STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2013-000149

THE STATE, ...RESPONDENT,

v.

RAYMOND LEWIS YOUNG, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly denied Young's Batson motion where he failed to carry his burden of showing the State's race-neutral explanations for striking three African-American jurors was mere pretext to engage in purposeful racial discrimination and where the only arguably problematic strike was harmless because it was used to strike a potential alternate and the use of alternates was not necessary during the trial.

2. Whether the trial court properly admitted testimony from gang Investigator Brown where: (1) it was relevant to explain the arc of the police investigation; (2) he never directly testified Young was in a gang and therefore did not offer character evidence for purposes of rule 404, SCRE; (3) to the extent his testimony may have suggested Young was part of a gang it was nevertheless relevant as part of the res gestae of the crime and as proof of identity, intent, and motive; and (4) the probative value of the testimony outweighed any danger of unfair prejudice for purposes of Rule 403, SCRE.

3. Whether the trial court properly admitted several photographs of the codefendants flashing gang signs where: (1) the photos were cumulative to a photograph from Young's Facebook page titled "The Family" which included Williams, Booker, and Young, and which was admitted without objection; (2) Young failed to object when Booker opened the door to their admission by cross-examining Investigator Brown on the alleged display of "gang signs" in a photo of the victims; (3) they were sufficiently authenticated by evidence presented at trial; (4) they were relevant as part of the res gestae of the crime and as proof of identity, intent, and motive; and (5) their probative value outweighed any danger of unfair prejudice.

4. Whether the trial court's warning to codefendant DaQuan Bruster, who was called as a witness by the State, that his failure to testify as to the same facts he admitted in his earlier guilty plea would constitute a breach of his plea agreement and would result in the court vacating the plea and allowing the State to proceed with the original charges, was not coercive and did not infringe upon Young's right to due process and a fair trial.

5. Whether the trial court properly denied Young's motion to excuse two jurors and declare a mistrial due to juror misconduct where in direct compliance with Aldret, the trial judge followed the precise procedure suggested by our Supreme Court as soon as he learned of the alleged juror misconduct and through voir dire determined Young had suffered no prejudice.

STATEMENT OF THE CASE

Appellant, **Raymond Lewis Young (Young) (a/k/a "Lil Ray" & "Randy")**,[1] was indicted at the May 2012 term of the grand jury for Greenville County for one (1) count of second-degree assault and battery by mob (2012-GS-23-3841A), one (1) count of possession of a weapon during the commission of a violent crime, one (1) count of conspiracy, and seven (7) counts of attempted murder (2012-GS-23-7941 to -7947).[2] He was represented by John Abdalla, Esquire, of the Greenville County Bar. Respondent (the State) was represented by Assistant Solicitor Katrina Salisbury of the Thirteenth Circuit Solicitor's Office. On January 7-11, 2013, Young and three of his eight codefendants, **Michael A. Williams (Williams) (a/k/a "Mikey")**, **Esaiveus Frantrez Booker (Booker) (a/k/a "Trez")** and **Kinjta K. Sadler (Sadler) (a/k/a "Ken")**, proceeded to a joint trial by jury pursuant to which all four were found guilty of the seven counts of attempted murder and the single count of second-degree assault and battery by mob. Young was also found guilty of conspiracy but was found not guilty of possession of a weapon during the commission of a violent crime. As explained below, the other four codefendants not tried entered pleas to various charges prior to trial. Young was sentenced by the Honorable Edward W. Miller to thirty (30) years' concurrent imprisonment for each count of attempted murder (2011-GS-23-8012 to -8018), five (5) years' concurrent imprisonment for conspiracy (2011-GS-23-8011), and ten (10) years' consecutive imprisonment suspended upon the service of five (5) years' probation for second-degree assault and battery by a mob (2012-GS-23-3838A). (R. 837-865). He timely filed a notice of intent to appeal his convictions and

[1] Nearly all of the codefendants, victims, and other fact witnesses have nicknames that were used throughout the trial. To the extent possible, the State has noted those nicknames in parentheticals when each individual's name is first used in the Statement of Facts.

[2] Five codefendants, Raymond Lewis Young, Michael Antonio Williams, Kinjta Kadeem Sadler, Daquan Bruster, and Tavarus Holmes, were similarly indicted, and two codefendants, Shaquille Hogan and Larry Johnson, were indicted for only second-degree assault and battery by a mob and conspiracy.

sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

As explained in the solicitor's opening statement, in the early morning hours of July 17, 2011, a group of friends were hanging out in the parking lot of the Lil' Cricket (LC) gas station on Whitehorse Road in Greenville County. They gathered at the LC after a trip to the hospital where they had visited a friend who was shot earlier that night during a fight at the nearby Red Planet (RP) nightclub. Unbeknownst to the friends, eight young men had devised a plan to retaliate for the fight at the RP. Booker, his three codefendants at trial, and four other codefendants, parked behind the LC, approached the gas station on foot, and opened fire. Seven people were hit as the victims ducked and ran for cover during the attack. (R.p.105-p.112).

Guilty Pleas

Before the commencement of the trial, four of the eight original codefendants entered guilty pleas to charges associated with the shooting. **Shaquille Hogan (Hogan) (a/k/a "Lipz")** pled guilty to second-degree assault and battery by mob and conspiracy. He agreed with the solicitor's recitation of the facts and said the previous statement he had given to police, wherein he described how the attack was planned and carried out, was true. Hogan named the other codefendants who participated in the attack including Young, Booker, and Sadler, and specifically identified Williams as one of the shooters. (R.p.5-p.11). **Daquan Bruster (Bruster) (a/k/a "Buddha")** pled guilty to seven (7) counts of attempted murder, one (1) count of possession of a weapon during the commission of a violent crime, and one (1) count of conspiracy. He agreed that the facts recited by the solicitor were true, including the fact that he carried a handgun to the scene and opened fire along with five other codefendants. The solicitor noted the State had agreed to withdraw notice of intent to seek life without parole as part of

Bruster's plea. (R.p.11-p.18). **Larry Johnson (Johnson)** pled guilty to second-degree assault and battery by mob and conspiracy. He also agreed to the facts recited by the solicitor. Johnson testified he drove to the LC with a gun but did not get out of the car and only shot several rounds into the air during the attack. He specifically testified that Bruster, Booker, Williams, Hogan, Young, Holmes, and Sadler were with him during the attack and that they all had guns. (R.p.18-p.25). **Tavarus Holmes (Holmes) (a/k/a "Varus")** pled guilty to conspiracy and one count of attempted murder. He agreed that the facts recited by the solicitor were true, including the fact that he was one of the six shooters at the LC and that he carried a .380 handgun and travelled to and from the scene with Young and Williams in a red Honda. The solicitor noted the State had agreed to dismiss six counts of attempted murder, a weapons charge, and assault and battery by mob as a part of Holmes' plea. (R.p.25-p.30). Finally, **Kiara Kerns (Kearns)** pled guilty to obstruction of justice for her role in subsequently hiding some of the firearms used in the assault. She accepted the facts presented by the solicitor as true, including that she was dating Booker at the time of the attack, had allowed him to use her car the night of the attack, and had given guns to her brother for disposal after the attack. The solicitor noted the State had agreed to dismiss an accessory after the fact charge as a part of Kerns' plea. (R.p.30-p.34). The State asked for deferred sentencing on the four codefendants who pled guilty until after the trial of the four remaining codefendants.

Pretrial Matters – Batson hearing

After accepting the pleas, the trial began and the judge conducted jury qualification and selection proceedings. (R.p.35-p.63). As part of jury qualification, the trial court asked if any member of the jury panel was related by blood or marriage, or if they had a business, personal, or social relationship with any of the four co-defendants, the seven shooting victims, or the more

than 75 potential witnesses. None of the potential jurors responded in the affirmative. Similarly, there was no response when the judge asked if any juror knew of any reason they should not serve or could not be fair and impartial. (R.p.48-p.52). The trial court then proceeded with jury selection, with the State and counsel for Booker, who was acting on behalf of all four co-defendants, exercising peremptory strikes until twelve jurors and two alternates were seated. (R.p.53-p.62). Juror 106, Cynthia Foxx, a white female, was seated fourth. (R.p.55, line 22-p.56, line 3). Juror 281, Valisa Smith, a black female, was struck by the State after the ninth juror was seated. (R.p.59, lines 3-6). Juror 81, Anatolya Dodd, a black female, was struck by the State after the eleventh juror was seated. (R.p.60, lines 3-6). Juror 215, Lee Montgomery, a black male, was struck by the State after the twelfth juror was seated, during the selection of the two alternates. (R.p.61, lines 15-18). At the conclusion of jury selection, the defendants advised the trial judge they had a matter regarding jury selection they would like to take up outside the presence of the jury. (R.p.62, lines 17-23).

After the jury was excused, the defendants made an objection to the jury selection pursuant to Batson v. Kentucky,[3] pointing out that out of its six challenges the State struck three black individuals. The trial court noted three black jurors had been seated on the jury but acknowledged Juror 281 was an African-American struck by the State with its 4th challenge, Juror 81 was an African-American struck by the State with its 5th challenge, and Juror 215 was an African-American struck by the State when selecting the first alternate. The defendants said they were challenging all three strikes in their Batson motion. (R.p.63). The solicitor proceeded to give the following explanation for her strikes:

> With respect to Juror 281, Ms. Smith, I noted during jury qualifications that Ms. Smith expressed some concerns regarding her ability to withstand the duration of the trial. She indicated she had a substantial number of health issues

[3] 476 U.S. 79 (1986).

and wanted to be excused based on those issues. That's my basis for striking Ms. Smith.

Ms. Dodd, is Juror 81, and my notes indicate that Ms. Dodd lives on Prancer Avenue in Greenville County. It's my understanding that some of the witnesses in this case live in the area of Prancer Avenue and I was quite simply concerned that juror may become family with the witnesses even though she may not recognize their names off hand. That's my basis for striking her. And then Mr. Montgomery lives at Piedmont and I have the same reservations. There are many of these witnesses that live in the Piedmont area and have residences in Piedmont and again just out of an abundance of caution, I was concerned that he may be familiar with some of the witnesses in this case and decided that another alternate may be a better choice.

(R.p.63, line 23-p.64, line 19). The defendants responded that they did not believe these to be satisfactory racially neutral reasons because during voir dire the court had named all potential witnesses and gave the jurors the opportunity to identify any they knew. (R.p.64, line 21-p.65, line 6).

The trial judge disagreed, said the solicitor had given race neutral reasons for her strikes, and said the defendants were going to have to show something more to prove purposeful discrimination. (R.p.65, lines 7-11). Counsel for Sadler then stated: "One thing I would point out to the Court is Juror 106, No 12 on the list, Ms. Fox. So the extent that they are striking the jurors in Piedmont, Juror No. 106, Cynthia Fox, it was a white female and it provides her address as 13 Piedmont Avenue in Piedmont, no less, and yet she was not struck by the State." (R.p.65, line 12-18). The solicitor replied:

Your Honor, I just didn't indicate on my list that that was an address that I had some concern about. So[me] I do and some I don't, but that doesn't make it the –

. . . .

Judge, I'm not sure where I left off. I've offered race neutral reasons. If the Court wants a more specific inquiry. I didn't make that address on Ms. Fox, it is something that I had no concern. I had concerns about the Piedmont address but not this one. I don't know the geography of Greenville County with enough

> sophistication to appreciate the minor details of the community the basis of my strike, Judge.

(R.p.65, line 19-p.66, line 9). Ultimately, the trial court ruled:

> Okay. Well, Mr. Quinn makes a very valid point. I'm going to rely on State versus Tucker and Peyton versus Kirk Kearse (ph) that I don't see a discriminatory intent inherent in the proponent's explanation and so I believe those cases require me to find the reason offered to be deemed race neutral. So I'm going to deny your motion.

(R.p.66, lines 10-16) (emphasis added). The parties all agreed there was no need for a Neil v. Biggers hearing and the case proceeded to other pre-trial motions. (R.p.66-p.68).

Pretrial Matters – Motion in Limine Regarding "gangs"

During a subsequent discussion of possible introduction of documentary evidence, the solicitor noted she planned to submit "documents related to the defendants' gang affiliation" if they became relevant during trial. Young's counsel, John Abdalla, Esquire, advised: "The defendants have a motion in limine to prevent the State from any mention of gangs or use of the word gang because we believe the prejudicial effect outweighs any probative value." He argued that if the jurors started hearing about gangs it would make it very difficult for them to give the defendants a fair trial. The trial judge asked if Young had any foundation for his motion and Young asked if the motion could be argued more fully the following morning. (R.p.68-p.71).

The trial court then gave brief preliminary instructions before swearing the jury. In addition to instructing the jury on the key concepts of the presumption of innocence, the burden of proof, and the roles of the judge and jury, the court twice cautioned the jury not to begin deliberations until the completion of the entire trial. (R.p.72-p.80). The judge specifically charged: "Do not come to a decision until the end of the case until you've heard all of the evidence, until you've heard all of the law, until you're back there deliberating and talking about the case, keep an open mind." (R.p.76, lines 8-12). He also charged: "The third very important

thing that I ask you to do, instruct you to do, is not to discuss this case with anyone until you are free to deliberate at the end of trial." (R.p.76, line 24-p.77, line 2). The jury was then sworn and before breaking for the day, the trial court held a Jackson v. Denno hearing and found Williams' post-arrest statement to the police was freely and voluntarily given and would be admitted at trial. (R.p.80-p.90).

When the proceedings resumed the following morning, Williams' counsel, Scott Robinson, Esquire, argued the codefendants' joint motion in limine to prohibit the State's witnesses from characterizing or employing the terms "gang," "gang related," or "criminal gang" in the case. First, Williams argued that since none of the codefendants had been charged pursuant to the Criminal Gang Prevention Act, Section 16-8-230 of the Code, any testimony suggesting they were in a gang should be prohibited. Second, Williams made a "[Rule] 403 objection in terms of being unduly prejudicial and inflammatory." He contended the connotation of the word would arouse the passion of the jury to the point of causing prejudice. The trial judge reminded Williams that he needed some foundation for the argument because he could not rule "in a vacuum." Responding to this comment, Booker argued the discovery material showed the police had pursued their entire investigation as though the eight codefendants were in the Folk Nation gang or the "G's." He said the State intended to call Officer [Brandon] Brown as a witness, and Brown's sole job is to investigate gangs in Greenville County. The judge declined ruling on the joint motion prior to the State presenting evidence, finding he could not rule on the propriety of testimony about gangs without knowing the context in which it was being offered. (R.p.93-p.98).

The solicitor then summarized the State's theory of the case. She explained several witnesses were likely to indicate the codefendants wore all black during the attack, were part of

the "G's," and that Young was known to be a leader in the Folk Nation in Greenville. The solicitor argued this information was critical to the State's case because the codefendants retaliated as a unit in response to the fight at the RP. She explained the gang evidence would be probative of identity, motive, and intent. Williams responded that they also had an objection based on Rule 404(a), SCRE, because the evidence of gang affiliation would improperly interject character into the case. The trial judge agreed the evidence would interject character into the matter but explained it sounded like it would be appropriate evidence under the State's theory of the case. He said he would "see how it plays out" based on the other evidence presented and again declined to make a pretrial ruling restricting the State's ability to reference gangs. Young made one last argument, returning to his original contention that the word "gang" is simply so prejudicial that it would outweigh any probative value and prevent a fair trial. The trial judge disagreed and again denied the request for a pretrial limitation. He then questioned the solicitor as to how the State's witnesses would describe their own group. The solicitor said her witnesses would testify they were in a rap group at which point the judge cautioned all the parties to be careful with how they proceeded since they were concerned about anyone using the term "gang." (R.p.98-104).

Trial

The State and each codefendant then made an opening statement, none of which mentioned gangs. (R.p.105-p.123). The State proceeded to elicit testimony from ten of the individuals who were hanging out at the LC prior to the attack, seven of whom were shot. First, **Vincent Fant (Fant) (a/k/a "Buddha")**[4] described going to the RP on the night of July 16, 2011, with his cousin, Cornelius Sins. They were going to a concert at the club where he met up with his other cousins, including **Jamel Williams (Jamel) (a/k/a "Mel")**. Over Young's

[4] Coincidentally, both State's witness Fant and codefendant Bruster go by the nickname "Buddha."

objection, the court admitted photographs of Fant and a bunch of his friends that were taken inside the RP that night. In camera, Fant had explained the photograph was taken of his rap group, the Hardliners. He said the hand gestures some of the people in the photograph were making were an "h" and an "l" and simply stood for Hardliners, not for a gang, as alleged by Young. When the jury returned, Fant testified about a confrontation he had while in the RP. He said Williams and Young "got in his face" because he was talking to a particular lady; however, the dispute ended when Jamel got them separated and took him to the other side of the club. (R.p.120-p.131).

Fant testified that later a fight broke out in the club and everybody started leaving. As he walked to the car he was approached by Williams. Williams took his shirt off and started swinging. Fant started fighting back when he felt something hit him in the back of the head. He was then shot in the arm but did not see who shot him. Fant spent three days in the hospital so he was not hanging out at the LC when his friends were attacked. He later identified Williams from a photo lineup and then made an in-court identification of Williams as the person he fought in the RP parking lot. He identified both Young and Williams as the two men who confronted him inside the RP. (R.p.131-p.138).

Next, the State called **Raheem Adams (Adams) (a/k/a "Dex" & "Ra Ra")**. Adams is a member of the rap group and was with Fant at the RP on July 16, 2011. He noticed a commotion inside the club but did not see the actual confrontation involving Williams, Young, and Fant; however, when Adams went outside, he witnessed the fight in the parking lot and made an in-court identification of Williams. Adams testified he was pretty sure Young was the person who hit Fant in the back of the head and then made an in-court identification of Young. He testified he actually saw the person who shot Fant and was able to identify him to the police by his street

name, "Smoke."[5] (R.p.139-p.144). Adams went to the hospital to see Fant but after five or ten minutes he left with **Trevis Thompson (Thompson) (a/k/a "Trap")** to get cigarettes at the LC. When they got to the LC they met up with **Russell Moore Patterson (Patterson), Anthony Callahan (Callahan) (a/k/a "Ant" & "Antro"), Thomas Walker (Walker) (a/k/a "TJ")** and others. Adams testified there were four vehicles at the LC. He was sitting on the back of a Crown Vic when he heard shots. Adams turned to look as he jumped from the car and heard what sounded like 100 shots. He was hit under the arm. The bullet exited his chest and lodged in his neck and was still there at the time of the trial. Adams was lying on the ground when he heard a second burst of shots and a car drive away. He testified that at least three or four people came from the dark and started shooting. (R.p.144-p.154).

Patterson testified somewhat reluctantly on behalf of the State. He was at the RP on July 16, 2011, and saw the confrontation in the club involving Williams and Young. He testified all the people in the photographs from the RP were in the Hardliners. Patterson went by the hospital after Fant was shot and then went to the LC. He said he was sitting on Booker's car when the shooting started and that he was shot in the left leg. Patterson tried to call an ambulance because he could not run. He said he did not see the shooters. (R.p.158-p.168).

Walker testified he was also at the RP the night of July 16, 2011. He saw the fight between Williams and Fant inside the club and heard gunshots later when he saw Fant fighting in the parking lot. Walker got Fant into his car and drove him to the hospital. At the hospital he got into an argument with **Damont Suber (Suber) (a/k/a "Mont" & "Sub")** and then went to the LC. Walker said there were four cars at the LC: his car, Dutchy's car, Quan's car, and Tres's car. He was shot in the back of the thigh during the attack. Walker first ran and hid

[5] "Smoke" was later identified as **Travis Wear**. Wear was ultimately arrested for the RP shooting but was not a codefendant in this case and was not a member of the Hardliners rap group.

behind a white Impala and then ran away from the LC with **Dontavious Sullivan (Sullivan) (a/k/a "Tate")** and Tres. He admitted he had a gun in his car but did not shoot at the attackers because he did not have a chance. Walker spent a day and a half in the hospital recovering from his gunshot wound. (R.p.170-p.179).

Javon Henry (Henry) testified he knows all of these guys and acknowledged he was part of the Hardliners and was in the photo from the RP. He was at the RP the night in question with Fant, Adams, Patterson, and Walker. Henry said he did not see a fight inside the club but when he walked to the parking lot later, it was chaos. He went to the LC after leaving the RP. When he heard gunshots he hit the ground. Henry said he saw smoke and bodies. There were five to ten attackers and they had their faces covered. A tire was shot out of one of the cars right beside him but Henry was not hit. (R.p.180-p.189).

Motion for Mistrial – Premature Jury Deliberations

After Henry left the stand, the jury was sent out so the trial court could address an issue that arose during trial. The judge explained he received a note from a juror in an unrelated case stating: "I overheard jurors from Courtroom 8 [this courtroom] discussing what sounded like details of their case. Need to decode language, 'I was chillin, he's going down.'" He noted the parties had participated in a bench conference about the note resulting in the defendants moving for a mistrial. The trial judge referenced the 1999 case of State v. Aldret[6] which sets forth both the burden of proof when there has been an allegation of premature jury deliberations, as well as the proper procedure for the court to follow when assessing such an allegation. He noted it was necessary for him to determine whether or not misconduct occurred and whether it was prejudicial, and to make these determinations he would discuss the issue with the jurors one by

[6] State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999).

one. The trial judge cleared the courtroom for the purpose of the hearing and invited the defendants to put their position on the record. (R.p.192, line 2-p.194, line 13).

Counsel for Sadler explained for the record that the specific motion was for removal of the two jurors alleged to have been involved in the premature deliberations. Because this would result in being left with only eleven jurors, he argued the court would be required to declare a mistrial. Sadler further argued there was no need for the court to question individual jurors because the comment "he's going down" could only have meant a juror had already decided the defendants were guilty, which is prejudicial. He objected to the procedure outlined in Aldret and asked the court to simply declare a mistrial without further inquiry. Booker, Young, and Williams all joined in the objection. The trial judge noted that this Court had recently referenced Aldret with approval when analyzing a trial court's handling of a juror misconduct issue in State v. Carmack,[7] and denied the defendants' request not to question individual jurors. (R.p.194, line 14-p.198, line 6).

The trial court proceeded to separately call each of the twelve sitting jurors and the single alternate juror into the courtroom to answer questions about the alleged misconduct. Although several jurors indicated there had been brief conversations about the behavior and enunciation of the witnesses, as well as comments about trying to keep their names straight, there had been no discussion about the content of the testimony and no conclusions drawn about the ultimate outcome of the case. In fact, each juror assured the court that nothing that was said would impair his or her ability to be fair and impartial to the State and the defendants. They all stated they could follow their oath to judge the case solely on the evidence and the law. (R.p.198-p.214). After the inquiry, the trial judge held as follows:

[7] State v. Carmack, 388 S.C. 190, 694 S.E.2d 224 (Ct. App. 2010).

> Okay. Based on what I've just done I'm going to deny the motion for mistrial at this time. I don't find any prejudice to any defendant. I will give more cautionary instructions about discussion of the case and we're get [sic] ready to go forward.

(R.p.214, lines 11-17). Sadler again objected to the procedure and noted Aldret only suggested voir dire of the jurors when requested by the moving party. He argued the trial court should not have done so on its own. Sadler also objected to how the procedure was handled, arguing the parties should have been allowed to ask questions to establish an appellate record on which prejudice could be reviewed on appeal, and arguing the original accuser should have been questioned about what he heard in the restroom. Young added to the argument that he believed the questions asked by the court were framed in such a way that the jurors were not able to freely express themselves. Booker joined in the objection; however, Williams did not, stating: "I don't disagree with the Court. I believe it was conducted properly." (R.p.216, lines 4-5). Although the solicitor expressed her own concerns about the testimony of a particular juror, the State did not indicate any agreement with the defendants' request for a mistrial. Ultimately, the trial court overruled all objections to the procedure and maintained its denial of the motion for a mistrial. (R.p.214, line 18-p.217, line 7).

Trial – Continued

After denying the motion for a mistrial, the jury returned to the courtroom and the trial resumed. **Roshonques Perry (Perry) (a/k/a "Choc")** testified she was at the RP but never saw the fight inside or the fight outside the club. Afterwards she drove her green Ford Focus to the LC and was hanging out. A Crown Vic, an Escort, and an Impala were already there. She heard shooting, saw smoke, and ran. Perry was not shot but was scared the gas pumps would blow. (R.p.219-p.226). Next, Jamel testified he was at the RP on the night of July 16, 2011, and was in the photo with the rap group. He was there with Walker, Justin, and Callahan. Jamel saw Fant

in an altercation inside and later saw Fant scuffling in the parking lot before he heard gunshots. He drove to the hospital with Walker, Fant, and Callahan. Jamel admitted he had a gun but claimed he did not use it. He went to the LC to hang out after he left the hospital. When he heard gunshots from behind, he ran and was shot in the back. (R.p.227-p.237).

Callahan testified he knows everyone in the Hardliners but does not rap with them. He was at the RP and saw people going towards Fant and getting in an argument. Callahan then saw Williams shaking hands with Walker. He made an in-court identification of Williams. Callahan followed Walker and Jamel outside where he saw Jamel talking to Fant. He heard gunshots and helped get Fant in the car to take him to the hospital. Afterwards, Callahan went to the LC. He said Justin, Thompson, Quan, Jamel, Walker, Henry, Adams, and maybe Perry were there. Callahan heard lots of shots and got hit in the arm. He ran down the road and jumped over the edge of a bridge to get away. (R.p.238-p.246).

Sullivan testified he also knows everyone in the rap group but does not rap with them. He was at the RP on July 16, 2011, but did not see the fight inside. He saw people running out later but security at the club would not let people leave once shots were fired. He heard Fant was shot so he jumped in the car with Quan to go to the hospital. Sullivan then went to the LC in a white Impala. He was there for ten to fifteen minutes when he heard shots fired. He ducked and ran towards the bridge with Walker, but he was shot in the back of the head. (R.p.247-p.252).

Carroll Jackson (Jackson) (a/k/a "Warren") testified he was at the RP that night drinking and posing for pictures. He drives a white Impala. Jackson did not see the fight inside and club security kept him from coming out at first, but when he did come out he found Fant and helped Walker and Jamel get him to the hospital. He also went to the LC and heard the shots being fired, but he was not hit. (R.p.254-p.258). Next, Thompson testified he was at work and

not at the RP on July 16, 2011; however, when he got off work he followed the other cars to the LC. He said he was part of the rap group. Thompson heard shots, ducked, and crawled under a car. He testified the shots came from the dark area beside the LC and he was hit in the leg. (R.p.259-p.265).

After hearing from all the victims, the State called Patricia Smith, the night clerk at the LC, to the stand. She was working in the store on the night of July 16, 2011, and the morning of July 17, 2011. It was a slow night with four or five cars in the parking lot when she heard gunshots. Smith ran into the store cooler and called 911 but did not see anything. (R.p.2660-p.273).

Next, the State called a series of investigators from the Greenville County Sheriff's Office to describe their roles in the investigation of the shooting. Investigator Chris McCalmont was dispatched to the LC where he first encountered Jackson waving his arms and saying his friends had been shot. McCalmont provided medical assistance to several victims and later helped secure the scene. (R.p.274-p.281). Deputy Christopher Hill also responded to the scene and made contact with Sullivan and Walker as they were running away, injured. (R.p.282-p.384). Deputy James Brown was the first officer to respond to the scene where he found cars but no people in the parking lot. He taped off the scene and then took witness statements. (R.p.285-p.290). Deputy Matthew Owens also responded to the LC. When he arrived he found four cars but no people. He drove towards Highway 125 where he encountered Thompson running and suffering from a gunshot. (R.p.290-p.294).

The State then called Department of Public Safety Crime Scene Investigator Iona Ooten to the stand. Ooten walked the entire scene, taking photos and marking evidence such as shell casings and blood. (R.p.295-p.326). Next, the State elicited testimony from forensic

investigators Jonathan Derby and Jonathan Hamilton about the condition of the vehicles at the scene and various pieces of evidence collected from those vehicles. Derby testified he helped examine three vehicles: a green Ford Focus, a white Chevy Impala, and a green Ford Escort, each of which had multiple bullet holes. (R.p.327-p.343). Hamilton testified he examined a 2004 Crown Vic belonging to Walker containing a .9mm gun, a magazine for that gun, and a shirt. (R.p.344-p.353).

The State then called Lead Investigator Wayne Taylor Campbell to the stand. He gave detailed testimony about managing the investigation, from the collection and processing of physical evidence to finding and interviewing possible suspects, including Johnson and Hogan. Campbell noted that based on the investigation they determined there were four different caliber weapons used at the scene: .380, .9mm, .45, and .40. He testified he talked to Johnson on July 20, 2011, and later talked to Hogan, who was very useful and led to the police securing arrest warrants for six people.

Campbell explained there were a total of three shooting victims from the RP: **Brandon Edwards (Edwards) (a/k/a "Black")**, **Brandon Davis (Davis) (a/k/a "Bram-Bram")**, and Fant. He testified that **Travis Wear (Wear) (a/k/a "Smoke")**[8] was ultimately arrested for shooting Fant, and that a person named **Desmond Roberts (Roberts)**, who was from a totally different group, was charged with shooting Edwards and Davis. Campbell testified that Davis was with Bruster when some of the guns were subsequently recovered. (R.p.354-p.389; p.388-p.421).

Next, the State called more investigating officers to the stand. Investigator Shawn A. Peoples went to the RP on July 17, 2011, to collect evidence and talk to witnesses. She

[8] According to the transcript, Campbell testified a man named "Travar Blair" was charged with shooting Fant; however, this appears to be a typographical error because he also identified the shooter by his nickname "Smoke" which is consistent with the name "Travis Wear" that was used in other testimony during the trial.

interviewed Williams and took his statement after he was Mirandized. (R.p.422-p.433). Former officer Michael Moore testified he participated in Williams' arrest, which took place at Young's house. He described seeing a black duffle bag at the house and having to deal with two uncooperative female residents. (R.p.436-p.441). Investigator Dustin Woodall first responded to the LC but was later sent to the RP to assist Peoples. He testified he canvassed a lot of people, which included talking to Wear. Woodall testified he then went to the hospital to talk to Patterson, which led the investigation towards Young. He later arrested Williams at Young's house and saw the black duffle bag. Woodall testified that **Karima Johnson (Karima)** and **Brittney Phillips (Phillips)** were the two females at the house. He said the police came back later with a search warrant and although the duffle bag they had seen was gone, they did find some .40 caliber ammunition and a holster, and they learned Young and Phillips lived at the house. (R.p.442-p.453).

The State then called **Joseline Mack (Mack)** to the stand. She was at the RP the night of July 16, 2011, and was driving a burgundy Honda. Although she did not see it, she heard about the shooting in the parking lot of the RP and met Young afterwards at a nearby nightclub named Club 864. Mack said everyone there was mad about the earlier shooting and planned to go to the Waffle House to eat and talk. She testified a group of cars left Club 864 but then did a U-turn and returned, where she traded cars with Young and was told to go wait at the Waffle House (WH1). Mack admitted that when they switched cars Young got his gun and took it with him. She testified she saw Booker, Hogan, and Sadler get in Simone's green Camry but denied previously telling the police that Young and Williams got in her red Honda. Mack said she waited at the WH1 but Young did not show; however, he eventually called and told her to come to a different Waffle House (WH2). When she arrived a bunch of people were already there

including Young, Booker, Williams, and Sadler. The next day Young called Mack and asked her to look for a gun in her car. She found it and gave it to Young. Mack testified she later saw Booker with a black bag and she saw guns in her apartment, all of which she told Investigator Brown. (R.p.454-p.471).

Investigator Brandon Brown

Before the State called its next witness, Booker raised an objection as to how that witness would be identified to the jury. He explained that GCSO Investigator Brandon Brown is in the gang investigation unit and objected to Brown being identified this way. Booker complained that to do so would imply Brown was called in because police were investigating a gang, and that the State had not laid any foundation from any witness that the defendants were actually in a gang. The trial judge noted the objection for the record and the fact that all codefendants had joined in the objection; however, the objection was overruled. (R.p.472, line 7-p.473, line 23).

Investigator Brown then took the stand. He testified he was a "gang investigator" and that his responsibilities include maintaining all gang intelligence throughout Greenville County and knowing the players and entities involved as they pertain to gangs and violent crime. Brown explained he is often called to assist if an incident might involve a gang. He responded to the attack at the LC and began gathering information to see if any of his gang knowledge would help the investigation. Brown learned about the prior incident at another location involving what people were calling the "Folk Boys" who all showed up together wearing black. Several witnesses mentioned the name "Mikey" but the name did not stand out as someone he associated with a gang. Meanwhile, another investigator learned an individual named Brandon Edwards had been shot at the previous location. Brown testified that Edwards' name definitely had significance because he knew Edwards to be associated with several notable individuals in

Greenville, particularly Young. He described Edwards and Young as possibly "family." (R.p.475-p.479). Young objected to the testimony "involving this whole gang thing" and testimony about himself and Edwards. He argued it was prejudicial without a foundation. The objection was overruled and Brown continued explaining the investigation. (R.p.479, lines 14-23).

Brown next looked at Young's Facebook page, particularly a public conversation he had been having with Williams and a photo he posted that was titled "The Family." The photo came in without objection from Booker, Williams, or Young, and over the objection of Sadler. (R.p.481, line 4-p.482, line 12). Brown testified they used the photo to start determining exactly which individuals associated together. After many hours and days of trying to identify and track down people in the photo, Brown was able to interview Johnson, who he said was very forthcoming with the legal names and nicknames of people in the photo. This led them to Mack, who was involved with Young either romantically or as a friend. Mack shared more useful information about names and vehicles, and she told Brown she saw several guns in the residence where she and Young were staying. Mack also revealed that her roommate, Kerns, was involved with Booker, which was a new name that led Brown to more people from the photo. Mack told Brown the guns had been brought into the residence by Booker in a black duffle bag. Based on all the new information, Brown obtained an arrest warrant for Williams and subsequently got a search warrant for the residence. When executing the search warrant, the police found paperwork belonging to Young as well as two canvas gun holsters. Although Kerns was originally uncooperative, she eventually helped the police locate the guns Mack had seen in the residence. (R.p.480-p.494).

On cross-examination by Booker, Brown admitted he was familiar with the Hardliners. He testified he had seen the photograph of them flashing hand signs and admitted that is something that can be common among gang members. Brown also admitted the police found weapons inside some of the victims' vehicles. (R.p.494-p.499). Under redirect examination from the solicitor, Brown identified three photographs of groups of people who were making hand signs he recognized as being associated with gangs. The photos were admitted over objection and Brown identified Williams, Booker, and Hogan in those photos. (R.p.499-p.504). The trial judge then excused the jury to allow the defendants to argue their specific objections to the photos on the record, which were based on an alleged lack of foundation and a lack of relevance. Counsel for Young also renewed his objection to the prejudicial nature of gang information and the objection was overruled. The trial judge noted the photographs came from Young's cell phone. (R.p.499-p.507).

Trial – Continued

After Investigator Brown completed his testimony, the State called more investigators from the Greenville County Sheriff's Office to describe their roles in the investigation. Investigator William Whitlock executed the search warrant at **Amanda Bell's (Bell's)** house. Bell is Kerns' mother. They did not find anything, but the search convinced Kerns and Bell to help locate and turn the guns over. (R.p.507-p.512). Bell confirmed she retrieved the guns from her son, Adrian Kerns, and turned them over to the police. (R.p.515-p.517). Investigator Devon Hooper arrested Young, confiscated two cell phones from him, got search warrants for those phones, and turned them over for a forensic search. (R.p.517-p.519). Investigator David Weiner arrested Larry Johnson in a separate case and got consent to search his cell phone. (R.p.520-p.521). Investigator James Perry was in the data recovery unit and generated a cell phone

forensic report for two phones, one provided by Weiner and one provided by Hoover. (R.p.522-p.526). Finally, forensic crime lab chemist and firearms examiner James Williams Armstrong described the testing he did on the bullet fragments and casings discovered at the scene of the shooting. He was able to determine seven different weapons had been fired, including three .380s, two .9mms, one .45, and one .40. (R.p.528-p.548).

Codefendant Larry Johnson

To conclude its case, the State began calling each codefendant who had previously entered a guilty plea to the stand. First, the State called Larry Johnson. Johnson acknowledged his earlier plea to attempted murder and second-degree assault and battery by mob and then described the events of July 16-17, 2011. He testified he drove a black Cutlass Supreme to the RP after picking up Bruster from Young's house. Johnson testified he was hanging out at the RP with Young, Bruster, Holmes, Sadler, and Booker, made an in-court identification of each defendant, and then identified them in a photograph taken at the RP that night. He explained there was an incident inside the club where words were exchanged, but then Edwards came in and walked to the back with Young. Later, outside, Johnson saw two fights. Johnson testified Williams was fighting with someone and Edwards was fighting with **Nitche** when Johnson heard gunshots. After the gunshots stopped he got in his car and he saw Young and Williams get in a green Crown Vic. They all drove to a nearby nightclub, Club 864, where he learned Edwards had been shot and Davis had been shot. Johnson said there was a lot of commotion about Davis and Edwards being shot. (R.p.549-p.560).

Johnson testified they all left Club 864 in four cars and headed up Whitehorse road towards the LC. After driving past and seeing a group of guys parked at the LC, the cars did a U-turn and Young told the others they looked like the guys that shot Davis. Johnson's group

then went back to Club 864 where Young traded cars with Mack and told the people who were not heading back to the LC to go to the WH2 and wait. Johnson testified that Young, Williams, Sadler, and Booker all covered their faces with black t-shirts on the way. Johnson and Bruster were in Johnson's car while Williams, Holmes, and Young were in Mack's burgundy car and Sadler, Booker, and Hogan were in a green Camry. He stayed in his car and watched as six of the codefendants ran up beside the LC. He heard multiple shots before the group ran back and jumped in the cars to leave. They met up at the WH2 after the attack where Young made them all swear not to tell. Johnson proceeded to identify a bunch of people from the WH2 surveillance video. He said he originally withheld information from the police but eventually told them the whole truth in his third statement because he found out his friend Adams was one of the victims. (R.p.560-p.575).

Under cross-examination, Johnson acknowledged photos from his cell phone where he was displaying guns and money but denied an allegation that he was in the Bloods. He was questioned by both Booker and Young about a recantation in which he claimed he had been coerced to give a statement to the police; however, he testified this was not correct and that he was actually coerced to issue the recantation by one of his co-defendants. (R.p.583-p.590). On redirect Johnson testified he recanted because of threats from people in the gang. He said Young wanted the recantation for trial or Johnson would get "x-ed." Johnson testified he understood this to mean he would get murdered and explained he feared for his safety. (R.p.594-p.596).

Codefendant Shaquille Hogan

Hogan made in-court identifications of Booker, Williams, Young, and Sadler, all of whom he testified were at the RP on the night of July 16, 2011, along with Johnson and Holmes. He acknowledged the confrontation that happened inside the RP and posing for the photograph.

Hogan testified he came in a green Camry with Booker but left his .380 in the car. He did not witness the fight in the parking lot; however, he went to Club 864 with Booker and Sadler when they were finally able to leave the RP. Hogan said Holmes ordered him to hand over his gun, which he did because Holmes has "more power." He was told they were going to the LC. Hogan testified Johnson and Bruster were in a brown Altima, while Holmes, Williams, and Young were in a red car. They all parked behind the LC. The rest of the men got out of their cars but Hogan did not because he did not have a gun. Hogan heard gunshots and then the others came running back. He described each gun that was being used during the attack. Hogan denied meeting later in the WH2 parking lot although this is what he said in his statement. (R.p.597-p.614). Under cross-examination, Hogan admitted that he also wrote a recantation. (R.p.614-p.630). On redirect Hogan testified he got the idea to recant from another inmate at the jail. (R.p.626-p.629).

Codefendant Daquan Bruster

After briefly recalling Investigator Wayne Campbell in regard to details about the various guns that were described in Hogan's statement, (R.p.631-p.633), the State called Bruster to the stand. Bruster acknowledged pleading guilty to seven counts of attempted murder and possession of a weapon during the commission of a violent crime; however, he claimed he did not remember the events surrounding the shooting and attempted to "take the 5th." The solicitor asked to treat Bruster as a hostile witness and proceeded to question him about agreeing to the facts of the offenses when they were described at his plea. He admitted he did not want to testify and claimed he simply pled to whatever charges he was given. Under cross-examination Bruster testified he only pled guilty because the State had threatened him with life without parole and because his mother pled with him to do what the State wanted. He testified he did not know he

would have to testify as a result of his guilty plea. The trial court then excused the jury and asked the solicitor to have Bruster's counsel come to the courtroom the following morning. The trial judge commented he would give Bruster a chance to withdraw his plea since he was now claiming he did not remember what happened, which would make the plea invalid. (R.p.633-p.639).

The following morning, the State called codefendant Tavarus Holmes to the stand. Holmes made an in-court identification of Booker but then refused to answer any more questions without his attorney, Brian Beasley, present. The jury was sent out. After hearing from the solicitor about the terms of Holmes' plea deal, the trial judge vacated his plea, over Young's objection. Williams, Booker, and Sadler did not object. (R.p.642-p.646).

Next, Bruster's counsel advised the court that he had spoken with Bruster, and that to the extent of his knowledge, Bruster realized he was indeed guilty of the charges and would cooperate as to what he knows. Booker raised an objection. On behalf of all four defendants, he argued: "Our position is that once someone has entered a plea, that they can not be forced to withdraw that plea, that the plea cannot be vacated, that he came in here to testify after pleading guilty and just because he didn't say what they wanted him to say doesn't mean that he can now be brought back out here and essentially be forced to testify." The trial judge disagreed, noting that if this was true, it would allow someone to "game the system." The judge then called Bruster to the stand and explained he was going to give him another opportunity to testify truthfully, but that if Bruster continued to insist he could not remember what happened during the incident, the court would vacate his plea. Bruster said he would testify. (R.p.648-p.651).

Sadler objected to the State being allowed to recall Bruster as a witness, arguing the State had already had a full and fair opportunity to examine him. He again referenced what he called

the "coercive nature" of the court's ability to compel withdrawal of the plea resulting in Bruster facing additional charges and additional time. The trial judge noted the objection for the record and noted that all defendants presumably joined in the motion before denying it and advising the defendants they were free to cross-examine Bruster about all of this. The jury reentered the courtroom and the State resumed examining Bruster. (R.p.651-p.652).

Bruster testified that although he did not remember everything that happened, he remembered some things from the RP and the LC. He was at the RP the night of July 16, 2011, and he left to go to the hospital when he heard Davis got shot in the back. He left the hospital and went to the McDonalds near Club 864 where he got in a Cutlass with Johnson and rode with him to the LC. Bruster said he put a black shirt over his face and was carrying a .380. He testified he got out of the car at the LC with ten or eleven others, all of whom had their faces covered so he could not identify them. Bruster acknowledged that at his plea he admitted conspiring with Williams, Booker, Sadler, Young, Holmes, Hogan, and Johnson to attack the people at the LC; however, he testified he actually has no idea who was with him because their faces were covered. Bruster testified that he and Johnson got back in his car and went to the WH2. (R.p.652-p.660).

After playing portions of the security video from the WH2, the State rested. The defendants all moved for directed verdicts and those motions were denied. Each defendant then advised the trial court that he did not want to testify. Following a brief charge conference, the State and the defendants gave closing arguments. (R.p.661-p.666; Transcript - closing arguments, p.667-p.783). Finally, the trial court instructed the jurors on their role as the sole judges of the credibility of witnesses, the burden of proof, the presumption of innocence, reasonable doubt, direct and circumstantial evidence, and the elements of the crimes. (R.p.784-

p.796). Young was found guilty of the seven counts of attempted murder and the single count of second-degree assault and battery by mob. Young was also found guilty of conspiracy but was found not guilty of possession of a weapon during the commission of a violent crime. He was sentenced to thirty (30) years' concurrent imprisonment for each count of attempted murder (2011-GS-23-8012 to -8018), five (5) years' concurrent imprisonment for conspiracy (2011-GS-23-8011), and ten (10) years' consecutive imprisonment suspended upon the service of five (5) years' probation for second-degree assault and battery by a mob (2012-GS-23-3838A). (R. p.837-865).

ARGUMENT

I.

The trial court properly denied Young's Batson motion where he failed to carry his burden of showing the State's race-neutral explanations for striking three African-American jurors was mere pretext to engage in purposeful racial discrimination and where the only arguably problematic strike was harmless because it was used to strike a potential alternate and the use of alternates was not necessary during the trial.

Young argues the trial court erred in denying his Batson motion where the State's explanation for striking African-American jurors was inherently racial, fundamentally implausible and where the State failed to give racially neutral reasons for uneven treatment between the jurors struck and at least one similarly situated white juror that was seated. He contends the trial court failed to follow the mandated Batson procedure by failing to apply the proper law given the facts and that as a result, plenary review is appropriate. The State disagrees and submits Appellant's argument is without merit.

The trial court clearly followed the required three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. During that inquiry, the solicitor provided racially neutral explanations for striking each of the

three African American jurors in question. Even though the explanation in regard to Juror 215 initially appeared to be pretext because a similarly situated juror of another race, Ms. Foxx, was seated on the jury, the trial judge observed the solicitor's demeanor and made a credibility finding that there was no discriminatory intent in the her explanation and thereby concluded the reason given was in fact not pretext. That credibility finding must be given great deference and may not be set aside unless clearly erroneous, thus Young, as the opponent of the strike, failed to show the reason offered was actually mere pretext to engage in purposeful racial discrimination. In any event, even if this Court concludes the State's strike of Juror 215 was improperly exercised on the basis of race, any error was harmless because Juror 215 could only have been seated as an alternate.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Inman, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014); State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016). A court is bound by the trial court's factual findings unless they are clearly erroneous. Id. Thus, on review, this Court is limited to determining whether the trial court abused its discretion. State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. Palmer at 511, 783 S.E.2d at 827. "Because the trial court's findings regarding purposeful discrimination rest largely upon his evaluation of the solicitor's credibility, we will give those findings great deference." State v. Tucker, 334 S.C. 1, 9, 512 S.E.2d 99, 103 (1998); see also Palmer, 415 S.C. at 513, 783 S.E.2d at 829 ("The trial [court's] findings of purposeful discrimination rest largely on [its] evaluation of demeanor and credibility. Often the demeanor of the challenged attorney will be the best and only evidence of

discrimination, and an 'evaluation of the [attorney's] mind [based on demeanor and credibility] lies peculiarly within a trial [court's] province.'") (internal citations omitted).

Batson Framework

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a juror on the basis of race. Batson, 476 U.S. at 89; State v. Inman, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014); State v. Cochran, 369 S.C. 308, 313, 631 S.E.2d 294, 297 (Ct. App. 2006). "Once a peremptory challenge is opposed, the trial court must, upon request, conduct a Batson hearing and adhere to the procedures set forth in Purkett v. Elem, 514 U.S. 765, 767 (1995), and adopted by our Supreme Court in State v. Adams, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996)." Cochran, 369 S.C. at 314, 631 S.E.2d at 297-98. The United States Supreme Court has set forth a three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. Inman at 26, 760 S.E.2d at 108; See Purkett, 514 U.S. at 767-68. (1995).

First, the [party asserting the Batson] challenge must make a prima facie showing that the challenge was based on race. Inman at 26, 760 S.E.2d at 108. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the [party opposing the Batson] challenge to provide a race neutral explanation for the challenge. Id. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the [party asserting] the challenge has proved purposeful discrimination. Id. The ultimate burden always rests with the [party asserting the Batson challenge] to prove purposeful discrimination. Id.

Step two of the analysis is perhaps the easiest step to meet as it does not require that the race-neutral explanation be persuasive, or even plausible. Purkett, 514 U.S. at 768; Inman at 26,

760 S.E.2d at 108. The explanation must only be "clear and reasonably specific such that the [party asserting the Batson challenge] has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty [in step three] to assess the plausibility of the reason in light of all the evidence with a bearing on it. Inman at 26, 760 S.E.2d at 108. In contrast, step three of the above analysis requires the court to carefully evaluate whether the party asserting the Batson challenge has proven racial discrimination by demonstrating that the proffered race-neutral reasons are mere pretext for a discriminatory intent. Id. (emphasis added); see also Batson, 476 U.S. at 93-94 (stating that the court must consider "the totality of the relevant facts," including both direct and circumstantial evidence). During step three, the party asserting the Batson challenge should point to direct evidence of racial discrimination, such as showing that the opponent struck a juror for a facially neutral reason but did not strike a similarly-situated juror of another race. Inman at 26, 760 S.E.2d at 108-09. When the opponent of the strike proves the proponent of the strike practiced purposeful racial discrimination, the trial court must quash the entire jury panel and initiate another jury selection de novo. Cochran at 315, 631 S.E.2d at 298 (emphasis added).

Discussion / Analysis

Here, in compliance with Purkett, the trial court conducted a Batson hearing and adhered to the mandatory three-step procedure for evaluating whether the State executed its peremptory challenges in a manner which violated the Equal Protection Clause. After the defendants made a prima facie showing that the challenges were based on race, the trial judge asked the solicitor to provide race neutral explanations for the three strikes, and the solicitor did so. Juror 281 was struck because she "had a substantial number of health issues and wanted to be excused." Juror 81 was struck because she "lives on Prancer Avenue" and "some of the witnesses in this case

live in the area of Prancer Avenue and I was quite simply concerned that juror may become family with the witnesses even though she may not recognize their names off hand." Juror 215 was struck because he "lives at Piedmont and I have the same reservations. There are many of these witnesses that live in the Piedmont area." (R.p.63, line 23-p.64, line 19).

The defendants' response was that they did not believe these to be satisfactory racially neutral reasons because during voir dire the court had named all potential witnesses and gave the jurors the opportunity to identify any they knew. (R.p.64, line 21-p.65, line 6). On appeal he attempts to expand upon the assertion that the explanation itself was insufficient to clear the second step of the Batson analysis. First, he argues: "The solicitor's assumption that black jurors might not be aware of the names of their friends, neighbors, or relatives (as opposed to the white juror seated) is based on a stereotype, and therefore, inherently racial." (Brief of Appellant, p.24-p.25). Second, he argues: "the fundamental implausibility of the state's explanation was obvious in light of the record" because "the court had already called the name of every potential witness in the case and inquired specifically whether any of the venire knew . . . any of the potential witnesses in the case. (Brief of Appellant, p.25-p.26). However, each of these arguments is fundamentally flawed.

As to the claim that the explanations were based on a stereotype, it is absurd. There solicitor did not use a racially derogatory term [such as "redneck"] which is applied exclusively to members of a single race and did not identify a physical characteristic [such as "dreadlocks"] typically associated with a single race. Instead, the explanations were not based on anything that would be exclusive to a particular racial group. Indeed, on its face each explanation was race neutral. As to the claim the explanations were fundamentally implausible, Appellant's arguments both at trial and on appeal are based on a misrepresentation of the record. During voir

dire, the trial court asked if any member of the jury panel was related by blood or marriage, or if they had a business, personal, or social relationship with any co-defendants, victims, or potential witnesses, but it did not ask the panel members if they simply "knew" any witnesses, as opposed to having a "relationship" with them. (R.p.48-p.52). Thus, the solicitor's explanations went beyond the concerns addressed during voir dire and were not fundamentally implausible. The State provided a valid, race-neutral reason for striking each of the three potential jurors and thereby met its minimal burden at the second step in the process. Purkett, 514 U.S. at 768. The trial judge properly concluded the solicitor had given race neutral reasons for her strikes, and then properly returned the burden to Young and his codefendants to "show something more to prove purposeful discrimination." (R.p.65, lines 7-11). Consequently, the only question truly before this Court is whether the trial court abused its discretion in regard to step three of the Purkett procedure as to the three African-American jurors struck by the State.

Although the trial court invited Young and his codefendants to attempt to make a showing of purposeful discrimination as to each of the three strikes, they chose to focus solely on the State's strike of Juror 215, Mr. Montgomery. Counsel for Sadler stated: "One thing I would point out to the Court is Juror 106, No 12 on the list, Ms. Fox. So the extent that they are striking the jurors in Piedmont, Juror No. 106, Cynthia Fox, it was a white female and it provides her address as 13 Piedmont Avenue in Piedmont, no less, and yet she was not struck by the State." (R.p.65, line 12-18) (emphasis added). By failing to offer any further showing in regard to Juror 281 or Juror 81, Young failed to carry his burden of proof in the trial court. He similarly has also waived any right he may have had to challenge those two strikes on appeal. Furthermore, to the extent Young argues his challenge to Juror 215 encompassed a challenge to Juror 81 because the solicitor's race neutral reasons were both based on their home addresses, his

argument fails because he never argued to the trial judge that Prancer Avenue is in Piedmont. This is likely because Prancer Avenue is not in Piedmont, and instead is located ten miles north, near the Greenville Country Club.

As to Juror 215 himself, the solicitor's explanation initially appeared to be pretext because Ms. Foxx, a white woman from Piedmont, was seated on the jury. Cochran, 369 S.C. at 315, 631 S.E.2d at 298 ("This burden is generally established by showing similarly situated members of another race were seated on a jury."). The inquiry at Young's trial, however, continued when the trial judge asked the solicitor for further explanation. She replied:

> Your Honor, I just didn't indicate on my list that that was an address that I had some concern about. So[me] I do and some I don't . . . I didn't make that address on Ms. Fox, it is something that I had no concern. I had concerns about the Piedmont address but not this one. I don't know the geography of Greenville County with enough sophistication to appreciate the minor details of the community.

(R.p.65, line 19-p.66, line 9). Upon observing the solicitor's demeanor while she gave this explanation, the trial court found it did not "see a discriminatory intent" in the explanation. (R.p.66, lines 10-16). This credibility finding was the basis upon which the trial court grounded its conclusion that the State's reason given for striking Juror 215 was not pretext. The credibility finding must be given great deference and may not be set aside unless clearly erroneous. State v. Tucker, 334 S.C. 1, 9, 512 S.E.2d 99, 103 (1998) ("Because the trial court's findings regarding purposeful discrimination rest largely upon his evaluation of the solicitor's credibility, we will give those findings great deference."). Because the trial court was in the best position to evaluate demeanor and credibility, its finding should control and the denial of Young's Batson motion was not error.

Additionally, even if this Court concludes the defendants proved the originally neutral reason was pretext because it was not applied in a neutral manner, any error by the trial court in

regard to Juror 215 was entirely harmless because the State struck Mr. Montgomery as a potential alternate juror. See State v. Ford, 334 S.C. 444, 449, 513 S.E.2d 385, 387 (1999) ("Any Batson violation in regards to an alternate is harmless where an alternate was not needed for deliberations."); see also United States v. Lane, 866 F.2d 103, 106 n.3 (4th Cir. 1989) (noting a defendant would not have been prejudiced by the peremptory challenge of an alternate juror regardless of the stated reason where an alternate juror was not called upon to serve as a member of the petit jury). For all of these reasons, the trial court's denial of Young's Batson motion should be affirmed.

II.

The trial court properly admitted testimony from Investigator Brown where: (1) it was relevant to explain the arc of the police investigation; (2) he never directly testified Young was in a gang and therefore did not offer character evidence for purposes of Rule 404, SCRE; (3) to the extent his testimony may have suggested Young was part of a gang it was nevertheless relevant as part of the res gestae of the crime and as proof of identity, intent, and motive; and (4) the probative value of the testimony outweighed any danger of unfair prejudice for purposes of Rule 403, SCRE.

Young argues the trial court erred in allowing testimony by State's witnesses using the term "gang" in reference to the investigation of his case because: (1) the solicitor failed to lay the proper foundation that he was a gang member; (2) the reference was inflammatory and unduly prejudicial under Rule 403, SCRE; and (3) the reference constituted improper character evidence under Rule 404, SCRE. He complains that contrary to the solicitor's claim during the pretrial motion in limine, none of the victims gave testimony identifying the codefendants as being involved in a gang, much less any particular gang, and that as a result the solicitor should not have been allowed to call Investigators Brown and Whitlock to testify they consulted in the investigation due to suspected gang involvement. Young further complains that Brown was

allowed to testify regarding gang signs shown in photographs of some of the codefendants. He argues all of this testimony should have been excluded by the trial judge for a lack of foundation and under Rules 403 and 404, SCRE. (Brief of Appellant, p.34-p.35). The State disagrees and submits Young's arguments are without merit.

In regard to laying a proper foundation, the State merely elicited testimony from Investigator Brown regarding suspected gang activity which helped move the investigation forward from one suspect to the next. The only foundation required was Brown's own testimony that he was able to make these investigative connections due to his extensive knowledge about gangs in Greenville County. In regard to Rule 403, Young does not challenge relevance in his argument, instead claiming the testimony should have been excluded as inflammatory and unduly prejudicial. However, the probative value of the testimony clearly outweighed any danger of unfair prejudice; therefore, it was properly admitted. In regard to Rule 404, the State did not offer any testimonial evidence that Young was in a gang; therefore, no character evidence was offered and there was no basis for exclusion under the Rule.

Standard of Review

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant. State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006); State v. Rice, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct. App. 2007). An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support. State v.

Irick, 344 S.C. 460, 463, 545 S.E.2d 282, 284 (2001); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003).

Gang Prevention Act

Before focusing on the three main prongs of his attack on Brown's testimony, Young first references the definition of "criminal gang" in the Gang Prevention Act (the Act) and complains that he was never charged with being a member of a gang under the Act. The State submits this complaint is a red herring. As explained by the solicitor at trial, the State never alleged the codefendants participated in a "pattern of criminal gang activity" for purposes of the Act. Contrary to Young's assertion, this is not a concession the defendants were not a criminal gang. Instead, it only signifies that they were not specifically being prosecuted for being a criminal gang because they were on trial for attacking the victims at the LC in retaliation for the previous fight at the RP.

Foundation for Testimony from "Gang Investigator" Brown

In regard to laying a proper foundation, the State merely elicited testimony from Investigator Brown regarding suspected gang activity which helped move the investigation forward from RP victim Edwards, to Young, to Williams, and eventually to Booker and the other codefendants. Brown testified several witnesses referenced a previous altercation at another location involving "them Folk Boys." He explained that when he learned Edwards had been shot during that altercation this had significance because he knew Edwards to be involved with several individuals on the southern end of Greenville County, including Young. Brown testified he knew Edwards and Young associated closely and "may even possibly be family; however, he did not use the word "gang" and did not directly tied Young to a gang. Indeed, it was Young's counsel who used the term "gang" in front of the jury when arguing his objection. (R.p.475-

p.479). Later, it was only in response to Booker's cross-examination of Brown about possible "gang signs" in the photo of the Hardliners that Brown gave specific testimony about gang signs in relation to the codefendants. Where Brown did not testify on direct examination that Young was in a "gang," the only foundation required for Brown to testify as a gang investigator was Brown's own testimony that he was able to make the connections that drove the investigation based upon his extensive knowledge about gangs in Greenville County. In any event, Johnson's subsequent testimony that he recanted a prior statement to the police implicating his codefendants because of a threat from "more people from the gang" would have been sufficient to provide a foundation for Brown directly tying Young to the gang if such testimony had been offered by Brown in the first place. Booker contends this "scant testimony" would not have been enough, yet it supports the entire narrative that the attack was in retaliation by Young and his gang members for the shooting of Edwards and Davis earlier that night. The State laid a proper foundation for the admission of Brown's testimony.

Rule 401, SCRE: Relevance

As a general rule, all relevant evidence is admissible. State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); Rule 402, SCRE. Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. In the Matter of Care and Treament of Corley, 353 S.C. 202, 577 S.E.2d 451 (2003); State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002); Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.").

Here, to the extent any such evidence was "introduced" simply because the investigation was driven by considering possible gang involvement, evidence of Young's gang affiliation was

relevant and admissible as part of the res gestae of the crimes charged. See State v. McGee, 408 S.C. 278, 287-88, 758 S.E.2d 730, 735-36 (2014) (discussing the res gestae theory of admissibility). It was also probative as to why several State's witnesses initially recanted all or portions of the statements to law enforcement that identified Young as one of the shooters. Furthermore, the identity of the individuals who committed the attempted murders was clearly of consequence to the jury's determination of guilt or innocence at trial, particularly where Young presented a defense that the State could not prove he participated in the shootings. Brown's ability to connect the defendants to a local gang had a tendency to make the determination of the identity of the shooters more probable than it would be without the testimony, particularly in the context of the State's theory of the case. Similarly, the testimony had a tendency to make a determination of motive and criminal intent more probable than it would have been without the testimony. The challenged evidence provided the answer to the question of why the attackers committed the shooting at the LC: their motive was to retaliate against the Hardliners, the rap group whose members had fought with and exchanged gunfire with Young's gang earlier that night at the RP. Indeed, it was Brown, using his gang knowledge, who identified RP shooting victim Brandon Edwards as a close associate of Young. This connection fits squarely into the State's narrative that Young, Williams, Booker, Sadler, and the other gang members attacked the Hardliners at the LC in retaliation. Thus, as conceded by Young in this appeal, Brown's testimony as a gang investigator was relevant. Rule 401, SCRE.

Rule 403, SCRE: Probative Value

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative

evidence." Rule 403, SCRE; State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000). "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence." State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). Further, Rule 403, SCRE, requires there to be 'unfair prejudice" before the evidence will be excluded. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." Id. at 529, 732 S.E.2d at 229. A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). The appellate courts review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. Id. at 358, 543 S.E.2d at 593. See Aleksey, 343 S.C. at 35, 538 S.E.2d at 256 (finding the trial judge is given broad discretion in ruling on questions concerning relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Young first questions the probative value of Brown's testimony contending that "even if the allegation of gang involvement were true, it was not part of the incident." He acknowledges testimony that the shooting of Edwards and Davis at the RP was what prompted the subsequent attack at the LC; however, he claims there was no testimony that Edwards or Davis was affiliated with any gang and therefore the gang evidence was not needed. He argues "there was little to no probative value to the gang related evidence." (Brief of Appellant, p.25). Yet, Brown testified

that as a gang investigator, the name Brandon Edwards was very significant to him, and that Edwards led him directly to Young. Thus, the gang affiliation was highly probative of motive for the LC attack, explaining both the large number of participants and the extent of the retaliatory response. Mack confirmed this motive when describing the group's rendezvous at Club 864 immediately after the shooting at the RP. She noted she was there with Young and they were all "mad" about Edwards and Davis being shot. (R.p.454-458).

Young next claims any probative value of the testimony was outweighed by unfair prejudice, but the prejudice posited by Young is vague. With reference to Rule 403, he simply claims that any evidence relating to the word "gang" is prejudicial and inflammatory and prevented him from receiving a fair trial. (Brief of Appellant, p.25). He relies in part on this Court's opinion in State v. Sobers, 404 S.C. 263, 744 S.E.2d 588 (Ct. App. 2013) in support of his argument; however, Sobers dealt solely with a trial court's ruling on relevance pursuant to Rule 401, not an analysis of prejudice. Id. Therefore, Sobers is not directly applicable. To the extent it does apply, Sobers stands for the proposition that deference must be given to the trial court regarding the admission or exclusion of evidence. Id. at 267-68, 744 S.E.2d at 590. Here, the trial court listened carefully to the defendants' arguments and, after hearing testimony from many fact witnesses, determined the probative value of Brown's testimony was significant. The "unfair prejudice" claimed by Young simply does not exist. Instead, the probative value of the testimony supports the trial court allowing it into evidence. Young has shown no abuse of discretion and no exceptional circumstances to warrant reversing the trial court's discretionary ruling to admit Investigator Brown's testimony into evidence.

Young also complains about the solicitor's closing argument, contending that although she did not use the word "gang," her references were clearly gang related. (Brief of Appellant,

p.21). Because the testimony was properly admitted by the trial court, the solicitor's reference to that testimony during closing arguments, either directly or implicitly, was likewise appropriate. See State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999) ("[A] solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony."). Furthermore, even if the reference was somehow improper, it would not require reversal because Young cannot show he did not receive a fair trial due to the alleged improper argument. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). Indeed, Young could not have suffered unfair prejudice from the alleged inference that he was in a gang because the trial court thoroughly instructed the jurors on their role as the sole judges of the credibility of witnesses, the burden of proof, the presumption of innocence, reasonable doubt, direct and circumstantial evidence, and the elements of the crimes. (R.p.784-p.796). See Foye v. State, 335 S.C. 586, 590, n.1, 518 S.E.2d 265, 267 n.1 (1999) ("A jury is presumed to follow instructions."). In any event, since none of the defendants objected to the solicitor's closing argument, the challenge to that closing argument is not preserved for appellate review. State v. Carlson, 363 S.C. 586, 606, 611 S.E.2d 283, 283, 293 (Ct. App. 2005).

Rule 404, SCRE: Character Evidence

Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion. Rule 404(a), SCRE. Young argues: "The defendants made no attempt to introduce evidence of their good character so as to open the door to bad character evidence from the solicitor" and concludes: "Thus, the gang evidence was improper character evidence under Rule 404(a), SCRE." (Brief of Appellant, p.37). However, this argument is entirely conclusory and presupposes the State introduced evidence of Young's character or trait of character. It did not. Our Supreme Court has defined

"character" as "a generalized description of a person's disposition or a general trait such as honesty, temperance, or peacefulness." State v. Nelson, 331 S.C. 1, 7, 501 S.E.2d 716, 718 (1998). Not only did Investigator Brown not directly testify Young was in a gang, no State's witness testified as to Young's disposition or claim he had a general trait for dishonesty, violence, or any other character. Thus, no character evidence was offered and there was no basis for exclusion under the Rule.

Harmless Error

Regardless of whether the trial court erred in allowing testimony using the word "gang," any such error does not require reversal of Young's convictions. Given the direct evidence of Young's participation in the crimes as offered by codefendants Hogan and Johnson, and the substantial circumstantial evidence of his participation, the overwhelming evidence of Young's guilt rendered any errors harmless beyond a reasonable doubt. Young's convictions should be affirmed.

III.

The trial court properly admitted several photographs of the codefendants flashing gang signs where: (1) the photos were cumulative to a photograph from Young's Facebook page titled "The Family" which included Williams, Booker, and Young, and which was admitted without objection; (2) Young failed to object when Booker opened the door to their admission by cross-examining Investigator Brown on the alleged display of "gang signs" in a photo of the victims; (3) they were sufficiently authenticated by evidence presented at trial; (4) they were relevant as part of the res gestae of the crime and as proof of identity, intent, and motive; and (5) their probative value outweighed any danger of unfair prejudice.

Young argues the trial court erred in admitting two photographs of him and his codefendants making "gang signs" because the solicitor failed to lay the proper foundation for

their admission, they were not relevant to the facts at issue in the case, and they were unduly prejudicial.[9] The State disagrees and submits each of Young's arguments is without merit.

Initially, the State submits this entire issue should not be considered on appeal for two reasons. First, any possible negative inference flowing from the photos because they suggested the codefendants associated together in a "gang" was cumulative to the exact same inference which flowed from the photograph on Young's Facebook page which was titled the "The Family" and which included Williams, Booker, and Young. That photo was admitted without objection from Young, Booker, or Williams. (R.p.481, line 4-p.482, line 12). Therefore, any error with respect to admission of the "gang signs" photos was entirely harmless. See, e.g., State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (any error in admission of evidence cumulative to other unobjected-to evidence is harmless). Second, Booker opened the door to admission of the photographs through his cross-examination of Investigator Brown, and Young raised no objection to that cross-examination. Indeed, Young cannot complain that admission of gang sign evidence was unduly prejudicial where he did not object to Booker's questions, and those questions opened the door to the responsive gang sign evidence offered by the State on redirect. See State v. Robinson, 305 S.C. 469, 474 409 S.E.2d 404, 408 (1991) ("[Because] Appellant opened the door to this evidence, he cannot complain of prejudice from its admission."); see also State v. Culbreath, 377 S.C. 326, 333 659 S.E.2d 268, 272 (Ct. App. 2008) ("A defendant may open the door to what otherwise would be improper evidence through his own introduction of evidence or witness examination. A party cannot complain of prejudice to which he opened the door."). In any event, the photographs were appropriately admitted where

[9] Although Investigator Brown testified about four such photographs (State's Exhibits 51 through 54), only State's Exhibit 51 and State's Exhibit 54 were ultimately admitted into evidence. (R.p.499-p.504).

they were properly authenticated pursuant to Rule 901, they were relevant to facts in issue in the case, and their probative value outweighed any danger of unfair prejudice.

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Anderson, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court." (emphasis added)). Rule 901 of the Rules of Evidence provides: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), SCRE. It goes on to list examples of authentication or identification conforming with the requirements of the rule, including: "testimony that a matter is what it is claimed to be" and an item's "[a]ppearance, contents, . . . or other distinctive characteristics, taken in conjunction with circumstances." Rule 901(b)(1) & (4), SCRE. Investigator Brown, who personally knew each of the codefendants at the time of trial, identified particular individuals in the admitted photographs, thus offering testimony that the matter is what it is claimed to be—a photograph of those individuals. In regard to State's Exhibit 51 he identified Hogan, Booker, and Williams, and in regard to State's Exhibit 54 he identified Young. (R.p.502, lines 4-9; p.503, line 16-p.504, line 8). Additionally, Brown's identification of these individuals was necessarily based on the appearance and distinctive characteristics of the people identified. Thus, the evidentiary predicate of authentication was met in two ways and the trial court did not err in finding the proper foundation had been laid for admission pursuant to Rule 901, SCRE.

In regard to relevance, as a general rule, all relevant evidence is admissible. State v. Aleksey, 343 S.C. 20, 34, 538 S.E.2d 248 , 255 (2000); Rule 402, SCRE. Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. State v. Salley, 398 S.C. 160, 169, 727 S.E.2d 740, 745 (2012); State v. King, 349 S.C. 142, 153, 561 S.E.2d 640, 645 (Ct. App. 2002); Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). With respect to photographs, "the relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)). Admitting photographs which serve to corroborate testimony is not an abuse of discretion. State v. Martucci, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008).

Here, the two photographs of Young and his codefendants flashing gang signs simply provided additional evidence of Young's association with his codefendants and corroborated evidence that the shooting was a coordinated attack by the codefendants in retaliation for the earlier shooting at the RP. As explained in Argument I above, to the extent the photographs suggested Young was in a gang, such evidence was relevant and admissible as part of the res gestae of the crimes charged. See State v. McGee, 408 S.C. 278, 287-88, 758 S.E.2d 730, 735-36 (2014) (discussing the res gestae theory of admissibility). It was also probative as to why several State's witnesses initially recanted all or portions of the statements to law enforcement that identified Young as one of the shooters. Furthermore, the identity of the individuals who committed the attempted murders was clearly of consequence to the jury's determination of guilt

or innocence at trial, particularly where Young presented a defense that the State could not prove he participated in the shootings. Brown's ability to connect the defendant's close relationship through their use of gang signs had a tendency to make the determination of the identity of the shooters more probable than it would be without the testimony, particularly in the context of the State's theory of the case. Similarly, the testimony had a tendency to make a determination of motive and criminal intent more probable than it would have been without the testimony. The challenged photographs helped provide the answer to the question of why the attackers committed the shooting at the LC: their motive was to retaliate against the Hardliners, the rap group whose members had fought with and exchanged gunfire with Young and his close associates earlier that night at the RP, resulting in Edwards and Davis being shot. Indeed, it was Brown, using his gang knowledge, who identified RP shooting victim Brandon Edwards as a close associate of Young. This connection fits squarely into the State's narrative that Young, Williams, Booker, Sadler, and the other codefendants attacked the Hardliners at the LC in retaliation for the injuries sustained in the earlier fight. Thus, the photographs of Young and his codefendants flashing gang signs were relevant. Rule 401, SCRE.

In regard to the possibility of undue prejudice, our courts have held that: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE; State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000). "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence." State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). Further, Rule 403, SCRE, requires there to be 'unfair prejudice" before the evidence will be excluded. "Unfair prejudice

does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." Id. at 529, 732 S.E.2d at 229. A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). The appellate courts review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. Id. at 358, 543 S.E.2d at 593. See Aleksey, 343 S.C. at 35, 538 S.E.2d at 256 (finding the trial judge is given broad discretion in ruling on questions concerning relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Here, the photographs were not merely relevant, but were highly probative because they corroborated the remaining evidence that the shooting was a coordinated attack by a group of close associates in retaliation for the earlier shooting at the RP. Young's affiliation with the other codefendants supported the State's evidence indicating that their actions were a premeditated, forceful response, which was part of the res gestae of the crimes charged and also corroborated testimony about the recanted statements from two testifying codefendants who had identified Young as one of the shooters. The photographs were also highly probative of identity by corroborating testimony that Young participated in the shootings with the other codefendants. Indeed, where the photographs were discovered on Young's phone and included pictures of Booker and Williams, they helped prove identity, motive, and criminal intent in the context of

the State's theory of the case. Given the trial court's discretion to admit photographic evidence that corroborates testimony at trial, the judge also did not err in admitting these photographs of Young and his codefendants over Young's Rule 403, SCRE, objection.

Whatever the case, as with the testimony using the term "gang," the overwhelming evidence of Young's guilt rendered any errors in admission of the two "gang sign" photographs harmless beyond a reasonable doubt. Young's convictions should be affirmed.

IV.

The trial court's warning to codefendant DaQuan Bruster, who was called as a witness by the State, that his failure to testify as to the same facts he admitted in his earlier guilty plea would constitute a breach of his plea agreement and would result in the court vacating the plea and allowing the State to proceed with the original charges, was not coercive and did not infringe upon Young's right to due process and a fair trial.

Young argues the trial court erred by effectively coercing codefendant Bruster to testify against him with a threat to vacate Bruster's guilty plea after finding Bruster's initial testimony violated his plea agreement, which left Bruster facing a sentence of life without parole. He complains that the trial court's actions amounted to enforcement of a portion of the plea negotiations that never existed. The State disagrees and submits Young's argument is without merit.

Young relies upon the United States Supreme Court's opinion in Webb v. Texas, 409 U.S. 95 (1972) as well as two cases from the Appellate Court of Illinois in support of his argument. He contends the trial judge in his case "did not safeguard [his] right to due process and a fair trial" when the judge effectively coerced Bruster to testify a second time. (Brief of Appellant, p.44-p.46). However in Webb, the issue was whether the trial judge's threatening remarks, directed only at a single witness for the defense, effectively drove that witness off the

stand, and thereby deprived Webb of due process of law under the Fourteenth Amendment. Id. at 98 (emphasis added). Similarly, the two cases from Illinois address situations where the State or the court exerted improper influence on defense witnesses causing them not to testify. People v. Mancilla, 620 N.E.2d 1163, 1167 (Ill. App. Ct. 1993); People v. King, 593 N.E.2d 694, 698 (Ill. App. Ct. 1992). Here, Bruster was not driven off the witness stand and was not subject to improper influence that caused him not to testify. To the contrary, Bruster took the stand and was subject to both direct and cross-examination. Therefore, Webb and the Illinois cases cited by Young are inapplicable.

Furthermore, the allegedly coercive nature of the influence being exerted by the State only appears coercive because Bruster was attempting to breach the terms of his plea agreement. He was not forced to testify for the State and he was not prevented from being called as a witness for the defense. Instead, Bruster was faced with a difficult choice, but a choice nonetheless. His ultimate decision to fulfill his obligations under the terms of his plea agreement rather than breaching that agreement and facing the same charges as Young did nothing to deprive Young of due process of law under the Fourteenth Amendment. As for Young's nonsensical and speculative contention that there actually was no plea negotiation or requirement that Bruster testify for the State, such a circumstance would have left Bruster entirely free from coercion by the trial judge rather than under a threat. Bruster could have simply refused to testify, secure in his knowledge that no plea negotiations requiring his testimony were in existence. He and his attorney could then protect his rights if and when the trial court attempted to vacate his plea and proceed to trial. Instead, Bruster, upon advice of counsel, elected to retake the stand and testify about the attack.

As recognized by this Court, it is the duty of the trial court to exercise supervision and control over the witnesses in attendance at trial. State v. Stanley, 365 S.C. 24, 35, 615 S.E.2d 455, 461 (Ct. App. 2005). "In South Carolina, it is firmly settled that the presiding judge has the right to order the arrest of a witness in open court who has made contradictory statements amounting to perjury." Id. Indeed, in Stanley this Court found the claim the defendant was prejudiced when a witness was arrested and sent to jail, and then later returned to reverse his prior testimony, was meritless. This was true even though the judge cautioned the witness regarding perjury in front of the jury. Here, the trial court's comments about giving Bruster a chance to withdraw his guilty plea were made outside the presence of the jury, lessening any possible prejudice.

While plea agreements are matters of criminal jurisprudence, this court has repeatedly recognized they are subject to contract principles. State v. Miller, 375 S.C. 370, 388, 652 S.E.2d 444, 453 (Ct. App. 2007); Reed v. Becka, 333 S.C. 676, 686, 511 S.E.2d 396, 401 (Ct. App.1999). Where a guilty plea is induced by prosecutorial promises, those promises must be fulfilled. Santobello v. New York, 404 U.S. 257 (1971). However, when a defendant breaches a plea agreement, the State is released from its obligations under the agreement. State v. Tillman, 320 S.C. 61, 463 S.E.2d 94, 96 (Ct. App. 1995). Here, Bruster attempted to gain the benefit of his plea agreement, which involved admitting the facts behind the underlying charges, and then sought to deny those same facts by claiming he did not remember them during Young's trial. This was a breach of Bruster's contract with the State, which permitted the State to seek the remedy of nonperformance, and permitted the court to vacate the plea. The trial judge acted well within his discretion in advising Bruster of the very real consequences of his actions and the denial of Young's request for a mistrial should be affirmed.

V.

The trial court properly denied Young's motion to excuse two jurors and declare a mistrial due to juror misconduct where in direct compliance with Aldret, the trial judge followed the precise procedure suggested by our Supreme Court as soon as he learned of the alleged juror misconduct and through voir dire determined Young had suffered no prejudice.

Young argues the trial court erred in refusing to excuse two jurors and in denying his motion for a mistrial based on juror misconduct in the form of premature jury deliberations. He contends that where a juror allegedly made the comment that "he's going down," it implies that the juror intended to find at least one of the defendants guilty and therefore had been engaged in deliberations. Young goes on to claim: "Their deliberations did affect fundamental fairness, as they not only indicate a premature discussion in the case but a premature decision in the case against the defendants." Focusing on the dictionary definition of "deliberate," Young complains that the trial court's attempt to follow the procedure set forth in State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999), was insufficient to make the requisite findings. Nevertheless, he argues the testimony the trial court did elicit from the questioned jurors indicated they were discussing the case, which met the definition of "deliberate." He argues he was denied a fair trial because it was clear the jurors were discussing the case in spite of the judge's instructions and because "it was apparent from the discussion that was overheard that at least some of the jurors had made a decision regarding guilt or innocence [] well before the conclusion of the case." (Brief of Appellant, p.46-p.50). The State disagrees and submits Young's argument is entirely without merit. The trial court followed the proper procedure as set forth in Aldret to explore the allegation of juror misconduct. The trial judge committed no error and Young suffered no prejudice as the result of any alleged juror misconduct. Young's convictions should be affirmed.

Standard of Review

"The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors." State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000). In order to safeguard a defendant's right to a fair trial by an impartial jury, the jury must reach its verdict free from any outside or improper influence. State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998). However, "unless [juror] misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict." Id.; see also Aldret, 333 S.C. at 313, 509 S.E.2d at 813-14 (instructing juror misconduct in the form of premature deliberations does not warrant automatic reversal and, instead, requires the defendant to demonstrate such misconduct affected the jury's verdict before a reversal is granted).

When an allegation of juror misconduct arises, the trial judge is vested with broad discretion to assess and respond to such an allegation. State v. Pittman, 373 S.C. 527, 553, 647 S.E.2d 144, 157 (2007). Juror misconduct is a fact to be determined by the trial judge under the circumstances of each individual case. State v. Smith, 338 S.C. 66, 71, 525 S.E.2d 263, 266 (Ct. App. 1999). Decisions regarding how to address juror misconduct rest in the sound discretion of the trial judge, and the trial judge's decisions on such matters will not be reversed absent an abuse of that discretion amounting to an error of law. Pittman, 373 S.C. at 553, 647 S.E.2d at 157.

Discussion / Analysis

Premature deliberations constitute a form of juror misconduct because "[a] jury should not begin discussing the case, nor deciding the issues, until all the evidence has been introduced, the arguments of counsel complete, and the applicable law charged." State v. Joyner, 289 S.C. 436, 437, 346 S.E.2d 711, 712 (1986). The prohibition against premature deliberations is

designed to prevent jurors from making up their minds prematurely by declaring a position on an issue while the trial is in progress and then standing by that declared position even in defiance of contrary evidence subsequently introduced. State v. McGuire, 272 S.C. 547, 552, 253 S.E.2d 103, 105 (1979). The burden is on the party alleging premature deliberations to establish prejudice. Aldret, 509 S.E.2d at 815, 333 S.C. at 315.

In Aldret, our Supreme Court determined premature deliberations were a type of juror misconduct that could affect the fundamental fairness of a trial. Id., 333 S.C. at 312, 509 S.E.2d at 813. In order to assist the trial courts of South Carolina in responding to such misconduct, the Supreme Court proposed a "suggested procedure" to handle allegations of premature deliberations. Id. at 315, 509 S.E.2d at 815. Pursuant to the suggested procedure, if such an allegation arises during the trial, trial courts should conduct a hearing to first determine if the premature deliberations actually occurred and to then determine if they were prejudicial. Id. The Supreme Court noted the trial court may voir dire the jurors and, if practicable, issue a cautionary instruction to correct the damage. Id. Thereafter, the Supreme Court instructed that a trial judge should only grant a new trial in cases where the premature deliberations were found to be prejudicial. Id.

Here, the trial court did not abuse its discretion in conducting a hearing to ascertain whether premature deliberations occurred and whether any such deliberations were prejudicial. Rather, in direct compliance with Aldret, the trial judge followed the precise procedure suggested by our Supreme Court as soon as he learned of the alleged juror misconduct. The trial judge then properly questioned the jurors individually to ensure Young and his codefendants could receive a fair trial. The jurors all said they could follow their oath to judge the case solely on the evidence and the law, and each of the jurors who had listened to or participated in the

brief conversation assured the court that nothing that was said would impair his or her ability to be fair and impartial to the State and the defendant. Thus, the evidence supports the trial court's conclusion that the conversations were not prejudicial. See Kelly, 331 S.C. at 141, 502 S.E.2d at 104 ("The trial judge is in the best position to determine the credibility of the jurors; therefore, [the appellate court] should grant him broad deference on this issue."). Contrary to Young's assertion, it is not enough to claim it was "apparent" some of the jurors had made a decision regarding guilt or innocence. Aldret requires proof from the party alleging premature deliberations. The trial judge specifically asked the jurors about any conversations and was satisfied by the answers that were given. Nothing more is required.

Nothing about the original note given to the trial judge proves any of the jurors engaged in an attempt to prematurely decide the case or declare a position regarding guilt or innocence, which is the type of conduct that the prohibition against premature deliberations is designed to prevent. See McGuire, 272 S.C. at 552, 253 S.E.2d at 105 ("The reason for the rule [prohibiting premature deliberations] is apparent. The human mind is constituted such that when a juror declares himself, touching any controversy, he is apt to stand by his utterances to the other jurors in defiance of evidence. A fair trial is more likely if each juror keeps his own counsel until the appropriate time for deliberation."). To the extent the note suggests such misconduct, the suggestion was affirmatively rejected by the jurors during voir dire. Young failed to establish the jury engaged in premature deliberations in his case and failed to establish he suffered any prejudice as a result of the brief conversations described by the jurors during voir dire. See State v. Grovenstein, 335 S.C. 347, 351, 517 S.E.2d 216, 218 (1999) ("We have consistently required defendants to demonstrate prejudice due to improper jury influences."). Thus, the trial judge did not abuse his discretion in denying the motion for a mistrial. See Harris, 340 S.C. at 63, 530

S.E.2d at 627 ("The trial court has broad discretion in assessing allegations of juror misconduct."). Young's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the convictions and sentence of the lower court be affirmed.

Respectfully submitted,

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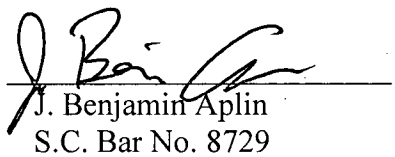
BY: 
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Columbia, South Carolina
December 16, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2013-000149

THE STATE,.....RESPONDENT,

v.

RAYMOND LEWIS YOUNG,.....APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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