STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2017-001236

THE STATE,

Respondent,

vs.

DERRICK LAMOUNT FURTICK,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

United States Supreme Court Cases:

Other Authorities:

STATEMENT OF ISSUES ON APPEAL

I.

The trial judge did not abuse her broad discretion by declining to ask several questions proposed by defense counsel during voir dire because those questions exceeded the scope of the matter that must statutorily be inquired about during the jury selection process, the questioning actually conducted was sufficient to ensure the jurors who decided Appellant's case were fair and impartial, and the failure to ask any further questions did not render the trial fundamentally unfair in any manner.

II.

The trial judge did not err by either instructing the jury on voluntary intoxication or permitting the solicitor to address the issue of voluntary intoxication during her closing argument after evidence of Appellant's voluntary intoxication was presented during trial because the trial judge's decisions merely communicated to the jury voluntary intoxication was not a defense to crime, which constituted an indisputably correct statement of South Carolina law that was important for the jurors to know in order to understand and properly evaluate the evidence before them.

STATEMENT OF THE CASE

In August of 2016, Appellant Derrick Lamount Furtick was arrested after he was discovered dragging a woman along a roadway against her will. In May of 2017, the Orangeburg County Grand Jury indicted Appellant for kidnapping and first-degree burglary. On May 23, 2017, a jury trial was commenced in the Orangeburg County Court of General Sessions with the Honorable Maite Murphy, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant of kidnapping and acquitted him of first-degree burglary. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of thirty years. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In the early morning hours of August 19, 2016, Danielle Monroe was awakened by the apparent sound of gunshots outside her home. (R. p. 59; p. 71; p. 73). In response, Monroe got out of bed and went to the window to see what was going on. (R. p. 59). When she did not see anything, she returned to bed. (R. p. 59). Only moments later, though, she heard the door to her home open and close, and, believing it may have been her brother, she called out for him several times. (R. pp. 59-60; p. 67; p. 74). However, no one responded, so Monroe went into the living room to investigate. (R. p. 60; p. 62). Once there, she noticed her ten-year-old son, Jamarion S., was asleep on the couch, but she did not see any sign of her brother. (R. p. 60; p. 62). Monroe then went to check to see if her brother's car was parked outside, and, upon doing so, she looked back and saw a man whom she quickly recognized was not her brother come out of her son's bedroom into the hallway of her home. (R. p. 60; p. 91).

At that moment, the man, Appellant Derrick Lamount Furtick, turned on one of the lights in the home, and Monroe noticed he was breathing heavily, was sweaty, had eyes as "big as golf balls," and looked "scary."[1] (R. p. 60; p. 70; p. 72; p. 77). Terrified, Monroe yelled for Appellant to leave, and her son was awakened by her shouts. (R. p. 60; p. 69; pp. 89-90). Once her son was awake, Monroe ran to the door and opened it so she and her son could get away, but Appellant charged at her, forced the door shut, and grabbed her by the arms. (R. p. 60). The two then struggled at the door, but Monroe and her son were eventually able to escape outside. (R. pp. 60-61; p. 90; p. 92). However, as Monroe fled from her home, Appellant chased after her, grabbed her by her hair, and began to drag her away. (R. p. 61; pp. 68-69).

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[1] During trial, Monroe testified she was familiar with Appellant because she had attended school with him over a decade earlier and had dated his brother. (R. pp. 57-58). However, she indicated she was not friends with Appellant and had never invited him to her home. (R. p. 58).

As Monroe was being dragged away by Appellant, Jamarion ran to a nearby house and asked his neighbor to call for help before quickly returning to assist his mother. (R. pp. 92-94). Shortly after that, Investigator Ryan Harter of the Orangeburg County Sheriff's Office was notified of the kidnapping, and he rapidly responded to the scene. (R. pp. 94-95; pp. 97-100). Upon arriving, he observed Appellant, who had enlarged eyes and a blank expression, dragging Monroe, who appeared to be in a state of panic, along the road by her arm and hair while Jamarion was pulling at Monroe's other arm in an effort to rescue her. (R. p. 62; pp. 101-102; p. 104; pp. 108-110; p. 113). In response, Investigator Harter ordered Appellant to release Monroe, and, when Appellant did not do so, he threatened to deploy his police dog, which was barking and growling inside of his patrol vehicle. (R. pp. 94-95; pp. 103-104; p. 112). Appellant then briefly stumbled, and Investigator Harter used that opportunity to rush in and subdue him, which ended the ordeal. (R. p. 84; p. 95; pp. 103-104; p. 113).

Subsequently, Appellant was indicted for kidnapping and first-degree burglary, and he proceeded forward to trial. (R. p. 5; pp. 212-215). At the outset of trial, the trial judge conducted voir dire by asking the prospective jurors if any of them: (1) were related to, had a social connection to, or had been represented by the members of the solicitor's office or the public defender's office; (2) were related to or had a social connection to Appellant, the victim, or any of the witnesses, including several law enforcement witnesses, who might testify during trial; (3) were members of or contributors to any groups affiliated with law enforcement or victims' rights; (4) knew anything about Appellant's case; (5) had formed or expressed opinions about any matter or issue involved in the case; (6) were members of the grand jury that issued the indictments involved in the case; (7) were aware of anything about the type of case involved that would cause them to hesitate in their abilities to be fair and impartial in light of their own

personal experiences or the experiences of their friends, family members, or acquaintances; (8) were aware of any bias or prejudice to either side in the case; and (9) knew of *any* reason why they should not serve in the case or could not be fair and impartial. (R. pp. 6-22). At the conclusion of that questioning, the trial judge began the jury selection process, and the parties selected a jury for trial. (R. p. 22; pp. 25-30).

Once a jury had been selected, the trial judge asked the parties whether there were any objections to the jury selection process, and both the solicitor and defense counsel indicated they had no objections. (R. pp. 30-31). However, defense counsel noted he had submitted additional proposed questions for voir dire that were not expressly presented to the prospective jurors and objected to the trial judge's failure to ask those questions. (R. pp. 32-34). Specifically, defense counsel asserted he had proposed the prospective jurors be questioned about any connections they had to any member of a law enforcement agency, any employment they had with any civilian or military law enforcement agencies, and any connections they had to anyone who had been a victim of a burglary or some other type of violent crime, which he maintained was necessary to uncover potential bias and was permissible pursuant to Section 14-7-1020 of the South Carolina Code of Laws.[2] (R. pp. 32-34). However, in response, the solicitor asserted the broad questions the trial judge had already presented to the prospective jurors sufficiently covered the matter sought to be inquired about through defense counsel's proposed questions, and the trial judge agreed. (R. pp. 35-36). Therefore, the trial judge confirmed she declined to ask the proposed questions during voir dire. (R. p. 36).

As the trial continued forward, Monroe testified about her terrifying experiences on the night of the incident, and she identified Appellant in the courtroom as the person who invaded

[2] In total, defense counsel proposed *eighteen* questions for voir dire, and several of the proposed questions included follow-up questions for deeper inquiry. (R. pp. 207-211).

her home without permission and dragged her away against her will. (R. pp. 56-84). Likewise, Jamarion testified about his experiences on the night of the incident, and he also identified Appellant as the person who came out of his bedroom and proceeded to grab his mother. (R. pp. 88-95). Furthermore, Investigator Harter testified about his response to the reported kidnapping, and he made an in-court identification of Appellant as the individual he subdued after encountering him dragging Monroe along the roadway. (R. pp. 97-118).

In addition to that testimony, Appellant elected to testify in his own defense. (R. p. 135). During his testimony, Appellant claimed he was playing poker with friends, drinking, and using drugs at a home located near the victim's home on the night of the incident, went outside when he heard a noise, returned inside, and observed guns on the poker table. (R. pp. 136-138; p. 145; p. 156). Appellant asserted he then asked his friends about the guns, was told he had to leave, began to do so, and observed one of his friends cocking a pistol. (R. p. 138; p. 156). At that point, Appellant claimed he hit the gun and ran, and, as he fled, he asserted his friends began firing their weapons for no apparent reason. (R. p. 138; p. 156). After that, Appellant stated he ran to the nearest house, knocked on the door, and went inside in search of a safe place. (R. pp. 138-140). He asserted he then hid in a room until he heard a woman calling out, came out and turned on a light, and told the woman he needed help. (R. p. 140). When he did, Appellant asserted the woman told him to leave before trying to escape through the door with her son, and he stated he tried to stop her from doing so. (R. p. 140; p. 149). However, Appellant indicated the woman and her son were able to escape despite his efforts, he followed them outside, and he proceeded to grab the woman and hold her by the arm and hair despite her and her son's requests

for him to let her go.[3] (R. p. 140). Thereafter, Appellant stated he did not let go of the woman until an officer arrived on the scene and subdued him, he was subsequently taken to a hospital, and he remained there for several days as the result of a nearly fatal drug overdose. (R. pp. 140-143; p. 151; p. 158). Furthermore, Appellant indicated he was not thinking right on the night of the incident, was "lost" based on the amount of drugs he had ingested, did not know what was going on, could not remember all the details of what had occurred, and needed six days "to come to [his] senses." (R. p. 139; p. 146; p. 150; p. 153; p. 159).

Thereafter, at the conclusion of the evidentiary phase of trial, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law.[4] (R. pp. 163-196). As part of her jury instructions, the trial judge explained Appellant was presumed innocent and did not have to prove his own innocence, indicated the State had the burden of proving Appellant's guilt beyond a reasonable doubt, thoroughly defined reasonable doubt for the jury, explained she was the sole judge of the law while the jurors were the exclusive judges of the fact, instructed she was not permitted to comment on the facts, cautioned the jurors not to infer anything she said as expressing an opinion on the facts, and defined the required elements of both kidnapping and first-degree burglary.[5] (R. pp. 186-189; pp. 192-195). Furthermore, the trial judge instructed:

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[3] When asked during trial why he followed Monroe outside if he had entered her home to hide, Appellant asserted it would have been inappropriate for him to stay in another person's home that he was not "supposed to be in" when the resident was no longer present. (R. p. 148).

[4] During her closing argument, the solicitor correctly noted voluntary intoxication was not an excuse or defense to a crime and was permitted to display the voluntary intoxication charge to the jury by using a monitor. (R. p. 163; p. 172).

[5] Through her preliminary remarks at the outset of trial, the trial judge had earlier emphasized to the jurors they were the sole judges of the facts, she was not supposed to express a view on the facts and could not tell them what the facts were, they were required to disregard any comment

> Voluntary intoxication is not an excuse or a defense to crime, regardless of whether the crime is one involving general or specific intent. This rule also extends to the voluntary ingestion of drugs. A person who voluntarily ingests alcohol or drugs and thereby becomes intoxicated is not less responsible for his acts while in such condition.
>
> If one voluntarily drinks intoxicating liquors, wine or beer or ingests drugs and becomes intoxicated to whatever degree and if, while in that condition, commits an act which would be a crime if it had been committed by a sober person, the fact of intoxication would not relieve the intoxicated person from responsibility.

(R. p. 195). After the trial judge concluded her jury instructions, defense counsel objected to the charge on voluntary intoxication, and the trial judge overruled the objection.[6] (R. p. 197).

Subsequently, at the conclusion of trial, the jury solely convicted Appellant of kidnapping and acquitted him of first-degree burglary. (R. p. 198). The trial judge then sentenced Appellant to a thirty-year term of imprisonment. (R. p. 205).

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she made on the facts, and they had to determine the facts solely from the testimony and evidence presented. (R. pp. 38-40).

[6] Earlier during trial, defense counsel had anticipatorily objected to the giving of a jury charge on voluntary intoxication. (R. p. 131). In support of that objection, defense counsel asserted such an instruction was "tantamount" to an unconstitutional charge on the facts, would allegedly confuse the issues involved in the case, and would somehow diminish the prosecution's burden of proof. (R. pp. 131-132). In response to the objection, the trial judge indicated the propriety of the charge would depend on Appellant's testimony, and she subsequently confirmed she believed the charge was appropriate after Appellant repeatedly testified about his ingestion of drugs and alcohol on the night of the incident. (R. pp. 132-133; pp. 162-163).

ARGUMENT

I.

The trial judge did not abuse her broad discretion by declining to ask several questions proposed by defense counsel during voir dire because those questions exceeded the scope of the matter that must statutorily be inquired about during the jury selection process, the questioning actually conducted was sufficient to ensure the jurors who decided Appellant's case were fair and impartial, and the failure to ask any further questions did not render the trial fundamentally unfair in any manner.

Appellant contends the trial judge committed reversible error by declining to question the prospective jurors during voir dire about any connections they may have had to law enforcement agencies, victims of burglary, and victims of other violent crimes as requested by defense counsel. In support of that contention, Appellant appears to maintain the trial judge's failure to ask the questions was erroneous because the information sought through the questions could potentially have been helpful to the defense in selecting a juror. To the contrary, the trial judge committed no error in conducting voir dire because the questions she asked of the prospective jurors fully covered the matter identified in Section 14-7-1020 of the South Carolina Code of Laws, sufficient information was elicited through those questions to ensure each of the jurors who decided Appellant's case was fair and impartial, and the failure to ask the proposed questions did not render the trial fundamentally unfair in any manner. Under those circumstances, the trial judge did not prejudicially abuse her broad discretion over the scope of voir dire. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When reviewing an issue related to the scope of jury voir dire, an appellate court will not reverse a trial judge's ruling unless it constituted a clear abuse of discretion resulting in actual prejudice. State v. Stanko, 376 S.C. 571, 576, 658 S.E.2d

94, 96 (2008); see State v. Coaxum, 410 S.C. 320, 331, 764 S.E.2d 242, 247 (2014) ("[T]o receive a new trial, the defendant must show a prejudicial abuse of discretion."); see also Wilson v. Childs, 315 S.C. 431, 439, 434 S.E.2d 286, 291 (Ct. App. 1993) ("There is no reversible error in the impaneling of a jury unless it appears that the objecting party was prejudiced."). Significantly, in order for actual prejudice to exist, the trial judge's ruling regarding the scope of voir dire must have rendered the trial "fundamentally unfair." State v. Wise, 359 S.C. 14, 22-23, 596 S.E.2d 475, 479 (2004); see State v. Tucker, 334 S.C. 1, 10, 512 S.E.2d 99, 103 (1999) (instructing the failure to ask specific questions during voir dire only constitutes reversible error if it rendered the trial fundamentally unfair).

ANALYSIS

In every criminal case tried in South Carolina, a defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); see State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000) ("The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors."). That right guarantees to a defendant a trial by a panel of impartial, indifferent jurors. State v. Parker, 381 S.C. 68, 96, 671 S.E.2d 619, 633 (Ct. App. 2008); see U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury[.]"); S.C. Const. art. I, § 14 ("The right to trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury[.]"); see also State v. Rogers, 263 S.C. 373, 382, 210 S.E.2d 604, 609 (1974) ("[T]he law is well settled that the defendant has no right to a trial by any particular jury or jurors and has the right only to a trial by a competent and impartial jury."). Importantly, it is the duty of the trial judge to ensure a jury comprised solely of fair, impartial,

and unbiased jurors ultimately decides a defendant's case. State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998).

One mechanism used by courts to secure a criminal defendant's right to a fair trial is jury voir dire. See State v. Poindexter, 314 S.C. 490, 493, n. 2, 431 S.E.2d 254, 255 (1993) ("The purpose of voir dire is to select a fair and impartial jury."); see also Mu'Min v. Virginia, 500 U.S. 415, 431 (1991) ("Voir dire examination serves the dual purpose of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges."). In conducting voir dire in South Carolina, a trial judge—upon request by either party—is statutorily required to question prospective jurors to determine whether any of them: (1) is related to either party; (2) has any interest in the cause; (3) has expressed or formed any opinions; and (4) is sensible of any bias or prejudice therein. S.C. Code Ann. § 14-7-1020; see Wise, 359 S.C. at 22-23, 596 S.E.2d at 479 (instructing the "authority and responsibility" of the trial judge during voir dire is to focus the scope of examination as statutorily set forth). Significantly though, the scope of voir dire generally rests in the trial judge's broad discretion, and a trial judge is *not* required to ask any questions about matters beyond those that are statutorily identified unless the failure to ask about a particular matter would render the trial fundamentally unfair. Wise, 359 S.C. at 23, 596 S.E.2d at 479; see State v. Britt, 237 S.C. 293, 305, 117 S.E.2d 379, 385 (1960) ("[A]fter the statutory questions have been asked and answered, any further examination of a juror on voir dire must be left to the discretion of the trial Judge, which is subject to review only for abuse thereof. . . . [T]he scope and limit of the interrogation of a juror on voir dire is within the sound discretion of the trial Judge, and it is for him to determine the character of the questions proposed, and when the examination shall end."), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); see also Wall v. Keels, 331 S.C. 310, 318, 501

S.E.2d 754, 757 (Ct. App. 1998) ("[A]s a general rule, the trial court is not required to ask all voir dire questions submitted by the attorneys.").

Notably, in State v. Lucas, 285 S.C. 37, 39, 328 S.E.2d 63, 64 (1985), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), Lucas, who was on trial for multiple murders and was facing the death penalty, sought to question the prospective jurors during voir dire about their specific recollections of pretrial publicity surrounding his case and about their possible associations with the solicitor's office prosecuting his case, but the trial judge declined to permit the requested inquiry. After Lucas was subsequently convicted, he appealed, arguing the trial judge reversibly erred by prohibiting the proposed questioning. Id. However, the Supreme Court disagreed and affirmed. Id. at 38, 328 S.E.2d at 64. In affirming, the Supreme Court noted the scope of voir dire was set forth by Section 14-7-1020 while the scope of any questioning beyond the statutorily-delineated bounds rested in the trial judge's discretion. Id. at 39, 328 S.E.2d at 64. With those principles in mind, the Supreme Court concluded the trial judge in Lucas's case did not abuse his discretion by declining to conduct the requested inquiry because neither specific recollections of pretrial publicity nor possible associations with the solicitor's office were matters falling within the scope of voir dire as set forth by the legislature. Id.

In the case sub judice, the trial judge—like the trial judge in Lucas—asked the statutorily-delineated questions of the prospective jurors during voir dire by inquiring whether they were related to Appellant, had formed or expressed opinions about the case, were aware of any bias or prejudice to either side, and knew of *any* reasons why they could not be fair and impartial or should not serve on the jury. See State v. Smart, 278 S.C. 515, 522, 299 S.E.2d 686, 690 (1982) (instructing a trial judge is statutorily permitted to inquire into whether prospective

jurors are related to either party, have any interest in the cause, have expressed or formed any opinions, or are sensible of any bias or prejudice while any decisions regarding further inquiry beyond those matters rest in the trial judge's discretion), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Additionally, the trial judge further inquired of the prospective jurors whether they had any connections to the members of the solicitor's office or the public defender's office, any connections to the victim or any of the witnesses involved in the case, were connected to groups affiliated with law enforcement or victims' rights, knew anything about the case or had been a member of the grand jury that issued the indictments involved in the case, and were aware of anything about the type of case involved that would cause them to hesitate in their abilities to be fair and impartial. See State v. Neeley, 271 S.C. 33, 37, 244 S.E.2d 522, 525 (1978) ("Having asked the statutory questions, any further examination was in the trial judge's discretion."). After asking those broad questions covering all the matter identified in Section 14-7-1020 and more, the trial judge concluded sufficient information had been elicited in order for a fair and impartial jury to be selected, and her ruling—just like the ruling of the trial judge in Lucas—was *not* an abuse of discretion under the circumstances. See State v. Gibbs, 267 S.C. 365, 368, 228 S.E.2d 104, 105 (1976) ("[T]he nature and extent of any voir dire examination of the jury rests largely within the discretion of the trial judge."); cf. Lucas, 285 S.C. at 39, 328 S.E.2d at 64-65 ("Specific recollection of press coverage and possible personal association with the solicitor's office are outside the scope of voir dire under the statute. We hold the trial judge properly excluded these questions in his discretion.").

In arguing to the contrary, Appellant contends the trial judge abused her broad discretion over the manner in which voir dire was conducted by declining to extend it and ask several more questions to determine whether any of the prospective jurors had any connection whatsoever to a

law enforcement agency, a victim of a burglary, or a victim of some other violent crime. In support of that contention, Appellant appears to maintain the asking of defense counsel's proposed questions was somehow required because it might have been helpful in selecting a jury. Importantly though, while a trial judge has the *discretion* to ask additional questions during voir dire in order to elicit potentially helpful information, a trial judge is not *required* to do so unless the failure to ask a requested question would render the trial fundamentally unfair. See Mu'Min, 500 U.S. at 425-426 ("Questions about the content of the publicity to which jurors have been exposed might be helpful in assessing whether a juror is impartial. To be constitutionally compelled, however, it is not enough that such questions might be helpful. Rather, the trial court's failure to ask these questions must render the defendant's trial fundamentally unfair.").

Through the questioning actually conducted during voir dire in Appellant's case, the trial judge elicited sufficient information from the prospective jurors to ensure the trial was not fundamentally unfair, and the fact none of the jurors responded when asked if they were aware of *any* reason they could not be fair and impartial sufficiently demonstrated the jurors who decided the case did not harbor any improper bias or prejudice against Appellant. See State v. Plath, 281 S.C. 1, 6, 313 S.E.2d 619, 622 (1984) (instructing trial judges should focus the scope of voir dire upon matters that are statutorily enumerated and avoid excessive intrusions upon the privacy of the prospective jurors); cf. State v. Young, 238 S.C. 115, 120, 119 S.E.2d 504, 506 (1961) ("Their answer that they were not conscious of any bias or prejudice could mean only that they were not conscious of any bias or prejudice for any cause. The statutory questions encompassed the request, and we find no abuse of discretion amounting to error of law in refusing the question as presented."), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Accordingly, the trial judge fulfilled her duties in regard to conducting voir dire, and

Appellant wholly failed to establish the trial judge prejudicially abused her broad discretion by placing reasonable limits upon the questioning conducted of the prospective jurors. See Stanko, 376 S.C. at 577, 658 S.E.2d at 97 (finding no reversible error where Stanko failed to present evidence to establish the limits placed on questioning during voir dire impacted his right to a fair and impartial jury and resulted in a fundamentally unfair trial); see also State v. Koon, 278 S.C. 528, 532, 298 S.E.2d 769, 771 (1982) (explaining trial judges should avoid lengthy and superfluous voir dire and have a duty to "restrict questioning of prospective jurors to inquiries into whether a juror is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein"), overruled on other grounds by Skipper v. South Carolina, 476 U.S. 1 (1986); State v. Sellers, 257 S.C. 35, 42, 183 S.E.2d 889, 892 (1971) ("The trial judge, in the exercise of his discretion, concluded that the scope of the voir dire examination of the jurors, which he conducted, was sufficiently broad to assure that every juror presented was unbiased and impartial. We find nothing in this record to indicate that the refusal to propound the questions submitted by [Sellers] constituted an abuse of discretion."). Appellant's conviction should be affirmed.

II.

The trial judge did not err by either instructing the jury on voluntary intoxication or permitting the solicitor to address the issue of voluntary intoxication during her closing argument after evidence of Appellant's voluntary intoxication was presented during trial because the trial judge's decisions merely communicated to the jury voluntary intoxication was not a defense to crime, which constituted an indisputably correct statement of South Carolina law that was important for the jurors to know in order to understand and properly evaluate the evidence before them.

Appellant contends the trial judge committed reversible error by both instructing the jury on voluntary intoxication and permitting the solicitor to address the issue of voluntary intoxication during her closing argument. In support of those contentions, Appellant maintains the jury instructions on voluntary intoxication constituted an impermissible comment on the facts, were purportedly confusing in some manner, and somehow diminished the prosecution's burden of proof. To the contrary, both the trial judge's jury charge on voluntary intoxication and the solicitor's closing argument remarks on that subject matter correctly communicated the basic legal principle voluntary intoxication could not be used as a defense to a crime in South Carolina, and that legal principle was significant to the resolution of Appellant's case in light of the testimony presented establishing Appellant voluntarily ingested drugs and alcohol prior to the incident. Likewise, the trial judge's jury instructions on voluntary intoxication were not confusing, did not diminish the prosecution's burden of proof, and did not constitute an impermissible comment on the facts. Accordingly, there are no proper grounds upon which the trial judge's decisions regarding the issue of voluntary intoxication could be reversed on appeal. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In a criminal case, the appellate court sits solely to review errors of law. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an issue involving a trial judge's

jury charge, the appellate court must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation in analyzing whether the defendant's due process rights have been violated."). The appropriate test for reviewing the charge involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal."); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."). Moreover, an appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constitutes a prejudicial abuse of discretion. See Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."); Rauch v. Zayas, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985) ("[A]n alleged error in a portion of the charge must be prejudicial to the appellant to warrant a new trial."); see also State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005) ("Error without prejudice does not warrant reversal.").

ANALYSIS

The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). To carry out that purpose, a trial judge is required to charge the jury on the current and correct

South Carolina law applicable to the case based on the evidence presented. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003); see State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case based on the evidence presented). In doing so, the trial judge is only required to instruct the jury on the substance of the law and does *not* have to use any particular verbiage. State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). However, a trial judge in South Carolina is constitutionally prohibited from making any comments that could be construed as offering an opinion on the facts of the case. See S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."); see also State v. Smith, 288 S.C. 329, 331, 342 S.E.2d 600, 601 (1986) ("The trial judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of the witnesses, the guilt of the accused or as to controverted facts."). Importantly, so long as the trial judge's jury instructions are substantially correct, adequately cover the applicable law, and do not run afoul of the constitutional prohibition against comments on the facts, those instructions are considered to be appropriate and not erroneous. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law."); see also State v. Deas, 202 S.C. 9, 14, 23 S.E.2d 820, 822 (1943) ("Of course, under our Constitution and practice the jury are the sole judges of the facts in criminal trials and it is error for the Judge to communicate his views of them to the jury.").

In the case at bar, testimony was presented during trial establishing Appellant's terrifying actions on the date of the incident were committed *after* Appellant voluntarily ingested a

substantial quantity of drugs and alcohol. In fact, through his own testimony, Appellant made a number of statements related to his drug ingestion, specifically claimed he was "lost" when the incident occurred based on the amount of drugs he had consumed, and asserted he needed six days in a hospital to "come to [his] senses" following his arrest. Likewise, both the victim and Investigator Harter commented on Appellant's noticeably enlarged eyes at the time of the incident, and Investigator Harter indicated Appellant had a blank expression when he confronted him at the scene. Therefore, evidence of Appellant's voluntary intoxication at the time he committed the crimes for which he was charged was unquestionably before the jury through the testimony presented. See State v. White, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004) ("The law to be charged is determined by the evidence presented at trial.").

Due to the fact evidence of voluntary intoxication was before the jury, the jurors needed to know the law related to that particular matter in order to be able to understand and properly evaluate the evidence presented to them. See State v. Todd, 290 S.C. 212, 214, 349 S.E.2d 339, 341 (1986) (finding no error in the trial judge's jury charge on voluntary intoxication where "[t]here was some evidence showing the appellant had been drinking prior to the shooting"); see also Sanders v. Western Auto Supply Co., 256 S.C. 490, 497, 183 S.E.2d 321, 325 (1971) (recognizing a jury instruction on a principle of law applicable to the case based on the evidence presented was "required to properly guide the jury in its deliberation"). Pursuant to well-established and long-standing South Carolina law, voluntary intoxication is *not* a defense to crime. See State v. South, 310 S.C. 504, 508, 427 S.E.2d 666, 669 (1993) ("[V]oluntary intoxication does not relieve an individual from criminal responsibility."); State v. Hartfield, 300 S.C. 469, 473, 388 S.E.2d 802, 804 (1990) ("The general rule is that voluntary intoxication or use of drugs does not constitute a defense to a crime."); State v. Bellue, 260 S.C. 39, 43, 194

S.E.2d 193, 195 (1973) ("Voluntary intoxication or drug use does not absolve a defendant of criminal responsibility."); State v. Coyle, 86 S.C. 81, __, 67 S.E. 24, 27 (1910) (recognizing the legal principle "voluntary intoxication is no excuse for crime" is "settled law" in South Carolina). As a result, it was critically important for the trial judge to instruct the jurors on that basic legal principle to ensure they understood and did not misuse the voluntary intoxication evidence in reaching a verdict in Appellant's case, and the trial judge committed no conceivable error by doing just that. See Clark, 339 S.C. at 390, 529 S.E.2d at 539 ("It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge."); cf. State v. Lee-Grigg, 387 S.C. 310, 317, 692 S.E.2d 895, 898 (2010) (finding reversible error in the failure to instruct the jury on good character evidence because "without an instruction the jury was not aware that it could consider this evidence in determining [Lee-Grigg's] credibility and culpability").

In arguing to the contrary, Appellant contends the trial judge committed reversible error by both instructing the jury on voluntary intoxication and permitting the solicitor to address the issue of voluntary intoxication during her closing argument. In support of such a contention, Appellant maintains the jury charge on voluntary manslaughter somehow constituted an unconstitutional and confusing comment on the facts that diminished the prosecution's burden of proof due to the fact it contained the word "crime" in it.

Significantly though, the trial judge's jury instructions on voluntary intoxication did *not* in any way constitute a comment on the facts and could not be rationally construed as

communicating an opinion by the trial judge on the evidence presented.[7] See State v. Morgan, 282 S.C. 409, 413, 319 S.E.2d 335, 337 (1984) (rejecting Morgan's contention the trial judge's jury instructions on involuntary intoxication constituted an impermissible comment on the facts); see also Sheppard, 357 S.C. at 664, 594 S.E.2d at 474 ("[T]he test is what a reasonable juror would have understood the charge as meaning."). Instead, the trial judge's voluntary intoxication charge was a plain, straightforward, and understandable statement of a basic legal principle that merely conveyed the applicable law to the jurors so they could properly resolve the issues before them, and that charge in no way suggested the State did not have to prove Appellant's guilt for all the elements of the indicted offenses beyond a reasonable doubt. Cf. Sheppard, 357 S.C. at 664, 594 S.E.2d at 474 (rejecting Sheppard's contention the trial judge's jury instruction explaining a pistol is deadly weapon constituted an impermissible comment on the facts because "under the law of South Carolina, a pistol is a deadly weapon").

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[7] Notably, during trial, Appellant readily admitted to the jury he intentionally held his victim against her will by her arm and hair. (R. pp. 140-141). Based on that testimony, there was no actual dispute Appellant kidnapped his victim since it was an admitted fact he intentionally deprived her of her freedom through his actions. See State v. Owens, 291 S.C. 116, 118, 325 S.E.2d 474, 475 (1987) ("The crime of kidnapping requires proof that the defendant: (1) unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away; (2) any other person; (3) by any means whatsoever; (4) without authority of law."); see also State v. Porter, 389 S.C. 27, 39, 698 S.E.2d 237, 243 (Ct. App. 2010) ("Kidnapping is a continuous offense that commences when one is wrongfully deprived of freedom and continues until freedom is restored."). Therefore, even assuming the trial judge's jury charge on voluntary intoxication could somehow be construed as a comment on the facts, the charge would have been proper under the circumstances as the fact Appellant kidnapped his victim was undisputed and admitted based on Appellant's own testimony. See State v. Arther, 290 S.C. 291, 296, 350 S.E.2d 187, 190 (1986) ("[A]ppellant contends that the trial judge impermissibly commented on the facts in his jury charge by referring to appellant's statement as a 'confession.' Appellant's statement did constitute a confession that he stole money from the victim. When facts stated in a charge are not in dispute, the instruction is not erroneous."). Nonetheless though, the trial judge's jury instructions on voluntary intoxication did *not* constitute a comment on the facts in any manner. See State v. Petit, 144 S.C. 452, __, 142 S.E. 725, 734 (1928) (rejecting Petit's contention the trial judge's jury instructions on involuntary intoxication was improperly argumentative and constituted an unconstitutional charge on the facts).

Similarly, the solicitor's remarks during her closing argument were not improper in any fashion. To the contrary, the solicitor's closing argument remarks on voluntary intoxication simply communicated her indisputably correct view Appellant's voluntary ingestion of drugs and alcohol on the date of the incident did *not* relieve him of criminal responsibility for his ensuing actions, and those remarks were fully consistent with the express purpose of a closing argument. See State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975) (" '[The prosecuting attorney] may argue with reference to any matters which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.' " (citations omitted)); State v. Liberte, 336 S.C. 648, 653, 521 S.E.2d 744, 746 (Ct. App. 1999) ("Certainly, a prosecutor is entitled to call into question the credibility of a defense.").

Because both the trial judge's jury instructions and the solicitor's closing argument remarks on voluntary intoxication correctly conveyed the relevant and applicable law to the jury in a clear and understandable manner, those instructions and closing argument remarks were in no way improper. See Sheppard, 357 S.C. at 665, 594 S.E.2d at 472-473 ("A jury charge is correct if it contains the correct definition of the law when read as a whole."); see also State v. Vaughn, 268 S.C. 119, 125-126, 232 S.E.2d 328, 330-331 (1977) ("[V]oluntary intoxication, where it has not produced permanent insanity, is never an excuse for or a defense to crime, regardless of whether the intent involved be general or specific."). Accordingly, there is no proper basis upon which to reverse the trial judge's decisions on appeal. See Rye, 375 S.C. at 123, 651 S.E.2d at 323 ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."). Appellant's conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

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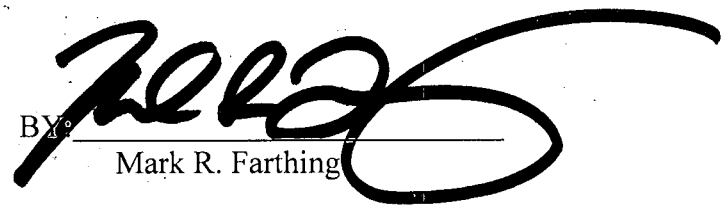
BY: 
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July 31, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Orangeburg County
Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2017-001236

THE STATE,

Respondent,

vs.

DERRICK LAMOUNT FURTICK,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Final Brief of Respondent on Appellant by sending two copies of the same to:

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I further certify that all parties required by Rule to be served have been served.
This 31st day of July, 2018.

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