STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Court of General Sessions
The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2021-001126

THE STATE,

Respondent,

v.

KENNETH ANDREW WHITAKER,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Secondary Sources

STATEMENT OF ISSUES ON APPEAL

I. Evidence of prior difficulties between a defendant and victim is admissible only if relevant. The victim in this case was convicted of domestic violence against Whitaker three years before this incident, but subsequently developed a debilitating brain tumor. Did the trial court err by making a preliminary ruling that the prior conviction was inadmissible where there was no evidence of self-defense introduced at that point in trial?

II. A trial court should only give jury instructions that are supported by the evidence. Whitaker told police he "slapped" his partner because she "spread feces" on him, but he did not testify and there was no evidence tending to show that his use of deadly force was necessary to prevent death or great bodily injury. Did the court err by refusing to charge the law of self-defense?

STATEMENT OF THE CASE

An Aiken County grand jury indicted Appellant Kenneth Whitaker for murder. He proceeded to jury trial on September 20, 2021, before the Honorable Clifton Newman. Whitaker was convicted of voluntary manslaughter and sentenced to 28 years' incarceration. This direct appeal follows.

STATEMENT OF FACTS

This case presents an unusual set of facts. The Appellant, Kenneth Whitaker, killed his cohabiting partner and mother of his children, Jackie Lillard, by striking her in the head. Lillard had a brain tumor and was in poor health. At the time, Whitaker was living with Lillard and their two children. (Supp. R.23).

The State's first witness was Dr. David Hourani, the emergency room doctor who treated Lillard. He testified Lillard had "trauma to her right ear and to her right jaw as well as trauma across the chest and then across the abdomen as well from being struck with some object." (Supp. R.16–17). Lillard "had a bloody right ear. She had bruising to her right jaw as well with essentially, you know, some feeling of soft or where the tissue had swollen underneath of it as well." (Supp.R.17). He further testified Lillard "did have strike marks across her chest and abdomen but they were kind of length wise in nature." (Supp. R.18). The marks appeared "patterned." (Supp.R.18).

Lillard's mother testified next and explained that Lillard had been diagnosed with a brain tumor in July of 2019. (Supp.R.24). Doctors had implanted two internal "shunts" to facilitate draining around the tumor. (Supp.R.89). The shunts drained fluid from around the tumor down her neck to her stomach. (Supp.R.89). Lillard had multiple surgeries to address the tumor, and at one point developed an infection in her skull. (Supp.R.25–26). Lillard's mother testified that Whitaker helped take care of Lillard "somewhat." (Supp.R.26). She explained that in the days leading up to this incident, Lillard had "started having some problems with mobility" and experienced chronic vertigo. (Supp.R.26–27). Lillard was also

incontinent and had to start wearing diapers. (Supp.R.27). Her family had to shower, dress, and feed her. (Supp.R.27). Lillard's mother would come by every day to help with household chores. (Supp.R.27). Lillard could not drive or perform most household duties. (Supp.R.28). Lillard was taking large doses of the medication Decadron to reduce her swelling, which her mother believed caused her condition to decline. (Supp.R.28–29). Lillard was treated for a UTI on March 18, 2020, which was unrelated to her tumor. (Supp.R.29–30). Lillard went to the doctor on March 20th and the doctor reduced her levels of Decadron. (Supp.R.31–32). Lillard's mother testified that she was "relatively normal" on the 20th. (Supp.R.32–33).

On March 21, Lillard's mother got home from her job as a nurse at around 8:30 a.m. She texted Lillard and went to sleep. She was awakened by a phone call from Whitaker at around 12:25. (Supp.R.35). He had been texting her since around 10:00 that morning. (Supp.R.35). When Lillard's mother returned his call, Whitaker told her Lillard was "on the floor unconscious but her eyes are open." (Supp.R.35). Whitaker said he had not called 911. (Supp.R.35). When Lillard's mother asked why, Whitaker said "to be honest, I don't want to go to jail today." (Supp.R.35). Whitaker admitted he had hit Lillard. He told her mother, "what do you expect, she shit herself." (Supp.R.36).

Lillard's mother went to Lillard and Whitaker's home, but Whitaker was not there. (Supp.R.36). Lillard's mother saw one of Whitaker's friends "running around the house" waving her in. (Supp.R.36). She walked in and found Lillard laying on the floor with her children sitting beside her. (Supp.R.36). The house was a mess,

and one of the tables was broken. The house had been clean the day before. (Supp.R.36–37). Lillard's dentures were broken and were lying underneath a table near her body. (Supp.R.37–38). First responders arrived and took Lillard to the hospital. (Supp.R.38). She never regained consciousness and died fourteen days later. (Supp.R.39).

Lillard's 6-year-old son testified. He witnessed the incident and testified that Whitaker "choked" Lillard "on the couch." (Supp.R.74). He testified Whitaker was "mad." (Supp.R.75). He stated that Whitaker touched Lillard with his "arm" but Lillard did not touch Whitaker. (Supp.R.76).

Whitaker's neighbor, Stephanie Kellogg, testified that on the morning of the incident she heard yelling next door and got out of bed. (Supp.R.84). Whitaker was yelling "get up, Jackie!" (Supp.R.85). When the yelling stopped, Whitaker's son went outside and Kellogg's son went outside to play with him. Whitaker yelled at the boys but later apologized, explaining to Kellogg that he didn't want the kids around Lillard "because of her immune system." (Supp.R.89).

The forensic pathologist who performed the autopsy on Lillard testified that she observed patterned bruises on Lillard's chest and abdomen. (Supp.R.150). She testified the presence of circular, patterned bruises indicated Lillard had been struck by an object. (Supp.R.151–152). Lillard also had bruises on her shoulders, arms, thighs, shins, and the back of her hands. (Supp.R.153–155). The pathologist testified the bruises on the back of her hands were consistent with defensive wounds. (Supp.R.154). Lillard also had a bruise on her left cheek bone.

(Supp.R.156). From her examination of Lillard's head, the pathologist concluded Lillard's brain was "very, very swollen," to the extent that it was "herniating," or expanding through the bottom of her skull. (Supp.R.162–164). The pathologist observed Lillard's brain tumor and found it was "friable," meaning that it "doesn't stick together," and hemorrhagic, or filled with blood. (Supp.R.166). She explained the tumor "was in a spot that would make the brain very susceptible to swelling" and "the location of her tumor was such that she could not sustain head trauma." (Supp.R.165–166). She testified Lillard was at "very high risk with the tumor being there." (Supp.R.167). She further testified that the presence of shunts in Lillard's head made her "even more susceptible to any injury." (Supp.R.168). The pathologist testified Lillard's cause of death was "complications of blunt force head trauma," or a "direct strike or direct impact to the head," and the manner of death was homicide. (Supp.R.168). She explained Lillard's "brain could not sustain trauma. Even a minimal amount . . . could have been catastrophic." (Supp.R.185).

Whitaker left the scene before Lillard's mother and police arrived. He was brought to the police station later that day. He originally indicated he did not wish to give a statement and asked for a lawyer. (Supp.R.130). The officer left the room immediately. When he returned, Whitaker had written a statement on a blank form that was left on the table. (Supp.R.132–33). His statement read: "First my son struck Jackie with the toy gun. And as far as incognent [sic] problems that is far fetched. She deliberately spread feces down my face and shirt and [sic] which time I slapped her." (Supp.R.134–135; R.91). Whitaker did not testify.

ARGUMENT

I. Whitaker failed to preserve the issue whether the trial court erroneously excluded evidence of the victim's prior conviction for domestic violence because he did not procure a final ruling and did not attempt to introduce the conviction at trial. Even if preserved, there is no evidence showing the conviction was sufficiently probative to be admitted.

Whitaker alleges the trial court erroneously excluded evidence of the victim Lillard's prior conviction for domestic violence. This issue is not preserved because Whitaker never offered the conviction into evidence. The trial court's ruling that the prior conviction was not relevant when the issue was discussed at trial was not a final ruling excluding evidence of prior difficulties. Rather, the trial court merely determined that there was no evidence at that point supporting a self-defense claim to make the conviction relevant. Even if preserved, the trial court did not err. Although Whitaker was the victim in the case where Lillard was convicted of domestic violence, the intervening circumstance of Lillard developing a brain tumor and becoming an invalid made the prior conviction irrelevant. Whitaker did not proffer any evidence concerning the facts of the prior case and has not shown prejudice. This Court should affirm.

A. 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. Collins, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014). 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.

B. Error preservation.

This issue is not preserved for review because Whitaker did not procure a final ruling and did not attempt to introduce the conviction at trial. The issue arose immediately prior to the testimony of Officer Scott Bernandino, the first police officer who responded to the scene and whose conduct was recorded by his body-worn camera. Bernandino was a State's witness offered for his eyewitness testimony about his observations at the scene. Even though the State was offering the video and did not intend to publish it in its entirety, defense counsel apparently intended to compel the State to play the entire video in order to publish a statement contained therein about Lillard's prior conviction. (Supp.R.93–94). Defense counsel also marked for identification an "incident report" and "rap sheet" concerning the prior conviction, but made no attempt to authenticate these documents. (Supp.R.5, Supp.R.94).

The State objected to Whitaker's attempt to inquire about the conviction during Officer Bernandino's testimony. The trial court agreed, reasoning there was no evidence of an altercation at that point, and evidence of the prior incident was not yet relevant. (Supp.R.95). The trial court did not rule that the prior conviction could not come in; it merely stated that it was premature "at [that] time." (Supp.R.95).

Whitaker made no other attempt to introduce the conviction or properly authenticate the documents. The trial court never actually excluded any evidence

offered by Whitaker. The discussion of the issue was essentially a preliminary ruling. State v. Wannamaker, 346 S.C. 495, 499, 552 S.S.2d 284, 286 (2001) ("An in limine ruling is not final and contemporaneous objection is required to preserved an issue for appeal."). Accordingly, this issue was not finally ruled upon and there is no final ruling for this Court to review. State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 213 (Ct. App. 2002) ("An issue must be raised to and ruled upon by the circuit court in order to be considered on appeal."). The issue is not preserved.

C. The trial court did not err and Whitaker has not shown prejudice because Whitaker did not lay a foundation to introduce the prior conviction or proffer evidence establishing its relevance.

Even if preserved, Whitaker has not shown reversible error. Whitaker did not lay a proper foundation to introduce the prior conviction. The discussion of Lillard's conviction occurred before the State introduced Whitaker's statement to police wherein he stated that he "slapped" Lillard because she "spread feces" on him. There had been absolutely no evidence presented at that point that Lillard had assaulted Whitaker. The trial court properly recognized that Whitaker was first required to lay a foundation by admitting evidence of "some facts that establish a basis to believe that you're entitled to defend yourself . . . ." (Supp.R.95). At that point in the trial, evidence of Lillard's conviction was simply not relevant.

Officer Bernandino did not make an arrest or any charging decisions in this case. He only provided eyewitness testimony about the condition in which he found Lillard and her home. Lillard's conviction had nothing to do with this testimony. See State v. Turner, 29 S.C. 34, 6 S.E. 891, 893 (1888) (explaining evidence of a

prior difficulties is admissible by defendant "where it is relevant either because of prior evidence received in the case, or where the prisoner has laid the proper foundation for its reception by proof of facts making it relevant").

Whitaker may have been able to admit evidence of Lillard's conviction if he had first laid a foundation by testifying to facts supporting a self-defense claim, or even by waiting until the State offered his statement to police through the lead investigator. But even then, the prior conviction had little probative value. The circumstances had fundamentally changed due to Lillard's severe decline in health in the three years that passed from the time of the conviction to the incident in this case. The testimony about Lillard's condition was undisputed. As discussed above in the Statement of Facts, Lillard had been diagnosed with a brain tumor in July of 2019, after the domestic violence conviction. (Supp.R.24). Doctors had implanted two internal "shunts" to drain fluid from around the tumor down her neck to her stomach. (Supp.R.24). Lillard had "started having some problems with mobility" and experienced chronic vertigo. (Supp.R.26–27). Lillard also became incontinent and had to start wearing diapers. (Supp.R.27). Her family had to shower, dress, and feed her. (Supp.R.27). Lillard could not drive or perform basic household duties. (Supp.R.28).

Given her frail condition, Lillard was not capable of threatening death or serious bodily injury to Whitaker. See State v. Day, 341 S.C. 410, 421, 535 S.E.2d 431, 437 (2000) (explaining evidence of prior difficulties between defendant and deceased victim is admissible to show defendant had "reasonable apprehension of

violence" from victim). Whitaker was required to lay a foundation by producing facts to make the prior conviction relevant. Turner, 29 S.C. 34, 6 S.E. at 892 (explaining "evidence of the character and habits of the party slain is proper only so far as they can be supposed to have affected the intention of the slayer in the fatal act"). The mere fact that Lillard had been convicted of domestic violence is not sufficient in itself to make the conviction relevant. See State v. Wigington, 375 S.C. 25, 35, 649 S.E.2d 185, 190 (Ct. App. 2007) ("Although there was some evidence that appellant had been the victim of criminal domestic violence at the hands of his son in the past, the record shows this prior incident was at least six years earlier and appellant was comfortable enough with Scott's presence that he continued to live with him thereafter . . . . No reasonable person would have feared serious bodily harm or loss of life from Scott's words and actions.").

Because he did not proffer any evidence and never actually attempted to properly introduce the record of the prior conviction, there is nothing in the record establishing the facts underlying the conviction. Whitaker has not shown prejudice. See State v. Hawkins, 310 S.C. 50, 61, 425 S.E.2d 50, 56 (Ct. App. 1992) ("No proffer of the excluded testimony was made. Evidence regarding previous difficulties between the accused and the prosecuting witness is admissible although the details of the difficulty should not be admitted. Even though the details of one incident were admitted, we cannot review the second incident because there was no proffer of the testimony."); State v. Atchison, 268 S.C. 588, 594, 235 S.E.2d 294, 296 (1977)

("There was no offer of proof of this witness's testimony and, absent such offer, this Court is unable to pass upon the ruling of the trial judge.").

Whitaker failed to lay a foundation for the admission of Lillard's prior conviction. There is no evidence in the record establishing the facts of the altercation underlying the conviction, and there was no evidence of self-defense when the issue arose at trial. Even if the court erred, Whitaker has not demonstrated prejudice because there are no facts supporting a finding that he reasonably feared bodily harm from Lillard. This Court should affirm.

II. The trial court correctly refused to charge the law of self-defense because the evidence did not support the charge.

Whitaker asserts the trial court committed reversible error by refusing to charge the law of self-defense. The trial court correctly refused the charge because the evidence did not reasonably support a finding that Whitaker's conduct met each element of self-defense. This Court should affirm.

A. 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). To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. Id.

B. Discussion.

i. Whitaker used deadly force as a matter of law.

The evidence in this case establishes as a matter of law that Whitaker used deadly force when he struck Lillard. Whitaker used deadly force "in fact" because Lillard died as a result of Whitaker striking her. But Whitaker also used "deadly force" as contemplated by South Carolina self-defense law because he knew about Lillard's extremely fragile condition when he struck her forcefully in the head.

There is little South Carolina case law explaining the meaning of "deadly force" in the context of self-defense. McAninch explains almost all South Carolina cases dealing with self-defense are appeals from homicide convictions, which by nature involve deadly force. William McAninch, The Criminal Law of South Carolina 620 (6th ed. 2013). However, the South Carolina legislature defined "deadly force" in the Protection of Persons and Property Act. The Act, which

codifies the common law self-defense "castle doctrine," applies when a person uses "deadly force that is **intended or likely to cause death or great bodily injury to another person** . . . ." S.C. Code Ann. § 16-11-440 (A). This definition is consistent with the rule in other states—such as North Carolina—whose courts have defined "deadly force" in the context of self-defense. See State v. Hunter, 315 N.C. 371, 373, 338 S.E.2d 99, 102 (1986) (defining deadly force as "force likely to cause death or great bodily harm"); see also People v. Vasquez, 148 P.3d 326, 328 (Colo. App. 2006) (collecting cases from various states regarding the definition of deadly force).

Whitaker was aware of Lillard's extremely fragile condition. He was Lillard's cohabiting partner and father of her children. (Supp.R.23). He knew of Lillard's brain tumor, and her incontinence, vertigo, and inability to take care of herself. (Supp.R.25–26). Whitaker and Lillard's mother had to bathe, dress, and feed her. (Supp.R.27). He knew that forcefully striking her in the head was "likely to cause death or serious bodily injury."

The evidence of Lillard's cause of death in this case was undisputed. She died from blunt force trauma to the head caused by a "direct strike or direct impact to the head." (Supp.R.168). Whitaker admitted to police to "slapping" her. There was also uncontroverted testimony that Lillard had been beaten about her body with a hard object, possibly from a broken piece of furniture observed at the home. (Supp.R.150–154, 174–178). She also had bruises on the back of her hands,

suggesting defensive wounds. (Supp.R.154). The pathologist testified these wounds were not caused by a fall. (Supp.R.154).

Had there been a conflict in the testimony, it may have created a jury question about whether Whitaker used deadly force. But given the uncontested facts of this case, Whitaker used deadly force as a matter of law. See State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) ("Appellant's statements fail to establish the elements of self-defense entitling appellant to a self-defense charge. No question of fact for the jury is created on this issue."); State v. Dickey, 394 S.C. 491, 503, 716 S.E.2d 97, 103 (2011) (holding "the uncontroverted facts establish as a matter of law" that defendant acted in self-defense); State v. Hendrix, 270 S.C. 653, 659, 244 S.E.2d 503, 506 (1978) (finding the "second and third elements [of self-defense] are clearly established by the evidence"); State v. Slater, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007) (holding trial court correctly refused self-defense charge where "the uncontradicted evidence illustrates that Slater acted in violation of the law by carrying a weapon").

ii. There was no evidence reasonably tending to show that Whitaker acted in self-defense.

A self-defense charge is not required unless the evidence supports it. State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006) (affirming refusal of self-defense instruction where evidence showed "no reasonable person would have feared for his life"); see also Tate v. State, 308 S.C. 163, 166, 417 S.E.2d 553, 555 (1992). "Because all of the elements are required to establish self-defense . . . [i]t is an axiomatic principle of law that [self-defense] has not been established if any one

element is disproven." In re Tracy B., 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010). Because Whitaker used deadly force, in order to be entitled to a self-defense instruction there must have been some evidence that his conduct met the elements of self-defense found in State v. Davis:

> There are four elements required by law to establish self-defense in this case. First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

The right to self-defense always rests on necessity and proportionality. "[A] small blow will not justify an enormous beating . . . ." State v. Wood, 1 S.C.L. 351 (1794) (quoted in William McAninch, The Criminal Law of South Carolina 620 (6th ed. 2013)). In State v. Amburgey, the Supreme Court approved the following instruction:

> A homicide is not justifiable or excusable on the ground of self-defense by reason of a danger or apprehension of danger, of slight bodily injury, or of a mere indignity, or of a slight or moderate injury, such as that to be apprehended from a simple or ordinary assault or battery with the hand or fist without a weapon, unless the assault is accompanied by acts indicating imminent danger of serious bodily harm or felony and produces in the mind of accused a reasonable belief of such danger.

State v. Amburgey, 206 S.C. 426, 431, 34 S.E.2d 779, 781 (1945).

There was no evidence that Whitaker reasonably feared death or great bodily injury when he struck Lillard. Whitaker did not testify or offer any evidence. See State v. Bruno, 322 S.C. 534, 536, 473 S.E.2d 450, 452 (1996) ("Bruno was not entitled to a self-defense charge, because he presented no evidence that he believed he was in imminent danger of losing his life or sustaining serious bodily injury."); State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) ("Goodson presented no evidence which shows that he believed he was in imminent danger of losing his life or sustaining serious bodily injuries at the time he shot Hemingway. There also is no evidence that Goodson was actually in imminent danger at the time he shot Hemingway. Accordingly, we find that the trial judge did not err in failing to instruct the jury on self defense."). This distinguishes this case from the vast majority of published self-defense cases where the defendant testified to facts supporting the defense.

The only evidence arguably supporting a self-defense charge came from his statement to police. He told police: "First my son struck Jackie with the toy gun. And as far as incognent [sic] problems that is far fetched. She deliberately spread feces down my face and shirt and [sic] which time I slapped her." (Supp.R.14). Even assuming the truth of Whitaker's claim that Lillard "spread feces" on him, there is nothing in this statement reasonably supporting a finding that Whitaker feared "death or great bodily injury" such that it was necessary to use deadly force to defend himself. Certainly, no man of ordinary firmness and courage in this

situation would believe it necessary to strike a fatal blow against an invalid. Rather, his statement essentially reads that he slapped Lillard out of anger. It makes no mention of anything that would remotely justify his brutality.

There was no evidence to support a finding of self-defense in this case. The trial court did not abuse its discretion by refusing the charge. This Court should affirm.

iii. Whitaker was not prejudiced because evidence of his guilt was overwhelming.

Finally, Whitaker was not prejudiced because the evidence of his guilt was overwhelming and the jury charge did not affect the result of trial. Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless where it could not reasonably have affected the result of the trial. State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006). Another description frequently cited is that error "is harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Collins, 409 S.C. 524, 538, 763 S.E.2d 22, 29–30 (2014).

The evidence conclusively showed that Whitaker brutally beat Lillard about her head and body in a fit of anger, causing her death. Whitaker's son testified Whitaker "choked" Lillard because he was "mad." (Supp.R.74–75). He further testified Lillard did not touch Whitaker. (Supp.R.76). As discussed, above, Lillard was in an extremely debilitated condition; she was incontinent, struggled with

vertigo, and could not perform basic household tasks. She could not have posed a serious threat to Whitaker.

There was no evidence corroborating his story that Lillard "spread feces" on him. No feces was found on Lillard's hands or on Whitaker. Of course, police were not able to immediately observe Whitaker because he fled the scene.

Finally, Whitaker's own words show he did not act in self-defense. Whitaker told Lillard's mother he had "hit her" because "she shit herself." (Supp.R.36). When asked why he hadn't called police, Whitaker explained that he did not want to "go to jail." (Supp.R.35). He did not come up with a self-defense story until later, when speaking to police.

On this record, the only reasonable conclusion is that Whitaker did not act in self-defense. His story was not consistent with the evidence, and no reasonable juror would have believed it. Any error was harmless. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent 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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