STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenwood County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ZANTRAVIOUS RANDELL HALL,

APPELLANT

APPELLATE CASE NO. 2018-002176

INITIAL BRIEF OF APPELLANT

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II. Did the trial judge improperly sentence Appellant to life imprisonment without the possibility of parole pursuant to the recidivist statute where Appellant's prior conviction did not constitute a "strike" because (1) the family court failed to made adequate findings of fact pursuant to In re Sullivan, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980), and (2) using a prior conviction for an offense committed while Appellant was a juvenile violated the Eighth Amendment's prohibition on cruel and unusual punishment?

STATEMENT OF THE CASE

On March 9, 2018, a Greenwood County grand jury indicted Appellant for the murder of Emyle Markial McDuffie (2018-GS-24-408) and possession of a weapon during the commission of a violent crime (2018-GS-24-409). R. *(indictments). On July 13, 2018, a Greenwood County grand jury indicted Appellant for the attempted murder of Michael D. Lukie (2018-GS-24-1246). R. *(indictment).[1] On July 26, 2018, the state served its intent to seek a sentence of life imprisonment without the possibility of parole (LWOP) pursuant to S.C. Code Ann. § 17-25-45. R. *(LWOP notice).

On October 8-12, 2018, the state, represented by Josh Thomas and Yates Brown, called the case to trial before the Honorable Donald B. Hocker and a jury. Tr. 1. Janna Nelson and Elizabeth Able represented Appellant. Tr. 1. The jury found Appellant guilty as charged. Tr. 728, ll. 2-8. The judge deferred sentencing to consider Appellant's memorandum in opposition to sentencing pursuant to the recidivist statute. Tr. 732, l. 2 – Tr. 733, l. 8; R. *(memo). The parties reconvened on November 30, 2018. Sent. 1. Judge Hocker denied Appellant's motion. Sent. 12, l. 22 – Sent. 13, l. 6; Sent. 15, ll. 8-16. Thereafter, he sentenced Appellant to life imprisonment without the possibility of parole (LWOP) for murder and attempted murder. Sent. 15, ll. 19-24; Sent. 18, ll. 19-21. He imposed no sentence on the weapon conviction in light of the life sentences. Sent. 18, l. 25 – Sent. 19, l. 2.

Appellant served his notice of intent to appeal on December 10, 2018. Appellant now files this brief.

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[1] Appellant was also charged with failure to stop for a blue light. Tr. 345, l. 25 – Tr. 349, l. 13. During the middle of the trial, Appellant entered a guilty plea to this charge. Tr. 345, l. 25 – Tr. 349, l. 13. Judge Hocker sentenced Appellant to time served for this offense. Sent. 18, ll. 22-24.

STATEMENT OF FACTS

On November 21, 2017, Timothy Wilson and Michael "Luke" Lukie walked across the street from Phoenix Place Apartments to smoke a blunt. Tr. 228, ll. 3-10; Tr. 229, ll. 9-13; Tr. 243, ll. 3-6. Emyle "Gump" McDuffie soon joined them. Tr. 229, ll. 14-25; Tr. 230, ll. 7-9; Tr. 242, l. 22 – Tr. 243, l. 6. Eventually, McDuffie and Lukie walked toward Building 3 of the apartment complex to get a pair of pants for McDuffie. Tr. 230, ll. 16-19; Tr. 243, ll. 7-18.

During this time, Marisha C. was at her home in the apartment complex, looking out her window. Tr. 211, l. 20 – Tr. 212, l. 13. She saw two cars – one was red, and the other was white. Tr. 213, ll. 6-7. She saw McDuffie walking toward the car and "talking through the window on the passenger side." Tr. 213, ll. 7-11. Although McDuffie initially started to walk away, he turned toward the passenger side of car again. Tr. 213, ll. 11-14; Tr. 218, ll. 1-14. At this point Marisha C. heard a gunshot. Tr. 213, ll. 14-18. Marisha C. ran out of her home to see what happened. Tr. 215, ll. 2-4. She saw that McDuffie had been shot. Tr. 215, ll. 3-4.

Wilson saw "some car pull[] in and let loose." Tr. 230, ll. 19-20. He did not "see the actual shooting." Tr. 233, ll. 1-3. He thought the car may have been "red, a little burgundy and stuff like that." Tr. 231, ll. 7-10. According to Wilson, McDuffie "hit the ground," while Lukie "kept running." Tr. 230, ll. 20-21.

Lukie claimed that after he and McDuffie talked to McDuffie's sister, Kumarie Cobb, a red car pulled up and someone in the car called out to McDuffie. Tr. 243, ll. 21-25; Tr. 250, ll. 8-23. According to Lukie, when McDuffie got to the car, Appellant got out, asked him a question, and started shooting. Tr. 244, ll. 1-7; Tr. 245, ll. 16-19. Although Lukie was shot in his hip on his left side, he ran away. Tr. 245, ll. 20-25.

Lukie got into the white car with Cobb and her friend. Tr. 232, ll. 11-16; Tr. 246, ll. 5-8. While Lukie was in the hospital, he told the police that he did not know who shot him or McDuffie. Tr. 246, ll. 14-25; Tr. 275, ll. 21-23. Later, Lukie claimed he saw the shooter's face and insisted that Appellant was the shooter. Tr. 247, ll. 1-11.

Lakisha Bletcher, who lived at Phoenix Apartments, heard gunshots and ran downstairs. Tr. 194, l. 21 – Tr. 195, l. 4; Tr. 195, ll. 15-20. She went outside where she saw a "little red car backing up" and McDuffie on the ground. Tr. 195, ll. 21-23. The red car left. Tr. 198, ll. 8-9; see also Tr. 214, ll. 20-21. Bletcher was unable to identify the make or model of the little red car, however. Tr. 203, ll. 10-12. Eventually, Bletcher and Terrance Gilchrist picked McDuffie up and put him in a car. Tr. 199, ll. 2-9; Tr. 215, ll. 5-8; Tr. 265, ll. 12-21. Gilchrist drove McDuffie to the hospital. Tr. 265, ll. 19-20. McDuffie was pronounced dead at the hospital. Tr. 320, ll. 11-12. According to the pathologist, McDuffie died as a result of a gunshot wound to the chest or back. Tr. 428, ll. 4-7.

Shortly after the police received a report about the shooting at Phoenix Place, an officer went to a 7-Eleven convenience store, which was about twenty-five yards from the apartments, to review surveillance video. Tr. 363, ll. 2-9; Tr. 374, ll. 1-3; Tr. 444, l. 21 – Tr. 445, l. 2.

After initially instructing other officers to look for a white car with a female driver, the police issued a "be on the look out" for a red car with tinted windows. Tr. 353, ll. 1-8; Tr. 364, ll. 1-8; Tr. 445, ll. 3-4; State's Exhibit #55. Around 5pm, officers with the Greenwood Police Department saw a car fitting the description within two miles of Phoenix Place Apartments. Tr. 353, l. 9 – Tr. 354, l. 1. While pursuing the car, the officers learned it was registered to Miangel Clark. Tr. 358, ll. 4-11. After the car crashed, the officers arrested Appellant. Tr. 356, l. 14 – Tr. 357, l. 5.

ARGUMENT

I. The trial judge erred in failing to permit Appellant to present social media messages providing evidence of an alibi for one of his co-defendants, who was not on trial, where the social media messages were authenticated properly pursuant to Rule 901, SCRE, because the person who received the messages was prepared to testify and where the circumstantial evidence of distinctive characteristics established the evidence was what it purported to be.

Standard of review

"'The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.'" State v. Anderson, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "'An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.'" Id. (quoting Pagan, 369 S.C. at 208, 631 S.E.2d at 265).

Relevant facts

Marisha C. told the police that she saw McDuffie talking through the window on the passenger side of the red car immediately before he was shot. Tr. 213, ll. 6-9. McDuffie then walked away from the car, but he was called back. Tr. 213, ll. 9-13. When he turned around, he was shot. Tr. 213, ll. 12-14. The police spoke to Marisha C. shortly after the shooting at the apartment complex. State's Exhibit #55. Based upon information received from Marisha C. and others, the police believed at least two people were in the red car at the time of the shooting. State's Exhibit #55.

In addition to charging Appellant, the police arrested Kemad White and Cedric Elmore for crimes related to this shooting. Tr. 449, ll. 15-25; Tr. 536, ll. 6-8; Tr. 565, l. 19 – Tr. Tr. 569, ll. 25. During his case-in-chief, Appellant sought to present a witness and introduce evidence

from Snapchat. Tr. 666, ll. 5-11. Specifically, Appellant wanted to call Raven Jackson, the girlfriend of Cedric Elmore. Tr. 666, ll. 15-20; R. *(Court's Exhibit #4). Jackson was prepared to testify regarding Snapchats she received from Elmore on the day and time of the shooting. Tr. 666, ll. 15-20; R. *(Court's Exhibit #4); R. *(Court's Exhibit #5). Jackson had spoken to the police and provided them with information regarding Elmore's whereabouts. Tr. 568, l. 24 – Tr. 569, l. 25. In essence, the Snapchat conversation placed Elmore at their apartment on the day and time of the shooting. Tr. 666, ll. 15-20; R. *(Court's Exhibit #4); R. *(Court's Exhibit #5).

Judge Hocker denied the request to present the evidence because he was concerned about "the possibility of" the "actual date and time stamped on this material" "being manipulated in some way." Tr. 667, ll. 5-12.

Discussion

"It is black letter law that evidence must be authenticated or identified in order to be admissible." State v. Brown, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018). The proponent of evidence must satisfy "[t]he requirement of authentication or identification as a condition precedent to admissibility." Rule 901(a), SCRE. This requirement "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Id. While the burden is not high, the proponent must offer a satisfactory foundation to permit the jury to conclude the evidence is authentic. Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015) (citing United States v. Hassan, 742 F.3d 104, 133 (4th Cir. 2014)).

One of the most common ways for the proponent to authenticate evidence is through the testimony of a witness with knowledge that the "matter is what it is claimed to be." See Rule 901(b)(1), SCRE. Another way to authenticate evidence is by showing the evidence contains

"distinctive characteristics and the like." Rule 901(b)(4), SCRE. "Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances" may serve to authenticate evidence. Id.; see also State v. Anderson, 386 S.C. 120, 129, 687 S.E.2d 35, 39-40 (2009) (finding a master fingerprint card authenticated where an expert explained the prints on the master card were taken at a correctional facility on a specific date, and assigned a unique state identifying number).

Analyzing whether loan documents were authenticated, this Court held the proponent offered sufficient evidence. Deep Keel, LLC, 413 S.C. at 65, 773 S.E.2d at 610-611. This Court explained that a witness "testified he agreed to purchase a note from CresCom Bank, he examined the loan documents while negotiating the agreement, and the loan documents offered in evidence were the ones he examined and later received pursuant to this transaction." Id. at 65, 773 S.E.2d at 611. "This testimony authenticated the loan documents because it was sufficient to support a finding that they were the documents [the proponent] claimed them to be." Id. This Court rejected the argument that the witness was not a witness with knowledge under Rule 901(b)(1), SCRE, because he did not know "'when, how, or by whom the documents were prepared, how they came to be in the possession of CresCom Bank, or how they were maintained by that bank.'" Id. According to this Court, "[t]he authentication requirement does not demand this degree of proof." Id.; see also State v. Patterson, 425 S.C. 500, 507-508, 823 S.E.2d 217, 221-222 (Ct. App. 2019) (holding the state authenticated DNA evidence by presenting a witness who "had first-hand knowledge of the procedures that went into collecting, storing, maintaining, and testing the DNA profile," and another witness who "personally reviewed and verified the results of the DNA profile match").

Recently, this Court addressed the authentication of social media messages through

circumstantial evidence. State v. Green, 427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019). This Court held the state authenticated Facebook messages despite neither the sender nor the recipient testifying. Id. at 232-233, 830 S.E.2d at 715-716. Rather, a witness testified that a co-defendant, who was not on trial, used the name "Ruby Rina" on Facebook. Id. at 228, 830 S.E.2d at 713. The witness claimed he saw the co-defendant and the defendant "laughing while texting." Id. Later that day, the deceased arrived at the co-defendant's home. Id. Subsequently, the police found the deceased's body. Id. The police learned of the messages from the deceased's father. Id. at 227, 830 S.E.2d at 712. The father claimed he had the deceased's Facebook password and viewed the messages after the deceased went missing. Id. Among the messages was an invitation from Ruby Rina to the deceased on the day of his death for a sexual rendezvous at her home. Id. at 227, 830 S.E.2d at 712-713.

This Court held "the content of the messages was distinctive enough that a reasonable jury could find [co-defendant] wrote them." Id. at 233, 830 S.E.2d at 715. According to this Court,

> Numerous facts link[ed] the Facebook messages to [co-defendant] and, consequently, Green: the use of the screen name 'Ruby Rina,' which [a witness] testified was [co-defendant]'s; reference to 'Julissa' on the messages, which testimony showed was [co-defendant]'s sister's name; Ruby Rina's invitation to her home, which she stated was at 108 Queens Circle; [the deceased]'s reference to Ruby Rina as [co-defendant] ...; comments throughout the messages about Ruby Rina's erstwhile boyfriend that were consistent with her relationship with Green; the timing of the messages; and the tragic fact that [deceased] disappeared shortly after Ruby Rina invited him to 108 Queens Circle, where his blood was later discovered.

Id. at 233, 830 S.E.2d at 715-716. This Court held that "[t]aken together, these circumstances serve as sufficient authentication to meet the low bar Rule 901(b)(4), SCRE, sets." Id. at 233, 830 S.E.2d at 716.

Here, the Snapchats were authenticated pursuant to personal knowledge and

circumstantial evidence. Raven Jackson's sworn statement provided that she received multiple photographs and videos via Snapchat from Elmore while she was at work on November 21, 2017. R. *(Court's Exhibit #4). The photographs indicated they were received between 2:04 p.m. and 2:23 p.m. R. *(Court's Exhibit #4); Court's Exhibit #5. She received the videos at 2:23 p.m., and 4:13 p.m. R. (Court's Exhibit #4); Court's Exhibit #5. The videos show Elmore and her child in their apartment, which Jackson identified. R. (Court's Exhibit #4); Court's Exhibit #5. Thus, the photographs and videos were identified by someone with personal knowledge as to their content and to their time and date of receipt.

Further, the photographs and videos were authenticated by circumstantial evidence. Elmore and Jackson were in an intimate relationship and shared two children; thus, messaging between the two was common. While Jackson was at work, Elmore sent her a series of photographs and videos showing her what he and their daughter were doing. The photographs showed dates and times that coincided with Jackson's work schedule. Thus, there was sufficient circumstantial evidence that the Snapchats were what they purported to be – evidence that Elmore was at home at the time of the alleged shooting.

The state relied on the same witnesses to place Appellant at the scene of the shooting as it did to place Elmore at the scene of the shooting. Therefore, if those witnesses were wrong about Elmore's presence at the scene of the shooting, then the witnesses' credibility was called into question, including whether they could be believed about Appellant's presence at the scene of the shooting. Based upon the photographs and the videos showing Elmore at a different place, then the witnesses were wrong about where Elmore was. The judge's error in concluding the photographs and videos were not authenticated because the dates and times could have been altered prejudiced Appellant because it prevented Appellant from challenging the investigation

conducted by law enforcement and the credibility of the state's witnesses.

II. The trial judge improperly sentenced Appellant to life imprisonment without the possibility of parole pursuant to the recidivist statute where Appellant's prior conviction did not constitute a "strike" because (1) the family court failed to made adequate findings of fact pursuant to *In re Sullivan*, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980), and (2) using a prior conviction for an offense committed while Appellant was a juvenile violated the Eighth Amendment's prohibition on cruel and unusual punishment.

Standard of review

"'In criminal cases, the appellate court sits to review errors of law only.'" State v. Vick, 384 S.C. 189, 197, 682 S.E.2d 275, 279 (Ct. App. 2009) (quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). The appellate court is "'bound by the trial court's factual findings unless they are clearly erroneous.'" Id. (quoting Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829). The reviewing court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." State v. Slocumb, 412 S.C. 88, 91, 770 S.E.2d 436, 438 (Ct. App. 2015). "A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support." In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

South Carolina statutory law "authorizes the family court to determine whether it is appropriate to transfer a juvenile charged with murder to the general sessions court." State v. Avery, 333 S.C. 284, 292, 509 S.E.2d 476, 481 (1998). "The appellate court will affirm a transfer order unless the family court abused its discretion." Id. However, there must be evidence to support the family court's findings of fact. Sanders v. State, 281 S.C. 53, 55, 314 S.E.2d 319, 320 (1984).

Relevant facts

After the jury found Appellant guilty of murder and attempted murder, the judge deferred sentencing to consider Appellant's opposition to sentencing pursuant to the recidivist statute. Tr. 732, l. 2 – Tr. 733, l. 8; R. *(Memo). The parties reconvened on November 30, 2018. Sent. 1. According to the state's notice of intent to seek LWOP, Appellant was convicted of assault and battery with intent to kill (ABWIK) on December 7, 2011. R. *(LWOP notice). The state argued the prior ABWIK conviction qualified as a strike because it was considered a most serious offense and Appellant's convictions for murder and attempted murder were most serious offenses. R. *(LWOP notice). Appellant argued his prior conviction did not qualify as a strike because (1) the family court failed to made adequate findings of fact pursuant to In re Sullivan, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980), and (2) using a prior conviction for an offense committed while Appellant was a juvenile violated the Eighth Amendment's prohibition on cruel and unusual punishment and the constitutional requirement of equal protection for all. Sent. 5, ll. 2-6; Sent. 6, ll. 1-19; Sent. 8, l. 3 – Sent. 9, l. 1; R. *(memo).

Appellant's prior ABWIK conviction rose out of events that occurred on February 10, 2009, when Appellant was merely fifteen years old. R. *(memo). The family court had jurisdiction over Appellant due to his age. R. *(memo). Despite a pre-transfer evaluation that indicated Appellant needed therapeutic interventions and significant limits placed on his behavior, which would have been achievable in DJJ along with education, addiction treatment groups, vocational rehabilitation programs, and much more, the family court waived jurisdiction and transferred Appellant to the court of general sessions on November 25, 2009. R. *(memo). Thereafter, on December 7, 2011, Appellant entered a guilty plea to ABWIK. R. *(memo). He

was sentenced to fifteen years imprisonment suspended upon the service of eight years and credit for 1029 days of time served. R. *(memo).

Ultimately, Judge Hocker denied Appellant's motion. Tr. 12, l. 22 – Tr. 13, l. 6; Tr. 15, ll. 8-16. Thereafter, he sentenced Appellant to life imprisonment without the possibility of parole (LWOP) for murder and attempted murder pursuant to the recidivist statute. Tr. 15, ll. 19-24; Tr. 18, ll. 19-21.

Discussion

Insufficiency of the family court order

According to the United States Supreme Court, in order to transfer jurisdiction of a juvenile from a court exercising jurisdiction over juveniles to one exercising jurisdiction over adults, the court must find the following:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.

2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if injury resulted.

4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand jury may be expected to return an indictment ....
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime....

6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

7. The record and previous [criminal or adjudicative] history of the juvenile....

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

State v. Avery, 333 S.C. 284, 289 n.3, 509 S.E.2d 476, 479 n.3 (1998) (quoting Kent v. United States, 383 U.S. 541, 567 (1966)). Four decades ago, the South Carolina Supreme Court admonished family courts regarding their orders waiving jurisdiction over juveniles. Specifically, the Court held

> [I]t is the responsibility of the family court to include in its waiver of jurisdiction order a sufficient statement of reasons for, and considerations leading to, that decision. Conclusory statements, or a mere recitation of statutory requirements, without further explanation will not suffice. The order should be sufficient to demonstrate that the statutory requirement of full investigation has been met and that the question has received full and careful consideration by the family court. The salient facts upon which the order is based are to be set forth in the order.

In re Sullivan, 274 S.C. 544, 548, 265 S.E.2d 527, 529 (1980). Over the course of those four decades, the Court has reminded family courts repeatedly of the need for sufficient orders. "The family court must provide a sufficient statement of the reasons for the transfer in its order." State v. Pittman, 373 S.C. 527, 559, 647 S.E.2d 144, 160 (2007).

The Family Court failed to follow the Supreme Court's directive when it transferred jurisdiction over Appellant's ABWIK charge to the Court of General Sessions. The entirety of the order consists of conclusory statements without any evidentiary support. Although the court heard from three witnesses, the court failed to summarize the testimony of those witnesses or indicate how the testimony affected, if at all, the decision to waive jurisdiction. Further, the order claimed there was probable cause to believe Appellant committed the charged crime, but the order provided no facts or legal analysis to support the conclusion. It was simply a conclusory statement. Along the same lines, the order concluded there was sufficient merit to warrant the grand jury returning a true bill indictment; however, the order neglected to explain how the writer arrived at the conclusion.

Appellant's conviction for ABWIK should be construed as a juvenile adjudication in light of the Family Court's failure to follow the proper procedure during the transfer of jurisdiction process.

Treating Appellant's prior conviction as a juvenile adjudication requires vacation of his LWOP sentence because a juvenile adjudication is not a strike for purposes of the recidivist statute. State v. Ellis, 345 S.C. 175, 179, 547 S.E.2d 490, 492 (2001).

Violation of the Eighth Amendment

In 2002, the South Carolina Supreme Court held a LWOP sentence is not cruel and unusual if the triggering offense was committed at the time the defendant was a juvenile as long as the defendant was tried and sentenced as an adult for the triggering offense. State v. Standard, 351 S.C. 199, 203, 569 S.E.2d 325, 328 (2002). The legal analysis on which Standard was based as been altered by controlling United States Supreme Court precedent. Although Standard was a statutorily-defined juvenile at the time of the triggering offense, jurisdiction over his case had been transferred from the juvenile courts to general sessions. Thus, Standard was tried and sentenced as if he were an adult concerning the triggering offense. The Court based its decision upon sentences imposed in other cases to "find lengthy sentences or sentences of life without parole imposed upon juveniles do not violate contemporary standards of decency so as to constitute cruel and unusual punishment." Id.[2] Using this analysis, the Court determined that "an enhanced sentenced based upon a prior most serious conviction for a crime which was committed as a juvenile does not offend evolving standards of decency so as to constitute cruel and unusual punishment." Id. at 206, 569 S.E.2d at 329.

Eighth Amendment jurisprudence involves "evolving standards of decency" and recent decisions by the United States Supreme Court concerning juveniles and the Eighth Amendment indicate an evolution in those standards since this Court's decision in Standard, supra. The Standard

[2] Cf. State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001)(holding that a juvenile adjudication is not a conviction, guilty plea, or plea of nolo contendere, thus, it may not be used to trigger the recidivist statute).

Court's holding that sentences of LWOP for juveniles[3] comport with contemporary standards of decency has been overruled by recent decisions of the United States Supreme Court. Appellant respectfully disagrees with this Court's recent decision in State v. Green, 412 S.C. 65, 770 S.E.2d 424 (Ct. App. 2015). In arriving at its conclusion that Green's LWOP sentence pursuant to the recidivist statute did not violate the ban on cruel and unusual punishments, this Court relied upon Standard. State v. Green, 412 S.C. 65, 86-87, 770 S.E.2d 424, 435-436 (Ct. App. 2015). As explained infra, Standard's justification for permitting juvenile convictions to serve as strikes is no longer supported by controlling case law.

"[C]hildren are constitutionally different from adults for purpose of sentencing." Miller v. Alabama, 567 U.S. 460, 471 (2012). On June 25, 2012, the United States Supreme Court held mandatory sentences of life without parole (LWOP) imposed upon juveniles violate the Eighth Amendment to the United States Constitution. Id. Beginning in 2005 with its decision in Roper v. Simmons, 543 U.S. 551 (2005), the Supreme Court recognized society's evolving standards of decency concerning juvenile justice jurisprudence. In Roper, the Court held death sentences for juveniles were cruel and unusual punishment. Four years later, the Court held that a LWOP sentence imposed upon a juvenile for a non-homicide offense violated the Eighth Amendment's ban on cruel and unusual punishment. Graham v. Florida, 560 U.S. 48 (2010). Not surprisingly, when presented with the question of whether mandatory LWOP sentences for juveniles, even in homicide cases, violated the Eighth Amendment, the Supreme Court held they did. Miller, 567 U.S. at 479.

[3] The recent United States Supreme Court cases concerning this issue address individuals under the age of eighteen even if such individuals do not meet a state's statutory definition of juvenile.

Additionally, the South Carolina Supreme Court embraced the Supreme Court's Miller decision in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). As expressed by the Court, "Miller does more than ban mandatory life sentencing schemes for juveniles; it establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered." Aiken, 410 S.C. at 543, 765 S.E.2d at 577. This Court explained that "whether their sentence is mandatory or permissible, any juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment." Id. at 544, 765 S.E.2d at 577.

This Court should hold the Eighth Amendment precludes mandatory LWOP sentences under the recidivist statute where the defendant was under eighteen at the time of the triggering offense based upon the same constitutional reasoning. The Court's decision was based not only on upon the mandatory nature of the penalty, but on the character of children in general. The Miller Court repeatedly focused on the notion that the character traits of children are "more transitory and less fixed." Miller, 567 U.S. at 471. Children by definition lack maturity and responsibility; thus, they are more likely to act with "recklessness, impulsivity, and needless risk-taking." Id. The Court eloquently explained that due to the innate characteristics of children at large, there is a "great difficulty ... of distinguishing at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." In fact, the Court stated "incorrigibility is inconsistent with youth." Id. at 473. The Court emphasized the potential for reform present in all juveniles and the mitigating qualities of youth, noting "[i]t is a time of immaturity,

irresponsibility, 'impetuousness[,] and recklessness.'" Id. at 476 (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).

Miller, thus, eradicated the rationale underpinning Standard. Even if the Eighth Amendment's ban on cruel and unusual punishment does not forbid sentencing individuals to mandatory LWOP where the triggering offense occurred when the individual was under the age of eighteen, the Eighth Amendment requires courts to make individualized sentencing decisions. Therefore, the mandatory nature of LWOP pursuant to the recidivist statute where the triggering offense occurred when Appellant was only seventeen-years old violated the requirement of individualized sentencing. The Supreme Court has recognized the importance of individualized sentencing in numerous cases. For example, Justice Sotomayor discussed the longstanding tradition of individualized sentencing: "'It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.'" Peppers v. United States, 562 U.S. 476, 131 S.Ct. 1229, 1239-1240 (2011)(quoting Koon v. United States, 518 U.S. 81, 113 (1996)). The tradition is premised upon the principle that "the punishment should fit the offender and not merely the crime." Id. at 1240 (quoting Williams v. New York, 337 U.S. 241, 247 (1949)). Thus, the sentence must have the "fullest information possible concerning the defendant's life and characteristics." Id. (quoting Williams, 337 U.S. at 247).

The Supreme Court has recognized the differences between adults and adolescents in sentencing considerations:

> The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors,

> especially in their earlier years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment expected of adults.

Eddings v. Oklahoma, 455 U.S. 104, 115-116 (1982) (footnotes and internal quotations omitted).

Appellant's sentence of LWOP, which was mandatory pursuant to the recidivist statute, violates the Eighth Amendment's ban on cruel and unusual punishment because Appellant was under the age of eighteen at the time of the triggering offense. At a minimum, the Eighth Amendment requires the trial judge have discretion in his sentencing where the sentence necessarily involved consideration of Appellant's prior record, which included an offense committed prior to his attaining the age of eighteen.

CONCLUSION

As to Issue I, Appellant respectfully requests this Court reverse his convictions and remand for a new trial. As to Issue III, Appellant respectfully requests this Court vacate his sentences for murder and attempted murder and remand for new sentencing.

Sara M Carely for:
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of January, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ZANTRAVIOUS RANDELL HALL,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Zantravious Randell Hall, #348917, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 8th day of January, 2020.

Lara M Candy for:
Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of January, 2020.

Lindsay M. Matthews (L.S)
Notary Public for South Carolina
My Commission Expires: 10/22/2024