

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of General Sessions

S.C. SUPREME COURT

Edward W. Miller, Circuit Court Judge

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Opinion No.2017-UP-427 (S.C. Ct. App. filed November 15, 2017)  
Appellate Case No. 2018-000231

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State of South Carolina, ..... Respondent,

v.

Michael Antonio Williams, ..... Petitioner.

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**RETURN TO PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether the Court of Appeals properly affirmed the trial court admitting testimony from gang investigator Brown where: (1) it was relevant as part of the res gestae of the crime and as proof of identity, intent, and motive, and (2) its probative value outweighed any danger of unfair prejudice.
2. Whether the Court of Appeals properly affirmed the trial court's warning to a co-defendant 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, where that warning was not coercive and did not infringe upon Williams' right to due process and a fair trial.
3. Whether the Court of Appeals properly affirmed the trial court denying Williams' motion for a mistrial due to juror misconduct where, in direct compliance with *Aldret*, the trial judge followed the precise procedure suggested by this Court as soon as he learned of the alleged juror misconduct and through voir dire determined Williams had suffered no prejudice?

## STATEMENT OF THE CASE

Petitioner, **Michael A. Williams (Williams) (a/k/a “Mikey”)**,<sup>1</sup> 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 a mob (2012-GS-23-3039A), one count of possession of a weapon during the commission of a violent crime (2012-GS-23-7957), one (1) count of conspiracy (2012-GS-23-7958), and seven (7) counts of attempted murder (2012-GS-23-7959 to -7965).<sup>2</sup> He was represented by Scott Robinson, 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, Williams and three of his eight co-defendants, **Raymond Young (Young) (a/k/a “Lil Ray” & “Randy”)**, **Esaiveus Booker (Booker) (a/k/a “Trez”)**, and **Kinjta Sadler (Sadler) (a/k/a “Ken”)**, proceeded to a joint trial by jury pursuant to which all were found guilty of the seven counts of attempted murder. As explained below, the other four co-defendants entered pleas to various charges prior to trial. Williams was sentenced by the Honorable Edward W. Miller to twenty-five (25) years’ concurrent imprisonment for each count of attempted murder, twenty (20) years’ concurrent imprisonment for second-degree assault and battery by a mob, and five (5) years’ concurrent imprisonment for conspiracy. (R.p.759-785). He timely filed a notice of intent to appeal his convictions and sentences and the parties submitted briefs addressing the three issues raised by Williams on appeal. On November 15, 2017, Court of Appeals issued an unpublished opinion that affirmed Williams’ convictions and sentences. *State v. Williams*, Op. No. 2017-UP-427 (S.C. Ct. App. filed November 15, 2017)

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<sup>1</sup> 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 parentheses when each individual’s name is first used in the Statement of Facts.

<sup>2</sup> Five codefendants, Raymond Lewis Young, Esaiveus F. Booker, 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.

(App.p.1-p.3). Williams submitted a petition for rehearing on November 29, 2017, and the State filed a return on December 13, 2017. (App.p.4-p.21). By order filed January 18, 2018, the petition was denied. (App.p.22). Williams timely served and filed a petition for a writ of certiorari to the Court of Appeals. This Return to Petition for a Writ of Certiorari, submitted on behalf of the State, now 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 Red Planet (RP) nightclub. Unbeknownst to the friends, eight young men had devised a plan to retaliate for the fight at the RP. Williams, his three co-defendants at trial, and four other co-defendants, 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.102-p.109).

### Guilty Pleas

Before the commencement of the trial, four of the eight original co-defendants 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 seven co-defendants who participated in the attack, specifically identifying Williams as one of the shooters. (R.p.2-p.8). **Daquan Bruster (Bruster) (a/k/a "Buddha")** pled guilty to seven (7) counts of attempted murder, one count of possession of a weapon during the commission of a

violent crime, and one 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 co-defendants. The solicitor noted the State had agreed to withdraw notice of intent to seek life without parole as part of Williams' plea. (R.p.8-p.15). **Larry Johnson (Johnson)** pled guilty to second-degree assault and battery by a 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.15-p.22). **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.22-p.27). Finally, **Kiara Kerns** 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.27-p.31). The State asked for deferred sentencing on the four co-defendants who pled guilty until after the trial of the four remaining co-defendants.

### **Pretrial Matters – Motion *in limine* Regarding “gangs”**

After accepting the pleas, the trial began and the judge conducted jury qualification and selection proceedings. (R.p.32-p.60). During a 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.65-p.68).

When the proceedings resumed the following morning, Williams’ counsel argued the co-defendants’ 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 co-defendants 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.” Counsel for Booker then argued the discovery material showed the police had pursued their entire investigation as though the eight co-defendants were in the Folk Nation gang or the “G’s.” He said the State intended to call Officer 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.90-p.95).

The solicitor then summarized the State's theory of the case. She explained several witnesses were likely to indicate the co-defendants 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 co-defendants 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 he also had an objection based on Rule 404(a) 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.95-101).

## Trial

The State and each co-defendant then made an opening statement, none of which mentioned gangs. (R.p.102-p.121). The State proceeded to elicit testimony from several victims who were hanging out at the LC prior to the attack including: **Vincent Fant (Fant) (a/k/a “Buddha”)**,<sup>3</sup> **Raheem Adams (Adams) (a/k/a “Dex” & “Ra Ra”)**, **Russell Moore Patterson (Patterson)**, **Thomas Walker (Walker) (a/k/a “TJ”)**, and **Javon Henry (Henry)**. (R.p.117-p.182).

### 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 resulting in the defendants moving for a mistrial. The trial judge referenced the 1999 case of *State v. Aldret*<sup>4</sup> 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 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.183, line 2-p.185, 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

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<sup>3</sup> Coincidentally, both Fant and codefendant Daquan Bruster go by the nickname “Buddha.”

<sup>4</sup> *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999).

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*,<sup>5</sup> and denied the defendants’ request not to question individual jurors. (R.p.185, line 14-p.189, 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, and 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 defendant. They all stated they could follow their oath to judge the case solely on the evidence and the law. (R.p.189-p.205).

After the inquiry, the trial judge held as follows:

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.205, 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

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<sup>5</sup> *State v. Carmack*, 388 S.C. 190, 694 S.E.2d 224 (Ct. App. 2010).

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 objection 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.207, lines 4-5). Although the solicitor expressed concerns about 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.205-p.208).

#### **Trial – Continued**

After denying the motion for a mistrial, the jury returned to the courtroom and the trial resumed. The State then called additional shooting victims and witnesses from the attack, including: **Roshonques Perry (Perry) (a/k/a "Choc")**, **Jamel Williams (Jamel) (a/k/a "Mel")**, **Anthony Callahan (Callahan) (a/k/a "Ant" & "Antro")**, **Dontavious Sullivan (Sullivan) (a/k/a "Tate")**, **Carroll Jackson (Jackson) (a/k/a "Warren")**, and **Trevis Thompson (a/k/a Trap)**, and Patricia Smith, the night clerk at the LC. (R.p.217-p.262).

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 including: Chris McCalmont, Christopher Hill, James Brown, Matthew Owens, DPS Crime Scene Investigator Iona Ooten, and forensic investigators Jonathan Derby and Jonathan Hamilton. (R.p.263-p.342).

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 testified that Travis Wear was ultimately arrested for shooting Fant, and that a person named Desmond Roberts was charged with shooting **Brandon Edwards (Edwards) (a/k/a “Black”)** and **Brandon Davis (Davis) (a/k/a “Bram-Bram”)**. (R.p.343-p.378). On redirect examination Campbell testified that Davis was with Bruster when the guns were recovered. (R.p.379-p.382). Next, the State called additional investigating officers including: Shawn A. Peoples, Michael Moore, and Dustin Woodall. (R.p.383-p.412). The State also called **Joseline Mack (Mack)**, to the stand. (R.p.413-p.430).

### **Gang Investigator Brandon Brown**

Before the State called its next witness, Booker raised an objection 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 co-defendants had joined in the objection; however, the objection was overruled. (R.p.431, line 7-p.432, 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.433-p.437). 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.437, 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 which 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 was 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.438-p.452).

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.452-p.457). 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.457-p.462). 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.457-p.465).

#### **Trial – Continued**

After Investigator Brown left the stand, the State called more investigators from the Greenville County Sheriff's Office including: Assistant Gang Investigator William Whitlock, Devon Hooper, David Weiner, James Perry, and forensic crime lab chemist and firearms examiner James Williams Armstrong. (R.p.465-p.503). The State also elicited testimony from Amanda Bell. (R.p.471-p.473).

#### **Co-defendant Larry Johnson**

To conclude its case, the State began calling each co-defendant 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 a 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 was hanging out at the RP with Young, Bruster, Holmes, Sadler, and Booker and made an in-court identification of each defendant and then identified them in a photograph taken at the RP that night. There was an incident inside the club where words were exchanged. Then Edwards came in and walked to the back with Young. Later, outside, Johnson saw two fights. 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.504-p.515).

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 Waffle House 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 co-defendants ran up beside the LC. He heard lots of shooting before the group ran back and jumped in the cars to leave. They met up at the Waffle House after the attack where Young made them all swear not to tell. Johnson proceeded to identify a bunch of people from the Waffle House 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.515-p.530).

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 about a recantation in which he claimed he had been coerced to give a statement to the police; however, he testified he was actually coerced to issue the recantation. (R.p.530-p.549). 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 murdered and explained he feared for his safety. (R.p.549-p.551).

#### **Co-defendant 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 Waffle House parking lot although this is what he said in his statement. (R.p.552-p.569). Under cross-examination, Hogan admitted that he also wrote a recantation.

(R.p.569-p.585). On redirect Hogan testified he got the idea to recant from another inmate at the jail. (R.p.581-p.584).

### **Co-defendant 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.586-p.588), 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 5<sup>th</sup>." 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.588-p.594).

The following morning, the State called co-defendant 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.595-p.599).

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.601-p.604).

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.604-p.605).

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 Waffle House. (R.p.605-p.613).

After playing portions of the security video from the Waffle House, 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.614-p.619; Transcript - closing arguments, p.620-p.736). 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.737-p.748). After being found guilty as charged, Williams was sentenced to twenty-five (25) years' concurrent imprisonment for each count of attempted murder, twenty (20) years' concurrent imprisonment for second-degree assault and battery by a mob, and five (5) years' concurrent imprisonment for conspiracy. (R. 759-785).

Williams was found guilty of seven counts of attempted murder, one count of second-degree assault and battery by mob, and one count of conspiracy, but was found not guilty of possession of a weapon during the commission of a violent crime. Williams was sentenced by the Honorable Edward W. Miller to twenty-five (25) years' concurrent imprisonment for each count of attempted murder, twenty (20) years' concurrent imprisonment for second-degree

assault and battery by a mob, and five (5) years' concurrent imprisonment for conspiracy. (R. p.759-785).

### CERTIORARI

Williams timely filed a notice of intent to appeal his convictions and sentences and the parties submitted briefs addressing the three issues raised by Williams on appeal. On November 15, 2017, Court of Appeals issued an unpublished opinion that affirmed Williams' convictions and sentences. *State v. Williams*, Op. No. 2017-UP-427 (S.C. Ct. App. filed November 15, 2017) (App.p.1-p.3). Williams submitted a petition for rehearing on November 29, 2017, and the State filed a return on December 13, 2017. (App.p.4-p.21). By order filed January 18, 2018, the petition was denied. (App.p.22). Williams timely served and filed a petition for a writ of certiorari to the Court of Appeals. This Return to Petition for a Writ of Certiorari, submitted on behalf of the State, now follows. Although a truncated statement of facts is included above, the full procedural history, statement of facts, and the substantive arguments recited in the Final Brief of Respondent are also hereby incorporated by reference.

Williams argues this Court should grant certiorari because the Court of Appeals misapprehended the significance or prejudicial effect of certain issues in reaching its decision. However, the Court of Appeals employed the proper standard of review in concluding Williams' claims of error did not warrant reversal. The decision is consistent with precedent in South Carolina. Pursuant to Rule 242(b), SCACR, there are no "special and important reasons" for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. Indeed, the Court of Appeals decision was a straightforward exercise of reviewing the trial court's application of the law to the particular facts and circumstances of Williams' case. Williams' petition for a writ of certiorari be denied and dismissed.

## ARGUMENT

### I.

**The Court of Appeals properly affirmed the trial court admitting testimony from gang investigator Brown where: (1) it was relevant as part of the res gestae of the crime and as proof of identity, intent, and motive, and (2) its probative value outweighed any danger of unfair prejudice.**

In his appeal to the Court of Appeals, 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). The Court of Appeals 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 and in response to Williams’ petition for rehearing to the Court of Appeals, 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 the Court of Appeals 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 certiorari, 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 the Court of Appeals "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. The Court of Appeals

properly concluded Brown's use of the term "gang" could not have been prejudicial because it was cumulative. In any event, the limited use of the term was properly allowed under the circumstances of this case.

## II.

**The Court of Appeals properly affirmed the trial court's warning to a co-defendant 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, because that warning was not coercive and did not infringe upon Williams' right to due process and a fair trial.**

In his appeal to the Court of Appeals, 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. The Court of Appeals 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 certiorari, Williams claims: "The Court of Appeals 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. The Court of Appeals properly found no error in the trial court's actions and properly affirmed.

### III.

**The Court of Appeals properly affirmed the trial court denying Williams' motion for a mistrial due to juror misconduct where, in direct compliance with *Aldret*, the trial judge followed the precise procedure suggested by this Court as soon as he learned of the alleged juror misconduct and through voir dire determined Williams had suffered no prejudice.**

In his appeal to the Court of Appeals, 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." The Court of Appeals found no error, relying on this 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. The Court of Appeals properly found no error in the procedure or the denial of Williams' motion for a mistrial, and properly affirmed.

### CONCLUSION

Based on the foregoing reasons, the State submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court's rulings. If the Court grants the petition for a writ of certiorari, Respondent would request permission under the rules to fully brief the issues contained herein.

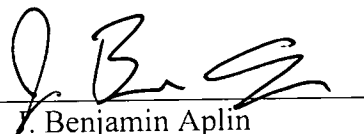
Respectfully submitted,

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Columbia, South Carolina  
March 19, 2018

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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. 2018-000231

State of South Carolina, ..... Respondent,

v.

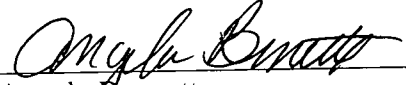
Michael Antonio Williams, ..... Petitioner.

**PROOF OF SERVICE**

I, Angela Bennett, Administrative Coordinator, hereby certify that I have served the within *Return to Petition for a Writ of Certiorari*, dated March 19, 2018, on Petitioner by depositing two copies of the Petition and one copy of the Appendix in the United States mail, postage prepaid, addressed to his attorney of record:

LaNelle Cantey DuRant, Appellate Defender  
S.C. Commission on Indigent Defense  
PO Box 11589  
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 19<sup>th</sup> day of March, 2018.

  
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