

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Charleston County

Honorable Perry M. Buckner, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

GREGORY KYLE GREEN,

APPELLANT

APPELLATE CASE NO 2019-001924  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

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**SC Court of Appeals**

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**STATEMENT OF ISSUE ON APPEAL**

The trial judge erred in allowing appellant's facebook posts (state's exhibits 116, 122, 123, and 124) into evidence at trial because they lacked relevance and were more prejudicial than probative.

## **STATEMENT OF THE CASE**

Appellant Gregory Kyle Green was convicted of murder and possession of a weapon during the commission of a violent crime per jury trial held during the November 2019 term of the Charleston County General Sessions Court before Judge Perry M. Buckner, who sentenced him to an aggregate forty-year prison term. Attorneys Taylor J. Stewart and Teresa L. Norris represented appellant at trial, and Assistant Solicitors Richard Waring and White Sowards appeared on behalf of the state.

Appellant appealed his convictions and sentences. This brief follows.

## **STANDARD OF REVIEW**

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827; State v. Butler, 353 S.C. 383 577 S.E.2d 498 (S.C. Ct. App. 2003). The admission of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Pagan, 369 S.C.201, 631 S.E.2d 262 (2006). An abuse of discretion occurs when the conclusion of the trial court either lacks evidentiary support or are controlled by error of law. State v. Pagan, supra; State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645 (2013).

## ARGUMENT

The trial judge erred in allowing appellant's facebook posts (state's exhibits 116, 122, 123, and 124) into evidence at trial because they lacked relevance and were more prejudicial than probative.

The state's case against appellant consisted wholly of circumstantial evidence. Freeman Rivers was found dead in his home on June 8, 2017. Tr. 299, l. 16 – p. 302, l. 9. The autopsy report revealed that Rivers died from four bullet wounds to his head. Tr. 500, l. 1 – p. 508, l. 12.

At trial, Terrance Doucet testified that when he received a message that appellant needed a ride, then he (Doucet) went to a particular residence in North Charleston to pick-up appellant. Then, when appellant entered his (Doucet's) vehicle, Doucet noticed that appellant had blood on his shirt and was in possession of a firearm in his hand. Doucet admitted and that he suggested setting fire to Rivers' house after appellant said he left a "blunt lit" in the house. Tr. 112, l. 8 – p. 156, l. 9.

A cigarette butt was found in the trash outside Rivers' residence. Tr.326,l. 18–p 334, l. 3.

It was analyzed and the results showed that the butt contained the DNA of appellant and Rivers. Tr. 464, l. 8 – p. 467, l. 8. See Also Nov. 7<sup>th</sup> transcript at Tr. 16., l. 23 – p. 17, l. 22.

State's witnesses and Rivers' neighbors Johnathan Seabrook and Kendyl Rice both stated that they saw people going in and out of Rivers' house around 3 am on that morning and then witnessed Rivers' house on fire. Seabrook added that he saw a car that belonged to Doucet driving in the neighborhood at that same time. Tr. 228, l.7 – p. 242, l. 20; Tr. 267, l. 22 – p. 275, l. 8. Seabrook referenced the name Kone in connection with the car he

saw in the neighborhood on that morning.

Lanica Walker testified that Doucet told her that he had to pick-up a guy at around 3:45 am on the morning in question and that Doucet also told her that the male he picked up and entered his car was bloody. Walker stated that Doucet said he shot Rivers and that setting the fire was his suggestion. Then, Walker recanted and stated that Doucet did not state that he shot Rivers. Tr. 252, l. 3 – p. 259, l. 6.

Officer David Pritchard testified that he attended a proffer of Doucet, and that he showed Doucet a photographic layout then, and Doucet selected appellant's photograph from the line up apparently inferring that appellant was the perpetrator of the crimes. Tr. 347, l. 21 -p. 350, l. 10.

The defense presented no witnesses and appellant did not testify at trial.

The state's main theory of the case was that the killing of Rivers was the result of disrespect due to a failure to pay a debt the deceased owed to appellant. However, there was no evidentiary proof that neither this theory nor the assumption that the deceased owed money to appellant.

In support of the state's theory, the solicitor sought to enter appellant's facebook entries into evidence at trial for the jury to view. Police Officer Michael Sanchez testified that while investigating this case, he came across facebook posts made by appellant, aka Kone Ski Mask. Tr. 542, lines 8-16. Defense counsel objected to the facebook posts listed below entered as inadmissible in violation of Rule 403, SCRE. Tr. 542, lines 8-16.

- 1.) State's exhibit #116 is a viewing of appellant's Facebook profile as Kone Ski Mask screenshot picturing a body with a target at the heart. Tr. 543, lines 7-13; Tr. 550, l. 1 – p. 551, l. 11; Tr. 559, lines 1-21. .
- 2.) State's exhibit #122 says "those who don't know the value of loyalty won't understand the cost of betrayal. June 6, 2017. Tr546, lines 5-8; Tr. 556, lines 4-23.

3.) State's exhibit #123 on June 6, 2017 says "I cut people off with no hesitation, no explanation and no warning. If you do something phony...or if I feel you can't be trusted life is too short and I'm getting to old to be hanging with people who don't understand the concept of loyalty. Tr. 557, lines 15-20.

4.)State's exhibit 124 says I'm getting to old to be hanging with people who don't understand the concept of loyalty. I can't trust everybody. I can't love everybody. Tr. 546, 1.23-p. 547, 1.5.

Clearly, there was no evidence that neither a debt existed nor that appellant was angry over a debt. This was a fabricated theory extrapolated by the state's references from a jail call. To the contrary, the posts were appellant's references to abstract emotions in general regarding issues such as betrayal, loyalty, and eliminating fake people sans any connection to Rivers or any debt Rivers owed to him. There was no mention in the posts of money or a debt and the betrayal mentions could refer to any situation or issue. The imaginative theory was a loose connection to dots to interpret the imaginary thought that appellant had a motive to kill without any verification on the facebook posts to support this.

These posts were irrelevant. Rule 401, SCRE, states that evidence is relevant if it tends to make the existence of any fact alleged more or less probable. See State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986). Furthermore, even if evidence is relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. See Rule 403, SCRE. Evidence that is considered unfairly prejudicial, confuses the issues, or misleads the jury will not be admissible. Compare State v. Phillips, Opinion No. 27978 (S.C filed June 3, 2020). Here, the total lack of probative value of the facebook posts must be weighed against the unfair prejudice of the same. It was clearly a stretch of the imagination to interpret these facebook posts as corroborative evidence of a debt owed and a motive for the killing. Rather, the facebook posts depicted a negative portrayal of appellant as a potentially violent and reactive person who was hostile and predisposed to commit a criminal acts.

This lended credence to the ground for the objection to the posts because they painted an unfair, prejudicial, and false portrayal of appellant as one who would shoot to kill and that he shot and killed the deceased in this case. The trial judge erred in allowing the very inflammatory and prejudicial facebook posts into evidence at trial in violation of appellant's right to a fair trial in violation of the Fourteenth Amendment Due Process Clause.

### **CONCLUSION**

Based on the foregoing argument, appellant requests that his case be reversed and remanded to the lower court for a new proceeding.

s/Wanda H. Carter  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of September, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gregory Kyle Green states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Perry M. Buckner, which was held on , and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, She asks the Court to relieve her as counsel for Gregory Kyle Green.

Respectfully Submitted,

s/Wanda H. Carter

Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of September, 2020.

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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 dated November 4, 2019
- (3) Transcript dated November 5, 2019
- (4) Transcript dated November 6, 2019
- (5) Transcript dated November 7, 2019
- (6) State's Exhibit No. 103 (jail call transcript)
- (7) State's Exhibit Nos. 116, 122, 123, 124 (Facebook posts)
- (8) State's Exhibit Nos. 102 (jail call)
- (9) Court's Exhibit 5 and 6

I certify that this designation contains no matter which is irrelevant to this appeal.  
September 18, 2020

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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.”

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