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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Orangeburg County

Honorable G. Thomas Cooper, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

APPELLANT.

APPELLATE CASE NO. 2020-001612

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# ANDERS BRIEF OF APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

Did the trial court err in allowing a police officer to testify about the meaning of slang phrases used in text messages exchanged between appellant and his co-defendant?

## STATEMENT OF THE CASE

An Orangeburg County jury indicted appellant in November 2012 for murder. R. 797. On February 28, 2018, Appellant's conviction was reversed by the Supreme Court. State v. Samuel, 422 S.C. 596, 813 S.E.2d 487 (2018). On November 30, 2020, appellant was re-tried before the Honorable G. Thomas Cooper and a jury. R. 1. Donald N. Sorenson and Chelsea A. Glover represented the State. R. 1. Thomas R. Sims represented appellant. R. 1. The jury convicted appellant of murder. R. 670, l. 9 – 23. Judge Cooper sentenced appellant to thirty-seven years' imprisonment. R. 691, l. 14 – 18. This appeal follows.

## STANDARD OF REVIEW

"'The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.'" State v. Fripp, 396 S.C. 434, 438, 721 S.E.2d 465, 467 (Ct. App. 2012) (quoting State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006)).

## ARGUMENT

The trial court erred in allowing a police officer to testify about the meaning of slang phrases used in text messages exchanged between appellant and his co-defendant.

The State's key piece of evidence against appellant in this murder case was a series of text messages. R. 793 – 800. (State's Ex. 97). The text messages were sent by appellant to his co-defendant, Alan Fields (a/k/a "Gator"). R. 513, l. 5 – 12. Appellant texted Gator while he was at the home of his relative, Taneris Hamilton ("Hamilton"). R. 503, l. 1 – 6. The State's theory was that appellant and Gator planned the robbery and murder of Hamilton. R. 75, l. 17 – 82, l. 21. Appellant testified that he was threatened by Gator into supplying him with information about Hamilton and that appellant left the scene before Gator and another man murdered Hamilton. R. 504, l. 6 – 515, l. 25.

Hamilton was a drug dealer. R. 91, l. 24 – 92, l. 2. The solicitor admitted in her opening statement that "Taneris Hamilton was no saint." R. 75, l. 17. Shameka Wolfe ("Wolfe") was the decedent's girlfriend and lived with him at the time of the shooting. R. 88, l. 10 – 23. Hamilton sold weed, crack, and cocaine. R. 92, l. 1 – 5. Wolfe owned two handguns which were in the house. R. 92, l. 12 – 94, l. 24. The night of the shooting, Hamilton had one of the guns on his person and the other was in his bedroom under a pillow. R. 101, l. 1 – 6.

Appellant frequently went to Hamilton's house. R. 96, l. 1 – 5. They were cousins. R. 96, l. 5 – 7. Appellant sometimes spent the night at Hamilton's house. R. 96, l. 10 – 11. Appellant was at Hamilton's house on the night of the murder playing video games and using his phone. R. 99, l. 17 – 25.

Steven Johnson ("Johnson"), Hamilton's "best friend," came over to the house that evening. R. 280, l. 1 – 15. Johnson came to the house to buy cocaine and marijuana from

Hamilton. R. 100, l. 13 – 17. Johnson and appellant were still at the house when Wolfe left to get Chinese food take-out. R. 98, l. 15 – 18. Johnson said Hamilton had a gun and that appellant had a gun sitting in a chair near him. R. 286, l. 7 – 14. Johnson left shortly after Wolfe and appellant was still at the house with Hamilton. R. 287, l. 10 – 15.

When Wolfe returned from the restaurant, she found Hamilton shot to death inside the house. R. 107, l. 12 – 16. She ran to a gas station and called the police. R. 109, l. 13 – 19. After the police arrived, appellant came to the scene, consoled Wolfe, and told her Johnson killed Hamilton. R. 110, l. 18 – 120, l. 25. Wolfe (and the police) saw that appellant's car had its windows broken and multiple bullet holes. R. 110, l. 18 – 120, l. 25. R. 150, l. 15 – 18.

Appellant voluntarily went to the police station to give a statement. R. 151, l. 2 – 156, l. 15. Appellant told the police that when he left Hamilton's house, he saw Johnson and another man go into the house. R. 158, l. 14 – 161, l. 22. Appellant heard gunshots inside the house, then saw Johnson and the other man come outside. R. 158, l. 14 – 161, l. 22. They fired at appellant as he left in his car. R. 158, l. 14 – 161, l. 22. Appellant returned fire. R. 158, l. 14 – 161, l. 22.

Appellant subsequently told the police that Gator and Johnson shot Hamilton. R. 195, l. 7 – 16. R. 312, l. 19 – 318, l. 2. In a later statement, appellant admitted being in Hamilton's house texting Gator. R. 398, l. 14 – 407, l. 21. Johnson and Gator robbed and murdered Hamilton. R. 398, l. 14 – 407, l. 21. Appellant shot up his own truck at a nearby bakery. R. 398, l. 14 – 407, l. 21. Gator repeatedly threatened appellant, including threatening to kill him. R. 398, l. 14 – 407, l. 21. Appellant was afraid for the safety of his family. R. 398, l. 14 – 407, l. 21. The police agreed Gator was a violent criminal who had been in prison. R. 408, l. 20 – 409, l. 25. R. 447, l. 24 – 454, l. 7.

The police obtained cell phone records and the content of text messages and an exhibit with the content of the back-and-forth between Gator and appellant placed in chronological order was entered into evidence without objection through Officer James Shumpert ("Shumpert"). R. 430, l. 6 – 431, l. 15. R. 793 – 800. (State's Ex. 97). Before having Shumpert read the text messages to the jury, the solicitor confirmed the officer had learned "some of the slang and some of the vernacular that typically younger people use." R. 431, l. 25 – 432, l. 4. The solicitor then added, "I may get you to kind of touch on some of that." R. 433, l. 5 – 7.

Appellant objected. R. 433, l. 9 – 11. Defense counsel stated that he objected "to characterizations and interpretations. The document speaks for itself." R. 433, l. 9 – 11. The court said it was an "interesting question" and noted that Shumpert had not been qualified as an expert. R. 433, l. 12 – 16. The solicitor then attempted to provide a foundation for Shumpert's opinions on the meaning of words in the text messages. R. 433, l. 17 – 435, l. 6. Shumpert testified about his experience in law enforcement and at the Department of Juvenile Justice. R. 433, l. 22 – 435, l. 6.

Defense counsel continued to press his argument that Shumpert could not give opinions on how to interpret the text messages. R. 435, l. 8 – 436, l. 8. Defense counsel explained that the texts were written phonetically and that Shumpert was not qualified "to testify about the phonetics and how it is written when they picked it up and began to type it when it's typed out. That's a different story altogether." R. 435, l. 8 – 436, l. 8. The trial judge overruled the objection, finding that Shumpert had "a sufficient background" and that defense counsel could cross-examine Shumpert on his interpretations. R. 435, l. 8 – 436, l. 8. The court did not qualify Shumpert as an expert. R. 435, l. 8 – 436, l. 8.

Shumpert then defined nine essential terms in the text messages. R. 435, l. 8 – 436, l. 8. Shumpert told the jury his definition of the following:

1. Lick: "doing some type of criminal activity or doing some type of crime"
2. Crib: "a home/residence where somebody sleeps at"
3. Taking him out: "to kill someone"
4. Three Pound: "a .357"
5. Whip: "vehicle"
6. Chirp: "phone"
7. Biddy: "female"
8. Strap: "a weapon"
9. Swerve: "leave," as in depart

R. 435, l. 8 – 436, l. 8. Shumpert read the text messages and interpreted the meanings for the jury. R. 435, l. 8 – 446, l. 7. Shumpert told the jury that appellant's messages "Let's do that lick" and "Imma take him out" indicated a plan to rob and kill Hamilton. R. 435, l. 8 – 446, l. 7.

The text messages are interspersed with phone calls that are both answered and go to voicemail. R. 793 – 800. (State's Ex. 97). Defense counsel confirmed on cross-examination that Shumpert had no idea what was said during the phone calls. R. 460, l. 14 – 465, l. 14.

Appellant testified that Gator repeatedly threatened him during these calls. R. 504, l. 10 – 521, l. 13. Appellant admitted he intended to steal Hamilton's drugs and money, but he never intended for Gator to rob and kill Hamilton. R. 504, l. 10 – 521, l. 13. Appellant tried to back out of the situation. R. 504, l. 10 – 521, l. 13. Gator then threatened him. R. 504, l. 10 – 521, l. 13. Appellant ultimately did back out and left before Hamilton died. R. 504, l. 10 – 521, l. 13. Appellant also confirmed that another man, Hillard Pinkney, assisted Gator with the robbery and

not Johnson. R. 504, l. 10 – 521, l. 13. Appellant said he realized that whether he was in jail "or on the streets, I still have to fight for my life" and that Gator left him no alternatives. R. 504, l. 10 – 521, l. 13.

The trial court erred in allowing Shumpert to interpret the text messages for the jury. See Rules 701, 702, SCRE. Rule 701 governs opinions by lay witnesses. Rule 701, SCRE. Rule 701 limits lay witness opinion testimony to matters "rationally based on the perception of the witness" and that "do not require special knowledge, skill, experience, or training." Rule 701, SCRE. Shumpert could not perceive what appellant or Gator meant when they wrote the messages. Rule 701 therefore prohibited Shumpert's testimony as an improper lay opinion.

In S.C. Dep't of Revenue v. Meenaxi, Inc., 417 S.C. 639, 657, 790 S.E.2d 792, 801 (Ct. App. 2016), the Court concluded that allowing a SLED agent to testify about the interpretation of legal terms in an alcohol permit was error. In Meenaxi, the agent testified he had training in alcoholic beverage licenses and had done "thousands" of inspections. Id. The agent's testimony about his experience is similar to Shumpert's testimony about his experience with slang and vernacular. Allowing Shumpert's testimony was similarly error.

The Colorado Court of Appeals found admission of a police officer's testimony about the definition of a specialized slang drug term was improper expert testimony. People v. Bryant, 428 P.3d 669, 681-83 (Colo. Ct. App. 2018). The court differentiated between slang terms that had entered the common vernacular and specialized terms that were not evident to someone with ordinary knowledge. Id. Citing cases from other jurisdictions, the court found that such testimony is expert rather than lay testimony. Id. The trial judge in Bryant erred in letting a police officer testify about the meaning of "sherm" because the officer "should have been disclosed and qualified as an expert witness." Id.

The terms "lick, whip, three pound" et al. are not within the common knowledge of ordinary people. As in Bryant, Shumpert was not qualified as an expert. Therefore allowing his testimony about the meaning of such key terms was error and highly prejudicial. Appellant disputed Shumpert's definition of "lick." R. 470, l. 23 – 473, l. 7. Appellant said a "lick can mean anything." R. 470, l. 23 – 473, l. 7. He said that if he meant "robbery," he would have used the term "robbery." R. 470, l. 23 – 473, l. 7. "Lick" can also mean "let's turn up." R. 470, l. 23 – 473, l. 7. The definition of "lick" was disputed and crucial to appellant's involvement in the case. But see State v. Miller, 433 S.C. 613, n.4, 861 S.E.2d 373, n.4 (Ct. App. 2021). This Court should reverse.

## **CONCLUSION**

For the foregoing reasons, this Court should reverse appellant's conviction and grant him a new trial.

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of October, 2021.

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Lamont Antonio Samuel states:

1. He is 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 G. Thomas Cooper, which was held on November 30, 2020 and December 1-3, 2020, 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 Lamont Antonio Samuel.

Respectfully Submitted,

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

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APPELLATE CASE NO. 2020-001612

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

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

(1) Transcript dated November 30, 2020
(2) Trial Transcript dated December 1 – 3, 2020
(3) Court's Exhibit No. 3 (Hearing Transcript dated November 5, 2020)
(4) Court's Exhibit No. 4 (Hearing Transcript dated February 12, 2020)
(5) State's Exhibit Nos. 2, 5, 8, 10, 12, and 97
(6) Indictment
(7) Sentence sheet

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

s/David Alexander
Appellate Defender

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ATTORNEY FOR APPELLANT

This 27th day of October, 2021.

**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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This 27th day of October, 2021.