

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Spartanburg County
Hon. J. Derham Cole, Circuit Court Judge
Appellate Case No. 2022-001505

RECEIVED

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S.C. SUPREME COURT

The State,

Respondent,

v.

Lance Antonio Brewton,

Petitioner.

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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STATEMENT OF QUESTIONS PRESENTED

- I. The Court of Appeals properly affirmed the trial court's decision refusing to charge involuntary manslaughter and accident.
- II. The Court of Appeals properly affirmed the trial court's decision refusing to allow Petitioner to testify regarding voices and witchcraft when a large portion of his testimony was based on inadmissible hearsay and, while he claimed it was necessary for his defense to explain his flight, he admitted in his proffer the voices had nothing to do with his decision to flee the scene.
- III. The Court of Appeals properly concluded any challenge to the trial judge's decision to allow impeachment by prior convictions was not preserved for review on appeal. Additionally, any error is entirely harmless in light of the evidence in the record.

STATEMENT OF THE CASE

Procedural History

In October 2017, a Spartanburg County grand jury indicted Petitioner for murder, possession of a weapon during the commission of a violent crime, failure to stop for a blue light (first offense), driving under suspension, and escape. On August 20, 2018, Petitioner proceeded to a jury trial before the Honorable J. Derham Cole. Before the jury was sworn, Petitioner pled guilty to failure to stop for a blue light, driving under suspension, and escape and was sentenced to respective sentences of three years' incarceration, thirty days' incarceration, and four years' incarceration. After a trial, the jury found Petitioner guilty of murder and possession of a weapon charges. The trial judge sentenced Petitioner to a sentence of life without parole on the murder charge, and found the mandatory five-year sentence for the possession of a weapon charge inapplicable given the sentence for murder.

Petitioner timely filed a notice of appeal. After briefing and oral argument, the Court of Appeals affirmed Petitioner's convictions and sentences. See State v. Brewton, 437 S.C. 44, 876 S.E.2d 141 (Ct. App. 2022). Petitioner served and filed a Petition for Rehearing and the State filed a Return. The Petition was granted, the Court of Appeals withdrew the original opinion, and the Court issued a new slightly revised opinion. Petitioner served and filed a second Petition for Rehearing, which was denied on September 22, 2022.

Factual Background

On August 13, 2018, a motions hearing was held on Petitioner's case. The state moved, in limine, to prevent the defense from presenting any evidence pertaining to Petitioner's alleged mental illness. The State presented a mental evaluation performed on Petitioner in relation to a federal charge Petitioner incurred nine days prior to the charged crime. The evaluation,

performed after the incident, found Petitioner competent to stand trial and lacking any mental illness. Thus, the State argued Petitioner's unsupported claims regarding potential mental illness were not relevant and highly prejudicial. (R.p.4, line 4–R.p.5, line 9; R.pp.390–400)

In response, trial counsel noted it was not the defense's argument that the "voices" took away Petitioner's legal responsibility for any actions Petitioner took that day, particularly Petitioner shooting Victim. The defense sought to introduce the evidence of the "voices" as context for "many of [Petitioner's] actions that day" so that he may present a full defense to the jury. Trial counsel believed presentation of such evidence was particularly important to counter the State's presentation of evidence of Petitioner's flight from law enforcement after the shooting. (R.p.5, line 10–R.p.7, line 8)

The trial judge informed the parties that he was not inclined to admit the evidence of Petitioner's voices because, due to the defense's admissions that such evidence was not used to challenge Petitioner's culpability, they were not relevant to the case. Further, such evidence would be misleading to a jury because it would lead jurors to infer Petitioner suffered from ongoing "mental illness or some kind of defective condition," although there was no evidence or assertion by the defense of such. However, the trial judge informed the parties it could proffer the evidence during trial and he would make a final ruling on the motion at that time. (R.p.16, lines 5–22)

At the beginning of trial, before the jury was sworn, Petitioner pled guilty to escape, driving under suspension, and failure to stop for a blue light. During his plea, Petitioner acknowledged he understood the charges against him and that he did not have a defense to any of those charges. During its presentation of the facts, the State again submitted the mental evaluation performed on Petitioner, which established he was competent and free of any mental

illnesses. Again, Petitioner acknowledged this evidence and did not challenge its veracity. The trial judge accepted his pleas and sentenced him accordingly. (R.p.44, line 1–R.p.65, line 16)

Kevin Schuerman was the eyewitness to the shooting. Schuerman was friends with Victim's family and was particularly close with Victim. He arrived at Victim's house on the day of the shooting and found Petitioner, who he knew as Victim's on-again-off-again boyfriend, standing outside and talking on the phone. Schuerman noted Petitioner appeared "erratic" and "on edge." Schuerman left Petitioner outside and entered the home to speak with Victim. Eventually, the pair, along with Petitioner, decided to make a trip to a nearby gas station for refreshments. The three entered into the only vehicle at the house, Victim's mother's black Honda Civic, with Victim getting into the driver's seat of her vehicle, Schuerman taking the front passenger seat, and Petitioner taking the seat behind Schuerman. Before the group could leave, Petitioner requested to be let out of the vehicle, at which point he went to the driver's side of the car and told Victim he wished to drive, causing an argument between the two. Schuerman was looking away from the couple, trying to avoid involvement in the argument when he heard a gunshot. Schuerman at first believed he was shot and quickly exited the vehicle and ran behind Victim's garage. After Schuerman discovered he was unharmed, he looked back to the vehicle to see Petitioner pulling Victim out of the car. After watching Petitioner enter the vehicle and drive away, Schuerman ran to Victim, called 9-1-1, and tried to manage her bleeding with a towel. When officers began arriving at the scene, Schuerman informed officers that both Petitioner and Victim had possibly been under the effects of drugs at the time of the shooting, likely methamphetamine or heroin. While speaking with officers, Schuerman noticed Victim's mother's car drive by the house and informed officers of such. As they tried to stop the vehicle,

Schuerman saw it go off the road and cut through the yards of nearby homes in an effort to escape the situation. (R.p.83, line 13–R.p.114, line 24)

Officer Christian Stewart with the South Carolina Highway Patrol found Petitioner driving the black Civic a short distance from Victim’s house and initiated a traffic stop by turning on his blue lights. Officer Stewart pursued Petitioner as he drove through yards and refused to stop for nearly an hour in time and approximately twenty-three miles in distance. During the chase, Petitioner drove at speeds as high as eighty to ninety miles per hour. The pursuit ended when Petitioner collided with a vehicle in the driveway of a home at 126 Darby Place in Greenville County, later identified as Petitioner’s house. (R.p.116, line 1–R.p.125, line 12)

At the conclusion of the State’s case-in-chief, Petitioner decided to testify in his own defense. The parties decided to proffer Petitioner’s testimony regarding his “belief” that Victim’s mother used witchcraft on him. Petitioner claimed he believed Victim’s mother practiced Witchcraft, although she denied it, because the mother’s friend “Aaron” was put under such a spell which caused him to hear voices in his head. Petitioner also claimed he believed he had been affected by such magic “off and on” for “eight or ten months,” and that Victim confirmed her mother was “familiar” with such magic. Petitioner alleged he was hearing voices in his head the day of the shooting which told him his “family was being murdered.” Petitioner claimed the voices were the reason for many of his actions that day: getting into the backseat of the vehicle, leaving the scene of the crime, but they were not a factor in him shooting Victim. After Petitioner shot Victim and attempted pursuit of a cement truck he thought would bury his family, he returned to the scene of the shooting and saw officers. At this point, Petitioner did not stop for officers because he possessed drugs on his person. Petitioner later clarified the “voices”

did not play any part in his refusal to stop for police once they began pursuit. (R.p.260, line 16–R.p.271, line 18)

After hearing the parties' arguments, the trial judge determined Petitioner was not permitted to testify he believed he was under the influence of witchcraft or that he heard voices which caused him to leave the scene based on the dangers of unfair prejudice to the State and the great risk of confusing the jury. The trial judge based his ruling on the following: (1) the parties agreed prior to trial that Petitioner was not asserting any defense related to mental disability or illness; (2) testimony related to witchcraft and "voices" would be confusing to a jury because it would lead to a "reasonable inference" in jurors' minds that Petitioner suffers from some type of mental illness or defect even though it was not asserted by the defense; (3) Petitioner had already pled guilty to failing to stop for a blue light and admitted full responsibility for it without claiming any defense; (4) Petitioner testified his escape from police was related to use and possession of narcotics; (5) Petitioner's testimony regarding witchcraft was based largely upon hearsay. However, the trial judge ruled Petitioner could testify he was fearful and felt he needed to leave the scene of the crime based on his instincts or "something within him." (R.p.275, line 2–R.p.277, line 9)

Following the trial judge's ruling and his explanation to Petitioner of his right to testify, the trial judge revisited the admissibility of Petitioner's 1999 and 2008 convictions. The trial judge informed the parties he believed both convictions were admissible; the later conviction and sentence occurred within ten years of the charged crime, and the earlier conviction was part of a "continuous course of conduct" with the latter, meaning neither were "remote" under the rules. Further, even if they were remote, the probative value of the convictions substantially outweighed the danger of unfair prejudice. Trial counsel again argued that the earlier conviction

was too remote and that the probative value of the convictions did not outweigh the danger of unfair prejudice because there was limited value to attacking Petitioner's credibility. The State, noting trial counsel's concerns, offered to refer to the two crimes as "crimes of dishonesty" instead of common-law robbery. The trial judge agreed to the change in terminology, and trial counsel failed to object to it. The parties also discussed how the State could question Petitioner regarding his ability to carry a firearm and agreed the State could ask Petitioner whether he understood, at the time of the shooting, "he was not lawfully able to possess a firearm." (R.p.282, line 24–R.p.286, line 24)

During his trial testimony, Petitioner admitted he was using drugs on the day of the shooting. After Schuerman arrived at Victim's home, it was Petitioner who suggested that the three of them go to the gas station. After the three got into Victim's car, Victim began applying makeup. Petitioner, impatient, asked Victim if he could drive. When Victim did not respond, Petitioner exited the vehicle. Petitioner realized his gun had fallen out of his pocket and onto the backseat, so he picked it up and walked to the driver's side door. Petitioner reached the driver's side door, but Victim had still not provided Petitioner with permission to drive the vehicle. Petitioner reached into the car to "grab the keys" from Victim, but she resisted and pushed his hand back, at which time the gun went off. After he left, Petitioner refused to stop for police because he had drugs on his person and was scared he was going to be shot. In fact, his fear of being shot was why he fled all the way to his house, so that his family could witness the arrest. (R.p.287, line 10–R.p.298, line 18)

As to why Petitioner was carrying a gun that day, he claimed he possessed a gun because he was both a drug dealer and a drug addict and needed to protect himself. However, Petitioner was well aware that it was illegal for him to possess a gun. Finally, at the end of his direct

examination and before the State could do so, trial counsel asked Petitioner whether he had been convicted of two crimes of dishonesty in his past, both of which Petitioner acknowledged. (R.p.293, line 14–R.p.294, line 7; R.p.298, line 19–R.p.299, line 4)

On cross-examination, Petitioner admitted to having an argument over who would drive, but not an “angry argument.” Further, when he reached for Victim’s keys, he was holding the gun not at his side, but in the middle of his body, aimed towards Victim when he went for the keys. When asked how he obtained the illegal gun, Petitioner stated he purchased it from his friend “Curtis,” but that he did not know Curtis’s last name or where he lived. On the subject of drug use, Petitioner admitted to using drugs the day of and in the days leading to the shooting, specifically “meth and heroin.” In fact, Petitioner had been on a drug “binge” and had been unable to sleep for over three days at the time of the shooting. (R.p.299, line 14–R.p.315, line 7)

ARGUMENT

I. The Court of Appeals properly affirmed the trial court's decision refusing to charge involuntary manslaughter and accident.

The Court of Appeals correctly found Petitioner was not entitled to a jury instruction on either accident or involuntary manslaughter. Petitioner was not acting in self-defense and could not lawfully possess a gun. His illegal possession proximately caused the victim's death. Alternatively, based on his own testimony, Petitioner was attempting to carjack the victim at the time she was shot and, therefore, he could not be entitled to either an accident or involuntary manslaughter charge.

Standard of Review

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)). "In general, the trial court is required to charge only the current and correct law of South Carolina." Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). "A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (quoting State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989)).

"Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21. "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (citations omitted). "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "In

reviewing jury charges for error, [the Court] must consider the court’s jury charge as a whole in light of the evidence and issues presented at trial.” Brandt, 393 S.C. at 549, 713 S.E.2d at 603 (quoting State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2013)). “Jury instructions should be designed to enlighten the jury and aid it in arriving at a correct verdict.” State v. Stukes, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016) (citing State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). “Regardless of whether the charge is a correct statement of the law, instructions which confuse or mislead the jury are erroneous.” Id.

Merits

The law to be charged is determined by the evidence presented at trial. The trial judge is to charge the jury on a lesser included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed. State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996) (internal citation omitted); see also, State v. Gilmore, 396 S.C. 72, 76, 719 S.E.2d 688, 690 (Ct. App. 2011) (“If there is evidence in the record from which the jury could infer the defendant is guilty of the lesser-included offense, rather than the crime charged, the trial judge must instruct the jury on the lesser-included offense.”).

Under South Carolina, “murder” is “the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. § 16-3-10 (2015). “Malice aforethought” encompasses four separate mental states, involving both general intent and specific intent: (1) the intent to kill, (2) the intent to inflict grievous bodily harm, (3) extremely reckless indifference to the value of human life, or (4) the intent to commit a dangerous felony. State v. Smith, 425 S.C. 20, 29, 819 S.E.2d 187, 191 (Ct. App. 2018); see also Black’s Law Dictionary (11th ed. 2019);

Involuntary manslaughter is defined as the unintentional killing of another while engaged in either: (1) an unlawful act, not a felony or naturally tending to cause death or great bodily

injury, or (2) a lawful act committed with a reckless disregard for the safety of others. See, e.g. State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014). As this Court has noted, “the essence of involuntary manslaughter is the involuntary nature of the killing.” State v. Gibson, 390 S.C.347, 357, 701 S.E.2d 766, 771 (Ct. App. 2010). “To warrant a jury charge on involuntary manslaughter, there must be some evidence the killing was unintentional.” State v. Murray, 404 S.C. 300, 303, 744 S.E.2d 607, 609 (Ct. App. 2013).

For a homicide to be excused on the basis of accident, “it must be shown the killing was unintentional, the defendant was acting lawfully, and due care was exercised in the handling of the weapon.” State v. Burriss, 334 S.C. 256, 259, 513 S.E.2d 104, 106 (1999). Notably, a person may be legally prohibited from possessing a firearm but may be found to be acting “lawfully” for the purposes of the defense of accident if that person properly armed himself at the time of the shooting, but the victim was shot by accident through the unintentional discharge of the gun. See State v. Goodson, 312 S.C. 278, 281, 440 S.E.2d 370, 372 (1994). However, when a defendant’s unlawful possession of a weapon is the proximate cause of the difficulty, and not “merely incidental” to the lawful act of arming oneself in self-defense, a defendant is still prohibited from claiming either self-defense or accident at trial. See id.

As discussed, in order to receive a charge on accident, Petitioner must be acting with due care. It is impossible to argue he operated the gun in this case with due care when he pointed a loaded gun with no safety inside a car vehicle window at the victim and it went off merely because she pushed his hand away. As a result, there is no doubt the trial court properly denied the accident instruction.

Additionally, accident is the lack of criminal intent. In order to be convicted of murder, the jury had to find Petitioner acted with malice aforethought—criminal intent. A separate

charge on accident was not necessary because if the jury concluded Petitioner acted without any criminal intent, it could not have concluded him guilty of murder—especially in light of the trial court’s extensive charge on murder and malice. (R.367-369).

Petitioner was not entitled to an involuntary manslaughter charge because he was 1) carjacking the victim and 2) in unlawful possession of a weapon. As a result, he certainly was not engaged in a lawful activity. Further, he was engaged in two unlawful activities, both of which are felonies and, therefore preclude a charge for involuntary manslaughter.

While the Court of Appeals did not rule on carjacking, Petitioner’s own testimony supports the conclusion he was involved in a carjacking at the time of the victim being shot. Pursuant to S.C. Code Ann. § 16-3-1075(B), “A person is guilty of the felony of carjacking who takes, or attempts to take, a motor vehicle from another person by force and violence or by intimidation while the person is operating the vehicle or while the person is in the vehicle.” The victim was clearly in the vehicle and in the driver’s seat at the time she was shot. Under Petitioner’s own statement of the facts, he had been in an argument with the victim of who was going to drive. There is no indication in the record or in Petitioner’s own testimony he was going to be allowed to drive the vehicle at that time. Instead, the victim’s actions clearly indicate a contrary decision on her part as she swatted Petitioner’s hand away as he reached into a window to try and take her keys away from her. His actions constituted the crime of carjacking and, as such, his actions were clearly unlawful and precluded the charge of involuntary manslaughter.

The Court of Appeals also properly concluded the charge on involuntary manslaughter was precluded because Petitioner’s unlawful possession of the weapon was a proximate cause of the death of the victim. The Court correctly noted Petitioner never claimed he was acting in self-

defense or otherwise lawfully armed himself at the time the victim was shot. Additionally, there is zero evidence in the record of a need to arm himself in self-defense. Instead, he always acknowledged he did not rightfully possess the pistol, possessed the gun while being sleep deprived after a multi-day drug binge, held the gun in his hand while reaching into her car to take away her keys against her clear will—as evidenced by the fact she swatted his hand and attempted to push it back out the window—and fired the fatal shot.

Additionally, the Court of Appeals correctly found this case was similar to the facts and subject the same analysis used by Justice Toal in State v. Goodson, 312 S.C. 278, 281, 440 S.E.2d 370, 372 (1994). Petitioner was on drugs, clumsily held the gun in his hand while arguing with the victim, and he still held the gun in his hand pointed directly at the victim when he reached into the car to take the victim's keys. His unlawful actions were clearly the proximate cause of the victim's death. Petitioner's attempts to assert his felon status is the only issue relevant to a determination of proximate cause are without merit. It is his unlawful possession of a weapon that made a difference and, when as here he is not lawfully entitled to arm himself and he shoots someone while in unlawful possession of the weapon, it is the proximate cause of their death.

Accordingly, the Court of Appeals properly affirmed the trial court's refusal to charge both involuntary manslaughter and accident.

II. The Court of Appeals properly affirmed the trial court’s decision refusing to allow Petitioner to testify regarding voices and witchcraft when a large portion of his testimony was based on inadmissible hearsay and, while he claimed it was necessary for his defense to explain his flight, he admitted in his proffer the voices had nothing to do with his decision to flee the scene.

The Court of Appeals correctly found the trial court properly excluded Petitioner’s proffered testimony regarding witchcraft and hearing voices as it was predominantly inadmissible hearsay, not relevant to his defense, and unfairly prejudicial due to confusing the jury on the claims being made. Petitioner’s own testimony precludes the argument that the testimony was relevant and any discussion of hearing voices or other possible mental illness has the possibility to confusing the jury regarding whether the defendant is seeking to present an overall excuse for his actions.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). “The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” 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.

“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.” State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). “Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury’s verdict.” State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

Merits

The evidence sought to be admitted in this case was not relevant given the basis Petitioner's counsel argued it was admissible and it was prejudicial based on the possibility of confusing the jury. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (defining relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"). If a piece of evidence could assist the jury in arriving at the truth of an issue, it is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). However, even 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." Rule 403, SCRE.

Much of the testimony he sought to admit was blatant hearsay and inadmissible. He seems to assert that his right to present a defense overrides any evidentiary rules. However, the United States Supreme Court has provided:

State and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. This latitude, however, has limits. Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. This right is abridged by evidence rules that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve.

Holmes v. South Carolina, 547 U.S. 319, 324 (2006) (internal quotation marks and citations omitted). The Court continued:

While the Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury.

Id. at 326. Certainly, hearsay would be considered another well-established, non-arbitrary evidentiary rule which can be applied to even limit defense testimony. As a result, Petitioner does not have an unfettered right to testify to what would otherwise be inadmissible under the Rules of Evidence.

Neither Petitioner nor his counsel maintained the voices he sought to testify about caused him to commit the shooting. At no time did he contend the voices precluded him from going to trial or affect his competency to stand trial on the murder charge. He did not assert at the time of the commission of the act constituting the offense, as a result of mental disease or defect, he lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. Finally, he never asserted he knew the difference but lacked the ability to conform his actions or conduct to the requirements of law.

Instead, his counsel only maintained the evidence of witchcraft, spells, and voices would be admitted as a defense or explanation of his flight from the scene. Petitioner initially left the scene claiming he was following a cement truck that was going to kill his family. However, he returned to the scene. At this point, he was pursued by law enforcement. Instead of stopping, Petitioner took off through yards and neighborhood to avoid capture by authorities. This is the primary flight evidence, once he returned to the scene and clearly knew authorities were seeking

him related to the shooting, that the State sought to admit against Petitioner as evidence of consciousness of guilty.

Petitioner's own testimony indicated that the witchcraft or voices played no role in his fleeing from the scene to avoid authorities, and instead, it resulted from his possession of drugs or his "intuition." (R.268. 270). This is basically the same testimony presented at trial when he indicated he "panicked" because "I had drugs on me." (R.297). As a matter of fact, when directly asked during the proffer whether the voices had any impact on his decision not to stop, he replied "No, Sir." Petitioner testified: "**when I was on the chase I wasn't hearing nothing.**" (R.270) (emphasis added). Because he admitted the voices were not the cause of his fleeing from authorities, the testimony was not relevant as a defense to the evidence the State sought to admit as consciousness of guilt. As a result, even if he had a right to present a defense through otherwise inadmissible testimony, the testimony he complains was excluded in this case was entirely inapplicable and irrelevant to his defense.

Accordingly, the trial court did not err in excluding Petitioner's proffered testimony because it was either inadmissible hearsay or not relevant to his defense.

III. The Court of Appeals properly concluded any challenge to the trial judge's decision to allow impeachment by prior convictions was not preserved for review on appeal. Additionally, any error is entirely harmless in light of the evidence in the record.

The Court of Appeals correctly found the issue to be waived at trial. Further, any possible error was entirely harmless in light of the evidence in the record.

Standard of Review

The admission or exclusion of evidence is within the discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000).

"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." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

Preservation

Initially, as the Court of Appeals found, any issue was waived or acquiesced to by Petitioner's counsel and, therefore, not reviewable on appeal. In this case, Petitioner contested the admission as impeachment one conviction of common law robbery on the grounds it was too remote. However, after the Court acknowledged another conviction would be admitted Petitioner's counsel questioned whether the State would be allowed to admit the actual names of the crimes or just call them "crimes of dishonesty." (R.285). When the State indicated it would simply refer to them as crimes of dishonesty, the Court indicated it best to not reference the

convictions by name “so that it’s not too confusing or prejudicial to the jury and they understand the purpose of the admission of the convictions.” Petitioner’s counsel acquiesced in the decision and did not indicate any further objection. (R.285). At a minimum, the trial court could certainly have understood co-counsel to be dropping the initial objection once he found the names of the crimes would not be used and they would only be referred to as generic “crimes of dishonesty.” See State v. Sinclair, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) (holding that where the defendant received the relief requested from the trial court, there is no issue for the appellate court to decide); State v. McEachern, 399 S.C. 125, 146, 731 S.E.2d 604, 614-15 (Ct. App. 2012) (where defendant received the relief she sought she could not be heard to complain on appeal).

Merits

Even if the issue was not waived, any error in admission of the remote conviction was entirely harmless in this case. “The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (internal quotation marks and citations omitted). “Error is harmless when it could not reasonably have affected the result of the trial.” Id.

While Petitioner contends one conviction should not have been admitted, a second prior conviction was properly used as impeachment and was also referred to as a crime of dishonesty. So, the jury knew he had committed a prior crime and any prejudice from a second prior crime is very minimal.

There is no question Petitioner shot the victim—even he never contested that he shot the victim. As discussed above, at the time the victim was shot, Petitioner was committing multiple felonies. Even Petitioner’s own testimony indicated he was attempting to carjack the victim at

the time of the crime while pointing an unlawfully possessed loaded gun in her direction. Credibility was not seriously at issue in the case given the testimony and the record presented. The fact that the judge allowed two prior “crimes of dishonesty” to be mentioned instead of one could not have reasonably affected the result of the trial given the conclusive proof of guilt by overwhelming evidence. The only conclusion which could be reached by a reasonable jury was that Petitioner was guilty of murder.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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