STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County
Honorable J.C. Buddy Nicholson, Circuit Court Judge

Appellate Case No. 2016-00616

THE STATE,

PETITIONER,

v.

DAVID ALAN WHITE

RESPONDENT.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

David Alan White, Appellant.

Appellate Case No. 2016-000616

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Published Opinion No. 5603
Submitted May 1, 2018 – Filed October 17, 2018

REVERSED

Appellate Defender Laura Ruth Baer, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Deputy Attorney General David A. Spencer, both of Columbia, and Solicitor Scarlett Anne Wilson, of Charleston, all for Respondent.

THOMAS, J.: David Alan White appeals his convictions of assault and battery of a high and aggravated nature (ABHAN) and possession of a weapon during the commission of a violent crime. On appeal, White argues the trial court erred by (1) indicating he could not pursue both the defense of accident and self-defense, (2) excluding and limiting his testimony about Joseph Johnson's statements, (3) denying his request for a jury instruction on self-defense, and (4) denying his

request for a lesser-included instruction on second-degree assault and battery. We reverse.

FACTS AND PROCEDURAL HISTORY

On the night of November 27, 2013, Johnson cut White's hair. Sometime later, White cut Johnson's throat.

White and Johnson were both guests at a friend's backyard gathering. Seven witnesses testified to the events surrounding the incident. Some recalled White and Johnson joking with each other and did not know what caused White to cut Johnson's throat. Others recalled tense interactions between the two.

White testified he did not mean to injure Johnson and did not aim for Johnson's throat. As White was explaining the conversation he and Johnson had while Johnson cut his hair, the State objected on the basis of hearsay. During an *in camera* hearing, White testified Johnson told him he used to make shanks in prison. White also testified Johnson told him he had a gun and knife underneath his moped seat. The trial court ruled the shank statement was not admissible because it was a prior act and not relevant to self-defense or accident. However, the trial court allowed White to use the statement to impeach Johnson's earlier testimony that he did not make shanks in prison. The trial court excluded the statement regarding the weapons, finding it was irrelevant and hearsay.

When White resumed his testimony, he indicated he decided to leave Washington's house and, as he was walking, someone punched him on the side of his head. White stated he had one hand in his pocket and quickly spun around after he was punched. White then noticed Johnson was injured. White explained why he wanted to leave Washington's house: "Because the way things were going in that backyard . . . it could have been worse than what happened" and he "didn't feel comfortable anymore." White clarified he did not mean to swing the knife and did not intend to stab Johnson.

White stated he "didn't feel threatened but [he] knew [he] had a lot of head injuries in [his] past that [he] thought could have triggered something." White explained the head injuries he suffered in the past: (1) he was hit on the side of his head with a mug and had to get stitches, (2) he was hit by a window pane and had to get stitches, and (3) he had a brain aneurysm. White testified he did not run because he "was more scared than anything" and "did not know" if he could get away safely. He did not believe he could get away because he felt threatened by his

conversation with Johnson. White indicated his intent in swinging his arm toward Johnson was to protect himself. White explained why he swung the knife: "Because I got hit; it was a reaction. I didn't realize that I even had the knife like that in my hand in my pocket. I just spin around real quick. I didn't know it was him behind me that close or whatever when I swung my arm." Later, White testified he knew it was Johnson who hit him. White stated he was fearful of Johnson.

White requested the trial court charge the jury on the defenses of self-defense and accident and the lesser-included offenses of ABHAN, first-degree assault and battery, and second-degree assault and battery. The trial court charged accident, ABHAN, and first-degree assault and battery but refused to charge self-defense and second-degree assault and battery. The jury found White guilty of ABHAN and possession of a weapon during the commission of a violent crime. The trial court sentenced him consecutively to five years' imprisonment for the weapons conviction and ten years' imprisonment for the ABHAN conviction. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court only reviews errors of law and is clearly bound by the trial court's factual findings unless the findings are clearly erroneous." *State v. Dickey*, 394 S.C. 491, 498–99, 716 S.E.2d 97, 100 (2011).

JOHNSON'S STATEMENTS

White argues the trial court erred in excluding Johnson's statement about weapons on his moped and limiting Johnson's statement about shanks because the testimony was relevant to self-defense and was not hearsay. We agree the trial court should have admitted White's testimony regarding the weapons on Johnson's moped.[1]

First, we find the statement was relevant to White's claim of self-defense.

---

[1] We find White's argument regarding the shank statement is not properly before this court because the trial court allowed White to testify about the statement. White does not point to any prejudice from the limitation or make any argument other than the testimony should have been admitted for a different reason. We make no determination regarding whether the admission for impeachment purposes was proper.

"Evidence which is not relevant is not admissible." Rule 402, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." *State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991). We agree with White's argument that the statement was relevant to explain why he believed he was in imminent danger and if that belief was reasonable. *See State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (explaining two of the elements of self-defense are whether "the defendant . . . actually believed he was in imminent danger" and whether "a reasonably prudent man of ordinary firmness and courage would have entertained the same belief"). At trial, White testified he became uncomfortable and felt threatened throughout the night, in part because of Johnson's statement, and decided to leave. White indicated he did not believe he could safely leave after he was punched because of Johnson's statement and the possibility that Johnson may have had access to a weapon.

We disagree with the State's position that the statement was not relevant because White testified he did not know if Johnson was armed or whether it was Johnson who punched him. Although White did at times testify he did not know who hit him, he also testified he knew it was Johnson who hit him. Furthermore, although White admitted he did not know whether Johnson was armed and never testified he saw Johnson with a weapon, Johnson testified he accessed his moped directly before the incident. Therefore, it would be a jury question whether White intended to stab Johnson in self-defense and whether that was reasonable. In *State v. Washington*, this court rejected a defendant's argument that evidence a victim actually had weapons in the trunk of his car was relevant to show the defendant reasonably believed he was in imminent danger. 367 S.C. 76, 81–82, 623 S.E.2d 836, 839 (Ct. App. 2005), *aff'd as modified*, 379 S.C. 120, 665 S.E.2d 602 (2008). This court held the trial court did not err in excluding the testimony because the defendant had (1) no knowledge the victim had weapons in the trunk of his car on the day of incident, (2) no reason to believe the victim previously stored weapons in the trunk of his car, and (3) no reason to believe the victim accessed his trunk before he was stabbed. *See id.* White's case is factually distinct from *Washington*. Unlike in *Washington*, White testified Johnson said he kept a gun and a knife on his moped, and Johnson accessed his moped before the incident. Because White had reason to believe Johnson stored weapons on his moped and accessed his moped prior to the stabbing, we find Johnson's statement was relevant to White's self-defense claim.

Second, we find White's testimony about Johnson's statement was not hearsay. "'Hearsay' is a statement, other than one made by the declarant while testifying at

the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "It is well settled that evidence is not hearsay unless offered to prove the truth of the matter asserted." *State v. Vick*, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009). We find the statement was not introduced to prove the truth of the matter asserted, i.e. that Johnson actually had a gun and knife on his moped. Instead, White offered the statement to show *he believed* Johnson had weapons on his moped. *See State v. Griffin*, 277 S.C. 193, 198, 285 S.E.2d 631, 634 (1981) (finding a trial court erred in not allowing a defendant to testify a friend told him the deceased owned a firearm because the testimony was offered "to show he believed the deceased owned a firearm, not to prove the deceased in fact owned a gun"), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009).[2] It was relevant White thought Johnson was armed or could be armed, not whether Johnson was actually armed. Johnson's statement was, therefore, admissible to explain to the jury why White believed he was in imminent danger and to help it evaluate whether such a belief was reasonable. Therefore, we find the trial court abused its discretion in excluding the statement because it was relevant and not hearsay. *See State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.").

SELF-DEFENSE

White argues the trial court erred in limiting him to pursuing either self-defense or accident because South Carolina case law allows both defenses if there is evidence in the record to support them. White contends the trial court erred in refusing to charge self-defense because there was evidence to support the charge and the trial court improperly weighed the evidence. We agree.

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[2] Other jurisdictions have similarly held statements were not hearsay when they were offered to show the effect of the statement on the listener's state of mind when the listener's state of mind was relevant to the case. *See People v. Kline*, 414 N.E.2d 141, 144 (Ill. App. Ct. 1980) ("If the out-of-court statements are offered to prove the resultant effect of those words on the listener's state of mind, then the speaking of the words is independently relevant regardless of the truth of their content and the statements are admissible as non-hearsay."); *Sullivan v. Popoff*, 360 P.3d 625, 633 (Or. Ct. App. 2015) (De Muniz, S.J., concurring) ("[A]n out-of-court statement may be offered to show that the making of that statement had some effect on the person who heard the statement if that person's state of mind is relevant to an issue in the case.").

"[An appellate court] will not reverse a trial court's decision regarding a jury instruction absent an abuse of discretion." *State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013). "When reviewing the [trial] court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant." *State v. Williams*, 400 S.C. 308, 314, 733 S.E.2d 605, 608–09 (Ct. App. 2012). "The law to be charged to the jury is determined by the evidence presented at trial." *State v. Gaines*, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008). "If there is any evidence to support a jury charge, the trial [court] should grant the request." *State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004).

"Upon request, a defendant is entitled to a jury instruction on self-defense if he has produced evidence tending to show the four elements of that defense." *Stone v. State*, 294 S.C. 286, 287, 363 S.E.2d 903, 904 (1988). The four elements of self-defense are as follows:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Davis, 282 S.C. at 46, 317 S.E.2d at 453.

In this case, the trial court believed White did not have a valid self-defense case because he testified he stabbed Johnson unintentionally. The trial court went further to state that "accident and self-defense pretty well can't co-exist" and asked White which he would like to pursue. The trial court subsequently denied White's request to charge self-defense. While it is true accident and self-defense "are often mutually exclusive," a trial court should charge both when there is evidence in the

record to support both charges. *See Williams*, 400 S.C. at 317, 733 S.E.2d at 610. In *Williams*, the defendant's "testimony at trial vacillated as to whether he acted intentionally or unintentionally when he shot the victim" which created a jury question "as to whether [he] shot the victim accidentally." *Id.* at 316–17, 733 S.E.2d at 610. Here, there was evidence White unintentionally stabbed Johnson and also evidence he intentionally stabbed Johnson.

Viewing the evidence in the light most favorable to White, we find there was some evidence to support each element of self-defense. *See id.* at 314, 733 S.E.2d at 608–09 ("When reviewing the [trial] court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant."). As to the first element, White's testimony he was attempting to leave Washington's house when he was punched in the head from behind shows he was not at fault in bringing on the difficulty. As to the second element, White testified he felt threatened by his conversation with Johnson, and he "was more scared than anything" after he was hit. We note at times White's testimony was contradictory regarding whether he felt threatened and whether he knew it was Johnson who hit him. However, we find there was some evidence White believed he was in imminent danger, and therefore, it was a jury question as to whether White actually believed he was in imminent danger. Likewise, it was a jury question whether White's belief was reasonable under the third element of self-defense. We note Johnson's statement that he kept a gun and knife on his moped and the fact that Johnson accessed the moped before the incident are evidence the jury could consider to find White's belief was reasonable. Finally, White's testimony he previously suffered multiple head injuries, had a brain aneurysm, and did not know if he could safely escape was some evidence tending to show he had no other probable means of avoiding the danger. Therefore, we find the trial court abused its discretion in refusing to charge self-defense where there was at least some evidence to support each element of self-defense and a jury could have believed White acted in self-defense when he stabbed Johnson. *See State v. Day*, 341 S.C. 410, 416–17, 535 S.E.2d 431, 434 (2000) ("If there is *any evidence* in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial [court's] refusal to do so is reversible error." (emphasis added) (quoting *State v. Muller*, 282 S.C. 10, 316 S.E.2d 409 (1984)).

CONCLUSION

Therefore, we find the trial court abused its discretion in excluding White's testimony regarding Johnson's statement and refusing to charge the jury on

self-defense.[3] Accordingly, White's convictions for ABHAN and possession of a weapon during the commission of a violent crime are

REVERSED.[4]

SHORT and HILL, JJ., concur.

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[3] Because the self-defense issue is dispositive, we decline to address White's remaining argument regarding the trial court's refusal to charge the jury on the lesser-included offense of second-degree assault and battery. *See Hughes v. State*, 367 S.C. 389, 408–09, 626 S.E.2d 805, 815 (2006) (noting an appellate court need not reach remaining issues on appeal when a decision on another issue is dispositive).

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable J.C. Buddy Nicholson, Circuit Court Judge

Appellate Case No. 2016-000616

THE STATE,

Respondent,

vs.

DAVID ALAN WHITE,

Appellant.

STATE'S PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, the Petitioner State now requests a rehearing on the following points that this Court may have overlooked or misapprehended. In so doing, the State maintains all its prior arguments as set out in its brief of respondent.

I.

This Court found the trial court erred in declining to instruct the jury on self-defense, opining some evidence supported each element of self-defense. The State respectfully submits no evidence was presented that White was at risk of death or serious bodily injury and no evidence was presented White held a reasonable fear that he was at risk of death or bodily injury. In order for a defendant to be entitled to a jury instruction on self-defense, evidence of the

following four elements must be presented:

> (1) The defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was in actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.

State v. Day, 341 S.C. 410, 416, 535 S.E.2d 431, 434 (2000). "A jury charge on self-defense is not required unless it is supported by the evidence." State v. Wigington, 375 S.C. 25, 31, 649 S.E.2d 185, 188 (Ct. App. 2007).

In the instant case, no evidence was presented White believed he was imminent danger of losing his life or sustaining serious bodily injury, and no evidence was presented that he could reasonably believe he was actually in imminent danger of losing life or sustaining serious bodily injury.

White testified in camera that while Victim was cutting White's hair, Victim told him he had a knife and gun in his moped. R. p. 327, lines 3-4. Before the jury, White testified that after Victim finished cutting White's hair, White paid Victim and there was no disagreement. R. p. 320, p. 323. White left the gathering briefly and then returned. R. pp. 343-44. White, Victim, and others were gathered in conversation at the fire pit. White was about to call his wife to leave when he was hit behind. R. pp. 344-45. At best, White was inconsistent about whether he knew who hit him. However, White testified he reacted and swung out at whoever hit him. R. pp.

357-58. He testified he did it in self-defense. R. p. 349. However, White never testified before the jury **or in camera** that he swung at Victim with a knife because he was afraid Victim might be armed. State v. Knighton, 334 S.C. 125, 136, 512 S.E.2d 117, 123 (Ct. App. 1999) (finding an appellant bears the burden of presenting an adequate record that is sufficiently complete so that the appellate court is able to review the lower court's actions).

This Court indicated in its opinion, "White indicated he did not believe he could safely leave after he was punched because of Johnson's statement **and the possibility that Johnson may have had access to a weapon.**" State v David Alan White, Op. No. 5603 (S.C. Ct. App. filed October 17, 2018). However, the State would respectfully point out that at no point during his trial testimony or his in camera testimony did White indicate that he believed he could not leave because Johnson might have a weapon. He never testified that at the time he reacted and swung his knife, he thought Johnson could have a weapon. There is simply no evidence that when he swung his knife at Johnson, White considered the possibility that Johnson might be armed – no evidence in the record indicates it was a factor in his decision to use lethal force.

Accordingly, no evidence was presented he was actually in fear of death or serious bodily harm when he swung his knife. Further, such a belief was not reasonable. This Court overlooks the fact that while it is plausible Victim might have retrieved a weapon from his moped after he cut White's hair and before White returned to the party, it is only conjecture that he might have done so. Specifically, this Court stated "Johnson testified he accessed his moped directly before the incident." However, Victim Johnson's specific testimony is he **put away** his belongings in his moped because he was preparing to leave, Johnson never indicated he retrieved any items. R. p. 106, lines 10-12; p. 107, lines 21-25. More importantly, White never testified he saw Johnson

access the moped immediately before the incident, so Johnson's testimony to that effect has no bearing on White's state of mind. Accordingly, this evidence does not support a self-defense instruction.

The State would further argue that conversations by Johnson or about Johnson, a man in his fifties, about how he was a high school wrestler have no relevance in a self-defense claim. Nor is the fact he made shanks in prison relevant to the analysis since he did not claim to have a shank on him that day.

Also, White testified he did not know who was behind him when he swung his knife. Other times he testified he knew it was Johnson that hit him. However, that testimony does not specify what he knew **when he acted**, which is the relevant question. He testified on direct examination that he did not know where Johnson was when he swung his knife and did not look where he swung. R. p. 349, lines 8-19. He then admitted on direct examination, "I didn't know it was him behind me that close or whatever when I swung my arm." R. p. 351, lines 8-12. He admitted "Spencer could have been behind me" and agreed anyone could have been behind him. R. p. 357, lines 16-21. When his counsel attempt to rehabilitee his testimony on redirect examination, instead White admitted, **"At the time I didn't know who it was."** R. p. 360, lines 8-11. The trial court did not err in declining a self-defense instruction.

Additionally, White's actions were not reasonable. By no stretch was his response proportional to the "danger" from being bumped or hit. See State v. Wood, 1 S.C.L. 351 (1 Bay 351) (1794) (key to self-defense is the defendant can only respond with proportionality). In State v. Quin, 5 S.C.L. 515 (S.C. Const. App. 1815), the court held: "Proof that the prosecutor was the

aggressor would not justify an enormous battery; nor, indeed, any, beyond the bounds of self-defense."

In State v. Campbell, 111 S.C. 112, 96 S.E. 543 (1918), the Supreme Court held, "The defendant, if without fault, had the right to use such **necessary** force as required for his complete protection from loss of life or serious bodily harm, and could not be limited to the degree or quantity of attacking opposing force." Id. 111 S.C. at 112, 96 S.E. at 544 (emphasis added). White's response to merely being bumped in the back of the head did not warrant the use of deadly force. Accordingly, his testimony failed to support self-defense. Therefore, the trial court did not err in declining to instruct the jury on self-defense.

II.

Further, the trial court did not err in declining to admit White's testimony that Victim claimed to keep a gun and knife in his moped. This Court found that it should have been admitted because the testimony was not for the truth of the matter asserted and therefore, not hearsay on the basis that it went to White's state of mind, which would be relevant to self-defense. The problem is White never testified in camera, or otherwise, **how** it affected his state of mind, if at all, **when** he swung the knife. It only matters if White swung his knife because he feared Johnson was armed. White never testified to that.

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801, SCRE. Hearsay is inadmissible except as provided by statute, the Rules of Evidence, or other court rules. Rule 802, SCRE; State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (Ct. App. 2001).

Johnson's alleged out of court statement would be admissible to show White's state of

mind only if White established he was acting in self-defense. At the time that White sought to admit the testimony, he failed to establish a foundation showing self-defense. Prior to seeking to admit White's hearsay testimony, White testified (1) he did not try to kill Little Bear; (2) he admitted he cut Little Bear; (3) he did not mean to cut Little Bear; and (4) he did not aim for Little Bear's throat. R. p. 320, lines 14-23. He further testified he never met Little Bear before the gathering, there was no tension between them, and there was no dispute over money or the quality of the haircut. R. p. 323, lines 5-24. At this point defense counsel attempted to elicit testimony that Little Bear told White he made shanks in prison, and he kept a knife and gun in his moped. R. pp. 324-27. Defense counsel claimed it was admissible because it went to White's state of mind for purposes of self-defense. R. pp. 328-29.

The trial court observed that "based upon what he has already said how can you possibly raise self-defense because self-defense is a [purposeful] act you intentionally inflicted physical harm on a person that you were in imminent fear of. Well, he's already said he did not cut him on purpose. . . . Now where is self-defense going to come into this?" R. p. 329, lines 7-14. The trial court further observed, "So none of this testimony he has said so far has any relevancy at all unless there is a valid self-defense case." R. p. 329, lines 21-23.

At the point during White's direct testimony that defense counsel sought to elicit this testimony, there was insufficient foundation to show the evidence was not for the truth of the matter asserted because White had not testified to acting in self-defense, only that he did not intend to cause the injury to Victim. Accordingly, the trial court's ruling was correct and appropriate. "The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse

of discretion." State v. Shuler, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003).

Further, at no point afterwards did defense counsel make another attempt to admit the testimony on the basis that he had laid sufficient foundation since the trial court's initial ruling. Because White never testified he was afraid or concerned Victim was armed when he slashed Victim's throat, the testimony never became relevant. Additionally, counsel could have elicited any such testimony in camera and failed to do so. This deficiency was hinted at during counsel's proffer when he advised the court his client did not know if Johnson was armed. Counsel never asserted that his client would testify he was worried Johnson might be armed and that caused him to act. Nor did counsel attempt to elicit in camera testimony from White that he was fearful Johnson was armed and that is why he struck his knife at Johnson.

Of course, White admitted on redirect examination that he did not know who hit him when he swung his knife. R. p. 360, lines 8-11. Therefore, the trial court did not abuse its discretion in disallowing the testimony since ultimately evidence supports the trial court's determination that White was seeking to admit Johnson's out of court statement for the truth of the matter asserted and not for White's state of mind since he admitted not knowing who he swung his knife at.

Accordingly, the trial court did not err in declining to admit the testimony.

WHEREFORE, the State requests this Court to grant the petition for rehearing and affirm the convictions and sentences. Given that the convictions and sentences were reversed without oral argument, the State would respectfully request oral argument on the State's petition for rehearing.

Respectfully submitted,

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October 30, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
The Honorable J. C. Buddy Nicholson, Circuit Court Judge

Appellate Case No: 2016-000616

THE STATE,

Respondent,

v.

DAVID ALAN WHITE,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within State's Petition For Rehearing on Appellant by delivering two copies of the same addressed to his attorney of record, Wanda H. Carter, Esquire, SCCID, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.
This 30th day of October, 2018.

Anne Mueller

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The South Carolina Court of Appeals

The State, Respondent,

v.

David Alan White, Appellant.

Appellate Case No. 2016-000616

ORDER

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

Paul G. Shorts, Jr. J.

Paula H. Thomas J.

D. Garner J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
Laura Ruth Baer, Esquire
David A. Spencer, Esquire
Scarlett Anne Wilson, Esquire
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The Honorable J. C. Nicholson, Jr.

FILED
December 13, 2018