192, 904 S.E.2d at 446 (finding overwhelming evidence of malice based on the defendant stealing a vehicle to facilitate the attack and indiscriminately firing a rifle fourteen times into an apartment where a party was occurring); *State v. Brooks*, 428 S.C. 618, 630-31, 837 S.E.2d 236, 242-43 (Ct. App. 2019) (concluding evidence the defendant displayed his gun to the unarmed victim, paced around and taunted the victim, fired his gun multiple times in multiple directions, fled the scene, and tried to cover up his guilt constituted overwhelming evidence of malice); *State v. Franks*, 432 S.C. 58, 82-83, 849 S.E.2d 580, 593 (Ct. App. 2020) (explaining the shooting of unarmed victims in their home, evidence of a struggle inside the home, testimony the defendant was "loud," "hyped," or "amped" on the night of the shooting, and evidence of flight amounted to overwhelming evidence of malice); *State v. Stanko*, 402 S.C. 252, 264-65, 741 S.E.2d 708, 714-15 (2013), *overruled on other grounds by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019) (ruling any error in instructing the jury that inferred malice may arise from the use of a deadly weapon was harmless because the court also stated that malice can be inferred from conduct showing total disregard for human life and the jury could have found the defendant's conduct showed a total disregard for human life).

AFFIRMED.[1]

GEATHERS, HEWITT, and VINSON, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.