STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

RECEIVED

FEB 2 2 2018

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

ESAIVEUS FRANTREZ BOOKER,

APPELLANT

APPELLATE CASE NO. 2013-000207

FINAL BRIEF OF APPELLANT

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II. Whether the trial court erred in admitting photographs of the co-defendants allegedly making "gang signs" where the solicitor failed to lay the proper foundation for their admission, they were not relevant to the facts at issue in the case, and they were unduly prejudicial?

III. Whether the trial court erred where he coerced co-defendant DaQuan Bruster to testify for the State by threatening to vacate his guilty plea such that he would be facing life without parole (LWOP) because the judge found that Bruster's first testimony violated the plea agreement?

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STATEMENT OF THE CASE

On May 29, 2012, the Greenville County Grand Jury indicted Esaiveus Frantrez Booker on seven counts of attempted murder, one count of assault and battery by mob second degree, one count of conspiracy, and one count of possession of a weapon during the commission of a violent crime. R. 815 – 830 (Indictments).

On January 7, 2013, Booker proceeded to trial before the Honorable Edward W. Miller and a jury. He was tried along with three co-defendants.[1] Booker was represented by Randy Chambers; Michael Williams was represented by Scott Robinson; Kinjta Sadler was represented by Thomas Quinn; and Raymond Young was represented by John Abdalla.[2] The State was represented by Katrina Salisbury. The jury found Booker guilty of the seven counts of attempted murder and assault and battery by mob. He was found not guilty of possession of a firearm during the commission of a crime of violence and conspiracy. R. 801, ll. 5-13. Judge Miller sentenced Booker to twenty years on each charge, with all sentences to run concurrently. R. 805, l. 21 – 808, l. 1.

This appeal follows.

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[1] Eight people were arrested and charged with the same charges. Four pled guilty prior to trial with sentencing deferred. R. 3 – 30.

[2] The trial judge advised the defense attorneys that he would "assume, unless you all stand up and say something else, that everybody joins in with what's said." R. 198, ll. 4-6; *see also* R. 473, ll. 17-23; R. 652, ll. 7-9.

STATEMENT OF FACTS

On July 17, 2011, at approximately 3:30 in the early morning, a group of young people were talking outside of their vehicles at a Lil Cricket gas station in Greenville. They had recently left the hospital, where they had taken their friend, Vincent Fant a/k/a "Buddah,"[3] who had been shot at the Red Planet night club earlier that night. R. 105, ll. 11-25; R. 140, l. 19 – 141, l. 12. Suddenly, shots rang out in every direction. Seven people were shot with all requiring medical attention. R. 106, ll. 1 – 11. None of the victims could identify the shooters. R. 157, ll. 20-23; R. 169, l. 10-25; R. 176, ll. 12-21; R. 226, ll. 5-9; R. 234, ll. 1-6; R. 245, ll. 1-12; R. 251, ll. 6-17; R. 253, ll. 2-11; R. 258, ll. 12-16; R. 263, ll. 1-17. Only one of the victims actually saw them, but he could not make any identification because the shooters were wearing black bandanas over their faces. R. 189, l. 14 – 190, l. 15.

The assistant solicitor told the jury in her opening statement that eight young men were arrested and charged in this case. Four of the eight were on trial and the other four would provide testimony against them. The solicitor believed that the defendants carried out their plan to park behind Lil Cricket, approach the gas station on foot, and open fire. R. 106, l. 3 – R. 111, l. 17. She theorized that the co-defendants shot at the victims in retaliation for another shooting that took place earlier that evening at the Red Planet Nightclub. R. 106, ll. 7-16.

Evidence Related to Gangs

During pretrial motions, the solicitor told the court that she had documents related to the defendants' gang affiliation that she planned to admit if they became relevant. The trial

[3] Co-defendant Daquan Bruster also goes by the nickname "Buddah." R. 633, ll. 22-23.

judge cautioned the solicitor that her witnesses needed to be careful about how they described any such documentation so that they did not "put a defendant's character into issue in violation of the rules." R. 70, ll. 8-22. Counsel Abdalla for co-defendant Young argued that all of the defendants had a motion *in limine* to prevent the solicitor from any mention of gangs or use of the word gang because the prejudicial effect outweighed any probative value. He argued that it would be very difficult for their clients to have a fair trial if the jury related it to gangs. He said that "either they [the solicitor] can prove their case without that [the mention of gangs] or they cannot." The judge asked for a foundation that the jury would be prejudiced by "the mention of the word gang" and agreed to allow counsel to present further argument the next morning. R. 70, l. 23 – 71, l. 22.

The next day, January 8, 2013, counsel Robinson for co-defendant Williams argued the motion shared by all the defendants regarding any reference by the solicitor to gangs. Counsel argued that the solicitor had not charged any of the co-defendants with being a criminal gang under the Criminal Gang Prevention Act. This Act defined a criminal gang as "a formal or informal ongoing organization, association, or group that consists of five or more persons who form for the purpose of committing criminal activity and who knowingly and actively participate in a pattern of criminal gang activity." S.C. Code § 16-8-230(2). Counsel further argued that references to the defendant's gang involvement was unduly prejudicial under Rule 403, SCRE and that the word "gang" took on an inflammatory appeal to the passions of the average person. R. 93, ll. 20 – R. 95, ll. 23.

The judge responded that the term was "pretty wide open" and he could not rule in a vacuum. Defense counsel Chambers argued that the State intended to call as a witness investigator Brown whose sole job was to investigate gangs because the solicitor had

pursued this case as though these young men were part of the gang known as the Folk Nation. The defendants asked to stop that before it happened. R. 96, ll. 1-24.

The solicitor argued that there was no charge related to S.C. Code Ann. § 16-8-230. Therefore, she reasoned, the statutory definition of "gang" was not controlling. The solicitor stated she was "not alleging that this group of defendants participated in a pattern of criminal gang activity," but that she was prepared to present evidence they were in a gang. She proffered that it would be apparent from her very first witness that the people the victims fought with earlier that night at the club were dressed in all black and known to them as "the G's." Additionally, she proffered that "several of the witnesses" would indicate that they knew co-defendant Young by name and knew him to be the leader of the Folk Nation sect in Greenville. She further stated that the investigators pursued leads from witnesses that a gang committed the attack and thus the testimony related to gangs was "critical to how the case was investigated." Additionally, since the defendants were charged with assault and battery mob, "the mob is the gang." R. 98, l. 1 – 100, l. 9.

Counsel Robinson for co-defendant Williams argued that any reference was also prevented under Rule 404(a) because it interjected the defendants' character into the evidence because the jury would think they were bad people if they heard the word gang. The judge ruled that he could not limit the solicitor's presentation of her case because it may impugn the defendants' character, but he would see how "it played out." R. 100, l. 1 – 101, l. 19; R. 102, l. 24 – 104, l. 13. Counsel Abdalla reiterated that the solicitor would not be prevented from putting on evidence to support its theory of the case by being prevented from using the word "gang." R. 101, l. 21 – 102, l. 23.

After several witnesses testified, defense counsel Chambers told the Court that the solicitor's next witness was investigator Brandon Brown who was with the gang investigation unit. Counsel asked that Investigator Brown identify himself only as an investigator with the Greenville County Sheriff's Office and not identify himself as a gang investigator. Counsel argued that no foundation was laid by the solicitor that the defendants were members of a gang. The judge said that the exception was noted for the record. The judge also acknowledged that all of the attorneys for the defendants joined in the objection. R. 472, l. 7 – 473, l. 23.

Immediately after that ruling, Investigator Brandon Brown was the next witness for the State. He described himself as a "gang investigator assigned to the Federal Bureau of Investigation as a task force officer." He was contacted by Investigator Wayne Campbell to respond to the shooting at Lil Cricket due to the multiple shootings. His job was to collect information and try to determine if there was any information he knew as a gang investigator that could assist the lead investigator. R. 475, l. 23 – 477 l. 16.

He was not able to speak with the victims, as they had all been transported away from the scene when he arrived. Many witnesses did not want to speak with the police, allegedly because they were scared. However, he was able to learn that the victims had an altercation at another location earlier in the night with "them Folk Boys," who were wearing all black. Investigator Brown heard the name "Mikey,"[4] but it did not have any significance to him at the time. Another investigator informed him that Brandon Edwards was one of the individuals shot at the previous location. Investigator Brown "knew him [Edwards] to be

[4] Investigator Brown later testified that co-defendant Michael Williams is also known as "Mikey." R. 502, ll. 6-9.

involved with several individuals specifically on the southern end of Greenville County which led [him] to possible names of people that are typically involved with them." He knew Edwards to be an associate and possibly a family member of co-defendant Raymond Young. R. 477, l. 17 – 479, l. 13. Counsel Abdalla for co-defendant Young objected to the testimony regarding this "whole gang thing." The judge overruled the objection. R. 481, ll. 9-17.

Investigator Brown continued to testify that he found evidence that Williams and Young were communicating via Facebook. It was there that he located a picture labeled "The Family." R. 480, l. 10 – 481, l. 25. This appeared to be a club picture. R. 482, ll. 14-25.

The solicitor then showed Investigator Brown several photographs that he "received during the course of the investigation," and she asked about hand signs as they related to gangs. Investigator Brown's testimony was that hand signs were a popular way to identify gang members as they were "universal" signs. Several of them were in these photographs according to Brown. There were some signs associated specifically with the Folk Nation or the Gangster Disciples. He identified some of the defendants as exhibiting these signs in the photographs. The trial court admitted photographs over the defense objection. R. 500, ll. 1 – R. 506, ll. 23; State's Exhibit 51 and 54, photographs (on file with this Court).

Testimony of Co-Defendants

Prior to the commencement of the trial, co-defendants Larry Johnson, Shaquille Hogan, Daquan Bruster, Tavarus Dean Holmes, and Kiara Simmons all entered guilty pleas. With the exception of Simmons, all of the co-defendants were called to testify in the State's case-in-chief. Notably, there was no mention at the plea hearings that acceptance of the plea offers required any of those individuals to testify at the co-defendants' trial. R. 3, l. 3 – 34, l.

25. With respect to Daquan Bruster, the solicitor put on the record only that sentencing be deferred and that, as part of the plea, the solicitor agreed to withdraw the notice of intent to seek life without parole that it had filed. R. 18, ll. 16-19. With respect to Tavarus Holmes, the solicitor indicated that it would again defer sentencing and "agreed to dismiss six counts of attempted murder, the weapons charge, and assault and battery by mob as part of the defendan's plea to these two charges." R. 29, ll. 13-18.

Testimony of Larry Johnson

One of the co-defendants, Larry Johnson, testified for the State that he was charged in this incident and pled guilty earlier to attempted murder and second degree assault and battery by a mob. His sentencing was deferred. R. 550, ll. 1-24.

According to Johnson, he went to the Red Planet and was with his friends, which included the four co-defendants as well as Tavarus Holmes and Daquan Bruster. R. 551, l. 1 – 552, l. 23. Another friend, Brandon who was known as "Black," was also there. Brandon and Michael Williams got into a fight outside the club with some other guys. Later, Johnson heard gunshots and he and his friends left. They met at another club, "864," to discuss what happened. It was there that Johnson learned that Brandon ("Black") and another friend, "Bram-Bram," were shot. R. 558, l. 1 – 560, l. 25.

Johnson maintained that while they were driving down White Horse road past Lil Cricket when co-defendant Young said those guys at the Lil Cricket looked like the ones that shot Bram-Bram. They returned to Club 864. Young told everyone who was going to "come on." Young, Booker, Sadler, and Williams covered their faces with black tee-shirts. They, along with Johnson, Bruster, Holmes, and Hogan, all rode to Lil Cricket and parked

behind it. R. 561, l. 1 – 565, l. 7. With the exception of Johnson and Hogan, they all got out of their cars and ran up the hill to Lil Cricket and started shooting. He heard a lot of shots. Then they returned to the cars and they left. R. 567, l. 3 – 569, l. 25.

Johnson admitted on cross-examination that he met with police and gave them varying statements on three consecutive days after the incident, on July 20, 21, and 22, 2012. He was told that he faced a potential thirty year sentence, which he would be required to serve day for day. On November 10, 2012, he executed a recantation, in which he wrote:

> On the dates of or between July 20th and 22nd, 2011, I, Larry Terrell Johnson, was made promises and even threatened by Greenville County Detectives to make false accusations against Michael Williams, Raymond Lewis Young, Tavarus Dean Holmes, Esaiveus Frantez Booker, Daquan Bruster Kinjta Sadler and myself, Larry Terrell Johnson, and Shaquille Hogan.
>
> I was under stress due to my recent arrest, misunderstood what the detectives was asking me. I was coerced to write and sign a false statement.
>
> The investigator typed a false statement and told me to sign it and claim[ed] they would help me get out of jail. I now wish to recant those false accusations and state the fact that on the date of July 17, 2011, I, Larry Terrell Johnson, did not participate or conspire nor witness any illegal actions or activity of any kind with the names listed above or anyone of that matter.

R. 578, l. 11 – 587, l. 3.

On redirect, when the solicitor asked why he wrote the letter from the jail recanting, Johnson said that more of the people from the gang were in the dorm with him telling him to recant. He was told he would be "xed" out if he did not recant. R. 594, l. 23 – 596, l. 11. Johnson further testified that he was receiving no benefit in exchange for his testimony. R. 588, ll. 17-23.

Testimony of Shaquille Hogan

Another co-defendant, Shaquille Hogan, testified for the State that he was friends with the four co-defendants on trial. R. 598, l. 1 – 600, l. 5. He described going to the Red Planet. A fight occurred inside first, and then outside where shots were fired. R. 600, l. 6 – 601, l. 23. He told how they all went behind Lil Cricket. Hogan stayed at the cars because he had given his gun to Tavarus, and Johnson went with the group that fired shots. R. 606, l. 1 – 608, l. 25.

Hogan gave a statement to police implicating the four co-defendants on trial. However, he subsequently made two statements recanting his earlier statement. On September 6, 2011, he executed a recantation, asserting that: "Investigators told me what to say and claim if I went along with it, they would help me with my charges. I was manipulated and used and wish to recant those false accusations." This was prior to Hogan's being charged in the present case.[5] Again, on June 10, 2012, he executed a recantation, stating that the police told him what to say in his original statement given on July 22, 2011 and that he just went along with it. R. 610, l. 14 – 620, l. 17. He also recalled a conversation with co-defendant Young in which he apologized for making a statement and told him that "Larry [Johnson] was in [his] ear and promising [him] the police would help [him] if [he] told them these things." R. 625, l. 18 – 626, l. 3. Even during the solicitor's

[5] Hogan was facing an unrelated charge of armed robbery, to which he pled guilty. Sentencing was deferred, along with sentencing on the guilty plea he entered in the present case. R. 619, l. 16 – 620, l. 17. Hogan agreed that he was reluctant to plead guilty in this case, but eventually did so. R. 620, l. 13 – 623, l. 22; see also R. 3, l. 3 – 11, l. 23.

direct examination, Hogan said that he was not given a chance to look over his statement to police or make any corrections.[6] R. 610, ll. 20-24.

Testimony of Daquan Bruster

A third co-defendant, Daquan Bruster, was called to testify for the State. He admitted that he pled guilty on the Monday before trial started to seven counts of attempted murder, conspiracy, assault and battery by mob second degree, and possession of a weapon during the commission of a violent crime. He testified that he did not remember the events of that night, and then "pled the Fifth." The solicitor received permission by the court to treat him as a hostile witness. He said he admitted these crimes because he just went with what the solicitor said. He did not understand that he was expected to testify and did not want to testify. R. 633, l. 19 – 636, l. 21.

On cross-examination Bruster admitted that he only pled guilty because he was facing life without parole if he did not plead. He executed a statement on July 25, 2012 indicating that neither he nor his codefendants had anything to do with the alleged crimes. He again reiterated that he did not know that he had to testify. R. 636, l. 22 – R. 638, l. 9.

After his testimony the judge *sua sponte* ordered that Bruster's attorney be brought to court the next day. The judge said he would give Bruster a chance to withdraw his guilty plea because it was not valid if he did not remember. He further said: "We'll just have to try him separately. If he goes to trial, that gives other people an opportunity to testify. I

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[6] Allegations of police coercion and inaccuracy in the statements typed by law enforcement were not uncommon among the State's witnesses. R. 183, l. 17 – 185, l. 6 (Javon Henrary said: "To this day like I said the stuff it wasn't me saying it, it was more of an agreement. They were telling me what they had."); R. 189, l. 14 – 191, l. 23; R. 461, l. 20 – 462, l. 2 (Joseline Mack noted inconsistencies between what she told police and what they wrote in "her statement").

understand there are some offers that have made and I will honor those until the first witness hits the witness stand tomorrow. After that, no." R. 638, l. 20 – R. 639, ll. 9.

Testimony of Tavarus Holmes

The next day, the solicitor began by calling co-defendant Tavarus Holmes to testify. On the witness stand, he said his attorney was not present and that he had no testimony. R. 642, l. 15 – 643, l. 8. The solicitor told the judge that Holmes had pled guilty to one count of attempted murder and conspiracy and had agreed to testify for the State as part of his plea. Holmes said that he was told "if I go in an[d] say this I get a deal on my plea." The Judge responded "You've already got your deal or your deal is going to disappear and you and Mr. Bruster will be tried separately because I'm going to vacate your plea. And I'm telling you right now Bruster is looking at life without parole, what's he looking at?" Initially it was indicated that Holmes would face a potential thirty-five year sentence if his plea was vacated and he went to trial. The judge advised him:

> You haven't even been alive 35 years. That would make you 56. I can remember what it was like to be 56. I have a hard time remember[ing] what it was like to be 21. I'm going to suggest that you speak with your counsel privately before you proceed any further. There's a private space back in there.

R. 642, ll. 15 – 645, l. 6. The solicitor later clarified that in the event the plea were vacated, she would reinstate the additional charges that it dismissed against Holmes and he would be facing over two hundred years. R. 645, l. 25 – 646, l. 10.

Counsel Abdalla for co-defendant Young objected that the defendants were not receiving a fair trial if the co-defendants were being forced to testify by threatening to vacate his plea. The judge said that the co-defendants were not affected by Holmes backing out of his deal. R. 645, ll. 1-22.

Holmes confirmed to the judge that he was coerced into entering his guilty plea. The judge, *sua sponte*, vacated Holmes' plea and noted he would be tried on seven counts of attempted murder. He also revoked his bond and ordered that he be taken into custody. R. 646, ll. 10-25.

Recall of Daquan Bruster

The solicitor then told the judge that co-defendant Bruster was present with his attorney and that he may have changed his mind. Counsel Abdalla objected to the coercive nature of the judge forcing the witness Bruster to come back and testify after he had already refused. The judge responded that Bruster had violated his plea agreement and he was vacating his plea. He would have to go to trial and face LWOP. Bruster's counsel said Bruster would testify. R. 647, ll. 22 – 648, ll. 25.

Defense counsel Chambers noted that the record reflected that each of the witnesses took the stand and indicated that there was no deal in exchange of their plea and that no promises were made. The judge responded that there was no recommendation on sentencing but that the co-defendants were receiving the benefit of dismissal of other charges and withdrawal of the LWOP notice. Chambers argued that once a person entered a plea, the plea could not be vacated just because the witness did not say what the solicitor wanted him to say, and the witness could not be brought back and forced to testify. R. 649, l. 2 – 650, l. 4.

Even the solicitor admitted that the testimony was not necessarily a part of the plea

negotiations, stating:

> I don't know what Mr. Holmes wants to do but I don't have any problem allowing him to maintain his guilty [plea] and quite frankly examine him with respect to these specific allegations that he admitted to. The understanding that I had Mr. Holmes would be the range would be up to 35 years and the extent to which he could control just how high that number was, was exclusively his depending on the extent to which he cooperated. I interviewed him, I met with him, we went over these videos. I was under the impression he was going to cooperate. I guess it's his choice. If he wants to [rescind] the guilty plea, that's his choice.

The trial judge disagreed and instructed Bruster to take the witness stand and be sworn as a witness. He instructed Bruster that he could either "come forward with the truth" or his plea would be vacated. R. 650, l. 5 – 651, l. 14.

Counsel Quinn for co-defendant Sadler objected to Bruster being recalled because he had been examined as a hostile witness and released. He also reiterated the coercive nature of compelling Bruster to withdraw his plea and face additional time if he did not testify again. The judge stated that counsel's objection was noted for the record and he said: "I assume everyone is in agreement with it." R. 649, ll. 1 – R. 652, ll. 10.

Bruster then testified for the State that he was at the incident at the Red Planet and Brandon Davis was shot in the back. Bruster went with Larry Johnson to Lil Cricket. Ten or eleven other people were there and Bruster covered his face as Johnson told him to do. Bruster did not know who the other ten or eleven people were because their faces were covered also. He admitted participating in the shooting, and admitted to pleading guilty. R. 652, l. 12 – R. 657, l. 8. On cross-examination, Bruster again stated that he specifically discussed whether he would be required to testify with his attorney prior to plea and was under the impression that his testimony was not required. He further admitted that he was told to testify or LWOP was "back on the table." R. 659, ll. 1-11.

Motion for Mistrial for Juror Misconduct

Early in the trial after several victim witnesses testified, the judge had an *in camera* bench conference with the attorneys. The judge then put the issue on the record. The judge received a note from a juror in another trial that said: "While in [the] restroom during lunch I overheard jurors from courtroom 8 discussing what sounded like details of their case. 'Need to decode language;' 'I was chillin;' 'He's going down.' [That was followed by] laughter." R. 192, l. 24 – 193, l. 6; R. 814 (Court's Exhibit 3, Note from Juror).

The judge explained that a bench conference was held with the attorneys and the attorneys had a motion for a mistrial. The judge cited the case of State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999), which set forth the procedure to follow in cases of alleged juror premature deliberation which must establish prejudice. This procedure required a hearing to determine if it was premature deliberation and if it was prejudicial. If it was prejudicial, then a new trial was required. R. 193, ll. 6-25. The judge decided to discuss the problem with each of the jurors by calling them into the courtroom individually. R. 194, ll. 1- 9.

Defense counsel Quinn for co-defendant Sadler, moved for a mistrial with no further inquiry. The other three attorneys joined in the mistrial motion. Defense counsel's argument was that it was not known what else may have been said, and no witness had used the words "he's going down." Therefore, it sounded as though someone was going to be found guilty. The judge rejected counsel's additional contention that the jurors only needed to be questioned if there was opposition to the motion for mistrial. R. 194, l. 14 – 198, l. 6.

The judge then proceeded to question each of the jurors individually, and sent them back to a separate room so they could not discuss it.

Juror Harper reported that what was discussed was "sadness" over some of the things heard. R. 198, ll. 7-22. Juror Ferguson stated that there was discussion about the initial charges and how long the trial would take. There was also talk about the behavior of some of the witnesses who had taken the stand which was mainly about demeanor, enunciation but no conclusions were drawn. R. 199, l. 15 – 201, l. 25.

Juror Foxx reported that there was talk about the names and trying to get the names straight, and if they understood some of the conversations. R. 202, ll. 1-25. Juror Tutiven stated that there had been kind of a reflection on different facts such as names and how many people. R. 207, ll. 1-25. Many of the other jurors said different versions of what had been reported by the others. R. 204, l. 1 – 214, l. 12. The judge then denied the motion for a mistrial saying he found no prejudice. R. 214, ll. 12-17.

Three of the defense attorneys objected to the hearing procedure and the manner in which it was conducted because defense counsel was not given the opportunity to establish an appellate record. They argued the juror who sent the note should testify. Further, no questions were asked about the specific misconduct alleged. Counsel Robinson for co-defendant Williams stated: "I don't disagree with the Court. I believe it was conducted properly." R. 214, l. 18 – 217, l. 7.

Even the solicitor expressed concern over Juror Whittenberg, who was alleged to have been a party to the conversation overheard in the bathroom. The solicitor noted that "he, more than anybody else denied any conversation having happened and that concerns me." R. 216, ll. 8-13; *see* R. 203, l. 19 – 204, l. 25. Despite this, the judge determined that the jurors did not actually deliberate as to the outcome of the case, and he maintained that he conducted the proper inquiry. R. 216, l. 14 – 217, l. 7.

ARGUMENT

I. The trial court erred in allowing testimony by the State's witnesses using the term "gang" in reference to Appellant's case where the solicitor failed to lay the proper foundation that Appellant was a gang member, the reference was inflammatory and unduly prejudicial under Rule 403, SCRE, and the reference constituted improper character evidence under Rule 404, SCRE.

Contrary to the solicitor's proffer to the Court during the motion *in limine* hearing, none of the victims in this case gave testimony identifying the co-defendants as being involved with a gang, much less a specific gang called Folk Nation, the G's, or Gangster Disciples. R. 70, ll. 8-22. Nonetheless, the solicitor was allowed to call Investigators Brown and Whitlock, who testified that they consulted on this case due to suspected gang involvement. R. 475, l. 19 – 508, l. 21. Further, over the defense's objection, Investigator Brown was allowed to testify regarding alleged gang signs shown in photographs of some of the co-defendants and specifically alleged that they were part of the Folk Nation. R. 475, l. 13 – 512, l. 12; *see* argument *infra*, Issue II. The defense argued that the solicitor failed to lay the proper foundation for the testimony, that the gang reference was inflammatory and prejudicial, and that the gang reference was improper character evidence. R. 70, l. 8 – 71, l. 22; R. 93, l. 20 – 104, l. 13; R. 472, l. 7 – 473, l. 23; R. 479, ll. 19-23; R. 481, l. 9-17; R. 506, ll. 1-23.

The Gang Prevention Act at S.C. Code § 16-8-230 (2), provides that "criminal gang" means "a formal or informal ongoing organization, association, or group that consists of five or more persons who form for the purpose of committing criminal activity and who knowingly and actively participate in a pattern of criminal gang activity." Defense counsel argued that the solicitor had not charged any of the defendants with being a member of a gang. The solicitor told the Court that because the defendants were not charged under the

Act, she was not required to present evidence that they met the statutory definition of a "criminal gang." She specifically stated that she was "not alleging that this group of defendants participated in a pattern of criminal gang activity." R. 98, ll. 1 – R. 99, ll. 25. Therefore, the solicitor conceded the defendants were not a criminal gang, or at the very least that she could not prove that they were a criminal gang.

Yet, in her closing argument, the solicitor made reference to the "photos" that Investigator Brown had described as showing hand signs that were associated with gangs and especially the Folk Nation. Investigator Brown had identified some of the defendants as exhibiting these signs in the "photos." R. 696, l. 19 – 697, l. 3; R. 709, ll. 8-14; R. 500, l. 1 – 506, l. 23. The solicitor also argued for the jury to consider the pressure being exerted on the State's witness, Larry Johnson, at the jail. She reminded the jury that he testified that he was threatened to recant his statement or he would be "x-ed" out. He was told "either you are with us or against us." R. 704, ll. 7-15. The solicitor also reminded the jury of Shaquille Hogan's testimony when he said he had to give his .380 gun to Tavarus. He had to do what Tavarus told him because he's "got that power." R. 703, ll. 11-23. Although the solicitor did not use the word "gang," these references were clearly gang related.

Failure to Lay Proper Foundation for Gang Evidence

Prior to Investigator taking the stand, none of the solicitor's first twenty-five witnesses made any mention of the co-defendants' involvement with a gang. Even so, Investigator Brown was allowed to testify that he was a gang investigator assigned to the FBI task force and that his responsibilities were to "maintain all gang intelligence throughout Greenville County area, be responsible for knowing all players involved, all entities thereof throughout the county involving everything from A to Z as long as it pertains

to gangs and violent crimes." He was called to determine if anything he knew "as gang investigator" could further the investigation. R. 476, l. 2 – 477, l. 14. He testified:

> While talking to several of the witnesses what we were able to get out of some of them was that there had been an altercation at another location and during that altercation, them Folk Boys, as they kept referring to them were involved. They further stated they were all wearing black, they all showed up together, they were an organized group and we continued to hear the name possibly of Mikey.

R. 478, ll. 4-13. There was no clarification of who Investigator Brown was referring to when he mentioned "several witnesses," and due to the lack of any mention of gangs by the solicitor's earlier witnesses, it was not obvious from the record either. Investigator Brown also pointed to "gang signs" that he recognized in photographs of some of the co-defendants. *See* argument *infra*, Issue II. He went so far as to say the hand signs in the photo were those of the Folk Nation gang. R. 500, ll. 1 – R. 506, ll. 23.

The only witness to mention gangs other than the investigators was Larry Johnson. He mentioned on cross-examination that the investigator he spoke with was trying "to find out if it was gang related or anything like that," though he later said that he did not know he was talking to a gang investigator but was told that he would be facing thirty years if it was gang related. R. 580, ll. 8-9; R. 592, l. 25 – 593, l. 7. It was not until redirect that any of Johnson's testimony even implied his own association with a gang. He said that he recanted his prior statement because of a threat to him by "more of the people from the gang" who were in the dorm with him and that Young told him "you either with us or against us." R. 594, l. 25 – 596, l. 11. This scant testimony still failed to provide even a post hoc foundation for the earlier gang testimony.

Improper Character Evidence

"Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged." State v. Brown, 344 S.C. 70, 73, 543 S.E.2d 552, 553 (2001); see Rule 404, SCRE. Rule 404(a), SCRE, provides that "evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." An exception applies to the character of the accused if "a pertinent trait of character offered by an accused, or by the prosecution to rebut the same."

Here, the defendants made no attempt to introduce evidence of their good character so as to open the door to bad character evidence from the solicitor. See State v. Council, 335 S.C. 1, 12 n.6, 515 S.E. 2d 508, 514 n.6 (1999) (noting that "[a]n accused must introduce evidence of his character at trial before the prosecution can attack it" and where "appellant never testified or offered other evidence of his good character, his character was never an issue."). Thus, the gang evidence was improper character evidence under Rule 404(a), SCRE.

Probative Value Substantially Outweighed by Unfair Prejudice

Pursuant to Rule 404(b), SCRE, evidence of other crimes wrongs or acts *may* be admissible "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Under the *res gestae* theory, "evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred." State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001), *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 106, 610 S.E.2d 494, 501 (2005).

However, evidence considered for admission under the *res gestae* theory must satisfy the requirements of Rule 403 of the South Carolina Rules of Evidence. State v. Dennis, 402 S.C. 627, 742 S.C. 627 (2013). Rule 403, SCRE, provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct.App.1998) (quotation marks and citations omitted).

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

Defense counsel in Sobers wanted to admit evidence of gang activity of the victim and witnesses because it went to the motive of self-defense. The defense had pictures from Facebook showing the victim and witnesses flashing gang signs. The trial court found that Sobers failed to show any relevance of gang associations to the shooting. Four of the witnesses even admitted they were making gang signs in the photographs but denied being in a gang. They were just being together like "family" in the picture. The solicitor argued

that witnesses testified they were in a gang, and if they were, there was no evidence of a connection between gang activity and the shooting.

The present case is very similar to Sobers except that it was the solicitor that wanted to admit the evidence here. Here too, even if the allegation of gang involvement were true, it was not a part of the incident. Co-defendant Larry Johnson testified that their friends "Bram-Bram" and Brandon ("Black") had been shot during an earlier incident at the Red Planet club. It was the individuals who shot Bram-Bram that Young allegedly saw at the Lil Cricket, prompting the attack. R. 551, l. 2 – 573, l. 12. There was no testimony that "Bram-Bram" or "Black" were affiliated with any gang. As noted *supra*, Johnson's only references to gang at most imply involvement of he and Young in a gang. R. 580, ll. 8-9; R. 592, l. 25 – 593, l. 7; R. 594, l. 25 – 596, l. 11. He never mentioned Booker's gang affiliation and still failed to make any connection between the gang and the incident itself. Even in the solicitor's closing argument, she theorized that the shooting was retaliation for "*their friends* Brandon Edwards and Brandon Davis getting shot." R. 678, ll. 4-6; R. 706, ll. 12-16 (emphasis added). Thus, there was little or no probative value to the gang related evidence.

The admission of any evidence relating to gangs was prejudicial to Booker. The word "gang" was inflammatory to the jury and prevented Booker and his co-defendants from receiving a fair trial. See Clemons v. Walls, 202 F. Supp. 2d 767 (N.D. Ill. 2002), *reversed on other grounds by*, Clemons v. McAdory, 58 Fed.Appx. 657 (7th Cir. 2003) ("With regard to gang evidence, the Seventh Circuit has long recognized the substantial risk of unfair prejudice attached to such evidence, noting that evidence of gang membership is likely to be damaging to a defendant in the eyes of the jury and that gangs suffer from poor public relations. The Court of Appeals added that gangs generally

arouse negative connotations and often invoke images of criminal activity and deviant behavior. There is therefore always the possibility that a jury will attach a propensity for committing crimes to defendants who are affiliated with gangs or that a jury's negative feelings toward gangs will influence its verdict. Consequently, while acknowledging that—*under appropriate circumstances*—gang membership and gang activity evidence has probative value that can outweigh claims of unfair prejudice, the Seventh Circuit demands careful consideration by district courts in determining the admissibility of such evidence." (internal quotations and citations omitted)).

The trial judge failed to appreciate why a reference to gangs was prejudicial, stating that "there's a lot of stuff that comes out in criminal cases that's prejudicial." The judge even cited the "dictionary.com" definition of gang, stating:

> The definition of a gang, 'A group or band, a gang of boys gathered around the winning pitcher; a group of youngsters, adolescents who associate closely often exclusively for social reasons; a group of people with compatible tastes or mutual interests who gather together for social reasons. I'm throwing a party for the gang I bowl with.' For all of the negative connotations that you all want to associate with that word. The fifth definition down on the list is, 'A group of persons associated for some criminal or other anti-social purpose.'

R. 71, ll. 15-18; R. 97, ll. 15-24. Respectfully, this flippant response from the judge was improper in light of the seriousness of the charges against the co-defendants. The trial judge's refusal to recognize the obvious prejudice of the reference to the co-defendant's as being members of a gang was error.

The only purpose of presenting evidence of the co-defendant's gang involvement was to appeal to the passions and fears of the jury. The solicitor's argument that the gang evidence was essential to prove the elements of assault and battery by mob is without merit. S.C. Code Ann. § 16-3-210(a) defines a "mob" as "the assemblage of two or more persons,

without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another." Whether the acts were premeditated does not rise or fall on whether these co-defendants were members of a gang. The solicitor presented evidence that the co-defendants all went to the Red Planet club earlier in the evening and video footage of at least some of them together at Waffle House later that evening. Additionally, she presented testimony of some of the co-defendants, who explained that they and their co-defendants saw the victims at the Lil Cricket, made a U-turn and went back to Club 864, and then proceeded back to the Lil Cricket and shot the victims. The gang evidence was never tied to the specific incident or the concept of premeditation. Thus, the gang evidence was an attempt to pile on prejudicial evidence that was not probative of the alleged crimes.

Therefore, the trial court erred in admitting the gang related evidence because the solicitor failed to lay the proper foundation for its admission, the evidence constituted improper character evidence, and the evidence's probative value was substantially outweighed by the danger of prejudice.

II. The trial court erred in admitting photographs of the co-defendants allegedly making "gang signs" where the solicitor failed to lay the proper foundation for their admission, they were not relevant to the facts at issue in the case, and they were unduly prejudicial.

On redirect of Investigator Brown, the solicitor asked him to identify several photographs. The sole purpose of the photographs was to serve as impermissibly spurious corroboration of the defendants' gang affiliation. Investigator Brown testified that he received the photographs during the course of his investigation "several days after the initial incident occurred." He testified that hand signs, which was one of the most popular ways to identify a gang member," in the photographs were those of the Folk Nation and Gangster Disciples.

In one of the photographs, taken outside of a restaurant in downtown Greenville, Investigator Brown claimed that the individuals were "throwing [what] was known as a three point crown and that was very specifically [sic] to the Folk Nation." He identified co-defendants Hogan, Booker, and Williams in the photograph and recognized the other two individuals but could not recall their names. R. 499, l. 14 – R. 502, l. 14; State's Ex. 51, photograph (on file with this Court). In a second photograph, Investigator Brown noted the use of the three point crown and "L" symbol. He identified co-defendant Young in the photograph and said that Holmes and Booker were also possibly in the photograph. R. 503, l. 2 – 504, l. 10; State's Ex. 54, photograph (on file with this Court). On cross-examination, Investigator Brown admitted that none of the co-defendants were displaying gang signs in the photograph that was actually taken at the Red Planet club earlier that night. R. 504, ll. 13-20.

Following the testimony and outside of the presence of the jury, the trial judge allowed the defense attorneys to place their objection to the photographs on the record,

which was previously discussed at a bench conference. Defense attorney Chambers argued that no foundation was laid for the admission of the photographs and that they are not relevant to an issue in the case. He noted that no information was provided as to when or where they were taken. Counsel Abdalla for Young added that the photographs were unduly prejudicial as gang evidence. The judge indicated that he overruled the objection and was told that the photographs came off of co-defendant Young's cell phone. R. 506, ll. 1-24.

In her closing argument, the solicitor made reference to the "photos" that Investigator Brown had described as showing hand signs that were associated with gangs and especially the Folk Nation. R. 696, l. 19 – 697, l. 3; R. 709, ll. 8-14.

Rule 901(a), SCRE, provides: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." In the present case, the only question asked of Investigator Brown with respect to authentication was whether he received the photographs in his investigation. According to the judge, the photographs were obtained from Young's cell phone, yet no records were produced by the solicitor to verify that claim or indicate when the photographs were taken. Further, the jury was given no information as to how and where the photographs were obtained in order to determine what weight to give them.

In addition to the lack of authentication, the photographs were irrelevant and unduly prejudicial. The solicitor had ample other evidence to show that the co-defendants were together on the night of the incident. Thus, the only purpose of the photographs was to

establish the co-defendants' gang association. As argued *supra*, admission of gang related evidence was improper.

III. The trial court erred where he coerced co-defendant DaQuan Bruster to testify for the State by threatening to vacate his guilty plea such that he would be facing life without parole (LWOP) because the judge found that Bruster's first testimony violated the plea agreement.

The trial judge's actions in threatening to vacate, and in one instance actually vacating, those co-defendant's guilty pleas who did not testify as the solicitor anticipated was improper. While the Court framed its ruling in the context of upholding the administration of justice by preventing perjury or allowing an invalid guilty plea, the Court's actions instead amounted to enforcement of a portion of plea negotiations that never existed. See State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005) (holding that a judge has the responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of justice). The plea transcript mentions no requirement that Bruster testify for the State and he repeatedly stated that he did not understand that he had to testify against the co-defendants and was specifically advised by his attorney that he did not have to do so. R. 11, l. 24 – 18, l. 19. Even the solicitor's comments imply that there was no requirement to provide testimony as a part of the plea. R. 650, ll. 5-17.

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

The United States Supreme Court in Webb v. Texas, 409 U.S. 95, 98 (1972), reversed the defendant's conviction because the trial judge drove a prospective defense

witness from the stand by telling him that if he lied he could be prosecuted, and convicted for perjury, and have to serve more time.

In another Illinois case, People v. King, 593 N.E.2d 694 (Ill. App. Ct. 1993), the Appellate Court reversed the defendant's conviction where the circuit judge drove a prospective defense witness from the stand by threatening to revoke an earlier plea bargain made before that court if it believed the witness was lying. The Illinois Supreme Court affirmed the reversal. People v. King, 608 N.E.2d 877 (Ill. 1993). These same principles that prohibit influence aimed to keep defense witnesses from testifying should apply to influences aimed at forcing State's witnesses to testify against

In State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005), the South Carolina Court of Appeals held that giving false testimony at trial constituted the felony of perjury and subjected the person to a fine or imprisonment. The trial witness in Stanley contradicted his prior statement to police during his trial testimony and was guilty of perjury if the information to police was false and if it was true, then his trial testimony was perjury. The trial judge warned the witness of perjury and ordered the witness to jail after dismissing the jury. The witness was allowed to consult with his attorney and testify again. The court found that all courts have the power to punish for contempt which was essential in judicial proceedings and to the due administration of justice. The court wrote that a judge has the responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of justice.

The facts of Stanley are distinguishable from the present case where the problem was not perjury, but rather enforcement of the purported terms of the State's plea agreement. Here, Bruster indicated that he was under the impression that providing testimony against

the co-defendants was not a requirement of his plea agreement. The trial judge did not safeguard Bookers' right to due process and a fair trial when the judge coerced the witness to testify a second time by threatening to vacate the witness's plea such that he would face the possibility of LWOP. It was prejudicial to Booker to coerce the witness to testify **a second time** and certainly implied the Court's dissatisfaction with his earlier testimony as a hostile witness.

IV. The trial court erred in failing to excuse the two jurors who engaged in misconduct and declare a mistrial where jurors from this trial were overheard by a juror in another case talking in the restroom during the lunch break about Appellant's case, saying such things as "the need to decode the language", "I was chillin," and "he's going down," followed by laughter.

Were it not for the honesty of a juror serving in another case, Booker may have never learned of the premature jury deliberations that took place in his trial. The trial court was alerted to the misconduct after the solicitor presented her fifth of thirty-seven witnesses. While the trial judge in this case seemed to think that a clear definition of "deliberations" needs to be promulgated by the appellate courts, it was obvious from the allegations in this case that at least some of the jurors were discussing more than just the demeanor of the witnesses. That in of itself comes close to discussions of witness credibility, an essential part of deliberations. The comment "he's going down" certainly implies that the juror or jurors intended to find at least one of the defendant's guilty. Thus, the trial court's finding that the jurors had not engaged in any deliberation was erroneous. Their deliberations did affect fundamental fairness, as they not only indicate a premature discussion in the case but a premature decision in the case against the defendants.

Trial counsel argued:

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

R. 194, ll. 11 – 195, ll. 5. The other attorneys joined in the motion. R. 196, ll. 1-21.

"Deliberate" is defined in Black's Law Dictionary 294 (6th ed. 1991), as "to weigh in the mind, discuss, to consider the reasons for and against, etc." In State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999), the Supreme Court held that premature deliberations could affect fundamental fairness of a trial such that the trial court could inquire into such allegations. The Court set forth the following suggested procedures to follow if an allegation of premature jury deliberations arose during a trial:

> [T]he trial court should conduct a hearing to ascertain if, in fact, such premature deliberations occurred, and if the deliberations were prejudicial. If requested by the moving party, the court may *voir dire* the jurors and, if practicable, "tailor a cautionary instruction to correct the ascertained damage." *United States v. Resko*, 3 F.3d at 695. If the trial court determines the deliberations were prejudicial, such findings should be set forth on the record, and a new trial ordered.

333 S.C. at 315, 509 S.E.2d at 815.

The trial court attempted to follow this procedure in Booker's case by conducting voir dire of all of the jurors. However, the judge did not allow any information to be put on the record regarding the allegation of misconduct other than the note written by the juror who overheard them. See Court's Exhibit 3, Juror Note (on file with this Court). The court also failed to inquire about the specific allegation of misconduct, instead just posing a general question to the jurors regarding whether there have been some discussion about the facts of the case. R. 198, l. 7 – 214, l. 11; R. 215, ll. 3-18. While the jurors in this case all claimed that they remained fair and impartial, it is difficult to fathom in what circumstance a sworn juror would say otherwise. This is even more so where there is credible evidence that jurors previously failed to abide by the Court's instructions not to discuss the case.

In State v. Carmack, 388 S.C. 190, 694 S.E.2d 224 (Ct. App. 2010), the Court of Appeals ruled that premature jury deliberations may amount to misconduct that could affect fundamental fairness. Notably, in Carmack the juror was asked about the specific allegation that he had discussed the case with his girlfriend and denied it. Further, the information relayed to defense counsel in that case was that the juror's girlfriend told her employer "It's [a] cut and dry case. Everyone knows he did it." Thus, not even the extrinsic evidence of the alleged misconduct actually implicated the juror. This case is distinguishable because the allegation did implicate misconduct on the part of the jurors and the judge failed to question the jurors about the specific misconduct alleged, i.e. the bathroom conversation.

Even the general questioning by the judge elicited some of the following:

> **Court:** Are you aware of any discussion about this case that has gone on either in the jury room or anywhere else? Do you know of any?
>
> **Juror Harper:** I would say, yes. Not anything substantive but I would say that there hasn't been a group thing.
>
> **Court:** Can you tell me what has been talked about?
>
> **Juror Harper:** Probably at least what I'm aware of in the context of **almost sadness over some of the things we've heard**.

R. 198, ll. 4-22.

> **Court:** I am calling each juror out individually to determine whether or not y'all have heard some **discussion**. ....Anything along those lines?
>
> **Juror Ferguson:** There was some discussion yesterday after the initial charges were made as to how long this might take and that kind of thing. And then there has been –I'm trying to think--- some natural curiosity I think. There's been some discussion I think of the behavior of some people who have taken the stand that kind of thing. I don't think there's been any conclusions drawn. Does that make sense?

R. 200, ll. 6-24.

> **Court:** It has come to light that there may have been some discussion or talk about the case among our jury. Have you been privy to any of that or heard any of that?
>
> **Juror Tutiven:** Not specifics. Nobody has shared opinions. We have discussed or asked questions about names ... It's just been kind of a **reflection on different facts**.
>
> **Court:** When you say facts, what do you mean?
> **Juror Tutiven:** names and how many people we've listened to so far and how many witnesses we've had, sort of generic.

R. 207, ll. 4-24.

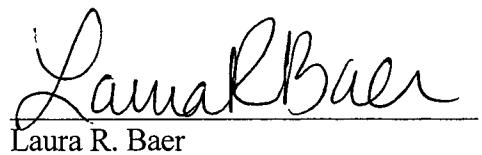
The testimony from the questioned jurors indicated that they were discussing the case which met the definition of to "deliberate." One of the trial attorneys argued that no witness had said anything about someone "going down." This language indicated that at least one of the jurors had already made a decision before the case went to the jury, and was discussing her decision with another juror. This was the only conversation overheard, but based on the juror's responses, there was a reasonable probability that other conversations were held about the case prematurely. Even the solicitor expressed concern over the retention of Juror Whittenberg, who denied having any discussions about the case despite being one of the jurors overheard in the bathroom. R. 216, ll. 8-13; *see* R. 203, l. 19 – 204, l. 25.

Booker was denied a fair trial because the record made it clear that the jurors were discussing the case in spite of the judge's instructions. Moreover, it was apparent from the discussion that was overheard that at least some of the jurors had made a decision regarding guilt or innocence well before the conclusion of the case. Therefore, the trial judge erred in failing to declare a mistrial.

CONCLUSION

For the reasons set forth herein, Appellant Esaiveus Frantrez Booker respectfully requests this Court to reverse his convictions and remand for new trial.

Respectfully submitted,



Laura R. Baer
Appellate Defender

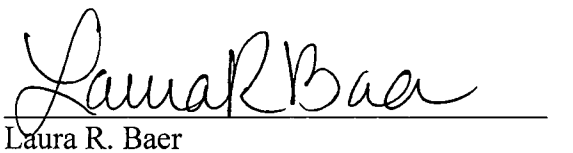
ATTORNEY FOR APPELLANT

This 20th day of December, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

Respectfully Submitted,



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ATTORNEY FOR APPELLANT

This 20th day of December, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ESAIVEUS FRANTREZ BOOKER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of December, 2016.

Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of December, 2016.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.