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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Kershaw County
Honorable William A. McKinnon, Circuit Court Judge
Appellate Case No. 2022-000211

THE STATE,

Respondent,

vs.

GREGG PICKRELL,

Petitioner.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit

Post Office Box 192
Columbia, SC 29202
(803) 576-1800

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

In September of 2014, Petitioner Gregg Pickrell was arrested following an investigation into the death of a man who was fatally shot in the back inside her residence. In August of 2015, the Kershaw County Grand Jury indicted Pickrell for one count of murder. In August of 2016, Pickrell filed a motion seeking immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. On January 26, 2017, a pre-trial hearing was conducted on the motion in the Kershaw County Court of General Sessions with the Honorable Alison Renee Lee, circuit court judge, presiding. Subsequent to the two-day hearing, the immunity hearing judge denied Pickrell's request for immunity from prosecution through an order filed on January 3, 2018. Thereafter, on May 29, 2018, a jury trial was commenced in the Kershaw County Court of General Sessions with the Honorable William A. McKinnon, circuit court judge, presiding. At the conclusion of the six-day trial, the jury convicted Pickrell as indicted. Following the verdict, the trial judge sentenced Pickrell to a term of imprisonment of thirty-five years. Pickrell then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing and oral argument—issued a published opinion unanimously affirming Pickrell's conviction. State v. Pickrell, 435 S.C. 417, 867 S.E.2d 465 (Ct. App. 2021). Thereafter, Pickrell petitioned the Court of Appeals for rehearing, and the petition was denied. Pickrell then filed a petition for a writ of certiorari in the Supreme Court, and that petition was granted on September 8, 2022.

STATEMENT OF FACTS

Just before 9:00 a.m. on the morning of September 11, 2014, Pickrell called 911 to report a shooting at her small residence, which was situated on a 123-acre horse farm located in Rembert, South Carolina. (R. pp. 57-59; p. 189; p. 565; pp. 897-898; p. 918; p. 933; pp. 935-936; p. 1051; pp. 1269-1275). In response, law enforcement officers and medical personnel rapidly responded to the scene. (R. p. 189; p. 256; p. 266; pp. 438-439; pp. 499-500; pp. 560-561; p. 600; p. 714; pp. 897-898; p. 944; pp. 952-953). Once there, the emergency responders encountered Pickrell outside, and she repeatedly asserted she did not need any medical treatment while describing herself as "okay." (R. pp. 501-502; p. 603; p. 901; p. 945; pp. 955-956; p. 960). Meanwhile, inside the residence, they found the victim, Robert Lamont Demary ("Victim"), dead on the floor of a bedroom with a single gunshot entry wound to his back and no weapons nearby. (R. pp. 269-270; p. 444; p. 449; pp. 600-601; pp. 721-722; p. 903; p. 906; p. 964; p. 966; p. 968).

Following those discoveries, Pickrell agreed to discuss what happened at the Kershaw County Sheriff's Office, and she initially spoke with Investigator Richard DeVors. (R. pp. 255-258; p. 497; p. 505; pp. 509-510; pp. 1066-1069; Trl. St. Ex. # 69 (Recording of Interviews)). During that interview, Pickrell, who was sixty-one years old, indicated she knew Victim, who was thirty-three years old, through his past employment at her farm, and she claimed they had been engaged in a sexual relationship for some time. (R. p. 1071; p. 1076; p. 1097). She further reported Victim was abusive towards her, had been so for years, had threatened her, and had begun to use "gangsta" talk around her.[1] (R. p. 1076; pp. 1079-1080; p. 1086; p. 1090). Regarding the incident itself, Pickrell asserted she left money for Victim in her mailbox on the night of September 10, 2014, and he subsequently unexpectedly showed up at her residence's

[1] In describing the abuse inflicted by Victim, Pickrell referenced an incident in Louisiana that had occurred roughly six years before the shooting. (R. pp. 1079-1082).

door while intoxicated.[2] (R. pp. 1084-1085; pp. 1102-1103). Pickrell alleged she then invited Victim inside, they began drinking vodka together, and Victim suddenly threw her, which caused her to spill her drink. (R. pp. 1102-1103; pp. 1105-1106). After that, Pickrell asserted they had dinner together, Victim fell asleep in a chair, and she got into bed around 4:00 a.m. or 4:30 a.m. (R. p. 1101; p. 1103; pp. 1108-1112). Subsequent to that, Pickrell indicated Victim got into bed with her while nude, they proceeded to have sex, and they went back to sleep after doing so. (R. pp. 1117-1118). Then, when they awakened a few hours later, Pickrell claimed she informed Victim they needed to go because her mother was coming over to vaccinate horses, he began having a "fit" because one of his earrings was missing, he threatened to kill her, and he started angrily searching for his earring in the vicinity of the bed. (R. pp. 1112-1113; pp. 1118-1123; pp. 1136-1138; pp. 1145-1146). As he searched, Pickrell indicated she retrieved a gun in order to try to encourage Victim to leave, pointed it at him, and told him to "just come on." (R. p. 1137; p. 1146). At that point, Pickrell alleged Victim made a movement, "[she] just shot the gun," Victim "went down," and she then quickly called 911 to report what had occurred. (R. pp. 1138-1140; pp. 1142-1143; p. 1147).

After Pickrell provided that account, Pickrell's attorney arrived at the sheriff's office, and Investigator DeVors—who personally did not yet know Victim had been shot in the back—discontinued the interview so Pickrell and her attorney could speak. (R. pp. 258-261; p. 504; p. 511; p. 540; p. 553; pp. 1158-1159). Once she had done so, Pickrell initiated a conversation with Investigator Rick Bailey, who *was* aware Victim had been shot in the back, to provide additional information about the events that had transpired. (R. p. 261; p. 279; p. 512; p. 564; p. 566; pp.

[2] Through subsequent analysis of Pickrell's and Victim's phones, investigators were able to determine Pickrell was fully aware Victim would be coming to her residence on the night of September 10, 2014. (R. pp. 636-636; p. 641; pp. 757-758).

578-579; pp. 1163-1164; Trl. St. Ex. # 69). During that second interview, Pickrell repeated her claims about being abused and threatened by Victim for years. (R. pp. 1168-1175; p. 1183; p. 1190). Beyond that, Pickrell again reported Victim unexpectedly arrived at her house on the night before the shooting, and she noted she invited him in for drinks and dinner after his surprise appearance. (R. pp. 1191-1192; p. 1197; pp. 1232-1233). Once he came inside, Pickrell asserted Victim threw her on a desk and held her down, they proceeded to have dinner together, and they subsequently engaged in rough consensual sex. (R. p. 1192; p. 1194; pp. 1254-1256). Then, on the next morning, Pickrell, who expressed embarrassment about being with Victim, indicated Victim began angrily looking for a missing earring despite her telling him she needed him to leave since her mother was coming over. (R. pp. 1199-1203; p. 1240; pp. 1242-1245). As Victim searched for his earring, Pickrell claimed she retrieved her gun, pointed it at Victim for the purpose of getting him to leave, and told him *they* needed to go. (R. pp. 1208-1210; p. 1243). At that point, Pickrell alleged Victim told her she was not going to shoot him before moving or lunging towards her, and she stated the shooting "just happened" after that. (R. p. 578; pp. 1210-1211; p. 1220; p. 1222; p. 1249; Trl. St. Ex. # 69). Furthermore, Pickrell insisted she did what she did that morning because she thought it was "the end" for her. (R. p. 1238).

Ultimately, as a result of what was uncovered—including the fact Victim was killed by a gunshot from behind—in the investigation of the shooting, Pickrell was arrested at her home later the next day. (R. pp. 207-208; pp. 210-211; pp. 740-741; pp. 763-764; p. 976; pp. 978-982; p. 995; p. 1010). Subsequently, Pickrell was indicted for Victim's murder, and she proceeded to trial after unsuccessfully seeking immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. (R. p. 8; p. 45; p. 881; pp. 1050-1063). At the

conclusion of trial, the jury convicted Pickrell as indicted, and the trial judge sentenced her to a thirty-five-year term of imprisonment. (R. p. 855; p. 864).

Following her conviction, Pickrell appealed. State v. Pickrell, 435 S.C. 417, 420-421, 867 S.E.2d 465, 467 (Ct. App. 2021). On appeal, the Court of Appeals affirmed. Id. In doing so, the Court considered—amongst other things—Pickrell's appellate challenge to testimony elicited from Investigator Bailey indicating Pickrell's interview statements caused him concern based on his knowledge Victim had been shot in the back. Id. at 445, 867 S.E.2d at 480. Upon analyzing the matter, the Court concluded the investigator's response—even assuming it could properly be challenged on appeal—did not constitute improper lay opinion testimony since it merely conveyed his personal perceptions from the interview and, even if improperly admitted, was harmless in light of the fact it was cumulative to other unobjected-to testimony from both Investigator Bailey *and* another officer. Id. at 445-447, 867 S.E.2d at 480-481. Next, the Court considered Pickrell's appellate challenge to non-expert testimony elicited from a SLED agent regarding a cartridge case found at the crime scene. Id. at 447, 867 S.E.2d at 481. Upon analyzing the matter, the Court determined any error in the admission of that testimony was harmless because it was: (1) confusing, somewhat contradictory, and undermined by the agent's own testimony; (2) refuted by subsequently-presented *expert* testimony; and (3) insignificant and irrelevant to any critical issue in dispute. Id. at 448-450, 867 S.E.2d at 482-483.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling on appeal, the appellate court must give great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."). Significantly, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear *prejudicial* abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's evidentiary ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

I.

The Court of Appeals correctly rejected Pickrell's appellate challenge to the trial judge's evidentiary ruling admitting testimony from an investigator about the investigator's perceptions during his interview with Pickrell because: (1) the challenged testimony constituted proper lay opinion testimony since it was rationally based on the investigator's own perceptions, could have been helpful to the jury, and did not require any special knowledge or expertise; and (2) any possible error in the challenged testimony's admission was entirely harmless since it was wholly cumulative in nature to other unobjected-to testimony presented during trial, including to virtually-identical testimony elicited by defense counsel during his cross-examination of the investigator.

Pickrell contends the Court of Appeals reversibly erred by affirming the trial judge's decision refusing to exclude a portion of Investigator Bailey's trial testimony. Specifically, Pickrell contends Investigator Bailey should not have been permitted to testify he had trouble understanding during his interview with Pickrell how she could have shot Victim while Victim was in the process of lunging at her in light of the fact Victim had been shot in the back. In support of that contention, Pickrell maintains the investigator's testimony in that regard constituted improper opinion evidence and was prejudicial to her case because it "went to the heart of" her self-defense claim. Contrary to Pickrell's contention, the investigator's testimony did not constitute improper lay opinion testimony because it was rationally based on the investigator's own perceptions, could have been helpful to the jury in understanding things like why certain investigative actions were undertaken both during and after the interview, and did not require any special knowledge or expertise. As a result, the trial judge did not abuse his broad discretion by admitting that testimony. Furthermore, even assuming the testimony's admission was somehow improper, any conceivable error was entirely harmless because the challenged portion of the investigator's testimony was cumulative to other unobjected-to testimony presented during trial, including to virtually-identical testimony from Investigator

Bailey that was elicited by defense counsel. Under such circumstances, the Court of Appeals correctly affirmed on appeal. Pickrell's conviction should be affirmed.

Relevant Facts

During the course of Pickrell's trial, evidence and testimony was presented establishing Pickrell, who did not have any significant injuries after the incident and personally claimed to be "okay," fatally shot Victim in the back from a distance of at least two feet away while he was near a bed inside her small residence. (R. p. 483; p. 502; p. 579; p. 586; p. 603; pp. 616-617; p. 903; pp. 910-911; pp. 944-945; pp. 955-956; p. 960; p. 966; p. 968; p. 976; pp. 978-979; p. 1010). Additionally, evidence and testimony was presented establishing Victim's body was found on the floor leaning up against the bed with Victim's only injury being a single gunshot wound to the back. (R. p. 449; pp. 721-722; p. 964; p. 966; p. 968; p. 976; p. 979; p. 984; p. 1011). Moreover, evidence and testimony was presented establishing Pickrell claimed to have been physically abused by Victim between midnight and 5:00 a.m. while Victim was not fatally shot until hours later at around 9:00 a.m. (R. p. 614; pp. 654-655). Furthermore, Pickrell's accounts of the shooting were presented to the jury through the recordings of her investigative interviews. (R. pp. 514-515; p. 567). During the second of those interviews, Pickrell claimed Victim was moving like he was coming towards her at the time she fired the fatal shot, and she appeared to physically gesture with her arms outstretched towards her interviewer in order to demonstrate Victim's supposed actions towards her at that time. (Trl. St. Ex. # 69).

Importantly, testimony was also presented from Dr. Janice Ross, who had forty-two years of pathology experience and was a board-certified expert forensic pathologist, in regard to the results of Victim's autopsy. (R. pp. 971-972). During her testimony, Dr. Ross confirmed the shooter's gun was positioned towards Victim's back at the time Victim was shot in that part of

his body, which was a fact that sharply contradicted Pickrell's accounts of the shooting. (R. p. 979; p. 990; p. 1010; Trl. St. Ex. # 69). Dr. Ross further opined Victim would have been slightly bent over when he was shot from behind if the shooter had been in a standing position while Victim could have been shot from above if he had been lying face down with his shooter standing over him. (R. pp. 979-980). Beyond that, Dr. Ross expressly indicated she could not in any way say if Victim was moving at the time he was shot, but she did indicate his death would have occurred within minutes of him being shot. (R. p. 995; pp. 997-998).

In addition to that, Investigator DeVors and Investigator Bailey each testified about their roles in the investigation of the shooting and their respective interviews with Pickrell. (R. pp. 504-506; p. 509; pp. 558-595). During his testimony, Investigator DeVors explained he could never get a direct answer from Pickrell as to why she shot Victim despite his efforts to elicit that information, and he confirmed he did not have a clear understanding of what happened even after speaking with her. (R. pp. 541-543). Similarly, during Investigator Bailey's testimony, Investigator Bailey indicated Pickrell did not provide many specifics about the incident to him, and, as he recounted the details of the interview, the following exchange occurred:

> [Solicitor]: And you asked her several times why she pulled the trigger?
>
> [Investigator Bailey]: Uh-huh.
>
> [Solicitor]: Correct?
>
> [Investigator Bailey]: Uh-huh.
>
> [Solicitor]: Why did you ask her so many times?
>
> [Investigator Bailey]: I was trying to determine why she pulled the trigger. What would have made her do that. Was she in fear or was there something going on, was he coming after her. I wanted to know why she pulled the trigger.

> [Solicitor]: And did she ever at all tell you that she was in the midst of being assaulted when she shot the trigger?
>
> [Investigator Bailey]: One thing that concerned me, and I wasn't there to make a determination on guilt or innocence, was she, in the video, I think you may have seen, she said, He kind of came at me like that. The thing that kind of bothered me about that was I had already been told the point of impact of the bullet, and it didn't match up.
>
> [Solicitor]: What do you mean it didn't match up?
>
> [Investigator Bailey]: I found it hard to believe if he was coming at her --

(R. p. 571; pp. 576-577). At that point, defense counsel objected, arguing—incorrectly—the investigator "was about ready to give a conclusion about based on what he has heard as to why she may have shot him."[3] (R. p. 577). The trial judge then inquired as to what had been asked, and the solicitor explained she had simply asked the investigator why he was concerned by Pickrell's statements during the interview. (R. p. 578). Upon hearing that explanation, the trial judge ruled he would permit the question, and the investigator proceeded to give the following response to it:

> During the interview, I wanted to get as much detail as what happened that led up to the event of actually pulling the trigger. Her response was that he pulled up and he kind of lunged at her. She never said, He came at me, but she motioned that he kind of lunged towards her.

[3] On appeal, Pickrell contended Investigator Bailey's testimony was inadmissible because it constituted an opinion about *how* the shooting occurred. (App. Br. pp. 21-29). However, defense counsel did not raise such an argument during trial and, instead, argued Investigator Bailey's testimony should not be permitted because he was purportedly going to offer a conclusion as to *why* Pickrell shot her victim. (R. p. 578). Significantly, because the argument Pickrell raised on appeal was neither raised nor ruled upon during trial, Pickrell's appellate issue with Investigator Bailey's testimony was not properly preserved for appellate review and could not appropriately be considered or addressed on appeal, which constitutes a compelling reason for Pickrell's current appellate allegation of error concerning the investigator's testimony to be rejected. See State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A] party may not argue one ground at trial and an alternate ground on appeal.").

> Prior to the interview, I had knowledge that the deceased had been -- actually, the point of the impact of the bullet was in the back. I had trouble understanding how if he was lunging forward how he was shot in the back.

(R. p. 578). After that, defense counsel quickly followed up on cross-examination by asking Investigator Bailey to give his opinion on whether the victim had to be charging at Pickrell in order for her to shoot him, and—without objection—Investigator Bailey responded: "I find it hard to believe that I was told that he was lunging at her, but he was shot in the back. That's where I had the issue." (R. p. 579).

Subsequent to that testimony, Investigator Miles Taylor from the Kershaw County Sheriff's Office also offered testimony about his role in the investigation into Victim's death and confirmed he obtained an arrest warrant for Pickrell based on what was uncovered. (R. pp. 710-764). Significantly, during his testimony, Investigator Taylor offered testimony highly similar to Investigator Bailey's and noted—without objection—he was concerned by the fact Pickrell reported Victim was lunging at her when she shot him, which the investigator asserted was "totally" inconsistent with the evidence establishing Victim was shot in the back. (R. pp. 763-764).

Analysis

In South Carolina, a lay witness is permitted to offer opinion testimony when the witness's opinion or inference: (1) is rationally based on the witness's perception; (2) is helpful to a clear understanding of the witness's testimony or to the determination of a fact in issue; and (3) does not require special knowledge, skill, experience, or training. Rule 701, SCRE. Significantly, "conclusions or opinions of laymen should be rejected only when they are superfluous in the sense that they will be of *no* value to the jury." State v. McClinton, 265 S.C.

171, 176-177, 217 S.E.2d 584, 586 (1975) (emphasis added). Furthermore, "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE.

In the case sub judice, Investigator Bailey—in recounting the details of his interview with Pickrell and explaining why he repeatedly asked her about her reason for shooting Victim—testified he was concerned by Pickrell's responses during the interview because her claim Victim was lunging at her seemed to him to be inconsistent with the physical evidence establishing Victim had been shot in the back. Significantly, Investigator Bailey's testimony in that regard was based on his personal perceptions of Pickrell's statements and *gestures* during the interview coupled with his personal knowledge of the fact Victim had a gunshot wound to the back and, thus, was clearly rationally based on his own perceptions. See United States v. Parkhurst, 865 F.3d 509, 515 (7th Cir. 2017) (characterizing a detective's testimony about the interpretations he drew from a conversation with a defendant as "classic Rule 701 lay-witness testimony"). Additionally, that perception-based testimony could have been helpful to the jury in better and more fully understanding Pickrell's responses during the interview because Investigator Bailey—unlike the jurors—was seated directly across from Pickrell in the interview room and, therefore, was in the best possible position to evaluate and interpret her demeanor, statements, and gestures as she spoke with him. See State v. Fripp, 396 S.C. 434, 439-440, 721 S.E.2d 465, 467-468 (Ct. App. 2012) (finding the trial judge properly permitted two witnesses to offer lay witness opinion testimony identifying Fripp from surveillance footage based on their knowledge of him due to the fact the testimony was rationally based on their perceptions and could have aided the jurors by providing a better perspective of the evidence before them); cf. Robinson v. United States, 797 A.2d 698, 707 (D.C. 2002) ("Whalen's 'opinion' testimony was based on his personal

observations of Harris' demeanor and on the fact that he had received contradictory information from another witness that Harris was outside, not inside, when the shooting occurred. The trial judge could, and did, reasonably conclude that Whalen's testimony would be helpful to the jury because it explained why he questioned Harris a second time for information about Frank Blakeney's murder."). Moreover, that testimony was additionally helpful towards aiding the jury in understanding the investigative decisions made during and after the interview, including in regard to why the questioning was conducted in the manner that it was conducted and why Pickrell was ultimately arrested as the investigation moved forward.[4] See Davis v. People, 310 P.3d 58, 63 (Colo. 2013) ("[A] detective may testify about his or her assessments of interviewee credibility when that testimony is offered to provide context for the detective's interrogation tactics and investigative decisions."); cf. State v. Houser, 768 S.E.2d 626, 632 (N.C. Ct. App. 2015) (concluding the trial judge did not err by admitting testimony from an investigating officer indicating the defendant's account of the incident was inconsistent with the physical evidence because that testimony was proper in light of the fact it was rationally based on the officer's perceptions and was helpful in providing a clear understanding to the jury of the officer's investigative process and reasons for undertaking certain actions). Finally, that testimony was based solely on—and merely conveyed—the logical and obvious inferences Investigator Bailey drew from the things he personally perceived without relying on any expert, scientific, or specialized knowledge. See United States v. Dempsey, 629 F. App'x 223, 227-228 (3d Cir. 2015) (holding the district court judge did not err by admitting officer testimony indicating

[4] Demonstrating the necessity of the jury receiving accurate—and direct—information about the circumstances and details of Investigator Bailey's interview of Pickrell from the investigator himself, defense counsel appeared to imply during her closing argument Pickrell had not, in fact, claimed during the interview Victim was lunging at her at the time of the shooting even after Investigator Bailey directly testified to the contrary during trial. (R. pp. 810-811).

Dempsey was not truthful during an interrogation because that testimony was rationally based on the officers' personal perceptions, could have been helpful to the jury, and did not require any special knowledge or expertise). Under those circumstances, Investigator Bailey's testimony constituted proper lay opinion testimony since it met all the necessary requirements for admission, and, accordingly, the trial judge—just as the Court of Appeals correctly concluded—did not abuse his broad discretion by admitting it. See State v. Williams, 321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) ("Conclusions or opinions of laymen should be rejected only when they are superfluous in the sense that they will be of no value to the jury.").

Beyond that, even assuming both the trial judge and the Court of Appeals were somehow wrong in their assessment of the challenged testimony, any conceivable error committed by the trial judge through his admission of that testimony was nevertheless harmless beyond a reasonable doubt in light of the other evidence presented during the course of trial. Demonstrating that fact, the challenged portion of Investigator Bailey's testimony was entirely cumulative to virtually-identical testimony defense counsel himself elicited from Investigator Bailey on cross-examination. See State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) ("An objection to the admission of evidence is waived where the same or similar evidence has been elicited by the objector."); cf. State v. Bookter, 93 S.C. 97, __, 76 S.E. 110, 110-111 (1912) ("Without conceding that the question was improper or objectionable, it cannot avail appellant, because the same witness and others, both for the state and defense, answered questions of similar import without objection. The rule adopted by this court is that, where incompetent testimony upon a point is admitted without objection, other testimony of like character, from the same or another witness, though admitted against timely objection, cannot avail as ground for a new trial."). Likewise, Investigator Bailey's testimony was entirely cumulative to unobjected-to

testimony from Investigator *Taylor* conveying the exact same concern caused by the fact Pickrell's statements seemed to be inconsistent with the physical evidence. Bookter, 93 S.C. at __, 76 S.E. at 110-111; see State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983) ("It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence."); cf. State v. Imbraguglio, 987 So. 2d 257, 267 (La. Ct. App. 2008) ("In the present case, the officer's [opinion] testimony [about Imbraguglio's explanations for the victim's injuries] was cumulative. Several other witnesses testified that the [Imbraguglio]'s explanations did not make sense when compared to the injuries. Thus, the officer's testimony was not so prejudicial that it constituted reversible error."). Furthermore, even without consideration of the investigators' cumulative unobjected-to testimony, Dr. Ross's testimony directly established the shooter was positioned behind Victim when Victim was shot in the back based on the physical characteristics of the gunshot wound, which meant the jury received an expert conclusion that established Victim's injuries were not consistent with Pickrell's claimed version of events. McFarlane, 279 S.C. at 330, 306 S.E.2d at 613; cf. State v. Lawrence, 264 S.C. 3, 17, 212 S.E.2d 52, 58 (1974) (finding any error in the admission of testimony that may have been beyond a witness's "competence" was harmless "because the fact stated *was otherwise abundantly clear on the record*" (emphasis added)). Accordingly, any conceivable error in the admission of Investigator Bailey's testimony was harmless beyond a reasonable doubt, and the Court of Appeals correctly affirmed on appeal. See State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) (recognizing an error must be prejudicial to warrant reversal on appeal). Pickrell's conviction should be affirmed.

II.

The Court of Appeals correctly concluded any possible error in the admission of non-expert opinion testimony from a law enforcement agent regarding the purported significance of the location where a fired cartridge case was found after the shooting was entirely harmless and could not have contributed to the outcome of Pickrell's case because that testimony was refuted by expert testimony that was subsequently presented, was insignificant and unimportant when considered in the context of the case as a whole, and was not significant or relevant to any critical issue in dispute.

Pickrell contends the Court of Appeals reversibly erred by affirming the admission during trial of a law enforcement agent's non-expert opinion testimony regarding the purported significance of the location where she found a fired cartridge case after the shooting. In support of that contention, Pickrell maintains the agent's testimony constituted improper lay opinion testimony and was "very prejudicial." Critically, even assuming the trial judge erred by admitting the agent's testimony, any error in admitting that testimony was harmless beyond a reasonable doubt because the testimony was subsequently refuted by *expert* testimony explaining the positioning of the cartridge case was essentially meaningless based on the specific characteristics of the gun used in the shooting, the testimony was insignificant and unimportant when viewed in the context of the case as a whole, and the testimony was not significant to any critical issue in dispute. Under those circumstances, the admission of the agent's testimony—just as the Court of Appeals accurately concluded—could not have contributed to the outcome of Pickrell's case and, therefore, was harmless even if erroneous. Pickrell's conviction should be affirmed.

Relevant Facts

During the course of Pickrell's trial, testimony and evidence was presented establishing Victim's body was found on the floor of a tiny bedroom in Pickrell's small residence slumped up against a bed. (R. p. 444; p. 449; p. 483; p. 564; p. 579; p. 586; pp. 721-722; p. 903; pp. 907-

908; pp. 910-911; p. 964; p. 968; p. 976; pp. 978-979; pp. 1010-1011). Additionally, testimony was presented establishing the location where Victim's body was found was only roughly ten feet from the compact residence's front door while Victim was shot in the back from a distance of at least two feet away. (R. p. 451; p. 483). Furthermore, recordings of Pickrell's interview statements following the killing were played for the jury, and, through those statements, the jury heard Pickrell's claim she was standing in the bedroom *doorway* at the time she shot Victim, who—according to Pickrell's remarks and gestures during one of the two interviews—was purportedly in the midst of lunging or moving towards her at that time. (R. pp. 514-515; p. 567; p. 578; Trl. St. Ex. # 69).

In addition to that testimony and evidence, Agent Dawn Claycomb, a crime scene investigator from the South Carolina State Law Enforcement Division ("SLED"), testified about her involvement in the investigation into the shooting. (R. pp. 434-436; pp. 438-439). During her testimony, Agent Claycomb explained her role involved photographing, documenting, and collecting evidence at the crime scene, and she indicated she carried out those tasks at the small residence where the shooting occurred on the morning of the incident. (R. pp. 435-436; pp. 438-443; pp. 466-468; p. 483). In carrying out those tasks, Agent Claycomb noted she found Victim's body seated on the floor next to the bed, located a small amount of blood on Victim's shirt, and discovered no other blood or blood trails nearby. (R. pp. 449-451). Likewise, Agent Claycomb stated she discovered a gun on a table that was located just inside the residence's front door, and she explained she found a fired cartridge case in a laundry basket just inside the bedroom where Victim was killed. (R. p. 447; p. 449; p. 457; p. 484).

As Agent Claycomb's testimony continued, the solicitor asked Agent Claycomb if she found anything indicating where the shooter was positioned, and the agent affirmed she did not.

(R. p. 452). Agent Claycomb further explained a cartridge case's location after a shooting does *not* necessarily reveal where the shooter was positioned since a cartridge case can be ejected in multiple directions, but, somewhat contradictorily, she followed that explanation by asserting a cartridge case's location could potentially eliminate areas where the shooter was positioned or "give you an idea" of a shooter's position. (R. p. 452). The following exchange then occurred:

> [Solicitor]: In this case, the shell casing was found right by the doorway, I believe you said?
>
> [Agent Claycomb]: Correct. Right when you walk in the bedroom door, there was -- the first small chest in a laundry basket.
>
> [Solicitor]: So what did that eliminate for you as to where the shooting would have occurred?
>
> [Agent Claycomb]: Well, saying --

(R. pp. 452-453). At that point, defense counsel objected, arguing the question went to matter outside the witness's "scope" if it was related to trajectory while further noting an actual expert would be testifying on the subject later during the trial. (R. p. 453). In response, the solicitor indicated she was not asking about trajectory but, instead, was only attempting to ask what places could be eliminated as the location where the shooting "could have come from." (R. p. 453). Upon considering the matter, the trial judge indicated he would allow the question but instructed the solicitor to "limit it to the shell casing." (R. p. 453). The questioning then resumed, and the following exchange occurred:

> [Solicitor]: What areas did it eliminate that the shooting could have happened at?
>
> [Agent Claycomb]: Within the bedroom, saying that if the cartridge case was not moved or tampered with at that point.
>
> [Solicitor]: And all I meant was, in other words, it didn't happen in the living room?

> [Agent Claycomb]: Correct. If you would find the cartridge case in the bedroom, yeah, it would not occur in the living room had it not been touched or moved, anything like that.

(R. pp. 453-454).

Thereafter, as the trial proceeded forward, Agent James Green, a forensic firearm examiner from SLED and an expert in tool mark and firearm identification, offered expert testimony to the jury about his analysis of Pickrell's gun, the cartridge case recovered at the scene, and the fired bullet that had been recovered from Victim's body during the autopsy. (R. pp. 687; p. 690-693; p. 707). During the course of his expert testimony, Agent Green explained he determined through his analysis the recovered bullet and cartridge case had been fired from Pickrell's pistol. (R. p. 449; p. 469; pp. 690-693; p. 707; p. 982). Furthermore, Agent Green explained there was no possible way to tell where a cartridge case might go when it is ejected from Pickrell's gun due to the gun's tip-up barrel and open slide, and he indicated he had personally observed cartridge cases fired from guns like Pickrell's go forwards, backwards, to the left, and to the right. (R. p. 706).

Subsequently, at the conclusion of the evidentiary phase of the trial, the parties presented their closing arguments to the jury. (R. pp. 775-822). During the course of those closing arguments, the solicitors' remarks were heavily focused on the inconsistencies in Pickrell's statements after the killing along with the fact Pickrell's unarmed victim was shot squarely in the back, which was fundamentally inconsistent with Pickrell's claim Victim was lunging at her at the time of the shooting. (R. pp. 775-794; pp. 816-822). Contrastingly, defense counsel focused her remarks on Pickrell's claims of past abuse involving Victim, text messages Victim had sent at various times prior to the incident, and Pickrell's apparent injuries after the shooting. (R. pp. 794-816). Notably though, neither the solicitor nor defense counsel ever made any references to

Agent Claycomb's testimony during their arguments, and no one ever suggested to the jury through their remarks the specific spot in the small residence where Pickrell was positioned was in any way significant—or even relevant—to the outcome of the case. (R. pp. 775-822).

Analysis

If an error occurs during trial in regard to the admission of lay or expert opinion testimony, such an error does not automatically require reversal and, instead, may be harmless. See State v. Santiago, 370 S.C. 153, 165, 634 S.E.2d 23, 29 (Ct. App. 2006) (recognizing an evidentiary ruling regarding expert testimony may be harmless under the circumstances). The question of whether an error is harmless is necessarily dependent on the particular circumstances of each individual case. State v. Salley, 398 S.C. 160, 172, 727 S.E.2d 740, 746 (2012). Importantly, "[n]o definite rule of law governs this finding; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Reeves, 301 S.C. 191, 193-194, 391 S.E.2d 241, 243 (1990); see State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (recognizing an error is harmless "if its impact is minimal in the context of the entire record"). Ultimately, if an error does not contribute to the verdict, that error is harmless beyond a reasonable doubt. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008); see Yates v. Evatt, 500 U.S. 391, 403 (1991) ("To say that an error did not 'contribute' to the ensuing verdict is not, of course, to say that the jury was totally unaware of that feature of the trial later held to have been erroneous. . . . To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record."), disapproved of on other grounds by Estelle v. McGuire, 502 U.S. 62 (1991); see also Thomasko v. Poole, 349 S.C. 7, 17,

561 S.E.2d 597, 602 (2002) ("It is well established that an appellant seeking reversal of a decision by the trial court must show both error and prejudice.").

In the case sub judice, Agent Claycomb, who was not offered as an expert witness, primarily testified during trial about the various things she found when she processed the crime scene after the shooting, including about a cartridge case she located just inside the bedroom where Victim's body was discovered. However, in addition to that testimony, Agent Claycomb stated—after initially indicating a cartridge case's location does not necessarily reveal where a shooter was positioned—a cartridge case's location could potentially eliminate areas where a shooter may have been when a shot was fired. Subsequent to that, Agent Claycomb responded over defense counsel's objection to a question asking what areas were eliminated by the fact the cartridge case was found just inside Pickrell's bedroom by answering "[w]ithin the bedroom." The solicitor then sought clarification of that confusing response by asking if the fact the cartridge case was not found in the living room meant the shooting did not occur there, and Agent Claycomb affirmed that was correct.[5] Thus, based on her clarifying response, Agent Claycomb appeared to suggest a cartridge case would be expected to be found in the room where a shooting had occurred as opposed to in a room where the shooting had *not* occurred.

Significantly, to the extent Agent Claycomb's testimony in that regard was improper, any error in its admission was entirely harmless when that testimony is evaluated in the context of Pickrell's case as a whole. Initially, that is true because Agent Claycomb's testimony was later followed by—and refuted by—*expert* testimony from Agent Green, who—unlike Agent Claycomb—directly analyzed the gun used in the killing. Through his expert testimony, Agent Green explained a cartridge case ejected by Pickrell's gun could potentially go in *any* direction

[5] On appeal, Pickrell readily acknowledged Agent Claycomb's testimony was "very confusing." (App. Br. p. 31).

based on the specific characteristics of that weapon, and, as a result, he made it clear to the jury the location where the cartridge case was found inside Pickrell's residence was essentially meaningless towards determining where the shooter had been positioned, which effectively eliminated any possibility Agent Claycomb's testimony could have had any meaningful impact. Cf. State v. Clayton, 570 So. 2d 519, 526 (La. Ct. App. 1990) (concluding an error in the admission of inadmissible lay opinion testimony from a detective regarding the conclusions he drew from a cartridge found at the crime scene was harmless beyond a reasonable doubt due to the fact expert testimony from a forensic scientist was also presented to the jury and "effectively refuted" the improper lay opinion offered by the detective). Moreover, Agent Claycomb's testimony itself was unimportant and insignificant because: (1) it appeared to communicate the obvious conclusion a cartridge case would be expected to be found in the vicinity of where a shooting occurred; and (2) it did not offer any opinions that could have been interpreted as refuting or contradicting the possibility the fatal shot was fired from the bedroom *doorway*—which was not a location "[w]ithin the bedroom" or in the living room—as Pickrell had claimed after the incident. See Chapman v. California, 386 U.S. 18, 22 (1967) (recognizing even constitutional errors can be harmless and not warranting of reversal when they are unimportant and insignificant based on the circumstances of a particular case). Finally, demonstrating the insignificance and immateriality of Agent Claycomb's testimony, neither the solicitor nor defense counsel referenced it in any way during their closing arguments and never asked the jury to draw any conclusions from it, which strongly showed it was not truly relevant to any critical issue actually in dispute. See State v. Kelsey, 331 S.C. 50, 70, 502 S.E.2d 63, 73 (1998) (concluding any prejudice that resulted from the admission of improper testimony was "minimal" and did "not warrant reversal" when that improper testimony did not "directly" relate

to the critical issue the jury needed to decide in the case); cf. State v. Ellis, 345 S.C. 175, 178-179, 547 S.E.2d 490, 491 (2001) (considering the fact the solicitor repeatedly referred to improperly-admitted testimony during his closing argument in finding the admission of the testimony constituted reversible error).

Under those circumstances, Agent Claycomb's testimony about the significance of the cartridge case's location—even if improperly admitted—could not have had any conceivable impact on the outcome of Pickrell's case, which hinged not on where Pickrell was specifically standing at the time she fired the fatal shot but on whether her actions were justified when she shot her unarmed victim *in his back*. See State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); see also United States v. Churchwell, 807 F.3d 107, 119 (5th Cir. 2015) ("Merely stating, as Churchwell does, that Churchwell's supervisor's opinion 'was devastating to the defense' is insufficient to show that this testimony contributed to a guilty verdict."). Accordingly, any possible error in its admission was—just as the Court of Appeals correctly concluded—entirely harmless and resulted in no prejudice whatsoever to Pickrell. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."). Pickrell's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the decision of the Court of Appeals and the judgment and conviction of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit

BY:_____
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR RESPONDENT

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