

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

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Appeal from Hampton County

Honorable Carmen T. Mullen, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JOHNNIE LEE MCKNIGHT,

APPELLANT

APPELLATE CASE NO 2019-000219

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ANDERS BRIEF OF APPELLANT

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RECEIVED  
JAN 28 2020  
SC Court of Appeals

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**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred by admitting remote, more than two-month-old text messages, between appellant and the decedent, his girlfriend, where those remote text messages were only going to confuse the jury, since some of them threatened the decedent while others showed a very warm relationship between appellant and his girlfriend which only invited undue prejudicial speculation into the murder or self-defense case deliberations?

## STATEMENT OF THE CASE

Appellant was indicted at the September 20, 2018 term of the Hampton County Grand Jury for the murder of Alydia Ling, his girlfriend, and her unborn baby. The grand jury also indicted appellant for three counts of attempted murder, discharging a firearm into a dwelling, and possession of a weapon during a violent crime from in the same shooting incident. R. p. \*.

Appellant's case was called to trial on February 4, 2019 before the Honorable Carmen T. Mullen, and a jury. Trasi Campbell represented appellant. Hunter Swanson was the assistant solicitor. R. 1.

On February 6, 2019, the jury found appellant guilty on all counts. R. 443, l. 24 – 444, l. 13. Judge Mullen sentenced appellant to life imprisonment on each count of murder, thirty years imprisonment on each count of attempted murder, ten years imprisonment for discharging a firearm into a dwelling, and five years imprisonment for possession of a weapon during a violent crime. R. 457, l. 4 – 458, l. 4.

This appeal follows.

## **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. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (“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.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

## ARGUMENT

The court erred by admitting remote, more than two-month-old text messages, between appellant and the decedent, his girlfriend, where those remote text messages were only going to confuse the jury, since some of them threatened the decedent while others showed a very warm relationship between appellant and his girlfriend which only invited undue prejudicial speculation into the murder or self-defense case deliberations .

### **Pre-trial Argument**

Prior to trial, the solicitor sought to obtain a favorable ruling, allowing the state to introduce text messages “between the defendant and the victim that came off the defendant’s Samsung Galaxy phone. These were a couple months before the murder. And there are a series of text messages specifically, I mean the ones that I think are most important, but are twenty-seven texts in a row that are to the victim that state ‘die bitch.’” R. 30, ll. 2 – 25.

The solicitor claimed there was “a little back and forth” between the older appellant and his sixteen-year-old decedent girlfriend, and the solicitor repeated that they were exchanged about “two and a half months” before the fatal shooting. R. 30, ll. 2 – 25.

Defense counsel Campbell argued that the text messages are “way too remote.” Further, if the threatening text messages the state wanted before the jury were admitted, then the defense then would be entitled to the admission of a great many text messages between the couple “[i]n the weeks right before August 31 where every morning there is a loving exchange of messages between the two of them. You know, good morning, babe, I love you, you know, back and forth, what’s going on today?” R. 31, ll. 2 – 16. See Rule 106, SCRE. This was only going to confuse the jury.

The solicitor argued that the “loving text messages” would indeed be a proper subject for cross-examination but she maintained that the threatening text messages should be admitted over the defense objection. R. 31, l. 2 – 33, l. 3. The judge did not conduct any on-the-record analysis before admitting the text messages, and the judge admitted them over, state’s exhibit 52, over objection before the jury. R. 322, l. 10 – 323, l. 17.

### **The Trial**

Estill police officer, Marcus Miller, testified on the night of August 31, 2017 he was in the parking lot of the police station, talking to the parents of a couple teenagers, when “I heard several shots in the distance, and being familiar with the town and the area, I guess—guesstimated, or I could approximate it was coming from the north-east side of town.” R. 130, l. 6 – 131, l. 15. Miller ran inside the police station and notified his Corporal of the shots being fired, “and then dispatch came over the radio and gave us an address to where we responded.” R. 131, ll. 10 – 19.

Police body camera footage of the chaotic Fifth Avenue crime scene was introduced into evidence. Shamond Ling, the decedent’s older brother, is seen screaming on the body camera that appellant had shot his sister. That tape is on file with this Court to review as defense exhibit #1.

Miller said he heard a series of shots in “rapid succession” before he arrived at the Ling residence on Fifth Street at about 9:37 that evening. R. 132, ll. 1 – 23. Miller remembered seeing Shamond Ling wearing a white tank top—a “wife-beater”—and Ling was in the road yelling, “He shot my sister. He shot my sister...” and he said, “It was Johnnie Mack.” Miller admitted Ling was acting erratically and was highly upset at the time. R. 134, l. 4 – 135, l. 18.

Officer Zatch Pouchprom of the Estill Police Department also recalled that August 31, 2017 night shooting. R. 151, l. 2 – 155, l. 9. Pouchprom described it as a chaotic scene and “very emotionally charged.” R. 155, ll. 3 – 9. He spoke with Shamond Ling, who told him that Johnnie McKnight was driving a blue Honda and that appellant had allegedly “opened fire” in front of the Ling residence. Several shell casings were found on the ground. R. 156, ll. 5 – 20; r. 162, ll. 3 – 6.

Michelle Bryan of Hampton County EMS responded to the scene that evening, as well. She testified she “found a young female, who was pregnant, laying on her back inside the doorway of the residence; not breathing, without a pulse, with blood around her.” R. 164, ll. 10 – 17.

Bryan explained that the unborn baby was viable but died at the scene, as well. Bryan offered: “There’s a very small window from the time the mother takes her last breath ‘till the time” when the unborn baby could be saved. Bryan said she was not able to perform “any life-saving measures” in this case. R. 167, ll. 1 – 8.

Shamond Ling testified he lived with his mother, and the sixteen-year-old decedent on Fifth Street in Estill. Ling worked “armed security” at night clubs and elsewhere, and he had a concealed weapons permit for a nine-millimeter Smith and Wesson. R. 170, l. 7 – 171, l. 8.

On August 31, 2017, Ling was smoking a cigarette in front of their house when a car pulled up, and appellant asked the decedent to “get in the car, get in the car. I told Alydia to come back in the house. The car pulled off, went down to the stop sign at the end of the street, turned around and came back in front of the house. At that point in time I just stepped off the porch in front of the—in front of my mother’s truck. [He] pulled back up yelling and raging and everything like that. I was—I got beside my mother’s truck and the next thing I know [he]

just—just start shooting, but that’s when I pulled my weapon and returned—and tried to return fire.” R. 171, ll. 11 – 23. Ling said appellant was driving “a little four-door blue Honda” that night, and maintained that appellant had shot first. R. 172, ll. 2 – 19.

Describing the scene at the house that evening, Ling identified his mother’s Mercedes SUV in front of the house and his Chevy Impala parked near it. R. 173, l. 12 – 176, l. 19. Ling claimed that the first bullets went towards the house, and then appellant started shooting towards him. One bullet was found inside the Mercedes and one hit the rear-view mirror on his Chevy Impala. R. 175, l. 7 – 176, l. 19.

Ling gave inconsistent testimony about whether he knew appellant was the father of his decedent sister’s unborn child. At one point, Ling said, “I didn’t even know the guy before that [shooting].” R. 177, l. 19 – 178, l. 10.

Ling confirmed that he did not tell the police on the night of the shooting that he had fired his gun also. R. 187, l. 22 – 189, l. 1. Ling was at a subsequent meeting with law enforcement when he was told that appellant maintained he shot in self-defense, and the police asked Ling for his gun. Ling promised to turn over his weapon so it could be examined but he never did. The jury was ultimately given the verdict options of finding appellant guilty or not guilty by reason of self-defense. R. 430, l. 19 – 437, l. 4.

On cross-examination, Ling said he knew appellant because appellant had been banned from a club, the VFW Lounge, where he worked. Ling denied that he had pulled a gun on appellant at the night club on a prior occasion. Ling also denied he knew appellant had received a fifty-thousand-dollar settlement from an automobile accident, and that appellant had given “hundreds and hundreds and hundreds of dollars” to his decedent sister and to his mother. R. 191, l. 21 – 194, l. 20.

The decedent's mother, Deborah Ling, testified she was a nursing assistant at CNA. She later found out that her sixteen-year-old decedent daughter was in a relationship with appellant. She maintained that when she found out appellant was a much older man: "I talked to him one time after that, and I beg him [sic] when I find out what his age was, and he promised me that he was gonna stop."<sup>1</sup> R. 197, l. 13 – 199, l. 25. Deborah Ling testified her decedent daughter was standing by her "not far from the door" when her daughter got shot. She said she saw her son, Shamond Ling, get down in front of her Mercedes SUV at one point. R. 202, l. 11 – 203, l. 5.

Alex Williams of the Estill Police Department testified that appellant was located in Denmark, South Carolina, where his "white Ford F-150" company truck was located also. In addition, appellant's Honda was found with a bullet hole in the right driver's side door, and with the tires were "destroyed, just shredded" on a highway near Denmark. R. 282, l. 1 – 283, l. 6.

Williams acknowledged that he later met with Shamond Ling. Williams told Ling that the McKnight family had told him that appellant was only firing in self-defense that evening. He told Ling that he needed his firearm, so it could be tested. Ling promised to give Williams his gun for testing. However, Williams never received that firearm from Ling so it could be tested. R. 291, l. 1 – 301, l. 6.

### **Text Messages**

SLED agent Viann Brantley testified that she was able to recover the text messages from appellant's phone. R. 320, l. 17 – 322, l. 12. In all, Brantley recovered 830 pages of data from appellant's phone. The solicitor had Brantley read, over the defense's previous objection, some of the text messages for the jury, including: "We done, yo. That crack head can have you."

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<sup>1</sup> There was no evidence in this record that appellant ever admitted the decedent was his girlfriend, but the state introduced DNA evidence that appellant was the father of the decedent's unborn child. "99.99% of randomly-tested men would be excluded as the biological father." R. 365, l. 13-20.

Another text messages said “Die, birth; die, bitch,; die, bitch.” R. 323, l. 15 – 324, l. 11. Yet another message read, “I hate you, bitch,” “Die, bitch,” “That’s the crackhead baby,” and “Bitch, you done.” R. 323, l. 11 – 326, l. 7.

On cross-examination, the defense then had Brantley identify other text messages, which read, “Somewhere loving you,” “Good morning, my beautiful lady,” and “Bae, I love you.” R. 328, l. 13 – 330, l. 15. Brantley confirmed there were no text messages pulled from appellant’s phone for the month of August, 2017 or August 31, 2017, the day of the shooting. R. 331, ll. 15 –17.

Defense counsel argued to the jury that appellant shot at Shamond Ling in self-defense, and that it could not be determined from the evidence which bullet – from which gun – hit and killed the decedent and her unborn baby. R. 411,12 – 420, l. 20.

### **Discussion**

Rule 403, SCRE states that “although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, *confusion of the issues*, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” (emphasis added). Defense counsel correctly argued that the text messages in this case were too remote since the last of the text messages were exchanged at least two months before the fatal shooting incident.

Text messages containing threats and text messages showing a warm relationship between appellant and his decedent girlfriend were only going to confuse the jury and allow impermissible speculation. Here, the judge did not conduct any Rule 403, SCRE analysis on-the-record as to defense counsel’s argument and assertion that this evidence would cause

confusion of the issues in the minds of the jurors. See State v. Spears, 403 S.C. 247, 742 S.E.2d 878 (2013).

While an analysis being put on the record in Rule 403, SCRE cases usually involves the Rule 403 prong pertaining to the probative value of the evidence being substantially outweighed by its danger of unfair prejudice to the defendant, there is no reason why a confusion of the issues analysis should not also be put on the record for this Court to review. This Court has in the past remanded a case to the trial court for a State v. Colf, 337 S.C. 622, 629, 525 S.E.2d 246, 249 (2000), on the record analysis where it was, as here, lacking. Cf. State v. Scriven, 339 S.C. 333, 529 S.E.2d 71 (Ct. App. 2000)(remand for hearing on Rule 608(a)(1) analysis on the admissibility of prior convictions). The jury in this case was going to be confused by text messages threatening the decedent and by text messages with appellant expressing his love for the decedent.

Further, and importantly, defense counsel also argued that the threatening text messages were too remote to be admissible. The threatening text messages were more than two months old according to the solicitor. In State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999), the decedent was killed on March 10, 1995 after suffering blunt force trauma and dying in a fire determined to be an arson. The state introduced evidence from King's ex-wife that prior to their separation in October 1994 -- and again after they reconciled in 1995 -- that King stole cash from her purse, forged checks from her bank account, stole cash from her bank account, and stopped paying his share of the bills. The Supreme Court held that this remote evidence of King's thefts was not admissible for any purpose. The state in King sought to show that, because money was missing from the decedent's wallet at the time his body was found that King's thefts showed he

was constantly in need of money and willing to commit illegal acts to obtain money. However, that was remote inadmissible bad character propensity evidence.


As in State v. King, the threatening text messages in this case were certainly not part of the *res gestae*, as they were not necessary to a “full presentation” of the offense. See State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 360, 370-71 (1996). They were also remote since they were two and half months old. The state, as in King, want to paint appellant as a person of bad character who would kill a pregnant sixteen-year-old.

However, what made the inadmissible evidence worse in this case than in King was that the jury here had to consider whether the shooting was in self-defense. Consequently, gratuitously admitting evidence that appellant threatened the decedent with vague text messages months before the fatal shoot-out was even more prejudicial, and confusing. The jury in this case had to determine whether appellant acted in self-defense, and whether he therefore, rather than Ling, was the person actually returning fire. That was the only issue for the jury.

In sum, the admission of these remote, confusing text messages was highly prejudicial in this self-defense case, and appellant should be granted a new trial.

**CONCLUSION**

By reason of the foregoing arguments, appellant's conviction should be reversed and this case remanded to the Hampton County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of January, 2020.

STATE OF SOUTH CAROLINA

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Appeal from Hampton County

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PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Johnnie Lee McKnight states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Carmen T. Mullen, which was held on February 4 - 6, 2019, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Johnnie Lee McKnight.

Respectfully Submitted,

\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR APPELLANT

This 28th day of January, 2020.

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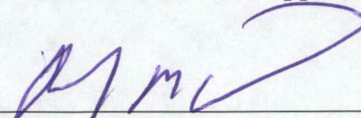
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Transcript of trial held February 4-6, 2019
- (3) Defendant's Exhibit #1 (8 CDs pertaining to the shooting)
- (4) State's Exhibit #32 (Text messages from the South Carolina Computer Crime Center)

I certify that this designation contains no matter which is irrelevant to this appeal.

January 28, 2020

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
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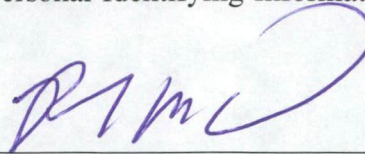
ATTORNEY FOR APPELLANT

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**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

January 28, 2020.



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Robert M. Dudek  
Chief Appellate Defender

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THE STATE,

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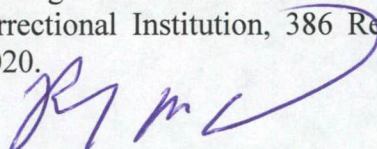
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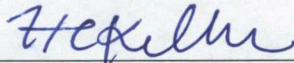
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders 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 Anders Brief of Appellant and Designation of Matter have been served on Johnnie Lee McKnight, 268238, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 28th day of January, 2020.



Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 28th day of January, 2020.

 (L.S)

Notary Public for South Carolina  
My Commission Expires: December 31, 2029.