

(Exhibit A)

COPY

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Kershaw County
James Barber, Circuit Court Judge

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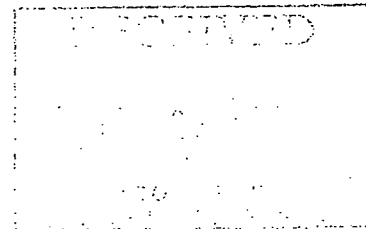
SC Court of Appeals

Case No. 2014-000165

The StateAppellee

V.

Ernest Allen.....Appellant



**APPELLANT'S MOTION TO SUPPLEMENT FINAL BRIEF OF APPELLANT
BASED ON RECENTLY DECIDED CASE LAW.**

NOW COMES the Appellant, who moves this Honorable Court for leave to supplement the Final Brief of Appellant. Appellant's request is based on the fact that this Court's decision in State v. King (S.C. App: 2015), having been decided after the initial filing of Appellant's brief and having recently come to the attention of Appellant's counsel, presents a new legal issue which was not available at the time Appellants Brief was filed. Appellant seeks leave to include the following as a third point of argument:

III. Did the trial Court commit reversible error when the Court instructed the jury that specific intent to kill was not an element of attempted murder statute S.C. Code §16-3-29?

Appellant further contends that this issue has otherwise been preserved for appeal, is likely to be dispositive, and the interest of justice so requires.

PROCEDURAL BACKGROUND

The initial brief of Appellant was timely filed on January 8th, 2015. Thereafter, on April 22, 2015 this Court's ruling in State v. King was handed down. That decision deals squarely with the intent required for conviction under S.C. Code § 16-3-29. Oral arguments were held in this case on February 2nd, 2016. Thereafter the decision came to the attention of Appellant's counsel. As of the date of this motion, the Court has not rendered its decision.

ADDITIONAL ARGUMENT REQUESTED

Appellant seeks to include, as an additional argument, that the trial Court committed reversible error when it instructed the jury that:

"a specific intent to kill is not an element or attempt of attempted murder, but there must be a general intent to commit serious bodily injury". Tr. tr. p. 268. (Line 12 and 13)

The record also reveals that Defense counsel timely objected to the instruction at trial:

"Your honor did read from what you told us you would. I would disagree that specific intent is not an element of attempted murder. I'd ask you to correct that but I understand the court's position on that. **I just make my objection noted**". Tr. tr. p. 278. (Line 7-10)

As such the issue is otherwise preserved for review by this Court.

In King, this Court ruled for the first time that S.C. Code §16-3-29, which was enacted in 2010, was a specific intent crime requiring a finding that the Defendant acted with the specific intent to kill. In the Case, the trial Court charged the jury that:

"A Specific intent to kill is not an element of attempted murder but it must be a general intent to commit serious bodily harm." Id.

This instruction is the exact same instruction given in this case. This Court's decision in King makes clear that the record likely contains a reversible error of law for which Appellant requests the opportunity to be heard. Appellant further contends that given the seriousness of the charges for which the Appellant is facing, the fact that King was decided after submission of Appellant's initial brief, and that no decision has yet been reached by this Court, justice so requires that Appellant's motion be granted, and as such Appellant request fourteen (14) days in which to submit an amended brief.

Did the evidence show that I prepared, or hated, or ill will?

Wrong charge. Isn't specific intent an element of attempted murder? Sure it is!

circumstances which are proved. Expressed malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts or preparation going to show that the deed was within the defendant's mind would be expressed malice.

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. A specific intent to kill is not an element or attempt -- of attempted murder, but there must be a general intent to commit serious bodily injury. Intent means intending the result which actually occurred, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent.

Evidence of the character of the act, the character of the instrument used, the manner in which it was used, purpose to be accomplished may be considered in determining the intent with which the act was committed. Intent may also be inferred when demonstrated that the defendant voluntarily and

1 Honor.

2 THE COURT: Mister, uh, --

3 MR. KRINCICH: Yes, sir, Your Honor. As I
4 indicated previously, I do object to the charge of
5 attempted murder with regards to specific intent.
6 Your Honor did read from what you told us you would.
7 I would disagree that specific intent is not an
8 element of attempted murder. I'd ask you to correct
9 that but I understand the Court's position on that.
10 I just make my objection noted.

11 THE COURT: All right. It is. Thank you
12 very much.

13 MR. KRINCICH: Your Honor, I do have one
14 other issue. I don't know the true solution to it.
15 I just wanted to express this. I believe Your Honor
16 did everything you could to properly charge assault
17 and battery of a high and aggravated nature. I
18 understand the law and I've got it here in front of
19 me. There's and/or in there. There's a battery or
20 there could just be an assault. I'm just not sure
21 that it's clear enough for the jury. They don't
22 have to find an actual battery to find the assault
23 and battery of a high and aggravated nature. Before
24 we had commonlaw ABHAN, AHAN. Now, it's all under
25 one.

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NOV 22 2016

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Kershaw County
James R. Barber, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EARNEST MAURICE ALLEN,

APPELLANT,

Appellate Case No. 2014-000165

Case No. 2013-GS-28-0681;82;83

CERTIFICATE OF SERVICE

I, Earnest M. Allen, certify that I have served the Appendix of The Petition For Writ Of Certiorari on Respondent by depositing two copies of the same in the United States Mail, postage prepaid, addressed to:

ALAN McCRORY WILSON
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JENNIFER ELLIS ROBERTS

Office of the Attorney General
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I further certify that all parties required by Rule to be served have been served. This 10th day of November, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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NOV 18 2015

SC Court of Appeals

Appeal from Kershaw County
James R. Barber, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERNEST MAURICE ALLEN,

APPELLANT

APPELLATE CASE NO. 2014-000165

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

- I. Did the trial Court commit reversible error when it failed to grant appellant's motion for a directed verdict on the charge of resisting arrest, when the evidence showed that Appellant did not submit to the arrest and thus no arrest was ever effectuated?

- II. Did the trial Court commit reversible error when it allowed evidence to be submitted to the jury that the Appellant was facing substantial jail time, as a motive and intent exception to Rule 404(b), even though no rule 403 prejudice analysis was conducted, and the PWID charges bore no logical connection to the charges for which he was on trial?

STATEMENT OF THE CASE

(Earnest Maurice Allen (“Appellant” or “Defendant”) was indicted by the State of South Carolina (“The State” or “Respondent”) in Kershaw County on one count of resisting arrest with a deadly weapon in violation of § 16-03-0625 S.C. Code of Laws, 1976, as amended on August 21, 2013; four counts of attempted murder in violation of § 16-3-19 S.C. Code of Laws, 1976, as amended on July 17, 2013; and one count of possession of a weapon during the commission of a violent crime in violation of § 16-23-0490 S.C. Code of Laws, 1976 as amended on July 17, 2013. *See indictments 2013-GS-28-0685, 2013-GS-28-0681, 2013-GS-28-0682, and 2013-GS-28-0811.*

A jury trial was held on January 16, 2014 in Kershaw County, lasting one day. At trial, directed verdict was granted in favor of Appellant on one count of attempted murder. The Jury found Appellant guilty of possession of a weapon during the commission of a violent crime, resisting arrest with a deadly weapon, and two counts of attempted murder. The jury found the Appellant guilty of a lesser included offense of assault and battery of a high and aggravated nature on one count of attempted murder. *See Verdict forms.*

Appellant timely filed a notice of Appeal on January 27, 2014 and served upon respondent. *See Notice of Appeal.* This appeal was filed on January 7, 2014.

STATEMENT OF FACTS

This case originates from an incident that occurred on December 20th, 2012 in Kershaw County, South Carolina. On that date, four officers with the Kershaw county Sherriff's office sought to execute arrest warrants on the Appellant. The arrest warrants were for possession with intent to distribute cocaine (PWID), and carried significant prison time as penalties. Trial Transcript p.82. The officers received information from a female individual that Appellant would be riding with her in her car later that day, and gave the officers a description of the car and an approximate time and location. Trial Transcript p. 83. Once the officers spotted the vehicle, and believing the Appellant to be in the car, they initiated the blue lights. Once the blue lights were initiated, the Appellant exited the vehicle on foot and fled from the officers. Trial Transcript 84. The officers later testified that the Appellant turned and fired a handgun at the officers. Trial Transcript p. 101. The firing of the handgun halted the officers' pursuit and the Appellant was not arrested that night. Later that night a handgun was discovered, and the evidence indicated that it was the gun used by the Appellant earlier that night. Trial Transcript p. 103. Appellant was subsequently arrested and charged with resisting arrest with a deadly weapon, attempted murder, and possession of a weapon during the commission of a violent crime. Trial Transcript p. 104.

From the outset of the trial, Counsel for The State sought to center the case around Appellant's pending charges for PWID, and thus prejudice the jury's perception of the Appellant before hearing all the facts. Before opening statements, Counsel for The State made a motion to allow into evidence the sentencing ranges that the Appellant was facing for those charges. Trial Transcript p. 49. Despite objection from Counsel for Appellant, the trial allowed the testimony into evidence. Trial Transcript p. 52. Almost immediately into

his opening statement Counsel for The State made the jury aware that the Appellant was had nine pending charges at the time of the incident for which he was on trial. Trial Transcript p. 82. He continued his effort to establish a prejudicial view of the Appellant by telling them that the charges were "serious charges" and that "there four charges for which he could have done up to 30 years on." Trial Transcript p. 82. Further testimony was presented which reiterated the fact that the Appellant was facing "serious felony charges": Trial Transcript p. 136.

At the close of The State's case in chief, Counsel for the Appellant moved for a directed verdict on the charge of resisting arrest with a deadly weapon. Trial Transcript p. 213. Trial Counsel argued that no evidence was presented that an arrest had actually been effectuated. Trial Transcript p. 220. The trial Court denied the motion, but directed verdict was granted in favor of Appellant on one count of attempted murder. Trial Transcript p. 216.

Ultimately, the Jury found Appellant guilty of one count of possession of a weapon during the commission of a violent crime, once count of resisting arrest with a deadly weapon, and two counts of attempted murder. The jury found the Appellant guilty of a lesser included offense of assault and battery of a high and aggravated nature on one count of attempted murder. This appeal follows.

ARGUMENT

Standard of Review

A criminal Defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. Ladner* 373, S.C. 103, 12, 644, 644 SE 2d 684 (2007). When reviewing a denial of a directed verdict, the Court views the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *State v. Gaines*, 380 S.C. 23, 667SE 2d 728 (2008).

Though the admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002), an abuse of discretion does occur when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

I. The trial Court erred in failing to Grant Appellant's motion for directed verdict on the resisting arrest charge when it improperly applied a seizure analysis in determining whether an arrest had been effectuated, and since the evidence showed that appellant did not submit to the arrest, under the *Williams* standard, there was not sufficient evidence presented that an arrest had occurred.

When the state seeks to ascribe criminal penalties against a Defendant for his resistance of an arrest for separate charges, the burden is on the State to show that an arrest had been effectuated, and when the arrest was effectuated, before the state can meet its burden. *State v. Williams* 237 S.C. 252, 116 S.E.2d 858 (1960); *State v. Brannon* 388 S.C. 498, 697 S.E.2d 593 (2010).

It is well established jurisprudence that there is a distinction between an "arrest" and a "seizure" when dealing with an agent of the government. *Terry V. Ohio*, 392 U.S. 1 S. Ct. 1868 L.Ed. 889 (1968) and its progeny, make clear that an individual can be seized under the Fourth Amendment, without being arrested. The US Supreme Court has gone on to clarify that an individual is seized under the Fourth Amendment to the US Constitution when a reasonable person, in the view of all the circumstances of a particular case, would not believe he was free to leave. *Michigan v. Chesternut*, 486 US 567, 573, 108 S. Ct. 1975, 100 L.Ed.2d 565 (1988). This amounts to an objective standard.

In contrast, our state, in *State v. Williams*, 237 S.C. 252, 116 S.E. 2d 858 (1960), further clarified that determining whether an arrest occurred required an analysis of intent, both of the officer and of the suspect. In *Williams*, the Court acknowledged that "It is not necessary that there be an application of actual force, or manual touching of the body, or physical restraint which may be visible to the eye, or a formal declaration of arrest". *Id* at 257. However, the Court made clear that the person being arrested must understand that he is in the power of the one arresting and submits in consequence. In cases, such as the present one, where there is no manual touching the Court established that there must be an intent on the part of the officer to arrest the suspect, and intent on the part of the suspect to submit, under the belief and impression that submission was necessary." *Id*. This amounts to a subjective standard.

In *State v. Brannon* 388 S.C. 498, 697 S.E.2d 593 (2010), the Court further clarified that on a resisting arrest charge the State must show that an actual arrest occurred, as opposed to a mere seizure, and that when a suspect flees he is clearly not submitting to the officers, and thus no arrest can occur since it fails to satisfy the second prong of the *Williams*

test. *Id.* at 505. In that case, police responded to a call regarding a suspected vehicle burglary. When police arrived on the scene they noticed an individual standing beside a Ford Explorer, which was where the caller had identified the suspect as being. Upon seeing the suspect, the officer shouted "Stop Police". Thereafter, the suspect fled on foot for approximately 33-350 yard before being apprehended. He was charged with resisting arrest under South Carolina Code 16-9-320(A). At trial, Counsel for the Defendant moved for a directed verdict on the charge; arguing that there was no evidence that an arrest was made when he ran from police. The Court of Appeals reversed, finding that there was no seizure, and thus no arrest. The Supreme Court reversed, finding that seizure analysis was improper in determining whether or not an arrest was effectuated. The Court further held that the Defendant did not submit to the police officers, as required under the second prong of the *Williams* test, as evidenced by the fact that he ran from the officer. *Id.*

Though the Defendant in the case at hand was charged with violation of a different statute than that of the Defendant in *Brannon*, there still must be an inquiry into whether or not an arrest was being effectuated, in order to satisfy the State's burden. An Arrest itself is an ongoing process in South Carolina. *State v. Dowd* 306 S.C. 341, 268 411 S.E.2d (1991).

In *Brannon*, the Defendant was charged with violation of 16-9-320(A). Here, the appellant was charged with 16-3-625.

Admittedly, the statute at issue in this case is a lower threshold than that of the statute in *Brannon*. However, the statute reads: "A person who resists the lawful efforts of a law enforcement officer to *arrest him* or another..." This language is unambiguous on its face, and as such the Court has no right to impose another meaning. *Gay v. Ariail* 381 SC 341, 673 S.E. 2d 418 (2009). Given that there are distinctions between a seizure and an

arrest, there must be a determination as to when (if ever) the officers' actions amounted to an effort to arrest, as opposed to an effort to seize. The record shows that officer's actions, at all relevant times, amounted to a continuation of the effort to seize, as opposed to an effort to arrest. This is especially true given the fact that it was never announced that he was under arrest, which was cited as a factor by the *Brannon* Court.

In this case, officers identified the vehicle and began following the car. Testimony was presented that an officer initiated the blue lights to conduct a traffic stop. Thereafter testimony was presented that the Appellant exited the side of the automobile and ran on foot away from the officers. There was no testimony that a verbal notification to the Defendant that he was under arrest was made. The appellant was not taken into custody on that date, but was later arrested and charged. At the close of the State's case, Counsel for the Defendant requested a directed verdict on the grounds that an arrest had not been effectuated, and cited *Brannon* as support. The State argued against the motion indicating that because the appellant "clearly knew he was under arrest" an arrest was effectuated at the time of the traffic stop, and the trial Court denied the motion. Trial Transcript p. 215. This amounts to an analysis of whether or not the Appellant was seized, as opposed to whether or not he was under arrest, because it relies on the reasonable expectation of the Appellant, not on the actual intents of both the officer and the suspect.

In looking at the seizure, which appellant does not dispute occurred when the blue lights were initiated, and failing to use the two-prong test outlined in *Williams*, the Trial Court failed to analyze whether the Appellant ever intended to submit to the arrest, and thus committed reversible error. It is evident from the Court's holding in *Brannon*, that running from the police shows an intent on the part of the suspect to not submit to the arrest, and that

even if it is the officer intends to effect a full custodial arrest, until such time as the two prongs are satisfied, the officer is attempting a mere seizure and not an arrest.

Therefore, under *Brannon*, the Trial Court erred in failing to grant Defendant's motion for directed verdict because there was not sufficient evidence presented that the arresting officer's actions ever effectuated an actual arrest.

II. The trial Court erred in allowing evidence to be submitted to the jury that the appellant was facing substantial jail time on pending charges, under the intent/motive exception to SCRE rule 404(b), when the Court failed to conduct a prejudice analysis, and since the crimes for the pending charges held no logical relevance to the crime of attempted murder for which he was being charged, the evidence of the pending charges was inherently prejudicial.

Whenever evidence is submitted to a jury of a criminal Defendant's prior criminal charges it is inherently prejudicial, and as a consequence the trial Court must evaluate the degree of prejudice presented, and determine whether there is any logical relevance between the prior charges and the charges being prosecuted. *State v. Adams*, 322 S.C. 114, 470 S.E. 2d 366 (1996); *State v. Wallace*, 384 S.C. 428, 683 S.E. 2d 275 (2009).

It is a fundamental tenant in South Carolina jurisprudence that admission of evidence regarding a criminal Defendant's prior bad acts is inherently prejudicial, and as such should only be submitted to the jury in certain limited circumstances. *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). In the years following *Lyle*, this state codified that long-held understanding in Rule 404(b) of the South Carolina Rules of Evidence. Rule 404(b) does carry with it the common law exceptions regarding motive, identity, existence of a common scheme or plan, absence of mistake, or intent. However, the rule does not set forth the

burden of proof required for the admission of evidence of bad acts which have not resulted in conviction and, therefore, case law controls on this issue. *State v. Smith*, 300 S.C. 216, 387 SE-2d 245 (1989).

Even if the trial Court does find that one of the exceptions listed in 404(b) applies, the trial Court then must determine whether the probative value of admitting evidence of the bad act substantially outweighs its danger of unfair prejudice, under SCRE 403. If not, then the evidence must not be submitted, even though it qualifies as an exception under 404(b). *Wallace* at 435.

In this case, after finding that evidence of the Defendant's pending charges could be admitted, under the intent and motive exceptions of 404(b), the Court failed to conduct a prejudice analysis as required under *Wallace*. The record is unclear as to exactly how many charges were pending against the Defendant, but it is clear that there were four Possession with Intent to Distribute (PWID) third offense charges of which the Defendant was aware. Each of these charges carried between ten and thirty year penalties. Counsel for the State sought to introduce into evidence the fact that the Defendant was facing serious jail time, and as such show a motivation that he "didn't want to be taken into custody". Trial Transcript p. 51. Counsel for the Plaintiff objected to The State's request and requested that the Court address the 403 issue, if it allowed it under 404(b). Trial Transcript p. 53.

The trial Court ultimately allowed evidence to be admitted regarding the four PWID charges, under the intent/motive exception. However, the Court failed to address the issue of prejudice, and whether or not the probative value substantially outweighed the risk of unfair prejudice. In his opening statement, Counsel for The State stated "He had nine charges pending at the time. Of those nine charges, on almost every one of them, he could

have done significant time. When I say significant, there were four charges for which he could have done up to 30 years on. That's a lot of time." Trial Transcript p.82. Officer Edward Corey later testified that he had "outstanding bench warrants, all for *serious felony charges*" against the Defendant. Trial Transcript p. 136. Though counsel for the Defendant did not renew his objection at this time, the admission of the evidence was so close in time to his objection prior to opening statements that it is preserved for review. *State v. Forrester*, 343 S.C. 637, 541 S.E. 2d 837 (2001)

Furthermore, the trial Court's decision to allow testimony that the Defendant had pending criminal charges was inconsistent with the logical relevance standard set forth in *Adams*. The charges that the Defendant was on trial for were attempted murder and resisting arrest. However, the serious felony charges that were referenced by Officer Corey were all drug-related. It can hardly be argued that possession of cocaine is inherently linked with resisting arrest and attempted murder. The State argued at trial that the Defendant's alleged actions were motivated by his reluctance to be arrested and face the substantial jail time.

However, there is a significant logical leap between acknowledging that a Defendant facing significant jail time will may not want to be taken into custody, and inferring that the Defendant is willing to attempt murder as a result. Though the State's argument is admittedly stronger with regard to the resisting arrest charge, in light of attempted murder charges it seems that allowing the jury to know that the Defendant was facing "serious felony" charges has the primary effect of implying the Defendant is the type of individual who commits felonies, and as such is more likely to have committed this particular felony. This is precisely the scenario in which evidence of prior bad acts should not be admitted *Lyles* at 810.


The record supports a finding of the prejudicial nature of the evidence submitted to the jury by Counsel for The State. Shortly before the close of the State's case, it came to the Court's attention that a juror had declared his belief in the Appellant's guilt or innocence. Trial Transcript p. 188. Juror 192 admitted that he had made statements to other jurors he "did not need to hear anymore", and that he had "made up his mind about this case and that he knew what the deal was with respect to guilt or announce". Trial Transcript p. 188-189. The Court held the juror in contempt and ordered him to remain in custody until the jury reached a verdict. Trial Transcript p. 234. It is important to note that juror 192's declaration came before the close of the State's case, and before the jury was aware of whether or not the Appellant, or any witnesses on his behalf, would testify.

Therefore, because the trial Court failed to conduct a prejudice analysis with regard to the admission of the Defendant's prior charges, and because there was no logical relevance between the prior charge of PWID and the charges for which the Defendant was being tried, it committed a reversible error.

CONCLUSION

The trial Court erred in failing to grant Defendant's motion for directed verdict on the charge of resisting arrest with a deadly weapon. There was no evidence that the Appellant ever intended to submit to the arrest. As such, there was no evidence that an arrest was ever effectuated. In addition the trial Court erred in allowing the admission of evidence regarding the Appellant's pending charges because it failed to conduct a prejudice analysis, and since the pending charges bore no rational relationship to the charges for which he was on trial, such evidence violated rule 403 SCRE. South Carolina law indicates that both errors are not harmless, and request that this Court order a new trial.

Respectfully submitted,

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ATTORNEYS FOR APPELLANT

This 6th day of January, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County
James R. Barber, Circuit Court Judge

THE STATE,

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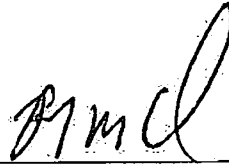
ERNEST MAURICE ALLEN,

APPELLANT

APPELLATE CASE NO. 2014-000165

CERTIFICATE OF SERVICE

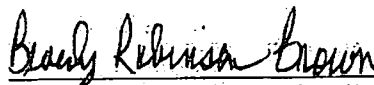
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of January, 2015.



ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 6th day of January, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: December 9, 2024.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY

Court of General Sessions

James R. Barber, Circuit Court Judge

Appellate Case No. 2014-000165

THE STATE,

Respondent,

v.

ERNEST MAURICE ALLEN,

Appellant.

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ATTORNEYS FOR RESPONDENT

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APR 22 2015

SC Court of Appeals

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I. The trial court correctly denied Appellant’s motion for directed verdict on the charge of resisting arrest with a deadly weapon because the evidence was sufficient to demonstrate the officers intended to arrest him 8

II. Appellant’s argument regarding prior bad act evidence is not preserved, but even if preserved, the trial court properly allowed evidence that Appellant was facing substantial prison time to show motive and intent pursuant to Rule 404(b), SCRE 17

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court correctly denied Appellant's motion for directed verdict on the charge of resisting arrest with a deadly weapon because the evidence was sufficient to demonstrate the officers intended to arrest him.

II.

Appellant's argument regarding prior bad act evidence is not preserved, but even if preserved, the trial court properly allowed evidence that Appellant was facing substantial prison time to show motive and intent pursuant to Rule 404(b), SCRE.

STATEMENT OF THE CASE

A Kershaw County Grand Jury indicted Appellant for four counts of attempted murder, one count of resisting arrest with a deadly weapon, and one count of possession of a firearm during the commission of a violent crime. (R.* Indictments.) On January 13-16, Appellant proceeded to trial before a jury and the Honorable James R. Barber. Jason D. Kirincich, Esquire, represented Appellant, and Assistant Solicitor Brett Perry represented the State. The jury found Appellant guilty on two counts of attempted murder, one count of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN), one count of resisting arrest with a deadly weapon, and one count of possession of a firearm during the commission of a violent crime.¹ (Tr. 281-82.) Judge Barber sentenced him to twenty years' imprisonment for the two attempted murder charges and the ABHAN charge, two years' imprisonment for the resisting arrest with a deadly weapon charge, to run concurrently, and four years' imprisonment on the possession of a firearm during the commission of a violent crime charge, to run consecutive to the others. (Sent. Tr. 10.)

On January 21, 2014, Appellant filed a Notice of Appeal.

¹ The trial court directed a verdict on one attempted murder charge. (Tr. 220, lines 20-21.)

STATEMENT OF FACTS

In December of 2010, Appellant had nine outstanding Kershaw County bench warrants for failure to appear in court. (Tr. 98, lines 1-6.) Sergeant Michael Sellers with the Kershaw County Sheriff's Office left his number with people at local apartment complexes to let them know he was looking for Appellant. (Tr. 95, lines 18-24.) On December 20, 2012, he received a text message from a citizen notifying him that Appellant was in a beige van leaving a particular apartment complex. (Tr. 95, line 15-Tr. 96, line 22.) The citizen advised Sgt. Sellers that Appellant had a firearm on him. (Tr. 97, line 1.) Based on the information, Sgt. Sellers did not want to approach Appellant by himself, so he gave a description of the van and its general direction to some other deputies. (Tr. 97, lines 1-11.) Sgt. Sellers parked on the side of the road with his lights off and awaited the van. (Tr. 97, lines 11-17.) Captain Edward Corey joined him and soon they saw the van. (Tr. 97, lines 17-22.) They began following, and as the van got close to a trailer park, Sgt. Sellers decided to make a felony car stop.² (Tr. 98, line 8-Tr. 99, line 10.)

Sgt. Sellers activated his blue lights, the van stopped, and Appellant bailed out of the passenger side and began running across the brightly lit yard of a home. (Tr. 99, lines 1-23.) Sgt. Sellers was able to recognize Appellant because he knew him from past experience. (Tr. 99, line 25-Tr. 100, line 7.) Other units were on the scene too, and Deputy Justin Scott ran after Appellant and was able to gain on him quickly. (Tr. 100, lines 18-23.) Sgt. Sellers saw something silver and a flash in his direction, and then he

² A felony traffic stop, or felony car stop, is one that is carried out with consideration for the safety of the public and the officers. (Tr. 136, lines 2-10.) Rather than a typical traffic stop where the officer approaches the driver, in a felony stop the officer does not walk up to the car but rather calls the suspect out of the car to him. (Tr. 99, lines 6-15; Tr. 135, line 23-Tr. 136, line 13.)

heard a loud noise and began looking for something to get behind. (Tr. 100, line 23-Tr. 101, line 24.) He yelled to Deputy Scott that Appellant had a gun because Scott was closing in on him. (Tr. 101, lines 12-13; Tr. 102, lines 1-2.) He saw Deputy Scott and Appellant face each other about fifteen to twenty yards apart and saw the muzzle flash of numerous shots fired. (Tr. 102, lines 6-15.) Deputy Scott returned fired but did not hit Appellant. (Tr. 153, line 16-Tr. 155, line 12.) The officers decided to retreat to their cars rather than follow a man with a gun into a dark area. (Tr. 103, lines 10-21.) Appellant was not apprehended that night but was arrested the next day and charged with four counts of attempted murder, one count of resisting arrest with a deadly weapon, and one count of possession of a firearm during the commission of a violent crime. (Tr. 104, lines 14-20; R. * Indictments.)

Prior to trial, the State moved to introduce Appellant's pending charges at the time the incident took place, arguing it showed motive and intent as to why he was willing to do whatever it took not to be taken into custody, including shooting at law enforcement. (Tr. 49, line 10-Tr. 51, line 25.) The trial court ruled it would allow evidence that he had nine serious charges pending to be admitted based on intent and motive. (Tr. 55, lines 11-13; Tr. 56, lines 9-12.) The trial court then determined it would decide the next morning whether the evidence regarding the amount of time Appellant was facing on those pending charges, ten to thirty years, could come in. (Tr. 57, lines 2-4.)

Defense counsel argued Appellant should be able to invoke his Fifth Amendment right not to be questioned regarding the charges he had pending at the time of this incident. (Tr. 58, line 2-Tr. 61, line 13.) The trial court agreed with defense counsel that going into the details of the offenses would not be relevant but that the State would have

the right to ask Appellant whether he understood he had nine warrants that were outstanding and whether he understood he was "looking at serious time for these offenses." (Tr. 62, lines 9-22.) Defense counsel agreed with the trial court on that distinction. (Tr. 62, lines 23-24.) The trial court then clarified the State could pursue the line of questioning about the amount of time he was facing on pending charges but prohibited the State from asking whether he was guilty of those charges. (Tr. 63, lines 3-7.) Defense counsel stated, "Yes, sir. And that's kind of what I was looking for so I could fully advise him." (Tr. 63, lines 8-9.)

The next morning, neither party asked the trial court for a further ruling on whether the evidence regarding the specific amount of time Appellant was facing on those pending charges could come in. Indeed, Appellant seemed satisfied with the trial court's decision to prohibit any evidence about the facts or merits of the pending charges. When the State mentioned in its opening statement that Appellant "had nine charges pending at the time [and] could have done significant time up to [thirty] years," Appellant did not object. (Tr. 82, lines 8-12.) Sgt. Sellers testified that the reason the sheriff's department was looking for Appellant was because he had nine outstanding bench warrants for failure to appear in court. (Tr. 97, line 23-Tr. 98, line 6.) Sgt. Sellers further testified Appellant was wanted on nine serious charges. (Tr. 99, line 8.) Investigator Rick Bailey testified that he was approached by Captain Ed Corey to assist Sellers on warrant service. (Tr. 123, lines 1-5.) Captain Corey confirmed he was contacted by Sellers to assist him in serving outstanding warrants on Appellant. (Tr. 134, lines 9-12.) Deputy Justin Scott testified that his job was to arrest people who were wanted. He further elaborated that if they run, it is his duty to chase them and try to arrest them and that is what he did here. He specifically stated that he did not arrest Appellant that night,

but he tried. (Tr. 152, line 19-Tr. 153, line 9.) Appellant objected to none of this testimony. Nor did Appellant object when the State argued in its closing, "This young man was wanted for multiple serious charges for which he could have gotten as much as [thirty] years on some of those charges." (Tr. 239, lines 13-15.)

Before closing arguments, after the State rested, defense counsel moved for a directed verdict on the various charges. (Tr. 208-22.) As to the charge of resisting arrest with a deadly weapon, he argued that because the officers did not advise Appellant he was under arrest, no arrest was effectuated and, thus, the charge should be dismissed. (Tr. 214, line 7-Tr. 215, line 6.) The State responded that as soon as the van stopped Appellant bailed out, began running, and began shooting at the officers. (Tr. 215, lines 13-14.) Thus, the State argued, Appellant's own actions kept the officers from getting close enough to tell him he was under arrest. (Tr. 215, lines 15-20.) The State argued Appellant knew he was under arrest and fled from that arrest. (Tr. 215, lines 21-24.) The trial court denied the directed verdict motion, ruling:

[Appellant] knew that he had an obligation to be in court at some point in time in the past and had failed to do so and that likely arrest warrants were issued for him and that they attempted to effect the service of these arrest warrants. He clearly did not give them the chance to take him into custody at that point in time. So, I'm going to find that that's an appropriate charge and I'm going to go forward with it.

(Tr. 216, lines 3-12.)

Ultimately, the jury found Appellant guilty on two counts of attempted murder, one count of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN), one count of resisting arrest with a deadly weapon, and one count of

possession of a firearm during the commission of a violent crime.³ (Tr. 281-82.) The trial court sentenced Appellant to twenty years' imprisonment for the two attempted murder charges and the ABHAN charge, two years' imprisonment for the resisting arrest with a deadly weapon charge, to run concurrently, and four years' imprisonment on the possession of a firearm during the commission of a violent crime charge, to run consecutive to the others. (Sent. Tr. 10.)

³ The trial court directed a verdict on one attempted murder charge. (Tr. 220, lines 20-21.)

ARGUMENT

I.

The trial court correctly denied Appellant's motion for directed verdict on the charge of resisting arrest with a deadly weapon because the evidence was sufficient to demonstrate the officers intended to arrest him.

Appellant argues the trial court erred in denying his "motion for directed verdict on the resisting arrest [with a deadly weapon] charge." (App.Br.7.) First, he argues the trial court improperly applied a "seizure analysis" in determining whether an arrest had been effectuated. Second, he argues there was not sufficient evidence presented that an arrest had occurred because the evidence showed Appellant did not submit to the arrest under the Williams⁴ standard. However, the trial court did not apply a seizure analysis, and the State was not required to show Appellant submitted to the arrest in order to demonstrate he met the elements of the crime of "resisting arrest with a deadly weapon." Thus, the trial court correctly denied the directed verdict motion, and this Court should affirm.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury." Id. at 292-93, 625 S.E.2d at 648. The trial court should grant a directed verdict when the evidence merely raises a

⁴ State v. Williams, 237 S.C. 252, 116 S.E.2d 858 (1960).

suspicion that the accused is guilty. State v. Hernandez, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. Ladner, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

The South Carolina Code defines "resisting arrest with a deadly weapon" as follows: "A person who resists the lawful efforts of a law enforcement officer to arrest him or another person with the use or threat of use of a deadly weapon against the officer, and the person is in possession or claims to be in possession of a deadly weapon" S.C. Code Ann. § 16-3-625 (2003). In contrast, "opposing or resisting law enforcement officer serving process" is defined as:

It is unlawful for a person knowingly and willfully to oppose or resist a law enforcement officer in serving, executing, or attempting to serve or execute a legal writ or process or to resist an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not.

S.C. Code Ann. § 16-9-320 (2003).

Appellant relies on State v. Brannon, 388 S.C. 498, 697 S.E.2d 593 (2010), and State v. Williams, 237 S.C. 252, 116 S.E.2d 858 (1960), in arguing a suspect must submit to the officers in order for an arrest to occur for the purposes of resisting arrest. He first argues Brannon stands for the proposition that on a resisting arrest charge the State must show an actual arrest occurred. Yet a close look at Brannon reveals the Court views an arrest in South Carolina an "ongoing process." Brannon, 388 S.C. at 504, 697 S.E.2d at 597 (quoting State v. Dowd, 306 S.C. 268, 270, 411 S.E.2d 428, 429 (1991)). Thus, the Court's inquiry centered on whether the arresting process was underway when Brannon fled. Brannon, 388 S.C. at 504, 697 S.E.2d at 597. The Court found an arrest was not

being made because the State “failed to put forth any evidence demonstrating that the officers either intended to arrest Brannon or that Brannon submitted to the arrest.” Id. (emphasis added.)

There are two factors in Brannon that immediately distinguish it from the case at hand. First, Brannon was charged with resisting arrest under section 16-9-320, and the Court emphasized that “knowingly and willfully” are elements of that crime. They are not elements of the crime charged here, resisting arrest with a deadly weapon. Based on the language of the two statutes, only section 16-9-320, “opposing or resisting law enforcement officer serving process,” requires the person to act “knowingly and willfully.” Because that is the statute under which Brannon was charged, Appellant’s reliance on Brannon is misplaced. Section 16-3-625, the statute under which Appellant was charged, does not require that the person act knowingly and willfully. Second, the Court found the State did not put forth enough evidence that an arrest was being made because the officers testified they merely stopped Brannon to question him. Here, direct testimony was given by the officers that their intent was to arrest Appellant. Thus, the Court’s analysis in Brannon and its focus on proof of submission to the arrest is inapplicable to the situation here. In Brannon, the Court focused on the fact that neither officer testified he intended to arrest Brannon. Specifically, one officer testified “our intention was to approach the subject and find out exactly what he was doing there at the time.” Brannon, 388 S.C. at 505, 697 S.E.2d at 597. Here, rather than having testimony that the officers only wanted to approach Appellant, clear evidence exists through the officers’ testimony that they were trying to serve outstanding warrants on Appellant and arrest him. Thus, the intention of the arresting officers was clear.

Although Appellant acknowledges he “was charged with violation of a different statute than that of the [d]efendant in Brannon” and that the statute at issue has a “lower threshold,” he still emphasizes the need for an inquiry into whether an arrest was being effectuated. (App.Br.9.) He then argues that here the effort was on seizing Appellant rather than arresting him. He argues the trial judge’s analysis in denying the direct motion “amounts to an analysis of whether or not the Appellant was seized, as opposed to whether or not he was under arrest, because it relies on the reasonable expectation of the Appellant, not on the actual intents of both the officer and the suspect.” (App.Br.10.) This argument is a red herring and appears to confuse the real issue.

In Brannon, the Court analyzed the difference between a seizure and an arrest. “[A]n arrest represents the highest form of seizure.” Brannon, 388 S.C. at 503, 697 S.E.2d at 596. A seizure can occur, as in Terry v. Ohio⁵, without leading to an arrest. However, the trial court was not analyzing whether Appellant was arrested or whether he was seized because Appellant ran, shot at police, and was not apprehended. Evidence was presented that the officers’ sole intent in performing the felony traffic stop was to arrest Appellant for his nine serious outstanding charges. The State respectfully disagrees with Appellant’s contention that the trial court improperly engaged in a “seizure analysis” by examining Appellant’s reasonable expectation during the encounter. In denying Appellant’s directed verdict motion, the trial court stated, “[Appellant] knew that he had an obligation to be in court at some point in time in the past and had failed to do so and that likely arrest warrants were issued for him and that they attempted to effect the service of these arrest warrants. He clearly did not give them the chance to take him into custody at that point in time.” (Tr. 216, lines 4-10.) Nothing about the trial court’s

⁵ 392 U.S. 1 (1968).

ruling indicated he conducted a reasonable person, objective analysis. On the contrary, the trial court clearly looked at the subjective intent of Appellant. Indeed, Appellant's argument defies logic. It is Appellant alone who attempts to interject the word "reasonable" and the incorrect "objective" standard into the discussion. The trial court either considered a subjective standard under what Appellant claims is the proper arrest analysis by looking at the intent of both the officers and Appellant, or it considered an objective standard by looking at whether a reasonable person would consider himself free to leave. It certainly cannot be both. Here, the trial judge considered the evidence regarding the officers' intent, the evidence that Appellant knew he was under the ongoing process of arrest because he had been noticed for court and not appeared, and the evidence that Appellant ran from and shot at the officers so as not to give them a chance to take him into custody. Thus, the trial court followed the guidelines in Brannon and Williams for analyzing whether an arrest was occurring using a subjective standard.

It would be an absurd result indeed if our jurisprudence was such that a person who knew he had nine outstanding warrants for his arrest could escape a charge of resisting arrest with a deadly weapon simply by evading apprehension after running and shooting as soon as the police pulled him over. Similarly, it would be absurd if a defendant simply had to testify he did not submit to an arrest in order to obtain a directed verdict on a resisting arrest charge. The Court's analysis in Brannon relates only to situations like Brannon's in which the only evidence shows the police merely stopped the person to question him about possible involvement in a crime, not to serve arrest warrants that both the police and the person knew were outstanding.

Appellant argues that Williams made clear the person being arrested must understand he is in the power of the one arresting and submit in consequence. He further

argues that in cases like this one in which there is no manual touching, the Williams court established there must be intent on the part of the officer to arrest the suspect and intent on the part of the suspect to submit. The actual quote from Williams as is follows:

However, in all cases in which there is no manual touching or seizure **or any resistance**, the intentions of the parties to the transaction are very important; there must have been intent on the part of one of them to arrest the other, and intent on the part of such other to submit, under the belief and impression that submission was necessary. **There can be no arrest where the person sought to be arrested is not conscious of any restraint of his liberty.**

237 S.C. at 257, 116 S.E.2d at 860-61 (emphasis added).

Appellant argues Williams requires the suspect have a subjective intent to submit. Appellant does not explicitly argue he did not submit to the arrest, but he does argue the trial court failed to analyze whether he ever intended to submit to the arrest. Appellant seems to misconstrue Williams' analysis of a suspect's subjective intent. By referring to "all cases in which there is no . . . resistance," the Williams court made clear it was laying out guidelines for specific situations where a suspect would not likely know he was being arrested because there was "no manual touching or seizure or any resistance." Only then does the Court stress the importance of considering the intent of both parties. On the other hand, the Court seems to be saying, in a situation where there is touching, seizure, or resistance (in other words, actions on the part of either the officer or the suspect that show a restraint on liberty is occurring), intent is clear and no further analysis is required. It makes sense that when actions show a restraint of liberty, such as touching, resistance, running, and chasing, the internal intent of the parties need not be considered.

The circumstances in Williams distinguish it from the case at hand. An officer performed a traffic stop of Williams' brother and noticed Williams bend over as if putting

something under the seat. He asked Williams to get out of the car and noticed a jar of unstamped liquor under the front seat. While the officer radioed another officer, Williams started walking away. The officer went up to him and placed his hand on Williams' shoulder, at which time Williams jerked loose. The officer asked Williams' brother to get him to not resist. Williams calmed down and came back to the patrol car, but suddenly caught the officer by the arm, took his pistol, and went down the road. He then disappeared.

Williams's complaint on appeal was that he was unlawfully arrested after the car was stopped. However, the Court analyzed when the actual arrest occurred, determining that Williams was not arrested until after the officer found the liquor. Prior to that time, the officer had only requested he get out of the car. The Court found a request to get out of the car did not amount to an arrest, finding "there must be an actual or constructive seizure or detention of the person, performed with the intention to effect an arrest and so understood by the person detained." Williams, 237 S.C. at 257, 116 S.E.2d at 860 (quoting Jenkins v. United States, 161 F.2d 99, 101 (10th Cir. 1947)). To determine Williams did not consider himself under arrest when he stepped out of the car, the Court analyzed his own testimony where he said he walked away from the car even though the officer told him to stand there because "[h]e hadn't told me about an arrest or nothing." Williams, 237 S.C. at 258, 116 S.E.2d at 861.

Here, the situation was vastly different. The officers here were in pursuit of the van Appellant was riding in solely for the purpose of arresting him for nine outstanding warrants.⁶ This was anything but a random traffic stop. As soon as the officers activated

⁶ Appellant was aware of the warrants because he was noticed to be at trial and did not appear. (Tr. 62, lines 18-19.)

their blue lights and stopped the van, Appellant began resisting by running from them. Unlike Brannon, where the Court found an arrest was not being made because the State "failed to put forth any evidence demonstrating that the officers either intended to arrest Brannon or that Brannon submitted to the arrest," extensive evidence was put forth that the officers intended to arrest Appellant. Sgt. Sellers testified that the reason the sheriff's department was looking for Appellant was because he had nine outstanding bench warrants for failure to appear in court. (Tr. 97, line 23-Tr. 98, line 6.) Sgt. Sellers further testified Appellant was wanted on nine serious charges. (Tr. 99, line 8.) Investigator Rick Bailey testified that he was approached by Captain Ed Corey to assist Sellers on warrant service. (Tr. 123, lines 1-5.) Captain Corey testified he was contacted by Sellers to assist him in serving outstanding warrants on Appellant. (Tr. 134, lines 9-12.) Deputy Justin Scott testified that his job was to arrest people who were wanted. He further elaborated that if they run, it is his duty to chase them and try to arrest them and that is what he did here. He specifically stated that he did not arrest Appellant that night, but he tried. (Tr. 152, line 19-Tr. 153, line 9.)

Appellant also argues the officers made no verbal notification to Appellant that he was under arrest. However, one of the very cases Appellant relies on makes clear "a formal declaration of arrest" is not necessary. Williams, 237 S.C. at 257, 116 S.E.2d at 860. Also, the officers had activated their blue lights which indicated an intent to arrest. Furthermore, Appellant's own actions kept the officers from getting close enough to tell him he was under arrest. In his brief, Appellant states, "The record shows that officer[s'] actions, at all relevant times, amounted to a continuation of the effort to seize, as opposed to an effort to arrest." (App.Br.10.) However, based on the Court's analysis in Brannon, what took place here was never simply a seizure, even one that would eventually result in

an arrest. Rather, the record shows the officers stopped the van for the purpose of arresting Appellant for nine outstanding warrants. Most notably, Deputy Scott testified that his job was to arrest people who were wanted and that if they run, it is his duty to chase them and try to arrest them and that is what he did here. He specifically stated that he did not arrest Appellant that night, but he tried. (Tr. 152, line 19-Tr. 153, line 9.) This testimony alone is sufficient to distinguish Appellant's case from Brannon and Williams.

In sum, the evidence presented established the officers' intent was to arrest Appellant and Appellant actively resisted the arrest by running and shooting as soon as the officers stopped the van. Furthermore, the trial court did not analyze the stop under a seizure analysis and, even if it did, it had no impact on the sufficiency of the evidence to survive a directed verdict motion. Sufficient evidence existed to prove the elements of resisting arrest with a deadly weapon, and the trial court properly submitted the case to the jury for its resolution. Therefore, this Court should affirm the trial court's decision.

II.

Appellant's argument regarding prior bad act evidence is not preserved, but even if preserved, the trial court properly allowed evidence that Appellant was facing substantial prison time to show motive and intent pursuant to Rule 404(b), SCRE.

Appellant argues the trial court erred in allowing evidence to be submitted to the jury that he was facing substantial jail time on pending charges, under the intent/motive exception to Rule 404(b), SCRE. He argues the trial court failed to conduct a prejudice analysis under Rule 403, SCRE, and that because the pending charges held no logical relevance to the crime of attempted murder, the evidence was inherently prejudicial.⁷ On the contrary, the trial court properly allowed the State to introduce evidence that Appellant was facing substantial prison time to show why he ran from police and began shooting at them when faced with an arrest. Thus, this Court should affirm the trial court's decision.

Initially, the State submits this issue is not preserved. The State wanted to introduce the fact Appellant had pending charges and brought the issue before the trial court in a pretrial matter. Defense counsel stated he would agree "wholeheartedly" if the State simply wanted to say Appellant had warrants for prior failures to appear issued by the trial court. (Tr. 52, lines 12-16.) However, he argued the State should not be allowed to mention the nature of the charges or the sentencing ranges. (Tr. 52, lines 17-20.) He

⁷ In his brief, Appellant also seems to argue the fact that a juror told other jurors he had made up his mind and did not need to hear more, and was subsequently held in contempt and taken into custody, demonstrated the prejudicial nature of the evidence. (App.Br. 14; Tr. 188-89.) He does not elaborate on how this shows prejudice, but regardless, when the trial judge asked both parties if they had any objection to his removing the juror and replacing him with an alternate, he did not object. (Tr. 190, line 23-Tr. 191, line 19.) Thus, any issue involving this matter is not preserved for this Court's review.

further argued that if the trial court found the charges could come in for the purpose of intent, the trial court would still have to go through a Rule 403, SCRE, balancing test.

(Tr. 53, lines 2-5.) He also stated:

I think the State needs to be fair warned that that's the only reason that it comes in for intent not to prove his general bad character. That would be too far and that would be the reason we have 404(b). I don't know if there's any limiting instruction or if there is an admonishment from the Court beforehand to the State. But for the limited purpose that they want to introduce it, it's very hard for me to argue.

(Tr. 53, lines 8-16.) (emphasis added.) The solicitor conceded he did not care that the jury hear the nature of the charges but simply wanted to be able to state that Appellant had pending charges for which he could have faced mandatory minimums of ten to thirty years. (Tr. 54, lines 1-15.) In addition, the State asked to introduce evidence of a previous occasion when law enforcement tried to stop Appellant and he fled at a high rate of speed; however, the trial court did not allow that evidence. (Tr. 54, lines 5-21.) The trial court then stated:

I'm going [to] find that—first of all, I don't know that it is relevant, second of all, even if it is, because he did know about it or the charges were pending, to put that in would substantially outweigh the probative value. I am going to allow the evidence to come in based on intent and motive.

(Tr. 55, lines 7-13.) The trial judge determined he would think about whether to allow testimony about the mandatory minimums to come in and told the parties he would let them know in the morning, but he ruled that the State would at least be able to put in evidence that Appellant had the nine serious charges pending. (Tr. 56, lines 1-12.)

At that point, the following exchange took place:

The Court: Defense motions?

[Appellant]: I do have one, Your Honor. I was going to let them finish up whatever they had.

The Court: I thought that was your motion.

[Appellant]: I think if the State wants to introduce it, they have to--

The Court: I thought that was a motion in limine to keep all that out.

[Appellant]: I think if the State wants to introduce it, it has to be their motion to make sure it passes that balance test. We could have done it at the time of trial.

(Tr. 57, lines 11-22.) (emphasis added.)

Defense counsel then argued Appellant should be able to invoke his Fifth Amendment right not to be questioned regarding the charges he had pending at the time of this incident. (Tr. 58, line 2-Tr. 61, line 13.) The trial court agreed with defense counsel that going into the merits of the drug offenses would not be relevant but that the State would have the right to ask Appellant about whether he understood he had nine warrants that were outstanding and whether he understood he was "looking at serious time for these offenses." (Tr. 62, lines 9-22.) Defense counsel agreed with the trial court on that distinction. (Tr. 62, lines 23-24.) The trial court then clarified the State could pursue the line of questioning about the amount of time he was facing on pending charges but prohibited the State from asking whether he was guilty of those charges. (Tr. 63, lines 3-7.) Defense counsel stated, "Yes, sir. And that's kind of what I was looking for so I could fully advise him." (Tr. 63, lines 8-9.) After the State assured the trial court it was "not here to try the drug cases" but simply wanted to use the pending charges to show motivation, Appellant stated, "And if it comes up during trial, I'll obviously object

to it: We've already covered these issues. Thank you, Your Honor." (Tr. 63, lines 17-19.)

The next morning, neither party asked the trial court for an additional ruling on whether the evidence regarding the specific amount of time he was facing on those pending charges could come in. Indeed, Appellant seemed satisfied with the trial court's decision to prohibit any evidence about the facts or merits of the pending charges. The State submits the above discussion that began with Appellant's argument regarding his Fifth Amendment right not to answer questions about the pending charges was sufficient to address the issue of the amount of time he was facing. Thus, the trial court's ruling that the State could pursue the line of questioning about the amount of time he was facing on pending charges but was prohibited from asking whether he was guilty of those charges seems to have encompassed the State's original motion regarding amount of time. It is clear from the following exchange that defense counsel agreed with the trial court's decision to allow the State to question Appellant regarding the minimums he could have been convicted for.

The Court: I agree with you. If he starts to go into the merits of the drug offenses, I don't think it's relevant.

[Appellant]: Okay.

The Court: I think he certainly would have a right to say, Mr. Allen, you understand that you had nine—nine warrants that were outstanding and I guess they had been served on him and he had made a first appearance or something.

[The State]: He was noticed to be at trial, Judge, and didn't show up.

The Court: I think he can ask him all that stuff. You understand that you were looking at serious time for these offenses.

[Appellant]: I can agree with you there, Judge.

The Court: He could have been convicted a minimum of 10 years on some of them. I can't remember what—

[The State]: 10 to 30, 0 to 15 and 0 to 10, Judge.

The Court: So I think he can pursue that line of questioning. He can't go into anything about were you guilty of that.

[Appellant]: Yes, sir. And that's kind of what I was looking for so I could fully advise him.

(Tr. 62, line 9-Tr. 63, line 9.) (emphasis added.) The fact that defense counsel then stated that he would object if "it" came up during trial shows that he realized the requirement to object contemporaneously to evidence that had been ruled upon during *in limine* motions. Yet he did not object at any time to the evidence the State presented during trial that Appellant had those nine pending charges and that he was facing significant time. The State submits defense counsel's failure to object to this evidence after acknowledging he would object when necessary demonstrates that the "it" he was referring to was any evidence of the nature of the charges themselves, which is what Appellant wanted to keep out. Thus, his argument now on appeal that evidence regarding the amount of time Appellant was facing was admitted in error misconstrues the record's account of the trial judge's rulings and counsel's arguments and statements.

When the State mentioned in its opening statement that Appellant "had nine charges pending at the time [and] could have done significant time up to [thirty] years,"

Appellant did not object. (Tr. 82, lines 8-12.)⁸ As Appellant points out in his brief, Captain Corey later testified that he had “outstanding bench warrants, all for serious felony charges,” to which Appellant did not object. (App.Br.13.) Appellant argues that “[t]hough counsel for [Appellant] did not renew his objection at this time, the admission of the evidence was so close in time to his objection prior to opening statements that it is preserved for review.” He bases this argument on State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001). “In most cases, [m]aking a motion *in limine* to exclude evidence at the beginning of trial does not preserve an issue for review because a motion *in limine* is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced.” Forrester, 343 S.C. at 642, 541 S.E.2d at 840 (citation and internal quotation marks omitted). However, the Supreme Court held in Forrester that “[b]ecause no evidence was presented between the ruling and [the] testimony, there was no basis for the trial court to change its ruling. Thus, . . . [the] motion was not a motion *in limine*. The trial court’s ruling in this instance was in no way preliminary, but to the contrary, was a final ruling. Accordingly, [the defendant] was not required to renew her objection to the admission of the testimony in order to preserve the issue for appeal.” Id. (quoting State v. Mueller, 319 S.C. 266, 268-69, 460 S.E.2d 409, 410 (Ct. App. 1995)). The rationale behind this exception is that when no evidence is taken between the ruling and the introduction, no opportunity exists for the court to change its ruling. Here, Captain Corey was the fourth witness, so this certainly was not a case of the ruling coming directly prior to Appellant’s lack of objection to the evidence. Thus, Forrester is inapplicable and standard *in limine* rules apply. Consequently,

⁸ Appellant also did not object when the State argued in its closing, “This young man was wanted for multiple serious charges for which he could have gotten as much as [thirty] years on some of those charges.” (Tr. 239, lines 13-15.)

Appellant's failure to object prevents this issue from being preserved for appellate review. Additionally, when the trial court ruled during the discussion regarding Appellant's Fifth Amendment right not to answer questions that the pending charges and the amount of time he was facing could come in, Appellant argued the nature of the charges should not come in, and the trial court agreed. Thus, Appellant got what he asked for—that any evidence of the nature of the drug charges be excluded—and, consequently, had no need to object when evidence he agreed to was presented. The State submits the reason defense counsel did not object, then, is because he had already agreed with the trial court that evidence of the pending charges and their sentencing ranges could come in as long as the nature of the charges did not.

As to Appellant's argument that the trial judge failed to conduct a balancing test, the State submits the trial judge did conduct a balancing test under Rule 403, SCRE, when considering the totality of the 404(b) evidence the State sought to introduce. The trial judge excluded evidence that Appellant ran from the police a previous time. He specifically found "to put that in would substantially outweigh the probative value." (Tr. 55, lines 7-15.) By ruling immediately after making that statement that, "I am going to allow the evidence to come in based on intent and motive," the trial judge implicitly indicated the probative value of the evidence of the nine pending charges was not substantially outweighed by danger of prejudice. If Appellant desired a more specific ruling than that, he could have and should have requested one. It is incumbent upon an appellant to obtain a ruling from the trial judge to preserve an issue for appeal. Shortly after his ruling to allow the evidence in, when the trial court asked Appellant whether the *in limine* motion was a defense motion "to keep all that out," Appellant stated, "I think if the State wants to introduce it, it has to be their motion to make sure it passes that balance

test. We could have done it at the time of trial.” (Tr. 57, lines 17-22.) Despite saying this, Appellant did not ask for a balancing test or even object at all to the evidence at the time of trial. Thus, Appellant cannot now complain about an alleged error his own conduct caused. See State v. Curtis, 356 S.C. 622, 632, 591 S.E.2d 600, 605 (2004) (“A party cannot complain of an error which his own conduct created.”).

Appellant’s argument that there must be “logical relevance” between the prior charges and the ones being prosecuted is based on State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) *overruled on other grounds by State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014). In Adams, the issue was whether drug use could be used to establish motive for the crime charged. Specifically, the State sought to show the defendant robbed the store to get money for drugs. The Adams court found logical relevance between the drug use and the crime based on testimony by the defendant that he robbed the store because he ran out of money to buy drugs. The Court distinguished three other cases where drug use was not logically relevant to the crime because it was not contemporaneous with, or closely related to, the crimes committed. Appellant’s reliance on this “logical relevance” connection is misplaced. Here, the trial court did not allow evidence regarding the nature of the pending charges to come in, in direct response to defense counsel’s argument to exclude it. Thus, no testimony about possession of cocaine was presented to the jury. Consequently, it is of no moment that possession of cocaine is not “logically relevant” to resisting arrest with a deadly weapon and attempted murder. What was important in this case was the fact that Appellant had pending charges, was facing a significant amount of time in prison, and thus was motivated to resist arrest and shoot at the officers when the police stopped him. Any pending charge that fit this criteria was logically relevant. No other connection between the nature of the pending charges and the current crime was

necessary because that evidence was excluded pursuant to the trial judge's favorable ruling for Appellant to exclude any evidence of the merits of the drug offenses. Thus, the trial court's decision and Appellant's convictions should be affirmed.

CONCLUSION

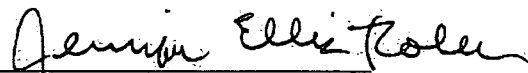
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

BY: 
Jennifer Ellis Roberts
Bar # 79818

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

ATTORNEYS FOR RESPONDENT

April 22, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 22 2015

SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
James R. Barber, Circuit Court Judge

Appellate Case No. 2014-000165

THE STATE,

Respondent,

v.

ERNEST MAURICE ALLEN,

Appellant.

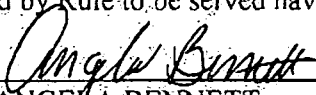
PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

T. Jarrett Bouchette, Esquire
The Floyd Law Firm PC
P.O. Drawer 14607
Surfside Beach, SC 29587

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 22nd day of April, 2015.


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



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

APR 22 2015

SC Court of Appeals

April 22, 2015

T. Jarrett Bouchette, Esquire
The Floyd Law Firm PC
P.O. Drawer 14607
Surfside Beach, SC 29587

Robert M. Dudék, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29201

RE: State v. Ernest Maurice Allen
Appellate Case No. 2014-000165

Dear Counsel:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/ab
Enclosures

cc: Honorable Jenny A. Kitchings
Victim Services

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

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Ernest Maurice Allen, Appellant.

Appellate Case No. 2014-000165

Appeal From Kershaw County
James R. Barber, III, Circuit Court Judge

Unpublished Opinion No. 2016-UP-135
Heard February 2, 2016 – Filed April 6, 2016

AFFIRMED

Thomas Jarrett Bouchette, of Johnny Gardner Law
Group, P.A., of Conway, and Chief Appellate Defender
Robert Michael Dudek, of Columbia, for Appellant

Attorney General Alan McCrory Wilson, Assistant
Attorney General Mark Reynolds Farthing, Assistant
Attorney General Jennifer Ellis Roberts, and Solicitor
Daniel Edward Johnson, all of Columbia, for
Respondent.

PER CURIAM: Ernest M. Allen appeals his convictions for resisting arrest with a deadly weapon, possession of a weapon during the commission of a violent crime, assault and battery of a high and aggravated nature (ABHAN), and two counts of attempted murder. Allen contends the trial court erred in denying his motion for a directed verdict on the resisting arrest charge. He also maintains the trial court erred in allowing evidence of pending charges to be submitted to the jury. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in denying his motion for a directed verdict on the resisting arrest charge: *State v. Brannon*, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." (quoting *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006))); *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 (Holding if any direct evidence or substantial circumstantial evidence reasonably tends to prove the guilt of the accused, this court must find the case was properly submitted to the jury); S.C. Code Ann. § 16-3-625 (2015) ("A person who resists the lawful efforts of a law enforcement officer to arrest him or another person with the use or threat of use of a deadly weapon against the officer, and the person is in possession or claims to be in possession of a deadly weapon, is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten nor less than two years.").

2. As to whether the trial court erred in allowing evidence of pending charges to be submitted to the jury: *State v. Williams*, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) (holding an issue not raised and ruled upon by the trial court is not preserved for appeal); *Ex parte McMillan*, 319 S.C. 331, 334, 461 S.E.2d 43, 45 (1995) (holding a party cannot acquiesce to an issue at trial, but then complain on appeal); *State v. Mitchell*, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998) ("[B]ecause counsel acquiesced in the judge's limitation of his cross-examination, and made no other objections regarding [the issue], [a]ppellant cannot now complain about this issue.").

AFFIRMED.

HUFF, A.C.J., and KONDUROS and GEATHERS, JJ., concur.



JOHNNY GARDNER LAW GROUP, P.A.

DUI · PERSONAL INJURY · CRIMINAL · FAMILY · BUSINESS

JOHNNY GARDNER
HEATHER MOORE
JARRETT BOUCHETTE
ADAM SZYSZKOWSKI

April 11th, 2016

Mr. Earnest M. Pickett (Inmate # 310134)
386 Redemption Way
McCo:mick SC 29899

Re: State v. Ernest M. Allen: Appellate Case No: 2014-000165

Dear Mr. Pickett (Allen):

Enclosed is a copy of the opinion of the Court of Appeals in your case. Unfortunately, the Court affirmed the trial Court's ruling and denied our request for a new trial. Please be advised that our office will be closing your case along with this letter.

Please be aware that there is a **one year statute of limitations for filing an application for post-conviction (PCR) relief**. This is one year from the date of the enclosed opinion. This statute of limitations is **very strictly enforced**, so please be sure that **you** comply with it. Please understand *it is your responsibility alone to be sure this PCR application is timely filed*. **This application must be filed with the clerk of court in the county of your conviction**. There is also now a **one year statute of limitations for filing for federal habeas**. However, you must **exhaust** your **PCR claims** in state court, before raising them in federal court.

Please be aware that the time between your direct appeal becoming final, and the date your PCR application is filed **will count against your federal habeas statute of limitations in the future**. I do wish you the best. Feel free to contact me if you have any questions.

Sincerely,

T. Jarrett Bouchette, Esq.

TJB

Enclosure: Post-Conviction Relief Application

Wherever life takes you, we'll be there.



ALAN WILSON
ATTORNEY GENERAL

April 27, 2016

HAND-DELIVERED

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: State v. Ernest Maurice Allen – Appellate Case No. 2014-000165

Dear Ms. Kitchings:

On April 26, 2016, our office received a pro se petition for rehearing personally submitted by Appellant Ernest Maurice Allen for filing in the above-referenced case. However, pursuant to our records, Appellant is still currently being represented by T. Jarrett Bouchette, Esquire, and Robert M. Dudek, Esquire, in this appeal, and no motion has been filed seeking for appellate counsel to be relieved in Appellant's case. As a result, Appellant's pro se petition for rehearing constitutes an improper pro se filing and, accordingly, should not be accepted by this Court. See Miller v. State, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010) ("Since there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel **are not to be accepted unless submitted by counsel.**" (emphasis added)); cf. Foster v. State, 298 S.C. 306, 307, 379 S.E.2d 907, 907 (1989) (ordering the Clerk of Court to return a substantive pro se document filed while the petitioner was represented by counsel). If the Court desires a more formal return from the State or needs any additional information, please contact me at (803) 734-3727.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar No. 76901

MRF/

cc: T. Jarrett Bouchette, Esquire
Robert M. Dudek, Esquire
Ernest Maurice Allen, Inmate No. 310134
Victim Services



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 3, 2016

Mr. Ernest M. Pickett Allen (Inmate # 310134)
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

Re: Withdrawing from your case

Dear Mr. Allen:

Enclosed please find my Motion to be Relieved as Counsel. Please be advised that if you wish for the court to consider your *pro se* petition for rehearing, you will need to promptly resubmit it to the Court of Appeals.

Please contact me if you have any questions. I wish you the best in the future.

Sincerely,

Susan B. Hackett for

Robert M. Dudek
Appellate Defender

RMD/ssd

Enclosure

cc: T. Jarrett, Bouchette, Esq. (w/ enclosure)

The South Carolina Court of Appeals

The State, Respondent,

v.

Ernest Maurice Allen, Appellant.

Appellate Case No. 2014-000165

The Honorable James R. Barber, III

Kershaw County

Trial Court Case No. 2013GS2800681, 2013GS2800682,

2013GS2800683, 2013GS2800685, 2013GS2800811

ORDER

The Court has received a motion to relieve Mr. Thomas Bouchette and Mr. Robert M. Dudek as counsel for Ernest M. Allen. This motion is Granted. Mr. Thomas Bouchette and Mr. Robert M. Dudek are now relieved as counsel and the Appellant, Ernest M. Allen, is considered to be proceeding as *pro se*.

FOR THE COURT

 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Robert Michael Dudek, Esquire

Thomas Jarrett Bouchette, Esquire


Jennifer Ellis Roberts, Esquire

Daniel Edward Johnson, Esquire

Mark Reynolds Farthing, Esquire

Ernest Maurice Allen

FILED

7/15/16 



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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 18, 2016

The Honorable Joyce McDonald
PO Box 1557
Camden SC 29021-1557

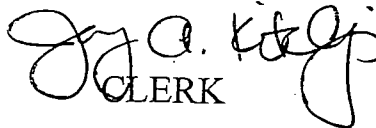
REMITTITUR

Re: The State v. Ernest M. Allen
Lower Court Case No. 2013GS2800681, 2013GS2800682,
2013GS2800683, 2013GS2800685, 2013GS2800811
Appellate Case No. 2014-000165

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Thomas Jarrett Bouchette, Esquire
Jennifer Ellis Roberts, Esquire
Daniel Edward Johnson, Esquire
Mark Reynolds Farthing, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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August 12, 2016

Ernest Maurice Allen, 310134
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

Re: The State v. Ernest M. Allen
Appellate Case No. 2014-000165

Dear Mr. Allen:

This office received your most recent letter on August 2, 2016. A remittitur was issued on July 18, 2016. This ends appellate jurisdiction over the case. If you feel a clerical error has been made, you may file a motion to recall the remittitur.

Very truly yours,

A handwritten signature in cursive script that reads "Jenny A. Kitchings".

CLERK

cc: Alan McCrory Wilson, Esquire
Jennifer Ellis Roberts, Esquire
Daniel Edward Johnson, Esquire
Mark Reynolds Farthing, Esquire

The South Carolina Court of Appeals

The State, Respondent,

v.

Ernest Maurice Allen, Appellant.

Appellate Case No. 2014-000165

The Honorable James R. Barber, III

Kershaw County

Trial Court Case No. 2013GS2800681, 2013GS2800682,

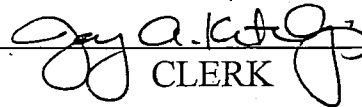
2013GS2800683, 2013GS2800685, 2013GS2800811

ORDER

The Court's remittitur was sent to the Clerk of Kershaw County on July 18, 2016. It is now necessary for this Court to recall the remittitur. The Clerk of Kershaw County is, therefore, directed to return the remittitur to the Clerk of the South Carolina Court of Appeals within ten days from the date of this order.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

Ernest Maurice Allen, 310134
Alan McCrory Wilson, Esquire
Jennifer Ellis Roberts, Esquire
Daniel Edward Johnson, Esquire
Mark Reynolds Farthing, Esquire
The Honorable Joyce McDonald

FILED

September 9, 2016

The South Carolina Court of Appeals

The State, Respondent,

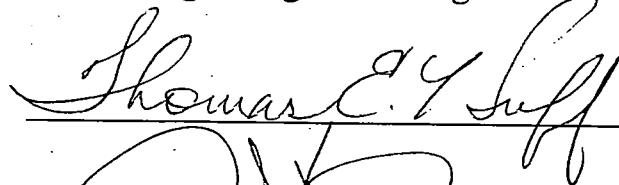
v.

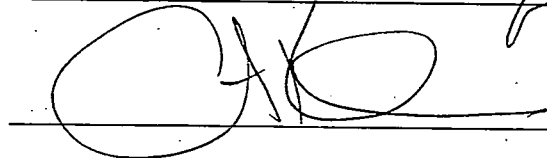
Ernest Maurice Allen, Appellant.


Appellate Case No. 2014-000165

ORDER

After careful consideration of the petition 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 petition for rehearing is denied.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

cc:
Ernest Maurice Allen, 310134
Alan McCrory Wilson, Esquire
Jennifer Ellis Roberts, Esquire
Daniel Edward Johnson, Esquire

FILED

October 21, 2016

Mark Reynolds Farthing, Esquire
Joyce McDonald