STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL ANTONIO WILLIAMS,

PETITIONER

APPELLATE CASE NO 2013-000091

APPENDIX

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INDEX

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Michael Antonio Williams, Appellant.

Appellate Case No. 2013-000091

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2017-UP-427
Submitted September 7, 2017 – Filed November 15, 2017

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General John Benjamin Aplin, both of Columbia, and Solicitor W. Walter Wilkins, III, of Greenville, for Respondent.

PER CURIAM: Michael Antonio Williams was convicted of seven counts of attempted murder, one count of second degree assault and battery by mob, and one

count of conspiracy.[1] The trial court sentenced him to concurrent terms of imprisonment of twenty-five years for each count of attempted murder, twenty concurrent years of imprisonment for second degree assault and battery by mob, and five concurrent years of imprisonment for conspiracy. Williams appeals, arguing the trial court erred in (1) allowing the State to admit testimony referencing the term "gang," (2) coercing codefendant DaQuan Bruster to testify for the State by threatening to vacate his guilty plea, and (3) denying a motion for a mistrial based on jurors' comments made prior to deliberations. We affirm.

1. We find no error by the trial court in admitting testimony referencing the term gang. The admission of improper evidence is harmless when the evidence is merely cumulative to other evidence. *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). During the trial, evidence referencing gangs was admitted numerous times without objection.

2. We next find the trial court did not err by threatening to vacate Bruster's guilty plea. During the trial, Bruster initially denied remembering the events underlying the charges. The trial court warned Bruster his testimony could invalidate his previously entered guilty plea. The following morning, the court vacated the plea of another codefendant who refused to testify and threatened to do the same to Bruster. Bruster then testified. In *State v. Stanley*, the witness recanted previous testimony and testified against the defendant after the court found he was either guilty by his prior admissions or guilty of perjury and ordered him arrested. 365 S.C. 24, 30-32, 615 S.E.2d 455, 458-59 (Ct. App. 2005). On appeal, the defendant argued the trial court intimidated the witness and should have granted a mistrial. *Id.* at 32-33, 615 S.E.2d at 459. This court disagreed, finding the court had the duty to supervise and control witnesses. *Id.* at 35, 615 S.E.2d at 461; *see State v. McKay*, 89 S.C. 234, 236, 71 S.E. 858, 859 (1911) (stating the solicitor's order to the sheriff to arrest a witness for perjury when the witness left the witness stand was not prejudicial to the defendant). Accordingly, we find no error.

3. Finally, we find no error by the trial court in denying Williams' motion for a mistrial based on juror misconduct. In *State v. Aldret*, our supreme court discussed premature deliberations as juror misconduct and outlined a suggested procedure to use to determine if juror misconduct warranted a new trial. 333 S.C. 307, 312-16, 509 S.E.2d 811, 813-15 (1999). If an allegation of juror misconduct arises during

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[1] Williams was tried with codefendants Esaiveus Frantrez Booker, Kinjta Sadler, and Raymond Lewis Young.

the trial, the court should conduct a hearing to first determine if premature deliberations actually occurred. *Id.* at 315, 509 S.E.2d at 815. A new trial should only be granted in cases in which the premature deliberations caused prejudice. *Id.*

In this case, the trial court followed the procedure outlined in *Aldret*. The jurors all affirmed no premature deliberations occurred and they could be fair and impartial. We find the trial court was in the best position to assess the jurors' credibility and its refusal to grant a mistrial is deserving of this court's deference. *See State v. Pittman*, 373 S.C. 527, 556, 647 S.E.2d 144, 159 (2007) (stating a trial court's factual findings regarding juror misconduct will not be disturbed absent an abuse of discretion); *State v. Kelly*, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998) (stating "[t]he trial judge is in the best position to determine the credibility of the jurors; therefore, this [c]ourt should grant him broad deference"); *Pittman*, 373 S.C. at 555, 647 S.E.2d at 159 ("Jury misconduct that does not affect the jury's impartiality will not undermine the verdict.").

AFFIRMED.[2]

SHORT, KONDUROS, and GEATHERS, JJ., concur.

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

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MICHAEL ANTONIO WILLIAMS,

APPELLANT

APPELLATE CASE NO 2013-000091

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

Opinion No. 2017-UP-427

PETITION FOR REHEARING

The Court of Appeals affirmed the above named Appellant's convictions and sentences on November 15, 2017. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rule 221 and 224 of the South Carolina Appellate Court Rules, appellant submits the following:

Appellant Williams raised three issues on appeal: (1) The trial court erred in allowing the state to admit testimony by the state's witnesses using the term "gang" in reference to Appellant Williams' case when Appellant Williams had not been identified as a gang member nor charged pursuant to S.C. Code Section 16-8-230, the Gang Prevention Act, because the reference was

inflammatory and unduly prejudicial under Rule 403, SCRE; (2) the trial court erred by coercing Co-defendant DaQuan Bruster to testify incriminating Appellant by threatening to vacate his guilty plea so he would be facing LWOP because the judge found that Bruster's first testimony violated the plea agreement; and the judge vacated the guilty plea of Co-defendant Tavarus Holmes after his testimony because the judge said it violated his plea agreement; (3) the trial court erred in denying a mistrial based on the fact that jurors from this trial were overheard by a juror in another case talking in the restroom during the lunch break about Williams' case saying such things as "the need to decode the language", "I was chillin," and "he's going down.."

On Issue One, this Court, citing State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) found no error by the trial court in admitting testimony referencing gangs. This Court held that the admission of improper evidence was harmless when the evidence was merely cumulative to other evidence as the Court wrote that other evidence referencing gangs was admitted without objection.

On Issue Two, this Court found that the trial court did not err in threatening to vacate Co-defendant Bruster's guilty plea because his first trial testimony, where he claimed to not remember events, could invalidate his guilty plea. Bruster then testified against Appellant Williams. This Court relied on State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005), where this Court found that the trial court had the duty to supervise and control witnesses.

On Issue Three, this Court found no error by the trial court in denying Appellant Williams' motion for a mistrial based on juror misconduct because the trial court followed the procedure suggested in State v. Aldret, 333 S.C. 307, 509 S.E.2d 811, 813-815 (1999) to determine if juror misconduct warranted a new trial. Because all of the jurors in Appellant Williams' case affirmed

that no premature deliberations occurred and that they could be fair, this Court found no error and relied on the trial judge's determination of juror credibility.

Respectfully, this Court misapprehended these issues.

Issue One:

The Gang Prevention Act at South Carolina Code Section 16-8-230 (2), provides that "criminal gang" means a formal or informal ongoing organization, association, or group that consists of five or more persons who form for the purpose of committing criminal activity and who knowingly and actively participate in a pattern of criminal gang activity.

Defense counsel argued that the state had not charged any of the defendants with being a member of a gang. The solicitor actually told the court that she was not alleging that the defendants participated in a pattern of criminal gang activity. R. 95, ll. 1 – R. 96, ll. 25. Therefore, the state conceded the defendants were not a gang.

In State v. Sobers, 404 S.C. 263, 744 S.E.2d 588 (Ct. App. 2013), the judge correctly found that evidence suggesting gang associations of murder victim and witnesses were irrelevant. Sobers, who was in his car, watched a fight between the victim and another young man in the midst of a crowd of people. He claimed that he fired shots when one of the young men approached his car and tried to start a fight. This was due to comments Sobers made about the man's sister. Sobers testified that the crowd swarmed his car and he fired shots. One bullet hit the victim in the back of his head as he sat in the back of another car.

Defense counsel wanted to admit evidence of gang activity of the victim and witnesses because it went to the motive of self-defense. Defense had pictures from Facebook showing the victim and witnesses flashing gang signs. The trial court found that Sobers failed to show any relevance of gang associations to the shooting. Four of the witnesses even admitted they were

making gang signs in the photographs but denied being in a gang. They were just being together like "family" in the picture. The state argued that witnesses testified they were in a gang, and if they were, there was no evidence of a connection between gang activity and the shooting.

Williams' case is very similar to that of Sobers except that it was the state in Williams' case that wanted to admit the evidence. Investigator Brown, the gang investigator, even went so far as to say the hand signs in the club photo were those of the Folk Nation gang. R. 458, ll. 1 – R. 464, ll. 23.

Rule 403, SCRE, provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.

The admission of any evidence relating to the word "gang" was prejudicial to Williams. The word "gang" was inflammatory to the jury and prevented Williams and his co-defendants from receiving a fair trial.

In her closing argument, the solicitor made reference to the "photos" that Investigator Brown had described as showing hand signs that were associated with gangs and especially the Folk Nation. Investigator Brown had identified some of the defendants as exhibiting these signs in the "photos." R. 649, ll. 19 – R. 650, ll. 3; R. 662, ll. 8 – 14; R. 458, ll. 1 – R. 464, ll. 23.

The solicitor also argued for the jury to consider the pressure being exerted on the state's witness, Larry Johnson, at the jail. She reminded the jury that he testified that he was threatened to recant his statement or he would be "x-ed" out. He was told "either you are with us or against us." R. 657, ll. 7 – 15.

The solicitor also reminded the jury of Shaquille Hogan's testimony when he said he had to give his .380 gun to Tavarus. He had to do what Tavarus told him because he's "got that power." R. 656, ll. 11 – 23.

Although the solicitor did not use the word "gang", these references were clearly gang related.

Testimony by Investigator Brown was the first testimony by a witness regarding gangs. Once the judge allowed this testimony, any further objection by trial counsel about gangs would have been fruitless. Brown's testimony was more prejudicial than that from other witnesses because he specialized in gangs and gang investigations. His testimony likely carried more weight with the jury because he was with law enforcement and had an authority identification. The state presented him as a witness for the purpose of making it appear that Appellant Williams was a gang member. It was the state's way of getting in testimony about gangs without charging Williams with being a gang member.

This Court misapprehended that gang testimony from Investigator Brown was more prejudicial and not harmless and was not cumulative. Testimony about gangs was character evidence which was admitted without following the rules for admission. (See State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) that the accused must introduce evidence of character before the prosecution can attack it.)

Issue Two:

In People of the State of Illinois v. Manchilla, 250 Ill.App.3d 353, 620 N.E. 2d 1163 Dec. 846 (1993), the Appellate Court reversed Manchilla's conviction for aggravated criminal sexual assault because the prosecutor violated Manchilla's right to present witnesses by intimidating the witness with repeated statements concerning perjury and immigration status. The Illinois Appellate Court wrote that a fundamental element of due process is the right of an accused to present witnesses but that right was violated if the state or court exerted improper influence on defense witnesses causing them not to testify.

The United States Supreme Court in Webb v. Texas, 409 U.S. 95, 98, (1972), reversed the defendant's conviction because the trial judge drove a prospective defense witness from the stand by telling him that if he lied he could be prosecuted, and convicted for perjury, and have to serve more time.

In another Illinois case, People v. King, 228 Ill.App.3d 519, 170 Ill.Dec.805, 593 N.E.2d 694 (1993), the Appellate Court reversed the defendant's conviction where the circuit judge drove a prospective defense witness from the stand by threatening to revoke an earlier plea bargain made before that court if it believed the witness was lying. The Illinois Supreme Court affirmed the reversal. People v. King, 154 Ill.2d 217, 181 Ill.Dec.626, 608 N.E.2d 877.

In State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005), the South Carolina Court of Appeals held that giving false testimony at trial constituted the felony of perjury and subjected the person to a fine or imprisonment. The trial witness in Stanley contradicted his prior statement to police during his trial testimony and was guilty of perjury if the information to police was false and if it was true, then his trial testimony was perjury.

The trial judge warned the witness of perjury and ordered the witness to jail **after** dismissing the jury. The witness was allowed to consult with his attorney and testify again. The court found that all courts have the power to punish for contempt which was essential in judicial proceedings and to the due administration of justice. The court wrote that a judge has the responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of justice.

The trial judge in Williams' case did not safeguard Williams' right to due process and a fair trial when the judge coerced the witness to testify a second time by threatening to vacate the

witness's plea, and he would then face the possibility of LWOP. It was prejudicial to Williams to coerce the witness to testify a second time.

The appropriate action by the judge would have been for him to charge the witness with perjury after the trial.

This Court misapprehended the significance that Bruster was facing LWOP if he did not do what the trial court was coercing him to do.

Issue Three:

In State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999), the Supreme Court held that premature deliberations could affect fundamental fairness of a trial such that the trial court could inquire into such allegations and could consider juror affidavits in support of such allegations.

Deliberate is defined in Black's Law Dictionary 294 (6th ed. 1991), as "to weigh in the mind, discuss, to consider the reasons for and against, etc."

In State v. Carmack, 388 S.C. 190, 694 S.E.2d 224 (Ct. App. 2010), the Court of Appeals ruled that premature jury deliberations may amount to misconduct that could affect fundamental fairness.

Whether to grant or deny a mistrial motion is a matter within the trial court's sound discretion, and the court's decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. State v. Jenkins, 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014); State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008); citing State v. Council, 335 S.C. 1, 12-13, 515 S.E.2d 508, 514 (1999). In order to receive a mistrial, a defendant must show error and resulting prejudice. Id. The party moving for a mistrial has the burden to show not only error, but resulting prejudice. State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999).

The testimony from the questioned jurors indicated that they were discussing the case which met the definition of to "deliberate." One of the trial attorneys argued that no witness had said anything about someone "going down." This language indicated that one of the jurors had already made a decision before the case went to the jury, and was discussing her decision with another juror. This was the only conversation overheard. There was a reasonable probability that other conversations were held about the case prematurely. When the judge questioned each juror, some of the comments were as the record shows:

> **Court:** Are you aware of any discussion about this case that has gone on either in the jury room or anywhere else? Do you know of any?
> **Juror Harper:** I would say, yes. Not anything substantive but I would say that there hasn't been a group thing.
> **Court:** Can you tell me what has been talked about?
> **Juror Harper:** Probably at least what I'm aware of in the context of almost sadness over some of the things we've heard.
>
> **Court:** I am calling each juror out individually to determine whether or not y'all have heard some discussion. ....Anything along those lines?
> **Juror Ferguson:** There was some discussion yesterday after the initial charges were made as to how long this might take and that kind of thing. And then there has been –I'm trying to think--- some natural curiosity I think. There's been some discussion I think of the behavior of some people who have taken the stand that kind of thing. I don't think there's been any conclusions drawn. Does that make sense?
>
> **Court:** It has come to light that there may have been some discussion or talk about the case among our jury. Have you been privy to any of that or heard any of that?
> **Juror Tutiven:** Not specifics. Nobody has shared opinions. We have discussed or asked questions about names ... It's just been kind of a reflection on different facts.
> **Court:** When you say facts, what do you mean?
> **Juror Tutiven:** names and how many people we've listened to so far and how many witnesses we've had, sort of generic.

R. 189, ll. 4 – 22; R. 191, ll. 6 – 24; R. 198, ll. 4 – 24.

Trial counsel argued:

> Your Honor was nice enough to note for the record we had that bench conference and I know you've heard most of this but for the record, my motion is to remove the two jurors that are alleged to have been involved in the activities specified in the note. That would then, unfortunately, leave us with 11 jurors and so you would have to declare a mistrial. That would be the second part of my motion.
>
> The basis of it is that Your Honor charged the jury as part of his instructions and has consistently charged the jury every time we've taken a break not to discuss the case at all. Your Honor has not said don't discuss the facts but you can discuss some other part of the case. So clearly these jurors have violated the oath that they took at the beginning of the case as a part of which following your instructions.

R. 185, ll. 11 – R. 186, ll. 5.

The other attorneys joined in the motion. R. 187, ll. 1 – ll. 21.

The trial judge stated that the question was fundamental fairness and were these defendants going to be denied a fair trial. R. 187, ll. 22 – 25.

They were denied a fair trial because there was no way to know all of the jurors' discussions. The record made it clear that the jurors were discussing the case in spite of the judge's instructions.

WHEREFORE, we respectfully request this Court to reconsider its ruling, and remand Williams' case for a new trial.

Respectfully submitted,

LANELLE CANTEY DURANT
Appellate Defender

This 29th day of November, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL ANTONIO WILLIAMS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Michael Antonio Williams, #353957, at Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010, this 29th day of November, 2017.

LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 29th day of November, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Opinion No. 2017-UP-427 (S.C. Ct. App. filed November 15, 2017)

Appellate Case No. 2013-000091

THE STATE, ...RESPONDENT

v.

MICHAEL ANTONIO WILLIAMS, ...APPELLANT.

RETURN TO PETITION FOR REHEARING

On November 15, 2017, this Court issued an unpublished opinion that affirmed Appellant Williams' convictions for seven counts of attempted murder, one count of second degree assault and battery by mob, and one count of conspiracy. *State v. Williams*, Op. No. 2017-UP-427 (S.C. Ct. App. filed November 15, 2017). On November 29, 2017, Williams submitted a Petition for Rehearing and by letter dated December 6, 2017, this Court requested that Respondent (the State) submit a return within ten days of the date of the letter. This return in opposition to the petition for rehearing now follows. The procedural history, the statement of facts, and the

substantive arguments recited in the Final Brief of Respondent are hereby incorporated by reference.

The State respectfully asks this Court to deny the petition for rehearing pursuant to Rule 221(a), SCACR, because it did not overlook or misapprehend any points that would warrant further consideration of this matter. Indeed, in regard to each of Williams' three issues on appeal, the Court employed a straightforward application of existing precedent to the facts and circumstances of the Williams' case in finding no reversible error. Rehearing should be denied.

Issue One

In his appeal to this Court, Williams argued the trial court erred in allowing the State to admit testimony referencing the term "gang." Specifically, he complained about testimony from Investigator Brandon Brown of the Greenville County Sheriff's Office (GCSO). This Court found no error, relying on the principle discussed in *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) that the admission of improper evidence is harmless when it is merely cumulative to other evidence admitted during trial. The Court accurately noted that evidence referencing gangs was admitted numerous times without objection from Williams, and therefore testimony from Investigator Brown referencing the term "gang," even if error, was merely cumulative and therefore harmless. The State continues to maintain the position argued in its Final Brief that the trial court properly admitted the testimony from Brown because it was relevant, part of the res gestae of the crime as proof of identity, intent, and motive, and its probative value was not outweighed by the danger of unfair prejudice. (Final Brief of Respondent, p.25-p.30). Additionally, the State submits this Court properly affirmed on the alternative basis that the testimony from Brown was cumulative and therefore harmless.

At trial, after calling all of the victims of the shooting as well as numerous officers involved in the immediate response and the subsequent investigation leading to the arrest of Williams and his codefendants, the State called Investigator Brandon Brown to the stand. Booker raised an objection as to how that witness would be identified to the jury. He explained that 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. 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. Counsel for Young 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).

In his Petition for Rehearing, Williams contends the objectionable testimony from Investigator Brown was the first testimony by a witness regarding gangs and that once the trial court allowed such testimony any further objection by trial counsel about references to gangs would have been fruitless. He argues Brown's testimony was more prejudicial than that of other witnesses who came later because Brown specialized in gangs and contends Brown's testimony likely carried more weight with the jury because he was with law enforcement and had an "authority identification." Williams argues this Court "misapprehended that the gang testimony from Brown was more prejudicial and not harmless and was not cumulative."

None of these arguments were made to the trial court as a basis for Williams not raising further objections to the evidence referencing gangs that was admitted throughout the trial. Indeed, Williams never asked the trial court if he would somehow be excused from making further objections to the term "gang" as the trial proceeded. While Brown was still on the stand, codefendant Booker appears to have independently raised the issue of gangs during his cross-examination by suggesting the victims of the shooting were themselves part of a gang called the Hardliners. (R.p.452-p.457). Similarly, under cross-examination from Young, codefendant Larry Johnson repeatedly used the term gang, including a reference to Brown as a "gang

investigator." (R.p.545-p.549). Investigator William Whitlock of the GCSO testified he assisted in "gang investigations" when describing his role in Williams' case. (R.p.466, lines 16-18). No objections were raised to these examples of "gang" related testimony. This Court properly concluded Brown's use of the term "gang" could not have been prejudicial because it was cumulative.

Issue Two

In his appeal to this Court, Williams argued the trial court erred by effectively coercing co-defendant Bruster to testify against him by threatening to vacate Bruster's guilty plea after finding Bruster's initial testimony violated his plea agreement. This Court found no error, relying on the principle discussed in *State v. Stanley*, 365 S.C. 24, 30-32, 615 S.E.2d 455, 458-59 (Ct. App. 2005) and *State v. McKay*, 89 S.C. 234, 236, 71 S.E. 858, 859 (1911) that the actions were appropriate under the trial court's duty to supervise and control witnesses. The State continues to maintain the position argued in its Final Brief that the trial judge acted well within his discretion in advising Bruster of the very real consequences of his actions under contract principles, as well as in doing so in the performance of his duty to supervise and control witnesses. (Final Brief of Respondent, p.31-p.33). In his Petition for Rehearing, Williams claims: "This Court misapprehended the significance that Bruster was facing LWOP if he did not do what the trial court was coercing him to do." However, the severity of the consequences facing a witness for violating the terms of his plea agreement should have no bearing on the propriety of the trial court's actions in supervising and controlling that witness at trial by ensuring he knows of those consequences. Here, those actions were entirely appropriate. This Court properly found no error in the trial court's actions and properly affirmed.

Issue Three

In his appeal to this Court, Williams argued the trial court erred in denying his motion for a mistrial based on juror misconduct in the form of premature jury deliberations. He contended that where the original note said a juror had used the phrase "he's going down," and no witness had used those words during trial, it "indicated that one of the jurors had already made a decision before the case went to the jury, and was discussing her decision with another juror." Williams went on to claim: "There was a reasonable probability that other conversations were held about the case prematurely." He argued he was denied a fair trial "because there was no way to know all of the jurors' discussions." This Court found no error, relying on our Supreme Court's opinion in *State v. Aldret*, 333 S.C. 307, 312-16, 509 S.E.2d 811, 813-15 (1999) and the procedure established therein to address an allegation of juror misconduct that arises during trial. The State continues to maintain the position argued in its Final Brief that the trial court followed the proper procedure as set forth in *Aldret* to explore the allegation of juror misconduct and that as a result, the trial judge committed no error and Williams suffered no prejudice. (Final Brief of Respondent, p.34-p.38). In his Petition for Rehearing, Williams offers no specific challenge to this Court's conclusion that the trial court followed the procedure outlined in *Aldret*. The State submits this is because the procedure was followed in its entirety. Upon following this procedure, the trial court concluded Williams was not entitled to a mistrial. He 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. This Court properly found no error in the procedure or the denial of Williams' motion for a mistrial, and properly affirmed.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Opinion No. 2017-UP-427 (S.C. Ct. App. filed November 15, 2017)

Appellate Case No. 2013-000091

THE STATE, ...RESPONDENT

v.

MICHAEL ANTONIO WILLIAMS, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Legal Coordinator, hereby certify that I have served the within *Return to Petition for Rehearing*, dated December 13, 2017, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

LaNelle C. DuRant, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certified that all parties required by Rule to be served have been served. This 13th day of December, 2017.

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The South Carolina Court of Appeals

The State, Respondent,

v.

Michael Antonio Williams, Appellant.

Appellate Case No. 2013-000091

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

J.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
LaNelle Cantey DuRant, Esquire
John Benjamin Aplin, Esquire
William Walter Wilkins, III, Esquire
The Honorable Edward W. Miller