RECEIVED
Sep 24 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2026-002059

The State, ...Petitioner-Respondent,

v.

Kendrick Montrez Lee, ...Respondent-Petitioner.

Appendix – Volume II of II

Alan Wilson
Attorney General

Brian H. Gibbs
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
803-734-3727

David M. Stumbo
Solicitor, Eighth Judicial Circuit

P.O. Box 516
Greenwood, SC 29468

Attorneys for Petitioner-Respondent State of South Carolina

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Respondent-Petitioner Kendrick Lee

INDEX TO APPENDIX

Volume I

Record on Appeal, Volume I of II

Sentencing Sheet for Kendrick Lee 1

Sentencing Sheet for Travis Lee 3

Verdict Form for Kendrick Lee 5

Verdict Form for Travis Lee 6

Order Denying Motion for New Trial.....7

Arrest Warrant for Kendrick Lee 9

Arrest Warrant for Travis Lee.....10

Indictment for Kendrick Lee.....11

Indictment for Travis Lee 13

Notice of Intent to Seek Life Without Parole 15

Amended Notice of Intent to Seek Life Without Parole.....16

Motion for a New Trial or, Alternatively, to Reconsider the Sentence 17

Trial Transcript (September 25, 2023).....25

Trial Transcript (September 26, 2023, Part I).....101

Opening Statements

By Mr. Black.....136
By Mr. Tinsley 141
By Mr. Grose 146

Brian Singleton

Direct by Mr. Black 149
Cross by Mr. Tinsley.....157
Cross by Mr. Grose 158

Forrest Crowe

Direct by Mr. Black 165
Cross by Mr. Tinsley.....181
Cross by Mr. Grose 185

Elizabeth Webb

Direct by Mr. Black 188
Cross by Mr. Tinsley.....199
Cross by Mr. Grose 201
Redirect by Mr. Black.....204

Trial Transcript (September 26, 2023, Part II) 207

Tobias Hughey

Direct by Mr. Black 214
Cross by Mr. Tinsley.....243
Cross by Mr. Grose 255
Redirect by Mr. Black.....267
Recross by Mr. Tinsley 271
Recross by Mr. Grose 272

Eric Phillips

Direct by Mr. Black 277
Cross by Mr. Tinsley.....285
Cross by Mr. Grose 287
Redirect by Mr. Black.....292
Recross by Mr. Grose 294

Trial Transcript (September 27, 2023).....297

Renee Guillebeaux

Direct by Mr. Black 302
Cross by Mr. Tinsley.....320
Cross by Mr. Grose 327

Michael Floyd

Direct by Mr. Black 339
Cross by Mr. Tinsley.....357

Cross by Mr. Grose 361
Redirect by Mr. Black 368
Recross by Mr. Tinsley 368

John Martin

Direct by Mr. Black 379
Cross by Mr. Tinsley 402
Cross by Mr. Grose 403

Steven Cogdill

Direct by Mr. Black 406
Cross by Mr. Tinsley 415
Cross by Mr. Grose 416

Brandon Johnson

Direct by Mr. Black 418
Cross by Mr. Tinsley 428
Cross by Mr. Grose 429

Kristen Spoor

Direct by Mr. Black 431
Cross by Mr. Tinsley 448
Cross by Mr. Grose 450
Redirect by Mr. Black 454
Recross by Mr. Grose 456

Andy Donlan

Direct by Mr. Black 459
Cross by Mr. Tinsley 470
Cross by Mr. Grose 472

Ricky Duane Balchin

Direct by Mr. Black 477

Volume II

Record on Appeal, Volume II of II

Ricky Duane Balchin (cont.)

Direct By Mr. Black (cont.) 501
Cross by Mr. Tinsley....514
Cross by Mr. Grose....523

Ashley Giles

Direct by Mr. Black 529
Cross by Mr. Tinsley....533
Cross by Mr. Grose....535

Trial Transcript (September 28, 2023)....538

Nick More

Direct by Mr. Black 563
Cross by Mr. Tinsley....567
Cross by Mr. Grose....568

Closing Arguments

By Mr. Black....587
By Mr. Tinsley....619
By Mr. Grose 634

Jury Instructions....649

Jury Verdict....669

Court Exhibit 1 (Criminal History Juror 186)....688

Court Exhibit 2 (Criminal History Juror 188)....690

Court Exhibit 3 (Criminal History Juror 191)....691

Court Exhibit 4 (Criminal History Juror 191)....693

Court Exhibit 12 (Random Strike Sheet)....694

Court Exhibit 13 (Court's Detailed List) 696

Sentencing Hearing Transcript 726

Court Sentencing Exhibit 1 781

Court Sentencing Exhibit 2....784

Rule 210, SCACR Certification....787

Court of Appeals Materials

Final Brief of Appellant....788

Final Brief of Respondent....815

Final Reply Brief of Appellant....856

State v. Lee, S.C.Ct.App. Opinion No. 6151 (filed July 1, 2026)....868

State's Petition for Rehearing....874

Kendrick Lee's Petition for Rehearing....881

Court of Appeal's Request for Return to Cross-Petitions for Rehearing....886

Kendrick Lee's Return to State's Petition for Rehearing....887

State's Return to Kendrick Lee's Petition for Rehearing....892

Order Denying Cross-Petitions for Rehearing....896

RECEIVED
Dec 16 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

Record on Appeal Volume II of II

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Appellant Kendrick Lee

Alan Wilson
Attorney General

Brian H. Gibbs
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
803-734-3727

David M. Stumbo
Solicitor, Eighth Judicial Circuit

P.O. Box 516
Greenwood, SC 29468

Attorneys for Respondent State of South Carolina

INDEX

Volume I

Sentencing Sheet for Kendrick Lee 1

Sentencing Sheet for Travis Lee 3

Verdict Form for Kendrick Lee 5

Verdict Form for Travis Lee 6

Order Denying Motion for New Trial 7

Arrest Warrant for Kendrick Lee 9

Arrest Warrant for Travis Lee 10

Indictment for Kendrick Lee 11

Indictment for Travis Lee 13

Notice of Intent to Seek Life Without Parole 15

Amended Notice of Intent to Seek Life Without Parole 16

Motion for a New Trial or, Alternatively, to Reconsider the Sentence 17

Trial Transcript (September 25, 2023) 25

Trial Transcript (September 26, 2023, Part I) 101

Opening Statements

By Mr. Black 136
By Mr. Tinsley 141
By Mr. Grose 146

Brian Singleton

Direct by Mr. Black 149
Cross by Mr. Tinsley 157
Cross by Mr. Grose 158

Forrest Crowe

Direct by Mr. Black 165
Cross by Mr. Tinsley.....181
Cross by Mr. Grose 185

Elizabeth Webb

Direct by Mr. Black 188
Cross by Mr. Tinsley.....199
Cross by Mr. Grose 201
Redirect by Mr. Black.....204

Trial Transcript (September 26, 2023, Part II) 207

Tobias Hughey

Direct by Mr. Black 214
Cross by Mr. Tinsley.....243
Cross by Mr. Grose 255
Redirect by Mr. Black.....267
Recross by Mr. Tinsley 271
Recross by Mr. Grose 272

Eric Phillips

Direct by Mr. Black 277
Cross by Mr. Tinsley.....285
Cross by Mr. Grose 287
Redirect by Mr. Black.....292
Recross by Mr. Grose 294

Trial Transcript (September 27, 2023).....297

Renee Guillebeaux

Direct by Mr. Black 302
Cross by Mr. Tinsley.....320
Cross by Mr. Grose 327

Michael Floyd

Direct by Mr. Black 339
Cross by Mr. Tinsley.....357
Cross by Mr. Grose 361
Redirect by Mr. Black.....368

Recross by Mr. Tinsley 368

John Martin

Direct by Mr. Black 379
Cross by Mr. Tinsley.....402
Cross by Mr. Grose 403

Steven Cogdill

Direct by Mr. Black 406
Cross by Mr. Tinsley.....415
Cross by Mr. Grose 416

Brandon Johnson

Direct by Mr. Black 418
Cross by Mr. Tinsley.....428
Cross by Mr. Grose 429

Kristen Spoor

Direct by Mr. Black 431
Cross by Mr. Tinsley.....448
Cross by Mr. Grose 450
Redirect by Mr. Black.....454
Recross by Mr. Grose 456

Andy Donlan

Direct by Mr. Black 459
Cross by Mr. Tinsley.....470
Cross by Mr. Grose 472

Ricky Duane Balchin

Direct by Mr. Black 477

Volume II

Ricky Duane Balchin (cont.)

Direct By Mr. Black (cont.) 501
Cross by Mr. Tinsley.....514
Cross by Mr. Grose 523

Ashley Giles

Direct by Mr. Black 529
Cross by Mr. Tinsley....533
Cross by Mr. Grose 535

Trial Transcript (September 28, 2023)....538

Nick More

Direct by Mr. Black 563
Cross by Mr. Tinsley....567
Cross by Mr. Grose 568

Closing Arguments

By Mr. Black....587
By Mr. Tinsley 619
By Mr. Grose 634

Jury Instructions....649

Jury Verdict....669

Court Exhibit 1 (Criminal History Juror 186)....688

Court Exhibit 2 (Criminal History Juror 188)....690

Court Exhibit 3 (Criminal History Juror 191)....691

Court Exhibit 4 (Criminal History Juror 191)....693

Court Exhibit 12 (Random Strike Sheet) 694

Court Exhibit 13 (Court's Detailed List) 696

Sentencing Hearing Transcript 726

Court Sentencing Exhibit 1 781

Court Sentencing Exhibit 2....784

Rule 210, SCACR Certification....787

Q. Looks like there's a female running. Who was that again?
A. Ms. Kira Devette.
Q. And she's looking up the stairs?
A. She is.
Q. And this is about minute 16 --- 16:10.
(Video playing)
Q. Somebody's come downstairs from that apartment at 16:23; who is that?
A. Mr. Ken Lee.
Q. Can you see anything in his hands?
A. Yeah, he's got that --- that object in his right hand.
Q. And he goes out of frame here about 16:45 or so, correct?
A. Yes, sir.
(Video playing)
Q. And a female just approached that black car again, is that --- who is that?
A. That's Ms. Kira Devette.
Q. Looks like she put something in the car?
A. That would be the white shirt that she picked up.
Q. Now who all's in the frame right this minute 18:53?
A. Mr. Travis Lee is in the white shirt and gray shorts, and Mr. Ken Lee's in the black shirt and black and red shorts.
Q. And where is Mr. Ken Lee going?

A. To the [redacted] building.
Q. Is he going up the stairs at this point?
A. He is.
Q. At minute 19:10.
(Video playing)
Q. At 19:42, what did the female throw in the trash can?
A. Be a red shirt that she got out from the passenger side --- the front passenger side of her car. It appeared she wiped her arms off and then threw that red shirt on top of the trash can.
Q. And at 20:01, can you see Mr. Ken Lee coming down the stairs?
A. Yeah, he comes down the steps and he's going to walk past this camera, and then past the thing that as we saw in the previous (unintelligible).
(Video playing)
Q. He's off the screen here at 20:28; is that right?
A. Yes, sir.
Q. Next we'll go to State's 15.
THE COURT: Which one?
MR. BLACK: State's 15. We started at 29:45.
(Video playing)
BY MR. BLACK:
Q. What is this camera of again?
A. The back of the [redacted] building.

Q. Did you receive information from Michael Floyd about some folks coming to his apartment at some point a couple days prior?
A. I did.
Q. Is that why you looked at this camera angle?
A. It is.
Q. All right.
(Video playing)
Q. All right. 30:22, there's two individuals --- there's two individuals right there that came on the screen. Tell --- that's what going on?
A. Yes, sir. I can see.
Q. And what are they wearing?
A. The one on the right has a orange shirt and blue jeans, and the one on the left has a red shirt and red (unintelligible).
Q. Can you tell if anybody's holding anything in this photograph or in this still frame?
A. The individual in the red has an object, it could appear to be a stick or a bat. Something similar behind his back.
(Video playing)
Q. What's going on here?
A. The one in the orange shirt is going to the door and obviously speaks to Mr. Floyd, which is how we got the

information that this even existed. And they're asking where Mr. Tobias Hughey's at.

(Video playing)

Q. And there's not an assault on this video, is there?

A. No, sir.

Q. Now, this person right here in the red, were you able to identify who this person was?

A. I was.

Q. Who is that?

A. Mr. Ken Lee.

Q. Do you know about what day this was?

A. A couple days prior, because I have a lot there to see without looking at my notes, I don't know the --- the exact date, 3rd or the 4th.

Q. And at this point the conversation is over and the gentleman in the orange is walking away?

A. That is correct.

(Video playing)

Q. Do you --- did you ever identify who was in orange or do you know who was in the orange?

A. I don't believe so.

Q. I think that's all the videos I have.

Now, as part of your job as the investigator, in addition to looking at the cameras and going through all that, were you also tasked with following up with Mr. Hughey?

A. Yes, sir.
Q. Okay. And what --- what did you do to follow-up with Mr. Hughey?
A. He was in Greenville Hospital for quite a while. I made two trips up there to speak to him.
Q. Okay. And the first time you went and talked to him, do you know what date was?
A. October the 19th, I believe.
Q. When you first talked to him where was he located?
A. In a hospital bed.
Q. Do you know what part of the hospital?
A. Critical care unit. I --- I don't know exactly what the name of the --- the unit would be.
Q. And you --- I'm going to show you what's been marked as Defendant's Exhibits Number 1 and 2. Do you recognize those?
A. I do.
Q. And what are those?
A. These are handwritten statements by Mr. Tobias.
Q. Okay. And so when you got those statements, what was date of that there?
A. October the 19th, 2020.
Q. Okay. And so you didn't go up there any the 19th, so that would have been what --- almost two weeks after this?
A. Yes, sir.
Q. That was the first time?

A. Yes, sir.
Q. Who wrote those statements for Mr. Hughey; did you write them, or did he write them, or do you know?
A. No, sir, he --- he wrote his.
Q. Okay. Were you able to talk with him at that time?
A. On the 19th, no. He had a tube that was in that prohibited him from communicating verbally. I had to communicate through written communication.
Q. So the first time you went was --- you couldn't actually talk to him, he was --- he still had a tube in his throat?
A. Yes, sir. I mean, I could talk to him, but couldn't --- he couldn't --- he couldn't --- he couldn't communicate with me except through this paper.
Q. And you remember that?
A. Yes, sir.
Q. Now, the first time you talked to him are both of these statements dated --- and I'll show you back one, two. Are they both dated October the 19th?
A. The top one is dated October the 19th, 2020 and the bottom one is dated October the 19th, 2020.
Q. So did you get two --- two different statements on the same day?
A. I did. I believe what there --- there was a video --- there's --- there's a body camera of this, and I believe this was in response to a question that I

asked. And this was --- tell me what happened.
Q. Okay. And he wrote pretty short statements at that point?
A. Yes, sir. He was --- I mean, like I said, he was still hooked up to the --- the tubes and --- and all that --- that stuff at that time.
Q. Okay.
A. He could write, but, I mean, he could not speak.
Q. All right. Did you talk to --- did you talk to any of the doctors that day when you were up there?
A. Not the doctor, I talked to his nurse. And I asked her prior to speaking with him, had he been given any kind of medication that would alter his mental status, that would prohibit me from asking him any questions.
Q. Okay. But you didn't talk to any of the surgeons or anybody about anything, just kind of a nurse about medications more or less?
A. That's right. To see if I was even going to be able to ask him any questions.
Q. Were you ---
(Simultaneous speaking)
Q. --- were you aware of any diagnoses that he had had from any surgeons or anything like that?
A. The only thing that --- that we were told is we would ask for update as to what his condition would be.

Whether it be critically stable or critically --- or you know how they categorize it. And we were told that he was, you know, critically stable. That was the only thing we were told, they wouldn't elaborate anymore.

Q. Okay. And then you went back up there, I guess maybe another ten days later?

A. I did. On the 29th of October.

Q. 28th of October?

A. 29th, I believe. October 27th. I received a call from his mother and at the 28th, the next day, I went up there.

Q. Okay. The 28th, you got this third statement?

A. Correct.

Q. And at that point where was he located in the hospital?

A. I believe he was in the same area. I can't --- I can't remember. I mean all of it's bad to me up there where he was up, 'cause there's all kind of people always --- always around. It's not a free-for-all that you can just go visit somebody in the room. That's not where he was at.

Q. Okay. You had to get --- are you saying you basically had to get permission to go back there?

A. Right. Right.

Q. Okay. And again, when you got this last statement, did you talk to any of the surgeons or anybody about his medical

condition or diagnosis?
A. Just his --- his nurse to make sure that he had not had any medication that would alter his mental status or hits ability to answer questions.
Q. Okay. So basically just concerning medication?
A. That was it.
Q. And that was a specific question that you asked?
A. Yes.
Q. Okay. Let's go to the next day while you were still investigating this. Were you present for the arrest when Mr. Travis Lee was arrested?
A. I was.
Q. Where --- and again, do you know about where he was arrested at?
A. Adams Drive.
Q. Adams Drive. And you were there?
A. I was.
Q. When he was arrested, did you read him his Miranda rights?
A. I did.
Q. And is that standard procedure that you guys do when you arrest somebody?
A. It is.
Q. Did --- did he speak with you?
A. He did.

Q. Did you coerce him in any way to talk to you?
A. I did not.
Q. Did you force him to talk to you?
A. I did not.
Q. He spoke freely about what was going on?
A. He did.
Q. Was he under the influence of any kind of anything that you could tell?
A. Not that it appeared.
Q. Okay. He was --- he was coherent when y'all were talking?
A. Yes, sir.
Q. He didn't --- he didn't give you a problem either out there did he?
A. No, sir.
Q. When you --- when you talked to him you --- I guess investigator Cogdill was out there with you, correct?
A. Correct.
Q. Did he have a body camera that was operable?
A. He did.
Q. And he had it on at that time?
A. He did.
Q. And it recorded the conversation?
A. It did.
Q. And it recorded the Miranda rights being given?

A. Yes, sir. It did.
Q. And Mr. Travis Lee told you out there on the scene that all he did was hold him?
A. That's correct.
Q. And that's --- those are the exact words that he used?
A. Yes, sir.
Q. Did he demonstrate that to you as well?
A. He did.
Q. How did he do that?
A. He just grabbed my arm as if he was showing me exactly what I saw on video.
Q. And he was just demonstrating it? He wasn't threatening you or anything like that?
A. No. He was --- yeah. He was --- he never give us a problem.
Q. Okay. But he said all I did was hold him?
A. Right.
Q. Now, you went --- after you wrapped up on the scene, you went through the house, correct?
A. We did.
Q. What --- what were you doing in the house?
A. We were looking for the clothes, specifically the white shirt, you know, from the previous night.
Q. And y'all took some items from the house and did you take some items from car as well?

A. I don't think we took anything from the house. I believe we did take a bag from the --- the rear of the car.
Q. And that --- that would have been collected through the normal evidentiary process?
A. That's correct.
Q. Was any of that stuff sent down to SLED?
A. It was not.
Q. And why --- why wasn't it?
A. Preliminary investigation, we try to collect everything we possibly can. 'Cause we don't know whether we're going to need it or not. But after reviewing the video, we could see what happened. We didn't feel the need to send the shirt down with --- with blood on it, when we can see that there was blood on it. We know --- we know what happened. We have a video. So we ---
(Simultaneous speaking)
A. --- send anything down.
Q. Fair enough. Once you wrapped up at --- at Adams Drive, you took Mr. Travis Lee to the Abbeville Police Department; is that right?
A. Correct.
Q. Did you talk with Mr. Travis Lee again?
A. I did.
Q. And did you read him his Miranda rights again?

A. I did.
Q. Same process? Same procedure?
A. Yes, sir.
Q. Did you coerce him or force him to say anything to you?
A. No, sir, I did not.
Q. Did he --- did he talk freely to you?
A. He did.
Q. Didn't appear to be under the influence of anything?
A. No, sir.
Q. And did he tell you basically the same thing?
A. He did.
Q. But this time he --- he said that he held Tobias --- he used Tobias's name?
A. Yes.
Q. And kind of --- basically kind of did the same thing? All he did when ---
A. He didn't --- he didn't grab ahold to my arm at the police department, but he indicated the same thing. All he did was hold him.
Q. All he did was hold Tobias?
A. Right.
Q. And he said --- that's what he said?
A. Yes, sir.
Q. Did you ever receive any kind of reports about a burglary at apartment [redacted]?

A. Not prior to this incident, no.
Q. Did you ever receive a report about a burglary after this incident?
A. An actual report? No. The night that it happened and I spoke with Ms. Cobb, she referred to an incident, but it had not been reported.
Q. Okay.
MR. BLACK: I think that's all the questions I have. Please answer any questions that Mr. Tinsley and Mr. Grose might have.
THE COURT: Mr. Tinsley.
MR. TINSLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. TINSLEY:
Q. All right. Now, you testified about viewing the cameras that night.
A. Yes, sir.
Q. Were you able to do that through your law enforcement connection or did you have to get somebody from The Village to help you?
A. We had access just as we had access to other cameras for apartment complexes within the city. We had access to those cameras where we can view them. You couldn't view them live, none of them. You had to get (unintelligible).

Q. Okay. So you could --- you could --- okay. So you were able to see what had happened earlier that night from the law enforcement connection?
A. Yes, sir.
Q. Okay.
A. I mean, on our computer at the police department that's where we would log on and we could see the videos and --- and burn them to a disc from that one.
Q. Okay. So you can't view them live, but you can see what happened earlier that night?
A. That is correct.
Q. Okay. And these videos that we looked at, it was --- it was daylight when all this took place?
A. Yes, sir.
Q. And when you got called out there that evening it was night, right?
A. Yes, sir.
Q. And you would agree with me that the video of the parking lot shows Tobias Hughey walk towards Travis Lee?
A. They meet up in the middle of the parking lot.
Q. Yeah, they're each walking towards each other?
A. Yes, sir.
Q. Okay. And they're having a conversation, right?
A. Yes, sir.
Q. And there's no --- no signs of any violence or any

struggle early on there?
A. Right.
Q. Okay. And you went through numbers of swings on the camera angles that you can't tell if any actually make any contact with Mr. Hughey on --- on the screen, can you?
A. Not visibly. No, you can't. You can just see it being swung ---
Q. Okay.
A. --- what it impacts ---
Q. Okay.
A. --- couldn't tell you.
Q. All right.
A. Just what it appears.
Q. All right. And when --- when there's off camera, there's four people that are off camera --- or five people actually that are off camera, correct?
A. I don't understand the question. What do you mean, "off camera?"
Q. Because when they --- when Mr. Hughey and the --- and the Lees disappear off camera behind --- behind the building, there's two other people that are --- that disappear as well, correct?
A. You talking about when the initial fight starts and they go behind the [redacted] building?
Q. Yes.

A. Yes, sir, but there's another camera angle that captures all of that. That's just one angle that they disappear behind. The other angle actually captures all of it.

Q. Well, you're saying there's --- wait a minute. There's a camera that --- that captures the entire thing including Mr. Hughey and --- and the Lees on there?

A. Yes, sir. It's the camera that was on the side of the [redacted] building.

Q. Okay. So nothing happens outside the view of that camera?

A. It does, once he is dragged or drugged behind the [redacted] building there's not a camera angle that captures that or behind the [redacted] building. But when the assault is taking place, it's --- that is captured on that [redacted] camera.

Q. Okay.

A. They initially go out of the --- the [redacted] frame in the parking lot.

Q. Okay.

A. And then the [redacted] angle captures all of that, but no camera angle captures when he's pulled behind the [redacted] building, there's not a camera.

Q. Okay. And there's a fee --- female, Ms. Devette, you're saying she's on camera at all times?

A. Nobody's on camera at all times. Because the whole incident disappears behind the [redacted] building as --- as we watched.

Q. Okay.

A. We can't see anything behind there.

Q. Okay. So Ms. Devette also disappeared off camera?

A. Yes, sir.

Q. And there was another gentleman that --- that disappeared off camera, correct?

A. Yes, sir.

Q. Do you know who that was?

A. Yes, sir. That was Mr. James Smith.

Q. James Smith. Okay. And Ms. Devette and Mr. Smith hadn't been charged with anything in connection with this incident?

A. No, sir. They had not.

Q. Okay. And you say "drug," now, it's not like Mr. Hughey's on the ground and Mr. Lee's dragging him like this. He's on his feet at all times, correct?

A. He falls a couple times on the video as they're going up that ---

(Simultaneous speaking)

Q. Okay. But he --- he pops back up, right?

A. Yes, sir. He does.

Q. Okay. There --- showed the video of Ms. Devette in that red shirt of the trash can?

A. Yes, sir.
Q. And you recovered that shirt?
A. Yes, sir, I did.
Q. Just didn't have evidentiary value?
A. We didn't --- again, looking at the camera angle, we feel that we saw what we needed to see. We collected it. Obviously preliminary, we don't have a second chance to collect evidence.
Q. Uh-huh.
A. If you see it, you get it.
Q. Gotcha, but you don't even know whose shirt it is?
A. We know it come out of the car ---
Q. Okay.
A. --- and it was put there. At that point in time we didn't --- we didn't know. It's an ongoing investigation.
Q. Okay. Okay. There wasn't any blood on it?
A. I --- I don't know.
Q. Okay. And you would agree with me that that camera doesn't show any blood on my client Travis Lee?
A. Yeah, I --- I mean I can't see anything on him.
Q. Okay. And you recovered his shirt, but it wasn't covered in blood or anything?
A. Correct.
Q. We saw the --- the night view going in Mr. Floyd's

apartment a couple --- couple nights earlier. Travis Lee is not on that camera, correct?

A. You are correct.

Q. And when you talked to Mr. Hughey in the hospital on October 19th, you talked to him and he communicated via handwriting you --- you were comfortable taking a handwritten statement from him, right?

A. Yes, sir.

Q. Okay. There were no concerns that --- that --- that he wasn't able to give, correct?

A. Right. I mean we --- I had done what I believe asking the questions of --- about the medicine, him being in an altered mental status ---

Q. Yeah.

A. --- I believe I had covered it.

Q. So you were comfortable with --- with doing there.

And --- and after you Mirandized Travis Lee, he talked to you a couple times that day, right?

A. Yes, sir.

Q. Despite the fact that he didn't have to?

A. Right.

Q. And he admitted to putting his hands on Mr. Hughey on his arm ---

A. Yes, sir.

Q. --- and that's accurate what the video shows?

A. Yes, sir.
Q. There's nothing showing Travis Lee striking him or kicking him?
A. Correct.
Q. There's nothing showing Travis Lee holding him down while Ken Lee or anybody else hits him, correct?
A. Yes, sir.
Q. Now, there were a lot of people out there around The Village that evening in the parking lot, correct?
A. Yes, sir.
Q. And you --- you testified you weren't getting much cooperation from anybody?
A. Right.
Q. Not a single one of those people called 911?
A. Right.
Q. Nobody took Mr. Hughey to the hospital or anything?
A. No, sir.
Q. I mean, to the point to where you told another officer on the scene that you made a phone call about putting cash money on the streets. How much --- how much cash did y'all put out on the streets?
A. We didn't put any on the streets.
Q. Then why did you say that?
A. In the --- in the investigations, when you conduct drug operations or you use informants, all that is

documented through a system.
Q. Uh-huh.
A. And that's just --- that would be referred to as --- as lingo among officers that work drugs is when you put cash money on the street is there's people that are just paid for information, there's people that conduct undercover buys. There's different things that are done in which people are compensated that happens on the state level all the way through the Federal level. So that lingo is where that's from.
And people will come forward a lot of times if money is offered. In this instance no money was --- no money was --- was paid to anybody.
Q. Was it offered to anybody?
A. No, sir. We had video.
Q. Okay. So you --- you thought about putting money on the street, but you didn't?
A. Yes, sir.
Q. Okay. There's no --- you weren't in any kind of drug operation associated with this case or anything right?
A. Again it doesn't just apply to drug operations. Funds that --- that are seized that are used for --- for different specific reasons, can within the law be used for those reasons. If they documented an informant through the right process, then you can pay people for

information. In this instance, that did not happen. There was not a documented informant, there was not any --- there was not any exchange for any money for information from anybody.

Q. But early on you were --- in the investigation you were talking about doing it?

A. Yes, sir.

Q. Okay. And there's no history that you're aware of any trouble between Mr. Hughey and Travis Lee?

A. Not that I'm aware of.

Q. And --- and they --- and they were cordial towards each other at the beginning of that interaction?

A. Yes, sir.

MR. TINSLEY: No further questions. Please answer any questions Mr. Grose has.

THE COURT: Mr. Grose.

CROSS-EXAMINATION

BY MR. GROSE:

Q. I believe the Solicitor's showed you several statements?

A. Yes, sir.

Q. One of these --- one of the statements was what's marked as --- I guess that's Defendant's Exhibits Number 1?

A. Yes, sir.

Q. And that's your signature on there?

A. It is.

Q. And it's dated 19 October 2020?
A. Yes, sir.
Q. All right. Other than the exhibit sticker, and your signature, and the date, Mr. Hughey wrote everything in?
A. Yes, sir.
Q. Including the part where he said, I went in the house, yes, comma?
A. Yes.
Q. Okay. And on Defendant's Exhibit Number 3, again, that's your signature down there?
A. Yes, sir.
Q. And looks like you filled out this part, I have read each page of the statement consisting of one pages. And then it skips down where the statement was completed at 7:14 p.m. on 28th day of October 2020?
A. Yes, sir.
Q. Okay. And then there's a signature below that?
A. That is correct.
Q. That's Mr. Hughey's signature?
A. It is.
Q. You watched him sign that?
A. Yes, sir.
Q. All right. Where it says, I Tobias Hughey --- Tobias Hughey is written out there. Did he write that?
A. Yes, sir.

Q. Then it says investigator D. Balchin Jr., looks like you wrote that?
A. Yes, sir.
Q. All right. Says I am 21, Mr. Hughey wrote that?
A. Yes, sir.
Q. And [redacted] is the address, did he write that?
A. Yes, sir.
Q. Number of years, ten years --- he said he can read?
A. Yes, sir.
Q. And they had a completed --- put in the 10th grade. He wrote that?
A. Yes, sir.
Q. And his --- there's a date of birth there, did he write that?
A. Yes, sir.
Q. All right. And then this part it begins, I went looking for Ken down through --- until there's a --- where it skips a line, did he write that?
A. Yes, sir. He did.
Q. All right. And then it has a question that's asked, you probably wrote that?
A. I did.
Q. And then where the answer was did you write that as well, or did he write that as well?
A. No, sir. He wrote that.

Q. He wrote that?
A. Yes, sir.
Q. All right. So there's no doubt in your mind that Mr. Hughey signed this statement that's Defendant's Exhibit Number 3?
A. That was --- this is a recorded body camera statement.
Q. I understand, but there's no doubt in your mind that he signed that statement right there?
A. Yes, sir. It wouldn't be on that video.
Q. And there's no doubt in your mind that he wrote out these parts that you identified that he wrote out?
A. Yes, sir.
Q. Okay. And on Defendant's Exibit Number 1, that also was recorded on body camera?
A. Yes, sir.
Q. And there's no doubt that he wrote everything on that page except your signature and the date?
A. Yes, sir.
Q. Okay. Now, I understand that when you first got involved in the investigation the first place that you went was the landing zone at the Abbeville High School practice field?
A. Yes, sir.
Q. All right. And from there you went The Village?
A. I did.

Q. And after The Village, you went to James Floyd's apartment?
A. Yes, sir.
Q. All right. And you interviewed --- you went to several places around The Village that night?
A. Yes, sir.
Q. And your role was identifying and interviewing witnesses?
A. Right.
Q. Okay.
A. That wasn't my only specific role, but ---
Q. That --- that's fair, but that was --- that was part of your role?
A. Yes, sir.
Q. And it was while you were interviewing witnesses that you told another officer that you made a call about putting cash money on the street?
A. Yes, sir.
Q. Okay.
A. I mean if that's on video then yeah.
Q. Yeah. And as I understand it, another part of your role was looking at the videos?
A. Yes, sir.
Q. And you were able to log in without having anybody's ID from the apartment complex to help you?
A. Yes, sir. They didn't have a --- an IT department.

Q. Okay. All right. And it took some time to review the videos?
A. Yes, sir.
Q. And then the next day you and one of the (unintelligible) officers went to where Travis was living; is that right?
A. No, sir. I ended up there ---
Q. Okay.
A. --- but there were two other guys. I had been working all night and there were two other guys there. So I was called over there ---
(Simultaneous speaking)
Q. Okay. You ---
A. --- but they had --- they had possibly seen Mr. Travis Lee.
Q. All right. You ended up there and then you interviewed Mr. Lee --- Travis Lee at the police department?
A. Yes, sir.
Q. Okay. And you made a couple of trips to the hospital in Greenville?
A. Yes, sir.
Q. All right. And of course Ken Lee turned himself in?
A. He did.
Q. And after, I guess Mr. Hughey was released from the hospital, (unintelligible) May, that kind of wraps up the investigation?

A. For the most part, yes.

MR. GROSE: Okay. Beg the Court's indulgence for a moment.

Thank you for that pause, but that's all I have at this time.

THE COURT: Any redirect?

MR. BLACK: No, sir, Your Honor.

THE COURT: All right. Sir, thank you. You can step down.

THE WITNESS: Thank you.

THE COURT: Good luck in the new career.

THE WITNESS: Thank you, sir.

THE COURT: All right. You've got one more witness ---

MR. BLACK: Yes, sir.

THE COURT: --- that we can do tonight?

MR. BLACK: Ashlye Giles.

THE COURT: Shouldn't be too long, right?

MR. BLACK: Very --- should be very quick.

THE COURT: Very good.

(Witness sworn)

ASHLYE GILES, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS.

DIRECT EXAMINATION

BY MR. BLACK:

Q. Please state your name for the record, please.
A. Ashlye Giles.
Q. And I'm going to hand you what's been marked as State's Exhibit 4 just for identification purposes.
A. Yes, sir.
Q. And you can refer to that. Ms. Giles where do you work at?
A. Abbeville County 911.
Q. How long have you worked there?
A. 16 years.
Q. And what is your current title?
A. 911 director.
Q. And so you're the director over the whole department?
A. I am.
Q. And with that role, what is your --- what is your department --- what do you all do?
A. In our department, we take and dispatch all emergency and non-emergency calls for the entire county. We dispatch all emergency services for the county including law, fire, and EMS. We document all the calls that come into the center and keep all records.
Q. And did you guys receive a call from October the 6th, 2020 in reference to --- or regarding a Tobias Hughey needing help at [redacted] --- [redacted]?
A. Yes, sir.

Q. And do y'all keep a --- a CAD report?
A. We do.
Q. And what --- tell the jury what a CAD report is.
A. What a CAD report is --- CAD stands for computer automated dispatch. So whenever a call comes into the 911 center, we start a call for service in the CAD system. So a CAD report is generated for each and every call that we input into that system.

So that is the report, it contains all the of information and times related to that particular call, from the start of the call, all of the information for the caller, as well as questions and information that we input from the caller. And then all of the times from the responders for that particular call as well.

Q. And this CAD report is kept in the ordinary course of business typically?
A. Yes.
Q. And does it indicate who ends up making this --- these calls?
A. It does.
Q. Who made this particular call?
A. Trays --- I'm not sure if I'm pronouncing it correctly, but Tyfabria I believe it was. Let me make sure in the documentation. I believe it was his sister.
Q. Okay. And what was the address that the call came from?

A. It was [redacted], Abbeville.
Q. And what time did the call come in?
A. At 19:39, so 7:39 p.m.
Q. 7:39. And you guys dispatched law enforcement as well as EMS?
A. That's correct.
Q. What time did law enforcement arrive on scene?
A. They --- first officer arrived on scene at 19:44, so 7:44 p.m.
Q. So it took about five minutes for the first officer ---
A. Yes.
Q. --- to get there? And then what time did EMS medical get there?
A. Medical arrived at 19:48, so approximately four minutes later.
Q. Did you receive any other calls from anybody else in the county about this incident?
A. No. I believe this was the only call we had regarding it.
Q. Did you --- did you ever receive any calls about this time in reference to any burglaries that may or may not have existed ---
A. No, sir.
Q. --- at --- at apartment [redacted], that's [redacted] apartment complex there?

A. No, sir.
Q. Did you search your system?
A. Yes, sir.
Q. And --- and you can narrow it down by apartment number ---
A. I can.
Q. --- addresses and whatnot?
A. Yes.
Q. So you never --- you never had any of that?
A. No, sir.
Q. And you --- you looked, right?
A. Yes.

MR. BLACK: That's all the questions I have. Please answer any questions from Mr. Tinsley or Mr. Grose may have.

THE COURT: Any questions gentleman?

CROSS-EXAMINATION

BY MR. TINSLEY:

Q. Solicitor asked you about a call (unintelligible) apartment on [redacted]?
A. Uh-huh.
Q. You don't have any record of that?
A. No, sir.
Q. How about Apartment 406 over there?
A. I can't say for certain. We searched the

initial --- or that exact address, as well as I believe the apartment complex. But I can't say 100 percent for sure on that one.

Q. If I hand you ---

A. Sure.

Q. --- a CAD ---

A. Yeah, I can look at it.

Q. --- for that apartment.

A. Sure. Yes, sir. This is one that we --- we would have input into the system, correct.

Q. What's --- what's date on it?

A. It is 12/22/2020, December 22, 2020.

Q. What the apartment unit again?

A. That would be Unit Number 406.

Q. Okay. And who was the caller on that one?

A. It is Betty Utes (phonetic).

Q. Okay. And what was Betty Utes' complaint?

A. She was requesting law enforcement in reference to her shoes being stolen out of her granddaughter's apartment.

Q. Okay. And what --- who --- who was --- who was she complaining about?

A. I'm not sure if maybe that was her --- her apartment, and she was calling about her granddaughter's, apartment or ---

Q. I'm saying who --- who is she complaining about taking the shoes?
A. It doesn't state or it may later. I can --- hold on. I'll have to read the whole thing. Okay. I see Tobias Guillebeaux.
MR. TINSLEY: Okay. Thank you. No further questions. Please answer any questions Mr. Grose has.
CROSS-EXAMINATION
BY MR. GROSE:
Q. That caller also stated that her granddaughter's cat had been killed didn't she? Very last (unintelligible).
A. Yes.
Q. And you're just here today to tell us about the records and the time frames of when people were dispatched?
A. Correct.
MR. GROSE: All right. Thank you. That's all I have.
THE COURT: No redirect, Solicitor?
MR. BLACK: No redirect.
THE COURT: All right. Ma'am, you can step down. Just leave those exhibits, I guess, with the court reporter, please.
All right. Let --- let me speak to y'all over here real quick.
(Sidebar conference)

THE COURT: Ladies and Gentlemen, what I'm going to do, we're done for the evening, thankfully. And I know that a lot has been thrown at you today. But we are perhaps a little bit ahead of schedule now.

So I want you to have a very pleasant evening, and I'm going to ask that you report back tomorrow morning at 10:00. And just report to the --- to the Grand Jury room out there where y'all were the other day.

The lawyers --- I --- I've got some stuff at 9:00 --- 9:00 --- 9:30. And the lawyers on this case and the --- the parties are going to be here at 9:30 in the event that we need to address a few housekeeping matters.

But you report at 10:00, and I --- I --- I hope to be able to get you back in here right there at 10:00. Okay? So I don't want to keep you waiting while I'm doing other stuff. That's what I'm --- that's what I'm doing here. All right. Enjoy your evening, don't talk about the case. See you tomorrow morning at 10:00. Have a great night. Thank you.

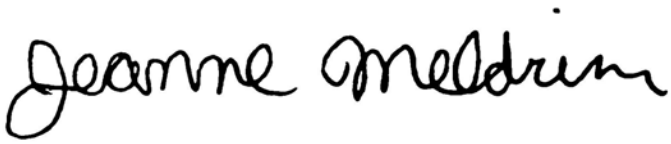
(PROCEEDINGS CONCLUDED AT 5:15 P.M.)

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 8 for ABBEVILLE COUNTY, South Carolina, on the 26th day of September, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 12, 2024



Jeanne Meldrim
Transcriber

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 8

COUNTY OF ABBEVILLE) DOCKET NO. 2021-GS-01-00215
2021-GS-01-00214

STATE OF SOUTH CAROLINA,)

Plaintiff,)

versus)

)

TRAVIS A. LEE AND)
KENDRICK MONTREZ LEE
)

Defendant.)

H E A R I N G

PRESENT: Travis A. Lee and Kendrick Montrez Lee
DATE: September 28, 2023
TIME: 9:44 a.m. - 4:14 p.m.
LOCATION: South Carolina Circuit Court 8
JUDGE: Frank R. Addy, Jr.
TRANSCRIBED BY: Jeanne Meldrim

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

APPEARANCES

Micah Black, Esquire
Eighth Circuit Solicitor's Office
PO Box 516
Greenwood, SC 29649

Yates Brown, Esquire
Eighth Circuit Solicitor's Office
P.O. Box 516
Greenwood, SC 29469

Attorneys for the Plaintiff

Charles Grose, Esquire
The Grose Law Firm
305 Main Street
Greenwood, SC 29646

Attorney for Defendant Kendrick Montrez Lee

Robert Jamison Tinsley, Jr., Esquire
Tinsley & Tinsley, PC
109 Oak Avenue
Greenwood, SC 29646

Attorney for the Defendant Travis Arnett Lee

INDEX

Proceedings..... 4
Closing Mr. Black..... 50
Closing Mr. Tinsley..... 82
Closing Mr. Grose..... 97
Jury charge..... 113
Certificate of Reporter..... 150

EXAMINATIONS

Witness	Direct	Cross	Redirect	Re-cross	further
Moore	26	30			

EXHIBITS

COURT'S EXHIBITS

Number	Description	Marked	Entered
10	E-mail	21	
11	E-mail	21	
12	document	130	130
13	document	130	130
14	document	149	149
15	document	149	149

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

(Jury not present in courtroom)

THE COURT: And Mr. Grose did forward some items that he wanted to be part of the record in this case. One was an incident report concerning the shoes and the dead cat which was mentioned yesterday. And the others appear to be e-mail-type discovery links to Dropboxes or something to that effect. Any objection to any of this?

MR. BROWN: Mr. Black had sent --- I think there was a request obviously during discovery anything in CAD reports that were --- that mentioned Tobias Hughey, or in this case they ran it and it said Tobias Guillebeaux. And that's the CAD from 12/22/2020, that was questioned yesterday by the defense. Came about as Travis Guillebeaux and ---

MR. GROSE: Your Honor --- Your Honor, I thought the question was was whether or not you had an objection. They're going into responding to my motion. And I think I should be able to make my motion before they try to influence you.

THE COURT: I --- I --- you --- you simply asked that they be made a part of the record and ---

MR. GROSE: Well, I ---

(Simultaneous speaking)

MR. GROSE: --- would say be made part of the record in anticipation of making a motion.

THE COURT: Huh-uh. What is the motion then?

MR. GROSE: The motion is to exclude what --- whatever witnesses they plan on calling this morning with regards to the incident that I've asked to be made a Court's exhibit. You'll see that that was sent --- incident report was sent to us after 9:00 last night after the end of the third day of trial.

And as you'll recall, you called the lawyers to a sidebar to discuss scheduling, at which point The State told you that they didn't have anymore witnesses, but they wanted to think overnight on whether or not they wanted to call another witness.

I think what they --- what Mr. Black told me this morning --- not Black --- what Mr. Brown told me this morning was is that they didn't know about this incident report. And that's why I sent you those three discovery e-mails that I got in July. Two of those three relate to the CAD report that was done yesterday. There's also the 911 call, the recording that they sent us reporting what they believe to be a crime.

And you know, we rely on what's sent to us in discovery to be able to formulate a --- a defense. And Mr. Tinsley yesterday asked their witness about a --- a CAD report for an incident occurred at --- at --- the --- The Village Apartments.

And then quite frankly, it feels like sandbagging, because they clearly knew that this material was out there, otherwise they wouldn't have sent it to us in July. They tell you we need to have overnight to get another witness. They're coming in, I think they're going to call Laporchia Offley, because they've given her --- given us certified copies of her conviction for use of a vehicle without permission.

She's not on any witness list. And you know, quite frankly, I think it's intentional based on how things went out yesterday. This government doesn't have any monopoly on circumstantial evidence. They were caught off guard by --- or --- or not off guard, because they knew it was coming.

They didn't like the questions that were asked to some of the witnesses yesterday. They knew that this incident report might exist. They told you we are not going to rest because we're going to go out and think about what we're going to do.

Now, it doesn't take a rocket scientist to put that together with what they sent us after 9:00 last night, that that's what they planned on going to look for when they told you that yesterday. And --- and so that quite frankly is sandbagging.

And, you know, Mr. Tinsley tells me something

similar happened to him in his last trial. You know, this is sort of a --- a common occurrence. And Rule 5 --- first of all, this was Brady. They --- they did turn over the Brady that Mr. Hughey was accused of this --- this burglary. It's also Rule 5 is --- is our state's mechanism of complying with due process. Not just Brady, but due process, because Rule 5 goes to stuff that The State intends to use in their case-in-chief. And it goes to material that's necessary to prepare a defense. That could be Brady, or that could be other material.

And --- and sort of in the line of the more things change, the more they stay the same, the only real substantive case enforcing Rule 5 that I'm aware of is --- is State versus Vernon Lawton, which was Greenwood case that was decided in 2009. And that cite is 382 SC 122 675 SE 2nd 5 --- I'm sorry 454. And in that case, the Solicitor's office had a --- a statement of Mr. Lawton that was in --- in the form of a letter that he had written to an ex-wife or somebody, a third party. And they produced for the first time during Mr. Lawton's cross-examination during the defense's case-in-chief.

And the Court of Appeals in an opinion written by then Chief Judge Hearn reversed. And you know, in --- in that case particular prejudice came with regard to the

decision that Mr. Lawton might have made if he had been given that information or it was disclosed that they had that information.

I will tell you, I --- I did not handle that case on appeal, but I was at the oral argument and --- and the Court of Appeals was concerned about the aspect of Rule 5 is not really decided in this opinion which has turned over the materials that are necessary in order to prepare a defense. And this incident report certainly qualifies as that. And it should be suppressed.

And they can't get up here and tell you they didn't know about it because they sent us the allegation that was Mr. Hughey being involved in that break-in as --- as part of the Brady obligations.

THE COURT: All right.

(Simultaneous speaking)

MR. BROWN: Judge in response ---

THE COURT: First things first. Do you intend to call that Laporchia ---

MR. BROWN: No, sir, Judge. We were planning on calling Chief Nick Moore. Basically that report was made --- and kind of giving you background, so the 911, the CADs 911 went through and did a search for Tobias and so pulls up Tobias Hughey, Tobias Guillebeaux and that's where that CAD from 12/22/2020 comes into play. It

mentioned Tobias Guillebeaux.

So after yesterday after Tobias Guillebeaux's been charged with --- or been said to have killed a cat, we went back and looked. And the answer for --- that was generated does not indicate Tobias Hughey, does not say Tobias Guillebeaux on it. And in essence, the reason being is the allegation was investigated but was unfounded.

Also gave what's public record, Laporchia Offley sentencing sheet and warrant. The warrant --- she was arrested on October 13, 2020, for use of vehicle without permission. So October 13, 2020, she was in jail up until January 7, 2021. And Judge McIntosh the --- actually there was a plea between Mr. Black, and Jane Merrill represented Mr. Laporchia Offley.

She pled guilty on January 7th, so it was 85 days she was not in her apartment. Essentially what we're getting at is the cat was not brutally murdered and the cat was dead in the apartment because people forgot about it. But again, his name is not in this incident report, and so when you do a search on it, it's not there.

And that's --- that's --- that's in essence, you know, we got --- he's being accused of everything about killing a cat, so, you know, the cat was locked up in an apartment while the owner was in jail.

MR. GROSE: And first of all ---

(Simultaneous speaking)

THE COURT: Well --- let me --- let me --- let me --- Nick Moore is on the witness list. So that takes care of the Laporchia Offley issue. Apparently y'all were aware of this incident report, because it was brought up ---

MR. GROSE: No, we ---

THE COURT: --- yesterday.

MR. GROSE: We --- we were not aware of this incident report. We were aware of the CAD report that was marked as an exhibit yesterday.

THE COURT: You --- you mentioned a dead cat, though, yesterday in your cross.

MR. GROSE: I --- I asked if --- if it mentioned a dead cat. I didn't accuse anybody of killing the cat. Y'all made that conclusion based on what you learned about Mr. Hughey. I --- I --- I just asked about if the cat was dead.

THE COURT: I --- I think Mr. Tinsley, though, did ask if Mr. Hughey stole the sneakers or something to that effect.

MR. GROSE: Well, he --- he was the suspect. And it raises an interesting question as to why --- why they were protecting Mr. Hughey, because it was very clear

that from that CAD report that --- that Tobias Guillebeaux or Tobias Hughey was the suspect.

This was the guy that --- that they were trying to use and use his mother in bond hearings to keep these two gentleman in jail. And it --- it --- it smacks of a coverup. And it wasn't unfounded. There were two pairs of shoes that were missing. So when you read that report, it --- it said that some of the shoes were found but all but two pairs. So it --- it wasn't unfounded.

THE COURT: I think that their position is that there was --- it was unfounded in the sense of okay, obviously --- because she was in jail, the cat must have starved to death, and it was unfounded in the sense that there was insufficient evidence to charge anyone with the crime. Am I getting at what you're getting at?

MR. BROWN: Yes, sir. That they couldn't charge Tobias Hughey with that. There's nothing there to say that Tobias Hughey ---

THE COURT: I mean, y'all brought it up.

MR. GROSE: We --- we --- we brought it up based on the information that we were given. And --- and for them to say that they didn't know about this incident report when they put up a witness yesterday and said that we can search our system based on addresses, they had to search for it somehow last night.

THE COURT: But --- but you obviously --- the defense obviously knew about allegations of stolen sneakers and knew about the ---

MR. GROSE: Yes, sir. And we --- and we prepared our defense based on what they provided and represented to us whenever they called case in trial, they represent they can file with discovery. They've been giving us discovery throughout the week, and we haven't complained until now.

MR. BROWN: Judge, they --- one thing is they also know he wasn't charged because his charges and everything he's been charged with after this has been brought to light. So it's --- essentially, the main thing is is there was nothing there to charge Tobias Hughey. And the cat was locked in the building because it's owner was in jail.

MR. GROSE: The ---

THE COURT: The --- the implication --- the implication is that --- I think your question was that along the lines of dead cat as well with the implication being that Mr. Hughey may have killed the cat.

MR. GROSE: But y'all --- y'all reached that conclusion based on the fact that the cat was dead and Mr. Hughey was a suspect.

THE COURT: Then why did you bring it up, unless you

wanted to suggest that Mr. Hughey killed the cat?

MR. GROSE: You --- you draw the conclusions that you draw, Judge. And I understand --- I understand why you would draw that conclusion based on what you've heard about Mr. Hughey's character this week. The issue though is is when I thought they were calling the person who they gave as the convictions board that was somebody who would maybe have some knowledge about whether or not she locked her cat in the house when she went to --- to --- to jail. But I don't think when I look at this report, I don't see Chief Moore's name on here as having investigated that. So he wouldn't be testifying about anything that he personally observed. And we would have --- if we had known that they were going to do this before almost 9:30 last night, we could have gotten Ms. Betty --- last name spelled U-B-A-H, here to explain why she thought that it was Mr. Hughey that had done it.

THE COURT: What is --- what is Mr. Moore going to testify to?

MR. BROWN: Basically as being the chief of --- that he has reviewed this and that there was no charges brought, Mr. Tobias Hughey's name is not in the report. And give the reason for that is that there's no evidentiary --- evidence --- evidence to support an arrest or charge, or anything like that, they don't even

put a suspect's name in there. If it's essentially unfounded.

MR. GROSE: And --- and again, that --- that's not anything that --- there's nothing on this report that indicates that he made that decision, or he participated in that investigation. The officer's name is on the report is Carmen Y-E-R-K-E-S.

THE COURT: I will allow you to call Nick Moore to explain that Ms. Offley was in jail and that no charges were brought for cruelty to animals, because the cat likely starved to death because it was forgotten about when it was left in the apartment.

MR. GROSE: And --- and that would be misleading to say that the cat likely starved to death, because on the 911 call it said that the cat wasn't in the apartment and then was in the apartment. Wasn't in the apartment when the --- the lady had last checked.

THE COURT: So you're now suggesting that Mr. Hughey did in fact, kill the cat, Mr. Grose?

MR. GROSE: I --- I'm suggesting that I don't know that the cat --- it --- it would be misleading to say that the cat starved to death because the lady who went --- went to jail locked the cat in the house. That would be misleading to suggest that.

THE COURT: The --- the defense doesn't get to have

it both ways.

MR. GROSE: I'm --- I'm not trying to have it both ways. I consistently all through my career have wanted to have discovery before trial. And as I've said, the more things change, the more things they stay the same. I mean they --- earlier this week, they --- they presented us with other incident reports of things that happened The Village Apartments. And we're in trial and --- and don't really have an opportunity to go out and investigate what --- what role Mr. Hughey might or might not have had in --- in some of that. I hadn't even had a chance to really look at those incident reports because I've been in here in trial. The time to have done discovery is before trial.

THE COURT: Mr. Tinsley brought this incident up --- Mr. Tinsley.

MR. TINSLEY: Judge, what --- what he's saying is true. It is certainly misleading because the lady said she was there a month earlier shoes were there, the cat wasn't there, now shoes are gone and the cat's in there dead. I mean, I --- that --- so to say that the cat was just left alone in there while this girl was in jail, there's just --- there's nothing to support that.

THE COURT: There's already been unobjected to testimony that Mr. Hughey has a reputation of being a

thief. Okay? Mr. Tinsley brought up a specific incident yesterday of bad acts which are not subject to a conviction. And from a review of the incident report, the person who stole the shoes is unknown.

I appreciate your position, Mr. Grose, I appreciate your position Mr. Tinsley, but Mr. Moore is listed as a witness, y'all were aware of this incident report. If Mr. Hughey was a suspect or you have discovery to that effect, you can certainly cross-examine Mr. Moore about the fact that maybe he was a suspect, but he was never charged because they felt like there was insufficient evidence.

MR. GROSE: Well, he --- he doesn't know that. He --- he --- he only --- he --- he doesn't have any personal knowledge of the investigation. He can --- he can say that Mr. Hughey wasn't charged over objection. He can say Mr. Hughey wasn't charged with burglary, with larceny, or with cruelty to animals, but unless he participated in the investigation, he can't say why that charge wasn't brought.

THE COURT: How do you plan to throw that needle, Solicitor?

MR. BROWN: Judge I'm just going to --- main thing is was an investigation done? Was an officer sent out there? Were any charges brought about for Tobias Hughey

for burglary, larceny, or cruelty to animals?

THE COURT: Basically just asking him based upon your review of the records were any charges ever brought.

MR. BROWN: Yes, sir. And then also ---

THE COURT: Was the report --- was the report made? Was an officer dispatched? Were --- were any charges made?

MR. BROWN: Yes, sir. And then also ask him was Laporchia Offley, did she live there, was that her documented residence? Was she arrested on 10/13/2020 and ultimately released from --- from jail on 1/7/2021?

THE COURT: Being the chief of police, that would be information within the knowledge of Mr. Moore, and he would be familiar with what their procedures are for making arrests and charging people should there be sufficient evidence. Mr. Tinsley.

MR. TINSLEY: Judge, I was just going to say you commented, we knew the incident report existed. We knew it at 9:25 last night. That CAD report says low priority, it didn't produce anything showing they looked into it. So I just figured nothing ever happened. I didn't know that Abbeville police looked into it. And, you know, they ---

(Simultaneous speaking)

THE COURT: Well, there --- there was a call and

someone's dispatched.

(Simultaneous speaking)

THE COURT: And you knew enough about the shoes. I mean, how did you know about the shoes?

MR. TINSLEY: Because it was in the CAD report. And the incident report had --- and the 911 call which we have the --- the audio of and the incident report, the CAD lists her Betty Utes in this incident report apparently her name's Betty Ubah. So we didn't know this thing existed.

THE COURT: The CAD report reflects what? That somebody called 911 about stolen shoes?

MR. BROWN: The grandmother apparently. That's what was introduced yesterday, or was brought up that the grandmother, Laporchia Offley, called about some stolen shoes and a cat was dead in the apartment is what --- what was brought out yesterday from the defense.

And again, the incident report, officers went out there. The incident report does not have Tobias Guillebeaux or Tobias Hughey's name in there. They did look at it and found that the doors were locked, windows were up, and cat was dead on the floor.

THE COURT: Okay. And why did that CAD report get provided to the defense?

MR. BROWN: Because they asked for anything that had

Tobias Hughey's name in it, or I guess Tobias, because it was Guillebeaux and Hughey.

MR. BLACK: They asked me for a --- I guess to run a search in the CAD for anything regarding Tobias Hughey, so we requested dispatch and we received --- we sent --- we sent to them.

THE COURT: Okay. Then how did Tobias Hughey ---

(Simultaneous speaking)

THE COURT: Hold --- hold --- let me --- please let me clarify in my mind how all this came about, please.

How did --- how --- how did Tobias Hughey Guillebeaux's name get attached to that CAD report then if ---

MR. BLACK: The caller said something along the lines of --- and don't quote me on this --- it was probably Tobias Hughey or Guillebeaux.

THE COURT: Okay.

MR. BLACK: They say Tobias Guillebeaux.

THE COURT: Okay.

MR. BLACK: At the very end of the call. So when we asked 911 based on their request to get it, they provided us the call in the CAD and we just forwarded it to them.

THE COURT: Okay. But clearly this was not --- I guess this was not something that was on your radar then because it just --- it was a whole --- big old dump of

anything with Guillebeaux or Hughey?

MR. BLACK: Yes, sir. But that was the only one, but we did get it provided at their request.

THE COURT: All right.

MR. GROSE: I --- I don't recall making that request. I just recall getting the e-mails. Maybe I did, but I --- I don't think Mr. Tinsley recalls that. I think, you know, they should have done their due diligence and --- and looked for this anyway.

MR. BLACK: I wouldn't have done it unless they asked. I don't remember if it was Mr. Grose or Mr. Tinsley. I'm not blaming one of them. But I do remember getting and immediately asking for it because that's typically what I do.

THE COURT: All right. He can testify.

MR. BLACK: And Judge, I did want to put one more thing on the record. I think there was a accusation that we provided incident reports. On Wednesday morning I sent a e-mail to Mr. Grose and Mr. Tinsley that provided other additional CADs. So they were not incident reports, but they were CADs. And they were in reference to reports made by Travis Lee about certain --- if he had made any reports of vandalism around that time or in 2020.

And one of CADs was from January 27, 2020, and the

other one was from June the 30th, 2020. I did send that to them, but it was never brought up. Any kind of questioning when we talked to the --- to the dispatchers. I --- I wanted to make sure that the record was clear as to we didn't see any additional incident reports. There was the two CADs and they were never brought up.

THE COURT: Okay. Thank you. All right. I'll make the e-mail chain with the incident report dated December 22, 2020 --- I'll make that e-mail chain, I think we're up to Court's 10.

MR. GROSE: Does that include the discovery e-mails?

THE COURT: That's going to be Court's 11.

MR. GROSE: Okay. Thank you.

(Court's Exhibit 10 marked)

THE COURT: Court's 10 will be the e-mail with the attached incident report. And then Court's 10 --- or sorry, 11 --- correction, Court's 11, will be series of e-mails with the links to the discovery Dropboxes, whatever it is.

(Court's Exhibit 11 marked)

THE COURT: All right. I assume that the jury is here. Before we get the jury, has --- has the defense made a decision as to whether they're going to present a defense, Mr. Tinsley? Just curious.

MR. TINSLEY: As it sits right now, I'm --- I don't

think my client is inclined to testify. So with that being said, we're not going to produce a --- a case in chief unless that changes in the next little while.

THE COURT: Gotcha.

MR. GROSE: Well, and --- and depending upon what happens with the chief, I'm going to have to consider it at that point. Because we may, you know, we may need to reply to that.

THE COURT: Fine. And --- and that's fine. I'm --- I'm just trying to keep the train on the tracks and keeping it running on time. And if it was necessary for me to have a colloquy with your clients about their right to testify, I was going to go ahead and do that if the decision had been made for them not to testify. So I guess we'll just go ahead with the jury and have to do that later.

MR. GROSE: Well, I can tell you unless something changes, Ken Lee is not going to testify. That doesn't mean ---

THE COURT: Okay.

MR. GROSE: --- I've still got --- I've got to see how this ---

THE COURT: Okay.

MR. GROSE: --- this develops. It may be benign, but --- but we may be asking you for time to --- to ---

to go get a witness. We just got to see.

THE COURT: I understand that. And we'll address the collateral nature of that potentially at a later point in time.

Gentleman, Misters Lee, I --- I need to just to briefly review with you, I'm --- I'm hearing and I'm going to refer to y'all by your first names just so that the record's clear. It doesn't mean any sort of disrespect or anything.

But Travis, your --- your attorney is telling me that you don't anticipate testifying. You don't anticipate presenting a defense.

And Kendrick, your --- your lawyer's telling me that there might be some defense after The State rests. He's not quite sure. He wants to see what Chief Moore says on direct. But nonetheless, he anticipates that you will not be testifying; is --- is that correct, Travis?

MR. T. LEE: Yes, sir.

THE COURT: And is that correct, Kendrick?

MR. K. LEE: (No audible response).

THE COURT: All right. And obviously, gentleman, you understand that you --- you have the right to testify if you wanted to. And at the same time, you have the right to assert your 5th Amendment rights, which means that nobody can compel you to be a witness in any case

where you are a criminal defendant.

And in this case thus far, obviously, gentleman, your attorneys have not introduced any evidence. And one of the reasons that may have taken place, or one of the reasons they may not have introduced any evidence is they want the last argument, which is generally considered a rather valuable thing in a criminal trial. Okay? A chance to have your last word. So that may be one of reasons that they don't anticipate presenting a defense.

If --- if you were to testify, of course you'd have to answer any relevant questions put to you. And you could potentially be impeached with --- with prior crimes. We haven't even discussed that possibility yet.

But whether or not you testify, you understand that's --- that's your decision to make, it's not your lawyer's decision. Certainly you should follow their advice, because they're trained in this kind of a thing. But whether or not you testify is totally up to you.

So Mr. Travis, are --- I'm hearing that it's your decision not to testify; am I correct in that?

MR. T. LEE: Yes, sir.

THE COURT: And same to you Mr. Kendrick?

MR. K. LEE: (No audible response).

THE COURT: All right. Gentleman, thank you very much. Y'all can have a seat.

MR. GROSE: Judge, if I may ---

THE COURT: Yes, sir.

MR. GROSE: --- put --- put on the record just one thing you said about impeachment. I just want the record to be clear. I don't think Travis Lee can be impeached with any of his prior crimes should he take the stand.

THE COURT: I understand. I understand your position. And that may very well be the case. But I don't see any reason to go there if they're not going to testify.

MR. GROSE: I understand. I just want to make sure that he didn't --- didn't think that that was out there.

THE COURT: Okay. You understand that all that, Mr. Travis?

MR. T. LEE: Yes, sir.

THE COURT: All right. Good enough. Let's have the jury, please.

MR. GROSE: Just note our objection to this witness being called since there's been a break ---

THE COURT: Sure.

MR. GROSE: --- when we made that motion and --- and --- and now.

THE COURT: Certainly. Objection is noted.

(Jury enters courtroom)

THE COURT: And y'all can come on down here. Come

on down and have a seat.

All right. The record will reflect all jurors are back and seated.

Ladies and Gentlemen of the jury, thank you for being here and thank you for being on time.

We have an additional witness for The State. So Solicitor, call your witness, please.

MR. BROWN: Thank you, Judge. The State calls Chief Nick Moore.

THE COURT: Of course this witness is being called subject to all prior objections and rules of the Court.

(Witness sworn)

CHIEF NICK MOORE, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS.

DIRECT EXAMINATION

BY MR. BROWN:

Q. Good morning. Please state your name.

A. Nicholas Moore.

Q. And where are you working?

A. City of Abbeville Police Department.

Q. And is your position?

A. Chief of police.

Q. How long have you been the chief of police?

A. Six months.

Q. And before that what was your role?

A. Assistant chief of police.
Q. And in 2020, were you working in Abbeville City Police Department?
A. Yes, sir.
Q. And as part of a chief, are you supervising officers?
A. Yes, sir.
Q. Manage the Abbeville Police Department?
A. Yes, sir.
Q. Okay. I want to take you back --- there was a CAD report mentioned yesterday, 12/22/2020 about a potential larceny of some shoes, and a cat that had died at an apartment complex. [redacted] Apartment [redacted]. Have you had a chance to review an incident report on that?
A. Yes, sir.
Q. Whose apartment did that --- who --- who --- who lived in that apartment?
A. The report stated Laporchia Offley.
Q. Okay. Now, I want to show you ---
MR. BROWN: Your Honor, may we approach?
THE COURT: Please proceed Mr. Brown.
MR. BLACK: Thank you.
BY MR. BROWN:
Q. Now Chief Moore, Laporchia Offley, she was arrested for use --- unlawful use of a vehicle, correct? October 13, 2020?
A. Correct.

Q. And she went to the Abbeville County Detention Center; is that right?
A. Yes, sir.
Q. She then pled guilty on January 7th of 2021; is that right?
A. As far as I know. I --- I can't swear to in that exact date.
Q. Let me just refresh your memory. On that sheet, what's that date?
A. 1/7/2021.
Q. 1/7/2021? And she got credit for 85 days in the detention center?
A. Yes.
Q. Now, it was brought --- brought out yesterday that there was a --- a 911 call or a CAD report for December 22, 2020, for somebody alleging that Tobias Guillebeaux had stolen some shoes, and a cat was involved; is that correct?
A. That's correct.
Q. Did officer --- was an officer dispatched that day?
A. Yes, there were.
Q. And did a follow-up investigation?
A. Yes.
Q. And was Tobias Hughey --- Tobias Guillebeaux, was he ever charged with anything from that?
A. No, he was not.

Q. Was he ever charged with cruelty to animals?
A. No, he was not.
Q. Larceny?
A. No, he was not.
Q. Burglary? In the incident report is Mr. Hughey's name even listed on that incident report?
A. No, it is not.
Q. What's the --- why --- is there a protocol in your office why the name's not put on that?
A. Yes, sir. If there's ---

(Simultaneous speaking)

MR. GROSE: This --- this was part of what I think was limited.

THE COURT: Okay. Rephrase your question.

BY MR. BROWN:

Q. When is a name placed in an incident report --- a suspect's name?
A. When you have evidence that they are a true suspect.

MR. GROSE: Your Honor, I move to strike. You --- you instructed them not to ask that question. That's --- that's outside of his personal knowledge.

THE COURT: Overruled. That's general policy of their --- I'm taking that as general policy of their department.

BY MR. BROWN:

Q. Tobias Hughey's name is not in the report?
A. No, it is not.
Q. And also in the report, was the apartment secured, locked up according to the incident report?
A. No forced entry to apartment was --- windows and doors were locked.
Q. And the cat was back on the carpet?
A. Yes, sir.
Q. Deceased?
A. Deceased.
MR. BROWN: No further questions.
THE COURT: Mr. Tinsley.

CROSS-EXAMINATION

BY MR. TINSLEY:
Q. December of 2020, your office was treating Mr. Hughey as a victim in the investigation of Travis and Ken Lee, correct?
A. Yes.
Q. Okay. And are you aware these --- these gentleman were still in the Abbeville County Jail during that time, correct?
A. I would assume, but I was not aware of actually their where whereabouts on that date.
Q. Oh. Okay. Well, I --- okay. Now were --- did you --- are you aware of the --- the bond hearings to get these gentleman out?
A. Yes, I'm aware of them.

Q. Okay. And your office was working with the Solicitor's office and with Mr. Hughey to try to keep them in jail, correct?
A. That part, I have --- I can't answer. I don't --- I don't know. I'm aware of them, but I'm not --- I don't participate in them. I wasn't present, so I can't tell you what ---
Q. Okay. Well, your office was --- was --- was in contact with Mr. Hughey during this time frame, correct?
A. The office would have been through the Solicitor's office.
Q. Okay. And didn't interview him about this incident or anything?
A. Which incident?
Q. The --- the December incident with the shoes.
A. To my knowledge, no they didn't know anything.
Q. And even though no one was charged, two pairs shoes were --- were certainly missing per the report?
A. Per the report.
MR. TINSLEY: No further questions.
THE COURT: Mr. Grose.

CROSS-EXAMINATION

BY MR. GROSE:
Q. Per the report, I think you just testified that two pairs of shoes were missing; is that right?

A. It's what the report says.
Q. And per the report, those shoes had been there a month earlier when the caller had been in the apartment?
A. It's what report says.
Q. And per the report there --- the officer talked to the front office about leaving windows open?
A. Ask that again? I'm sorry.
Q. Per the report, the officer that was dispatched talked to the front office to notify them about making sure windows and doors were locked after they cleaned?
A. Correct.
Q. All right. And so the fact that there was no forced entry doesn't mean that a burglary didn't take place? You don't have to have forced entry for a burglary? A burglary is entering without permission with intent to commit a crime?
A. Okay.
Q. You would agree with that?
A. Yes.
Q. And if I leave --- or if you leave your door to your house unlocked, and I walk in intending to steal your television, I'd be guilty of burglary ---
A. Correct.
Q. --- even though I didn't force my way in; is that right?
A. Correct.
Q. And did you did review the CAD report?

A. I did.
Q. And --- and Mr. Hughey was the person who was identified by the complaining witness as a suspect?
A. That's what they told the dispatch.
Q. Okay. And that's what dispatch put in the CAD report?
A. Correct.
MR. GROSE: Thank you.
THE COURT: Thank you, sir. You can step down.
Solicitor, any additional witnesses?
MR. BROWN: No, sir, Your Honor. The State rests.
THE COURT: All right. Very good. Ladies and Gentlemen, there's a couple of matters of law that I need to take up with the attorneys, some motions which need to be made, and prior to us proceeding further.
So if you would adjourn to the jury room from a few moments and when we get --- when we get done with that, I'll probably let you guys, whoever wants to have a smoke break, and we will take from there. Okay. Don't discuss the case yet, but do adjourn to the jury room, thank you.
(Jury leaves courtroom)
THE COURT: The jury is out. Of course all prior motions are renewed. All prior objections are renewed by all parties. And same ruling as before on everything previous.
Mr. Tinsley, Mr. Grose, I assume that you gentleman

do move for a directed verdict on these cases?

MR. GROSE: Yes, Your Honor.

MR. TINSLEY: Yes, sir.

THE COURT: All right. Anyone want to be heard on that? Or ---

MR. TINSLEY: Yes, Your Honor. I --- I --- I don't think The State has met its burden of producing sufficient evidence that anything my client Travis Lee did caused great bodily injury to Tobias Hughey. So on that ground I --- I would move for a directed verdict on the assault and battery of a high and aggravated nature for sure.

And I would also move on the --- the lesser includeds as well. But in particularly, their evidence consists of my client grabbing Tobias Hughey's arm, and then kind of --- I don't know if tussling is the right word or jerking around. It's kind of hard from that video to say who's --- who's driving that train.

And that's just not enough to get over directed verdict in the light most favorable to the State for assault and battery of a high and aggravated nature. And I would --- I would ask that you direct the verdict at least on that charge, but I'm asking for it on all charges, but particularly on the high and aggravated nature, given that The State has not produced evidence

that he did anything to cause great bodily injury to Mr. Hughey. Thank you, Your Honor.

THE COURT: Thank you. Mr. Grose, anything?

MR. GROSE: Your Honor, I would move for a directed verdict based on the fact The State's failed to present any direct or any substantial circumstance evidence based upon which a reasonable jury could convict.

THE COURT: All right. Appreciate your gentleman's position.

Did you want to be heard on that, Mr. Black?

MR. BLACK: No, sir, Your Honor. I --- Judge, I don't think it's necessary.

THE COURT: No, I understand. In --- in --- in this case, I think that the testimony of Mr. Hughey as well as the testimony of others indicate that there is both direct evidence and substantial circumstantial evidence which would warrant submitting this case to the jury. So respectfully, the motions are denied.

Mr. Grose, you anticipate calling --- or presenting a case at this point?

MR. GROSE: Can I have a moment ---

THE COURT: Certainly.

MR. GROSE: --- for ---

(Mr. Grose conferring)

MR. GROSE: Thank you, Judge. I --- I did consider

recalling a witness, but we've decided not to do that.

THE COURT: All right. Very good. I assume closing will be going in the same order that we've been going with The State. Our closing in full, then Mr. Tinsley, then Mr. Grose; is that what y'all decided? Is that okay with y'all?

MR. TINSLEY: I'm fine with that Your Honor.

MR. GROSE: It --- it --- it is. And I don't know what Mr. Tinsley might need, but I'm going to need time to hook up my technology before my closing. Should ---

THE COURT: Sure. You want to ---

MR. GROSE: I did this earlier this year, so it should go pretty quick. But ---

THE COURT: That's fine. The jury instructions that were e-mailed to y'all last night, did --- aside from adding the A and B first that Mr. Grose mentioned, and I think --- she's already got that. Did y'all have any other suggestions or ---

MR. GROSE: I do.

THE COURT: Yes, sir.

MR. GROSE: I think --- let me just pull up my Westlaw again, but --- taking --- there we go. While I'm doing that, Your Honor, I --- I think that it would be helpful if you explained that the concept of lesser included and give what has --- has been known as a King

charge.

THE COURT: I'm sorry?

MR. GROSE: A King charge. Resolving that the reasonable doubt --- if --- if they have any doubt between the --- the higher and the lesser that they have to resolve it in favor of the lesser included. I'm aware of --- this is what I was wanting to point out: Brightman versus State of South Carolina, which is a 1999 case. 336 S.C. 348, 520 SE 2nd 614. Where they --- the Supreme Court of South Carolina ruled that it's not, you know, automatic reversal for not giving that instruction if the proper reasonable doubt instruction is given. But they did not say that such an instruction would never be appropriate if requested.

And in that --- you know, they refer to the King case where that instruction was originally, or --- or one of the --- maybe not originally, but in (unintelligible) cases it stands for that in a footnote too, they say if a jury has a reasonable doubt between the lesser and greater offenses, it must resolve that doubt in the defendant's favor.

And so we would ask that that portion of the King charge to explain what lesser includeds are and to include that instruction.

THE COURT: Okay. Mr. Tinsley, you join in that

motion?

MR. TINSLEY: I join in that motion, Your Honor. I also would object to the hand of one is hand the hand of all. The State hasn't produced any --- any evidence that there was any kind of agreement that these two were in any kind of cahoots. All they've showed is that my client was having a conversation with Mr. Hughey, and then Ken Lee came up. My client did grab the arm, but that doesn't prove there was any kind of agreement there.

Also, I would ask for an assault and battery third degree charge for my client, Travis Lee. If a jury believes what I said, they have my take on what happened that my client grabbed his arm and they --- you know, they tussled or whatnot to the back. If they think he was one driving the train and that's all he did, they can convict him of simple assault and that's it.

So I --- I --- I think he is entitled to an assault and battery third degree charge. So I would ask that that be included in for Travis Lee.

MR. GROSE: And I --- actually, I would think that they're both entitled to that because the General Assembly specifically stated that third degree assault and battery is a lesser included of the other three that you're charging.

THE COURT: And Mr. Grose, you also join in Mr.

Tinsley's objection to hand of one, hand of all?

MR. GROSE: I --- I do.

THE COURT: All right. Mr. Brown.

MR. BROWN: Judge, to start, a hand of one, hand of all, Eric Phillips actually testified to a question I'd asked, did it look like they were working together, or --- essentially working together on this? And he said yes. So that is direct --- he looked at it and saw it basically. And also you can see the circumstances on video. So I believe hand of one, hand of all is appropriate and has been testified to.

As regard to the King charge, I believe it's not necessary now, I think that --- that case came about in 1930 telling a jury to find one guilty of a lesser included offense if they have any doubt as to guilt of a greater offense. It's --- it's no longer necessary, because of the modern reasonable doubt charge, which tells the jury to resolve any doubts in favor of the defendant. That's Brightman verse State from 1999. It's 520 S.E.2d 614. So I don't think the King charges would be necessary in this case.

MR. GROSE: And just responding to that, Brightman was the same case that I cited.

THE COURT: Right.

MR. GROSE: And it did not say to never give that

charge. And there's times like in the self-defense instruction where the jurors are reminded that The State has to prove, you know, their case, you know, beyond a reasonable doubt.

THE COURT: And disprove self-defense beyond a reasonable doubt.

MR. GROSE: Right. And --- and --- and so just because it might be covered by the reasonable doubt charge that you're planning to give, doesn't prohibit it for being in another place to make certain that the jury fully understands. I think --- it --- it may be the Blurton case, there's maybe the Belcher case, but there's --- there's cases that talk about, you know, that the --- the jury instructions should be crafted to --- to help the --- the jurors to understand the law in the particular case that's in front of them. And that --- that's why we request it.

THE COURT: All right. I forgot to ask you, Mr. Brown, concerning their request for an A and B third.

MR. BLACK: Judge, I don't think anything in the case works in A and B third. I --- we've toiled with A and B first as well, with attempt to injure --- you know, here we --- we have injuries, so I think we're kind of stretching for and A and B first is a lesser, but I think I can get more on what --- I understand why you --- when

you charge it based off of if the jury's in favor of Mr. Travis Lee for whatever reason, says he didn't actually --- be that he was attempting to injure in that manner that likely could produce death or bodily injury.

But, again, I --- I don't think there's any --- really any evidence of supporting an A and B first, and most definitely and A and B third based on the totality of the evidence and the injuries to Mr. Tobias Hughey.

THE COURT: All right. I appreciate everyone's position. The Court's going to decline to instruct the jury on the A and B third. This clearly is not an A and B third case. And I appreciate the way that the legislature wrote the law. And certainly under certain circumstances if it was warranted, for example, if someone were charged with A and B second, and maybe the --- there's disputed testimony about the degree of injury, or the degree of the assault, or things of that nature, then perhaps and A and B third would be warranted.

But under the particular facts of this case, I find as a matter of law that A and B third is not a viable lesser included of A and B second. As it relates to the King charge, I'm going to decline to instruct that. I think the reasonable doubt charge is sufficient, Mr. Grose. But you raise an interesting question, because

both you and I pretty much cut our teeth with the King charge being part of the standard instruction of the Court. And then obviously in --- I wasn't quite sure when it got --- I won't say disfavored, but when the --- I wasn't quite sure when the case came out until you reminded me that it was in '99.

But I --- I do feel that the King charge is unnecessary in this particular case in light of the reasonable doubt charge as well as the way I've kind of created a cascading consideration for the jury between A and B first and then A and B second. But your request is certainly noted. And ---

MR. GROSE: Well, I --- I think that that cascading way that you do it is why it's needed. Because you know, they have to --- you know, they have to consider the charge in the totality. And if --- if --- if they strictly following the cascading approach, then they're not considering the charge in those totality. So ---

THE COURT: And I understand your point. I do understand your point. And I --- I genuinely gave that consideration. In 13 years of doing this, you're the first one to request a King charge, and so that's what --- that caught me a little bit by surprise and it caused me to have to reflect on that a little bit.

All right. We'll be at ease for a few moments.

When the jury comes out, I'll simply turn to you, Mr. Tinsley, and you --- and I'll simply say Mr. Tinsley, and you can say the defense rests. Ditto for you, Mr. Grose. And then we'll go straight into closings.

And --- Solicitor.

MR. BLACK: Judge, I might have missed it, but did you make a final determination on hand of one, hand of all?

THE COURT: It's in there.

MR. BLACK: Yeah, that's all ---

THE COURT: There --- there --- there is --- there is some --- there is some direct evidence especially when they came to that apartment that night that this was in the minds of both individuals. So I --- I will be instructing hand of one, hand of all.

MR. TINSLEY: Judge, I would just point out the officer said Travis Lee wasn't on the video that night.

THE COURT: I --- I --- I understand. But they both have been asking about him at different times --- or at different times that night, I think was the testimony; am I correct?

MR. BLACK: I think Mr. Floyd identified Travis Lee and I think the officer said he didn't know if that was Travis Lee or not.

MR. TINSLEY: Oh, no. He testified that Travis Lee

was not on that video, there was no I don't know. He --- his testimony was that he was not on the video. Balchin. I --- I asked him on cross that specific question. He said, I don't know, maybe on direct. But I asked him the specific question on cross, and he said, no, he's not on that video.

MR. GROSE: What --- and what --- what I understood his testimony was is he couldn't identify who that other person was. But he knew it wasn't Travis Lee.

THE COURT: That was Balchin on the video, but I thought that the --- who was the witness at ---

MR. BLACK: Michael --- Michael Shane Floyd said it was Travis Lee.

THE COURT: Right. That's what I was thinking is that Mr. Floyd and that was the ---

MR. BLACK: That's the gentleman ---

THE COURT: --- gentleman who was offered a hundred bucks or something supposedly, right?

MR. BLACK: I think he said that the person that offered a hundred dollars was Kendrick Lee, but he identified two (unintelligible) coming to his apartment that night.

THE COURT: Correct. That's --- that was my recollection. That is --- that's in my mind sufficient to warrant a hand of one, hand of all instruction.

Okay. Anything else with the jury instructions? Any other problems? Issues? No? No? No? Going once, going twice.

MR. GROSE: We --- can we have a moment?

THE COURT: Certainly.

MR. GROSE: We're --- we're good.

THE COURT: You're good? All right. Why don't we go ahead and take a break. I'll let the jury have a smoke break. We'll be at ease for maybe about 15 minutes. And you can make sure that you can get your thing to work fairly quickly, if that's okay. You can do a dry run on the technology.

MR. TINSLEY: Are you going to e-mail out another copy of the instructions or ---

THE COURT: I don't really think they've changed any.

CLERK: I added like one sentence.

THE COURT: Options for the jury, guilty or not guilty of A and B first, but I don't think they've changed otherwise.

(Off the record 10:44 a.m. - 11:12 a.m.)

(Jury not in courtroom)

THE COURT: We are back on the record. Were y'all --- my clerk told me y'all were having trouble technologically. Are we --- are we good? You get it

sorted out? Everybody? Okay.

Mr. Grose, you wanted to look at the verdict forms. I have them here and I just e-mailed them to you and Mr. Tinsley.

MR. GROSE: I have it.

THE COURT: Okay.

MR. GROSE: Thank you.

THE COURT: Are we ready for the jury?

MR. TINSLEY: Judge, I want to put something on the record ---

THE COURT: Yes.

MR. GROSE: --- as it related to my client testifying. After we got done with that dialogue in which you stated he was on that video, which he was not, he's --- he wanted to testify to clarify that up since the judge is mistaken on these facts. He was concerned about the jury. But I think he still does not want to testify after going out and having a cigarette. But I just want to make very clear on the record about --- about this.

THE COURT: Mr. Travis, I take no position whatsoever as far as what's on the video. I cannot discern if that is you, if that is not you, or anything like that. I was simply going by the testimony of the gentleman who apparently was visited by individuals

wanting to speak with Mr. Hughey. Okay? So that --- I am not saying that you were on that video. That's a matter totally for the jury, and I take no position on that whatsoever factually. So does that clarify things, sir?

MR. T. LEE: Yes, sir.

THE COURT: Okay. If I said that, then I apologize. I misspoke. But obviously, I cannot positively identify you as being on that video just because of the nature of the video. Okay? All right. We good?

MR. T. LEE: Yes, sir.

THE COURT: All right. Very good. I assume you'll close, or Mr. Grose ---

MR. GROSE: May --- may I suggest an alternate verdict form, just listing the three charges and not guilty?

THE COURT: What are your thoughts on that?

MR. GROSE: That instead of listing them out the way that you've done, list assault, assault and battery of a high and aggravated nature, assault and battery first degree, assault and battery second degree, and not guilty as the options.

THE COURT: Where they would simply like circle ---

(Simultaneous speaking)

MR. GROSE: Yeah. The --- the way we always used to

do it. When I say that, I go back to when they wrote it on indictments but ---

THE COURT: Do you --- do you have a preference, Mr. Tinsley?

MR. TINSLEY: I don't have any opposition to the way Mr. Grose is requesting it.

THE COURT: You --- y'all have any position?

MR. BLACK: Judge, I think this is pretty self-explanatory of how it also tracks how the jury charge is. But (unintelligible) if not guilty go to question two. If --- or guilty you sign there. And that's it. I mean, I think it's --- it follows along. If they found not guilty on one, then you go to two, find not guilty on that, go to three. So I don't --- I don't see the issue with it.

MR. GROSE: This gets --- gets back to my request for the --- the King charge and the concerns I expressed earlier. You may not eliminate my concerns, but you would certainly substantially reduce them if you use the alternate verdict form I'm suggesting.

THE COURT: All right. I --- I appreciate your position. I --- I don't want to have them inadvertently circle a whole bunch of different things. And I think this tracks kind of the jury instruction in a similar vein. I --- I appreciate your position though.

And you will be closing for The State, Mr. Black?

MR. BLACK: Yes, sir.

THE COURT: All right. Very good. Let's have the jury, please. And again, I'll turn to you, Mr. Tinsley and then you, Mr. Grose. And y'all can just rest.

(Jury enters courtroom)

THE COURT: All right. The record will reflect that the jury is back and seated. Ladies and Gentlemen of the jury, we're in a position to proceed with this case at this point. So Mr. Tinsley.

MR. TINSLEY: Your Honor Travis Lee rests.

THE COURT: Mr. Grose.

MR. GROSE: Mr. Ken Lee rests.

THE COURT: All right. Very good. Ladies and Gentlemen, we've now reached that portion of the trial where you have received all the evidence that you're going to have in order to judge this case. And the towns will now have an opportunity to give you their closing summation or their closing argument. And the order that we're go in is Mr. Black will close on behalf of The State to be followed by Mr. Tinsley, and then Mr. Grose.

And I will let you know that it's normal for the attorneys to reference testimony or evidence that's been introduced during the course of the trial. It's normal for them to talk about what witnesses have said or

testified to. But if at any time, Ladies and Gentlemen, what the lawyers say about the evidence differs from what your recollection of the evidence is, you of course go with your recollection because you are the judges of the facts, not me, not the attorneys. You are the sole judges of the facts in this case. So you would go with your recollection of what the facts are even if the Solicitors or the defense attorneys were to make reference to any of the testimony or the facts. Okay? With that, Mr. Black, you're acknowledged for your closing.

MR. BLACK: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. BLACK: October the 6th of 2020. Tobias Hughey's life changed forever. It was a normal day. He was where he typically is at one of places that he stays. Here in The Village apartment complex here in the City of Abbeville.

He was in the parking lot between some of the buildings over there. And he --- as he was walking in the parking lot, he was met by Mr. Travis Lee. At that time point a conversation ensued. At one point here in this conversation, Travis Lee grabbed Tobias Hughey's arm. You've seen video, and the video's been referenced

throughout this trial. So we're going to watch it again.

And during this time, you can see other people in the apartment complex scurry around and go to the [redacted] building.

And a few moments later, a gentleman exited the [redacted] building top of the stairs, down at the bottom of the [redacted] building, carrying what appeared to be some sort of wooden stick --- some sort of bat, some --- some kind of maybe a table leg. Something that he was wielding. And you see that gentleman identified the other defendant, Kendrick Lee, walk across the parking lot to where Travis Lee and Tobias Hughey were standing.

And what happened next? The video shows swinging over and over again. Track a couple videos, and you can see this is what goes on. And ultimately, you hear testimony as to what happened and who did it to Mr. Tobias Hughey.

His life changed for forever. You heard medical testimony, you heard EMS, you heard doctors, you heard the extent of his injuries.

And now we're here today. You've been here all week. You came here on Monday for jury selection. For the past two days into this third day, and you've been hearing the evidence that's been coming from this witness stand from witnesses that have come up here and talked

about what they saw, what they heard, what they witnessed.

And now we're here at the end. We as The State --- as the prosecutors, we have the burden to prove the case beyond a reasonable doubt. And that burden is a burden that we welcome. And it's a burden that exists in every Criminal Court here in this country. And when you think about that burden, think about being firmly convinced of something. We don't have to prove it beyond all doubt. We don't have to prove our case every doubt, all possible doubt, every doubt that exists out there. We have to prove it beyond a reasonable doubt. And beyond a reasonable doubt is being firmly convinced of something.

Are you firmly convinced with the evidence that's been presented? Are you firmly convinced what they're saying happened? And what do we say? Both Kendrick Lee and Travis Lee were both charged with assault and battery of a high and aggravated nature. That's the allegations, assault and battery of a high and aggravated nature. That's what we have to prove, folks. And again, we've done that through witnesses that have testified, through the evidence that's been presented.

Mr. Wilke's putting up some definitions. These are some definitions that in a few moments once I get done, once Mr. Tinsley and Mr. Grose gets done, the judge is

going to read to you instructions of the law. And your job is to apply the law to the facts that you've heard, and ultimately as the finder of fact make a determination of what happened.

You don't have friends to reward, you don't have any enemies to punish. You're not on our side, you're not on their side. Your job is to determine what happened.

So what do we have to prove? Assault and battery of a high and aggravated nature. Person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person and great bodily injury to another person results. Or --- this "or" right here, the conjunction, the act is accomplished by means likely to produce death or great bodily injury.

That's what they're charged with, and this is what we have to prove. So again, great bodily injury to another person results. Did Tobias Hughey have great bodily injury? Or the act is accomplished by means likely to produce death or great bodily injury.

Now, you may ask yourself what is great bodily injury? Well, there's a definition. And that definition's right here below the assault and battery of a high and aggravated, the elements we have to prove. Great bodily injury means bodily injury which causes substantial risk of death, or, again, notice this "or,"

another conjunction, not and, or which causes serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Great bodily injury, again, which causes a substantial risk of death, or which causes serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

What was the testimony that came from this witness stand? Tobias Hughey died four times, had to revived four times. His heart --- heart stopped beating. That the brain is an organ, and once those cells were damaged from his brain injury, it's not like an arm, it's not like skin, it doesn't grow back. Those cells are gone forever. He has to learn to cope with that injury to his brain. That memory loss, that short-term memory loss that he has. Those cells aren't coming back, the brain is an organ.

So I submit to you that we have proved our case and we'll get into more specifics. That's the definition of battery which we call assault and battery of a high and aggravated nature.

And I submit to you when you're back there deliberating, once you look at the definition of battery, and once you take the facts that have been presented, the evidence that has been presented, you stop there. Don't

look any further. But you're going to get charged with some lesser included crimes. Some lesser included offenses, if you will. And those are assault and battery in the first degree, and assault and battery in the second degree. But again, you don't have to go there because it stops here with what's been --- with what has come out of the witness stand.

But let's talk about what assault and battery in the first degree is. And again is the definition that Judge Addy will read in a few moments. You find that The State's failed to prove either or both defendants guilty of (unintelligible) then you may consider whether The State has proven the offense of assault and battery in the first degree.

Person commits the offense of assault and battery in the first degree, if the person unlawfully offers or attempts to injure another person with the present ability to do so, and the act is accomplished by means likely to produce death or great bodily injury.

Now, at first blush, you may be saying to yourself, well, that sound an awful lot like what we just read just a minute ago with --- with assault and battery of a high and aggravated nature, but this is completely different. Key word here, assault and battery in the first degree if a person unlawfully offers --- this word "offer," right

here or attempts to injure. It's different if you're offering or attempting the injure --- injure someone else. That doesn't mean you actually have an injury.

So for example, say I had a --- a --- a bat, or a stick, or, you know, anything. I take this pen over here, and trying to stab Mr. Brown with this pen, and I swing at him and miss, that would be an assault and battery in the first degree because I missed. He doesn't have an injury. Trying to stab him in the neck to either cause death or cause a great bodily injury, I'm attempting to do. I'm offering to do it, but I miss.

That's what this assault and battery in the first degree is all about, offers or attempts to injure another person with the present ability to do so. And the act is accomplished by means that will likely produce death or great bodily injury.

It's not that folks. It's not assault and battery in the first degree, because we have an actual injury. We have the fact that Mr. Hughey had bleeding on his brain, he had (unintelligible). He died four times. They had to revive him four times. We have an actual here. So it's not assault and battery in the first degree. And again, it --- it talks about what great bodily injury is, but that's the exact same definition that we just read.

So the next one that you'll consider is assault and battery in the second degree. And that's below assault and battery in the first degree. Now, what is assault and battery in the second degree? And again, we submit to you that you're not even going to get this far, but assault and battery in the second degree is a person commits the offense of assault and battery in the second degree if a person unlawfully injures another person or offers or attempts to injure another person with the present ability to do so and moderate bodily injury to another person results or moderate bodily to another person could have resulted.

So you've heard a little bit about great bodily injury and you've heard a little bit about moderate bodily injury. And that was Dr. Spoor talked a little bit about that if you remember her testimony the other day. So what is moderate bodily injury? Again, we have another definition here that again, Judge Addy will read to you moderate bodily injury means physical injury that involves prolonged loss of consciousness or that cause us temporary or moderate disfigurement, or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia, or injury that results in a fracture or dislocation. Moderate bodily

injury does not include one-time treatments, subsequent observations of scratches, cuts abrasions, bruises, burns, splinters or any other minor injuries that do not ordinarily require extensive medical care. Moderate bodily injury.

Now, you --- may --- maybe thinking to yourself and what you may hear is that Mr. Hughey was unconscious for a while, yes, that's true. He had a fracture to his elbow, his arm. Yeah, well, that's true. But he also had if you remember the testimony, he had bleeding on his brain. He's got a permanent injury to his organ, the brain. Those cells are gone. They're never coming back. That's not temporary, that's permanent, that's forever. Dr. Donlan testified never going to be the same.

He was in the hospital for a month. He had to be revived four times meaning he was dead. His heart was not beating. Folks, that's great bodily injury. That's where you stop at. You stop at (unintelligible) assault and battery of a high and aggravated nature.

Now, I also mentioned in my opening, hand of one, hand of all, and we didn't get into any definitions at that point about what it is. But I put it in the back of your mind because that was something that was going to come up. And the judge is going to instruct you on that.

Let me pull it up here on the screen for you as

well. And there's some more to the definition, but hand of one is kind of a --- kind of self-explanatory. If a crime is committed by two or more people who are contacting together in committing the crime, the act of one is the act of all. Person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose.

For example, if two people can be guilty of killing another person when there was only one gun, there's only one bullet, and only one of the two fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all. Or as it is sometimes referred to or called the hand of one is the hand of all.

So the argument may be that, well, Mr. Travis Lee, he didn't --- he --- he didn't strike any blows. He didn't have the stick. All he did was --- was hold somebody.

And in fact, you'll remember the testimony he told law enforcement about it. Travis Lee told officer Cogdill out there --- out there on the scene. There was video of that. And you heard testimony that he said the

exact same thing when they got back to the police department. All I did was hold Tobias.

Well, it's just not that simple, folks, because he knew what was going on. He held him so Mr. Kendrick Lee could come over and smack him with a stick repeatedly over and over and over again. You're telling me he didn't know what was going on? He had everything to do with it. Everything.

When he drug him out there behind the [redacted] building, and according to Tobias Hughey's testimony, started hitting with his hand and started kicking him. So he actually participated too, while his buddy had a stick that kept repeatedly striking him in the head.

So that's what the hand of one, hand of all is. And again, y'all may have heard that before. That's what the definition is. And there'll be some more to that definition as well, that Judge Addy will read.

But Eric Phillips, witness that testified on that first day --- the last witness, he also said the same thing. He came out of his apartment at the [redacted] building, and he said they were working together as well.

So those are the definitions that --- again, that Judge Addy's going to be reading to you. Now, what's --- what's the evidence? And --- and --- and I've kind of been mentioning the evidence as we've been talking about

a little bit about the --- the definition and --- and what's going on. Let's --- let's talk about the evidence. Let's talk about what happened. You heard --- you --- you heard testimony from the officers that showed up. You heard that they got called to respond to [redacted] Road. And you heard Officer Singleton and Officer Crowe get there and immediately assess the situation. And they saw Tobias. You saw the videos, he was unconscious on the couch.

They immediately called EMT, cleared the --- cleared the room to make sure it was safe for EMTs to come in. And they did at that point they basically turned over the scene to them to let them deal with Mr. Hughey while they began their investigation, started collecting information, started doing everything that you would expect police officers to do doing their job.

Of course they're talking back and forth and eventually they learn that during the course of this initial encounter, when it didn't happen here in [redacted] Road, it happened over here at The Village. It happened over here at this apartment complex at [redacted] Street here in Abbeville.

So of course they tell all the other officers. They tell investigators who weren't working, had to come in on --- 'cause they were on call --- to investigate this

crime. So they go over to The Village Apartments that day and they begin their investigation.

And if you remember one of the questions I asked of the officers was, you know, did y'all get a --- did y'all get a lot of help when y'all got over there? And the answer was, well no, we didn't. Nobody really wanted to help us out.

So there was even talk about a --- of cash money. And you'll hear that. Maybe they're trying to bribe people. Folks, they're just offering. Rewards happen all the time folks. They didn't even get to that point because thankfully, they had video, right?

They had video. And --- and y'all seen the video. We're going to watch it again here in a --- in a little bit. They had video. Of course it took them some time to pull that video up. They had to figure out --- they didn't know exactly where it was, so I'm sure they were looking at different camera angles, different parts of that apartment complex as --- as you remember State's 53, the apartment complex is rather --- rather large and there's cameras all over this place. They didn't exactly know where it was, so they had to figure out which cameras to use.

So they eventually pulled it up and it did take a little bit of time. And what did they see from those

camera angles? What did they see from those camera angles? Investigator Wilke's pulling this up. As he's pulling these camera angles up, I think it started about 11:15 is playing now.

(Video playing)

MR. BLACK: This camera angle will show the apartment building. You heard testimony that this is the [redacted] building, this is the [redacted] building, this building over here on the right-hand side of the screen is the [redacted] building. And this building up here is the [redacted] building. And this is camera --- camera angle that's at the very base of the parking lot. But there's a fence that runs along there that if you remember behind it is Adams Drive, a --- a --- a road that kind of loops around the back.

And the testimony from Mr. Hughey --- Mr. Tobias Hughey was that it was starting to get dark. It was later in the --- the afternoon --- later in the evening. And he was walking across the parking lot. And at 11:53 in this video, can you see Mr. Hughey right here at the top of this parking lot, right here. He's walking down the parking lot.

I don't know where he's going, maybe he's going to see Mr. Floyd, right? There's testimony that he and Mr. Floyd hung out a good bit. They played video games, but

before he got there, wherever he was going, he runs into this gentleman right here. And who is that gentleman? Mr. Travis Lee. And as you can see there's --- they're talking. I --- there's no audio for this surveillance video. But Mr. Lee's kind of getting close to him and Mr. Hughey took a couple steps back, looks like he's talking. And if you remember Mr. Hughey's testimony was, well this --- it was kind of an animated conversation. And he kept demanding his stuff back. That's what Mr. Hughey testified to. And then Mr. Hughey at some point says that Mr. Travis Lee grabs his arm, right? And in a minute you'll see this. You see this dog run across the parking lot right here. You got a car coming by.

(Video playing)

MR. BLACK: Mr. Kendrick Lee is about to come from the right-hand side as these --- as these two cars pass by right here. Mr. Lee's going to kind of walk right past these cars --- Kendrick Lee, that is. There he is right there in the red shorts. So he's got something in his hands, doesn't he? That's what Mr. Hughey testified. He's swinging it.

At this point Mr. Hughey's being held and he's trying --- he's being pulled. Now Mr. Hughey is trying to get away. And you see a swing right there where Mr. Hughey jumps. And then another attempt at a swing, and

now they go off camera just about 13:45 when they go off camera.

Now, in a few minutes watch this here just a second. Because a lot of times you heard some testimony --- you heard testimony from the witness stand to talk about what happened. Well, you also have communication, right? You've got verbal communication. You've also got nonverbal communication, right? Not everybody that was out there testified, right? Not everybody out there testified. Eric Phillips testified, you heard his testimony.

But whoever this gentleman is right here, he didn't testify. This blue hoodie gentleman right here. Watch this gentleman in the blue hoodie. Keep your eyes on him. You want to know how bad this was? Watch this right here. See him do that? Let's rewind that. It's at 14:30. Let's watch that again. See him shrug his shoulders like that?

(Video playing)

MR. BLACK: In about 30 seconds he's going to walk over here to this white car. He's going to be able to see back this way back behind the [redacted] building. Please rewind that, Chris. All right. Here we go. Right here. See this? Do you see that, folks? You want to know how bad it was? You want to know bad they were beating Mr.

Hughey? Watch his reaction. Let's watch that again.

(Video playing)

MR. BLACK: This is how bad it is right here. Watch his reaction. It was that bad. Maybe that was the blow that got him in the head that got him on the right side or the left side caused that midline shift and bleeding on the brain. Maybe that was it. Or maybe it was a couple of them. I don't know. We can't see it. But he sure did. And you can tell from his reaction how bad it was.

Now, as tape continues to roll, you've got other people out here watching. He's still watching over there. You see this lady pick up a shirt to try to clean up the scene, I guess. See Travis Lee come back onto the camera here. Not one of these people called 911. Not one of them.

You see Mr. Kendrick Lee start going back to one --- the [redacted] building. He walked right past here heading to the [redacted] building. There's been a couple --- couple of sports references, right? There was a --- a reference about in a reasonable doubt how, you know, we as a state, we can't just take the opening kick-off and get to the 50-yard line. We can't take it to the third-yard line or take it to the 25-yard line and settle for a field goal, we have to take it all the way, right? Well, no sports

reference, and I hate to analyze it or to make an analogy about sports, with something like this, but so the tape don't lie.

Talking about football season, and everybody's excited about football season. Talking about coaches going back and looking at the tape to see how well that player's actually playing. Tape don't lie. If we watch this next video that shows more of the assault just from a different angle, you can see the amount of swings that Mr. Kendrick Lee has taken. This video starts about 11:30.

(Video playing)

MR. BLACK: We see from this angle this camera's from the [redacted] building at the point back with the [redacted] building. Again, you see Mr. Travis Lee walking across the parking lot, and you see Mr. Tobias Hughey come in the frame here at 12:12 and then, again, begin their conversation.

You see this lady running off of the screen down here at the top left corner. From the other videos that you've seen, you know she's going to get Mr. Kendrick Lee. And Mr. Kendrick Lee is about to come out from the side over here. Again, carrying the stick. You see him, he's got his arms right here. At 12:50, he's got his arms. Travis Lee's got Tobias in arms. Can't get away.

You see him move his arm trying to get away? At 13:15, here he goes. See him trying to get away.

(Video playing)

MR. BLACK: They go off screen here at 13:50. And then 13:50 is the --- let's pause it right here at 13:58. See this gentleman right here? See this guy right here? That's Eric Phillips. Now, let me talk about Eric Phillips for just a moment. Eric Phillips, when law enforcement showed up to his --- to his house that night, what did he tell Investigator Balchin? And what did he testify to on the stand? He said, I told him I didn't see anything, I was in my apartment --- I was in my apartment. I heard a loud noise, but I didn't see anything. When did he tell you that? When he testified. That was a lie. He came out and he was standing right there. And you can clearly see it, because he lives at this apartment. And that's the end of a tank top right there, the same clothes he was wearing that night when Investigator Balchin went and talked to him. And he's standing there the whole time watching.

Now, Mr. Phillips --- Eric Phillips, didn't have a record. He doesn't have any pending charges. A lot of the witnesses that testified for The State, you heard about pending charges that they have or past criminal record, which is fair. It is what it is. He doesn't

have --- he doesn't have any of that. He also lived up there and he told you that he lied. He lied that day about knowing what was going on. And why did he lie? He lied because he said he didn't want to get involved.

What else did he tell you? He told you once this whole thing got done, that Tobias Hughey came up and asked for help and he turned him away. Turned him away, the guy that had just gotten his brain bashed and his head bashed in. The guy that had just gotten beaten with --- within an inch of his life. And he turned him away. And he came up here and he said he turned him away. What reason does he have to make up any kind of story other than what he testified to?

Judge Addy said that, you know, what you see in court is not like what you see on TV. You never have that Matlock moment. You know, typically, we know what people are going to say. He never told anybody what he saw.

MR. GROSE: Objection. That's not in evidence.

THE COURT: All right. Ladies and Gentlemen, you'll recall the testimony based upon how you recall the testimony being presented. Again, none of this --- none of what Mr. Black says as it relates to the facts, if it differs from your recollection, you got to go with your recollection. Okay?

Please continue.

MR. BLACK: And Judge Addy's completely correct. If I say something that's incorrect, my --- what I say is not evidence. What these witnesses say is evidence. And the same is true for Mr. Tinsley. What Mr. Tinsley says is not evidence. Same thing with Mr. Grose. What Mr. Grose says is not evidence. The only evidence that you have to consider is what these witnesses testify to.

But Mr. Phillips, going back to Eric Phillips, got up here and told you what he saw. And he told you that Travis Lee and Kendrick Lee were involved. He told you that it appeared that they were working together. That Travis was holding him and pulling him behind the building. And that Kendrick had some sort of stick and he kept hitting him in the head on all over his body.

And he's standing right there watching this whole thing go down. They went behind the building at 13:50. Let's start the video back.

(Video playing)

MR. BLACK: See how long it takes for them to come around the corner? All right. Hold it right there. 14:55. It's a little bit of a flash, but (unintelligible) top where you see a gentleman right here appears to be red shorts. See another gentleman in white reappear on the screen. About a minute and five seconds.

Minute and five seconds behind the [redacted] building with Tobias Hughey getting pummeled over and over again. According to his testimony, and again, he's going in and out of consciousness, he thinks about 20 times or so. A minute. Not including the swings that take place starting here in the parking lot working his way between the [redacted] building --- the [redacted] building and the [redacted] building.

But a minute and five seconds, they're completely disappeared from camera. What happens next? The video starts, Mr. Travis Lee comes back around. And look at Mr. Phillips, Eric Phillips. Looks like he's going into his apartment. There's somebody stumbling around right here, that's Mr. Tobias Hughey. Goes up to his door. There he goes. He's turned away. And he starts going behind the [redacted] building. Just like Mr. Phillips told you he did. Turned him away. Again you can tell Mr. Phillips didn't want to be up here. He didn't want to get involved. He came up here. Kendrick Lee, Travis Lee working together repeatedly hitting Tobias Hughey all over his body.

We go to this next video, starting about the 15-minute mark. This captures the back of the [redacted] building.

(Video playing)

MR. BLACK: I believe that is State's 10. At 15:20 you see Mr. Kendrick Lee with nothing in his hands walk past the --- here's the back side of the [redacted] building, heading back to the [redacted] building. And in a minute, 15:39 you see Tobias Hughey stumbling. And you see him right there. He's --- it's kind of hard to tell with this pause, but you can see how his face and his head it's bloody. And he's stumbling around. He's not --- he's not walking like he walked when he came across that parking lot. He's stumbling.

He barges into apartment [redacted], I believe that belonged to Michael Shane Floyd. And he was screaming and hollering too. Because we saw that video --- I'm not going to play the video when he goes into Mr. Floyd's apartment. But you heard how much in pain he was in.

And one of the arguments is well he didn't --- he didn't go to the --- he didn't go hospital. He told them not to call the police. He testified he --- "he," being Tobias Hughey, testified that he wanted to see his son. I guess that's fair.

He also had pending warrants. That's a hundred percent true. He had a domestic violence charge that was pending from September of that --- of that year. And then he had a charge that his mother took out on a FTC taking her car or something or other from April of that

year. And that charge was --- was dismissed. He had pending warrants. But he was concerned about seeing his son.

Now, the video fast forward came forward it jumps to 16:32 and Mr. Wilke's paused. That we're going to start it back up here. 16:22 is when it starts back. And Travis Lee comes back into the frame. Now, when Travis Lee gets past the [redacted] building, he turns around, and he comes back, and he goes to the base of the back side of this [redacted] building. And this is about 16:45.

16:47 he turns around and he leans over and he picks something up and then he's off camera. We don't know what he picks up. Maybe it was a wooden stick. Maybe it's the wooden table leg, or the bat, or whatever it was. Maybe it was the --- somebody's shoes. Didn't appear that Mr. Hughey was wearing his shoes a while ago when he walked to the --- Mr. Floyd's apartment. Got beat so bad it knocked his shoes off. Maybe it was --- maybe it was his shoes. I don't know, but they pick something up.

And an 17:14 there's two other individuals --- gentleman in the middle, blue shirt, and then Kendrick Lee, the individual that just got done beating Mr. Tobias Hughey within an inch of his life.

While Mr. Wilke is pulling up this last video, I

believe The State's 15. Mr. Hughey is inside Mr. Floyd's apartment at that point. And again, you heard testimony about him being in his apartment and (unintelligible) his mother comes and gets him.

This is a video that Mr. Floyd talked about when he testified the other day about a couple nights prior to Mr. Hughey's getting beat. And what is it Mr. Floyd testified to? And again Mr. Floyd has a record, has pending charges, but everything he testified to is basically on video. So again, once again, folks, tape don't lie.

So this video starts at about a 1:30:15. What did Mr. Floyd testify to? He said two --- and we'll pause it right there. At 30:25. He said that two gentleman came up to his door a couple different times on about, you know, an hour, an hour and a half or so, on three different occasions. And they were inquiring about Mr. Hughey. They were looking for him. This person is ultimately identified, the person in all red on the left-hand side of this video is identified as once again, Mr. Kendrick Lee.

And what does he have in his hands? Got something behind his back attempting to conceal it. This wasn't a spur of the moment kind of thing, folks. Kendrick Lee was looking for him for several days. And he went to Mr.

Floyd's apartment a couple nights prior, looking for him holding either the same object or something very similar to what he had on October the 6th when he beat him within an inch of his life. So we'll play this video too.

(Video playing)

MR. BLACK: See a gentleman going up to the door? Mr. Floyd's testimony was he came up to the door looking for him. He told him Mr. Hughey wasn't there. They came back a couple times. I think the last time that these individuals came back he identified Kendrick Lee as asking Mr. Hughey --- he pulled out some money and offered him a hundred bucks. And Mr. Floyd's testimony was I opened the door, showed them he wasn't in there, even though Mr. Hughey was in there according to his testimony.

They were looking for him several days prior.

You heard Renee Guillebeaux testify. She testified that Travis Lee called her that day and Travis Lee told her that he was looking for Tobias to confront him about an alleged burglary Apartment [redacted] that belonged to Miesha Cobb.

And what did Mr. Guillebeaux tell him? Y'all handle it. What did Ms. Guillebeaux mean by y'all handle it? Well, she didn't mean almost kill him. That's what she didn't mean. She made that very clear when she

testified. She said they're somehow related. And I --- she explained it and I couldn't really follow it, so if y'all were able to follow that kudos to y'all. But there's some kind of relationship. But either way she made it very clear that she did not intend for them to almost kill her son.

You heard from law enforcement from Officer Cogdill and Officer Balchin. Again, you heard from Officer Balchin about these videos. But you also heard from that that Travis Lee, when they arrested him, admitting to his (unintelligible) in this. Admitting to holding Tobias. He even demonstrated out there on the scene, by grabbing one of the officer's arms, not maliciously, but demonstrating what he did. All I did was hold him. And he clarified that at the police department. All I did was hold Tobias. Again he's admitted his involvement. He's admitting exactly what he had done.

And then you heard from the doctors. The medical portion. You heard from EMS. You heard that they showed up at [redacted] and took him to the landing zone because they --- he was in critical care --- he was in critical condition. So they made the decision to fly him to Greenville which is a level one trauma center here in the upstate so they could get him there quickly.

They gave him drugs to help with his seizure

activity. They also gave him --- I believe the testimony was a epinephrine drip. And Dr. Spoor said that is a --- it's rarely done by EMS. But why do they do it? They do it to make blood flow from the heart to make the heart beat. They were scared the patient would lose his heartbeat. That's why they --- that's why they gave him that. And in the course of transitioning him from EMS to the helicopter, what happens to Mr. Hughey? Heart stops. They have to start doing CPR, when your heart stops, what did Dr. Spoor testify? You're dead. When your heart stops, you're dead. And they got to do whatever they can to try it revive it. Try to get it going.

So of course what (unintelligible) learns is you do CPR. And so began doing CPR on Mr. Hughey. Had to do it twice out there that day. And that's why they gave him that epinephrine drip. You heard once he got to the hospital Dr. Spoor who testified as an expert in trauma surgery, I believe is what her area of expertise was. Met him, evaluated him, and started attempting to save his life.

She said that he had a tremendous amount of blood loss. She said that he had to have a breathing tube in order to breathe. If he didn't have it, he was going to die, because he couldn't breathe on his own. Stated that he had a fracture (unintelligible). She said that his

body went into shock because of the amount of blood loss and that ultimately affected several of his organs. His lungs shut done, his kidneys couldn't produce urine. They --- they basically shut down.

She said that on October the 10th, four days after he'd been at the hospital, his heart stopped again. They had to do --- they had to revive him again even at --- at the hospital, four days after the fact.

Critical care, the ICU till October the 19th when he got transferred out. From October the 6th to October the 19th. Heart stopped again at the hospital on October the 10th. In total he was revived on four different occasions because of his heart stopping. And again she testified that that means you're dead.

Dr. Donlan testified that he eventually came to him at Roger C. Peace, which is basically another wing at the hospital, on October the 29th, and released on November the 4th. But Roger C. Peace is a part of the hospital that deals with rehabilitations. The rehabilitation center at the hospital where you're learning how to deal with brain injuries typically, is what he testified to. People getting into car wrecks and having brain injuries, strokes, et cetera. And basically how to teach people how to live your life and cope with the injury that you have.

And again, his testimony that it's your brain is an organ. When you have a brain injury, you lose cells in your --- in your brain. And again, that was due to the beating --- the subdural, epidural hematoma, the bleeding on the brain that Dr. Spoor testified to, that caused a midline shift, so much pressure on the brain that your brain shifts. Cells in his brain dead that don't regenerate, never come back. So you have to learn to live --- he --- Tobias Hughey has to learn to live and cope with that for the rest of his life.

The brain is not like other parts of the body. It's not like skin. It's not like bone that'll heal and come back. Once they're gone, they're gone. That's what Dr. Cogdill testified to. Again, what was the definition of great bodily injury? Permanent loss of member or an organ.

His injuries were consistent with blunt force trauma to the head, not heavy drug use. As you heard the question being asked over and over again. There's no evidence of that. Again, what I say is not evidence. What Mr. Grose says and what Mr. Tinsley says is not evidence. No evidence that Mr. Hughey had been having heavy drug loss --- or using heavy drugs. And even if he did, that didn't cause the bleeding on the brain. His injury was his --- his scans are consistent with blunt

force trauma.

What I've heard from the course of this trial is that Tobias Hughey has a record, Tobias Hughey has pending charges, Tobias Hughey's a thief. He's known as a thief. Tobias Hughey uses heavy drugs, and he admitted to using Adderall and marijuana. Heavy drugs. And so I don't know, I guess the insinuation is is that he deserved this. I guess that's (inaudible).

Come on folks are you serious? When those definitions were read, assault and battery of a high and aggravated nature and assault and battery in the first degree, assault and battery in the second degree. I didn't see any exceptions in there about if you've got a record this can happen to you. Or if you're known as a thief, this can happen to you.

Tobias Hughey is lucky to be here. His heart stopped four times, even after he was at a level one trauma center. Four days later his heart still stopped because what Dr. Spoor guessed is the tremendous amount of blood that was lost. He was dead and they brought him back four times.

Folks, that's great bodily injury. That's what Kendrick Lee and Travis Lee did to him. They were working together, it's obvious from the video. Tape don't lie. It's all on video. And the testimony from

the doctors and EMS speak for themselves.

Mr. Tinsley made a comment in his opening, again this is in reference that it's not good enough for the Solicitor's Office in The State to take the ball to the 50 or the 30, 25, 500 line. Settle for a field goal. State has to punch it in the end zone. We're going to use that analogy, folks. We got opening kick. We caught it and we ran untouched to the end zone. Nobody can touch us. They were working together and they beat Tobias Hughey, caused him great bodily injury and almost killed him.

We're going to ask you to find him guilty of assault and battery, both of them. Assault and battery of a high and aggravated nature, because that's what they did that day. The tape don't lie. Thank you.

THE COURT: Thank you, Mr. Black. If it's okay with you, Mr. Tinsley, I want to let the clerk go ahead and put in an order in for lunch for the jury.

So Ladies and Gentlemen, if you would, just adjourn to the back for a few moments, your clerk of court's going to join you. We're going to be ordering some pizzas from Theo's. And if anyone wants a salad or something that's maybe a little bit healthier than pizza, let her know and she'll order that too. Okay?

You guys probably won't be around, so you may not

want to put in an order, but if you are, you can have some pizza too. Okay?

Adjourn for the back for a few moments, don't discuss the case yet, and we'll proceed in about five or ten minutes, as soon as Ms. Boggs (phonetic) has placed that order. Thank you.

(Off the record 12:18 p.m. to 12:34)

(Jury in courtroom)

THE COURT: The jury, your lunch should be here or should be ready about 1:20. And the clerk will go get that, but I wanted to go ahead and get that order in since I figured it would take a while.

Mr. Tinsley, I apologize for delaying your closing, sir, but you have the floor, you're recognized.

MR. TINSLEY: May it please the Court.

THE COURT: Yes, sir.

MR. TINSLEY: Tape don't lie. The State's witnesses sure do. Mr. Black just told you that Mr. Hughey's life was changed forever. Said that --- essentially said that my client, Travis Lee, beat him to within an inch of his life and ruined his life. That's not what we heard from this witness stand. That's not what the evidence shows. His criminal enterprise that he had before this incident kept right rolling right along once he got out of the hospital. So to suggest that --- to suggest Travis Lee

has ruined Mr. Hughey's life, which is the argument he made is just not --- it doesn't hold water. You heard --- heard the evidence of what Mr. Hughey's been doing since he got out of the hospital of the sounds like he's been doing everything but getting treatment. Made one follow-up treatment --- one follow-up appointment and that's it.

Tape don't lie. You see several people out here on this tape. Several. Not a single one of them called 911. Why didn't they do that? Well, strikes me as pretty obvious. Number one, they didn't think Mr. Hughey was in any danger of death or great bodily injury. And number two, they didn't think a crime had occurred. Otherwise, surely someone would have called 911 with all those people out there.

And if you look at the tape, look at it play-by-play, you see Mr. Hughey walk to my client, Travis Lee, and they're having a conversation. Mr. Hughey knew --- knew what he'd been doing to this --- this community. Broken into Ms. Cobb's apartment, stole --- stole items out of there. And broke in who knows where else.

He couldn't even --- he had to ask which --- which pair of shoes I was talking him stealing. Someone is stealing so much he can't keep one theft --- one burglary

straight from the other.

So I ask if Mr. Travis Lee's behavior was reasonable. They're talking. Ken Lee comes up. Travis grabs --- grabs Hughey's arm. There's nothing to suggest that Travis knew anything about what was going to transpire between Ken Lee, Mr. Hughey --- Tobias Hughey there's no evidence of any kind of prior agreement between them. So, hey, I was told by your mama that we need to handle this. Now, don't --- don't run away, we're going to deal with it. That's what Travis Lee's behavior's consistent with. That's what he was doing holding Tobias Hughey's arm, which I think is very reasonable when he was going around stealing and you talk to his mama and say what needs to be done about that?

She knows what's going on. She said, y'all handle it. Specifically said that. She probably meant smack him around some. Certainly grabbing his arm is not inconsistent with that. And then Mr. Hughey take --- doesn't --- Mr. Black kept saying that he drag him. That tape doesn't show Travis Lee dragging him. That tape shows you --- them tussling, Travis is kind of hanging on. Hughey's the one jerking away to the back. He's not getting drug. He was never on the ground getting cold which is what dragging somebody means.

And I've talked in my opening about holes in their

case. We never see on this tape, which does not lie, I wanna agree. You never see any kind of --- anything hitting Mr. Hughey. You never --- certainly never see Travis Lee strike him or attempt to strike him. Then you've got the behind the --- you know, we don't know what happened that minute.

Obviously something --- something rough happened to Mr. Hughey. But The State's got the burden of proving that Travis Lee committed these crimes that they're alleging he did. They don't have it. They --- they --- they call --- The State strong arms Eric Phillips into coming up here under threat of 45 days in jail ---

MR. BLACK: Objection, judge.

THE COURT: Overruled. This is argument, Ladies and Gentlemen. I'll let Mr. Tinsley make the argument. Of course remember the testimony and the facts based on your recollection. Mr. Tinsley.

MR. TINSLEY: Testimony. He got up here admitted he out lied to the police that night. Told the police he didn't see anything. Now, he doesn't tell anybody anything else till the day of trial. Never spoke again. And you heard his testimony. He didn't want to --- I specifically asked him about the 45 days. And he no --- no, I think Mr. Grose questioned him a little more. You heard his testimony about man in a dark suit downstairs.

You heard that. That's not something that's being made up out of thin air.

And Solicitor Black made some comment about him wearing the same clothes. I don't know anything about that. The only evidence we've seen is him wearing what he was wearing on this security camera. You could tell he was scared. The man --- the man has serious health issues. And he testified to it. And that's the only person they've got to testify about --- that was out there. Solicitor Black made a big point about the man in the blue sweatshirt, and his reaction. I didn't see the man in the blue sweatshirt get called up here.

Likewise, two other people went off camera on there, a male and a female. We're never told who --- who they were. We never hear from them. Holes in The State's case. Just a lot of them. And they tried to clear --- to --- to --- to convict Travis Lee under this hand of one is hand of all theory. Mr. Black read part of it to you. He conveniently left another part out. Guilt is a principle that's shown by actual or constructive presence at the scene as a result of prior arrangement.

Therefore a finding of prior arranged plan or common scheme is necessary for finding guilt as a principle. So they have to prove there was an arrangement between Travis and Ken Lee. There's no evidence to support that.

There is evidence that Ms. Guillebeaux and Travis had a conversation where she told Travis Lee to handle the situation. Ken Lee wasn't part of that conversation.

And then there's testimony about Ken Lee coming to Mr. Floyd's residence a couple nights earlier. We saw the video. Mr. Floyd, admitted shoplifter, admitted hard drug user, admitted buddy of Tobias Hughey, claimed that Travis Lee came to his door. That's interesting. Travis Lee's not on that video.

If you recall yesterday afternoon I asked Officer Balchin if Travis Lee was on that video. The answer was no. Travis was not on that video. Travis didn't go to that man's door. Mr. Floyd testified that he's got a pending discharging a firearm into a dwelling. He had to come to court for roll call appearance last Friday morning. At some point last Friday, he talked to Solicitor Black. And at that point, he's talking about Ken Lee and a bald-headed man coming to his door that night.

Travis Lee doesn't have a bald head. There's no evidence in the record that he's ever had a bald head. And you better believe that if they had a --- a mug shot from that time with him having a bald head, they'd be waving it around in front of you. He didn't have a bald head, so you hadn't seen that. Mr. Floyd's testimony

should be entirely discredited, not only as he's an admitted heavy drug user, admitted thief, he's got a pending --- a serious pending charge that he hadn't even bothered to hire a lawyer from. He can get up and say --- him testify and that charges have nothing to do with each other.

You don't leave your common sense at the door. You know what's going on with Mr. Floyd trying to help his buddy. And his --- himself get out of his charges at the same time. And let's --- let's look at Mr. Hughey and his testimony. Boy, there was some whoppers there. He couldn't even admit to simple undisputed stuff. Couldn't even admit talking to my investigator Stevie Jones (phonetic) over here, despite a couple of in-person conversations. He had amnesia on those. Showed up a call log where he had called Mr. Jones five or six times and he --- he --- he acknowledged that was his phone number previously before he got rid of that phone. And but claims to not remember making all those calls. He has quite (unintelligible) memory to remember all these specifics of --- of this incident, but he can't remember something that --- that simple. It just didn't --- that doesn't pass the smell test.

He also --- he testified about somebody Kiara kicking him or --- in his statement which he --- and you

know, I'm --- I'm a little unclear of whether he's admitting that as his written statement or not. He was waffling pretty bad back and forth on that. The first statement he admits going into that apartment, which he then later denied.

He also doesn't mention anything about Travis Lee in the first statement. Second statement doesn't mention anything about Travis Lee. It's only in this third one when he mentioned getting kicked by somebody named Kira who's not been charged with anything, that he's --- that he even mentions Travis Lee.

And he's --- he was very unclear as was Mr. Phillips about what Travis Lee's role was. You hear that he's holding him, but you also hear he's hitting him. I mean, it --- it --- it's, unless he's Superman, he can't be hitting, kicking and holding at the same time. It just doesn't make any sense.

And Travis Lee, he cooperated with the police, you heard from him. He admitted --- yeah, y'all have me for holding him and demonstrated it. Holding the officer's arms. Tape don't lie, that's what he did. That doesn't make him guilty of assault and battery of a high and aggravated nature or these--- or assault and batteries, that's all The State's proven on Mr. Travis Lee.

And back to Mr. Hughey. And once again, he

couldn't --- couldn't tell the truth about the simple stuff. He couldn't, yeah, that's my --- my buddy that I'd go hang out the and smoke dope with and play video games, but said they work together. Come on. Just the simple stuff, he can't --- he can't tell the truth about. That's got nothing to do with memory, telling the truth.

He also, on the drug use, he admitted to Adderall and marijuana, but he also admitted to methamphetamines. Then he tried to clean that up by saying that's in Adderall. Come on, everybody knows that --- that's ridiculous. That's just a ridiculous comment, which when you --- when you start lying, you make ridiculous comments 'cause it's a lot easier to stand on the ground and to tell the truth than to climb --- climb up in a tree and tell all these lies and try to keep them straight.

And he admitted --- he flat out admitted he was guessing on his testimony. So once again, I would discredit it in its entirety. And The State's just wanting the camera to show what it does not show. It does not give them the evidence that Travis Lee committed these crimes. Doesn't --- does not show him striking Mr. Hughey, does not show him making any aggressive moves with Mr. Hughey, just grabbing his arm. Hey, come down, your mama told --- told us to handle this, so we're going

to squash it and (unintelligible).

And when Mr. Travis goes off, there's nothing showing Travis Lee holding him while Ken Lee or anybody else beats him. There's nothing to show Travis Lee beating him period.

And also, Mr. Black made the argument that Travis Lee was picking up evidence and hiding it on that last video, where he's walking to the back. Well, you folks know Abbeville. His mama lives over there on Adams Drive, which where the police picked him up the next day. And which is right over there, walking distance right by that tree line. So he's --- evidence supports that he's walking to his mother's house --- Ms. Virginia Lee, who's present in the courtroom --- where he resided.

And if he's --- stashing evidence, then why is he so forthright with the police the next day? Says, yeah, search the house, search the car, that's not a problem. They didn't find anything in there incriminating. If he --- you know, if he was responsible for being involved in beating this man to --- with him an inch of his life as the Solicitor said, why --- why isn't there any evidence of his clothing just soaked in blood? It's just not --- it --- it just does not pass the smell test once again. The State's theory just does not pass muster.

And in --- in --- in his --- as the Solicitor went

over with you, this --- they've got first charge. You're going have to look at assault and battery of a high and aggravated nature, which means great bodily injury. The State has to prove that Travis Lee is responsible for causing great bodily injury to get him --- to convict him of assault and battery of a high and aggravated nature. They have not done so. They haven't produced any evidence that Travis Lee had anything to do with injuries to Mr. Hughey.

And I would --- I would argue to you that great bodily injury, if he had really suffered this great bodily injury at the hands of Travis Lee or Ken Lee, right there on the scene, somebody would have called 911. Not a single person --- that doesn't happen late at night. It's in daylight. You've seen the video.

And then Mr. Hughey gets up and walks over to Mr. Floyd's to do God knows what for how --- who knows how long. Mr. Floyd said ten minutes. Somebody's really sitting there dying in your apartment for ten minutes, you don't call 911. That just doesn't --- that makes absolutely no sense.

And you heard the medical testimony to get up in his condition can be affected by how long it takes to get medical attention to him. So it is dark by the time paramedics get to his mother's house. Quite a bit of

time I suggest to you quite a bit of time had passed between when they incident occurred and when 911 got called. That doesn't sound like great bodily injury caused by Travis Lee or Ken Lee or anybody else that was at the scene The Village.

Then next you have to look at the assault and battery first degree. And that it as the Solicitor talked about requires, you know, the method causes a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Once again, they have to prove their case beyond a reasonable doubt, which means they have to prove beyond a reasonable doubt that Travis Lee caused --- did something that would be subject Mr. Hughey to that. It's just not there. It's not on that tape. It hasn't come from that witness stand.

So then you would look at the lowest level of assault and a battery that the judge is going to charge you with, which would be second degree, which is moderate bodily injury. And that involves a prolonged loss of consciousness or that causes a temporary or moderate disfigurement, or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional

or general anesthesia, or injury that results in a fracture or dislocation.

Well, once again, The State has to prove that Travis Lee caused that. When Travis Lee walks back a separate time from everybody, walks back on the scene and around and eventually leaves. Right after that Tobias Hughey walks by. You know, I --- there's certainly --- later on, there was a loss of consciousness, but at that point there was no loss of consciousness, so to pin that on Travis Lee is just not supported by the evidence.

And as far as the broken arm, once again, we have no evidence that Travis Lee participated in breaking the man's arm. So I would suggest to you that State's failed its burden even on that lowest level charge. And based off the reasonable doubt charge that the judge is going to instruct you on, if you have any doubt between the charges, you have to resolve it in my client Travis Lee's favor, which would mean going with the low --- lower charge.

And so, you know, reasonable doubt, we talked about a lot the blind load of justice like I told you about Tuesday morning. Facts going this way, or that way. The State has to firmly convince you, means it weigh --- its scales weigh in its favor to convict my client on every element --- every element of the crime. Even they have

to prove that he --- he caused this. Any doubt you have, reasonable doubt requires you to give the benefit of the doubt to my client.

And presumption of innocence, you should go back to the jury room and write on your tablet, presumed innocent. That's your starting point which all deliberations start. The State has to prove its case beyond all reasonable doubt to convict my client.

As --- as Mr. Grose explained to you Tuesday morning, this isn't Tobias Hughey versus Travis and Ken Lee. It's the government, The State of South Carolina bringing this case against Travis Lee. The government's on trial here. The State of South Carolina with its vast resources is what's on trial here, not Travis Lee. They're the ones who have to prove Travis Lee's guilt, convince you beyond a reasonable doubt.

You go through those --- those --- those charges, assault and battery of a high and aggravated nature should be easily thrown out. It's just when my client's life's at stake on that charge, and there's just no evidence to support it.

So then you look at assault and battery first, once again, as we went over, The State can't prove that Travis Lee did anything to subject Mr. Hughey to the risk --- risk of those --- those great bodily injury.

And then you look at moderate bodily injury, and I --- I --- I don't dispute that Mr. Hughey suffered moderate bodily injury, but the dispute I have is to hold Travis Lee accountable. There's no evidence to do so, they're trying to lump it under this hand of one hand of all. This is not supported by the evidence. There's no --- nothing in the record supporting the notion of any kind of prior arrangement. They don't ambush this man. They don't come jump on him. They arrive at different times to do what Ms. Guillebeaux told them to do, handle the situation.

Now, what happened behind that building, I don't know. The State doesn't know, and that's on The State. The State has the burden of proving Travis Lee's guilt.

So Mr. Black used my football analogy reasonable doubt quite a bit. And he spoke like somebody watching a game with rose-colored glasses. And he --- that he --- he and The State just took over the kick. They went untouched in the end zone, meaning every fact in the --- in here went in their favor.

Thankfully, you folks don't have rose colored glasses on. You get to be the judges, the jurors the referees to determine what really happened over there, and hold The State to its --- to its evidence. And the tape doesn't show what they want you to believe that it

shows or that they argue that it shows with all that. The State has failed to meet its burden of proving my client guilty.

So with that I --- I thank you for delivering my client and bringing a just verdict.

THE COURT: Thank you, Mr. Tinsley. Mr. Grose, your closing. I know you need to just get it set up. Give you a moment.

(Mr. Grose sets up equipment)

MR. GROSE: When we started at the beginning of the week and the judge was giving you some instructions at the beginning of the case, one of the things that he --- he said when he added to the instructions or the opening remarks was is that the trial is not really about, you know, figuring out what happened. The trial, what your role as jurors is --- is determining whether The State of South Carolina met their burden of proof. And if they don't meet their burden of proof, then Ken Lee and Travis Lee are entitled to that benefit of the doubt.

One of the things I think that the judge is going to tell you when he charges you on the law is that you have no friends to reward and no enemies to punish, that your verdict is supposed to be based on your view of the evidence and the law that the judge charges you.

I'm going to go through in a little bit --- I'm

going to go through some of the other things that I think the judge is going to charge you, but I want to remind you that when we started this on --- I guess, Tuesday, with opening statements and everything State just talked --- prosecutor just talked to you about assault and battery of a high and aggravated nature.

I mentioned that you would hear things about (unintelligible) other degrees of assault that you would hear about great bodily injury and moderate bodily injury. And what is this up on the board right now is the --- the verdict form. The judge --- and it's been alluded to by the other lawyers, the judge is going to give you three options as to what the charges should be if you decide that one or both of these people are guilty.

It was hard to sit there and not take offense when Mr. Black stood in front of you and said that I or anybody else in this courtroom was implying that Mr. Hughey deserved what he got that day. That's just not true.

There's reasons that we talked about his record, there's reasons that we talked about his conduct. There's reasons that we talked about his drug use and I'm going to go through some of those in a minute as it applies to the laws that I think you're going to be

charged in a little bit.

In fact, I imagine that there's a good chance that you're going to find that condition is responsible for something in this case, and I'm not up here standing and telling you that Mr. Hughey got what he deserved. I'm up here to tell you what the evidence shows, what the evidence doesn't show and where they failed to meet their burden of proof.

Now, I'm going to come back to this later, but we've had some talk already about great bodily injury, and moderate bodily injury. And through this trial for three days they've only given you three things to think about as to why Tobias Hughey has suffered an impairment or loss of use of his organ, loss of use of his brain. The first thing that they gave you was after he got out of the hospital with --- during that first two weeks that his mother had to give him a bath, help him with a bath one time.

The second thing that they gave you to think about as to why Mr. Hughey has permanent brain damage, is because on one occasion he forgot to turn the stove off when he was cooking chicken fingers and --- and the grease was still burning. A lot of people made that mistake. I made that mistake. Some of you might have made that mistake. One time is all they've said that

that ever happened.

And the third thing that they said to show that he has permanent brain damage and loss of use of --- of that organ in his body is he has a hard time remembering things. You saw him on the witness stand. I'm going to talk about demeanor in a minute. His memory is convenient to what he wants to remember and what he doesn't want to remember, what he wants to talk about and what he doesn't want to talk about.

So the first thing that I want to talk about is the presumption of innocence. Nobody is required to prove themself innocent. The burden is always on The State. As Mr. Tinsley alluded to earlier that this presumption of innocence continues into the jury room and you begin your deliberations presuming that both of these gentleman who are on trial are not guilty. In fact, he says this is not just a mere legal theory or a legal phrase. It's a substantive right that we're all entitled to.

As I talked to you about the other day, this is a dispute between Ken Lee and the government. Yes, there was a dispute involving Mr. Hughey, about the dispute in the courtroom is that The State is trying to make this into something that it's not, trying to make it into more than what it is and more than what happened that day. They tell you that the video shows everything. But then

at the same time, they try to put ideas, thoughts in your mind about what's not seen on the video. Why are they trying to make that into more than it is?

And another question that I think that you need to ask is, is why are they coddling Tobias Hughey? The testimony was is that he --- his reputation is a thief. He was confronted with a statement where he admitted to breaking into Ms. Cobb's apartment. They've not charged him with that. You heard about --- yesterday you heard about him being the suspect and going into this woman's apartment and stealing shoes. And that was on the --- the CAD report. And then they bring in the report today and his name's not on that. Why are they doing that? I would suggest to you that if you think about something that Investigator Balchin said yesterday, this gets back to no friends to reward, no enemies to punish.

Investigator Balchin talked about cash money --- cash money to put it on the street that they pay people for information. You got to wonder, are they trying to make this into something more than it is because Tobias Hughey is one of their people that they pay for information on the street? They certainly don't prosecute him when there's evidence there to do. Why is that? Why are they trying to reward him as Mr. Black said, rewards? Happen all the time.

Now, let's talk little bit about reasonable doubt. One of the things that the judge is going to tell you is is a reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Sometimes I hear that said that would cause a person --- a reasonable person to hesitate to act in their important daily affairs. And I'm going to come back to that definition when we talk about the doctors a little later on.

The judge is going to tell you about the difference in a criminal case, how the burden of proof is so much higher in a criminal case. And as The State pointed out, you are going to hear the term firmly convinced. But what they leave out is if on the other hand you think that there is a real possibility that one or both of the defendants are not guilty, you should give them the benefit of the doubt and find one or both of them not guilty.

Now, I don't know, we hear that term benefit of the doubt all the time, and I don't know for sure whether it came from our traditions in the courtroom with the benefit of the doubt. It's not just the benefit of the doubt whether they're guilty or not guilty. As Mr. Tinsley talked about, it's also the benefit of doubt with whether or not The State has proven which degree of the

assault and battery that they charged these two gentleman with. And we'll come back to that in a minute.

Direct and circumstantial evidence. Direct evidence is something that directly proves the existence of a fact. Circumstantial evidence is proof of a chain of fact and circumstances indicating the existence of the fact. And an example that I used minute ago talking about why is the government protecting Mr. Hughey. When you look at his conduct and you look at the fact that he's not prosecuted, and you look at the fact that they pay for information, that gives you some concern as to what that relationship between law enforcement and Mr. Hughey really is.

Oh, yes, he certainly has some charges pending, he trusts Mr. Black to tell him what those charges are, and he trusts Mr. Black to take care of them. Now, I don't think that they realize just --- "they," when I say that, the prosecutors and law enforcement --- I don't think that they realize just how much power they wield over people's lives. They talk about this stuff, rewards happen all the time, we put cash money on the street, that's not a bribe, that's just a reward. If I try to pay money to a witness, it would certainly be calling that a bribe. And they say, they get --- they get a little offended when you say strong arming a witness like

Eric, who came in here who --- who didn't want to come in here. He told you that he believed that he could get, you know, 45 days in jail if he didn't come and assist and cooperate.

And that's important because you have to determine the credibility of the witnesses. And I submit that you also have to determine the credibility of the case. And when you look at this, you can consider where any witness has exhibited to you any interest, bias, prejudice or other motive in this case. Nobody really wants to talk about the fact that charges get dismissed because of the way people testify in court. They certainly didn't want to admit to that while they were on the witness stand, neither Mr. Hughey or Shane --- Shane Floyd. Neither one of them wanted to admit to that.

They also didn't want to admit to the fact that they have a criminal enterprise together. If you remember, I asked Shane about did Mr. Hughey ever bring things to your house? Shoes? Yeah, he brought shoes sometimes. You've heard about the stolen shoes a couple times in this case. He would bring phones to his house. He wouldn't directly say that they were stolen but come on, he --- he knew that they were stolen. And so we got to look at people's bias, and their interest, and their motive.

And you can also consider their appearance and demeanor on the witness stand. And certainly Mr. Hughey and his mother were combative witnesses, with the defense anyway. And you have to question why is that? Well, why is that? Because they want you to think --- Mr. Hughey wanted you to think that the reason that he delayed --- or didn't want to call --- he didn't delay, he didn't want EMS to be called. He didn't want go to the hospital. And they want you to believe the reason for that is because he wanted to see his son.

His mama got on the witness stand and she thought about giving it up, but she eventually gave it up and said that he didn't want to go the hospital because they knew that there was warrants out there, that if law enforcement got involved, those warrants could be served on them. One of them was a warrant that she had on him for financial card fraud. The other one was a warrant for domestic violence.

Also submit to you that maybe he didn't want to go to the hospital because they knew that they were going to find hard drugs in his system. They want you to believe it was marijuana or maybe just hemp. But when Mr. Hughey was on the stand and it goes back to his demeanor, and we were asking him about that. We asked him about he first admitted to methamphetamine. And then he said, oh, no,

that's in Adderall. He was trying --- as Mr. Tinsley said, he was trying to clean that up.

And so the undeniable reality in this is is for whatever reason, good, bad or indifferent, Mr. Hughey did not want to seek medical care. And every one of the doctors told you that that was a bad idea. And so to what extent does Mr. Hughey's own conduct play in causing these injuries that he --- he says that he has?

Before I go on, the past criminal record, Judge is going to tell you that that can be used for determining credibility. I submit to you that there's also these uncharged --- or --- or these charges that are pending, those can be considered for motive. So when we go into what charges that they have, and when we talk about somebody's criminal history, there's a legitimate reason for doing that based on what the judge is going to charge you in the case.

Expert witnesses. They talked little bit about the doctors in the case. What the judge is going to tell you is you should consider any expert opinion given by a witness like any other evidence and give it the weight that you think it deserves. An expert's witness's testimony is to be given no greater weight that than of other witnesses simply because the witness is an expert. And you do not have to accept an expert's opinion even

though it is uncontradicted.

I said when we were talking about reasonable doubt and talked about reasonable doubt, one of the definitions is --- is the kind doubt that would make a reasonable person to hesitate to act with their important daily affairs.

I said I was going to talk about that again when we got to talking about the law with expert witnesses. Yes, you had two doctors come in here. And yes, they talked about the injuries that Mr. Hughey had. And they --- yes, they acknowledge the role that he played in that by not seeking help for so long.

They also told you that they have not seen Mr. Hughey since October in one case, and November in the other case, of 2020. Almost three years. Okay. It's almost three years. I imagine that y'all are a lot like other people when you want to get an opinion from a doctor about somebody that you love, a parent, child, a close friend, that you want that doctor basing that opinion one on an examination that they have done concurrent with the time that you're trying to get that opinion. You don't want a doctor that saw your loved three years ago to say, oh, yeah, I think this is X, Y, and Z. You want that doctor to be basing that opinion on current information.

All we know is all that they have presented. All that they have shown to try to meet their burden of proof is that Tobias Hughey had one follow-up outpatient rehabilitation trip just once in 2020. And as I talked about earlier, the only things that they point to that are currently not right with him --- well, the --- the --- the bath was three years ago. We don't know exactly when it is that he forgot to turn off the stove.

And his memory issues. And like we talked about before, it's very convenient that he remembers what he wants to talk about and he doesn't remember what he doesn't want to talk about. And we all know what meth does to people, because I'm sure we've seen it --- you've seen in your community. I've seen in my community. Meth destroys people.

I indicated earlier and those are a little bit small and I'll enlarge them in a minute, but this is what the judge is going to charge with regards to assault and battery of a high and aggravated nature, and assault and battery first degree. And there was an acknowledgement by the prosecution that the great bodily injury language is in both of these jury instructions.

I showed you the verdict form in the beginning and what I am going to suggest to you now is that the decision that you have to make is really between assault

and battery first degree and assault and battery second degree. And we're going to talk about assault and battery the second degree a little bit more in a minute.

And I think that it's important that we look at the definition of great bodily injury. Great bodily injury is bodily injury which causes potential risk of death and which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ. And the first degree assault and battery talks about the offer doing that.

They talked --- they're relying on how many times Mr. Hughey had to be revived. And I don't say that that's dead. To me, dead is dead. You don't move anymore, you don't breathe anymore, your heart doesn't beat anymore, and they bury you. That's what that word means in ordinary everyday use. When they're talking about assault and battery of a high and aggravated nature, and they're talking about the causation of that and they use the words serious permanent disfigurement or protracted loss and impairment of a body function or bodily member or organ, they're talking about there being that permanent --- that permanent impairment, that permanent disability.

Some people --- some of you may know people who have been involved in an automobile accident and were injured,

and then they got an impairment rating from the doctor. You haven't heard any evidence that Tobias Hughey has any kind of impairment rating from a doctor, because it doesn't exist.

So when you kind of look at the assault and battery. If a person commits assault and battery in the first degree, alters or attempts to injure another person, or the act is accompanied by means likely to produce death or great bodily injury, that's where you can take into account Tobias Hughey's own conduct, own failure to seek medical attention. Every doctor, every EMS person came in here told you that that's important.

And when you look at assault and battery second degree, and this is where I'm going to ask that you land with regard to end up with regard to Ken Lee. A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person or offers or attempts to injure another person with a present ability to do so and moderate bodily injury to another person results, or moderate bodily injury to another could have resulted.

Now, it's important to look at what moderate body injury is and is not. So in the green, moderate bodily injury means physical injury that involves prolonged loss of consciousness or that causes temporary or moderate

disfigurement or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment with --- when the treatment requires the use of regional or general anesthesia, or the injury results in a fracture or dislocation. That's exactly what you've heard in this courtroom this week. Yes, he had a fracture and that's healed. Yes, he had loss of consciousness. Yes, he had temporary loss of functions while he was in the hospital. He had eight weeks of being treated, he went through some rehabilitation. That's why it's important when they tell you that all they're offering is one bath, left the stove on one time, and has memory issues, that could be caused by illegal drug use.

What it's not, and I'm not --- I'm not --- I --- I just showed this to you, what it's not --- it's not one-time treatment or subsequent observations, or scratches, cuts abrasions, bruises, burns, splinters or other minor injuries. Some people would call some of those things to be significant injuries. But the law is telling us that that doesn't raise to the level of moderate bodily injury.

So I think it's important to real keep focus on what serious bodily injury means and what moderate bodily injury means.

We talked about reasonable doubt. And I talked about the verdict forms in the beginning. Given the fact that Mr. Hughey has recovered from these injuries, and they've done very little to tell you. They suggest oh, he's had to learn how to cope. But they've done nothing, they have presented no evidence of any differences and provide any different coping strategies he has. None of that is in front of you.

So if there's a real possibility that Mr. Hughey's injuries were only moderate bodily injuries, and the treatment that he had and the temporary nature of that, and his recovery certainly seems to support that. If there is a real possibility that his injuries are just the moderate bodily injuries, then the proper verdict for Ken Lee is assault and battery second degree. And that's what I ask you to do.

THE COURT: Thank you, Mr. Grose. All right. Now Ladies and Gentlemen and the clerk has gone to get your lunches, but I'm going to go ahead and proceed with these instructions to you. And Madam Forelady, Ladies and Gentlemen of the jury, I'll --- I'll tell you that when I first started practicing law in '93, the way that most judges handled instructing the jury on the law is that they'd sit up here and basically read to you 19 pages taken from all the law books that are in that cabinet

behind the TV and the jury was supposed to get in 15 minutes what took me three years to learn. Okay?

I always found that a little unreasonable and the think the tradition probably --- the tradition for doing that orally probably stems from when most people or maybe a lot of people were simply not literate. A lot of people didn't read. Now, today, of course, today pretty much everybody can read.

So what I'm telling you Ladies and Gentlemen is that I'm giving you a copy of these instructions in written form that you can refer to during your deliberations.

Please of course pay attention to the instructions as a whole --- as a whole. And don't simply ignore some portion. Of course pay attention to them as a whole.

If you have any questions about these instructions, Madam Forelady, simply write me a note and I can help you if you have a legal question. If you have a factual question, however, odds are I will not be able to help you. Okay? There is no mechanism by which I can reopen the record, or we can take additional testimony.

So if you've got a factual question, I can't help you. If you have a legal one, I probably can. All right?

Now, Ladies and Gentlemen, I instruct you that the indictments in this case charge the defendants with the

offense of assault and battery of a high and aggravated nature. And I'll remind you of what I said to you on Tuesday, that the fact that they were arrested, charged and indicted, is not evidence and cannot be considered by you as evidence of guilt, nor did the indictments create any presumption or inference of guilt.

Again, these documents are simply the formal written instruments which contain the charges made against the defendant. They're the formal means by which a case is brought in the Court. I instruct you that the case of each defendant and the evidence and the law concerning that defendant, should be considered separately and individually. Your verdict does not have the be the same for both defendants. The fact that you may find one defendant guilty or not guilty should not control your verdict as to the other defendant.

Where more than two --- sorry. Where more than one person is charged with a crime, if the evidence warrants it, you may convict one and acquit the other, or you may acquit both, or you can convict both. It'll depend upon your view of the testimony and the evidence. You must take each defendant and consider the evidence as to that defendant.

And my instructions to you on the law. You'll then write a separate verdict of guilty or not guilty for each

individual defendant. Now, the defendants in this case have pled not guilty to these charges and that plea puts the burden on The State to prove their guilt. I instruct you that a person charged with committing a criminal offense is never required to prove their innocence. It's an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of this guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, rather it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of guilt beyond a reasonable doubt.

The presumption of innocence is --- innocence is not merely a legal theory, it's not just a legal phrase, it's a substantial right to which everyone is entitled, unless you the jury are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

Well, what is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Reasonable doubt may arise from the evidence presented in and of itself or

from the absence of evidence. The State has the burden of proving the defendant's guilty beyond a reasonable doubt.

And some of you may have served as jurors in civil cases where you were told that it's only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases, The State's proof must be more powerful than that. It must be proof beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the --- of the defendant's guilt. Now, there are very few things in this world that we know with absolute certainty and in criminal cases, the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence, you're firmly convinced that one or both of the defendants are guilty of the crimes charged, you should find one or both guilty.

If on the other hand you think there is a real possibility that the one or both defendants are not guilty, you should give them the benefit of the doubt and find one or both not guilty.

Now, I'll remind you that during this trial you and I have certain duties to perform. And as the trial

judge, it's been my job to preside over the trial and rule on the admissibility of evidence. You are to consider only the competent evidence before you. So any testimony which was ordered stricken from the record you have to disregard that testimony. You can consider only the testimony which has been presented from the witness stand as well as any exhibits which have been made a part of the record in this case.

I have the additional duty to charge you the law, and as the presiding judge, I'm the sole judge of the law. It's your duty as jurors to accept and apply the law as I state it to you now.

So if you already have some idea as to what the law is or what the law should be, and this idea does not agree with what I now tell you the law is, you must abandon that idea, because you're sworn to accept and apply the law exactly as I state it to you now.

Now, again, Ladies and Gentlemen, in every case tried before a jury, the jury becomes the sole and exclusive judge of the fact in a case. A trial judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts in the case.

Since you are the sole judges of the facts, you're not to infer from what I've said during the progress of this trial ruling upon the admissibility of evidence or

otherwise, or anything that I say to you now during the course of these instructions that I have any opinion about the facts in this case.

Ladies and Gentlemen, the law does not permit me to have any opinion about the facts. This is a matter solely for you to determine. As jurors, it's your duty to determine the effect, value, weight, and truth of the evidence presented during this trial.

Now, typically there are two types of evidence which are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence directly proves the existence of the fact and does not require deduction, such as testimony by an eyewitness. It's evidence which immediately establishes the main fact to be proven.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. I instruct you the crimes may be proven by circumstantial evidence and the law makes no distinction between the weight or value to be given to either direct or circumstantial evidence.

However, to the extent The State relies on circumstantial evidence, all of the circumstances must be consistent with each other and when taken together, point conclusively to the guilt of the accused beyond a

reasonable doubt.

If the circumstances merely portray the defendant's behavior as suspicious, then the proof has failed. The State has the burden of proving the defendant's guilty beyond a reasonable doubt and this burden rests with The State regardless of whether The State relies on direct evidence, circumstantial evidence, or some combination of the two.

Now, necessarily, you have to determine the credibility of witnesses who have testified, and you are the sole and only judges of the credibility in this case.

Again, credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several, or several witnesses over one. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness.

You may believe the testimony of the witness in its entirety, or reject it in its entirety. You may consider whether any witness has exhibited any interest, bias prejudice or other motive in this case. And you may also consider the appearance and manner of a witness while on

the witness stand.

I instruct you Ladies and Gentlemen, that a person who has a past criminal record is competent to testify during a trial. A past record does not affect the ability of that witness to testify. The past record may only be considered by you, if at all, in determining the witness's believability.

Remember, you are the sole judges of the fact in this case and of the believability of any and all of the witnesses who have testified.

Now, as explained briefly yesterday, Ladies and Gentlemen, normally the rules of evidence don't permit witnesses to testify as to opinions or conclusions. But an exception to this rule exists for expert witnesses. A person who by education and experience has become an expert in some art, science, or profession, may give an opinion as to the subject the witness claims to be an expert in and may also give the reasons for their opinion.

You should consider any expert opinion given by you --- given by a witness and like any other evidence, give it the weight you think it deserves. If you decide that an expert witness's opinion is not based on sufficient evidence and experience, or if you decide that the reasons given in support of the opinion are not

sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness's testimony is to be given no greater weight than that of any other witness, simply because the witness is an expert and you do not have to accept their opinion even though it's uncontradicted.

Now, Ladies and Gentlemen, I instruct you and emphasize that the fact that the defendants in this case did not testify is not a factor to be considered by you in any way during your deliberations, and in your consideration on the question of the guilt or the innocence of the defendants. It must not be considered by you in any manner whatsoever. A defendant has the constitutional right to remain silent and the assertion of the this right must not be considered by you in your deliberations.

I repeat, under your oath, you're to draw no conclusion whatsoever from the fact that the defendants in this case did not testify. The fact that they did not testify should not even be discussed in the jury room. The burden of proof as I've said, is on The State. The defendant is not --- or the defendants are not required to prove their innocence. The burden of proof remains on The State to prove guilt beyond a reasonable doubt.

Now, Ladies and Gentlemen, I'll define for you now

the offense of assault and battery of a high and aggravated nature. A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person and great bodily injury to another person results, or the act is accomplished by means likely to produce death or great bodily injury.

Great bodily injury means bodily injury which causes a substantial risk of death, which causes serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

If you find The State has failed to prove either or both defendants guilty of assault and battery of a high and aggravated nature, you may consider whether The State has proven the offense of assault and battery in the first degree.

A person commits the offense of assault and battery in the first degree if the person unlawfully offers or attempts to injure another person with the present ability to do so, and the act is accomplished by means likely to produce death or great bodily injury.

Again, great bodily injury means bodily injury which causes a substantial risk of death, or which causes serious permanent disfigurement, or protracted loss, or impairment of the function of a bodily member or organ.

Finally, Ladies and Gentlemen, if you found that the state has failed to prove the charge of assault and battery first degree, you may consider whether The State has proven the defendants are --- either defendants are guilty of assault and battery second degree.

A person commits the offense of assault and battery in the second degree if the person unlawfully injures another or offers or attempts to injure another person with the present ability to do so. And moderate bodily injury to another person results or moderate bodily injury to another person could have resulted.

Moderate bodily injury means physical injury that involves prolonged loss of consciousness where the cause is temporary or moderate disfigurement, or temporary loss of the function of a bodily member or organ or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia, or injury that results in a fracture or dislocation.

Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters or any other minor injury that do not ordinarily require extensive medical care.

Now, Ladies and Gentlemen I instruct you --- finally, I instruct you that if a crime is committed by

one or more people who are acting together in --- in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the act done in carrying out the common plan and purpose.

For example, two people can be guilty of killing another when only one of the two has a gun, there was only one bullet and only one of the two fired the shot that caused the death.

If two or more people are together acting together assisting each other in committing the offense, the act of one is the act of all, or as it is sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime even if the defendant is present when the crime is committed is not sufficient to convict the defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement.

Therefore for the finding of a prior arranged plan or common scheme is necessary for a finding guilt as

principle.

The State must prove beyond a reasonable doubt by competent evidence, the theory of the hand of one is the hand of all.

A principal in a crime is one who either actually commits the crime or --- or who is present, aiding, abetting, or assisting in the committing of a crime.

When a person does an act in the presence of and with the assistance of another, the act is done by both.

Where two or more acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime.

However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting. Intent is also a necessary element for there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act.

Intent means in continued the result which actually occurs, not accidentally or involuntarily. Intent may be

shown by acts and conduct of the defendants and any other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements of course beyond a reasonable doubt.

Now, Madam Forelady, Ladies and Gentlemen of the jury, there are several verdicts in this case, and I prepared a verdict form for each defendant, okay, for --- to help guide your deliberations and for you to help return a verdict in this case. Okay.

Basically the first option --- and I'm just going to explain this to you --- but it basically runs through the three possibilities here. Okay, the first option --- or the first statement is: We the jury in the above captioned case on the charge of assault and battery of a high and aggravated nature unanimously find the defendant --- in this case it says Travis Lee, the other one says Kendrick Lee, either two mutually exclusive options not guilty or guilty.

If you find that the state has failed to meet its burden of proving Travis Lee's guilt beyond a reasonable doubt, and all 12 of you apply --- agree with that, you would initial right next to not guilty and then proceed down to number two.

If however --- if however, on the other hand, you find The State has met its burden of proving Mr. Lee's

guilt beyond a reasonable doubt and all of 12 of you agree, initial next to guilty, sign the form, knock on the door, let us know, we'll get you back in here. Okay?

The exact same questions are asked concerning the charges of assault and battery first degree and assault battery second degree. Okay. And you'll understand this when you see it, but it basically flows.

All right. Exactly as I said. And they're identical with respect to each --- each defendant who is charged in this case.

Now, Ladies and Gentlemen, if any --- if --- again, if any of you have any questions about the law or any sort of question or issue that you need to bring to my attention, Madam Forelady, simply write me a note and we'll get you back in here. I'll look at the note, give it to the bailiff, I'll look at it and I'll try to help you with anything that you're struggling with.

Understand that the videos, I'm not going to send those back, because I don't think there's a mechanism to play those back in there. So should you want to watch those again, for whatever reason, just let us know which one you want to watch, we'll cue it up and try and get it to that point where you want to see what's going on. Okay? So as it relates to videos, that's what you'll need to do.

Now, Madam Forelady, your verdict has to be unanimous. That means all 12 of you have to agree. We do not have majority verdicts in this state. So all 12 of you have to agree on whatever the verdict is.

I want --- and again, as it relates to notes, I forgot to mention this, but please never tell me what the numerical division is between the jury. All right? If you send me a note, never tell me whether it's 10/2, one way or another. 6/6, 5/7, I don't need that information. So never give --- give me numbers as it relates to any sort of jury division should you need to communicate with the Court.

Ladies and Gentlemen, I'll remind you that y'all were chosen on Monday as fair and impartial individuals. In other words, you have no friends to reward, you have no enemies to punish. Your job is to render a verdict based solely on the evidence presented and on the law as I have instructed you.

Now, I anticipate that your food is here. In a moment I'm going to let all 14 of you go to the back and let the --- the clerk bring in the --- the stuff that you ordered.

Please don't begin your deliberations yet. Okay? Your cue to begin your deliberations, Madam Forelady, will be receipt of these instructions, the verdict forms

and all the evidence sans the --- the CDs, the CD-ROMs with the videos. Okay? And then my asking the two alternates to step out.

You guys want to grab a slice of pizza let them go first. Okay? That way they can maybe kill whatever hunger pains they're suffering, because as soon as we get all that to you in the back, you can begin your deliberations and I'll bring them out. All right?

Should you want to take a smoke break, that's perfectly fine. Try to limit it to maybe once every hour, 15 minutes, or something like that, hour 30 minutes. I --- it --- it's really best that you not break every 15 minutes to have cigarette. And the reason for this, Ladies and Gentlemen, is that any time you have a cigarette break deliberations has to stop. Okay?

So you can only discuss this case with all 12 of people there. That means if four or five are outside, deliberations have to stop 100 percent. So try to minimize that to the extent --- and maybe limit it to every hour, hour and a half, somewhere in there if you could.

All right. With that, if you would adjourn to the jury room. Don't begin your deliberations yet. I'm going to send the clerk in with your food. And you know, you're free to begin your deliberations. All right.

Thank you.

My instructions to the jury, any additions, objections, Mr. Tinsley?

MR. TINSLEY: Nothing beyond what I talked about earlier about the A and B third and the hand of one is the hand of all.

THE COURT: All right. It's ditto?

MR. GROSE: Ditto.

THE COURT: All right. Y'all good?

MR. BLACK: Nothing from The State.

THE COURT: Very good. We will be at ease.

Y'all double-check and make sure that what goes back is what should go back.

I will be marking in a moment as Court's 12 my juror strike sheet, and as Court's 13, the Court's detailed lists that I promised would be in evidence. So those will be marked and introduced at Court's exhibits here shortly for Mr. Grose and my earlier comments. All right.

(Court's Exhibits 12 and 13 marked and entered)

MR. BLACK: And for the record, I believe State's 4 is marked but was never entered, so I ---

THE COURT: Right, I believe that's correct. But y'all make sure we're good on the evidence. Okay?

We'll be off the record.

(Off the record 1:52 p.m. to 3:10 p.m.)

(Jury deliberating 1:59 p.m.)

(Jury not present in courtroom.

THE COURT: We're back on the record. I'm told that the jury has reached a verdict. And anything prior to the jury being received into the courtroom from The State?

MR. BLACK: Not from The State.

THE COURT: Anything from the defense?

MR. TINSLEY: Nothing, Your Honor.

THE COURT: All right. I want to compliment everyone on the way that we've conducted ourselves during this trial. The --- the attorneys, the parties, everyone has done a --- a wonderful job of being very respectable and respectful in keeping things above board. And I just want to ask that that please continue when the jury verdict is rendered. I do not know what the verdict is, no one does.

Obviously these 12 individuals were forced to come in here and hear this case. And it's very important that whatever the decision is that their decision be respected by --- by all concerned, even though one side or maybe both sides may disagree with the outcome. So please, if you do find yourself unable to contain yourself for whatever reason when the verdict is rendered, just feel

free to quietly --- quietly get up and walk out the back of the courtroom ---okay --- if there are any problems maintaining your composure.

Let us have the jury, please.

(Jury enters courtroom)

THE COURT: All right. The record will reflect that the jury is back.

Madam Forelady, I'm been told that you've reached a verdict; is that correct?

MADAM FORELADY: (No audible response).

THE COURT: All right. And all 12 of you agree on the outcome for each?

MADAM FORELADY: (No audible response).

THE COURT: She nods yes. All right. If you would hand the verdict form, please, to the clerk of court. And if these are the exhibits, you could hand those to her as well. Thank you. All right. All right.

Madam Clerk, if you'll publish, please.

CLERK: Indictment number 2021-GS-01-215, State of South Carolina versus Travis Lee. We the jury in the above captioned case on the charge of assault and battery of a high and aggravated nature unanimously find Travis A. Lee guilty. Forelady Eleanor A. Weiders.

Indictment 2021-GS-O1-214, State of South Carolina versus Kendrick Lee, we the jury in the above captioned

case on the charge of assault and battery of a high and aggravated nature unanimously find Kendrick Lee guilty. Forewoman Eleanor A. Weiders forelady.

Ladies and gentlemen of the jury, if this is your verdict, so say you all, please signify by raising your right hand.

THE COURT: All right. The record will reflect all 12 hands were raised. Anything prior to discharge of the jury from The State?

MR. BLACK: Not from The State, Your Honor.

THE COURT: From the defense?

MR. TINSLEY: Poll the jury, please, Your Honor.

THE COURT: You agree as well, Mr. Grose?

MR. GROSE: Yes.

THE COURT: All right. Ladies and Gentlemen in a moment the clerk will call your juror names and numbers out individually, and will ask you is this your verdict as it relates to Travis Lee and is it still your verdict? And she'll ask the same question is this your verdict as it relates to Kendrick Lee, and is it still your verdict?

Okay? So Madam Clerk if you will poll the jury, please.

CLERK: Juror number 28 Benjamin Claire; is this your verdict and is it still your verdict?

THE JUROR: Yes.

THE COURT: If you --- we need to individualize it for each defendant. So Travis Lee and for Kendrick Lee. So you'll have to ask a few questions.

CLERK: Steven A. Stuber, juror number 175, is this your verdict and is it still your verdict?

THE JUROR: Yes.

THE COURT: Here, I got it. Let me have the list. I think I didn't make myself clear. All right. Let's see here. Okay. Juror --- yes. Okay.

Benjamin Claire, 28, who is that? Raise your right hand. All right. Mr. Claire is this your verdict as it relates to Travis Lee and is it still your verdict?

THE JUROR: Yes.

THE COURT: And is this your verdict as it relates to Kendrick Lee and is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: And juror Steven Stuber, raise your hand. All right. Mr. Stuber is this your verdict concerning Travis Lee and is it still your verdict?

THE JUROR: Yes.

THE COURT: And is this your verdict concerning Kendrick Lee and is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: Juror 196, John Wilson, Mr. Wilson is this your verdict --- is this your verdict as it relates

to Travis Lee and is it still your verdict?

THE JUROR: Yes.

THE COURT: And is this your verdict as it relates to Kendrick Lee and is it still your verdict?

THE JUROR: (No audible response).

THE COURT: And juror 188, Caroline Webb. All right. Ms. Webb, is this your verdict in regards to Travis Lee and is it still your verdict?

THE JUROR: Yes.

THE COURT: And is this your verdict as it relates to Kendrick Lee and is it still your verdict?

THE JUROR: Yes.

THE COURT: Juror 45, Ms. Ellison. Ms. Ellison, is this your verdict concerning Travis Lee, and is it still your verdict?

THE JUROR: Yes.

THE COURT: And is this your verdict concerning Kendrick Lee and is it still your verdict?

THE JUROR: Yes.

THE COURT: Juror 120 Sally Mullet. No, wait, sorry. She was not seated. Okay.

Juror 156 Jasmine Sanders. Is this your verdict as it relates to Travis Lee and is it still your verdict?

THE JUROR: Yes.

THE COURT: And is this your verdict as it relates

to Kendrick Lee, and is it still your verdict?

THE JUROR: Yes.

THE COURT: And Juror Heath Parnell. Mr. Parnell is this your verdict concerning Travis Lee and is it still your verdict?

THE JUROR: It is.

THE COURT: And is this your verdict concerning Kendrick Lee and is it still your verdict?

THE JUROR: It is.

THE COURT: And juror 1201, William Murphy. Mr. Murphy, is this your verdict concerning Travis Lee and is it still your verdict?

THE JUROR: Yes, Your Honor.

THE COURT: And is this your verdict concerning Kendrick Lee, and is it still your --- your verdict?

THE JUROR: Yes, sir.

THE COURT: All right. Juror --- Forelady 193, Eleanor Weiders --- Weiders I'm sorry. Ms. Weiders is this your verdict concerning Travis Lee and is is it still your verdict?

THE JUROR: It is.

THE COURT: And is this your verdict concerning Kendrick Lee and is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: Juror 136, James Powell. Mr. Powell, is

this your verdict concerning Travis Lee and is it still your verdict?

THE JUROR: Yes.

THE COURT: Is this your verdict concerning Kendrick Lee, and is it still your verdict.

THE JUROR: Yes.

THE COURT: Okay, juror 47, Laura Falls. Ms. Falls, is this your verdict concerning Travis Lee and is it still your verdict?

THE JUROR: (No audible response).

THE COURT: And is this your verdict concerning Kendrick Lee and is it still your verdict?

THE JUROR: (No audible response).

THE COURT: Juror 137, Tammy Poor. Ms. Poor, is this your verdict concerning Travis Lee, and is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: And is this your verdict concerning Kendrick Lee, and is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: Juror 82, Steven Hunter --- or wait, no. Those are the alternates. Okay. It would appear that the jury has been polled.

Anything further from the defense prior to discharge?

MR. TINSLEY: Nothing for the jury, Your Honor.

THE COURT: Mr. Grose?

MR. GROSE: No, sir.

THE COURT: Ladies and gentlemen of the jury, I want to thank you for your work here this week. I will tell you that in the coming days, you'll get a letter from me thanking you for your jury service. The letter's purpose is two-fold. First, it is a formal thank you, and expression of appreciation for your work here this week.

But I also have an ulterior motive. If there was anything that you did not like about jury service, I want to know. Anything you liked, sure, let me know. Anything you didn't like definitely let me know though, okay?

You'll have my contact information, e-mail, snail mail, phone number, whatever. And if you have any questions concerning your jury service this week, feel free to reach out to me, I'll be more than happy to answer those questions for you as best I can. All right?

At this point in time, you are free to go. Understand, Ladies and Gentlemen, that generally as a rule, what happens in the jury room stays in the jury room. Okay? It's a little bit like Las Vegas in that regard. So whatever happens in there, whatever discussions were, that's usually confidential. But if

you were to be contacted by one of the lawyers, understand that lawyers get better at their jobs by --- by sometimes reaching out to jurors and finds out what they liked what they didn't like, how they could do better at what they do.

And sometimes somebody might reach out to you just to discuss that, how the trial went and what your impression was. If you want to talk to them, that's fine. If you don't want to talk to them, just politely say, hey, I --- I appreciate you calling me, but yeah, I've got other stuff I need to do, and they want bother you. All right?

So with that, understand, Ladies and Gentlemen that you --- you will get a check. It should be in the mail in the coming days. I think 15 bucks a day, so $60. It may not arrive till next week. If for some reason it doesn't get there in the next couple of weeks, just give the clerk a call and she'll reissue the check. All right. I'm not --- I'm not going to keep you any longer.

At this point in time. I'll be addressing some post-trial motions. With the attorneys. And at that point in time, after those motions we'll move on with sentencing. If you desire to stay for sentencing, that's perfectly fine. But just for security purposes, I'll have to ask that you maybe take a seat out here kind of

in the rows to the back if you choose to stick around for sentencing. Okay?

I'm going to take a break. So if you wish to stay for sentencing, that's perfectly fine. The back rows over on this side here to my --- my left would probably be the best place to sit.

And if you don't want to stay here any longer, I will tell you the weather outside is quite lovely. Enjoy your day, and enjoy the rest of your week.

And they have juror excuses for their employers?

CLERK: Yes.

THE COURT: Okay. Very good. We have juror excuses right here. The bailiff will provide those to you if you need one. Again, I thank you very much for your efforts and your work this week. And the 11 of you can go. Madam Forelady, I need you to actually sign the indictment. So you hang around for five seconds.

And the rest of you are free to go. If you left anything in the back, feel free to collect it. Okay?

Everyone else, please stay. Please stay seated while the jury leaves.

(Jury leaves courtroom)

THE COURT: While the Solicitor prepares the sentencing sheets, I'm going to ask that the deputies go ahead and take Misters Lee into custody if you could. At

least please secure them. All right. Till we are able to address post-straw motions and sentencing. All right.

And Solicitor, obviously I'll be happy to hear from the victim in this case whenever we reconvene. Okay? If he wishes to tell me anything else.

MR. BLACK: Yes, sir.

THE COURT: We'll be off the record.

(Off the record 3:23 p.m. - 3:29 p.m.)

THE COURT: Solicitor, you have sentencing sheets?

MR. BLACK: Yes, sir, Your Honor.

MR. GROSE: Your Honor, we're going to ask that --- well we'll wait till they get back out here.

THE COURT: They don't have to sign them because it was a conviction at trial, but show it to them.

All right. Mr. Jones, you may need to let Mr. Travis have that seat there, if you could.

All right. Mr. Tinsley, I assume that you do renew all previous motions and new --- for a new trial on behalf of Travis Lee, sir.

MR. TINSLEY: Yes, Your Honor.

THE COURT: Mr. Grose, you do the same?

MR. GROSE: I have ten days to do that.

THE COURT: Yes, sir. But you do renew all prior motions ---

MR. GROSE: I --- I do, but --- but I tend to make a

motion within ten days ---

THE COURT: All right. Great.

MR. GROSE: --- as the rules allow.

THE COURT: All right. Very good.

MR. GROSE: Also ask that, and I think Mr. Tinsley is in agreement on this, ask that sentencing be deferred. As you might recall, Mr. Tinsley mentioned in chambers that he believed that his client, Travis Lee's, priors should not be considered two strikes.

At the time, I commented that that was sentencing issue and I believe the same applies for Kendrick Lee. So we would ask for an opportunity to be able to brief that.

THE COURT: Okay. And --- and I was informed in chambers, obviously that the recidivus provisions of the code did apply in this case. Does The State have a position on this?

MR. BLACK: Judge, our position is just so the Court is aware with regard to Mr. Travis Lee, we did serve him a NOOP (phonetic) notice for convictions of distribution of crack within a half mile of a school which is classified as serious. That offense date was March 21, 2022. And then he has another serious offense from February the 27th, where he was also sentenced on the same day. That offense date was the March the 13th of

2002. And again, that's also classified as serious.

We --- we sent an update to Mr. Tinsley on LWOT (phonetic) notice because they were originally can be charged with attempted murder. And so we changed it because obviously we went forward with an APHAN charge (phonetic).

So we just basically redid the language just so it clear was The State intended on going forward with for Mr. Travis Lee.

With regard to Mr. Kendrick Lee, The State served him again, an LWOT notice back on February the 16th of 2021. He had a conviction for trafficking crack cocaine, 10 to 28 grams. That offense date was May the 13th of 2008. That is also classified as a serious offense. He pled on November the 13th of 2009. On the same day, he pled on November the 13th of 2009, he pled to a distribution of marijuana within a half mile of a proximity to a school or playground. That offense date was July the 6th of 2006. Again, that's also classified as a serious offense.

And again, that was served on Mr. Lee on February the 16th of 2021. And again, likewise, The State updated that LWOT notice on August the 19th of 2023 when it became clear that we were going forward with an ABHAN (phonetic) charge and not an attempted murder charge. So

that reflected that in at that LWOT notice.

As far as our position, Your Honor, you know, day I --- I think we should go ahead and sentence, but of course we'll do whatever the Court decides to do.

THE COURT: Okay. Mr. Tinsley, you did indicate in chambers that there was some --- in your mind, some --- some question as to whether --- because they were --- because your client was sentenced at the same time, whether that should be treated at one event; is that your position? Or give me your position again, please.

MR. TINSLEY: No. No. No, Your Honor. I mean, that's why we're asking for time. But no, it's got nothing to do with the fact that he was sentenced at the same time. We're talking about two distributions with the same narc eight days apart. Section 17-25-50 says in determining the number of offenses for the purpose of imposition of sentence the Court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law if they constitute separate and distinct offenses.

I mean I --- I --- I think this should be treated as one --- one strike is what my argument was. But I think to flesh it out more, is why we're making the motion for

the deferred sentence, so they can look at the law a little bit more on that.

MR. GROSE: And be able to flesh out the facts.

THE COURT: Okay. Have y'all been able to do any research on this thus far? I know that the amended LWOT was served, I guess only about a month ago or so? Month and a few weeks six weeks or so.

MR. GROSE: Have I looked at some of the cases, the Pete Bright case comes to mind. I've looked at these two sections, but I need to get together --- I mean, this is isn't ripe until this point. And ---

THE COURT: I'm sorry, this isn't ---

MR. GROSE: This --- this isn't ripe until this point when it's a sentencing issue and we need to be able to have time. You know, quite frankly most places don't do like South Carolina, and goes straight from trial into sentencing. And, you know, I think that there's probably under the circumstances would --- would be a due process violation to rush it.

THE COURT: I --- I --- I don't know that it would necessarily constitute a due process violation. I'm --- I'm --- I'm familiar with that code section.

I'm --- Solicitor, I'm going to afford them an opportunity to go ahead and research this issue. And I will be granting their motion to defer sentencing.

the -- the primary --- the two primary reasons I'm doing that is there is not --- there appears to be --- only be one case that tangentially touches on that code section. There may be other cases from our sister states that could inform this issue.

And secondly, obviously the mandatory penalty in this case is what it is. And I would much rather the Appellate Courts have an opportunity to address this issue --- this issue on direct appeal as opposed to perhaps post-conviction relief if for some reason there's something floating around out there either in the Appellate pipeline, through the --- to the South Carolina Court of Appeals or elsewhere, and they don't find it.

So I'm going to afford the defense an opportunity and to do exactly that. And also give you an opportunity to --- to research that issue. Because the penalty is what the penalty is.

In light of the convictions, if you are accurate --- if you are correct, that --- that the two strikes for each gentleman should count as separate and distinct offenses if you are correct, then the penalty is what it simply is. And I'll allow them a opportunity to develop this issue a little bit more.

I will be in Laurens in two weeks, I believe. Perhaps.

MR. BLACK: Or you'll be back over here November the 13th week. If we could do that that week, that would be ---

THE COURT: All right. Very good.

MR. BLACK: It's whatever --- whatever works better for you, Judge.

THE COURT: I --- I --- I really don't want that hanging out there unnecessarily long if at all possible. I'd like to handle this --- is it two weeks that we're in Laurens? I'm going to be in Laurens the week of the 16th. I --- I'd prefer to do it then if at all possible. I --- I know that'll require some minor traveling for all concerned that ---

MR. BLACK: October 16th?

THE COURT: October 16th week, yes. I --- I --- I don't if --- Mr. Tinsley.

MR. TINSLEY: I was just going to say, I'm --- I'm fine traveling to Laurens, I don't have any objection to that. I'm just letting the Court know that I'm going to be at least, the early part of that week, going to be in a Common Pleas a wreck trial in front of Judge Hocker in Greenwood.

THE COURT: It's not a problem. We'll --- we'll --- we'll work around everyone's availability. If --- if --- if y'all could, try to have this issue briefed with me by

the 16th of October. And simply coordinate with John Thomas over in Laurens about the trial schedule availability and that kind of a thing.

As things stand, I think it's anticipated that Judge Cothran will be handling trials and I'll be doing pleas, so my availability should be pretty open. Okay?

MR. BLACK: Yes, sir, Your Honor.

THE COURT: All right. Very good.

MR. BLACK: And before we --- before we go off the record ---

THE COURT: Yes, sir.

MR. BLACK: I --- I'm going to put the sentencing sheets --- I'm going to have them marked as Court's exhibits if that would be appropriate.

THE COURT: That would be appropriate.

MR. BLACK: And then just so the record is clear. And then we'll also forward a copy of these to you as well for you to review when you look at these briefs.

THE COURT: That'll be fine. And if you want to attach them to your briefs as well, that's fine too.

MR. BLACK: Yes, sir.

THE COURT: All right. Very good. Mark those, as I think it'll be Court's 15 and 16. And what we're up to or 14 and --- 14 and 15. No, I've already got 13. 13 was my strike sheet. It'll be 14 and 15. Yeah.

(Court's Exhibits 14 and 15 marked and entered)

THE COURT: All right. I'll see you gentleman in a few weeks.

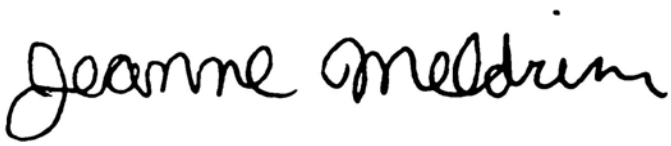
(PROCEEDINGS CONCLUDED AT 4:14 P.M.)

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 8 for ABBEVILLE COUNTY, South Carolina, on the 28th day of September, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 12, 2024



Jeanne Meldrim

Transcriber

186

LEMS.Web

ICHR 003F78C7A9 from SCCH

GRWSL401
.ICHR.003F78C7A9.SCCH.20230921 14:24:41
TO: GRWSL401-7535 20230921 14:24:41 003F78C7A9
FROM: SCCH-7915433 20230921 14:24:41

ICHR REQUEST FOR RAP SHEET
ORI-SC024015A SID-[redacted] PUR-C
ATN-DALLEN

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS. BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-09/21/2023 TIME-14:24:05
REQ ORI-SC024015A GREENWOOD SOLICITOR
SID-[redacted] FBI-[redacted]
NAME-MABREY, TONYA LOUISE SEX-F RACE-W
HEIGHT-502 WEIGHT-160 EYES-BLU HAIR-BRO SKIN- BORN-SC
FPC-POPI155505DI10131304 HENRY-15 O 21 W-R- 5
I 17 U

PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--06/19/1995 DATE OF LAST UPDATE--09/27/1995

ADDITIONAL IDENTIFIERS NAME	BIRTH DATES	MARKS	SOC SEC	MISC NUM
	[redacted]		[redacted]	

CONTRIBUTOR/SUBJECT	DOA/RCVD	CHARGE/DISPOSITION/ETC
MABREY, TONYA LOUISE SC0240100 GREENWOOD PD CASE-4838-B WARR-E335813	05/18/1995	ARREST CHARGE 1-FRAUDULENT CHECK PHOTOGRAPH AVAILABLE
WARR-R335849		ARREST CHARGE 2-FRAUDULENT CHECK
WARR-E335813		COURT CHARGE 01-FRAUDULENT CHECK COURT DISP-CONVICTED;FORFEITED $20
WARR-E335849		COURT CHARGE 02-FRAUDULENT CHECK COURT DISP-CONVICTED;FORFEITED $125

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC01010944
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

COURT'S EXHIBIT NO. 1 IDENTIFICATION/EVIDENCE DKT.# 21GS912J4 DATE: 9-25-23
PENGAD 800-631-6989

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

** S C CJIS END OF RECORD **

NLETS LEMS.Web

188

ICHR 003F78C7D7 from SCCH

GRWSL401
.ICHR.003F78C7D7.SCCH.20230921 14:27:21
TO: GRWSL401-7539 20230921 14:27:21 003F78C7D7
FROM: SCCH-7915479 20230921 14:27:21

ICHR REQUEST FOR RAP SHEET
ORI-SC024015A SID-[redacted] PUR-C
ATN-DALLEN

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS. BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-09/21/2023 TIME-14:26:45
REQ ORI-SC024015A GREENWOOD SOLICITOR
SID-[redacted] FBI-[redacted]
NAME-WEBB, CAROLYN GUNTER SEX-F RACE-W
HEIGHT-507 WEIGHT-145 EYES-BLU HAIR-BRO SKIN- BORN-NC
FPC- HENRY-
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--11/03/2011 DATE OF LAST UPDATE--04/16/2012

ADDITIONAL IDENTIFIERS NAME	BIRTH DATES	MARKS	SOC SEC	MISC NUM
	[redacted]		[redacted]	

CONTRIBUTOR/SUBJECT — DOA/RCVD CHARGE/DISPOSITION/ETC

WEBB, CAROLYN GUNTER 10/30/2011
SC0010000 ABBEVILLE CNTY SO
CASE-14464
ATN-01C000004802
WARR-71574FL
CIT-16-17-530-MISDEMEANOR
NCIC CODE-5399

ARREST CHARGE 1-PUBLIC DISORD
ERLY CONDUCT
OFFENSE DATE-10/30/2011

CIT--MISDEMEANOR
DOC-01
WARR-71574FL

COURT CHARGE 01-PUBLIC DISORD
ERLY CONDUCT
COURT DISP-CONVICTED;Fine
COURT DATE-01/25/2012
ATN-01C000004802

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC02024830
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

** S C CJIS END OF RECORD **

COURT'S EXHIBIT NO. 2 IDENTIFICATION/EVIDENCE DKT.# 2165C1-24 DATE: 9-25-23
PENGAD 800-631-6989

LEMS.Web

ICHR 003F78C80D from SCCH

191

GRWSL401
.ICHR.003F78C80D.SCCH.20230921 14:29:43
TO: GRWSL401-7545 20230921 14:29:43 003F78C80D
FROM: SCCH-7915533 20230921 14:29:43

ICHR REQUEST FOR RAP SHEET
ORI-SC024015A SID-[redacted] PUR-C
ATN-DALLEN

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS. BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-09/21/2023 TIME-14:29:07
REQ ORI-SC024015A GREENWOOD SOLICITOR
SID-[redacted] FBI-[redacted]
NAME-WHARTON, PHILLIP LEON SEX-M RACE-B
HEIGHT-509 WEIGHT-205 EYES-BRO HAIR-BLK SKIN- BORN-XX
FPC-PMPIPIPOPOPIPOPOPIPI HENRY- M 32 W IIO
I 32 W OOI

PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--10/07/1985 DATE OF LAST UPDATE--12/08/2021

ADDITIONAL IDENTIFIERS NAME	BIRTH DATES	MARKS	SOC SEC	MISC NUM
	[redacted]		[redacted]	

CONTRIBUTOR/SUBJECT	DOA/RCVD	CHARGE/DISPOSITION/ETC
WHARTON, PHILLIP LEON SC0010100 ABBEVILLE PD CASE-4192	08/28/1985	ARREST CHARGE 1-SIMPLE ASSAULT AND BATTERY OFFENSE DATE-08/28/1985 PHOTOGRAPH AVAILABLE COURT CHARGE 01-SIMPLE ASSAULT & BATTERY (NO INFO ON VICTIM) COURT DISP-CONVICTED;$216;PD COURT DATE-09/05/1985
WHARTON, PHILLIP LEON SC0010100 ABBEVILLE PD CASE-4690	01/17/1989	ARREST CHARGE 1-DISORDERLY CONDUCT OFFENSE DATE-01/17/1989 PHOTOGRAPH AVAILABLE COURT CHARGE 01-DISORDERLY CONDUCT

COURT'S EXHIBIT NO. 3
IDENTIFICATION/EVIDENCE
DKT.# 21GS01 214
DATE: 9-25-23
PENGAD 800-631-6989

COURT DISP-CONVICTED;$55 FINE
COURT DATE-01/20/1989

WHARTON, PHILLIP LEON 09/15/1989
SC0010000 ABBEVILLE CNTY SO

ARREST CHARGE 1-DISORDERLY CONDUCT
OFFENSE DATE-09/15/1989
PHOTOGRAPH AVAILABLE
WARR-02093GF
COURT CHARGE 01-DISORDERLY CONDUCT
COURT DISP-CONVICTED;$50 FINE; PAID
COURT DATE-10/03/1989

WHARTON, PHILLIP LEON 07/24/2003
SC0010000 ABBEVILLE CNTY SO
CASE-5424
ATN-980000449025
WARR-88626CH
CIT-16-25-20-MISDEMEANOR
NCIC CODE-3899

ARREST CHARGE 1-CRIMINAL DOMESTIC VIOLENCE 1ST OFFENSE
OFFENSE DATE-07/24/2003

CIT-16-25-20-MISDEMEANOR
NCIC CODE-3899
WARR-88626CH

COURT CHARGE 01-CRIMINAL DOMESTIC VIOLENCE 3RD OR SUB
COURT DISP-CONVICTED;GUILTY BENCH TRIAL;$153.75/ COUNSELING OR 30 DAYS
COURT DATE-07/24/2003
ATN-980000449025

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC00505246
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN CONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF TWO (2) YEARS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS. THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY FIREARMS OR AMMUNITION, AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

** S C CJIS END OF RECORD **

LEMS.Web

ICHS 003F78C7F5 from SCCH

GRWSL401
.ICHS.003F78C7F5.SCCH.20230921 14:29:06
TO: GRWSL401-7543 20230921 14:29:06 003F78C7F5
FROM: SCCH-7915509 20230921 14:29:06
ICHS/QH INQUIRY OF SCLED CCH FILES USING:
ATN-DALLEN
ORI-SC024015A PUR-C
NAM-WHARTON, PHILLIP
SEX-M RAC-B DOB-[redacted]

DATE-09/21/2023 TIME-14:28 PAGE-01 OF 01
ORI-SC024015A
SCLED IDENT RESPONSE TO ICHS/QH INQUIRY
THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-WHARTON, PHILLIP LEON SEX-M RACE-B
HEIGHT-509 WEIGHT-205 EYES-BRO HAIR-BLK SKIN- BORN-XX
FPC: HENRY- M 32 W IIO NCIC-PMPIPIPOPOPIPOPOPIPI
I 32 W OOI
SID-[redacted] FBI-[redacted]
PHOTOGRAPH AVAILABLE
1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS
DATE RECORD ENTERED--10/07/1985 DATE OF LAST UPDATE--12/08/2021

BIRTH DATES-[redacted]

SOC SEC NUMBERS-[redacted]
SCLED CJIS CCH FILE INDICATES SUBJECT HAS NO OUT-OF-STATE ARRESTS

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

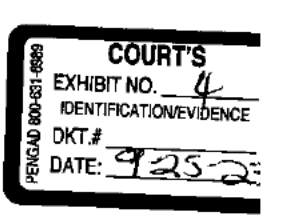
INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN CONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF TWO (2) YEARS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS. THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY FIREARMS OR AMMUNITION, AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS DEFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES MAY OCCUR DAILY, A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT USE OF THIS RECORD IS ALLOWED.

FOR COMPLETE CRIMINAL HISTORY, PERFORM ICHR INQUIRY USING SID NUMBER OR FBI NUMBER.

REQUEST FORWARDED TO NCIC
ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NCIC VIA YOUR TERMINAL
** END OF MESSAGE **



Abbeville County Courthouse

RANDOM STRIKE SHEET

Judge Name: Addy Frank R Jr

Trial Type: Criminal

Panel ID: 2021GS0100214

Courtroom: CTRM

Description: 2021GS0100214

Sorted By Random Nbr

Trial

	NAME	JURORNBR	RACE	SEX	ST/PLTFF 10	DEF 10	CRT	REMARKS
1	Clare, Benjamin P	28	W	M	(✓)	(✓)	( )	✓
2	Suber, Stephen A Sr.	175	W	M	(✓)	(✓)	( )	✓
3	Wilson, John T	196	W	M	(✓)	(✓)	( )	✓
4	Webb, Carolyn G 2012	188 DO	W	F	(✓)	(✓)	( )	✓
5	Ellison, Jennifer M McD's Mgr.	45	W	F	(✓)	(✓)	( )	✓
~~6~~	~~Mullett, Sallie S~~	120	W	F	(✓)	(X)	( )	Δ1
~~7~~	~~Shaw, Angelique M~~	162	W	F	(✓)	(X)	( )	Δ2
8	Sanders, Jasmine L	156	O	F	(✓)	(✓)	( )	✓
9	Parnell, Heath D	132	W	M	(✓)	(✓)	( )	✓
10	Murphy, William C	121	W	M	(✓)	(✓)	( )	✓
~~11~~	~~Rodriguez, Marie L~~	151	W	F	(✓)	(X)	( )	Δ3
~~12~~	~~Howell, Byron E~~	80	W	M	(X)	( )	( )	S1
~~13~~	~~Vermillion, Tonya L~~ 1995	186 Fraud ✓	W	F	(X)	( )	( )	S2
F 14	Wieters, Eleanor A	193	W	F	(✓)	(✓)	( )	✓
~~15~~	~~Smith, Beverly J~~	168	W	F	(✓)	(X)	( )	Δ4
~~16~~	~~Allen, Kevin W~~	3	W	M	(✓)	(X)	( )	Δ5
~~17~~	~~Landers, Joshua A~~	89	W	M	(X)	( )	( )	S3
~~18~~	~~Garrity, Caitlyn E~~	54	W	F	(X)	( )	( )	S4
~~19~~	~~Parker, Gabrielle C~~	129	W	F	(✓)	(X)	( )	Δ6
~~20~~	~~Saucier, Kenneth J~~	157	W	M	(✓)	(X)	( )	Δ7
21	Powell, James D	139	W	M	(✓)	(✓)	( )	✓
22	Falls, Laura M	47	W	F	(✓)	(✓)	( )	✓
23	Poore, Tammy G	137	W	F	(✓)	(✓)	( )	✓
~~24~~	~~Phillips, Christian C~~ Alt's	135	W	F	(✓)	(X)	( )	Δ1A
AH 25	Hunter, Steven W	82	W	M	(✓)	(✓)	( )	✓
~~26~~	~~Wharton, Phillip L~~ Put him on	191	B	M	(X)	( )	( )	S5
AH ~~27~~	~~Davis, Kenneth A~~	38	W	M	(✓)	(✓)	( )	✓
28	Lawter, Portia D	92	W	F	( )	( )	( )	
29	Ferguson, Barry	48	W	M	( )	( )	( )	
30	Erwin, Gloria Jane E	46	W	F	( )	( )	( )	
31	Bensel, Weslyn G	12	W	F	( )	( )	( )	
32	Herndon, James D	71	W	M	( )	( )	( )	

Print Date: 9/25/2023 3:17:12 PM

File: RandomStrike

COURT'S EXHIBIT NO. 12 IDENTIFICATION/EVIDENCE DKT.# DATE: 9/25/23 PENGAD 800-631-6989

Abbeville County Courthouse

RANDOM STRIKE SHEET

Judge Name: Addy Frank R Jr
Trial Type: Criminal
Panel ID: 2021GS0100214
Courtroom: CTRM

Description: 2021GS0100214

Sorted By Random Nbr

Trial

33	Ramey, Brittany S	144	W	F	( )	( )	( )	_____
34	Peterson, Florence L	134	B	F	( )	( )	( )	_____
35	Hagan, Pamela V	63	W	F	( )	( )	( )	_____
36	Nance, Gregory T	122	W	M	( )	( )	( )	_____
37	Smith, Logan D	171	W	M	( )	( )	( )	_____
38	Rawski, John T Jr.	146	W	M	( )	( )	( )	_____
39	Conklin, Crystal L	31	W	F	( )	( )	( )	_____
40	Wilson, Thomas G	197	W	M	( )	( )	( )	_____
41	Young, Erin R	200	W	F	( )	( )	( )	_____

Total Number of Jurors: 41

**** END OF REPORT ****

Court's Detailed List R. 696

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

1
SU

Adams, Stacey Y — 4014719 — B F — 51 — [redacted] — ( ) -
[redacted]
High School — [redacted] — 10
cnc mACHINIST — ZF Transmission
S

2
SU

Aiken, Esther M — 4001372 — B F — 82 — [redacted]
[redacted]

3
SU

Allen, Kevin W — 4000348 — W M — 49 — [redacted] — ( ) -
[redacted]
High School — [redacted] — 6
Parks and Recreation Director — City of Abbeville
D

4
AGE

Andrioff, Carl J — 0 — W M — 72 — [redacted]
[redacted]

5
NRS
W

Armstrong, David B — 530465 — W M — 62 — [redacted] — ( ) -
[redacted]
Bachelor's degree — ( ) - — 35
Retired — Prudential Ins Co
M

COURT'S EXHIBIT NO. 13 IDENTIFICATION/EVIDENCE DKT.# DATE: 9/25/23
PENGAD 800-631-6989

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror # / Status	Name / Address / Juror Occupation / Marital Status/Spouse	Certificate # / Employer / Spouse's Occupation	Race	Sex	Age / Education / Years Employed / Spouse's Employer	Birth Date / Home Phone / Bus Phone
6 AGE	Ashley, Melvin E Sr. [redacted]	1409617	W	M	68	[redacted]
7 UTL	Ballenger, Candice D [redacted]	312681	W	F	30	[redacted]
8 NRS	Barmore, Javon D [redacted] mover S	0	B	M	27 ( ) - 0	[redacted] ( ) -
9 AGE	Baughman, John W Jr. [redacted] Owner Baughman Enterprices M/Pam Baughman	1408502 Self Office Manager	W 4 year degree	M	68 [redacted] 40 Baughman Enterprises	[redacted] ( ) -
10 SU	Beauford, Thomas D [redacted]	1286542	W	M	21	[redacted]
11 AGE	Bell, Dorothy A [redacted]	2733393	B	F	68	[redacted]
12 SU	Bensel, Weslyn G [redacted] worker S	1652388 Smith Farm Supply	W High School	F	20 [redacted] 0	[redacted] ( ) -

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

13	**Blanton, Benjamin A**	4003830	W	M	59	[redacted]
SU	[redacted]		College		[redacted]	( ) -
	Realtor	Myself/1099			2	
	M/Lynn Blanton	Realtor			Self	
14	**Boyd, Elizabeth G**	1278923	W	F	59	[redacted]
TO	[redacted]		College		[redacted]	( ) -
	Fundraiser	Erskine college			3	
W	M/A. Shapleigh Boyd IV	Coach			Erskine College	
15	**Broadwell, Clyde H Jr.**	1073601	W	M	73	[redacted]
AGE	[redacted]					
16	**Brock, Cole**	1363119	W	M	23	[redacted]
SU	[redacted]					
17	**Brown, Lacee C**	1677224	M	F	19	[redacted]
SU	[redacted]					
18	**Brown, Nicole P**	4008432	W	F	42	[redacted]
SU	[redacted]					
19	**Brown, Tonya C**	1580345	W	F	51	[redacted]
SU	[redacted]		High School		( ) -	( ) -
	Homemaker				0	

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	
	M/Virgil Brown	Carpenter			Stephens Contruction	

20	Brownlee, Geraldine W	1074081	B	F	70	[redacted]
AGE	[redacted]					
21	Burton, Pamela J	6396646	W	F	58	[redacted]
SU	[redacted]					
22	Cagle, Alisa M	0	W	F	48	[redacted]
SU	[redacted]		12		[redacted]	( ) -
	Abbeville County School District	South Carolina Department of Corrections			10	
	S					
23	Campbell, Daniel C	4003857	W	M	55	[redacted]
UTL	[redacted]					
24	Campbell, Matthew R	4611742	W	M	50	[redacted]
TO	[redacted]		Doctorate		[redacted]	( ) -
	Professor	Erskine college			5	
	M/Evelyn Campbell	Secretary			Due West ARP Church	
25	Capilos, Linda Q	5991360	W	F	75	[redacted]
AGE	[redacted]				( ) -	( ) -
					0	
26	Carter, Rusty F	1380090	W	F	60	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

UTL [redacted]

---

27 **Champagne, Michael A** 4007050 — W M 75 [redacted]
AGE [redacted]

---

28 **Clare, Benjamin P** 5728287 — W M 38 [redacted]
SU [redacted]
Lonza M Works - Chester

---

29 **Clinkscales, Geneva B** 1073185 — B F 88 [redacted]
AGE [redacted]

---

30 **Cohen, Helene E** 1217939 — W F 64 [redacted]
SU [redacted]

---

31 **Conklin, Crystal L** 4328984 — W F 33 [redacted]
SU [redacted] 10th [redacted] ( ) -
Waitress — Goldsmith Cake — 9
/Jacob Gantt — Self Employed

---

32 **Cox, David R** 4006638 — W M 80 [redacted]
AGE [redacted]

---

33 **Craft, Nathan E** 0 — W M 21 [redacted]
UTL [redacted]

---

34 **Crawford, Carrol G JR** 0 — W M 51 [redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

PHY [redacted]

---

35 **Crawford, Margaret R** 1264799 W F 72 [redacted]
AGE [redacted]

---

36 **Davenport, Shawn M** 4008314 W F 45 [redacted]
SU [redacted] 2 years college [redacted] ( ) -
School Accounts Payable Ware Shoals School District 0
M/R Dale Davenport Jr Technician Eaton Electrical

---

37 **Davis, Katie G** 32250 W F 32 [redacted]
NRS [redacted] ( ) - ( ) -
0

---

38 **Davis, Kenneth A** 4014730 W M 40 [redacted]
SU [redacted] High School ( ) - ( ) -
Network Field Tech WCTEL 15
M/Hannah Davis Teacher Abbeville Co School Dist

---

39 **Dedalis, Lyla E** 1015319 W F 22 [redacted]
CHI [redacted]

---

40 **Demers, Wanda L** 5673475 W F 65 [redacted]
SU [redacted] 12 [redacted] ( ) -
Retired Connie Maxwell Childrens Ministry 17
D

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

41 SU	Douglas, Justin E [redacted]	13809	W	M	31	[redacted]
42 JUR	Eder, Bryan J [redacted]	4005674	W	M	54	[redacted]
43 AGE	Ellenburg, Jane C [redacted]	1074258	W	F	69	[redacted]
44 AGE	Elligson, Edward L [redacted]	4010794	W	M	68	[redacted]
45 SU	Ellison, Jennifer M [redacted]	214388	W	F	37	[redacted]
	Manager D	McDonalds	10 years		( ) - 3	( ) -
46 SU	Erwin, Gloria Jane E [redacted]	4005296	W	F	58	[redacted]
	Cosmetologist M/Wayne Erwin	Self Employed Maintenance	12 th Grade		( ) - 20 Abbeville School District	( ) -
47 SU	Falls, Laura M [redacted]	4009040	W	F	53	[redacted]
	IT Manager	Belton Industries Inc	2 year college		[redacted] 8	( ) -

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	
	M/Marley Babb	Truck Driver			South Work Metal	
48 SU	Ferguson, Barry [redacted]	2452165	W	M	56	[redacted]
	Business Owner .	Diaman Ridge Communication	Associates Degree		( ) - 1	( ) -
	M/Angela					
49 SU	Ferguson, Joseph E [redacted]	0	W	M	45	[redacted]
50 SU	Fleming, Charles M [redacted]	0	W	M	42	[redacted]
51 SU	Flitz, Anna M [redacted]	1625211	W	F	21 ( ) - 0	[redacted] ( ) -
52 SU	Ford, Tashekia [redacted]	1269798	B	F	22	[redacted]
53 SU	Garrison, Aubree [redacted]	1393415	W	F	24	[redacted]
54 SU	Garrity, Caitlyn E [redacted]	1583768	W	F	20	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	
55	Gibson, Patricia M	0	W	F	52	[redacted]
NRS	[redacted]				( ) -	( ) -
					0	
56	Gingerich, Emily L	157572	W	F	30	[redacted]
CHI	[redacted]		High School		[redacted]	( ) -
	Stay at home mother	Abbeville Youth Center			0	
W	M/Justin Gingerrich	Merl's Countertops			Merls	
57	Goodwin, Iquana W	4001767	B	F	50	[redacted]
SU	[redacted]		Bachelor's degree		[redacted]	( ) -
	4-k para pro	Long Cane Primary			18	
B	M/Charles Goodwin Jr	Unemployed			Fuji Films	
58	Grant, Angela L	4014122	W	F	64	[redacted]
SU	[redacted]					
59	Gray, Jacob R	0	W	M	24	[redacted]
PHY	[redacted]		12		[redacted]	( ) -
	unemployed				0	
	S					
60	Groves, Taylor N	508871	W	F	30	[redacted]
UTL	[redacted]					
61	Gunnells, Rodger W	1407966	W	M	70	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

AGE [redacted]

---

62 **Haddon, William L** 1073708 W M 72 [redacted]
AGE [redacted]

---

63 **Hagan, Pamela V** 401355 W F 68 [redacted]
SU [redacted] Doctorate [redacted] ( ) -
Retired/Higher Ed Administrator Spartanburg Community College /Former 25
M/Harry Hagan Jr Retired

---

64 **Hagen, Kathy A** 0 W F 74 [redacted]
AGE [redacted]

---

65 **Harrison, Karl K Sr.** 5699433 B M 50 [redacted]
SU [redacted]
Maint Tech

---

66 **Hawkins, Robert L** 4011585 B M 87 [redacted]
SU [redacted] ( ) - ( ) -
Retired 0
M/Annette Hawkins Retired

---

67 **Hedden, Charles L** 4010382 W M 44 [redacted]
SU [redacted] Associates Degree [redacted] ( ) -
Disabled 0
M/Kathy Hedden Store Associate Pop Shelf

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror # / Status	Name / Address / Juror Occupation / Marital Status/Spouse	Certificate # / Employer / Spouse's Occupation	Race	Sex	Age / Education / Years Employed / Spouse's Employer	Birth Date / Home Phone / Bus Phone
68 PHY	Hedden, Jacob T [redacted]	0	W	M	25	[redacted]
69 SU	Henderson, Sylvia S [redacted]	4015835	W	F	75	[redacted]
70 SU	Henry, Harriett B [redacted]	6597344	W	F	53	[redacted]
71 SU	Herndon, James D [redacted] Contractor S	1214365 Trades Industrial Co	W 12	M	26 [redacted] 1	[redacted] ( ) -
72 SU	Hester, Nikita N [redacted]	4016489	B	F	30	[redacted]
73 AGE	Hicks, Jo A [redacted]	1408384	B	F	73	[redacted]
74 PHY	Hill, Brunette [redacted]	4005785	B	F	58 ( ) - 0	[redacted] ( ) -
75 UTL	Hines, Kristy A [redacted]	5811183	W	F	67	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror # / Status	Name / Address / Juror Occupation / Marital Status/Spouse	Certificate # / Employer / Spouse's Occupation	Race	Sex	Age / Education / Years Employed / Spouse's Employer	Birth Date / Home Phone / Bus Phone
76 SU	Holliday, Judy R [redacted]	4244175	W	F	45	[redacted]
77 AGE	Holman, Walter [redacted]	4011902	B	M	84	[redacted]
78 UTL	Hoover, Kyle D [redacted]	4011915	W	M	61	[redacted]
79 AGE	Horton, Dudley M [redacted]	1073041	W	M	72 ( ) - 0	[redacted] ( ) -
80 SU	Howell, Byron E [redacted] Electrician M/jENNIFER hOWELL	4006501 Electrolux Homemaker	W High School	M	49 [redacted] 29 N/A	[redacted] ( ) -
81 SU	Hughes, William Lee [redacted] Maintenance Planner M/Kristin Hughes	4000335 Carerpillar Teacher	W High School	M	50 [redacted] 2 Abbeville County School	[redacted] ( ) -
82 SU	Hunter, Steven W [redacted] PLANT mANAGER 12-21-65	6597406 Roylco Inc Anders SC	W Bachelor's degree	M	57 [redacted] 13	[redacted] ( ) -

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	
	M/Dawn Hunter	Teacher			Greenwood/ Abbeville Schools	
83	Jackson, Alexander B	0	M	M	23	[redacted]
NRS	[redacted]				[redacted]	( ) -
	unemployed				0	
	M					
84	Jamison, Carlton L Jr.	6757598	B	M	39	[redacted]
SU	[redacted]					
85	Johnson, Willie Sue	2451816	B	F	76	[redacted]
SU	[redacted]					
86	Jones, Kristine A	0	W	F	21	[redacted]
NRS	[redacted]				( ) -	( ) -
					0	
87	Kauffman, Kevin G	0	W	M	22	[redacted]
SU	[redacted]				High School Graduate ( ) -	( ) -
	Construction	Fisher Barns			5	
	S					
88	Lakes, John W	0	W	M	63	[redacted]
DEC	[redacted]					
89	Landers, Joshua A	651238	W	M	33	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	
SU	[redacted]		Associates Degree		[redacted]	( ) -
	It	Piedmont Technical College			7	
	S					
90	Landis, Thomas S	1056806	W	M	69	[redacted]
AGE	[redacted]				[redacted]	( ) -
					0	
91	Laughlin, Sheridan B	4000831	W	F	56	[redacted]
CHE	[redacted]					
92	Lawter, Portia D	6978849	W	F	37	[redacted]
SU	[redacted]		College		[redacted]	( ) -
	LPN	Center Well Home Health			15	
	M/Michael Lawter	SCDNR			SCDNR	
93	Lee, Catherine	1074637	B	F	75	[redacted]
AGE	[redacted]					
94	Lee, Teresa	2452173	W	F	67	[redacted]
AGE	[redacted]					
95	Limbert, Craig W	308645	W	M	74	[redacted]
SU	[redacted]					
96	Lomax, Johnny Jr.	4006365	B	M	50	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	
SU	[redacted]					
97	Machen, Americas M	0	W	F	20	[redacted]
SU	[redacted]					
98	Madison, Angelina	1394119	U	F	51	[redacted]
SU	[redacted]				( ) -	( ) -
					0	
99	Marshall, Denise M	4015414	W	F	66	[redacted]
AGE	[redacted]					
~~100~~	Martin, Addie R	0	B	M	72	[redacted]
PHY	[redacted]		12		( ) -	( ) -
					0	
B	S					
101	Mattison, Marquis L	1435885	B	M	32	[redacted]
SU	[redacted]					
102	Mccall, Anthony H	4000303	W	M	52	[redacted]
EXC	[redacted]		12		(864) 378-3796	( ) -
	Owner and Operator	S and D Vases			22	
W	M/Buffy McCall	S and D Vases				
103	Mccaslan, Peggy D	4007537	W	F	76	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	
AGE	[redacted]					
104	Mccaw, Fran C	2452181	W	F	75	[redacted]
AGE	[redacted]					
105	Mccier, Mary W	1737649	B	F	75	[redacted]
AGE	[redacted]					
106	Mcclain, Joe F	0	W	M	73	[redacted]
AGE	[redacted]					
107	Mccoy, Lanis T	0	B	M	38	[redacted]
SU	[redacted]		Diploma		( ) -	( ) -
	Floor Installer	N/A			0	
	S					
108	Mcgaha, Brittany L	6760312	W	F	33	[redacted]
SU	[redacted]		Bachelor's degree		( ) -	( ) -
	Teacher	Greenwood District 50			3	
	M/Daniel McGaha	Pastor			Rice Memorial Baptist Church	
109	Mcintosh, Taria S	2733461	B	F	49	[redacted]
SU	[redacted]					
110	Mcneill, Paul	4483	W	M	83	[redacted]
AGE	[redacted]					

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

111	Meany, Eugene R	237368	W	M	65	[redacted]
AGE	[redacted]		4 years		[redacted]	( ) -
	Pastor	Faith Baptist Church			2	
W	M/Sherry	Homemaker			Walmart	
112	Merritt, Ruth	4010858	B	F	74	[redacted]
SU	[redacted]		GED		( ) -	( ) -
	Retired				0	
B	W					
113	Miller, David D	631418	W	M	56	[redacted]
SU	[redacted]					
114	Busby, Sherry L	2452771	W	F	61	[redacted]
SU	[redacted]		4 years college		[redacted]	( ) -
	RN	AAMC Health Related Home Care			0	
W	M/Charles Busby	Deputy Coroner			Abbeville County	
115	Mills, Nathaniel J	880898	W	M	25	[redacted]
SU	[redacted]					
116	Morris, Candice B	358894	B	F	26	[redacted]
SU	[redacted]					
117	Morton, John B	3503	B	M	91	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

AGE [redacted] 12 ( ) - ( ) -
Retired 0
W

---

118 **Moss, James B** 4004267 W M 70 [redacted]
AGE [redacted]

---

119 **Moss, Rashunda** 1354730 B F 36 [redacted]
SU [redacted]

---

120 **Mullett, Sallie S** 1419971 W F 62 [redacted]
SU [redacted] 4 years college ( ) -
Retired City of Belmont NC 29
M/Paul Mullett Retired Self

---

121 **Murphy, William C** 0 W M 25 [redacted]
SU [redacted] High School [redacted] ( ) -
Warehouse Worker Prevost USA 1
S

---

122 **Nance, Gregory T** 57335 W M 50 [redacted]
SU [redacted] 12 [redacted] ( ) -
City of Anderson Tech 4 City of Anderson 5
M/Ronda Nance Ashley Medical

---

123 **Newton, William R Jr.** 4016622 W M 79 1944

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

AGE [redacted]

124	Nichols, Austin R	1600661	W	M	27	[redacted]
TO	[redacted]		Doctorate		( ) -	( ) -
	Resident Physician	Self Regional			2	
	M/Claire Nichols	Nurse			Self-Regional	
125	Nimmons, Mark A	4215295	W	M	57	[redacted]
SU	[redacted]				( ) -	( ) -
					0	
126	Nix, Dakota B	0	W	M	29	[redacted]
UTL	[redacted]					
127	Oliver, Andrew J	1583922	W	M	40	[redacted]
SU	[redacted]					
128	Page, Emily C	4014613	W	F	42	[redacted]
NRS	[redacted]		Associates Degree		( ) -	( ) -
					0	
	M/Benjamin Page					
129	Parker, Gabrielle C	5265312	W	F	37	[redacted]
SU	[redacted]		Tech Diploma		[redacted]	( ) -
	Insurance INVESTIGATOR	Gainsco			1	
	M/Lawrence Parker	Insurance adjuster			Gainsco	

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

---

130 — **Parkerson, Rowena M** — 4014945 — W F — 92 — [redacted] — ( ) -
AGE [redacted] — [redacted] — ( ) -
Retired — 0

---

131 — **Parnell, Darrell W** — 4003612 — W M — 64 — [redacted] — ( ) -
SU [redacted] — Masters — [redacted] — ( ) -
Teacher — Anderson School District 3 — 7
M/Cathy Parnell — Teacher — Abbeville County School Distrivt

---

132 — **Parnell, Heath D** — 4007116 — W M — 46 — [redacted]
SU [redacted]

---

133 — **Pedro, Kiara V** — 0 — B F — 24 — [redacted]
SU [redacted]

---

134 — **Peterson, Florence L** — 1736026 — B F — 64 — [redacted]
SU [redacted] — 14 years — ( ) - — ( ) -
Retired — Kraft — 13
S

---

135 — **Phillips, Christian C** — 4010876 — W F — 42 — [redacted]
SU [redacted] — High School — [redacted] — ( ) -
Medical Coder — Lexicode — 2
M/Scott Phillips — Electrician — Duke Energey

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

136 SU	Pickell, Samuel D [redacted]	738577	W	M	25	[redacted]
137 SU	Poore, Tammy G [redacted]	2386388	W 12	F	55 [redacted] 19	[redacted] ( ) -
	Food Service Assistant M/Jeff Poore	Abbeville County School District Laundry			SLM Laundry	
138 AGE	Postell, Brenda E [redacted]	4001914	B	F	70	[redacted]
139 SU	Powell, James D [redacted]	1177432	W Associates Degree	M	24 [redacted] 1	[redacted] ( ) -
	Process Engineer Tech M/Kayla Powell	Blue Diamond Dental Assistant			Stoddard Dental Group	
140 SU	Power, Toka R [redacted]	62133	B	F	30	[redacted]
141 AGE	Price, Billy R [redacted]	4008148	W	M	73 [redacted] 0	[redacted] ( ) -
142 AGE	Prince, Harold L Jr. [redacted]	165	W	M	90	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

143 — Quarles, Mary D — 0 — B — F — 60 — [redacted]
UTL
[redacted]

144 — Ramey, Brittany S — 745434 — W — F — 38 — [redacted]
SU
[redacted]
Works Human Res.
M. Cooper Elect

145 — Rapley, Franklin D — 1074975 — B — M — 81 — [redacted] — ( ) -
AGE
[redacted]
Retired
0
W

146 — Rawski, John T Jr. — 1183625 — W — M — 25 — [redacted]
SU
[redacted]
Supervisor

147 — Ray, Phillip D — 2387715 — W — M — 65 — [redacted] — ( ) -
CTO
[redacted]
16
Abbeville Co Magistrate — State of SC — 9
M/Terri Ray — Music Teacher — Self
W

148 — Rayford, Sallie M — 4006077 — B — F — 95 — [redacted]
AGE
[redacted]

149 — Richardson, Edward K — 0 — W — M — 55 — [redacted]
SU
[redacted]

150 — Roberts, Arnold B — 1263512 — W — M — 79 — [redacted]
AGE
[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

151 SU	Rodriguez, Marie L [redacted]	2190719	W High School	F	55 [redacted] 0	[redacted] ( ) -
	Homemaker M/Mario Rodrigues	N/A weaver			Construction Technique CF	
152 AGE	Ross, Lorraine E [redacted]	0	W	F	70	[redacted]
153 AGE	Rothery, Johnnie S [redacted]	4000662	B	F	80	[redacted]
154 NRS	Rowland, Joshua C [redacted]	695643	W	M	26 [redacted] 0	[redacted] ( ) -
155 SU	Sanders, Dana S [redacted]	1351784	B	F	21	[redacted]
156 SU	Sanders, Jasmine L [redacted]	437977	O Associates Degree	F	30 [redacted] 5	[redacted] ( ) -
	Deli Associate at Ingles S	Ingles Market				
157 SU	Saucier, Kenneth J [redacted]	353709	W Some College	M	58 ( ) -	[redacted] ( ) -

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

retired — US Army — 30
W

---

158 — **Schulz, Kimberly D** — 299674 — W — F — 51 — [redacted]
SU — [redacted] — 12 — [redacted] — ( ) -
Rural Carrier Associate — USPS — 3
D

---

159 — **Schwab, Bonnie J** — 595873 — W — F — 66 — [redacted]
SU — [redacted]

---

160 — **Scott, Kolbie P** — 646913 — W — F — 34 — [redacted]
TO — [redacted] — Associates Degree — [redacted] — ( ) -
Part Time Polyromno Grapher — AnMed Health — 9
M/J Brandon Scott — Tech Manager

---

161 — **Seawright, Ronald G** — 1073452 — W — M — 69 — [redacted]
SU — [redacted]

---

162 — **Shaw, Angelique M** — 1101100 — W — F — 45 — [redacted]
SU — [redacted] — Bachelor's degree — [redacted] — ( ) -
Assistant Childrens Ministry Director — New Covenant Church — 3
M/Kyle Shaw — Forensic Pathologist — Anderson County

---

163 — **Shull, Curtis W** — 1176307 — W — M — 59 — [redacted]

Abbeville County Courthouse

GS Sept 25 2023 | **Attorney List** | Sorted by Seq Nbr

Juror # / Status	Name / Address / Juror Occupation / Marital Status/Spouse	Certificate # / Employer / Spouse's Occupation	Race	Sex	Age / Education / Years Employed / Spouse's Employer	Birth Date / Home Phone / Bus Phone
UTL	[redacted]					
164 JUR	Simmons, Jennifer S [redacted] RN Nurse M/Stephen Simmons	2387598 AAMC Construction	W	F	53 [redacted] 29 Self Employed	[redacted] ( ) -
165 CHI	Rowley, Tracey R [redacted]	4016555	W	F	48 ( ) - 0	[redacted] ( ) -
166 SU	Sizemore, John R [redacted]	0	W	M	45	[redacted]
167 TO	Smith, Amy K [redacted] School Counselor M/Melvin Smith	6804416 Abbeville County School District Service Tech	W Masters	F	44 [redacted] 9 Buck Stove and Spa	[redacted] ( ) -
168 SU	Smith, Beverly J [redacted] Care Giver M/Donnie Smith	1736374 Caring Hands	W 12	F	58 [redacted] 22 East T Lumber	[redacted] ( ) -
169 SU	Smith, Heath B [redacted]	5692929	W Bachelor's degree	M	35 [redacted]	[redacted] ( ) -

W

W

JR Bart Grill - bartender 11-13

M Teaher

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	
	Bartender	JR Cash's Grill and Bar			1	
	M/Juliana Smith	Teacher			Wright Middle School	
170	Smith, Leroy Jr.	4015743	B	M	53	[redacted]
SU	[redacted]					
171	Smith, Logan D	338394	W	M	33	[redacted]
SU	[redacted]		Associates Degree		[redacted]	( ) -
	Truck/ Delivery Driver	Farms and Supply			9	
	M/Virgina Smith	Self Employed			WCTEL	
172	Speed, Randall B	4005437	W	M	59	[redacted]
SU	[redacted]		12		[redacted]	( ) -
	Sales/ Lowe's	Lowe's			12	
	M/Wanda Speed	Billing			Self Regional	
	172					
173	Stephens, Roger S	6307000	W	M	73	[redacted]
AGE	[redacted]					
174	Strickland, Mary I	1073284	W	F	78	[redacted]
AGE	[redacted]					
175	Suber, Stephen A Sr.	5768878	W	M	64	[redacted]
SU	[redacted]		12		( ) -	( ) -
	Retired				0	
	D					

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

176 NRS	Swann, Kenneth S [redacted]	4007574	W	M	59 ( ) - 0	[redacted] ( ) -
177 JUR	Swartzentruber, Lowell [redacted]	0	W	M	59	[redacted]
178 SU	Taylor, Katelyn D [redacted]	0	W	F	30	[redacted]
179 SU	Thomas, Fernan K [redacted] Colgate	4014662	B	M	49	[redacted]
180 SU	Thweatt, Lisa M [redacted] Legal Assistant M/Dorrah Thweatt	342902 Stephenson and Murphy LLC Welds Roofing Materials	W	F	59 Some College [redacted] 9 Flash Co	[redacted] ( ) -
181 SU	Tillman, Dorthy M [redacted]	2452870	B	F	76	[redacted]
182 CHI	Trotter, Elizabeth [redacted]	1012062	W	F	32	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror # / Status	Name / Address / Juror Occupation / Marital Status/Spouse	Certificate # / Employer / Spouse's Occupation	Race	Sex	Age / Education / Years Employed / Spouse's Employer	Birth Date / Home Phone / Bus Phone
183 SU	Troyer, Kara D [redacted]	0	W	F	31	[redacted]
184 PHY	Turman, Lonzavis T [redacted]	0	B	M	28	[redacted]
185 SU	Vaughn, Ervin E [redacted]	4005529	W	M	84	[redacted]
186 SU W	Vermillion, Tonya L [redacted] Self Employed M/David Vermillion	4006643 Self Employed	W	F	48 Associates Degree [redacted] 0	[redacted] ( ) - ( ) -
187 AGE	Wagler, Jessie [redacted]	4011768	W	M	71	[redacted]
188 SU	Webb, Carolyn G [redacted] Glen Rabon	4013397 Sep - Self Empl	W	F	57	[redacted]
189 NRS	Weitzel, Ashley B [redacted]	4013680	W	F	35 ( ) - 0	[redacted] ( ) -
190 SU	Wells, Johnnie M [redacted]	4010455	B	F	64	[redacted]

Abbeville County Courthouse

GS Sept 25 2023 — **Attorney List** — Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education		Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

191 SU	Wharton, Phillip L [redacted] Retired SCDOT M/Latasha Wharton	1410016 ward Secretary	B 12	M	63 ( ) - 0 Self Regional Health Care	[redacted] ( ) -
192 AGE	White, Minnie S [redacted]	2386748	W	F	82	1941
193 SU	Wieters, Eleanor A [redacted] Restuarant Manager M/William Nickles	4015232 Jim Petty/ Belmont Inn Carpenter	W Some College	F	51 [redacted] 3 Former/ Prysmian	[redacted] ( ) -
194 AGE	Williams, Travis T [redacted]	4004515	W	M	73	[redacted]
195 AGE	Wilson, Jimmy W [redacted]	1263994	W	M	79	[redacted]
196 SU	Wilson, John T [redacted] ISP M/Emily Wilson	4011562 WCTEL Assistant Principal	W Associates Degree	M	35 ( ) - 12 ACSD 3	[redacted] ( ) -
197	Wilson, Thomas G	2411455	W	M	54	[redacted]

Print Date: 9/22/2023 2:20:51 PM — File: Attorney_Detailed_List

Abbeville County Courthouse

GS Sept 25 2023

Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address			Education	Home Phone	Bus Phone
	Juror Occupation	Employer			Years Employed	
	Marital Status/Spouse	Spouse's Occupation			Spouse's Employer	

SU [redacted]
H / H Grady
M RN - Jan Med
( ) -
0
( ) -

198 LAW
Yerkes, Carmen I [redacted]2784
H F 40
[redacted]

199 SU
Yoder, Joseph P [redacted]8646
[redacted]
Self Employed
M/Veronica Yoder
Homemaker
W M 35
GED
( ) -
0
[redacted]
( ) -

200 SU
Young, Erin R [redacted]
[redacted]
Front Office
M/Evan Keller
Greenwood ENT
Lineman
W F 23
High School
[redacted]
1
Pike Electric
[redacted]
( ) -

Total Number of Jurors: 200

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 8

COUNTY OF ABBEVILLE) DOCKET NO. 2021-GS-01-00215
2021-GS-O1-00214

STATE OF SOUTH CAROLINA,)

Plaintiff,)

versus)

)

TRAVIS A. LEE AND)
KENDRICK MONTREZ LEE

)

Defendant.)

H E A R I N G

PRESENT: Travis A. Lee and Kendrick Montrez Lee
DATE: October 19, 2023
TIME: 2:35 p.m. - 4:08 p.m.
LOCATION: South Carolina Circuit Court 8
JUDGE: Frank R. Addy, Jr.
TRANSCRIBED BY: Jeanne Meldrim

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

APPEARANCES

Micah Black, Esquire
Eighth Circuit Solicitor's Office
PO Box 516
Greenwood, SC 29649

Yates Brown, Esquire
Eighth Circuit Solicitor's Office
P.O. Box 516
Greenwood, SC 29469

Attorneys for the Plaintiff

Charles Grose, Esquire
The Grose Law Firm
305 Main Street
Greenwood, SC 29646

Attorney for Defendant Kendrick Montrez Lee

Robert Jamison Tinsley, Jr., Esquire
Tinsley & Tinsley, PC
109 Oak Avenue
Greenwood, SC 29646

Attorney for the Defendant Travis Arnett Lee

Also attending - Family members and friends of the defendants

INDEX

Proceedings..... 4
Certificate of Transcriber..... 55

EXHIBITS

COURT'S EXHIBITS

Number	Description	Marked	Entered
1	Document	7	
2	Document	7	
3	Document	7	
4	Document	7	
5	Document	7	
6	Document	7	
7	Document	7	
8	Document	7	

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

THE COURT: Okay. If we may, we're going to go back on the record. And this is regarding a Abbeville case that was tried several weeks ago. The case numbers for Travis Lee --- case number for Travis Lee is 2021-GS-01-00215, for Kendrick it's 2021-GS-01-00214.

The jury convicted both gentleman of the offense of assault and battery of a high and aggravated nature. I can't recall off the top of my head who the court reporter was for that trial, but obviously we --- we do have a different court reporter, I believe, here today for these proceedings.

But after the verdicts were returned, procedurally the defendant's requested time to formulate any post-trial motions. I think where we left off was that a motion for a new trial still has yet to be made. But there was of course also the issue of sentencing and life without possibility of parole, and whether the gentleman --- the gentleman's prior convictions are sufficient to warrant the Court opposing that sentence.

I did receive The State's brief on that issue last night. And I got Mr. Tinsley's earlier today. Did --- did you prepare one, Mr. Grose? Are we ---

MR. GROSE: I did not.

THE COURT: Okay. All right. Before I hear from The State, I presume, gentleman, that you do move for new

trials and of course you do redo all prior motions made during the court trial that we had --- had in September and renew all prior objections.

MR. GROSE: I --- I do all that, however, the rules provide for ten days after sentencing to do written motions ---

THE COURT: Okay.

MR. GROSE: --- that's --- that's Rule 9 --- I mean, Rule 29.

THE COURT: Sure.

MR. GROSE: And I do plan to file a written motion raising the --- the grounds, but that's not ---

THE COURT: I --- I was thinking that we were going to address that today.

MR. GROSE: Mr. Tinsley and I conferred about what the rule was. I'm going to take my ten days after sentencing.

THE COURT: All right. Do --- do you anticipate --- do you anticipate anything that necessitates reconvening a hearing in terms of your motion or --- and --- and the reason I'm asking that, gentleman, is I --- if --- if I'm going to move forward with sentencing today, and you intend to file something that might require another hearing, because of the volume of what I do have to address today here in Laurens, and because just for good

old judicial economy, perhaps it would be better, especially if your motion is going to address any of the LWOP aspects of this, that we reconvene this at a later point in time.

I --- I simply ask because obviously you've had a couple of weeks to think about issues you were going to raise and if it's something that I can address just by written memoranda, then I anticipate being able to move forward today and not have to reconvene. If it's something that's going to require another hearing, whatever, then I have concerns.

MR. GROSE: Well, you know, the rule says that it's your discretion as to whether you convene the hearing or not on the new trial motion. And I --- I don't know that --- I've never gotten a hearing from you on a new trial motion a general sessions case.

THE COURT: You have and others have, but ---

(Simultaneous speaking)

MR. GROSE: --- well, am saying I've gotten from other judges --- but I --- I --- I --- I did want newly discovered evidence one time. And --- and now I don't know of any newly discovered evidence, but I don't know what's going to happen in the next ten days.

THE COURT: Okay. Well let's just address --- let's just address then the sentencing issue. Solicitor, I did

read your memorandum you want to hit the high points of that and go ahead and make a record of the prior convictions. I know that you did have some sentencing for --- I know you had some sentencing paperwork you want to make part of the record as well as some incident reports, with the exception if I remember correctly you --- you were unable to locate one incident report, I believe concerning Travis Lee, but otherwise, you had a whole bunch of stuff you wanted to make part of the record; am I right?

MR. BLACK: Yes, sir, that is correct. I'm going to go ahead and put that on the record. I have marked as Court's Exhibits 1 through 8 several items.

(Court's Exhibits 1 through 8 marked)

MR. BLACK: The first item is a --- is a sentencing sheet for Kendrick Lee and that is a conviction for distribution of marijuana within a half mile of a school or playground. And that is marked as serious and the indictment number is 2006-GS-01-495. And there is a indictment that's stapled to that --- that court's exhibit and they are certified copies from clerk's office.

And I believe in this case against Mr. Kendrick Lee, he was represented by Joseph Smithdeal.

Court's Number 2 is also for Mr. Kendrick Lee. It's a

trafficking crack cocaine conviction where he also pled guilty 10 to 28 grams. It's also marked as serious again. He's also represented by --- he was represented by Joseph Smithfield. And the sentence date on both of those charges were November the 13th of 2009. And again, Court's 2 is the sentencing sheet as well as a certified copy of the indictment.

Court's 3 is for Mr. Travis Arnett Lee. On that there are two sentencing sheets that are attached. There's a distribution crack within half mile of a school, which is marked as serious. And he was represented by W. Alex Burney (phonetic), I believe is his name who was a public defender at the time. That is classified as serious.

He also pled at the same time to a distribution of crack second, which at the time was not classified as a --- as a serious offense, it was classified as non-violent.

And he pled to those two charges --- charges at the same time. And also attached is the indictment for those two offenses. And this would have been back on February the 27th of 2003, so that indictment looks a little bit different than what we have now. There's actually, I guess both indictments, or both the language of both of those charges are in the same body of the indictment. And again, that's Court's Number 3. And there's true

copies of that. And that date, Your Honor, for the record, is --- the offense date is 3/21/2022.

The next one is Court's Number 4. Same thing for Mr. Travis Lee, distribution within half a mile of the school which is marked as serious. The sentence date is 2/27/03, which is the same sentence date. He is also represented by W. Alex Burney, a public defender at the time back in 2003.

There's also, again, the sentencing sheet for the prox charge as the distribution crack, second, which again, was not classified as a strike at the time. And then also attached to that is the indictment.

Court's Number 5 is a copy of the incident report that we did cover from the Abbeville County Sheriff's Office regarding Travis Lee. And that is from the incident date of March 13th of 2002. Again, we were not able to recover an incident report from Abbeville City or Abbeville County for that March the 21st, 2002 arrest and conviction.

Court's Number 6 is a distribution of marijuana incident report regarding Kendrick Lee, and that date is July the 6th of 2006. And that again is marked Court's 6.

Court's --- I'm sorry and that is the prox charge on the marijuana for Kendrick Lee.

And then the other incident report is Court's Number 7 for Kendrick Lee and that incident date is May the 13th of 2008. That was an Abbeville City report. And again a couple pages but that is marked as Court's Number 7.

And then I also marked as Court's Number 8 a copy of my memorandum that I did provide to you last night via e-mail.

As far as kind of the high points of the --- the memo, that I did send, Your Honor. Of course I talked about kind of the factual background. The State did serve notice to Kendrick Lee. Originally, they were both charged with attempted murder, The State, after looking at the case and evaluating the case, decided to move forward on an indictment of ABHAN, which we did. But we did send a notice to seek like on Mr. Kendrick Lee. I believe for Mr. Kendrick Lee, originally we served him, I want to say it was in 2021, maybe --- I want to say it was February of 2021. And then we sent --- we sent an amended notices to his attorney, Mr. Grose, that changed --- really just changed the notice letting him know that we were going forward with ABHAN, just making that official. And that was on August the 19th of 2003.

Similar with Mr. Travis Lee, we served him a life notice, I want to say back at the beginning of 2023. And then on August the 9th we did send him an amended notice

again, letting him know that we were going forward with the --- the ABHAN charge.

Of course both of them were convicted on September the 28th of this year in Abbeville on the charge of ABHAN and I won't rehash the facts, but that is set forth in the memo.

And --- and again just to kind of summarize again, Kendrick Lee, he's got two --- two prior strikes on his record. He pled on both of those on November the 13th, 2009. He was represented by Joseph Smithdeal at that hearing.

The first conviction was a 2006 conviction for a prox charge. Again, he sold a quantity of marijuana at the Hickory Heights Apartment complex and there was a playground that's located within a half mile of the point where he sold the marijuana to a confidential informant.

And then about two years later on May the 13th of 2008, he was arrested at 1010 Adams Drive. Officers basically approached a group --- a group of men. I believe that they smelled marijuana. When they patted down Mr. Kendrick Lee they did notice a bulge in his pocket, pulled out some marijuana.

He was arrested and take back to the Abbeville Police Department. And then once they took him to Abbeville Police Department, they found an additional 26 grams of

crack cocaine as well as some money. And I think Mr. Kendrick Lee did admit that the money came from some drug transactions. And again that was on May 13th of 2008.

Regarding Travis Lee, his two offense dates, Your Honor, as I've already mentioned, he pled to two prox charges as well as two distribution of crack second offense charges in May of 2002. One offense date was May 13th of 2002, and the second one was May the 21st of 2002.

He was represented by W. Alex Burney on both of those charges. And again, we have an incident report from the March the 13th, 2002 incident, but we don't have one for the March the 21st incident. And those are, again, about nine days apart when those offenses occurred.

As far as the cases that we cited, Your Honor, we cited in our brief, we cited State v Coon. There's not a whole lot of --- I guess, case law, out there on this particular issue, again, regarding 172545 and 172550, which is, you know, you have to kind of look at both of those statutes in conjunction with each other when decided whether or not the Court is going to issue a life sentence.

And --- and also in looking at the proximity of these prior offenses when they occur and whether or not they are to count as basically a continuous offense --- one

continuous offense or separate offenses.

Coon basically said, and was basically a --- Coon and Bryant are both PCR cases, Your Honor. And defendant's filed PCR basically alleging their attorneys were ineffective for not arguing that at the trial court level, that they were one continuous string.

In the Coon case, it was basically some burglaries and I believe the burglaries were two weeks apart. I think he had committed another burglary kind of in close proximity to the --- I guess the original one. He committed three and some, two on back-to-back dates and then another one about two weeks later.

And the Court basically said, no, those are separate offenses, the ones from the two weeks apart were at different locations. They were different buildings, so you basically have different victims.

And the Court basically said we're not going to establish any kind of bright-line rule as to what constitutes two offenses that are so closely in point in time that we should say it's one offense or two separate offenses.

Similarly in Bryant you --- you had a situation where you had a guy that basically committed a string of armed robberies over the course of about a week. Two of them were on back-to-back dates. One was on December the 27th

in 1996 about 1:00 in the day. And then the next one was December the 28th at 2:00 a.m. One was in --- one was in Orangeburg County, the other one was in Colleton County. And then he committed another armed robbery a couple days later in January of 1997 in Jasper County. And he originally received a ten-year sentence on the Colleton and the Jasper County cases.

And then The State tried him in Orangeburg County and ultimately got a --- a life sentence on that.

And the argument there on the PCR again, is these are --- it's basically one string of offenses, basically committed these armed robberies over the course of a couple day period, it should all be considered one offense.

And the --- I believe originally on the PCR it was granted, but it was ultimately reversed if I'm remembering correctly on that. They basically said --- the Court said it wasn't --- it wasn't one string of offenses. You got, you know, different armed robberies that are occurring in --- in different counties and different locations. And while they're sure they're --- they're close, it's --- it's they're --- they're separate offenses.

So that's kind of the argument, Judge, that we have here regarding both Kendrick Lee and Travis Lee. With

Mr. Kendrick Lee, and his offenses are basically two years apart. While he did plea on the same day, two strikes, they're basically two years apart. One's a 2006 case, a prox charge. The other one's a 2008 trafficking charge. They're at different locations. They're --- they're separate offenses. They shouldn't be considered as one offense. And so this new conviction for ABHAN should count as a --- as a third strike.

Same thing with Mr. Travis Lee. His are a little bit closer. We acknowledge that they're about nine days apart. He's got a conviction for a prox charge and a distribution charge from March the 13th of 2002, I believe it was. And then about nine days later, he basically has the same thing, convictions for distribution and a prox charge. And he pled to those in February of 2003.

And again, we --- I don't have another incident report for the second offense. I don't know all the --- all the facts in it. And the facts as you are aware pretty bare on those incident reports and I have provided you a copy so there's not a whole lot to kind of determine as to, you know, what went on. But it's --- it's our --- it's our argument and it's our belief that they should be considered two separate offenses for the purposes of this sentencing, and as such, Mr. Travis Lee should also be

sentenced to life because he now has three --- three strikes.

THE COURT: All right. As it relates to Travis, did the incident reports that --- or not the incident reports, but the sentencing sheets, or any of the court documents, did they reflect separate incident dates?

MR. BLACK: They do, Your Honor. At the very top, of course, the caption on the top right side, you've got date of offense, code, CDR code, indictment number y'all put on --- that you put on there, and the --- at this time, they were handwritten in and they both reflect different incident dates. And I meant to pass these up to you.

THE COURT: All right.

MR. BLACK: And I can do that (inaudible).

MR. BROWN: Judge, just for a housekeeping matter, I know he said this a Court's 1 through 8. I think we already used Court's 1 through 8 for the trial. So once all these are combined these will need to be remarked so the Court's not confused with any of the Court's exhibits.

THE COURT: How about I just --- instead of remarking these, I'll just have the court reporter indicate today's date on the Court's exhibits and that --- that --- the handwriting will be different.

MR. GROSE: (Unintelligible).

THE COURT: --- sorry?

MR. GROSE: (Unintelligible).

THE COURT: Yeah, that way I don't think we have to worry about re-marking them. And it'll be cleaner in terms of the record.

And Court's 3 and 4, they reflect incident dates for Travis Lee of 3/21/02, and 3/13/02 respectively.

And Mr. Tinsley, I did get your memorandum. And of course you also raise a --- did --- were you done? I'm sorry.

MR. BLACK: I --- I had the record. He wanted to have the record. I can give that to you now, or I can give it to you later, both of them. I --- I -- I don't know if it matters.

THE COURT: Right. I --- I don't know that I necessarily need that in terms of ---

MR. BLACK: Yes, sir.

THE COURT: --- any other miscellaneous offenses that they may have been convicted of are probably immaterial ---

MR. BLACK: Yes, sir.

THE COURT: --- if --- if I were to conclude that you correct, that LWOP applies then any other record would be immaterial if I include after hearing from them

that you're incorrect in your position, then I'll hear that record, because sentencing would then be discretionary.

MR. BLACK: Yes, sir.

THE COURT: Mr. Tinsley, you --- you raise a ex post facto violation in your motion, and also argue that the distributions are so temporarily close to each other that they should count as --- as one strike. You want to expand on that?

MR. TINSLEY: Yes, Your Honor. The dates of those offenses for --- according to the sentencing sheet, which is all we had to go on, because they're so old that law enforcement doesn't have any record beyond a three-sentence incident report. And it says nothing about the March 13th. It's March 13, 2002 and March 21, 2002, which is eight days apart. And Travis Lee was 25 years old.

And then he was arrested May of --- May 24th of '02, on both of these charges. Two months later they held back an indictment getting is once, which I think adds to this being one offense for sentencing purposes. Meaning sentence on them both on February the 27th of 2003, when he was 26 years old. He's --- sits before you today at the age of 46.

And --- and --- and on these cases, he sold to the

same CI in the same location. A fellow by the name Brett Smith (phonetic) who busted over 60 people in Abbeville. They kept wiring up. So this --- this would be the prime example of when 1725-50 comes in to treat these two priors as one strike under 1725-40. And in Bryant versus State this fellow was committing armed robberies in different counties, so that is clearly distinguishable from this case where the two --- the two things happened at the same spot with the same --- same confidential informant.

And there's language in Bryant requires the court to look at 2550 and it precludes a life without parole sentence when --- when these multiple offenses are inextricably connected so that they're in such proximity so where it just wouldn't be fair for a life sentence based on two different convictions that should be treated at one.

And as the Solicitor said, there's no bright --- bright-line rule. There's an genuine am --- ambiguity in the language of how you would apply Section 50. This is the time for the Court to treat as one. Particularly when you look at the rule of lenity. And you --- it's --- any --- any --- any ambiguity, any --- any doubt goes to the benefit of my client Travis Lee. And on the ex post facto, 17-25-45F was amended in 2006 so the

version that was in place in 2003 when Mr. Lee was sentenced, stated that a prior conviction shall mean the defendant has been convicted of a most serious offense or serious offense on a separate occasion prior to the incident adjudication.

So at that point there --- there's no way that could have treated these --- the --- the March 13th is separate from the March 21st when they were sentencing him then. And now we're --- we're -- trying to treat him differently based off the 2006 amendment. So I would say he should get the benefit of the way the law read in 2003.

And The State versus Woody case is one where the court did affirm that two separate convictions were to be treated as one where the armed robbery with multiple victims. This is --- this is one close --- this is a chain. This is not I'm going on crime spree, I'm selling drugs here, I'm selling drugs there. That's not what happened. Same guy, same spot just over a week apart. That should be treated as one. Given, you know, the --- the --- the --- the obvious rationale behind three strikes law is recidivism.

You know, we want to cut that out. This does nothing to cut that out, treating these two things from over 20 years ago as separate offenses in order to give him

life without parole on this case should be treated as one based on the language of Subsection 50 mainly.

But I think the ex post facto is certainly relevant here, as well in the fair result under our statutory system is to treat this as strike two on Mr. Lee and sentence him accordingly to 0 to 20. Thank you, Your Honor.

THE COURT: Thank you. All right. Before I hear from you, Mr. Grose, Solicitor, I want you to speak to the state of law as it existed in 2003. Because obviously whoever represented Mr. Travis Lee is presumed to have known the law. And at the time Mr. Lee pled to those two offenses, my understanding is that the status of the law was that because the pleas were on the same day, even though there were separate dates or incident dates, the --- the fact that he pled on the same day would mean that it only counted as one strike.

And that's likely what he was advised when he tendered that plea. Do you want to --- and I'm --- what I'm trying to work through in my head is whether that's a --- whether that would constitute an ex post facto violation, or whether that --- and I'm struggling with exactly how to put this. But when he entered that plea, and it was in front of Judge Saunders, but it's entirely possible that Judge Saunders advised him at the time that these

two strikes would be treated as one strike.

It's a 2003 case. I don't know if a PCR was taken, but I'm sure that whatever record existed 20 years ago is now gone. How should the Court address that fact? Do y'all want to speak to that?

MR. BLACK: I can speak to it in the experience that I spoke with Andrew Hodges who was the prosecutor on that case yesterday. And Andrew obviously has prosecuted --- I mean, he's been doing this for 20-plus years now. And for most of my career, he was a defense attorney. And he's recently come back to our office to work as a prosecutor.

But what Mr. Hodges told me yesterday was that, you know, for the most part they were --- they were plea --- a lot of times they were offering prox charges to folks and getting the strikes, because the distribution second at the time was not considered a strike.

THE COURT: Correct.

MR. BLACK: And it's changed now, the distribution second is a strike. So they were kind of ensuring that they had multiple --- they were getting multiple strikes if they had a lot of different buys. Which kind of falls in line with what we see here and see on the sentencing sheets has to what happened.

I --- I --- I was in --- I --- I think I was in high

school, so I have no idea what would have --- would have been said at a 2003 plea whether or not that would have been --- a judge would have said, oh this is going to be one for the purposes of this hearing or --- or if it's two. But I would argue that if he pled to two different offenses, two different sentencing sheets, and they both reflect two different serious strikes, that it --- it would be construed as two separate strikes.

I know that pretty much all of the defense attorneys that I deal with, all the public defenders that I deal with and private attorneys that I deal with, are telling their clients that when they're pleading to multiple strikes.

When I'm handling cases, and I know that that's also coming from the bench. But for me to guess what was being said back in 2003, I --- I --- I don't see how that would be different, but maybe it was. I wasn't practicing at the time.

THE COURT: Right. My --- my point is --- all right. My point is a little bit more basic okay? If --- let's assume he --- we know he entered these pleas in 2003. In 2004, he is then convicted of another prox charge. Under the law that existed prior to 2006, that second prox charge, The State would not be able to seek life without the possibility of parole, because the two

that we're dealing with today in Court's three and four, those were resolved on the same day. Okay? Because that's what Section 45 basically said. So that would be one strike. 2004 would be a second strike. Then let's assume he goes out and in 2005, of course prior to the 2006 amendment, 2005 he commits another prox. He's convicted of that, that would be strike eligible. That would be the third strike.

So what I'm kind of asking you is --- and I'm asking you 'cause I don't know, and I'm wanting to hear argument, but the fact that he --- at the time that he pled to these two offenses in 2003, because the law was what it was, and those are treated as a single strike does that cement that for all time? Under what authority can The State then say, well, okay, the 2006 amendment changed the underlying nature of his guilty plea to subject him to a greater penalty should he 20 years down the road be convicted of another strike offense. That does ring of ex post facto to me a little bit. You see what I'm saying?

All right. Mr. Brown do you want to ---

MR. BROWN: Judge I --- I can also --- I would --- I understand what you're saying, but also look at the other part of the statute when we were talking about a similar or similar charge out of state. That we're bringing

people in if transfer into South Carolina, and are convicted of a charge later on that, I mean, your --- your --- your --- it's almost --- it's very similar to that. But they pled to some other charge outside of the state come in are subjected to as well. So I'd add that --- that caveat to it, or that ---

THE COURT: That's the danger of coming to South Carolina then I would say.

MR. BROWN: Exactly. Exactly.

THE COURT: But that's --- I --- I that's probably an apples and oranges comparison, I think. Maybe to have some bearing in the sense that of course they never would have been advised out of state hey, if you go to South Carolina this will qualify as a strike, and so you want to make sure that if you go to South Carolina you don't commit two more strike offenses.

Mr. Tinsley, did you want to kind of follow up on this discussion?

MR. TINSLEY: I mean, I think your questions go directly to the matter. I don't --- I think I understood in the Solicitor Black that --- that like the proximities that they plead to that so The State would be sure to get a strike, then almost like they drop (unintelligible). But that's not what happened in this case. So I don't know where that was --- and but it boils down to the law

at that time be counted as one strike so that's where the ex post facto comes in, so it should still be counted as one strike. Thank you.

MR. BLACK: And Judge, just --- I mean, just to kind of go back and forth on --- on this. I mean, I'm not entirely sure --- I haven't seen the entire statute pre-2006. I'm not really sure what it says. And if it said that you can't ---

THE COURT: I --- I --- I thought it was Blair that kind of explored all of that.

MR. BROWN: If --- if it says that if somebody pleads on the day that it was two different strikes, so that's construed as one. I mean, Mr. Tinsley didn't cite that in his brief, and I haven't seen that anywhere. Maybe I --- maybe I'm missing it.

(Simultaneous speaking)

MR. TINSLEY: I quoted --- just quoted the language and what I --- and it's in the brief. What it says is the prior statutes --- says prior conviction shall mean the defendant has been convicted of a most serious offense or serious offense on a separate occasion prior to the incident of judication. That's the way the language goes. I mean, you're right. That Bryant case goes through that --- through that history.

MR. BROWN: And that's what the statute still says

right now. So I don't see how that changes anything.

MR. TINSLEY: It --- it has been changed. That's --- that's the prior language.

MR. BROWN: It's also the current language. I just think date of conviction versus date of offense is two separate things, Judge.

THE COURT: My understanding is that there was --- and --- and perhaps it's case law. I looked at the case yesterday and I thought it was Bryant. It was Justice Kittredge's opinion. I recall Kittredge wrote the opinion. And maybe it was --- maybe it was creation of --- or maybe it was a rule of statutory interpretation that the Supreme Court had created. It relates to the interplay between Subsections 45 and 50. I remember that from the opinion. Darcy --- Darcy (unintelligible).

MR. TINSLEY: I can hand up a hard case of the Bryant case if you'd like, Judge.

THE COURT: I --- I --- I got it here. 'Cause it was the Gorden case that got overruled and Bryant.

MR. TINSLEY: That's when the legislature added language to change the statute.

THE COURT: Mr. Tinsley, have you been able to find any research, or do any research, or locate any case law that deals with this kind of thing on an ex post facto violation? I --- I feel like we're throwing around ex

post facto in kind of a loose way. This is not exactly what it is, but it sort of is.

MR. TINSLEY: I --- I haven't found a case that --- that would factually meet what we have here as --- to address this legal issue. The --- the old --- the old convictions under the old law versus here down the line, and I've looked through everything I could find in this state dealing with Bryant and with the code section.

THE COURT: And --- and Kittredge did allude to the rule of leniency in his opinion, or was that the descent from Justice Beatty?

MR. TINSLEY: He --- he --- he did mention it. And I'll --- what he said was a genuine ambiguity exists as a result of the proposed application of section 17-25-50 to a given situation. The rule of lenity requires that the doubt must be resolved in the defendant's favor. And that's why he declined to put a bright-line ruling in.

THE COURT: Which is of course ever so helpful. Mr. Grose, did you want to speak to the --- the questions as it relates to Kendrick Lee, the LWOP situation?

MR. GROSE: I --- there --- there's a --- a difference. Well, his were all on the same day. There's a difference in the time when they occurred and there's a difference in the --- the amount of time between the convictions. I've got a separate concern, but don't ---

I don't think we have anything with regards to what's being discussed right now.

THE COURT: Okay. Do you --- did you want to go ahead and voice your other concern at this point, or save it for later?

MR. GROSE: (Unintelligible).

THE COURT: Go ahead.

MR. GROSE: You know, my --- my concern is that I think it's fundamentally unfair to consider a proximity conviction for marijuana as a strike. You know, this --- this --- this country has had a history of particularly people with color being disproportionally affected by drug offenses. And we saw that a lot with the (unintelligible) sentence and cocaine and crack cocaine in the 90s, that sort of thing.

But the problem here is different. I mean, this was a --- a confidential informant situation, which means that they had a lot of a --- the government had a lot of say in the location which this was going to take place.

And, you know, as I understand, this happened in an apartment complex and the proximity playground or park was, you know, in --- in --- in somewhat of separate neighborhood.

But be that as it may, marijuana is legal in a lot of states. It's been decriminalized to a certain extent in

South Carolina. It's probably going to be legal one day everywhere in country, because that's what the majority of Americans what to see happen.

You know, and the --- so for that to be predicative of something that changes the mandatory sentence from a maximum of 20 years to a minimum of life, given the --- The State of the way that our culture, and politics, and public policy evolves, seems to be fundamentally unfair.

THE COURT: And basically a due process argument under Federal fairness.

MR. GROSE: Yes, sir, and under The State and Federal constitution.

THE COURT: Right. All right. Yeah, I'll --- I know the law is what it is, but did y'all want to speak to that argument or put anything on the record, gentleman?

MR. BLACK: Not really, Judge. It's just --- it kind of it what it is. It's got the --- the prox charge from '06 and then the trafficking charge from a couple --- couple years later. I guess just generally you've got to look at why were these statutes enacted, when they were enacted, and why they're on the still books.

You know, you got, I think the --- the goal is to try to keep drugs out of areas where children are. That

apartment complex is very close to that park. There's a lot of kids in that area, and that's --- I would --- I would surmise that that's probably why the legislature ended up enacting those certain laws, to try to look for basically society's interest, kid's interest.

So yeah, regardless of what may be kosher now, or what may not be kosher now, so that would be The State's reply.

THE COURT: You would agree though that if the legislature had amended the strikes to eliminate prox with marijuana, that the prior conviction for marijuana would no longer be a strike. The prior proximity charge would no longer be a strike had they done that in the interim or in the time that they've --- in the various times that they've revised the --- the penal code. I'm --- I'm assuming you would agree with that.

MR. BROWN: I think that would be any law, if --- if they repeal the law, then would no be --- no longer be in effect, so ---

THE COURT: Right.

MR. BROWN: But as of this day and the time of conviction back in September, the laws were still the same. And now I've come back to --- I found what --- what I thinking about the statute that is not related to this argument.

THE COURT: Okay. Did you need to put that on the record or ---

MR. BROWN: Once we get back to Mr. Tinsley's.

THE COURT: Yeah. We're --- we're back.

MR. TINSLEY: I think for sentencing, looking at the '07 version of the of the law of the --- for the purposes of convictions, I don't believe anything in F was changed from 0 --- from 7 and 15.

MR. BROWN: Judge, this is from 2003, and that's when the law was amended was in 2006. And they added this language that's talking about the Bryant case.

THE COURT: Mr. Tinsley, Mr. Grose, are y'all aware of anything that's pending maybe in C track or that's pending for argument between either the Appellate Courts or the Supreme Court. I know Mr. Grose, you and Mr. Tinsley pay a lot ---

(Simultaneous speaking)

THE COURT: --- more attention to that than I do.

MR. GROSE: I have not. Not that specifically ---

THE COURT: Put it on list served.

MR. GROSE: Yeah, I haven't looked.

THE COURT: Yeah. Okay. Same for you I guess, Mr. Tinsley?

MR. TINSLEY: Yeah, I'm not aware of anything. And --- and --- and one thing I do --- it's not much of a

legal argument. Mr. Grose talked about some of it, fundamental fairness, I think it goes into this case.

From my understanding it seems like the solicitor is the only person who wants this result. I know Ms. Guillebeaux is here, and I --- I --- would be free to address the Court. And I have a video --- two videos of Mr. Hughey saying that he --- this prior trial that he wants these gentleman to get probation or time served.

And I would like the Court to review these videos at the appropriate time. Now, I don't know how to proper --- I've got it on my telephone --- direct you to it that way. Those videos have been shared with the Solicitor's Office.

THE COURT: Sure. Well, I --- I --- I'm going to be happy to hear from Mr. Hughey in a few moments and ---

(Simultaneous speaking)

MR. BROWN: Judge, looking at the statute from 2003, and then 2006 and 2015. In 2006, the only language that was added to F, everything remained the same except they've added --- there's no requirement that (unintelligible) the prior --- or previous conviction must have been served or completed before the sentence of life without parole can be imposed or (unintelligible). But the ---

MR. TINSLEY: And that's a big change.

MR. BROWN: Well, that first sentence remained the same.

THE COURT: Right. But I'm still correct in that the way the Supreme Court was interpreting Gorden, when they decided Bryant, they --- they overruled Gorden. Gorden was how that --- the interplay between 45 and 50 was understood at the time of 2003 despite whether there was a change in the statutory law or not. Am I wrong?

MR. TINSLEY: No, I think your assessment is correct that Gorden was the law at ---

THE COURT: And Gorden required a --- Gorden required a --- a conviction on separate dates.

MR. TINSLEY: That's correct, Your Honor.

THE COURT: All right. Let --- let me take --- let me take five minutes. I want to talk to my law clerk about this. And we'll be back on the record.

MR. GROSE: Before you do that, can I just add one thing?

THE COURT: Yeah. Yes. Sure, please.

MR. GROSE: On the argument that I made with regards to the proximity statute in addition to the due process clause is I would add the 8th Amendment and the comparable provision of the South Carolina Constitution regarding cruel and unusual punishment.

THE COURT: I ---

MR. TINSLEY: And Judge, I --- even though my clients are crack versus marijuana, I join in Mr. Grose's arguments.

THE COURT: I was about to ask you if you did. Very good. All right. I'll let the court reporter date these exhibits today's date. We'll be back on the record in about five minutes, if we could.

(Off the record 3:22 p.m. to 3:34 p.m.)

THE COURT: Okay. We are back on the record. The --- The Court --- based on what has been presented to me as it relates to Travis Lee, and again, I --- I --- I'll say that I --- I would have preferred obviously to have more time to research this a bit more thoroughly to see if there are any other cases in our --- from our sister jurisdictions that might have some bearing on this issue.

But what's clear to the Court is at the time that Travis Lee pled in 2003, the status of the law was different. His lawyer is well known. Joe Smithdeal, is of course now a --- a --- a Family Court judge, and no --- I have no doubt that any legal advice that now Judge Smith would have given to him would have been dead on as far as the effect of whether these were two separate strikes or a single strike. And clearly the law as it existed in 2003, the law would have treated these

as a single strike. The Court's also very familiar with Judge Saunders and the detailed colloquy that he would engage with individuals and especially something as serious as a strike offense. The Court's of the opinion that Judge Saunders would have been very thorough in reviewing that with an individual at the time of their plea.

This is a little bit different from the collateral consequence kind of a thing where you have an offense which maybe initially did not require, for example, sex offender registry. But then the legislature concludes that okay, well, we want to put kidnapping in, or we want to add some other offense to the sex offender registry, that's certainly within the prerogative of the legislature.

But it still stands that at the time that --- that Travis Lee entered this plea, the operative effect of both of those serious convictions was a single serious conviction. Saying that is an ex post facto violation that --- it's not true in the sense that the legislature is criminalizing past conduct, or punishing past conduct with the statute recently passed.

But at the same time it has that kind of flavor in the sense that if the Court were to conclude that the ruling in Bryant should apply to Travis Lee's convictions in

2003, if --- if the Court were to do that we would essentially be --- or I would essentially be increasing the penalty substantially for something or for some conduct which took place at the plea in 2003. And even though I don't have a specific legal lexicon for that --- the event, I --- I --- I do find that for lack of a better word, that would be fundamentally unfair to Mr. Lee when at the time he entered his plea, in all likelihood the advice he got and certainly the operative effect of his plea at the time of that plea was that this was a single strike.

Accordingly, I --- I conclude that Travis Lee is not subject to the provisions of the LWOP statute and I of course understand, appreciate that The State does take exception to this. At the same time, the same law forces the Court to conclude that Mr. Kendrick Lee is subject to the provisions of the LWOP statute.

With that solicitor, if you want to give me --- and I can understand you object to my ruling, you're protected, but if you want to give me Travis Lee's prior criminal history for purposes of sentencing, I'd be happy to hear from you.

MR. BLACK: Yes, sir. And Judge, just again, so the record's clear, I am objecting to your ruling regarding Travis Lee. We think the language talking --- when it's

talking about separate occasion, is talking offense date, not actual date of when the plea is taken. I think, of course we've made that on the record. I just want to put that on the record so that whoever reviews this has that.

Regarding Travis Lee's record on, again, March the 3rd of 2003, his criminal history says that he has --- he was convicted of three counts of distribution of crack and three counts prox. But again, look, when you actually go back and pull the sheets, it's two counts, and you do have those. He received a seven-year concurrent sentence, to I believe, some other charges that he pled on.

But as you know how they do these records or these rap sheets, it's not always in chronological order. He's got a simple assault and battery in 2009, a trespassing in 2009, he's got a --- an ABHAN conviction from 2010. And that was under the old ABHAN. So it wasn't a strike.

THE COURT: A his demeanor, yeah.

MR. BLACK: He was also revoked on parole at the same time when he pled on the APHAN charge, it looks like.

1997, he's got a possession of crack, also a lynching --- a lynching --- and a lynching conviction ---

THE COURT: That was in '97 or 2007?

MR. BLACK: That was in 1997.

THE COURT: Okay. Sorry.

MR. BLACK: Burglary third degree in 2000 --- or I'm sorry, 1997, and pointing and presenting in 1997. 2000, it says that he's been convicted at --- it says ABWIK, but it was remanded to magistrate court so I'm assuming that it was an A and B third of some sort.

And I believe that's --- again, how they print these things off is with no rhyme or reason.

1994, A and B simple assault and battery. Larceny, and burglary third and --- well, I guess the larceny and the burg was 1997, which I've already alluded to that was a YOA so that's --- public disorderly conduct in 1996, failure to return rental objects in 1997, and a gambling conviction in 1997. It looks like there's also a resisting arrest in 1997, if I didn't already say that.

THE COURT: All right. Thank you. Did Mr. Hughey wish to address the Court?

MR. BLACK: I don't believe Mr. Hughey was able to make it today. I believe ---

THE COURT: Oh.

MR. BLACK: His mother's here. And some family member, but I don't think that they want to address the Court. At least they did not back at the end of September.

THE COURT: Okay.

MR. BLACK: Unless it's changed.

THE COURT: Just if you could, ma'am, just approach the microphone and give us your name again, because we have a different court reporter please.

MS. GUILLEBEAUX: Yes, my name is Renee Guillebeaux.

THE COURT: Guillebeaux.

MS. GUILLEBEAUX: Huh-uh. I don't think they deserve a life sentence without parole. I think they do some time it'll teach them, it'll break them. But their life without parole, they have kids. And I'm a parent myself. And that's basically all I have to say.

THE COURT: Thank you, Ms. Guillebeaux.

All right. Anything further from The State on this.

MR. BLACK: Not from State, Your Honor.

THE COURT: All right. Mr. Tinsley, I'll start with you, and I'll be happy to hear from you and certainly anything that your client may want to say, or anything that might be said on his behalf. Of course I'm factually familiar with everything that transpired. And obviously your client's role is factually perhaps different, but happy to hear from you on that question.

MR. TINSLEY: Yes, Your Honor. I --- I --- I think you hit the nail on the head that it is a different factual role. I would say a lesser --- a lesser role.

Travis Lee is 46 years old. You heard his record,

fairly extensive. Couple serious things. A lot of minor stuff. Most of the stuff is very old. All of it's more than ten years old. He's been a very productive member of society, for more than ten years. He's worked since he's been out on bond, he's worked at FLEX over in Abbeville, made it up to lead supervisor on his shift. He's got --- he has two coworkers here, one of home is going to speak on his behalf here --- here in just a minute.

He's been nominated multiple times here this year for employee of the month. As Ms. Guillebeaux said, he is a father. He has four children, two of whom are here today. His children have a pretty wide age --- age range between them. The oldest is 28, and the there's a 26-year-old, those are the two that are here today. He also has a ten-year-old and a one-month-old.

He was living --- prior to being incarcerated a few weeks ago he was living with April Bell, who is the mother of the one-month-old, helping to rise his child, supporting the child.

He has great family support here. Relatives sitting on the second row, his 82-year old mother, Virginia Lee, his brother Greg Lee. And Ms. --- Ms. Guillebeaux stated her --- her position which I think was, you know she's obviously not seeking revenge.

And Mr. Hughey, as I've told you, I've got these videos (unintelligible) but I've summarized what his position was at that time was probation and time served. And he has got 180 days credit from before he was bonded out, and the three weeks he's been in jail over in Abbeville since the trial.

And I believe his coworker, Patty Lewis, would like to address the Court at this time.

THE COURT: Sure. Ms. Lewis, could just --- if you come down to this microphone down here, please Ms. Lewis. Yes, ma'am.

MS. LEWIS: I'd like to say really good things about Travis. I've worked with him for almost two now --- two years now. I'm new to the community in Abbeville. I'm in recovery for eight years. And he's like an inspiration to me to see everything that he's been through.

And he's a very, very hard worker. Nobody --- they put his position up for grabs and it was like kind of upset me, because he's so good at what he does.

And I think that life or whatever they're offering him, I think he does not deserve it, because he's really outstanding at work. Everybody loves him. He's a go-getter, gets along with everybody, never complains. He just really never says anything.

But I love Travis to death and I really don't want to see anything bad --- and especially his significant other now, April, and the new baby.

And that's about it.

THE COURT: Thank you very much.

MS. LEWIS: Thank you.

THE COURT: I appreciate you being here.

MR. TINSLEY: And I believe somebody from the family may want to address the Court. I give them that opportunity at this time. And this will be his brother Greg Lee coming up to speak on his behalf.

THE COURT: And --- and obviously the record will reflect that he has a lot of relatives here today in support of him. But Mr. Lee, happy to hear anything you may want to say.

MR. G. LEE: Yes, my name is Gregory Lee. I'm Travis Lee's brother. And they all heard --- I've heard a lot of bad things about what they have done, but don't nobody know the good things that happened to him. Ken, he cooks at my mom house all the time. He made sure this elderly lady down the road named Ms. Ella (phonetic) make sure she has a plate all the time, make sure the next door neighbor. And Travis, he --- he give a lot things away to needy kids. He have a lot of kids, so if anybody need some clothes, or shoes, he also helps them out.

Both of them are --- they've done something that was wrong and I know they do regret it. But at the same time, they have kids, and I know that they want to be with their child still. And they do --- sorry from what they did.

THE COURT: Thank you, Mr. Lee.

MR. TINSLEY: And --- and --- and Judge, Travis Lee is just his --- his heart's out to everybody that's been involved in this case. I've advised him not to speak given that it's not a guilty plea situation. But it --- it --- he is --- you know, his heart goes out to --- to everyone who been impacted on this --- on this case.

In --- in conclusion, Travis' his role was the lesser role as in the case.

The record is --- is old. The serious stuff real, real old. And --- and for that, I --- I --- I would ask you to impose a fair sentence. And obviously the Court knows how to calculate these things given it's a zero to 20 range carrying 85 percent. And I would ask you to give him --- give him a chance to be in all his family's life, particularly these two young children that --- that he's the father of.

I'd like you to consider all that when imposing sentence. Thank you, Your Honor.

THE COURT: Thank you, Mr. Tinsley. Mr. Grose, did

you want to address the Court or ---

MR. GROSE: Before I do that, I think there's a number of people who want to speak for Ken. And whoever wants to speak for Ken, I --- I --- Ken, I ask that you come forward and form a line and ---

THE COURT: All right. Ma'am, if you could just give me your name before you speak, please.

MS. HUDSON: Tanisha Hudson.

THE COURT: Ms. Hudson, yes, ma'am.

MS. HUDSON: Just want to say that it's not fair for none of us. I just think that everything is --- was blown out of proportion. I do feel for Tobias and his suffering, but also my family is suffering as well.

My brother is not a bad person. He's a good-hearted person. He always tries to do everything that he can for anybody. And my uncle as well. I just think that, you know, they need to get --- have a fair chance at this. This is their life we talking about. And, like, the Court should represent life not death.

And I think y'all giving him a life sentence, 'cause that's what we are telling him that they're --- they're getting death and we supposed to be about life, giving a chance correcting their issues and giving them a chance to learn from their mistakes just as well as Tobias. You know, give him a chance to be a better person.

Like if this can be a beneficial to each --- each person, Tobias, and my brother, and uncle as well.

I just think that we're not handling --- handling the right way. I think that everybody --- we make mistakes based off emotions and actions. And we don't actually think about what we doing until after the fact, and then we are sorry and sympathetic for the things that we have done.

And by the time that we come to our senses, you know, like The State gone pick up it and they done blew it out of proportion with us. They want to win of course. But they're not realizing the fate that they're causing on other people lives as well.

Like these guys are good men even though they have made decisions in their life that don't dictate who they are. Everybody deserve a second chance. I'm pretty sure everyone in here has made mistakes and people don't hold it against their life. It's like it's different measures for different people.

I just think that they just deserve a fair chance and they shouldn't be given a life sentence without parole for this. I mean, they regret what happened, everybody is emotional right now, and we can't change the --- what happened, but we can try to fix it ongoing.

You know, like, (unintelligible) came up and said

she's a mother. I'm a mother and that's my uncle and my brother. I don't want them to do life together. They have a family, they have kids. They need to be here to take care of children and to teach their children so they won't make the same mistakes. It's breaking generational curses and that's what we have to do.

We cannot just allow this happen like this. We going to have to set the tone and do it the right way. Yes, they wrong. He was wrong as well. But the same time, like, we can all work together to overcome this. Like it don't have to be no life sentence without parole, because they don't deserve that.

Do they need to be punished? That's up to you, but it --- what degree? I mean, I think that a life sentence without parole is just very unfair.

THE COURT: Ms. Hudson. I --- I understand your position 100 percent. And understand I've got very little discretion based upon my understanding of the law in terms of sentence for Kendrick. And if I had discretion, perhaps I would be exercising differently. But the law is what the law is. I'm not allowed to deviate from that.

MS. HUDSON: Yes, be --- but we're not above the law either. So ---

THE COURT: I agree. Thank you.

MS. HUDSON: I mean we should --- we all got to abide by the law, 'cause we not greater than the law.

THE COURT: Yes, ma'am.

MS. HUDSON: That's why this country supposed to be built on biblical truth and biblical laws. Like we need to up hold these laws and stop being so much traditional. If these laws was set here they been set for a reason. And we shouldn't go and base things on our personal feelings or to get (unintelligible) or something. We have to be fair and just.

Thank you, sir.

THE COURT: Thank you, ma'am. And yes, ma'am, your name, please.

MS. COBB: My name's Miesha Cobb.

THE COURT: Ms. Cobb. Yes, ma'am.

MS. COBB: I'm Kendrick Lee's girlfriend --- baby mama. I've got three kids for him. One little girl and two boys. My little girl is five, her name's Kensley (phonetic), and my son is two, and I have a son on the way.

And Ken is a good father. And since he been gone, my kids been asking every day when they daddy come home, they need their daddy. He don't deserve no life without parole. And to see my kids go through this every day and --- and my unborn son, to be without a father, I

don't --- I can't --- we can't do this. I can't stand this.

THE COURT: I'm very sorry, Ms. Cobb.

MS. CRAWFORD: My name is Myrisha Crawford, I'm Kendrick Lee's sister --- older sister. And I'm Travis Lee's niece. I just feel like in the Court could show mercy upon them. Yes, they made a mistake and I just feel like neither one of them deserves life without parole.

I work with people every day in the recovery community as well as with probation and parole. I worked at South Carolina Department of Corrections, so I know people make mistakes. And I do know that people learn from their mistakes and they can change.

And I am 100 percent sure, and I am very family-oriented I stand behind them 100 percent. And I know that if given a chance, they will change. They will not be committing any other crimes. They will go the straight and narrow. And I know this.

And --- and I just see that just --- I just feel like if --- if the Court could just show mercy and do not sentence them to life without parole. Thank you.

THE COURT: Thank you, Ms. Crawford.

MR. GROSE: Your Honor, just briefly, this doesn't pertain exactly to sentencing, but it does pertain to

some things that were said here earlier today, which is despite what records reflect, and the record's reflected Mr. Smithdeal, now Judge Smithdeal was Ken's lawyer. Kendrick has a recollection of being in front of the Court with Towns Jones that day, even though the records appear to be different than that.

Mr. Tinsley's requested twice that for you to view the two videotapes of Mr. Hughey. I don't believe you have yet. Nobody's disputed the fact that in both of those tapes he indicated that he would --- was requesting at that time probation for everybody.

But I join in the request for Your Honor to look at those --- those videos.

And finally, I would just --- I would just ask --- well, I --- I would note --- you've heard a little bit about, you know, Ken is a family man. He was working in one of car washes in Abbeville at the time. He actually has ten children with one along the way.

And based on the --- the totality of the circumstances, Mr. Hughey's requesting those videos, Ms. Guillebeaux's request today, what you heard from the members of community, I would just like to request on the record that The State withdraw the notice of intent to seek life without parole, and allow Your Honor that discretion that you indicated that you would be prepared

to exercise if that impediment wasn't in the way.

THE COURT: Okay. And I --- I assume that your client does not wish to address the Court for the same reason ---

MR. GROSE: On my --- on my advice, he's not going to address the court and I trust you won't hold that against him.

THE COURT: Okay. And Solicitor, perhaps I got the representation incorrect. I think I may have said that Mr. Smithdeal was Mr. Lee's lawyer, was it the other --- or Travis Lee's lawyer, was it the other way around? Or ---

MR. BLACK: No, sir, what you said, what was I believe incorrect. Judge Smithdeal --- now Judge Smithdeal, represented Kendrick Lee according to the paperwork.

THE COURT: Okay.

MR. BLACK: And B. Alex Burney represented Mr. Travis Lee back in ---

THE COURT: Okay.

MR. BLACK: --- in 2002, 2003.

THE COURT: All right. I apologize for that. And quite honestly from the sentencing sheet, I can't tell --- the only legible signatures are those of Travis Lee and Kendrick Lee. I could not tell.

MR. BLACK: And I believe I looked it up by the bar number in order to ---

THE COURT: Oh, okay.

MR. BLACK: --- to --- yes, sir.

THE COURT: What --- what was the date that we concluded this trial?

MR. BLACK: September the 28th, I believe.

THE COURT: September 28th. Okay. Mr. Tinsley, I wrote it down, but I --- you said it was around 200 --- 201 days credit, something like that?

MR. TINSLEY: Something -- yes, sir, Your Honor.

MR. BLACK: I thought you said 180.

MR. TINSLEY: (Unintelligible).

THE COURT: I think was one --- you said 180, and then the last three weeks. So 180, plus 21 is that about right? Two --- I'm going to say 201.

MR. TINSLEY: Okay. Thanks, Your Honor.

THE COURT: All right. Mr. Travis Lee, we'll --- we'll --- we'll begin with you. I --- I --- your lawyer's representations as far as Mr. Hughey wanting you to --- to get probation, I --- I accept those 100 percent without any hesitation or any equivocation. So the fact that Mr. Hughey has forgiven you and would like to see you receive probation, of course that is something that the Court has taken into account.

But at the same time, Mr. Lee, the --- the one big problem with all this case --- well, there are a couple of big problems. First of all, understand that the testimony was that Mr. Hughey, for all intents and purposes was --- was dead at least on two, maybe more prior occasions, maybe four times. He --- he essentially died and was brought back to life. And so it's by the grace of God that --- that you and Kendrick Lee are not facing murder charges where we'd be talking about 30 years to life. Okay?

I --- I have taken into account Mr. Hughey's desires as reflected by your attorney. I --- I've of course also taken to account the lesser role that you had in all of this, in the sense that you weren't the one wielding the bat and actually striking the blows on Mr. Hughey. So I've taken all that into account.

But at the same time, Mr. Lee, this is what happens when people take the law into their own hands. If --- if you gentleman had honestly believed that --- that Mr. Hughey was responsible for the theft of some shoes, then the proper thing to do is call the police. And --- and in a civilized society, we just can't have people taking the law into their own hands. Okay?

I've taken that into account as well as your criminal history, and I've simply given you a straight seven

years. So you got seven years to do. And of course you get credit for 211 days that you served in jail.

Mr. Kendrick Lee, the sentence that I'm imposing arises by operation of statute. If I had any discretion, I may very well have been inclined to exercise it. But obviously, your culpability is substantially more than your codefendants in the sense that you were the one actually inflicting the blows on Mr. Hughey. And so in some respects, perhaps this is an appropriate sentence in --- in light of the severity of his injuries.

And for all the same reasons that I explained to Travis Lee, we just can't have people taking the law into their own hands.

Again this sentence --- this sentence arises by operation of law and pursuant to Section 72545, I must impose a life sentence.

I do, however, wish you luck, gentleman.

And of course ten days for any other motions. And if you're going to file of notice of intent to appeal, you need to let your lawyers do that for you. I'm sure they'll do that on your behalf. And of course any action for post-conviction relief has to be filed within one year of any appeal becoming final.

Gentleman, good luck. Thank you.

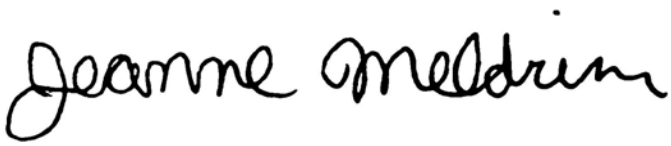
(PROCEEDINGS CONCLUDED AT 4:08 P.M.)

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 8 for ABBEVILLE COUNTY, South Carolina, on the 19th Day of October, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 12, 2024



Jeanne Meldrim

Transcriber

STATE OF SOUTH CAROLINA

COUNTY OF Abbeville

STATE

VS.

Kendrick M. Lee

AKA:

Race: B Sex: M Age: 27

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: Abbeville SC 29620

DL# [redacted] SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006 -GS- 01 - 495

A/W#: J095525

Date of Offense: 7/6/06

S.C. Code §: 44-53-445

CDR Code #: 0107

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Dist. of Marijuana w/i 1/2 mile of school/playground (up to 10 yrs)

In violation of § 44-53-445 of the S.C. Code of Laws, bearing CDR Code # 0107

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [signature] Solicitor | 71182 SC Bar # | Kendrick M. Lee Defendant | [signature] Attorney for Defendant | 65083 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ ~~**County Detention Center**~~, for a determinate term of 10 ~~days/months~~/years or ☐ under the ~~**Youthful Offender Act** not to exceed~~ _____ years and/or to pay a fine of $ _____ ; provided that upon the service of _____ days/months/years and or payment of $ _____ ; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09 493, 09 494, 09 498, 06 299, 06 270

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$100	$ 100.00
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.7(SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$
TOTAL		$ 230.00

Clerk of Court/Deputy Clerk Emily McMahan Jo Rae

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____

$ _____ Paid to Public Defender Fund

Other: TRUE COPY

BY Shandal Boggs

ABBEVILLE COUNTY CLERK OF COURT

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Presiding Judge [signature]

Judge Code: 2154

Sentence Date Nov. 13, 2009

COURT 1 DCRP 10-19-2023

THE STATE OF SOUTH CAROLINA **INDICTMENT FOR**

COUNTY OF ABBEVILLE

VIOLATION SECTION 44-53-445 (Proximity)

At a Court of General Sessions, convened on the 15th day of September, 2006, the Grand Jurors of Abbeville County present upon their oath:

COUNT ONE

That KENDRICK MONTREZ LEE, did in Abbeville County, state aforesaid, on or about the 6th day of July, 2006, wilfully, unlawfully and knowingly distribute, sell, purchase, manufacture, or possess with intent to distribute, a quantity of Marijuana, a Schedule I controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university, in violation of Section 44-53-445 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Solicitor

R 783

WITNESSES

Raymond Vandiver

WARRANT NUMBERS

095525

Foreman of the Grand Jury

Date: SEP 15 2006

VERDICT

True Bill

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2006

Indictment # 06GS01- 495

THE STATE

vs.

KENDRICK MONTREZ LEE

B/W 9-22-06

FTA 1/8/07 Asst. Sol.

restored

INDICTMENT FOR

VIOLATION SECTION 44-53-445 (Proximity)

TRUE COPY

BY Shanda Boggs

ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Abbeville)
STATE VS.)
Kendrick Montrez Lee)
AKA:)
Race: BLK Sex: M Age: 26)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
Abbeville, SC 29620)
DL#: [redacted] SID#:)

IN THE COURT OF GENERAL SESSIONS

R. 784

INDICTMENT/CASE#: 09GS01-0170
A/W#: J096309
Date of Offense: 5/13/2008
S.C. Code § : 44-53-0375(C
CDR Code #: ~~0450~~ 0452

COURT 2 10.19.2023 DDCRP

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Trafficking Crack Cocaine 10-28g 1st off. (3-10 yrs)
in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # ~~0450~~ 0450
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ 71182 Kendrick Lee _____ ~~65083~~
~~Andrews, Demetrios G~~ Elizabeth P. White SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ ~~**County Detention Center,**~~ for a determinate term of 10 ~~days/months~~/years or ☐ ~~under the **Youthful Offender Act**~~ not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09 493, 09 494, 09 495, 09498, 06 299
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
§ 35.13 (Public Def/Prob)	$500	$
§ 73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	$100	$ 100.00
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
§ 90.11 TP (SCCJA Surcharge)	$5	$ 5.00
TOTAL		$230.00

Emily McMahan
Clerk of Court/Deputy Clerk

Court Reporter: Jo Rice

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

TRUE COPY
BY Shandal Briggs
ABBEVILLE COUNTY CLERK OF COURT

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires $500 be paid to Clerk during probation.

PRESIDING JUDGE _____
Judge Code: 2154
Sentence Date: Nov. 13, 2009

SCCA/278 (03/2009)

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR

TRAFFICKING IN CRACK COCAINE
44-53-0375

At a Court of General Sessions, convened on the 17th day of April, 2009 the Grand Jurors of Abbeville County present upon their oath:

That Kendrick Montrez Lee, did in Abbeville County, state aforesaid, on or about the 13th day of May, 2008 willfully, unlawfully, and knowingly traffic in cocaine base (crack cocaine), to wit: that the said defendant(s) did sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was in actual or constructive possession or did knowingly attempt to become in actual or constructive possession of 10 grams but less than 28 grams of cocaine base (crack cocaine), in violation of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Solicitor

R. 786

WITNESSES

John Schrier
Abbeville Police Department

WARRANT NUMBER

J096309

Foreman of the Grand Jury

Date: APR 17 2009

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

April Term, 2009

Indictment # 09GS01- 170

THE STATE

vs.

Kendrick Montrez Lee

INDICTMENT FOR

TRAFFICKING IN CRACK COCAINE
44-53-0375

TRUE COPY
BY Shanda Boggs
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Dec 16 2024
SC Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

Rule 210, SCRCP Certification

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Kendrick Lee

December 16, 2024
Greenwood, South Carolina

RECEIVED
Dec 27 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

FINAL BRIEF OF APPLLANT

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Kendrick Lee

TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

Questions Presented 1

Statement of the Case 2

Standard of Review 3

Statement of Facts 4

Arguments

Question I

Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community? 8

Question II

Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records? 12

Question III

Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated? 14

Question IV

Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)? 15

Question V

Did the trial court err by not providing an instruction pursuant to *State v. King,* 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses, in

favor of the accused, when that jury instruction was not required but permissible? 16

Question VI

Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening instructions and ensured the jurors gave due consideration the lesser included offenses? 17

Question VII

Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United State? 18

Conclusion 20

Rule 211, SCACR Certification.....21

TABLE OF AUTHORITIES

Cases

Batson v. Kentucky, 476 U.S. 79 (1986) 4, 10

Buck v. Davis, 580 U.S. 100 (2017) 11, 13

Chapman v. California, 386 U.S. 18 (1967) 3

Fortune v. Gibson, 304 S.C. 279, 403 S.E.2d 674 (Ct.App.1991) 17

Georgia v. McCollum, 505 U.S. 42 (1992) 13, 14

Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019) 10

McCleskey v. Kemp, 481 U.S. 279 (1987) 11

McLaughlin v. Florida, 379 U.S. 184 (1964) 11

Pena-Rodriquez v. Colorado, 580 U.S. 206 (2017) 11

Powers v. Ohio, 499 U.S. 400 (1991) 12, 13

Rose v. Mitchell, 443 U.S. 545 (1979) 11, 13

S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) 18

Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct.App.1997) 15

Solem v. Helm, 463 U.S. 277 (1983) 19

State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018) 1, 5, 15

State v. Beckham, 273 S.C. 755, 259 S.E.2d 610 (1979) 11

State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) 16

State v. Blackwell, 420 S.C. 127, 801 S.E.2d 713 (2017) 3

State v. Blurton, 352 S.C. 203, 573 S.E.2d 802 (2002) 16

State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019) 16

State v. Covert, 368 S.C. 188, 628 S.E.2d 482 (Ct.App.2006) 18

State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012) 1, 6, 15

State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999) 12

State v. Harrison, 402 S.C. 288, 741 S.E.2d 727 (2013) 19

State v. Hawes, 411 S.C. 188, 767 S.E.2d 707 (2015) 15

State v. Hawes, 423 S.C. 118, 813 S.E.2d 513 (Ct. App. 2018) 11

State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993) 16

State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011) 4

State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971) 3

State v. King, 158 S.C. 251, 155 S.E. 409 (1930) 1, 7, 16

State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) 10

State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985) 3

State v. Myers, 344 S.C. 532, 544 S.E.2d 851 (Ct.App.2001) 18

State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (S.C. 2006) 12

State v. Reyes, 432 S.C. 394, 853 S.E.2d 334 (2020) 3

State v. Smith, 290 S.C. 393, 350 S.E.2d 923 (1986) 15

State v. Stewart, 413 SC 308, 775 S.E.2nd 416 (Ct. App. 2015) 5, 10, 14

State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) 3

State v. White, 371 S.C. 439, 639 S.E.2d 160 (Ct. App. 2006) 16

State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004) 14

State-Rec. Co. v. State, 332 S.C. 346, 504 S.E.2d 592 (1998) 15

United States v. Davis, 904 F.Supp. 564 (E.D.La.1995) 15

Statutes

S.C. Code Ann. § 14-7-1010 14

S.C. Code Ann. § 44-53-470 20

S.C. Const. Art. I 19

U.S. Const. Am VIII 19

U.S. Const. Am XIV 19

Other Authorities

9A Wright & Miller, *Federal Practice and Procedure,* Civil 2d § 2508, p. 193 17

QUESTIONS PRESENTED

Question I

Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?

Question II

Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?

Question III

Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?

Question IV

Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?

Question V

Did the trial court err by not providing an instruction pursuant to *State v. King,* 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused, when that jury instruction was not required but permissible?

Question VI

Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening instructions and ensured the jurors gave due consideration the lesser included offenses?

Question VII

Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina

has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

STATEMENT OF CASE

This appeal arises out of the trial of Kendrick ("Ken") Lee, a black male, before an all-white jury, in Abbeville, South Carolina, the self-proclaimed "cradle and deathbed of the confederacy."

For an incident occurring on October 6, 2020, the State charged Ken Lee and his Uncle Travis Lee with attempted murder. R. 9.[1] On February 16, 2021, the State noticed its intent to seek life without the possibility of parole in the event of a conviction of Ken Lee for attempted murder or the lesser included offense of assault and battery of a high and aggravated nature ("ABHAN"). R. 15. On March 3, 2021, the Honorable Frank R. Addy, Jr. granted bond, noting Mr. Lee "turned himself in to the authorities," "attempted murder is clearly and overcharge," and "it's not like the alleged victim's involvement was wholly innocent." R. *.

On August 8, 2023, the State noticed its intent to seek life without the possibility of parole in the event of a conviction of Mr. Lee for the offense of ABHAN. R. 16. On September 8, 2023, the State indicted Mr. Lee and his uncle for ABHAN. R. 11-14. From September 25-28, 2023, the State tried Ken Lee and Travis Lee before Judge Addy and an all-white jury. Micah Black and Yates Brown represented the State. Undersigned counsel represented Ken Lee, and Jamison Tinsley represented Travis Lee. On September 28, 2023, the jurors convicted Ken and Travis Lee of ABAHN, and Judge Addy deferred sentencing. R. 5-6, 669-86.

[1] The State initially indicted Mr. Lee and his uncle for attempted murder.

On October 19, 2023, Judge Addy sentenced Ken Lee to life imprisonment without the possibility of parole and Travis Lee to seven years imprisonment. R. 778-79. On October 30, 2023, Ken Lee moved for a new trial and, alternatively, for Judge Addy to reconsider the sentence. R. 17-24. On November 21, 2023, Judge Addy denied the new trial motion and declined to reconsider the sentence. R. 7-8. This appeal follows.

STANDARD OF REVIEW

"In criminal cases, this Court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown." *State v. Blackwell*, 420 S.C. 127, 136, 801 S.E.2d 713, 718 (2017) (internal citations and quotations omitted). "An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law." *Id*.

Before a federal constitutional error can be held harmless the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18 (1967). "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial." *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (internal quotations omitted) (quoting *State v. Key*, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971)). This Court does "not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict." *State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) (citing *State v. Tapp*, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012). In cases like this one,

when "credibility" is the "most critical determination" for jurors to make in the case, the error is not harmless. *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 95 (2011).

STATEMENT OF FACTS

The trial court selected an all-white jury. The trial court seated two white men as alternates. R. 43-51. Pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), Ken Lee and Travis Lee moved for the prosecution to explain its strike of Juror 191, a black male and the sole black person presented for possible selection on the jury. The Lees noted—just as they had noted in Chambers prior to jury selection—that number of black people appearing for jury services was fraction of number of black people summoned for jury duty. Of the 200 jurors summoned, 41 (20.5% of the number summoned)[2] were black. Twenty-nine black jurors did not respond to their summons.[3] Four jurors returned their juror summons to the Court but did not appear for jury service. Three jurors were excused. Of the 41 black people summoned, only five appeared for service. The Lees argued the problem was not with the original list of jurors summoned, but rather the number of black people lost between the summonses and service in court. Only two black people remained in the jury pool after jury qualification and voir dire. The Lees argued, "Statistically that 20 percent [of the original list summoned] should have stayed constant throughout, but it didn't." R. 51-59.

[2] According to the 2020 census, 25.9% of Abbeville County is black or African American. https://www.census.gov/quickfacts/fact/table/abbevillecountysouthcarolina,US/PST045222 (last viewed June 10, 2024).

[3] Abbeville County did not do anything to follow up on the jurors not returning their summonses other than check to see if the Auditor's Office had a different address for the non-responding jurors. R. 58.

The Solicitor explained that Juror 191 had disorderly conduct convictions in 1985 and 1989 and a criminal domestic violence conviction in 2003. The prosecution disclosed its knowledge that Jurors 186 and 188 also had criminal convictions. The Lees called the trial court's attention to *State v. Stewart,* 413 SC 308, 775 S.E.2nd 416 (Ct. App. 2015) where this Court "reversed because the State used criminal histories to justify striking certain jurors, but also sat jurors that had criminal histories that were deemed to be similarly situated." The prosecution attempted to distinguish the criminal histories of the different jurors. The trial judge announced a preference "for juries to be racially balanced . . . if for no other reason than perception" because "it's always best to have as wide a cross section of the community if at all possible." The trial court urged the prosecution to accept Juror 191 as an alternate. The prosecution eventually relented and allowed Juror 191 to be seated. R. 59-77.

When the jury panel returned to the courtroom, the trial judge learned that Juror 191 could "only hear out of one ear" and changed his mind about seating Juror 191 as an alternate. At a sidebar, prior to excusing the jury panel, the Lees objected to the trial court's change of mind about Juror 191 without determining whether the juror's hearing impediment could be accommodated. R. 77-84. The trial court swore the jurors subject to the Lees' objection. R. 125.

Mr. Lee argued "the best thing to do is – is to try this case in front of a jury when we can have a fair cross section" of the community and moved "to quash this jury" and "for a continuance." The trial court denied the motion. R. 116-19.

During opening comments, the trial court informed the jurors of their obligation to find the "true facts." R. 133034. Mr. Lee objected pursuant to *State v. Beaty*, 423 S.C. 26,

813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012), and moved for a mistrial. R. 135, 159-64. The trial court gave a curative instruction, to which Mr. Lee objected because it is impossible to "unrig the bell." R. 135-36, 163-64.

Renee Guillebeaux testified about a conversation she had with Travis Lee about her son, Tobias Hughey, burglarizing and stealing from Miesha Cobb, who is Ken Lee's girlfriend. Travis Lee wanted to confront Mr. Hughey about the crime. Ms. Guillebeaux told Travis Lee to "talk to" Mr. Hughey, "smack him around, handle him a little rough, but not leave him for dead." R. 307-10, 223-24.

Tobias Hughey testified about the altercation he had with Ken Lee and Travis Lee.[4] He encountered Travis Lee in the parking lot of the apartment complex. Ken Lee came up to them and hit Mr. Hughey with a stick-like, wooden object. He claimed he was hit "[a]bout 20 times." He went to the apartment where Michael Shane Floyd lived.[5] Mr. Hughey asked Mr. Floyd to call Mr. Hughey's mother, Renee Guillebeaux, rather than EMS. Mr. Hughey testified about his injuries, being airlifted to Greenville, his hospitalization, and his stay in a rehabilitation facility. R. 214-43. On cross-examination, Mr. Hughey acknowledged his extensive criminal record and his pending charges. R. 225-67, 272-76.

[4] Eric Phillips testified about witnessing a portion of the altercation and then lying to the police. R. 277-94

[5] Mr. Floyd testified about Mr. Hughey coming to his apartment, his observation of Mr. Hughey's injuries, calling Mr. Hughey's mother rather than EMS, his pending charges, and how Mr. Hughey would bring possibly stolen items to him to trade or pawn. R. 340-69.

Ms. Guillebeaux testified about picking up Mr. Hughey at Mr. Floyd's apartment, taking him to her apartment, calling 911,[6] and her observations of her son's injuries. R. 310-16. Abbeville Police Officers Brian Singleton and Forrest Crowe responded to Ms. Guillebeaux's residence and discovered her son "Tobias Hughey on the couch unresponsive [with] lacerations on his forehead." They administered first aid until EMS arrived and Mr. Hughey was airlifted to the hospital. R. 149-59, 165-74, 185-86, 418-30.

Officer Crowe, Investigator John Martin, Investigator Steven Cogdill, and Investigator Ricky Bulchin testified about the law enforcement investigation, including the videotape evidence admitted during the trial. R. 174-81, 379-417, 477-529.

Dr. Kristen Spoor, an emergency room physician, testified about Mr. Hughey's injuries and medical treatment. R. 431-58. Dr. Andy Donlan, a medical doctor, testified about Mr. Hughey's rehabilitation therapy. R. 459-73.

The trial court convened a charge conference. Mr. Lee requested a jury instruction based on *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), *overruled by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999), regarding the juror's obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused. Mr. Lee noted that although *Brightman* overruled *King*, to the extent *King* mandated the instruction, *Brightman* did not prohibit the instruction. R. 573-82. Mr. Lee also objected to the proposed verdict form and suggested an alternate form. R. 584-86.

The trial court instructed the jurors on ABHAN and the lesser-included offenses of first-degree assault and battery and second-degree assault and battery. R. 658-60. In his

[6] Ashley Giles authenticated the 911 call. R. 529-35.

closing argument, Mr. Lee asked the jurors to find him guilty of first-degree assault and battery or second-degree assault and battery. R. 645-49.

The jurors convicted Ken Lee and Travis Lee of ABHAN, and the trial judge deferred sentencing. R. 669-70, 679-86.

At the sentencing hearing, Mr. Lee argued it "fundamentally unfair to consider a proximity conviction for marijuana as a strike" and that people of color are disproportionally affected by inequities in drug sentencing. He also argued that marijuana is legal in a lot of states and South Carolina has decriminalized marijuana. R. 753-55. Mr. Lee asked the State to withdraw the notice of intent to seek life without parole and allow the trial court to exercise discretion in sentencing. R. 775-76. The trial judge sentenced Mr. Lee to life without the possibility of parole. R. 779.

ARGUMENTS

Question I

Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?

Abbeville, South Carolina embraces its dark history of race relations. Even today, the City of Abbeville embraces the Civil War:

> Abbeville has experienced many exciting and turbulent events. The city played a key role during the Civil War, and that legacy remains pristinely preserved. Abbeville is known the "Birthplace and Deathbed of the Confederacy." On what is now known as Secession Hill, the meeting which launched the state's secession from the Union took place on Nov. 22, 1860. Five years later in 1865, Jefferson Davis and his cabinet decided to dissolve

the Confederacy at the Burt-Stark Mansion, a stately home right off from Abbeville's Historic Court Square.[7]

Of the 191 Racial Terror Lynchings documented by the Equal Justice Initiative as having occurred in South Carolina, five occurred in Abbeville County.[8] From July 2001 to February 2023, the South Carolina Chapter of the League of the South owned property on the square in Abbeville.[9] According to the Southern Poverty Law Center, the League of the South is an Alabama based Neo-Confederate hate group.[10]

Against this backdrop, the State of South Carolina tried Ken Lee and his Uncle Travis Lee, in front of all-white jurors. During juror qualifications, Mr. Lee expressed his concerns about lack of diversity reflected by the jurors who appeared for jury duty.[11] During the selections of jurors, the prosecution struck the only black juror drawn for this case. Concerned about the negative appearance of all-white jurors sitting in judgement of two black men, the trial court "strong-armed" the prosecution into accepting the sole black male drawn for service in this case. After great hesitation—the length of which is unlikely

---

[7] https://www.abbevillecitysc.com/209/Abbevilles-History#:~:text=Abbeville%20is%20known%20the%20%22Birthplace,22%2C%201860. (last viewed Oct. 27, 2023).

[8] https://lynchinginamerica.eji.org/explore/south-carolina (last viewed October 27, 2023). Of the 191 documented Racial Terror Lynchings, 37 occurred in the Eighth Judicial Circuit—the most of any judicial circuit in South Carolina. *Id*.

[9] https://qpublic.schneidercorp.com/Application.aspx?AppID=613&LayerID=10508&PageTypeID=4&PageID=4485&Q=2001389540&KeyValue=109-13-05-019 (last viewed Oct. 27, 2023).

[10] https://www.splcenter.org/hate-map?state=AL (last viewed Oct. 27, 2023).

[11] Mr. Lee requested this Court have the Clerk of Court print a list of the jurors, identifying the jurors' races, who appeared for jury duty, the jurors who were qualified, and the jurors who remained after voir dire.

to be reflected in the typed transcript—the prosecutors reluctantly acquiesced to the trial court's pressure. Ultimately, the trial court deemed the sole black juror selected for this case to be unqualified for service because of hearing issues, even though this Court never inquired with the juror whether his hearing issues could be accommodated.

Because of errors in qualifying and selecting jurors, Mr. Lee moved the trial court to order a new trial for the following three reasons:

1. He timely moved for a continuance to a term of court when the pool of jurors actually appearing for service reflected a cross-section of the community.

2. The prosecution's violation of *Batson v. Kentucky,* 476 U.S. 79 (1986) and *State v. Stewart*, 413 S.C. 308, 314, 775 S.E.2d 416, 419 (Ct. App. 2015), when the prosecutors impermissibly relied on criminal history to strike the sole black juror while sitting white jurors with criminal records.

3. The trial court failed to determine whether the sole black juror's hearing issues could be accommodated.

R. 17-24.

The "adjudicative power of the [circuit] court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012). Mr. Lee timely moved the trial court to continue the case to a term of court where the potential jurors in attendance reflected a cross-section of the community. R. 40-43. In the post-conviction relief context, the Supreme Court urges trial courts to liberally grant continuances to avoid prejudice to the State. *Love v. State*, 428 S.C. 231, 245, 834 S.E.2d 196, 203 (2019) (Kittredge, J., concurring) ("If, however, the proposed amendment is complicated (factually or legally) and would truly prejudice the

State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

"[A] motion for a continuance is addressed to the sound discretion of the trial judge, and his ruling will not be disturbed by this court absent a showing of abuse of discretion." *State v. Beckham*, 273 S.C. 755, 757, 259 S.E.2d 610, 611 (1979). "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. Hawes*, 423 S.C. 118, 126, 813 S.E.2d 513, 517 (Ct. App. 2018). "To warrant reversal, an error must result in prejudice to the appealing party." *Id.*

Here, the denial of the continuance was both an error of law and not supported by the records. The trial judge correctly recognized the perception of trying two black men before an all-white jury. Racial discrimination in the administration of justice "strikes at the core concerns of the Fourteenth Amendment and at the fundamental values of our society and our legal system." *Rose v. Mitchell*, 443 U.S. 545, 564 (1979). Because "the power of the State weighs most heavily upon the individual" in criminal cases, *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964),"discrimination on the basis of race, odious in all respects, is especially pernicious." in that context, *Rose,* 443 U.S. at 555; *see also Pena-Rodriquez v. Colorado*, 580 U.S. 206, 223 (2017) (quoting *Rose*, 443 U.S. at 555); *Buck v. Davis*, 580 U.S. 100, 124 (2017) (same). Therefore, in criminal cases, courts "must be especially sensitive to the policies of the Equal Protection Clause." *McLaughlin*, 379 U.S. at 192. This is nowhere more true than in jury selection. The jury's indispensable role as "a criminal defendant's fundamental protection of life and liberty against race or color prejudice," *Pena-Rodriquez*, 580 U.S. at 223 (quoting *McCleskey v. Kemp*, 481 U.S. 279,

310 (1987)) (internal quotation marks omitted), means that racial discrimination in jury selection threatens the gravest of harms to criminal defendants.

Additionally, despite Mr. Lee's request, the trial judge never determined whether Abbeville County took appropriate action to ensure the summoned jurors received their summons. The trial judge determined the jury panel did not reflect a cross section of the community. R. 116-19. The trial judge should have continued the case. This Court should reverse the trial court and order a new trial.

Question II

Did the trial court err by denying Ken Lee's *Batson* motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?

Both the U.S. Supreme Court and the S.C. Supreme Court have repeatedly and consistently recognized prohibitions against racial discrimination in jury selection under *Batson* and its progeny are designed to serve multiple ends: "to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venireperson's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice." *State v. Haigler*, 334 S.C. 623, 628–29, 515 S.E.2d 88, 90 (1999); *see also State v. Rayfield*, 369 S.C. 106, 112, 631 S.E.2d 244, 247 (S.C. 2006).

Prospective jurors who are excluded from serving on a jury because of their race are deprived of one of "the most substantial opportunit[ies] that most citizens have to participate in the democratic process." *Flowers*, 139 S. Ct. at 2238 ("Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process."); *see also Powers v. Ohio*, 499 U.S. 400, 407 (1991). Jury

service provides citizens with an opportunity to participate in the legal system and enhances their regard and understanding of the legal system, the judiciary, and the jury system.[12] Unlawful exclusion of citizens from jury duty, therefore, forsakes significant opportunities to strengthen and deepen our democracy.

Perhaps, most significantly, the harm from discrimination affecting the composition of the jury "destroys the appearance of justice and thereby casts doubt on the integrity of the judicial process." *Rose*, 443 U.S. at 556; Buck, 580 U.S. at 124 ("[Such discrimination] injures not just the defendant, but 'the law as an institution . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts.'") (quoting *Rose*, 443 U.S. at 556). Such doubt, in turn, undermines "public confidence" in the criminal justice system and fosters community suspicion that a verdict may not have been "given in accordance with the law by persons who are fair." *Powers*, 499 U.S. at 413; see also Foster, 578 U.S. at 523. In short, "[a]ctive discrimination by a prosecutor" during jury selection "invites cynicism respecting the jury's neutrality and its obligations to adhere to the law," and it "cannot be tolerated." *Powers*, 499 U.S. at 412.

An all-White jury, especially in a trial where the defendant is Black and the victim is White, sustains cynicism about the jury's neutrality. Justice Thomas, concurring in *Georgia v. McCollum*, 505 U.S. 42 (1992), highlighted how a jury's racial composition affects perceptions of its fairness:

> The public, in general, continues to believe that the makeup of juries can matter in certain instances. Consider, for example, how the press reports criminal trials. Major newspapers regularly note the number of Whites and blacks that sit on juries in important cases. Their editors and readers apparently recognize that conscious and unconscious prejudice persists in

[12] *See* Shari Seidma Diamond, *What Jurors Think: Expectations and Reactions of Citizens Who Serve as Jurors*, In VERDICT: ASSESSING THE CIVIL JURY SYSTEM 285–86 (Robert E. Litaned.,1993).

> our society and that it may influence some juries. Common experience and common sense confirm this understanding.

Id. at 60 (footnote omitted).

Thus, it is imperative that court remain diligent in ferreting out racial discrimination in jury selection procedures. Failure to do so not only risks inflicting grave harm on not only the defendants and the citizens that are unlawfully excluded from jury duty, but also the community at large by undermining the public's confidence in the criminal justice system and, therefore, weakening the foundations of our multiracial democracy.

As seen above, Mr. Lee relied on *State v. Stewart*, which is a case that is factually indistinguishable from the case at bar. The trial judge recognized the problem he urged the prosecution to accept the black juror it struck. The trial judge ultimately erred in denying Mr. Lee's *Batson* motion. This Court should reverse the trial court and order a new trial.

Question III

Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?

As seen above, the State struck Juror 191, but the trial judge persuaded the prosecution to seat the juror as an alternate. However, when the trial judge learned Juror 191 had a hearing problem in one year, the trial judge changed his mind and allowed the State's strike to stand. Mr. Lee objected and moved the trial judge accommodate Juror 191's hearing impediment. The trial judge overruled that request. R. 77-84.

"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." *State v. Wise*, 359 S.C. 14, 22, 596 S.E.2d 475, 479 (2004) (citing S.C. Code Ann. § 14-7-1010). The trial judge accordingly had the discretion to qualify or not qualify Juror 191. However,

"[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) (citing *Samples v. Mitchell,* 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997)). Here, the trial court did not even inquire into whether Juror 191 could be accommodated, even though the juror stated he could hear out of one ear. This Court should reverse the trial court and order a new trial.

Question IV

Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?

As seen above, during opening comments, the trial court informed the jurors of their obligation to find the "true facts." R. 133-34. Mr. Lee objected pursuant to *State v. Beaty* and *State v. Daniels* and moved for a mistrial. R. 135, 159-64. The trial court gave a curative instruction, to which Mr. Lee objected because it is impossible to "unring the bell." R. 135-36, 163-64. See, e.g., *State-Rec. Co. v. State*, 332 S.C. 346, 356, 504 S.E.2d 592, 597 (1998) ("it is difficult, if not impossible, to 'unring a bell'") (quoting *United States v. Davis,* 904 F.Supp. 564, 569 (E.D.La.1995)).

Beaty held "a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict." 423 S.C. at 34, 813 S.E.2d at 506. The trial judge was correctly recognized the error, but the curative instruction called more attention to the error, rather than cure it. Failure to provide an adequate curative instruction can be a reason to reverse a trial court. *See, e.g, State v. Smith*, 290 S.C. 393, 350 S.E.2d 923 (1986) ("In instructing jury to disregard incompetent evidence, the jury should be specifically instructed to disregard evidence, and not to consider it for any purpose during deliberations;

mere general remark excluding evidence does not cure error."); *State v. White*, 371 S.C. 439, 446, 639 S.E.2d 160, 164 (Ct. App. 2006) ("While an instruction to disregard incompetent evidence usually is deemed to have cured the error in its admission, a mistrial may still be required if on the facts of the particular case it is probable, notwithstanding such instruction or withdrawal, the accused was prejudiced.").

Even with the trial court's curative instruction, the jurors likely viewed their role as finding the "true facts." As will be discussed below, the prejudice to Mr. Lee was compounded by the trial court's "cascading" verdict form and failure to provide a *King* charge. The jurors likely viewed their role as determining the "true" charge rather than resolving reasonable doubt in favor of Mr. Lee. This Court should revoerse the trial court and order a new trial.

Question V

Did the trial court err by not providing an instruction pursuant to *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused, when that jury instruction was not required but permissible?

"The law to be charged to the jury is determined by the evidence presented at trial. *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict." *State v. Blurton*, 352 S.C. 203, 207-08, 573 S.E.2d 802, 804 (2002). "A jury charge is no place for purposeful ambiguity." *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009), *holding modified and extended by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

As seen above, Mr. Lee requested a jury *State v. King*, regarding the juror's obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused. Mr. Lee noted that although *Brightman* overruled *King*, to the extent *King*

mandated the instruction, *Brightman* did not prohibit the instruction. R. 573-82. Mr. Lee also objected to the proposed verdict form and suggested an alternate form. R. 584-86. In the verdict form, the trial judge "created a cascading consideration" between ABAHN, first-degree assault and battery, and second-degree assault and battery. Mr. Lee argued the "cascading approach" is the reason why a *King* charge was necessary in this case, noting that strictly following the "cascading approach" prohibits the jurors from considering the charge as a whole. Absent a *King* charge, the verdict form guided the jurors to a verdict of guilty of ABHAN because the jurors were not allowed to consider resolving any doubt between the greater offenses and the lesser included offenses. This error was magnified by the trial judges opening remarks regarding the jurors' obligation to find the "true facts." This Court should reverse the trial court and order a new trial.

Question VI

Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening instructions and ensured the jurors gave due consideration the lesser included offenses?

As seen above, the verdict form "created a cascading consideration" between ABAHN, first-degree assault and battery, and second-degree assault and battery, and Mr. Lee objected to the "cascading approach." In the civil context, the Supreme Court observed:

> [A] special verdict question may be so defective in its formulation that its submission results in a prejudicial effect which constitutes reversible error. 9A Wright & Miller, *Federal Practice and Procedure,* Civil 2d § 2508, p. 193. In evaluating the prejudicial effect of a defective special verdict question or special interrogatory, the court must consider the question or interrogatory along with the instructions given to the jury. *Fortune v. Gibson,* 304 S.C. 279, 282, 403 S.E.2d 674, 675 (Ct.App.1991) (finding that special interrogatories and instructions must be considered together). The

> prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions. *See State v. Covert,* 368 S.C. 188, 214, 628 S.E.2d 482, 496 (Ct.App.2006); *State v. Myers,* 344 S.C. 532, 536, 544 S.E.2d 851, 853 (Ct.App.2001).

S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 303, 641 S.E.2d 903, 907-08 (2007).

As argued above, the trial court could have cured the defect by providing a *King* charge, but it did not do that. Another way the trial could have cured the defect was to eliminate the "cascading" format and provide the jurors with a choice between ABAHN, first-degree assault and battery, second-degree assault and battery, and not guilty, as Mr. requested. As seen above, Mr. Lee argued the "cascading approach" is the reason why a *King* charge was necessary in this case, noting that strictly following the "cascading approach" prohibits the jurors from considering the charge as a whole. Absent a *King* charge, the verdict form guided the jurors to a verdict of guilty of ABHAN because the jurors were not allowed to consider resolving any doubt between the greater offenses and the lesser included offenses. This error was magnified by the trial judges opening remarks regarding the jurors' obligation to find the "true facts." This Court should reverse the trial court and order a new trial.

Question VII

Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

At the sentencing hearing, Mr. Lee argued it "fundamentally unfair[13] to consider a proximity conviction for marijuana as a strike" and that people of color are disproportionally affected by inequities in drug sentencing. He also argued that marijuana is legal in a lot of states and South Carolina has decriminalized marijuana. R. 753-55. He also argued a life sentence under these circumstances would be cruel and unusual punishment.[14] R. 759. Mr. Lee asked the State to withdraw the notice of intent to seek life without parole and allow the trial court to exercise discretion in sentencing. R. 775-76. The trial judge sentenced Mr. Lee to life without the possibility of parole. R. 779.

"The Eighth Amendment prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime." *State v. Harrison*, 402 S.C. 288, 293, 741 S.E.2d 727, 729 (2013) (citing *Solem v. Helm,* 463 U.S. 277 (1983)). *Harrison* held:

> [I]n analyzing proportionality under the Eight Amendment outside the capital context, South Carolina courts shall first determine whether a comparison between the sentence and the crime committed gives rise to an inference of gross disproportionality. If no such inference is present, the analysis ends. In the rare instance that this threshold comparison gives rise to such an inference, intrajurisdictional and interjurisdictional analysis is appropriate. Courts may then look to whether more serious crimes carry the same penalty, or more serious penalties, and the sentences imposed for commission of the same crime in other jurisdictions. Courts should use this comparative analysis to confirm the gross disproportionality inference, and not to develop an inference when one did not initially exist. *See Harmelin,* 501 U.S. at 1005, 111 S.Ct. 2680 ("The proper role for comparative analysis of sentences, then, is to validate an initial judgment that a sentence is grossly disproportionate to a crime. This conclusion neither 'eviscerates' *Solem,* or 'abandons its second and third factors.' ").

402 S.C. at 299–300, 741 S.E.2d at 733.

---

[13] U.S. Const. Am XIV; S.C. Const. Art. I, § *.

[14] U.S. Const. Am VIII; S.C. Const. Art. I, § *.

In South Carolina a prior conviction for marijuana offense cannot be used to enhance a subsequent conviction for a non-marijuana offense in most situations. S.C. Code Ann. § 44-53-470. This decimalization of marijuana raises an inference of disproportionally when a marijuana offense is used to enhance any other non-drug related offense. Marijuana is fully legal in 24 states. Marijuana is partially legal, such as for medical use, in an additional six state. Marijuana is fully illegal in only six states—South Carolina, North Carolina, Kansas, Nebraska, Wyoming, and Idaho.[15] But for his prior marijuana offense, Mr. Lee would not have been eligible for life without parole. This Court should rule that using a marijuana related conviction to enhance a sentence for a subsequent offense to life without parole violates due process and the prohibition against cruel and unusual punishment.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court and order a new trial. Alternatively, this Court should vacate Ken Lee's sentence and remand for re-sentencing.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305Main Street
Greenwood, SC 29646

Attorney for Kendrick Lee

December 27, 2024

[15] https://www.cbsnews.com/news/legal-weed-map-states/ (last viewed June 10, 2024)

RECEIVED
Dec 27 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

Rule 211, SCACR Certification

This Final Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

December 27, 2024
Greenwood, South Carolina

RECEIVED
Jan 29 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

FINAL BRIEF OF RESPONDENT

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 Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 3

STANDARD OF REVIEW 19

ARGUMENT 20

I. The trial court did not abuse its discretion by denying Appellant's motion to continue his case to the next term of court due to Appellant's belief that the jury panel did not reflect a cross section of the community. 20

II. The trial court properly denied Appellant's *Batson* motion after the State appropriately struck a potential alternate juror with a prior conviction similar to the crime charged against Appellant where the State, after discussion with the trial court, relented and agreed to allow the potential alternate juror to be seated. 22

III. The trial court properly exercised its discretion in excusing an alternate juror before trial upon learning that the alternate juror had hearing problems and that the alternate juror only heard some of the questions posed to potential jurors during voir dire. 25

IV. The trial court properly denied Appellant's mistrial motion after the trial court mentioned "true facts" in its opening remarks to the jury because a view of the entirety of the trial court's opening remarks and the entire trial record indicate that Appellant suffered no prejudice sufficient to warrant reversal, especially considering the curative instruction given by the trial court at Appellant's request. 26

V. The trial court properly denied Appellant's request for a jury charge pursuant to *State v. King* because the trial court gave an appropriate and sufficient reasonable doubt jury charge. 28

VI. The trial court properly denied Appellant's motion to restructure the verdict form because the verdict form that was used allowed the jury to consider the indicted offense as well as lesser included offenses. 30

VII. The trial court properly denied Appellant's motion to quash the State's Amended Notice of Intent to Seek Life without Parole because Appellant's prior convictions qualified as two serious offenses for the purposes of the Three Strikes Rule despite Appellant's mistaken belief that marijuana has been "decriminalized" in South Carolina. 31

CONCLUSION 35

TABLE OF AUTHORITIES

Cases

Batson v. Kentucky, 476 U.S. 79 (1986) 1

Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) 13, 28, 29

Davis v. County of Greenville, 322 S.C. 73, 470 S.E.2d 94 (1996) 32

Duren v. Missouri, 439 U.S. 357 (1979) 21, 22

Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994) 28

Harmelin v. Michigan, 501 U.S. 957 (1991) 33

Joytime Distrib. & Amusement Co. v. State, 338 S.C. 634, 528 S.E.2d 647 (1999) 32

S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) 30

Sibron v. New York, 392 U.S. 40 (1968) 22

Skilling v. United States, 561 U.S. 358 (2010) 25

Solem v. Helm, 463 U.S. 277 (1983) 33

State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018) 1, 9, 26, 27

State v. Black, 400 S.C. 10, 732 S.E.2d 880 (2012) 19

State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012) 1

State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895 (2011) 30

State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009) 19, 23

State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007) 23

State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014) 23

State v. Green, 337 S.C. 67, 522 S.E.2d 602 (Ct. App. 1999) 22

State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999) 23

State v. Harrison, 402 S.C. 288, 741 S.E.2d 727 (2013) 33, 34

State v. Howard, 384 S.C. 212, 682 S.E.2d 42 (Ct. App. 2009) 30

State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998) 28

State v. King, 158 S.C. 251, 155 S.E. 409 (1930) 1, 2, 13, 28

State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997) 19, 20

State v. Patterson, 337 S.C. 215, 552 S.E.2d 845 (Ct. App. 1999) 27

State v. Stallings, 253 S.C. 451, 171 S.E.2d 588 (1969) 20

State v. Stewart, 413 S.C. 308, 775 S.E.2d 416 (Ct. App. 2015) 4, 23, 24

State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005) 27

State v. White, 371 S.C. 439, 639 S.E.2d 160 (Ct. App. 2006) 19, 27, 28

State v. Williams, 380 S.C. 336, 669 S.E.2d 640 (Ct. App. 2008) 33, 34

Victor v. Nebraska, 511 U.S. 1 (1994) 28, 29

Westvaco Corp. v. S.C. Dep't of Revenue, 321 S.C. 59, 467 S.E.2d 739 (1995) 33

Statutes

U.S. Const. amend. VIII 33

S.C. Code Ann. § 14-7-810 25

S.C. Code Ann. § 17-25-45 ..... 14, 32

S.C. Code Ann. § 17-25-45(B) 32

S.C. Code Ann. § 17-25-45(C)(2)(b) 32

S.C. Code Ann. § 44-53-190(D)(11) 31, 32, 34

S.C. Code Ann. § 44-53-470 31

S.C. Code Ann. § 44-53-470(B) 31

S.C. Code Ann. § 44-53-470(A)(1) & (2) 31

S.C. Code Ann. § 44-53-470(A)(3) & (4) 31

Rules

Rule 49, SCRCP 30

STATEMENT OF ISSUES ON APPEAL

Appellant's Issue Statements

I. Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-White jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?

II. Did the trial court err by denying Ken Lee's *Batson* motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating White jurors with criminal records?

III. Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?

IV. Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?

V. Did the trial court err by not providing an instruction pursuant to *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses in favor of the accused, when the jury instruction was not required but permissible?

VI. Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening instructions and ensured the jurors gave due consideration to the lesser included offenses?

VII. Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentence was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

Respondent's Counterstatements

I. Whether the trial court abused its discretion by denying Appellant's motion to continue his case to the next term of court due to his belief that the jury panel did not reflect a cross-section of the community.

II. Whether the trial court erred in denying Appellant's *Batson*[1] motion when the State properly struck an alternate juror with a prior conviction for assault and battery, which was a charge similar to the charge for which Appellant was standing trial, when the State, after discussion with the trial court, relented and allowed the juror to be seated.

[1] *Batson v. Kentucky*, 476 U.S. 79 (1986).

III. 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.

IV. Whether the trial court abused its discretion in denying Appellant's mistrial motion after the trial court mentioned "true facts" in its opening instructions to the jury and gave a curative instruction at Appellant's request.

V. Whether the trial court abused its discretion in denying Appellant's request for a jury charge pursuant to *State v. King*[2] despite the trial court giving a sufficient reasonable doubt jury charge.

VI. Whether the trial court abused its discretion by denying Appellant's motion to restructure the verdict form to give "due consideration to the lesser included offenses."

VII. Whether the trial court abused its discretion in denying Appellant's motion to quash the State's Amended Notice of Intent to Seek Life without Parole because Appellant believed that his prior conviction for distribution of marijuana within half a mile of a school or playground should not count as a strike due to South Carolina "decriminalizing" marijuana and his belief that marijuana will, at some unspecified and undeterminable point in the future, be nationally legalized.

[2] *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930).

STATEMENT OF THE CASE

In April 2021, an Abbeville County grand jury indicted both Appellant and his uncle, Travis Arnett Lee ("Travis"),[3] for assault and battery of a high and aggravated nature ("ABHAN"). (R. 11-12, 13-14). On February 16, 2021, prior to the grand jury indicting Appellant for ABHAN, the State notified Appellant that he would be charged with attempted murder and that the State intended to seek a sentence of life imprisonment without the possibility of parole ("LWOP") due to two qualifying prior convictions.[4] (R. 15). On August 9, 2023, the State provided Appellant with an Amended Notice of Intent to Seek Life without Parole based on his indictment for ABHAN instead of attempted murder. (R. 16). On September 25-28, 2023, Appellant 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, Appellant made a *Batson* motion based on the State striking the sole Black juror—Juror 191—presented from the jury panel.[5] (R. 52-53). Appellant expressed concern that the jury panel consisted of "a solid 20 percent" Black individuals despite "roughly 25 percent" of Abbeville County consisting of Black individuals. (R. 53). The trial court noted that 41 of the 200 potential jurors summoned were Black.[6] (R. 53, 696-725). The trial court informed Appellant that of the Black potential jurors, 29 did not respond to their summonses, 4 returned their juror information but did not appear in court, 3 were excused, and 5 appeared in court. (R. 53-55, 696-725).

---

[3] Travis did not appeal his conviction or sentence.

[4] The State did not indict Appellant for attempted murder and instead pursued and obtained an indictment for ABHAN.

[5] The trial court moved the jury and the two alternate jurors to the jury room before hearing the motion. (R. 51-52).

[6] The trial court's detailed juror listing shows 42 of the 200 potential jurors were Black. (R. 696-725).

Appellant inquired as to what the trial court and the clerk of court did regarding the 29 potential Black jurors who did not respond to their summonses. (R. 55-56). The trial court stated that 96 White and Hispanic potential jurors also either did not respond or did not appear in court. (R. 57). The clerk stated that when potential jurors are summoned and do not respond, someone from the Clerk's Office would go to the Abbeville County administration building and have the Auditor's Office check for the most up-to-date addresses. (R. 58). The clerk said that "if [the Auditor's Office does not] have anything other than what we do, we run it back." (R. 58).

The trial court then directed the conversation back to why the State struck Juror 191. (R. 59). The State informed the Court that it struck Juror 191 due to prior convictions for simple assault and battery, two instances of disorderly conduct, and criminal domestic violence, third or subsequent offense. (R. 59). The State noted that all of Juror 191's prior convictions were at least twenty years old. (R. 59).

Regarding other jurors with criminal records, the State informed the trial court that Juror 188, who was seated, had a public disorderly conduct conviction from 2011. (R. 60, 64). Additionally, Juror 186, who was stricken, had a conviction for fraudulent check from 1995. (R. 60). Both Juror 186 and Juror 188 were White. (R. 688-689, 690, 691-692, 693, 696-725).

Citing *State v. Stewart*,[7] Appellant argued that the State could not use criminal histories to strike certain jurors while simultaneously seating jurors with criminal histories deemed to be similarly situated. (R. 65). Appellant argued that Juror 191's criminal history (simple assault and battery, disorderly conduct, and criminal domestic violence) was similarly situated to Juror 188 (public disorderly conduct), but the State struck Juror 191, who was Black, and not Juror 188, who was White. (R. 65). The State contended that Juror 191's conviction for simple assault and battery

[7] 413 S.C. 308, 775 S.E.2d 416 (Ct. App. 2015).

was similar to Appellant's charge of ABHAN whereas Juror 188's conviction for public disorderly conduct was not. (R. 66-67). The trial court noted that the difference between Juror 191 and Juror 188 was that Juror 191 had two convictions for assault and battery on his record, while Juror 188 did not. (R. 68). Appellant argued that Juror 188's disorderly conduct conviction could have involved assault and that the State could not say that Juror 188's convictions did not also involve assault. (R. 72).

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). The trial court stated:

> As a practical matter, I would prefer for juries to be racially balanced, if for no other reason—and I'm sure that we all agree with this—but if for no other reason than perception. Okay? And obviously, it's always best to have as wide a cross section of the community if at all possible.
>
> In this case[,] I'm not finding that there was anything nefarious with the selection of the jury by the clerk, or the way it was generated.

(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 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.
>
> [Appellant'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).

Before the jury came out on the second day of trial, Appellant moved to quash the jury and for a continuance. (R. 116). Appellant argued that the trial court previously ruled that the jury did not represent a cross section of the community, as the trial court preferred, and asserted that "the best thing to do" would be to try the case in front of a new jury that represented a "fair cross section" of the community. (R. 116). Appellant also noted that the trial court previously "expressed some concerns about this being an [a]ppellate issue that's going to get this case reversed because [the trial court] encouraged [the State] strongly to consent to letting [Juror 191] be put on the jury . . . ." (R. 116).

The trial court noted that its comments were made prior to learning that Juror 191 was deaf. (R. 116). 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). The trial court determined that a *Batson* issue did not exist because a random strike sheet was used, meaning that the jurors were selected in a random order. (R. 117). The trial court stated that it would have preferred a "better cross section" but "random is random." (R. 117). Appellant 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 trial court denied Appellant's motion to quash the jury and for a continuance. (R. 119).

In its opening remarks to the jury, the trial court stated "your purpose as jurors is [to] find and determine the facts in this case." (R. 128). Later in the opening instructions when discussing why the trial court might ask the jury to step out of the court room during the trial, the trial court said, "Because you're the sole judges of the facts, I don't want any comment that I make about the

testimony or the evidence to have any effect on what you ultimately find the true facts to be." (R. 133). Subsequently, the trial court stated, "Now, in determining what the true facts are, you'll have to decide whether or not the testimony of the witnesses is believable or not. Understand that it's my job to rule whether certain testimony can be admitted. But once the testimony is admitted, whether you believe it is solely up to you." (R. 134). Immediately after the trial court's opening instructions to the jury, Appellant objected, and the trial court held a sidebar conference, which was not transcribed. (R. 135).

After the sidebar conference, the court provided the following curative instruction:

> Ladies and Gentlemen, I want to correct something—emphasize something to you in my opening instructions. Please understand [t]he State has the burden of proof in this case. The burden of proof in this case is beyond a reasonable doubt. And I'm sure that the attorneys are going to allude to that in a few moments in their opening statements, and probably during their closing arguments.
>
> So please understand that at all points and times, [t]he State has the burden of proving the defendant's guilt beyond a reasonable doubt.
>
> And to the extent that I indicated to you that you have an obligation to determine the true facts in this in this case, please disregard those comments about the true facts. Because sometimes Ladies and Gentlemen, there simply is not enough evidence to determine what the true facts are. If that were the case in this case, it would be your obligation to return a verdict of not guilty. And so sometimes again, Ladies and Gentlemen, it simply is not possible to determine what the true facts are. If that were to be the case your verdict should be not guilty. We'll address this in greater detail during closing argument.
>
> But Ladies and Gentlemen, you should not engage in any sort of speculation about the facts. And again, it is not your obligation to determine what the true facts are, but it is your obligation to attend—or attention to the witnesses, listen to the witnesses, and render a verdict under the oath that you have just taken which the clerk has administered.

(R. 135-136). Appellant renewed his objections made during the sidebar conference. (R. 136).

At the next break when the jury was out of the courtroom, the trial court noted that Appellant moved for a mistrial during the sidebar conference based on the trial court's references to "true facts." (R. 159-160). The trial court noted that its reference to "true facts" was contextually different from *State v. Beaty*,[8] where a trial court had instructed a jury that it must search for the truth. (R. 160). The trial court noted that Appellant suggested the curative instruction that the trial court gave. (R. 160-161). The trial court reiterated that the jury's function was to be the factfinder and that "true" merely modified "facts," which was a distinction the trial court found "superfluous." (R. 162). Appellant stated that the curative instruction was not exactly what he had suggested because the trial court had overlooked portions of *Beaty*. (R. 163). Appellant asserted that the curative instruction called attention to the alleged error and "you can't unring the bell." (R. 163). The trial court stated that a curative instruction may not have been required but believed the instruction to be accurate. (R. 164).

Brian Singleton, a deputy with the Abbeville County Sheriff's Department, testified that on October 6, 2020, he responded to a call from Renee Guillebeaux's residence. (R. 149-150). When he arrived, he found Tobias Hughey ("Victim") unresponsive on a couch with lacerations to his forehead. (R. 150). Deputy Singleton attempted to render aide to Victim, who was ultimately taken to a hospital by helicopter. (R. 151, 153). Deputy Singleton believed that no crimes occurred at Guillebeaux's residence. (R. 157).

Forest Crowe, an officer with the Abbeville Police Department, testified that he also responded to a call about an unconscious male on the date of the incident. (R. 165, 167). When he arrived at Guillebeaux's residence, he observed Victim unconscious on a couch with "very clear trauma to his head." (R. 168). Victim had a cut on his left eye and small cuts on his arms. (R. 168).

[8] *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018).

Victim's shirt and pants were covered in blood. (R. 168). Officer Crowe testified that Victim was still breathing, making resuscitation unnecessary at that point. (R. 169). According to Officer Crowe, Guillebeaux, who was Victim's mother, did not observe what happened to Victim. (R. 182).

Elizabeth Webb, the property manager of Hickory Heights and Oakland Apartments (the "apartment complex") at the time of the incident, testified that the apartment complex had a video surveillance system. (R. 188, 191). She gave recordings from the day of the incident to law enforcement. (R. 194).

Victim testified that at the time of the incident, he lived both at his mother's house and with his girlfriend at the apartment complex. (R. 216-218). On the day of the incident, he was in the parking lot at the apartment complex when Travis approached him. (R. 221-222). He had a conversation with Travis about something that had gone missing in Appellant's apartment. (R. 223). According to Victim, the conversation turned violent. (R. 223). At this point, Appellant approached Victim and Travis with a wooden object, likely a table leg or chair leg, in his hands. (R. 225-226). Victim stated that both Travis and Appellant hit him with the wooden object, but Appellant hit him more than Travis did. (R. 226-228). He believed Travis and Appellant collectively made "[a]bout 20 swings" at him with the wooden object. (R. 226). Travis grabbed and held Victim while Appellant swung at him. (R. 227-228). When Travis and Appellant were done, they "just left." (R. 230). Victim went to a friend's apartment in the apartment complex and asked his friend to call his mother, Guillebeaux. (R. 231-232). Guillebeaux came to the apartment complex and took him back to her house, where he passed out. (R. 232-233). The next thing he remembered after that was hearing helicopter blades. (R. 233).

According to Victim, he suffered brain trauma, a dislocated hip, a broken arm, and gashes on his arm. (R. 235-236). Due to the incident, he suffered kidney and liver problems and underwent abdominal surgery. (R. 235-236). Victim denied stealing anything from Appellant or Travis. (R. 238). He confirmed that video evidence showed Appellant carrying a wooden table leg while approaching him and Travis. (R. 239).

Eric Phillips, a resident of the apartment complex, testified that he observed the incident and saw Travis and Appellant beating Victim with a stick. (R. 277, 280-282). After Travis and Appellant finished beating Victim, they walked away and Victim came to his porch. (R. 282). Phillips stated that Victim was "drenched in blood coming down his face." (R. 282).

Renee Guillebeaux, Victim's mother, testified that Victim lived with her at the time of the incident, while the mother of Victim's child lived in the apartment complex. (R. 304-305). Guillebeaux had gone to school with Appellant. (R. 307). Prior to the incident, she had a conversation with Travis and learned that Travis was looking for Victim due to a burglary at Appellant's girlfriend's apartment. (R. 308-309). Guillebeaux told Travis to "do what [you] got to do," but did not tell him to injure Victim. (R. 309). She testified that because Victim was Travis's cousin, Travis should have talked to Victim or "smack him around, handle him a little rough, but not leave him dead." (R. 309-310). When she arrived to pick up Victim, he was sitting up but looked "horrible" and was "leaking" blood from his head. (R. 311-312). According to Guillebeaux, after she took Victim back to her house, his condition deteriorated, which prompted her to call EMS. (R. 310, 315). EMS took Victim to Abbeville High School, from where he was transported to the hospital via helicopter. (R. 316). Guillebeaux testified that Victim stayed in the hospital for about a month. (R. 317).

Michael Shane Floyd, a friend of Victim that lived in the apartment complex, testified that on the day of the incident, he was at home when the door flew open and Victim came in covered in blood and yelling. (R. 341-343). Floyd wanted to call an ambulance, but Victim refused. (R. 344). Before he could call anyone, Guillebeaux and Victim's brother arrived at his apartment. (R. 344-345).

Dr. Kristen Spoor, a trauma and general surgeon at Prisma Health in Greenville and an expert in emergency medicine, critical care medicine, and trauma medicine, testified that she treated Victim after he arrived at Prisma Health following the incident. (R. 432-434). According to Dr. Spoor, Victim's heart stopped twice during the helicopter transport, and upon first seeing Victim, she noticed that "he was bleeding profusely from his head." (R. 435-438). Victim had life threatening injuries, including large injuries to his scalp and forehead that caused significant blood loss, subdural and epidural hematomas, a midline shift in his brain due to a subdural hematoma, and a fractured ulna. (R. 438-441).

According to Dr. Spoor, the midline shift in Victim's brain could have caused difficulty with breathing, issues with continued cardiovascular function, and even death. (R. 441). Victim's head injuries were caused by blunt force trauma. (R. 441). Due to significant blood loss, Victim's liver and kidneys began to shut down. (R. 442-443). Dr. Spoor testified that while he was in the intensive care unit ("ICU"), Victim had trouble breathing and had issues with several internal organs—his lungs, liver, heart, and kidneys—starting to shut down. (R. 444). While in the ICU, Victim developed pneumonia. (R. 445). Dr. Spoor agreed that Victim suffered great bodily injury. (R. 455).

Dr. Martin Andrew Donlan III, a medical doctor and expert in trauma, brain injury, and patient management, testified that Victim suffered from short term memory recovery problems. (R. 460-465).

Ricky Duane Balchin, a former lead investigator with the Abbeville Police Department, testified that after seeing Victim off in the helicopter, he began his investigation by going to the apartment complex. (R. 477-478, 481). He was initially unsure of where the incident occurred but was able to determine that the incident occurred in the parking lot of the apartment complex after viewing surveillance camera footage. (R. 481-484). He testified that Travis and Appellant were involved in the incident. (R. 483-484). Appellant had a wooden object in his possession as he approached Victim and Travis. (R. 490).

After the State rested and both Appellant and Travis informed the court that they did not plan to call any witnesses, Appellant asked the court to explain the concept of lesser included charges to the jury and to give an instruction pursuant to *State v. King*,[9] which would inform the jury that if they were to have any doubt between the higher charge and the lesser included charge, then they should resolve that doubt in favor of the lesser included charge. (R. 570-574). Appellant acknowledged that in *Brightman v. State*,[10] the Supreme Court ruled that when a proper reasonable doubt instruction is given, failure to give a *King* charge is not subject to automatic reversal. (R. 574). However, Appellant asserted that the Supreme Court did not indicate that a *King* charge "would never be appropriate if requested." (R. 574).

[9] 158 S.C. 251, 155 S.E. 409 (1930).
[10] 336 S.C. 348, 520 S.E.2d 614 (1999).

Citing to *Brightman*, the State argued that a *King* charge was not necessary due to the modern reasonable doubt charge, which tells the jury to resolve any doubt in favor of the defendant. (R. 576).

The trial court determined that its reasonable doubt charge would be sufficient and declined to give a *King* charge. (R. 578). The trial court stated:

> I do feel that the [*King*] charge is unnecessary in this particular case in light of the reasonable doubt charge as well as the way I've kind of created a cascading consideration for the jury between A and B first and then A and B second.

(R. 579). Appellant stated that the cascading verdict form was why he believed a *King* charge was necessary because the jury was supposed to consider the charge in the totality, which they would not be able to do if they "strictly" followed the cascading approach. (R. 579). Appellant requested a jury form listing ABHAN, first degree assault and battery, second degree assault and battery, and not guilty. (R. 584). The State argued that the usual form that the trial court intended to use followed the jury charge and allowed the jury to work their way through lesser included offenses if they found Appellant not guilty of the greater offenses. (R. 585). The trial court denied Appellant's request to change the verdict form. (R. 585).

During the jury charge, the trial court gave a detailed and sufficient reasonable doubt charge. (R. 652-653).

The jury found both Appellant and Travis guilty of ABHAN. (R. 669-670).

After the jury delivered its verdict, the trial court noted that counsel had previously discussed Appellant's prior convictions and believed they should not count as two strikes against him for the purposes of section 17-25-45 of the South Carolina Code (the "Three Strikes Rule"). (R. 679). The State informed the trial court that Appellant had two prior convictions that had been classified as serious offenses: one for trafficking crack cocaine, 10 to 28 grams, and one for

distribution of marijuana within half a mile of a school or playground. (R. 680). The State noted that while Appellant had pleaded guilty to both on the same day, the crimes occurred approximately two years apart. (R. 680). The State indicated that it initially served its Notice of Intent to Seek Life without Parole on February 16, 2021, and served an Amended Notice on August 19, 2023, when it decided to move forward on Appellant's ABHAN indictment instead of seeking an attempted murder indictment. (R. 680). Appellant and Travis moved to defer sentencing, which the trial court granted. (R. 682).

On October 19, 2023, the trial court conducted a sentencing hearing for Appellant and Travis. (R. 726). The trial court marked several exhibits related to Appellant and Travis's previous convictions, including Appellant's indictments and sentencing sheets for distribution of marijuana within half a mile of a school or playground and trafficking crack cocaine, 10 to 28 grams. (R. 732-733, 688-689, 690). The State noted that the proximity charge was from 2006 and the trafficking charge was from 2008, but Appellant pleaded guilty to both on the same day in 2009. (R. 736).

The State argued that Appellant's prior convictions, both of which were serious in nature and occurred at different places almost two years apart, counted as two separate convictions for the purposes of the Three Strikes Rule, which meant his conviction for ABHAN carried a mandatory LWOP sentence. (R. 739-740).

Appellant asserted that it was "fundamentally unfair" to consider his distribution of marijuana conviction as a strike because (1) "this country has had a history of particularly people of color being disproportionally affected by drug offenses"; (2) marijuana is legal in "a lot of states"; and (3) marijuana "[has] been decriminalized to a certain extent in South Carolina." (R. 754-755). Appellant argued that for his distribution of marijuana conviction to be predictive of

something that changes the mandatory sentence from a maximum of 20 years to a minimum of LWOP "seem[ed] to be fundamentally unfair." (R. 755). He confirmed that his argument was "basically a due process argument under Federal fairness." (R. 755). Appellant contended that the Three Strikes Rule, with regard to the proximity conviction, violated his Eighth Amendment and comparable South Carolina Constitutional right against cruel and unusual punishment. (R. 759).

The State argued that Appellant had two qualifying prior convictions under the Three Strikes Rule, which was then and is now good law, and that marijuana is not legal in South Carolina. (R. 755-756).

The trial court determined that Appellant's prior convictions subjected him to the provisions of the Three Strikes Rule, which mandated an LWOP sentence. (R. 762).

Before the trial court sentenced him, Appellant requested that the trial court view and consider video recordings of Victim requesting that Appellant and Travis receive only probation for this incident. (R. 775). Appellant also requested that the State withdraw its Amended Notice of Intent to Seek Life without Parole and allow the trial court to exercise its discretion in sentencing. (R. 775-776). The State did not withdraw the Amended Notice. (R. 776-777). The trial court sentenced Appellant to LWOP pursuant to the Three Strikes Rule. (R. 779).

On October 30, 2023, Appellant filed his Motion for a New Trial or, Alternatively, to Reconsider the Sentence. (R. 17-24). In his motion, Appellant renewed his arguments related to jury qualification and selection from trial, arguing that the trial court should grant a new trial based on (1) his timely motion for a "continuance to a term of court where the pool of jurors actually appearing for service reflected a cross-section of the community"; (2) his *Batson* motion based on the State "impermissibly [relying] on criminal history to strike the sole [B]lack juror while sitting

[W]hite jurors with criminal records"; and (3) the trial court failing to determine whether the sole Black juror's inability to hear could be accommodated. (R. 17-19). Appellant asserted the trial court should have granted a new trial based on the trial court's "improper opening remarks to the jurors," which he viewed as "particularly prejudicial." (R. 21). Appellant also contended that the trial court should grant a new trial for denying his request to provide an unnecessary *King* jury charge and restructure the verdict form to his liking. (R. 22). Finally, Appellant argued that he should be resentenced because (1) the solicitors were the only people who wanted Appellant to receive an LWOP sentence; (2) the trial court "did not consider" a recorded statement from Victim when sentencing Appellant; and (3) Appellant objected to his conviction for distribution of marijuana within half a mile of a school or playground counting as a strike for the purposes of the Three Strikes Rule because "South Carolina has decriminalized marijuana" and counting that conviction as a strike would be a cruel and unusual punishment under the United States Constitution and the South Carolina Constitution. (R. 22-23).

The trial court denied Appellant's motion. (R. 7-8). The trial court reiterated its determinations from trial concerning Appellant's jury qualification and selection arguments. (R. 7). The trial court stood by its opening remarks to the jury, stating that its use of the adjective "true" to modify the noun "facts" "adds little to the noun and does not rise to the level of instructing the jury to 'seek the truth' per *State v. Beaty*." (R. 7-8). Concerning Appellant's request for a *King* charge, the trial court was satisfied that a *King* charge was not warranted. (R. 8). The trial court found no prejudice in the structure of the verdict form utilized at trial. (R. 8). Regarding Appellant's sentence, the trial court noted that it had reviewed Victim's recorded statement prior to imposing Appellant's sentence and that the Three Strikes Rule left the trial court with no discretion in imposing Appellant's LWOP sentence. (R. 8).

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.

The trial court's denial of a motion for continuance will also not be disturbed absent a clear abuse of discretion. *State v. Patterson*, 324 S.C. 5, 12, 482 S.E.2d 760 (1997).

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. *State v. White*, 371 S.C. 439, 443, 639 S.E.2d 160, 162 (Ct. App. 2006).

ARGUMENT

I. The trial court did not abuse its discretion by denying Appellant's motion to continue his case to the next term of court due to Appellant's belief that the jury panel did not reflect a cross section of the community.

"Whether there has been systematic racial discrimination by the jury commissioners in the selection of jurors is a question to be determined from the facts in each particular case." *State v. Stallings*, 253 S.C. 451, 454, 171 S.E.2d 588, 590 (1969). Further, "[d]iscrimination in the selection of a jury must be proved and it cannot be presumed." *Id.* A criminal defendant attacking his conviction on the ground that the State systematically excluded members of his race from the jury that convicted him has the burden of proving the existence of purposeful discrimination. *Id.* at 454-55, 171 S.E.2d at 590.

To establish a prima facie violation of the fair cross section requirement of the Sixth Amendment, a defendant must show "1) the group excluded is a 'distinctive' group in the community; 2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and 3) this underrepresentation is due to a systematic exclusion of the group in the jury selection process." *State v. Patterson*, 342 S.C. 5, 21, 482 S.E.2d 760, 767-68 (1997).

First, given that Black individuals are a "distinctive" group in the community, Appellant failed to show the representation of Black individuals in the venire from which the jury in this case was selected was not fair and reasonable in relation to the number of such persons in the community. The record indicates that 42 of the 200 members of the venire[11]—or 21 percent—were Black. (R. 696-725). Including a passing reference to the 2020 United States Census without any evidentiary support, Appellant conceded during pretrial arguments that "the 200 that were

[11] A venire is "[a] panel of persons selected for jury duty and from among whom the jurors are to be chosen." *Black's Law Dictionary*, *venire* (12th ed. 2024).

summoned is not very different [or] of any significan[t difference] from the population of the county." (R. 53). Appellant's concern related entirely to the jurors who appeared in court and the number of Black individuals who were "lost" in the "whittling-down process." (R. 53). Therefore, because Appellant conceded that the venire from which the jury was chosen adequately represented the population of Abbeville County, Appellant failed to show that the representation of Black individuals in the venire was not fair and reasonable in relation to the community.

Second, assuming that Appellant can show both steps 1 and 2, he has failed to show that Black individuals were systematically excluded during the jury selection process. In *Duren*, women were routinely granted exemptions from being included in jury venires upon request both before and after jury summonses were issued and, therefore, were underrepresented in jury venires. *Duren v. Missouri*, 439 U.S. 357 (1979). There, women accounted for 54 percent of the population and only 14.5 percent of the challenged jury pool. The United States Supreme Court held the "resulting disproportionate exclusion of women from the jury wheel and at the venire stage was quite obvious due to the *system* by which juries are selected." *Id.* at 367 (emphasis in original). Here, Appellant has not shown any system of exclusion from the jury venire specifically or in the jury selection process generally.

Even construing Appellant's argument that 29 of the 42 Black individuals summoned did not appear in court as an argument of systematic exclusion, the clerk stated that when potential jurors are summoned and do not respond, someone from the Clerk's Office would go to the Abbeville County administration building and have the Auditor's Office check for the most up-to-date addresses. (R. 58). The clerk said that "if [the Auditor's Office does not] have anything other than what we do, we run it back." (R. 58). Nothing in the record indicates that the process for selecting the venire or attempting to serve jury summonses systematically excluded Black

individuals, as opposed to the case with women in *Duren*. This was explicitly reflected in the trial court's ruling, where the court stated, "And obviously, it's always best to have as wide a cross section of the community if at all possible. In this case[,] I'm not finding that there was anything nefarious with the selection of the jury by the clerk, or in the way it was generated." (R. 75). Therefore, the trial court did not abuse its discretion in denying Appellant's motion for a continuance because Appellant failed to make a prima facie showing that the fair cross section requirement of the Sixth Amendment had been violated.

II. The trial court properly denied Appellant's *Batson* motion after the State appropriately struck a potential alternate juror with a prior conviction similar to the crime charged against Appellant where the State, after discussion with the trial court, relented and agreed to allow the potential alternate juror to be seated.

Initially, this issue is moot because the State agreed to allow the potential alternate juror—Juror 191—to be seated, which thereby achieved the purpose of Appellant's *Batson* motion without need for the trial court to rule on the motion. *See State v. Green*, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (Ct. App. 1999) ("When judgment on an issue can have no practical effect upon an existing case or controversy, the issue is moot."); *id.* ("A criminal case is moot only if there is no possibility that any legal consequence will be imposed." (quoting *Sibron v. New York*, 392 U.S. 40, 57 (1968))). While the trial court did ultimately rule on Appellant's motion, it did so after it excused Juror 191 for his previously undisclosed inability to hear. (R. 82-83).

However, should the Court find this issue is not moot, the trial court properly denied Appellant's *Batson* motion. In *State v. Giles*, the South Carolina Supreme Court explained the proper procedure for a *Batson* hearing:

> First, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the proponent of the challenge to provide a race neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at

> which point the trial court must determine whether the opponent of the challenge has proved purposeful discrimination.

407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014) (internal citations omitted). "The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike." *State v. Evins*, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007). The opponent of the strike must show the race neutral explanation was mere pretext, which generally is established by showing the party did not strike a similarly situated member of another race. *State v. Haigler*, 334 S.C. 623, 629, 515 S.E.2d 88, 91 (1999). "Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record." *Edwards*, 384 S.C. at 509, 682 S.E.2d at 822.

In *State v. Stewart*, the State charged the defendant with the murder of his affair partner, and during the jury selection process, the defendant made a *Batson* motion due to the State striking four Black potential jurors. 413 S.C. 308, 313-15, 775 S.E.2d 416, 418-19 (Ct. App. 2015). The State explained that it dismissed the four Black potential jurors for, respectfully, (1) prior domestic issues with his spouse; (2) prior arrest for possession of cocaine that was not prosecuted; (3) unemployed and knew the victim; and (4) being late and appearing disinterested. *Id.* at 315, 775 S.E.2d at 419.

The defendant in *Stewart* argued that the State allowed two similarly situated White jurors to be seated—one with a nolle prossed charge for assault and battery with intent to kill and one with either an arrest or conviction for simple assault and bad checks. *Id.* The trial court determined that the State expressed race neutral reasons for striking the two Black potential jurors with criminal histories because case law supported dismissing jurors with previous negative relationships with law enforcement. *Id.* at 317, 775 S.E.2d at 421. However, this Court reversed

the trial court, holding that the State negated the race neutral reason by seating similarly situated White jurors. *Id.*

Here, Appellant asserted that the State struck Juror 191 on the basis of race, as he was the first and only Black potential juror presented. (R. 52). The State offered a racially neutral reason for striking Juror 191, which was that Juror 191 had two convictions for simple assault and battery. (R. 59, 66). The State asserted that simple assault and battery is a crime similar to ABHAN, for which Appellant was standing trial. (R. 66).

In this case, unlike in *Stewart*, the State did not negate the racially neutral reason by allowing White jurors with criminal records to be seated because those jurors had distinctly different convictions that were not similar to ABHAN, instead having convictions for simple disorderly conduct and check fraud. (R. 60, 64, 66-67). In *Stewart*, two of the Black potential witnesses dismissed by the State had assault and battery arrests or charges, as did two of the White jurors seated by the State. This Court determined in *Stewart* that the Black potential jurors and the White seated jurors were similarly situated because the State's reasoning for striking the Black potential jurors applied just as well to otherwise similarly situated non-Black jurors. *Stewart*, 413 S.C. at 317, 775 at 421. This reasoning does not apply in this case because the State's expressed reasoning for striking Juror 191—his simple assault and battery conviction was similar to Appellant's ABHAN charge—does not apply to the two White jurors seated by the State. Disorderly conduct and check fraud are not similar to ABHAN. Therefore, the two White jurors with criminal records were not similarly situated to Juror 191.

Thus, the trial court did not err in denying Appellant's *Batson* motion, despite not needing to rule on it due to Juror 191's undisclosed inability to hear, because the State articulated a race

neutral reason for striking the only Black potential juror presented and Appellant failed to show that the reason was mere pretext.

III. The trial court properly exercised its discretion in excusing an alternate juror before trial upon learning that the alternate juror had hearing problems and that the alternate juror only heard some of the questions posed to potential jurors during voir dire.

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." (R. 82-83). Further, Juror 191 only heard some of the voir dire, 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.").

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 Appellant 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 of the voir dire remained problematic. (R. 118-119).

Therefore, because the trial court determined that Juror 191 was unable to render efficient jury service due to his inability to hear, which impaired his ability to meaningfully participate in voir dire, the trial court properly exercised its discretion in finding Juror 191 not qualified to sit on the jury in this case.

IV. The trial court properly denied Appellant's mistrial motion after the trial court mentioned "true facts" in its opening remarks to the jury because a view of the entirety of the trial court's opening remarks and the entire trial record indicate that Appellant suffered no prejudice sufficient to warrant reversal, especially considering the curative instruction given by the trial court at Appellant's request.

The trial court made two references to "true facts" in its opening remarks to the jury. (R. 133-134). "Because you're the sole judges of the facts, I don't want any comment that I make about the testimony or the evidence to have any effect on what you ultimately find the true facts to be." (R. 133). "Now, in determining what the true facts are, you'll have to decide whether or not the testimony of the witnesses is believable or not." (R. 134).

In *State v. Beaty*, the South Carolina Supreme Court determined that a trial court's use of phrases such as "search[ing] for the truth," "true facts," and "just verdict" in a trial court's opening remarks "could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best served its perception of justice." 423 S.C. 26, 33-34, 813 S.E.2d 502, 505-06 (2018). The trial court in *Beaty* denied the defendant's request for a curative instruction because his opening comments were not jury instructions. *Id.* at 33, 813 S.E.2d at 506. The Supreme Court determined, based on the trial court's entire opening remarks and the entire record on appeal, that Appellant failed to show prejudice sufficient to warrant reversal. *Id.* at 34, 813 S.E.2d at 506.

Here, much like in *Beaty*, the trial court's references to "true facts" were (1) a mere statement to the jury; (2) not linked to a reasonable doubt charge; and (3) not linked to a

circumstantial evidence charge. *Id.* Additionally, much like in *Beaty*, a review of the trial court's full opening remarks and the entire trial record, which is replete with references and instructions regarding the beyond a reasonable doubt standard after the trial court's opening remarks, reveals that Appellant failed to show he suffered prejudice from the trial court's "true facts" references that would warrant a reversal. *Id.* (R. 135-136, 140-148, 589-590, 603, 630-633, 639-649, 652-653). These references and instructions on the reasonable doubt standard entirely negate Appellant's argument that the jury "likely viewed their role as determining the 'true' charge rather than resolving doubt in favor of" Appellant. (Initial App. Br. 16). Instead, the jury heard the trial court instruct them *not* to consider its remarks on "true facts" and then repeatedly heard that the State had to prove Appellant's guilt, as well as Travis's guilt, beyond a reasonable doubt.

Moreover, the trial court gave a curative instruction *at Appellant's request*. (R. 133-134, 160-161). *See State v. White*, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) ("Generally, a curative instruction is deemed to have cured any alleged error." (quoting *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005))). The extensive nature of the curative instruction, in addition to subsequent reiterations of the reasonable doubt standard throughout the record, cured any possible error and eliminated any conceivable prejudice. *See State v. Patterson*, 337 S.C. 215, 227, 552 S.E.2d 845, 851 (Ct. App. 1999) ("The extensive curative instruction given by the trial [court] cured any possible error and eliminated any conceivable prejudice.").

Therefore, because a trial court should exhaust other methods to cure possible prejudice before granting a mistrial and because the curative instruction in this case is deemed to have cured any error from the trial court's references to "true facts," the trial court did not abuse its discretion in denying Appellant's mistrial motion. *See White*, 371 S.C. at 444, 639 S.E.2d at 162 ("The trial [court] should first exhaust all other methods to cure possible prejudice before aborting a trial.");

id. at 445, 639 S.E.2d at 165 ("If the trial [court] sustains a timely objection to evidence and gives the jury a curative instruction that it be disregarded, the error is deemed to have been cured by the instruction."); *State v. Kelsey*, 331 S.C. 50, 70, 502 S.E.2d 63, 73 (1998) ("The granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way.").

V. The trial court properly denied Appellant's request for a jury charge pursuant to *State v. King* because the trial court gave an appropriate and sufficient reasonable doubt jury charge.

In *Brightman v. State*, the South Carolina Supreme Court revisited the "continued propriety of the *King* charge." 336 S.C. 348, 351-52, 520 S.E.2d 614, 615-16 (1999). In doing so, the Supreme Court noted that in *King*, the trial court's jury charge implied that the defendant was guilty of murder while eliminating any potential for the jury to convict of the lesser included offense that was also charged. *Id.* The Supreme Court's holding in *King* was:

> The charge did not clearly and correctly instruct the jury, that if they had a reasonable doubt as to whether the appellant was guilty of murder or manslaughter, it was their duty to resolve the doubt in his favor, and find him guilty of the lesser offense. It is plain that the rule of reasonable doubt requires that a defendant charged with murder, be extended the benefit of that doubt, when it is questionable that the crime committed by him was murder or manslaughter.

State v. King, 158 S.C. 251, 155 S.E. 409, 426 (1930).

In *Brightman*, after discussing the holding from *King*, the Supreme Court recalled its notation in *Gilmore v. State* that the language of the *King* opinion was based on the 1930 definition of "reasonable doubt," which had gone through "significant modification and revision" in the decades since 1930. *Brightman*, 336 S.C. at 352, 520 S.E.2d at 616; *see also Victor v. Nebraska*, 511 U.S. 1 (1994); *Gilmore v. State*, 314 S.C. 453, 456 n.1, 445 S.E.2d 454, 456 n.1 (1994) (noting that "an argument could now be made that the *King* charge is unnecessary and archaic"). The

Supreme Court then reiterated that it had adopted the definition of reasonable doubt as set forth by Justice Ginsburg in *Victor v. Nebraska*, and overruled *King*. *Brightman*, 336 S.C. at 352, 520 S.E.2d at 616. The Supreme Court expressly stated:

> The *King* charge is unnecessary in light of the modern general reasonable doubt charge which instructs the jury to resolve doubts in favor of the defendant.

Id. Additionally, the Supreme Court, in a footnote, overruled a set of cases "to the extent that they hold it is reversable error to fail to give the *King* charge when there is evidence to support a charge on a lesser included offense." *Id.* at 325 n.5, 520 S.E.2d at 616 n.5.

Here, Appellant requested a *King* charge when the trial court determined that it would charge the jury on ABHAN as well as the lesser included offenses of first-degree assault and battery and second-degree assault and battery. (R. 574). The trial court denied Appellant's request, finding that a reasonable doubt jury charge would be sufficient. (R. 578).

Based on *Brightman*, the trial court properly determined that it did not need to give a *King* charge because its reasonable doubt jury charge was sufficient. *See Brightman*, 336 S.C. at 325, 520 S.E.2d at 616 ("The *King* charge is unnecessary in light of the modern general reasonable doubt charge which instructs the jury to resolve doubts in favor of the defendant."). To the extent that the trial court did err in denying Appellant's request for a *King* charge, the Supreme Court has confirmed that the failure to give a *King* charge is not reversible error. *Id.* at 325 n.5, 520 S.E.2d at 616 n.5 (overruling a set of cases "to the extent that they hold it is reversable error to fail to give the *King* charge when there is evidence to support a charge on a lesser included offense.").

VI. The trial court properly denied Appellant's motion to restructure the verdict form because the verdict form that was used allowed the jury to consider the indicted offense as well as lesser included offenses.

Initially, Appellant abandoned this issue on appeal. *See State v. Howard*, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App. 2009) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."). Here, the only legal authority Appellant cited in support of his argument that the verdict form utilized by the trial court in some way prejudiced him is a civil case[12] concerning a special verdict form permitted under Rule 49 of the South Carolina Rules of Civil Procedure. Therefore, because the only authority cited by Appellant is a civil case interpreting rules of civil procedure which are not generally applicable in criminal matters, Appellant's *only* citation does not support his argument regarding a verdict form in a criminal matter.

Should the court find this issue is not abandoned on appeal, the trial court properly determined that the verdict form was appropriate and allowed proper consideration of lesser included offenses. By definition, a greater offense includes all elements of lesser included offenses. *See State v. Dickerson*, 395 S.C. 101, 118, 716 S.E.2d 895, 904 (2011) ("A [lesser included] offense is one whose elements are wholly contained within the crime charged.").

In this case, Appellant agreed that first-degree and second-degree assault and battery are lesser included offenses of ABHAN. (R. 584, 644-646). Therefore, by definition, when the jury considered whether Appellant committed ABHAN, it necessarily also considered whether Appellant committed the lesser included offenses of first- and second-degree assault and battery. Additionally, the trial court charged the jury to resolve all doubts in favor of Appellant. (R.

[12] *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 300-01, 641 S.E.2d 903, 906-07 (2007) (discussing the use of a special verdict form as provided in Rule 49 of the South Carolina Rules of Civil Procedure).

652-653). Thus, if the jury believed that each and every element of ABHAN was not proven by the State beyond a reasonable doubt, only then could the jury separately consider whether Appellant was guilty of the lesser included offense of first-degree assault and battery.

To the extent that Appellant argues that the jury form did not allow the jury to consider the entirety of the trial court's charge, the State notes that the jury charges relating to the lesser included charges of first- and second-degree assault and battery were conditional on the jury finding that the State failed to prove ABHAN beyond a reasonable doubt. (R. 659-660). Therefore, these two jury charges did not need to be specifically considered separately from ABHAN unless and until the jury specifically found that the State failed to prove ABHAN beyond a reasonable doubt.

VII. The trial court properly denied Appellant's motion to quash the State's Amended Notice of Intent to Seek Life without Parole because Appellant's prior convictions qualified as two serious offenses for the purposes of the Three Strikes Rule despite Appellant's mistaken belief that marijuana has been "decriminalized" in South Carolina.

Initially, South Carolina has not "decriminalized" marijuana. *See* S.C. Code Ann. § 44-53-190(D)(11) (stating that marijuana is a controlled substance). Section 44-53-470 of the South Carolina Code defines "[s]econd or subsequent offense" in the context of offenses involving controlled substances. In this section, the General Assembly set forth that a prior marijuana offense would not count as a first offense for a subsequent controlled substance offense when the subsequent offense related to a controlled substance other than marijuana. *See* S.C. Code Ann. § 44-53-470(A)(3) & (4). However, a prior trafficking in marijuana violation would count as a first offense for all subsequent controlled substances offenses. *See* S.C. Code Ann. § 44-53-470(B). The General Assembly specifically set forth that a prior marijuana offense does enhance a subsequent marijuana offense to a second or subsequent offense. *See* S.C. Code Ann. § 44-53-470(A)(1) & (2). Ultimately, however, section 44-53-470 does not factor into an analysis

of whether prior controlled substance violations are considered strikes under the Three Strikes Rule.

The Three Strikes Rule specifically states which prior offenses are considered serious and most serious offenses, and thus considered strikes for the purpose of the rule. *See generally* S.C. Code Ann. § 17-25-45. Both of Appellant's prior convictions—one for trafficking crack cocaine and one for distribution of marijuana within half a mile of a school or playground—are listed as serious offenses under the Three Strikes Rule. *See* S.C. Code Ann. § 17-25-45(C)(2)(b) (defining "Trafficking in controlled substances" and "Distribut[ion of] controlled substances within proximity of a school" as serious offenses); S.C. Code Ann. § 44-53-190(D)(11) (defining marijuana as a controlled substance).

Therefore, after the jury found Appellant guilty of ABHAN, which itself is listed as a serious offense under the Three Strikes Rule, the trial court was statutorily required to sentence Appellant to LWOP. *See* S.C. Code Ann. § 17-25-45(B) ("[U]pon a conviction for a serious offense as defined by this section, a person must be sentenced to a term of life imprisonment without the possibility of parole if that person has two or more prior convictions for: (1) a serious offense . . . ."); S.C. Code Ann. § 17-25-45(C)(2)(b) (defining ABHAN as a serious offense).

To the extent that Appellant argues that the trial court erred in refusing to find that the penalty portion of the Three Strikes Rule, and his LWOP sentence imposed pursuant to the rule, violates the Eighth Amendment, Appellant has failed to show that the Three Strikes Rule is repugnant to the Constitution beyond a reasonable doubt. *See Joytime Distrib. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 651 (1999) (stating that appellate courts have a very limited scope of review in cases involving a constitutional challenge to a statute); *Davis v. County of Greenville*, 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996) (holding that all statutes are presumed

constitutional and will, if possible, be construed so as to render them valid); *Westvaco Corp. v. S.C. Dep't of Revenue*, 321 S.C. 59, 62, 467 S.E.2d 739, 741 (1995) (stating that a legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt).

The Eighth Amendment to the United States Constitution, which applies to the states by virtue of the Fourteenth Amendment, provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The Eighth Amendment prohibits not only barbaric punishments but also sentences that are not proportionate to the crime. *Solem v. Helm*, 463 U.S. 277, 284 (1983). However, "[t]he Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are 'grossly disproportionate' to the crime." *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring).

"[I]n analyzing proportionality under the Eight[h] Amendment outside the capital context, South Carolina courts shall first determine whether a comparison between the sentence and the crime committed gives rise to an inference of gross disproportionality. If no such inference is present, the analysis ends." *State v. Harrison*, 402 S.C. 288, 299–300, 741 S.E.2d 727, 733 (2013).

Here, Appellant's only argument that his LWOP sentence under the Three Strike Rule is not proportionate to his ABHAN conviction is that his prior conviction for distribution of marijuana within half a mile of a school should not be counted as a strike because South Carolina had "decriminalized" marijuana. (Initial App. Br. 20). *See State v. Williams*, 380 S.C. 336, 349, 669 S.E.2d 640, 647 (Ct. App. 2008) ("Under recidivist sentencing schemes, the enhanced punishment imposed for a present offense is not to be viewed as an additional penalty for the earlier

crimes, but instead as a stiffened penalty for the latest crime, which is considered to be an aggravated offense because it is a repetitive one.").

As discussed above, this argument is entirely without merit, and marijuana remains illegal in South Carolina. *See* S.C. Code Ann. § 44-53-190(D)(11) (stating that marijuana is a controlled substance). Moreover, the South Carolina courts have "determined stiff penalties for drug crimes do not violate the constitutional prohibition against cruel and unusual punishment." *Williams*, 380 S.C. at 347-48, 669 S.E.2d at 646. "[T]he United States Supreme Court has also held a state is justified in punishing a recidivist more severely than it does a first offender." *Id.* at 348, 669 S.E.2d at 647.

Appellant's remaining arguments all fall into an interjurisdictional analysis, which is only appropriate when the comparison between a sentence and the crime committed gives rise to an inference of gross disproportionality, which is far from the case here. *See Harrison*, 402 S.C. at 300, 741 S.E.2d at 733 (stating that a comparative interjurisdictional analysis is only appropriate after a court determines that an inference of gross disproportionality exists and courts should not use an interjurisdictional analysis to "develop an inference when one did not initially exist").

Therefore, the trial court did not abuse its discretion in denying Appellant's request to quash the State's Amended Notice because Appellant's LWOP sentence pursuant to the Three Strikes Rule does not raise an inference of gross disproportionality to his conviction for ABHAN given his prior convictions for distribution of crack cocaine and distribution of marijuana within half a mile of a school.

[*conclusion and signature block on following page*]

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's conviction for assault and battery of a high and aggravated nature, as well as his associated sentence.

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 Respondent

January 29, 2025
Columbia, South Carolina

RECEIVED
Jan 29 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Final Brief of Respondent on E. Charles Grose, Jr., Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 29th day of January, 2025.

Grace Sommer
Legal Assistant

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

Grace Sommer

From: Grace Sommer
Sent: Wednesday, January 29, 2025 4:43 PM
To: charles@groselawfirm.com
Cc: Brian Gibbs
Subject: The State v. Kendrick Montrez Lee (2023-001843)
Attachments: LEE Kendrick - FBOR.pdf

Good Afternoon Mr. Grose,

Attached please find a Final Brief of Respondent in The State v. Kendrick Montrez Lee (2023-001843). This Brief will be filed today with the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

Grace Sommer, Legal Assistant
South Carolina Attorney General's Office
Criminal Appeals | Office 803-734-3835 | gracesommer@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov

This email, together with any attachments, may be legally privileged. If you have received it in error, please notify the sender immediately, and then delete it from your system. This email and any replies to this email may be subject to disclosure under the Freedom of Information Act.

RECEIVED
Dec 27 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

FINAL REPLY BRIEF OF APPLLANT

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Kendrick Lee

TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

Arguments In Reply

Question I

Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community? 1

Question II

Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records? 1

Question III

Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated? 2

Question IV

Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)? 3

Question V

Did the trial court err by not providing an instruction pursuant to *State v. King,* 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused, when that jury instruction was not required but permissible? 4

Question VI

Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening

instructions and ensured the jurors gave due consideration the lesser included offenses? 4

Question VII

Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United State? 5

Conclusion 6

Rule 211, SCACR Certification....7

TABLE OF AUTHORITIES

Cases

Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) 4

State v. Beaty, 423 S.C. 26, 813 S.E.2d 502 (2018) 1, 3

State v. Covert, 368 S.C. 188, 628 S.E.2d 482 (Ct.App.2006) 4

State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012) 1, 3

State v. Hawes, 423 S.C. 118, 813 S.E.2d 513 (Ct. App. 2018) 2

State v. King, 158 S.C. 251, 155 S.E. 409 (1930) 1, 4

State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) 1

State v. McMillian, 349 S.C. 17, 561 S.E.2d 602 (2002) 1

State v. Myers, 344 S.C. 532, 544 S.E.2d 851 (Ct.App.2001) 4

State v. Stewart, 413 SC 308, 775 S.E.2nd 416 (Ct. App. 2015) 2

State-Rec. Co. v. State, 332 S.C. 346, 504 S.E.2d 592 (1998) 3

United States v. Davis, 904 F.Supp. 564 (E.D.La.1995) 3

Statutes

S.C. Code Ann. § 16-3-600(B) and (E) 2

S.C. Code Ann. § 44-53-190 5

S.C. Code Ann. § 44-53-230 5

S.C. Code Ann. § 44-53-180 5

S.C. Code Ann. § 44-53-220 5

ARGUMENTS IN REPLY

Question I

Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service did not reflect a cross-section of the community?

The State argues the trial court did not abuse its discretion in denying the continuance because Mr. Lee cannot prove systematic and purposeful discrimination. Brief of respondent, pp. 20-22. The State does not deny that an anomaly occurred where most of the black jurors summoned did not appear for juror service. The State overlooks "the inherent power to control the order of its business to safeguard the rights of litigants." *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012). Also, the State does not acknowledge that trial courts can abuse their discretion by denying a continuance request. *State v. McMillian*, 349 S.C. 17, 561 S.E.2d 602 (2002) (defendant was entitled to continuance of retrial, so he could obtain transcript of first trial, for use in impeaching victim's neighbor). Under the circumstances of this case, it was an abuse of discretion for the trial judge to deny the continuance request. This Court shold reverse the trial court and order a new trial.

Question II

Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?

The State initially argues this issue is moot because the persecution agreed—albeit reluctantly and the result of coercion by the trial judge—to seat the sole black juror drawn for service on this case. Brief of Respondent, p. 22. This question is not moot because, but for the State striking this juror, this juror would have sat on the jury.

The State next argues "unlike in *Stewart*,[1] the State did not negate the racially neutral reason by allowing White jurors with criminal records to be seated because those jurors had distinctly different convictions that were not similar to ABHAN, instead having convictions for simple disorderly conduct and check fraud." Brief of Respondent, p. 24. The State is wrong for two reasons. First, this statement talks in circles. The reality is the seated jurors had similar convictions. Assault and battery of a high and aggravated nature is very different from simple assault and battery. S.C. Code Ann. § 16-3-600(B) and (E). Simple assault and battery is an expungable 30-day misdemeanor, just like disorderly conduct and check fraud. Second, the general public loses confidence in the legal profession when lawyers make transparent arguments to mask reality. This Court should reverse the trial court and order a new trial.

Question III

Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?

The State implies Juror 191 was "deaf as a fence post." Brief of Respondent, pp. 7. The trial judge actually stated the juror "may not have been as deaf as a fence post, but he was darn – darn close." R. 83. Neither the State's implication nor the trial judge's comment is supported by the record as the trial judge was able to carry one a dialogue with Juror 191 but chose not to complete the dialogue. *State v. Hawes*, 423 S.C. 118, 126, 813 S.E.2d 513, 517 (Ct. App. 2018) ("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."). Because the trial court did not even inquire into whether Juror 191 could be

[1] *State v. Stewart,* 413 SC 308, 775 S.E.2nd 416 (Ct. App. 2015).

accommodated—even though the juror stated he could hear out of one ear—this Court should reverse the trial court and order a new trial.

Question IV

Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?

The State centers its argument around *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) but never addresses *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012).[2] Brief of Respondent, pp. 26-28. Nor did the State respond to Mr. Lee's objection that it is impossible to "unring the bell." R. 135-36, 163-64. *See, e.g.*, *State-Rec. Co. v. State*, 332 S.C. 346, 356, 504 S.E.2d 592, 597 (1998) ("it is difficult, if not impossible, to 'unring a bell'") (quoting *United States v. Davis,* 904 F.Supp. 564, 569 (E.D.La.1995)).

The State seemingly argues, Mr. Lee's case is not as egregious as *Beatty*, so this Court should not find error.; however, *Beaty* held "a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict." 423 S.C. at 34, 813 S.E.2d at 506. This Court should reverse the trial court. Twelve years after *Daniels* and six years after *Beatty*, trial courts are still giving this instruction. Unless this Court intervenes and reverses cases because of this improper instruction, there is no deterrent to this practice.

[2] The State's only reference to *Daniels* occurs in the State's listing of Mr. Lee's Questions on Appeal. Brief of Respondent, p. 1.

Question V

Did the trial court err by not providing an instruction pursuant to *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused, when that jury instruction was not required but permissible?

The State overstates the holding in *Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999) by implying *Brightman* held the *King* charge was no longer proper. In reality, although *Brightman* overruled *King*, to the extent *King* mandated the instruction, *Brightman* did not prohibit the instruction. In this case, the error in not giving the *King* charge must be considered in conjunction with the verdict form utilized by the trial judge. Strictly following the "cascading approach" of the verdict form prohibited the jurors from considering the charge as a whole. Absent a *King* charge, the verdict form guided the jurors to a verdict of guilty of ABHAN because the jurors were not allowed to consider resolving any doubt between the greater offenses and the lesser included offenses. This Court should reverse the trial court and order a new trial.

Question VI

Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening instructions and ensured the jurors gave due consideration the lesser included offenses?

The State initially argues Mr. Lee abandoned this argument because "the only legal authority Appellate cited in support of his argument that the verdict form utilized be the trial court in some way prejudiced him is a civil case." Brief of Respondent, p. 30. The State is wrong for two reasons. First, civil precedent is still precedent. Second, the case cited by Mr. Lee quoted two criminal cases—*State v. Covert,* 368 S.C. 188, 214, 628 S.E.2d 482, 496 (Ct.App.2006) and *State v. Myers,* 344 S.C. 532, 536, 544 S.E.2d 851, 853

(Ct.App.2001)—for the proposition, "The prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions." Brief of Appellant, p. 17.

As argued in Mr. Lee's opening brief, the trial judge had two options to cure the defective instruction: (1) the trial court could have provided a *King* charge or (2) the trial could have cured the defect was to eliminate the "cascading" format and provide the jurors with a choice between ABAHN, first-degree assault and battery, second-degree assault and battery, and not guilty, as Mr. requested. This error was magnified by the trial judges opening remarks regarding the jurors' obligation to find the "true facts." This Court should reverse the trial court and order a new trial.

Question VII

Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

The United States government is taking action to reschedule marijuana from a Schedule I drug to a Schedule III drug. https://www.justice.gov/opa/pr/justice-department-submits-proposed-regulation-reschedule-marijuana (last viewed Oct. 21, 2024). *Compare* S.C. Code Ann. § 44-53-190 *with* S.C. Code Ann. § 44-53-230. A Schedule I drug has "[a] high potential for abuse, [n]o accepted medical use in treatment in the United States; and [a] lack of accepted safety for use in treatment under medical supervision." S.C. Code Ann. § 44-53-180. A Schedule III drug has an "accepted medical use in treatment in the United States." S.C. Code Ann. § 44-53-220. As argued in Mr. Lee's opening brief, this nation

trend militates in favor of not using a marijuana conviction to enhance a sentence to life imprisonment without the possibility of parole.

CONCLUSION

For the reasons stated in the Brief of Appellant and this Reply, this Court should reverse the trial court and order a new trial. Alternatively, this Court should vacate Ken Lee's sentence and remand for re-sentencing.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Kendrick Lee

December 27, 2024
Greenwood, South Carolina

RECEIVED
Dec 27 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

Rule 211, SCACR Certification

This Final Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

December 27, 2024
Greenwood, South Carolina

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 1, 2026

Mr. E. Charles Grose, Jr., Esquire
305 Main Street
Greenwood SC 29646

Mr. Brian Hollis Gibbs, Esquire
PO Box 11549
Columbia SC 29211-1549

Re: The State v. Kendrick M. Lee
Appellate Case No. 2023-001843

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
David Matthew Stumbo, Esquire
The Honorable Frank R. Addy, Jr.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Kendrick Montrez Lee, Appellant.

Appellate Case No. 2023-001843

Appeal From Abbeville County
Frank R. Addy, Jr., Circuit Court Judge

Opinion No. 6151
Heard November 6, 2025 – Filed July 1, 2026

REVERSED AND REMANDED

E. Charles Grose, Jr., of Grose Law Firm, of Greenwood, for Appellant.

Attorney General Alan McCrory Wilson and Brian Hollis Gibbs, both of Columbia, and David Matthew Stumbo, of Greenwood, all for Respondent.

VINSON, J.: Kendrick Montrez Lee appeals his conviction for assault and battery of a high and aggravated nature (ABHAN) and sentence of life without parole (LWOP), arguing, among other things, that the trial court erred by failing to determine whether a juror's hearing issues could be accommodated.[1] We reverse and remand.

---

[1] Lee additionally argued the trial court erred by (1) denying his request for a continuance; (2) denying his *Batson v. Kentucky*, 476 U.S. 79 (1986), motion; (3)

FACTS

In 2023, a jury convicted Lee of ABHAN for severely beating his cousin.[2] Prior to trial, Lee made a *Batson* motion based on the State's striking of the sole Black juror, Juror 191, presented from the jury panel. The State informed the trial court it struck Juror 191 due to his prior convictions for simple assault and battery; two instances of disorderly conduct; and criminal domestic violence, third or subsequent offense. All of these convictions were at least twenty years old. Regarding other jurors with criminal records, the State informed the trial court that Juror 188, who was seated and was white, had a public disorderly conduct conviction from 2011. Juror 186, who was struck and was white, had a conviction for a fraudulent check from 1995. Lee argued Juror 191's criminal history was similar to Juror 188, but the State struck Juror 191, who was Black, and not Juror 188, who was white. The State contended that Juror 191's conviction for simple assault and battery was similar to Lee's charge of ABHAN whereas Juror 188's conviction for public disorderly conduct was not. The trial court asked the State to reconsider allowing Juror 191 to sit as the second alternate juror. The State acquiesced. When the jury returned to the courtroom, the trial court informed Juror 191 that he would be an alternate juror. However, Juror 191 had noticeable difficulty hearing the trial court and informed the court he could only hear out of one ear. When asked if he had been able "to hear everything that [had] been going on in the courtroom," Juror 191 said that he could hear only "[s]ome of it." The trial court held an off-the-record bench conference, after which the trial court instructed Juror 191 to rejoin the jury panel. The trial court dismissed the jury panel from the courtroom and 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 did not come to the

---

failing to grant a mistrial based upon the trial court's allegedly improper opening remarks; (4) failing to charge the jury under *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930); (5) providing jurors with a "cascading" verdict form; and (6) failing to quash the State's notice of intent to seek LWOP.

[2] The victim, Tobias Hughey, suffered life-threatening head injuries and a fractured ulna. Hughey's heart stopped twice during the helicopter transport after the attack. Due to his injuries, Hughey's lungs, liver, heart, and kidneys all began to shut down. Hughey survived after a month-long hospital stay, but he suffered permanent brain damage from the attack.

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.

[Lee'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 [J]uror 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 [J]uror 188, that that was because she had that disorderly conduct conviction that the strike against [J]uror 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 [it] 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, [J]uror 191 was - may not be a - may not have been as deaf as a fence post, but he was darn - darn close.

Lee moved to quash the jury and for a continuance, arguing the jury did not represent a fair cross section of the community. The trial court acknowledged it was "always best to have as wide a cross section of the community if at all possible" and stated it would have preferred a better cross section but denied the motion.

The jury found Lee guilty of ABHAN. Although the victim asked for leniency and requested a term of probation for Lee, the trial court sentenced Lee to LWOP under section 17-25-45(B) of the South Carolina Code (2014).[3] This appeal followed.

STANDARD OF REVIEW

In criminal cases, appellate courts 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. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007).

ANALYSIS

---

[3] Section 17-25-45(B), also known as the "Three Strikes Rule" provides that upon conviction for a serious offense, "a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has two or more prior convictions for . . . a serious offense." Lee had two previous convictions for serious offenses: one for trafficking cocaine and one for distribution of marijuana within a half mile of a school or playground. *See* S.C. Code Ann. § 17-25-45(C)(2)(b) (Supp. 2025) (including trafficking controlled substances and distribution of a controlled substance within proximity of a school as serious offenses).

We hold the trial court erred by excusing Juror 191 without making an inquiry into whether the court could accommodate his hearing impairment. The trial court may disqualify a juror for incompetence resulting from a physical infirmity. *See* S.C. Code Ann. § 14-7-1010 (2017) ("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 (2017) ("[N]o person is qualified to serve as a juror in any court in this [s]tate 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."); *State v. Gaskins*, 284 S.C. 105, 113, 326 S.E.2d 132, 138 (1985) ("A juror's competence is within the trial judge's discretion and not reviewable unless wholly unsupported by the evidence." (quoting *State v. Spann*, 279 S.C. 399, 402, 308 S.E.2d 518, 520 (1983))); *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."); *see also State v. Dawkins*, 268 S.C. 110, 111, 232 S.E.2d 228, 228 (1977) (noting the trial court has wide discretion in voir dire examination). However, here, the trial court failed to even inquire about whether Juror 191's hearing impairment could be accommodated. *See Trotman v. State*, 218 A.3d 265, 280 (Md. 2019) ("[T]he Americans with Disabilities Act prohibits a trial court from reaching the blanket conclusion that a certain disability would necessarily preclude jury service at any given trial."); *id.* ("When determining whether it is permissible to excuse for cause a prospective juror on a disability-related ground, a trial court must engage in an individualized, case- and disability-specific inquiry."); *People v. Guay*, 959 N.E.2d 504, 508 (N.Y. 2011) (stating "a court must determine whether the [prospective juror] has the ability to 'understand all of the evidence presented, evaluate that evidence in a rational manner, communicate effectively with the other jurors during deliberations, and comprehend the applicable legal principles, as instructed by the court'" (quoting *People v. Guzman*, 555 N.E.2d 259, 261 (N.Y. 1990))); *id.* ("[A] hearing impairment does not per se preclude an individual from serving as a juror."); *State v. Speer*, 925 N.E.2d 584, 589 (Ohio 2010) ("[A] trial court must determine whether reasonable accommodations will enable an impaired juror to perceive and evaluate all relevant and material evidence, and when no such accommodation exists, the court must excuse the juror for cause."). Further, although the trial court had valid concerns about whether Juror 191 heard all the questions asked during voir dire, it made no effort to voir dire Juror 191 individually. *See* S.C. Code Ann. § 14-7-1020 (2017) (requiring the court conduct a voir dire of any person who is

called as a juror upon request of either party). Because the trial court failed to engage in an inquiry of Juror 191, the record does not indicate whether a reasonable accommodation would have allowed Juror 191 to render efficient service. Thus, the record lacks evidence to support the trial court's disqualification of Juror 191. Therefore, we hold the trial court erred by excusing Juror 191 due to a hearing impairment without inquiring as to whether such impairment could be accommodated.[4]

REVERSED AND REMANDED.

KONDUROS and GEATHERS, JJ., concur.

[4] Because our disposition of this issue is dispositive, we decline to address Lee's remaining issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating appellate courts need not address remaining issues when disposition of prior issue is dispositive).

RECEIVED
Jul 15 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

PETITION FOR REHEARING

On July 1, 2026, this Court held that "the trial court erred by excusing Juror 191 without making an inquiry into whether the trial court could accommodate his hearing impediment." *State v. Lee*, Op. No. 6151 at *5 (S.C. Ct. App. filed July 1, 2026).

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the State requests that this Court rehear this matter because the trial court's determination that Juror 191 was disqualified to serve was based not on Juror 191's hearing difficulties, but rather on Juror 191 belatedly informing the trial court that he only heard *some 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, the trial court here had no obligation to conduct additional voir dire

questioning, which Appellant notably never requested. *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.").

The Court's initial citations to South Carolina authority make it clear 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 authority cited by this Court specifically 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, the South Carolina authority cited by this Court 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, 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. (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 did inquire and determine 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 might not speak up if he did not hear something at trial unless specifically asked. This should have been the end of this Court's analysis as 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 to conclude the potential juror would not be able to discharge their duties exists. *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.").

This Court's reliance on foreign authority to impose a requirement on the trial court to further inquire if Juror 191's hearing loss could be accommodated is also without merit. This court need not look farther 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 of voir dire questioning.

Therefore, the State requests this Court revisit its opinion and hold that the trial court did not abuse its discretion in finding Juror 191 disqualified to serve as the second alternate juror when Juror 191 himself provided the support for the trial court's decision that also served as a reasonable basis to conclude Juror 191 could not faithfully discharge his duties as a juror.

Section 14-7-1020 of the South Carolina Code

The State appreciates this Court's reliance on section 14-7-1020 of the South Carolina Code to support its holding that because either party can request the trial court to conduct further voir dire questioning regarding a potential juror's indifference and biases, 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, the Court's reliance on this statute is misplaced. Appellant 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 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*, this Court's reliance on section 14-7-1020 is inappropriate because Appellant never made such a request on the record.

Prejudice

As Juror 191 would have served at the *second* alternate juror had he been seated and no alternate jurors replaced any of the twelve jurors in this case, Appellant 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 Appellant cannot show he suffered prejudice from Juror 191's disqualification to sit as the second alternate juror, this issue should be affirmed.

[*conclusion and signature block on following page*]

Conclusion

Based on the arguments set forth above as well as those in the Final Brief of Respondent, the State requests that this Court rehear this case, determine that the trial court did not abuse its discretion by finding Juror 191 disqualified to serve on as the second alternate juror, and consider the remaining six issues on appeal.

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

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

Attorneys for Respondent

July 15, 2026
Columbia, South Carolina

RECEIVED
Jul 15 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Petition for Rehearing on E. Charles Grose, Jr., Esq., counsel of record for the Appellant, 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 15th day of July 2026.

Grace Sommer
Legal Assistant

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

RECEIVED
Jul 16 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

CROSS-PETITION FOR REHEARING

On July 1, 2026, this Court reversed Kendrick Lee's conviction and sentence and remanded this case for a new trial. *State v. Lee*, No. 2023-001843, 2026 WL 1884535, (S.C. Ct. App. July 1, 2026). On July 15, 2026, the State petitioned for rehearing.[1] This cross-petition for rehearing follows, and Mr. Lee respectfully petitions this Court to decide all the questions presented on appeal.

Mr. Lee presented seven questions for review:

---

[1] Although a return to a petition for rehearing is not required unless requested by the appellate court, Rule 221(a), SCACR, Mr. Lee cannot help but point out a factual error by the State in its petition for rehearing. The State argues, "As a trial court is only required to conduct an individual voir dire at the request of either party, the trial court here had no obligation to conduct additional voir dire questioning, *which Appellant notably never requested*." State's Petion, pp. 1-2 (citing S.C. Code Ann. § 14-7-1020) (emphasis added). The trial judge addressed Juror 191's service at a sidebar (R. 79) and placed the discussion on the record (R. 82). Later, Mr. Lee elaborated on the sidebar, noted accommodations "include[] asking the juror what circumstances would ensure that they would be able to hear what was going on in the courtroom," and pointed out the trial court "didn't even entertain asking the juror about whether or not he could be accommodated." R. 118-19.

1. Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?

2. Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?

3. Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?

4. Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?

5. Did the trial court err by not providing an instruction pursuant to *State v. King,* 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused, when that jury instruction was not required but permissible?

6. Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening instructions and ensured the jurors gave due consideration the lesser included offenses?

7. Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

This Court's opinion resolved only the third issue, and this Court additionally held, "Because our disposition of this issue is dispositive, we decline to address Lee's remaining issues on appeal." *Lee*, at *3, n. 4. Not addressing all questions presented on appeal is contrary to Rule 220(b), SCACR, which provides:

> In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly

> arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case. This rule does not apply to the following:
>
> > (1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.
> >
> > (2) The Court of Appeals need not address a point which is manifestly without merit.

Rule 220(b), SCACR.

Additionally, not addressing all issues presented in an appeal is contrary to judicial economy and risks unnecessarily extending the appellate review process. *See, e.g., State v. Dent*, 446 S.C. 121, 130, 919 S.E.2d 394, 398 (2025) ("The State and Dent cross-appealed, with the State raising the circumstantial-evidence jury charge ruling and Dent raising his remaining ten issues on appeal as additional sustaining grounds. We granted the State's petition for a writ of certiorari and reversed the court of appeals' decision, remanding the matter to the court of appeals to address Dent's remaining ten issues on appeal."). In the event the State appeals this Court's opinion, the Supreme Court should have the benefit of this Court's consideration and rulings on all questions presented.

The first three questions presented involve structural error in the jury selection, including the judicial system's failure to ensure that a cross-section of the community responded to juror summons and prosecutors' pretectural use of minor criminal records to

exclude minority jurors. Both are capable of reptation, and the bench and bar would benefit from the Court's guidance. Indeed, the failure to ensure jurors respond to juror summons is a customary practice in Abbeville County. The fourth issue continues to reoccur despite the Supreme Court's guidance in *Beaty* and *Daniels*. The fifth and sixth issues present important concerns regarding trial courts' obligations to ensure jurors follow instructions regarding the burden of proof and resolving reasonable doubt in favor of an accused. Although, as noted at oral argument, this Court lacks jurisdiction to decide the seventh issue, a statement to this effect in an opinion would ripen this issue for the Supreme Court.

For the foregoing reasons, this Court should decide all issues raised by Mr. Lee in this appeal.

IT IS SO MOVED.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Kendrick Lee

July 16, 2026
Greenwood, South Carolina

RECEIVED
Jul 16 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

Brian Gibbs, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
bgibbs@scag.gov

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466

July 16, 2026
Greenwood, South Carolina

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 17, 2026

Mr. E. Charles Grose, Jr., Esquire
305 Main Street
Greenwood SC 29646

Mr. Brian Hollis Gibbs, Esquire
PO Box 11549
Columbia SC 29211-1549

Re: The State v. Kendrick M. Lee
Appellate Case No. 2023-001843

Dear Counsel:

We received Petitions for Rehearing on July 15, 2026, and July 16, 2026. The Court requests returns to both Petitions within ten (10) days of the date of this letter.

Very truly yours,

Jasmine D. Smith, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
David Matthew Stumbo, Esquire

RECEIVED
Jul 27 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

KENDRICK LEE'S RETURN TO STATE'S PETITION FOR REHEARING

On July 1, 2026, this Court reversed Kendrick Lee's conviction and sentence and remanded this case for a new trial. *State v. Lee*, No. 2023-001843, 2026 WL 1884535, (S.C. Ct. App. July 1, 2026). On July 15, 2026, the State petitioned for rehearing and Mr. Lee cross-petitioned for rehearing. By letter dated July 17, 2026, this Court requested returns. Mr. Lee's return follows.

Mr. Lee presented seven questions for this Court to review. The first three issues pertained to selections of the jurors:

1. Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?

2. Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?

3. Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?

In reversing the trial court, this Court's opinion resolved only the third issue and held, "[T]he trial court erred by excusing Juror 191 due to a hearing impairment without inquiring as to whether such impairment could be accommodated." *Lee*, at *3. The State's raises three issues in its' petition: (a) misapplication of S.C. Code Ann. § 14-7-1020, (b) improper reliance on caselaw from other jurisdictions, and (c) lack of prejudice. Mr. Lee will respond to each argument.

A. S.C. Code Ann. §§ 14-7-810, 1010 and 1020.

As pointed out in Mr. Lee's brief, section 14-7-1010 requires, "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." Final Brief of Appellant, p. 14 (citing *State v. Wise*, 359 S.C. 14, 22, 596 S.E.2d 475, 479 (2004). A juror is disqualified when "[h]e is unable to read, write, speak, or understand the English language." S.C. Code Ann. § 14-7-810(2). This section places an obligation on the trial judge to make this determination. Here, the trial court did not even inquire into whether Juror 191 could be accommodated, even though the juror stated he could hear out of one ear."[1] As Mr. Lee argued, "[a] failure to exercise discretion amounts to an abuse of that discretion." Final Brief of Appellant, p. 15 (quoting *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015)). Although the State's rehearing petition acknowledges section 14-7-1010, the State does not address the trial judge's abuse of discretion under sections 14-7-810 and 1010.

[1] To State the obvious, Juror 191 would not have made this statement unless he was able to understand the English language.

The State argues, "As a trial court is only required to conduct an individual voir dire at the request of either party, the trial court here had no obligation to conduct additional voir dire questioning, *which Appellant notably never requested*." State's Petion, pp. 1-2 (citing S.C. Code Ann. § 14-7-1020) (emphasis added). This argument misstates the record.[2] The trial judge addressed Juror 191's service at a sidebar (R. 79) and placed the discussion on the record (R. 82). Later, Mr. Lee elaborated on the sidebar, noted accommodations "include[] asking the juror what circumstances would ensure that they would be able to hear what was going on in the courtroom," and pointed out the trial court "didn't even entertain asking the juror about whether or not he could be accommodated." R. 118-19.

B. Authority from Other Jurisdictions.

This State argues:

> This Court's reliance on foreign authority to impose a requirement on the trial court to further inquire if Juror 191's hearing loss could be accommodated is also without merit. This court need not look farther 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 of voir dire questioning.

Petition for Rehearing, p. 4.

[2] The State's rehearing petition is confusing. At one point, the State seems to argue that Mr. Lee never requested any questioning on Juror 191, which is not true. Later the State argues, "Appellant 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 apparent hearing impairment could be accommodated." State's Petition for Rehearing, p. 5. This passage acknowledges Mr. Lee requested the trial judge determine whether Juror 191 could be accommodated and seemingly argues for a hyper-technical application of section 14-7-1020. This Court was correct to consider section 14-7-1020 in determining wheter the trial court abused its discretion.

This State is wrong. The persuasive authorities this Court cited from other jurisdictions are consistent with our state's precedent that "[a] failure to exercise discretion amounts to an abuse of that discretion." *State v. Hawes*, 411 S.C. at 191, 767 S.E.2d at 708.

C. Prejudice.

The first three questions presented in Mr. Lee's appeal involve structural error in the jury selection, including the judicial system's failure to ensure that a cross-section of the community responded to juror summons and prosecutors' pretectural use of minor criminal records to exclude minority jurors. "[A]n error is structural if it is "the type of error which transcends the criminal process." *State v. Rivera*, 402 S.C. 225, 247, 741 S.E.2d 694, 705 (2013) (quoting *Arizona v. Fulminante*.499 U.S. 279, 311 (1991). Structural error is not subject to a harmless error analysis and requires automatic reversal.

CONCLUSION

For the foregoing reasons, this Court should deny the State's petition for rehearing.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Kendrick Lee

July 27, 2026
Greenwood, South Carolina

RECEIVED
Jul 27 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

Brian Gibbs, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
bgibbs@scag.gov

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466

July 27, 2026
Greenwood, South Carolina

RECEIVED
Jul 27 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

RETURN TO APPELLANT'S CROSS-PETITION FOR REHEARING

On July 1, 2026, this Court held that "the trial court erred by excusing Juror 191 without making an inquiry into whether the trial court could accommodate his hearing impediment." *State v. Lee*, Op. No. 6151 at *5 (S.C. Ct. App. filed July 1, 2026). On July 15, 2026, the State filed its Petition for Rehearing pursuant to Rule 221(a) of the South Carolina Appellate Court Rules. The following day, Appellant filed his Cross-Petition for Rehearing. On July 17, 2026, this Court requested returns to both parties' petitions.

In his petition, Appellant asks this Court to address the six issues he raised on appeal that were not addressed in this Court's opinion. (Cross-PFR 2-4). He contended that this Court not addressing these remaining six issues was contrary to Rule 220(b) of the South Carolina Appellate

Court Rules, contrary to judicial economy, and risked unnecessarily extending the appellate process. (Cross-PFR 2-3). Appellant also asserted that some of his issues were capable of repetition, from which the bench and bar could benefit from this Court's guidance. (Cross-PFR 3-4). Appellant noted that this Court was without jurisdiction to rule on his seventh issue, and requested a statement to that effect to ripen that issue for our supreme court. (Cross-PFR 4).

Pursuant to Rule 220(b) of the South Carolina Appellate Court Rules, this Court must address in writing "every point distinctly stated in the case *which is necessary to the decision of the appeal* . . . ." (emphasis added). As this Court noted in its opinion, the current disposition of the third issue on appeal resulted in a reversal and remand of the entire case for a new trial. *See Lee*, Op. No. 6151 at *6 n.4. Therefore, as the opinion currently stands, the disposition of the remaining six issues is not necessary for the outcome this Court reached, which provides Appellant with the relief he sought. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding that appellate courts need not address all issues when the disposition of one issue is dispositive). Further, as this Court's opinion currently stands, discussion of the remaining issues would constitute an advisory opinion on questions for which no meaningful relief can be granted. This Court does not issue advisory opinions. *See Dodge v. Dodge*, 332 S.C. 401, 420, 505 S.E.2d 344, __ (Ct. App. 1998) ("State appellate courts will not issue advisory opinions on questions for which no meaningful relief can be granted."); *see also Gainey v. Gainey*, 279 S.C. 68, 69, 301 S.E.2d 763, 764 (1983) (stating appellate courts "will not issue advisory opinions on questions for which no meaningful relief can be granted").

However, should this Court grant the State's Petition for Rehearing and determine that the trial court did not abuse its discretion by finding Juror 191 disqualified to serve as the second

alternate juror, then the State would join in Appellant's request that this Court consider and rule on the remaining six issues without regard to Appellant's third issue.

Conclusion

Based on the arguments set forth above, the State requests that this Court deny Appellant's Petition for Rehearing. For the reasons included in the State's Final Brief of Respondent and the State's Petition for Rehearing, the State further requests that this Court grant the State's Petition for Rehearing, determine that the trial court did not abuse its discretion by finding Juror 191 disqualified to serve as the second alternate juror, and consider the remaining six issues on appeal.

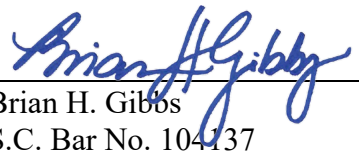
ALAN WILSON
Attorney General

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

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

Attorneys for Respondent

July 27, 2026
Columbia, South Carolina

RECEIVED
Jul 27 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Return to Appellant's Cross-Petition for Rehearing on E. Charles Grose, Jr., Esq., counsel of record for the Appellant, 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 27th day of July 2026.

Grace Sommer
Legal Assistant

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

The South Carolina Court of Appeals

The State, Respondent,

v.

Kendrick Montrez Lee, Appellant.

Appellate Case No. 2023-001843

ORDER

After careful consideration of the petitions for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
E. Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
Brian Hollis Gibbs, Esquire
David Matthew Stumbo, Esquire
The Honorable Frank R. Addy, Jr.

FILED
Aug 18 2026