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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2025-000484

THE STATE,

Respondent,

v.

JAQUAN LEON KING,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Appellant's Issue Statements

- I. "Whether the trial court erred in denying Appellant's request for dismissal of the indictments or, in the alternative, a spoliation instruction where the State failed to preserve material and potentially exculpatory evidence—including body camera footage from numerous officers, surveillance video from a nearby business, and an investigator's handwritten notes from an eyewitness interview—thereby violating Appellant's rights to due process of law." (Int. App. Br. 7).
- II. "Whether the trial court abused its discretion by admitting the photograph of the suspect vehicle . . . where the State failed to lay a proper foundation for its admission by producing neither the device on which it was taken nor any corroborating metadata, and where the image's circulation on social media broke the chain of custody and rendered its origin, timing, and location inherently unreliable." (Int. App. Br. 11).
- III. "Whether the trial court erred in allowing the State to introduce physical evidence recovered from the warrantless search of the Ford Fusion, including DNA, fingerprints, and [Appellant's] South Carolina identification card, where the investigation leading to the vehicle began with a social media photograph whose origin and timing were challenged by Appellant, and where the State relied on consent from the registered owner without a developed record demonstrating that the consent was voluntary and given by a person with authority—and, in light of defense counsel's failure to object when these exhibits were offered at trial, whether this constitutional claim is reviewable on direct appeal." (Int. App. Br. 15).
- IV. "Whether the [State's] rebuttal closing argument—repeatedly asserting that Jack King and Ashley Walcott 'withheld' information, asking 'What is there to hide? Why won't they speak Jaquan's name? Why won't they tell us where he was that night?' and thereby implying that [Appellant] and his family had a duty to admit ownership of the vehicle and provide an alibi—improperly shifted the burden of proof and invited the jury to draw adverse inferences from silence and failure to present evidence in violation of the Fifth and Fourteenth Amendments and South Carolina law, such that [Appellant's] convictions must be reversed and a new trial ordered." (Int. App. Br. 19-20).

STATEMENT OF THE CASE

In January 2022, a Richland County grand jury indicted Appellant for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime. (R. 1019-24). On February 24-28, 2025, Appellant proceeded to a jury trial before the Honorable Heath P. Taylor. (R. 1, 218, 520, 786, 906).

During pretrial motions, Appellant moved to dismiss the indictments against him for failure to preserve evidence and made a motion concerning alleged discovery violations. (R. 183). Appellant requested, in the alternative, that the trial court charge the jury on spoliation depending on how the trial went. (R. 183-84). Appellant noted that the assistant solicitors prosecuting this case were not involved in withholding any evidence. (R. 184). However, he asserted that law enforcement failed to collect and share surveillance camera footage from a restaurant that overlooked the parking lot where the incident occurred after viewing the footage and determining that it contained nothing of relevance. (R. 185). Appellant claimed he did not know which law enforcement officer reviewed the footage. (R. 185).

Appellant also contended that body camera footage from the night of the incident showed an off-duty Charleston County law enforcement officer who was present on the evening of the shooting. (R. 185). He argued that this off-duty officer from a county halfway across the state gave "numerous statements" and spoke "at length" with a Richland County investigator, who took "copious notes." (R. 185). However, Appellant did not receive any of those notes or a recording of the Charleston County officer's conversation with the Richland County investigator. (R. 186).

[continued on following page]

Appellant asserted that another witness to the incident, "Ms. Sarah,"¹ could be seen on a body camera recording talking to another officer. (R. 186). He claimed that that other officer had his body camera on, but Appellant did not have that footage. (R. 186). Appellant contended that he did not have body camera footage from "a lot of officers" who responded to the incident because their body cameras were either not turned on or the footage was not uploaded. (R. 186). Appellant argued that he did not know what "Ms. Sarah" said to officers that night because he did not have the recording, so he would not be able to impeach her at trial with the recording. (R. 186).

Based on these arguments, Appellant asserted he would not be able to properly cross-examine the State's witnesses at trial. (R. 187). He indicated that dismissing the indictments at this point would be a "serious remedy," and instead, asked the trial court to understand his basis for a spoliation charge at the end of trial due to his perceived inability to effectively cross-examine the State's witnesses. (R. 187).

The trial court inquired as to how Appellant knew other officers had functioning body cameras when they responded to the scene. (R. 187). Appellant responded that he did not have any reports that any of the body cameras were not functioning properly that night. (R. 188). Appellant stated that in the footage he received, he observed "a lot of officers who either didn't bother to turn them on or didn't . . . provide any statements to go along with why we don't have those." (R. 188). The trial court and Appellant engaged in a discussion that resulted in both agreeing that this was not a DUI case and the relevant statutes at the time did not require reports of non-functioning body cameras outside of DUI cases. (R. 188-89). Appellant asserted that "we

¹ Appellant indicated that the trial court had heard from "Ms. Sarah" earlier the same day during testimony concerning another pretrial motion and that she took the picture of the shooter's car as it left the parking lot. (R. 186). Based on the witnesses who testified at that hearing, "Ms. Sarah" is likely Kiara Acre, who testified she took the picture of the shooter's car. (R. 116-39).

have a policy for body cams," without citing to or providing any such policy, and then stated that due to that general and undefined policy, "I don't have to sit here and make arguments when I see that they have body cams on, but they're just either not using them or that they . . . weren't working." (R. 189).

The State informed the trial court that it requested all body camera footage from the Richland County Sheriff's Office related to this incident. (R. 190). The State asserted that some footage only contained a few minutes of recording, which could have been due to a technical issue with the cameras. (R. 190). The State indicated that it could not speak to why Appellant believed some body cameras should have been recording but were not or why he believed missing body camera footage existed. (R. 190). The State informed the court that it shared all of the body camera footage it had with Appellant. (R. 190).

Appellant then asked for dismissal of his indictments because he did not have access to the restaurant surveillance video or footage from "the other body cams." (R. 191). Appellant also asked to be allowed to call witnesses on the State's witness list that he had not subpoenaed himself in relation to these videos. (R. 191).

The State asserted that any reason why those videos, if they existed, were not collected, would be an appropriate cross-examination discussion for the relevant witnesses. (R. 191). As to the witnesses, the State indicated that any witnesses Appellant wanted to call needed to be specifically subpoenaed by him. (R. 191-92). Appellant indicated that she would work on those subpoenas. (R. 192). The trial court asked if it needed to rule on anything at this point, and Appellant responded, "No. I think at this point it just it is probably just more education for the Court in case something comes up. And it will like towards the end of the trial with—when we

talk about jury charges." (R. 192). Appellant then moved into another pretrial motion, and the trial court did not rule on this motion. (R. 192-93).

Appellant raised another pretrial motion concerning the suppression of a picture taken by Kiara Acre during the incident on her iPhone. (R. 194). Appellant asked the trial court to suppress this picture because he was not provided with a "phone download," did not have the time the picture was taken, did not have any metadata for the picture, and did not have any information corroborating anything from the picture. (R. 194). Appellant expressed concern that this picture was posted on social media by another witness, who heard from an unidentified third party that the car was in a specific place after the incident. (R. 194). Appellant indicated that the witness was not inclined to provide information about the unidentified third party. (R. 194). Appellant summarized his reasons to keep the picture out as his lack of the metadata for the picture, including the time and place that the picture was taken, which he contended was "incredibly important in the defense of this case." (R. 195).

In response, the trial court stated that a Polaroid from 1975 would not have metadata but would be admissible "as long as there's a witness to say what it is and authenticate it," which would be the same for a digital photo taken presently. (R. 195). Appellant argued, simply, "it's not 1975." (R. 195). The trial court ruled that no authority, including the rules of evidence, required metadata for every photograph the State intended to introduce to be disclosed to the defense. (R. 195). However, the trial court did not rule on the picture's admissibility, preferring to wait until the State offered the picture at trial and only then determine if the State properly authenticated it. (R. 195).

Appellant then moved into his next pretrial motion, which concerned suppression of anything found in the vehicle from the picture. (R. 196). Appellant asserted that the State wanted him to stipulate that DNA found inside the vehicle belonged to him. (R. 196). He stated that

because the car was his family vehicle, his DNA would be found inside the vehicle. (R. 196). His concern stemmed from how law enforcement found the vehicle, which law enforcement found at Appellant's father's house. (R. 196). Appellant claimed law enforcement searched the vehicle without a search warrant by merely claiming they received consent. (R. 196). Therefore, he moved to suppress DNA and fingerprint evidence from the car. (R. 196-97).

The State asserted that how law enforcement discovered the vehicle had no bearing on the legality of the search, and the trial court agreed. (R. 197). The State argued that at the time of the search, Appellant had no standing to object to the search because his then-girlfriend, Ashley Walcott, was the only registered owner of the vehicle. (R. 197). The State indicated it had a signed consent form from Walcott to search the vehicle. (R. 198). Additionally, the State indicated Walcott gave verbal consent on camera. (R. 198). The State contended that while Appellant may have had a subjective expectation of privacy in this vehicle, he did not have an objective one. (R. 197). The State asserted Appellant failed to make even a baseline showing that the search of Walcott's vehicle might have been illegal. (R. 198). Appellant then withdrew his motion to suppress evidence from the vehicle. (R. 199).

At trial, Timothy Riley, a corporal with the Richland County Sheriff's Department, testified that he responded to a 911 call about an incident on August 1, 2021, outside Tsubaki, a restaurant and karaoke bar. (R. 239-40). He stated the call was dispatched around 2 am. (R. 240). When he arrived at the scene, he noticed a male victim and a female victim. (R. 240).

Jacob Cora, one of the victims, testified that he was home for his birthday on the night of the shooting. (R. 313). His mother, Judy Reyes, insisted that they do something to celebrate his birthday. (R. 313). They decided to go to Tsubaki for karaoke and drinks with family. (R. 313). When Tsubaki closed around 2 am, Jacob and his family decided to go to Waffle House for some

late-night food. (R. 313-14). Before the rest of his family left Tsubaki, Jacob and his aunt, Yolanda Cora, went outside to smoke cigarettes. (R. 313). While outside, Jacob talked to his wife on the phone and Yolanda talked to someone they met in Tsubaki that night. (R. 314). Jacob confirmed he was drunk when he left Tsubaki and his mother, Judy Reyes, was his designated driver. (R. 314, 319).

During his phone conversation, Jacob overheard part of Yolanda's conversation where she told a man, "No, thank you." (R. 314). Jacob stated that the man called Yolanda the "B word" and was otherwise being rude to her. (R. 314). Jacob asked the man who he was talking to, and the man told him to mind his business. (R. 316). Jacob responded that what the man said was his business because the man had been rude to his aunt. (R. 316). Jacob and the man "met up" and exchanged words. (R. 316-17). While the two were arguing, the rest of Jacob's family came outside. (R. 317). Jacob stated that the next thing he remembered was hearing gunshots. (R. 317).

Jacob could not recall if the man his aunt was talking to was the same man who shot him. (R. 316). He later testified that the man his aunt was talking to and the man who shot him were not the same man. (R. 348-49). Jacob could not remember if anyone else came over to join the conversation and argument. (R. 317). However, after reviewing his written statement made shortly after the incident, he confirmed his mother, Judy, got between him and the man before the shooting. (R. 344). He recalled hearing two shots and hearing Yolanda say that she had been shot. (R. 317). Jacob only noticed he had been shot moments after noticing Yolanda had been shot. (R. 317). He saw blood spilling from his leg before going in and out of consciousness. (R. 317). Jacob testified he had been shot in both his leg and his neck. (R. 318). After being shot, he told his family to tell his sons that he loved them because he thought he was going to die. (R. 320).

Yolanda Cora testified that on the night of the incident, she went with her sister, Judy Reyes, to Tsubaki to celebrate Jacob's birthday. (R. 353-54). After drinking, dancing, and singing, she and her family decided to go to Waffle House. (R. 354). Yolanda and her family were the last group to leave Tsubaki when it closed. (R. 356). After leaving Tsubaki, Jacob asked Yolanda for a cigarette. (R. 357). She did not have any with her, so they walked toward the car. (R. 357-58). As they walked, "someone said something" to her, and she remembered saying, "thank you, but no thank you. I have a boyfriend." (R. 358). The next thing she remembered was trying to "get in the way of the argument" between Jacob and another man. (R. 358). She told Jacob not to worry about it and asked him to leave with her. (R. 358). Then she felt a shot hit her. (R. 358).

Yolanda testified that she was shot in the abdomen near her diaphragm, which resulted in "a lot of medical issues" for her. (R. 358-60). During her recovery in the hospital, she discovered she had been pregnant but lost the pregnancy due to the shooting. (R. 360). Due to injuries she sustained, she permanently lost hearing in one ear, is partly deaf in the other, suffers from constant body pain, and has PTSD. (R. 360).

Alexis Green testified that she was present at Tsubaki by herself on the night of the incident and that she had been drinking. (R. 365-68). She was outside when Yolanda and Jacob left Tsubaki. (R. 369-370). She was smoking a cigarette near the restaurant when she noticed an altercation break out in the parking lot near her car. (R. 370, 373-74). Green heard yelling and a warning shot. (R. 371). Green then saw both Jacob and Yolanda get shot. (R. 374). She testified that the shooter came from a Ford Fusion, that the shooter drove the Ford Fusion, and that the Ford Fusion left "kind of like speeding off." (R. 374).

Kiara Acre testified that she is Yolanda's daughter. (R. 405). She stated that she left Tsubaki with Jacob and Yolanda while the rest of the family trailed behind. (R. 406-07). As they

walked toward the car, a man made a flirtatious remark to Yolanda. (R. 407). After Yolanda denied the advances, the man called her "a 'B' word," which Yolanda ignored. (R. 407). A second man spoke to the first man, also using the same insult to refer to Yolanda. (R. 407-08). Kiara stated that Jacob then went to "defend" Yolanda. (R. 408). She stated there was no physical fight, just a verbal one. (R. 411). She tried to separate Jacob from the other men. (R. 413-14). During the argument, Yolanda and Judy attempted to calm the situation by getting between Jacob and the second man, who Kiara identified as the shooter. (R. 409, 414). Kiara heard shots but did not initially realize anyone had been shot because she was behind Yolanda. (R. 418-19). She then noticed that both Yolanda and Jacob had been shot. (R. 419).

Kiara stated that the shooter ran to his car and that she saw him drive off. (R. 420). As the shooter's car left, Kiara took a picture of the license plate, which was introduced as State's Exhibit 16 over Appellant's objection. (R. 420). Kiara stated that the picture was still on her phone at the time of trial. (R. 421). Appellant informed the trial court that it had a matter of law to discuss outside the presence of the jury. (R. 421).

After the jury left the room, Appellant asserted "we have found the metadata that I have been asking for, for four years." (R. 421). He asserted that he filed motions to compel asking for this metadata evidence and never received it, but the State was now trying to introduce it on the second day of trial. (R. 422). The State responded that one of the assistant solicitors on this case met with Kiara for the first time shortly before she testified, which is when Kiara indicated that she still had the digital version of the photograph on her phone. (R. 422). Kiara took a screenshot of the photograph, which showed the time and location when the photograph was taken. (R. 423). The State informed the trial court that law enforcement did not have access to this information until shortly before the witness testified. (R. 423). Appellant reasserted that he should have had

this information years prior to trial. (R. 423). The State reasserted that it did not have this information until that morning. (R. 423). The trial court sustained Appellant's objection to the admission of the screenshot of the photograph that contained the time and location information but indicated it would allow Kiara to testify as to that information. (R. 424).

After the jury returned, Kiara testified that she took the picture of the shooter's car and license plate on August 1, 2021, at 2:19 am outside of Inakaya Japanese Restaurant, which is next door to Tsubaki. (R. 429). She testified she sent the picture to law enforcement "from the very beginning." (R. 449). Kiara did not send the time and location information because no one asked for it. (R. 450).

Judy Reyes, who is Yolanda's sister and Jacob's mother, testified that she went to Tsubaki to celebrate Jacob's birthday. (R. 461-63). When she left Tsubaki as it closed, she heard Jacob arguing with someone in the parking lot and ran toward him. (R. 468). She got between Jacob and the man with whom he was arguing, telling the man that they were leaving and did not want any issues. (R. 469). Judy stated that Jacob was drunk and the other man was "really aggressive." (R. 470). She did not want this situation to get out of control. (R. 470). Judy stated that the man arguing with Jacob pulled out a gun and that she saw him shoot Yolanda. (R. 472-73). Judy stated that Kiara showed her the photograph of the shooter's car and license plate (State's Ex. 16) the day after the shooting. (R. 476). Judy stated that she posted the photograph to Facebook and that someone sent her a message telling her where the car was located, which she passed on to the Richland County Sheriff's Department. (R. 507). Judy would not say who sent the message. (R. 508). She was confident in her ability to identify the man who shot her son and sister. (R. 471, 480). Judy identified the shooter as Appellant. (R. 480-83).

Devin Pate testified that he observed the incident. (R. 524). Like previous witnesses, he observed one of Appellant's friends attempting to flirt with Yolanda before using a slur toward her. (R. 527-28). He saw Jacob arguing with that man, which he stated did not happen until after Appellant retrieved his gun. (R. 529-30). Pate stated Yolanda attempted to deescalate the situation before Appellant put his gun to her chest, shot her, and then reach over her to shoot Jacob. (R. 535). Pate stated Appellant quickly went back to his car, which he described as a grey Ford sedan. (R. 536-38). Pate memorized the license plate number, which was the same as the license plate number in Kiara's photograph, State's Exhibit 16. (R. 538-39). The State played a recording of his 911 call where he repeatedly told the operator the same license plate number. (R. 541; State's Ex. 4). Pate confirmed he also gave the license plate number to the deputies that responded to the scene.

Jack King, Appellant's father, testified that he recognized the car in State's Exhibit 16 as a car belonging to Appellant and Ashley Walcott, Appellant's then-girlfriend and now-wife. (R. 590-93). Jack stated that law enforcement came to his home the evening after the incident and asked him about the car in State's Exhibit 16, which was parked in his driveway when law enforcement arrived. (R. 593, 599). Jack clarified that he initially told law enforcement that the car belonged to Appellant before also saying that it belonged to Ashley. (R. 595-96). However, Jack confirmed that the car was registered only to Ashley. (R. 596). Jack confirmed that he told law enforcement that he did not know who drove the car on the night of the incident. (R. 599). He confirmed law enforcement told him the car had been involved in a shooting, which he denied knowing anything about. (R. 602). Jack told law enforcement that he did not know Appellant's present location. (R. 605).

Tucker Kovalchek, a senior crime scene analyst with Richland County Sheriff's Department, testified that he processed Ashley's grey Ford Fusion with a license plate matching State's Exhibit 16. (R. 608, State's Ex. 16). He lifted a fingerprint off the vehicle, which was admitted without objection. (R. 609-10). Kovalchek also swabbed for DNA in the vehicle and those swabs were admitted without objection. (R. 610-12). Kovalchek found Appellant's state issued identification card in the vehicle, pictures of which were admitted without objection. (R. 612-14; State's Ex. 21 & 22).

John Barron, a DNA analyst at Richland County Sheriff's Department and an expert in DNA analysis, testified that he conducted a DNA analysis of swabs from the grey Ford Fusion from the driver's door which matched a buccal swab from Appellant. (R. 636, 640).

Michael Fitzgerald, a trauma surgeon at Prisma Health Richland and an expert in trauma surgery and trauma medicine, testified that he treated both Jacob and Yolanda. (R. 657-59). He stated Jacob had two gunshot wounds, one to his right thigh and one to the left of his neck. (R. 659-660). He stated that the gunshot wound to the neck missed vital structures and the gunshot wound to Jacob's leg was less than two centimeters from the femoral artery. (R. 660-62). The bullet in Jacob's leg was not recovered. (R. 663). Fitzgerald stated Yolanda had a gunshot wound that went through her right breast and exited her right back. (R. 663). When Yolanda arrived at the hospital, she was in hemorrhagic shock. (R. 663). Yolanda's gunshot wound included damage to her diaphragm, liver, and lung. (R. 664). According to Fitzgerald, Jacob and Yolanda's injuries could have resulted in their deaths. (R. 670).

Clay Short, an investigator with Richland County Sheriff's Department and the lead investigator for this case, testified that multiple witnesses described the car the shooter left in after the shooting, with one witness taking a picture of the car. (R. 672-77). Another witness memorized

the license plate number of the getaway car. (R. 678). Short stated that the evening after the incident, one of the witnesses called law enforcement and provided information about the location of the getaway vehicle. (R. 681). Short testified that law enforcement went to the location, which was Jack King's residence. (R. 683). Jack King told law enforcement that the car belonged to Ashley Walcott, his daughter-in-law, and that his son, Appellant, also drove it. (R. 683). Short testified that Ashley was present at the residence when law enforcement arrived and gave consent to search the car. (R. 683-84, 755-56). According to Short, the car was taken into police custody and towed. (R. 684). A search warrant was also obtained for it. (R. 684). On August 2, the day after the shooting, law enforcement went to Ashley's residence; however, Ashley was uncooperative and had not filed a report about her car being stolen. (R. 686).

Short testified that someone from investigations went to the sushi restaurant next to Tsubaki to see if that restaurant's surveillance system picked up anything on the night of the shooting. (R. 736-37). However, to his knowledge, no video recording of the shooting existed. (R. 740). Short confirmed he did not follow up on an investigator's report that an off-duty sheriff's deputy from a different county halfway across the state was a patron of Tsubaki on the night of the incident, but Short did note that the investigator's report stated that off-duty out-of-town deputy did not get a great look at the shooter. (R. 754).

After the State rested, Appellant renewed all his pretrial motions, which the trial court denied. (R. 782-84).

Demetrius Potts, a deputy with the Charleston County Sheriff's Office, testified that he was off duty and in the parking lot during the shooting. (R. 809-10). He did not see the shooting. (R. 814). He confirmed he discussed his involvement with on duty law enforcement. (R. 814).

Taishi Sato, a co-owner of Tsubaki and a manager at Inakaya, testified that Inakaya had a surveillance camera that faced out into the parking lot. (R. 826-27). He stated that the camera "really only shows the—the walk—the sidewalk" and not a lot but some of the parking lot. (R. 828). However, Sato testified that the outside surveillance cameras from both Tsubaki and Inakaya had water damage and were not operational at the time of the shooting. (R. 831). He confirmed that law enforcement stopped by to see the footage but because the cameras were not operational, there was no footage. (R. 831).

After the defense rested, Appellant renewed his pretrial motions, which were again denied "based on the same reasoning as before." (R. 890).

During the State's closing argument, the State noted that Ashley Walcott was uncooperative in law enforcement's investigation, stating:

Investigators asked Ashley Walcott questions about the car and who had been driving the car. She was uncooperative. Where was the car last night? Who was driving the car? She was uncooperative. Ask yourself why wouldn't she want to answer those questions? Where was [Appellant]? He wouldn't be found until 23 days later—where was he?

(R. 924). Appellant did not object to this argument. In his closing argument, Appellant argued that he never contested that the grey Ford Fusion was his car but emphasized that the State spent an "entire afternoon" presenting evidence that this was Appellant's car. (R. 947-48). In the State's reply, the State noted that Appellant argued that the grey Ford Fusion was his car and that Appellant asked why the State was so determined to prove it was his car. (R. 975). The State emphasized its burden of proof before asking, "Second, why wouldn't he ever admit? Why wouldn't his family ever admit that was his car?" (R. 975). Immediately after this question was asked, Appellant asked to approach the bench to discuss a matter of law. (R. 975). The contents of this sidebar conversation were not placed on the record during or after the conversation. (R. 975).

After the sidebar conversation, the State continued its argument, asserting that it had to prove that the grey Ford Fusion was Appellant's car because when law enforcement found the car at Jack King's residence, Jack would not explain who drove the car. (R. 975-76). The State argued that Jack initially said Appellant drove it before changing his answer to Ashley. (R. 976). The State then asked why Ashley did not say who the car belonged to, why she did not say who was driving it on the night of the incident, and why she would not say where Appellant was. (R. 976). The State then reemphasized its burden of proof. (R. 976).

The jury found Appellant guilty of both counts of attempted murder and of possession of a weapon during the commission of a violent crime. (R. 1002-03). The trial court sentenced Appellant to thirty years' imprisonment for each count of attempted murder to run concurrently. (R. 1016-17). The trial court also sentenced Appellant to a consecutive five years' imprisonment for the possession of a weapon conviction. (R. 1017).

This appeal followed.

STANDARD OF REVIEW

Generally

"In criminal cases, [an appellate 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. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006). "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. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011).

As to the admission or exclusion of evidence

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001).

As to the State's closing argument

"The trial court has broad discretion when dealing with the propriety of the solicitor's argument, including the question of whether to grant a defendant's mistrial motion." *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). "The trial court's discretion will not be overturned absent a showing of an abuse of discretion amounting to an error of law that prejudices the defendant." *Id.* "On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record." *Id.* at 324, 468 S.E.2d at 624-25. "The appellant has the burden of proving she did not receive a fair trial because of the alleged improper argument." *Id.* at 324, 468 S.E.2d at 625.

ARGUMENT

- I. **Due to the lack of evidence of bad faith on the part of the State in the alleged destruction evidence and the minimal importance of the alleged missing evidence in light of the availability of evidence of comparable value, the trial court did not err in denying Appellant's motion to dismiss.**

Appellant argues the trial court erred in denying his motion to dismiss because he was not provided with (1) surveillance video from Inakaya Restaurant; (2) an investigator's notes from a conversation with an off-duty, out-of-town investigator; and (3) footage from body worn cameras that he asserts should exist based on his viewing of footage from body worn cameras that the State provided to him. (Int. App. Br. 7-8).

Pursuant to the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comply with prevailing notions of fundamental fairness. *California v. Trombetta*, 467 U.S. 479, 485 (1984). This standard of fairness requires "that criminal defendants be afforded a meaningful opportunity to present a complete defense." *Id.* "The State does not, however, have an absolute duty to preserve potentially useful evidence that might exonerate a defendant." *State v. Hutton*, 358 S.C. 622, 631, 595 S.E.2d 876, 881 (Ct. App. 2004). "Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in suspect's defense." *Trombetta*, 467 U.S. at 488.

To establish a due process violation where the State failed to preserve evidence, a defendant must demonstrate "(1) that the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means." *State v. Cheeseboro*, 346 S.C. 526, 538-39, 522 S.E.2d 300, 307 (2001); *see also Arizona v. Youngblood*, 488 U.S. 51, 56-57, (1988) (discussing what a defendant must show to establish a due process violation where the government failed to preserve evidence).

A. Preservation

Initially, this issue is not preserved for appellate review because the trial court did not rule on it. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007) ("The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002))). Appellant specifically told the trial court that it did not need to rule on this motion because the motion was "more education[al] for the Court in case something comes up." (R. 192). The trial court accepted Appellant's request and did not rule on the motion. (R. 192). Therefore, because the trial court did not rule on this motion at Appellant's request, it is not preserved for appellate review. To the extent this issue is preserved for appellate review, the merits are discussed below.

B. Restaurant Surveillance Videos

Appellant cannot point to any evidence in the record suggesting that the State destroyed surveillance videos from Tsubaki or Inakaya. While Appellant repeatedly asserted that the State destroyed these alleged videos despite the alleged videos never being in the State's possession, Appellant's own witness, Taishi Sato, testified that the surveillance cameras that were in place at the time of the shooting were waterlogged and did not work. (R. 831). Therefore, the waterlogged surveillance cameras did not produce any footage or other meaningful data that could have been destroyed by the State. (R. 831). Thus, the State did not destroy any potential surveillance camera recordings—in bad faith or otherwise—because those recordings, by Appellant's own witness's admission, did not exist.

Moreover, even if the cameras produced nothing more than a recording of a blank screen given their non-operational status, any potential blank screen recording did not have any exculpatory value because it would not provide any evidence of the incident. Therefore, Appellant has failed to carry his burden of establishing a due process violation regarding the alleged destruction of blank screen surveillance videos that were not and never were in the State's possession.

C. Notes about Off-duty, Out-of-town Investigator

Appellant cannot point to any evidence that any notes taken by Richland County Sheriff's Deputies when talking to Charleston County Sheriff's Deputy Demetrius Potts, who was off duty during the incident, were destroyed in bad faith. Investigator Clay Short stated that he received a report from one of his investigators that concerned that investigator's conversation with Potts, but Short did not follow up with that investigator. Therefore, at best, the record indicates only that investigator's notes were reduced to his report. The record does not indicate that the notes were destroyed in an effort to suppress exculpatory evidence or with any other bad faith motive.

Moreover, nothing in the record indicates that the alleged notes had an exculpatory value apparent before the alleged notes were allegedly destroyed. However, even if these notes did have an exculpatory value apparent before they were destroyed, Appellant could have obtained any information contained within those notes by calling or cross-examining Potts and the relevant Richland County Sheriff's deputy about the contents of those notes. In fact, Appellant did call Potts to testify but mysteriously did not ask him about any notes taken when he talked to Richland County Sheriff's deputies. (R. 809-19). Moreover, Short testified that the investigator's report stated that Potts was off-duty, out-of-town, and did not get a good look at the shooter. (R. 754).

Therefore, the notes that this report was based on likely did not have any exculpatory value apparent before those notes were allegedly destroyed.

Therefore, Appellant has failed to carry his burden of establishing a due process violation regarding the alleged destruction of a Richland County Sheriff's Deputy's notes concerning his conversation with an off-duty Charleston County Sheriff's Deputy.

D. Alleged Additional Body Camera Recordings

Much like the surveillance videos, Appellant cannot point to any evidence in the record that the State destroyed body camera recordings that he believes existed at some point. During the pretrial hearing, Appellant stated that the assistant solicitor was not involved in withholding any evidence. (R. 184). Appellant also argued that body camera footage that the State produced indicated that there were officers on scene after the shooting that had body cameras that were either not turned on or the footage from those cameras was not properly uploaded. (R. 186). He later clarified that the existing body camera footage showed that "a lot of officers . . . either did not bother to turn [their body cameras] on or didn't . . . provide them, . . . [and] didn't provide any statements to go along with why we don't have those." (R. 188). The State responded that it requested all body camera footage from the night of the incident and provided it to Appellant. (R. 190).

Appellant cannot show that the State destroyed any body camera footage, much less that it did so in bad faith. Appellant cannot point to any testimony from any law enforcement officer that tends to indicate an intentional deletion or destruction of body camera footage. Appellant similarly cannot point to any testimony or other evidence that conclusively demonstrates the body camera footage he seeks existed at all. The State requested and provided all body camera footage that was recorded on the night of the incident. (R. 190). Appellant agreed that law enforcement did not

have a statutory requirement to report non-operational or otherwise non-working body cameras outside of a DUI setting, which this was not. (R. 189). Therefore, the non-existence of body camera footage about which Appellant speculates is not an indication that the State destroyed evidence, much less that the State destroyed evidence in bad faith.

As to the second prong, there is nothing in the record that indicates that the evidence possessed an exculpatory value that was apparent before the alleged body camera recordings were allegedly destroyed. *See generally Hutton*, 358 S.C. at 632, 595 S.E.2d at 882 ("Exculpatory evidence is evidence which creates a reasonable doubt about the defendant's guilt."). The only indication in the record as to these alleged recordings is Appellant's argument that in some of the body camera recordings produced by the State, he could see officers with body cameras that may have been recording but he did not have those alleged recordings. (R. 186-90). Again, there is no evidence that these alleged recordings actually existed because the State produced all body camera recordings that were recorded on the night of the incident. (R. 190). Moreover, Appellant could have obtained other evidence of comparable value by subpoenaing and examining any of the officers and witnesses seen in the body camera footage the State produced and by cross-examining any of those officers and witnesses that the State called during trial. Indeed, Appellant did thoroughly cross-examine all the State's witnesses, including law enforcement, and specifically called Demetrius Potts, the off-duty and out-of-town Charleston County Sheriff's deputy.

Therefore, Appellant has failed to carry his burden of establishing a due process violation regarding the alleged destruction of body camera footage that he also failed to establish existed.

E. Requested Spoliation Charge

To the extent Appellant argues that the trial court erred by declining to give a spoliation charge, this issue is abandoned on appeal because Appellant raised this argument without any

supporting legal authority. *See State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) ("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."); *see also State v. Jones*, 344 S.C. 48, 58-59, 543 S.E.2d 541, 546 (2001) (stating an argument is deemed abandoned on appeal when conclusory and without supporting authority).

Here, Appellant referenced a three-factor test without citing any legal authority to support that test. (Int. App. Br. 9). The only legal authority cited in support of Appellant's spoliation issue is Rule 103(a) of the South Carolina Rules of Evidence, which discusses error preservation rather than spoliation charges and therefore is not in support of Appellant's argument. Thus, this argument is abandoned on appeal.

Should this Court determine that Appellant's argument concerning spoliation is not abandoned on appeal, the trial court did not abuse its discretion in declining to charge the jury on the spoliation of evidence because there are no South Carolina appellate decisions addressing whether such a charge is a correct statement of law in a criminal case. *See State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) ("An appellate court will not reverse the trial [court]'s decision regarding a jury charge absent an abuse of discretion."); *State v. Burkhardt*, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002) ("In general, the trial [court] is required to charge only the current and correct law of South Carolina."); *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003) ("In reviewing jury charges for error, [appellate courts] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial."); *State v. McBride*, 416 S.C. 379, 389, 786 S.E.2d 435, 440 (Ct. App. 2016) ("Adverse inference charges are rarely permitted in criminal cases."); *State v. Reaves*, 414 S.C. 118, 128 n.5, 777 S.E.2d 213, 218 n.5 (2015) ("[A]n adverse inference charge based on missing evidence, sometimes referred to as a

spoliation of evidence charge, has been limited to civil cases in South Carolina."); *State v. Breeze*, 379 S.C. 538, 548, 665 S.E.2d 247, 252 (Ct. App. 2008) ("To warrant reversal, a trial [court's] refusal to give a requested charge must be both erroneous and prejudicial.").

Moreover, even assuming a spoliation charge had somehow been factually warranted, such an instruction *still* would not have been proper because it would have constituted an impermissible and unconstitutional comment on the facts. *See* S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."); *Reaves*, 414 S.C. at 128 n.5, 777 S.E.2d at 218 n.5 ("[A]n adverse inference charge based on missing evidence, sometimes referred to as a spoliation of evidence charge, has been limited to civil cases in South Carolina."); *State v. McBride*, 416 S.C. 379, 389, 786 S.E.2d 435, 440 (Ct. App. 2016) ("Adverse inference charges are rarely permitted in criminal cases."); *cf. State v. Batson*, 261 S.C. 128, 138, 198 S.E.2d 517, 522 (1973) ("[W]e entertain grave doubt as to the propriety, in a criminal case, of the rule of an adverse inference from the failure to produce a material witness. Certainly, a charge of this proposition to a jury on behalf of either the State or the defense is not warranted except under most unusual circumstances").

Demonstrating that fact, a spoliation instruction advising the jury of an adverse inference that could potentially be drawn from the evidence would unmistakably have been a charge on the facts. *See generally Harris v. State*, 182 A.3d 821, 842 (Md. 2018) (explaining that jury instructions concerning inferences to be drawn from evidence or a lack thereof constitute instructions as to facts and factual inferences which are not normally required in criminal trials and such instructions do not have to be given by a trial court even when requested and supported by the evidence). Therefore, if this issue is both preserved and not abandoned on appeal, then the trial court did not abuse its discretion in declining to give a spoliation charge.

II. Given that the standard for authentication is not high, the trial court properly exercised its discretion by allowing the admission of Kiara's photograph after the State laid a proper foundation for its admission through Kiara's testimony from which a reasonable juror could find the photograph is what the State claimed it to be.

A. Generally

"[E]vidence must be authenticated or identified in order to be admissible." *State v. Brown*, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018). "The authentication standard is not high, and a party need not rule out any possibility the evidence is not authentic." *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (citation omitted), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020). Rather, the authentication requirement is satisfied by "evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), SCRE. "The trial judge acts as the authentication gatekeeper, and a party may open the gate by laying a foundation from which a reasonable juror could find the evidence is what the party claims." *Green*, 427 S.C. at 230, 830 S.E.2d at 714. "Lawyers can always argue case-specific facts . . . and attempt to convince the jury the writing is not genuine." *Id.*

The trial court's responsibility is to decide whether any reasonable jury could find that the evidence in question is authentic. *Id.* Thus, the State need only make "a prima facie showing that the 'true author' is who the proponent claims it to be." *Id.* (quoting *United States v. Davis*, 918 F.3d 397, 402 (4th Cir. 2019)). "Once the trial court determines the prima facie showing has been met, the evidence is admitted, and the jury decides whether to accept the evidence as genuine and, if so, what weight it carries." *Green*, 427 S.C. at 230, 830 S.E.2d at 714.

Here, the State laid a proper foundation for the admission of a photograph taken by Kiara Acre of a grey vehicle that included the vehicle's license plate through Kiara's testimony that the photograph was a picture she took on her iPhone before the shooter left the parking lot outside of Tsubaki. (R. 420; State's Ex. 16). *See* Rule 901(b)(1), SCRE (providing, as an example of

"authentication or identification conforming with the requirements of this rule," that "[t]estimony that a matter is what it is claimed to be" satisfies the authentication requirement). Kiara also testified as to the time, date, and place the photograph was taken. (R. 429). Therefore, a reasonable juror could determine that State's Exhibit 16 was what the State claimed it to be. Thus, the State met the low bar of authenticating the photograph, and the trial court did not abuse its discretion by allowing the State to enter the photograph into evidence.

Further, Appellant stated in his brief that "[a] photograph may ordinarily be authenticated by a witness with personal knowledge that it is a fair and accurate representation of what it purports to depict." (Int. App. Br. 12). Therefore, Appellant acknowledges that Kiara's testimony is generally sufficient to authenticate a photograph that she took.

B. Abandonment

To the extent Appellant asserts that the State needed anything further than Kiara's testimony to properly authenticate the photograph, any such argument is abandoned on appeal because it is conclusory and without supporting authority. *See Lindsey*, 394 S.C. at 363, 714 S.E.2d at 558 ("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."); *see also Jones*, 344 S.C. at 58-59, 543 S.E.2d at 546 (stating an argument is deemed abandoned on appeal when conclusory and without supporting authority).

III. As Appellant withdrew his pretrial motion to suppress evidence found in his car before the trial court ruled on that motion and did not object during trial when the State moved to admit this evidence, the issue of whether the trial court abused its discretion in allowing the State to introduce this evidence is not preserved for appellate review.

A. Preservation

Four basic requirements exist to preserve issues at trial for review on appeal. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007). "The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3)

raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *Id.* at 302, 641 S.E.2d at 907 (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002)).

The first step an issue preservation analysis is to determine whether an appellant raised an issue to the trial court as well as determine if the trial court actually ruled on it. *Id.* Constitutional arguments are no exception to this rule and are deemed waived on appeal if an appellant does not raise them to the trial court. *State v. Varvil*, 338 S.C. 335, 339, 526 S.E.2d 248, 251 (Ct. App. 2000). If the trial court had the opportunity to rule on an issue—and importantly, actually does rule on it—only then it is not "incumbent upon . . . counsel to harass the judge by parading the issue before him again." *State v. McDaniel*, 320 S.C. 33, 37, 462 S.E.2d 882, 884 (Ct. App. 1995) (quoting *Dunn v. Coca-Cola Bottling Co.*, 311 S.C. 43, 46, 426 S.E.2d 756, 758 (1993)); see generally *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to *and ruled upon* by the trial judge to be preserved for appellate review." (emphasis added)).

Here, Appellant raised the issue by moving to suppress all evidence found inside Appellant's car. (R. 196-97). However, after the State argued against the motion and before the trial court ruled on it, Appellant withdrew his motion to suppress. (R. 199). Therefore, while Appellant did, without question, raise this issue to the trial court during pretrial motions, the trial court did not rule on it because Appellant withdrew his motion to suppress. Thus, this issue is not preserved for appellate review.

To the extent Appellant argues that the trial court abused its discretion by allowing the State to introduce evidence from Appellant's car into the record, this argument is not preserved because

Appellant's counsel did not object to any of it when the State introduced it and moved it into evidence. Therefore, it was not raised to the trial court, much less ruled on by the trial court.

B. Abandonment

If this Court determines that this issue is preserved for appellate review, Appellant has abandoned it on appeal. *See Lindsey*, 394 S.C. at 363, 714 S.E.2d at 558 ("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."); *see also Jones*, 344 S.C. at 58-59, 543 S.E.2d at 546 (stating an argument is deemed abandoned on appeal when conclusory and without supporting authority).

In addition to being conclusory, Appellant's argument is supported by only two legal citations, neither of which actually support his argument. (Int. App. Br. 15-19). Appellant first cites to Rule 103(a) of the South Carolina Rules of Evidence, which concerns the effect of erroneous rulings admitting or excluding evidence and is cited as a standard of review. (Int. App. Br. 15). Appellant later cites generally to the Fourth Amendment's protection from unreasonable search and seizure. (Int. App. Br. 16). However, Appellant failed to cite any authority that specifically supports his contention that the trial court abused its discretion in allowing the admission of evidence discovered in Appellant's vehicle in his otherwise conclusory argument. Therefore, this issue is abandoned on appeal and should not be considered by this Court if this Court first determines the issue is preserved.

[continued on following page]

IV. Appellant's issue concerning the State's closing argument in reply is not properly preserved for appellate review because Appellant failed to place on the record the contents of a sidebar conversation that occurred during the State's closing argument in reply. The contents of this sidebar conversation are not apparent from the discussion, or lack thereof, contained in the record. Moreover, the State's argument was proper and did not constitute extraordinary circumstances that might allow this Court to circumvent longstanding preservation law.

A. General Preservation

"An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review." *York v. Conway Ford, Inc.*, 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997); *see also State v. Hamilton*, 344 S.C. 344, 360-61, 543 S.E.2d 586, 595 (Ct. App. 2001) (utilizing *York* in a preservation question in a criminal case), *overruled on other ground by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

Here, Appellant interrupted the State's closing argument in reply by stating that he had a matter of law and asked to approach the bench. (R. 975). The record indicates that a sidebar conversation was held between counsel for the State and Appellant, which was outside the hearing of the court reporter. (R. 975). At no point during or after the hearing did the court or either party place the contents of this sidebar hearing on the record. Therefore, consideration of this issue on appeal is procedurally barred. *See York*, 325 S.C. at 173, 480 S.E.2d at 728 (finding an issue procedurally barred where the appellant did not place the contents of a motion made in chambers on the record).

B. Ground for Objection Not Apparent from Context of Discussion in the Record

To the extent that Appellant asserts this issue is preserved for appellate review despite his failure to raise the issue with specificity and obtain a ruling on the record because the ground for his objection was apparent from the context of the discussion contained in the record, this argument is without merit. *See State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760 (1997) (stating that a general objection which does not specify particular ground on which objection is based is insufficient to

preserve question for review); *see also State v. New*, 388 S.C. 313, 318, 526 S.E.2d 237, 239 (Ct. App. 1999) ("Rule 103(a)(1), SCRE, however, only requires specificity where the ground for the objection is not apparent from the context *of the discussion* contained in the record" (emphasis added)).

Here, any discussion of why Appellant indicated he needed to discuss a matter of law with the trial court and opposing counsel was contained entirely outside of the record. (R. 975-76). Unlike in *Hamilton*, where defense counsel was able to (1) explain the bases of other objections made during the State's closing argument and relate those other objections to the one without specific discussion on the record, (2) move for curative instructions and a mistrial based on the objections, and (3) place the contents of the off-the-record bench conferences on the record by the acquiescence of the trial court and opposing counsel, Appellant did not provide any insight as to what his matter of law concerned. *Hamilton*, 344 S.C. at 360-61, 543 S.E.2d at 595. Therefore, any argument as to what this sidebar conference concerned is unbased speculation and wholly insufficient to preserve this issue for this Court's consideration.

C. Alleged "Abhorrent and Outrageous" Argument

To the extent Appellant asserts that this court can bypass longstanding law regarding preservation because the State's comments in its closing argument in reply were, according to Appellant, "abhorrent and outrageous," this argument is also without merit.

A party generally must make a contemporaneous objection to an improper argument or the objection is waived. *State v. Young*, 364 S.C. 476, 494, 613 S.E.2d 386, 395 (Ct. App. 2005). However, our supreme court has held that "even in the absence of a contemporaneous objection, a new trial motion should be granted in flagrant cases where a vicious, inflammatory argument results in clear prejudice." *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611,

615 (1994) (holding a new trial should be granted, despite the lack of contemporaneous objections to closing argument where counsel used posters in closing argument that invoked racial stereotypes and were highly prejudicial). Our supreme court described the circumstances of *Toyota of Florence, Inc.* as "extraordinary" and noted that it did not condone the failure to make a contemporaneous objection. *Id.*; see also *State v. Peay*, 321 S.C. 405, 413, 468 S.E.2d 669, 673-74 (Ct. App. 1996) (noting that our supreme court in *Toyota of Florence, Inc.* "did not condone the failure to contemporaneously object, and described the circumstances in that case as 'extraordinary'").

The State's closing argument in reply was zealous and also entirely within the bounds of a proper closing argument. See *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002) ("A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it.").

In Appellant's closing argument, he stated that he never contested that the grey Ford Fusion was his car. (R. 947-48). He lamented, however, that the State spent an "entire afternoon" presenting evidence that this grey Ford Fusion was his car. (R. 947-48). The State addressed this in its reply, emphasizing its burden of proof before explaining that it spent time proving Appellant had access to and use of the grey Ford Fusion despite Jack King's refusal to explain to law enforcement who drove the car and Ashley Walcott's refusal to cooperate with law enforcement generally outside of her consent to search the vehicle. (R. 975-76). The State then reemphasized its burden of proof. (R. 976).

Despite Appellant's newly presented argument on appeal, the State's closing argument in reply in no way shifted the burden of proof from the State to him, especially considering the State's

explicit references to its burden *before and after* these comments. (R. 975-76). Merely asking in a closing argument why a defendant's family was not cooperative—and explicitly excluding Appellant from that question—does not constitute the "extraordinary" circumstances to bypass preservation requirements as contemplated in *Toyota of Florence, Inc.* Therefore, the State's closing argument in reply did not constitute the "extraordinary" circumstances that would excuse Appellant's failure to make a contemporaneous objection properly preserved on the record.

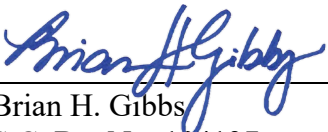
CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime, as well as his associated sentences.

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By: 

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Attorneys for Respondent

October 26, 2026
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2025-000484

THE STATE,

Respondent,

v.

JAQUAN LEON KING,

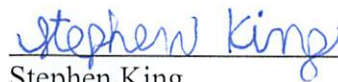
Appellant.

PROOF OF SERVICE

I, Stephen King, certify that I have served this Final Brief of Respondent on Matthew Ryan McKaig, Esq., and Aaron Vernon Wallace, Esq., both counsel of record for 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 26th day of October 2026.



Stephen King
Legal Assistant

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