STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2021-001385

THE STATE, ...RESPONDENT

v.

RASHAWN MONTEZ LITTLE, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether the trial court abused its discretion in admitting firearms identification testimony where the expert's methodology is widely accepted, has been subjected to peer review and publication, and includes quality controls to ensure reliability.

II. Whether the trial court abused its discretion in ruling that an out of court statement satisfied the excited utterance exception to the hearsay rule where the declarant had been shot during an active shooter incident, appeared agitated and under stress, was receiving emergency medical treatment for the gunshot wound, and was physically incapable of writing his initials on a police form.

STATEMENT OF THE CASE

In September 2016, the Chesterfield County Grand Jury returned indictments charging Rashawn Montez Little (appellant) with two counts of murder, six counts of attempted murder, and three counts of possession of a weapon during the commission of a violent crime.[1] (Indictments R. 537-78). The State alleged that appellant murdered Shannon Little (his wife) and Tyvon Threatt (a neighbor) during a shooting spree at a trailer park. (Indictments R. 562 and 566). Additionally, the State alleged that appellant attempted to murder Luther Chambers (an acquaintance) and five police officers who responded to the scene. (Indictments R. 538, 542, 546, 550, 554 and 558).

The case proceeded to trial in November 2021. (R. 1). Boyd Young and William Frick represented appellant. (R. 1). Assistant Solicitors Kernard Redmond, Mary Thomas Johnson Lee, and Elizabeth Munnerlyn represented the State. (R. 1). After a five-day trial, the jury found appellant guilty as charged on all counts. (R. 1; 518, l.23 - 520, l. 5). The Honorable Craig Brown sentenced appellant to life in prison for each murder charge, thirty years for each attempted murder charge, and five years for one count of possession of a firearm during the commission of a violent crime.[2] (R. 534, l. 16 - 535, l. 19). Judge Brown ordered the sentences to run concurrently. (R. 535, l. 21)

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[1] The grand jury also returned an indictment for unlawful possession of a firearm by a person convicted of a violent offense. (R. 10, l. 23-25). After jury selection, the parties realized that appellant's prior convictions for distribution of crack cocaine did not qualify as a crime of violence under S.C. Code Ann. § 16-1-60. (R. 87, l. 14-23; R. 523, l. 18-23). The court issued a curative instruction at the close of the State's case. (R. 450, l. 9-21). Appellant does not challenge that instruction on appeal. (App. Br. 1).

[2] Under S.C. Code Ann. § 16-23-490(A), the five year sentence for possession of a firearm during the commission of a violent crime "does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime." The trial court cited this provision in declining to impose a sentence for two counts of possession of a firearm during the commission

STATEMENT OF FACTS

A. Appellant's Arrest

On the evening of October 25, 2015, Lieutenant Wayne Jordan and other officers were conducting an inventory of stolen property in Chesterfield County. (R. 47, l. 15; 90, l. 3-4; 122, l. 13-15). Over the police radio, they heard a call of shots fired at a nearby trailer park on Evans Mill Road. (R. 47, l. 12-25). According to dispatch, one person had already been hit. (R. 47, l. 25 - 48, l. 1). The officers quickly responded to Evans Mill Road and found Luther Chambers bleeding from a gunshot wound to the arm. (R. 48, l. 17-18). They tried to gather information from Chambers, but he was evasive and uncooperative. (R. 48, l. 22-23). Within a few minutes, the officers heard more gunshots coming from the trailer park less than five hundred yards away. (R. 49, l. 7-10; 50, l. 3). One officer stayed behind with Chambers, while the rest headed towards the sound of gunfire. (R. 50, l. 17.)

The officers were moving into a dangerous situation. (R. 124, l. 13-24). People were screaming and running indiscriminately for shelter. (R. 91, l. 24-25; 145, l. 8-16). Amid the chaos, the officers had to identify the active shooter, prevent additional violence, and help the victims. (R. 52, l. 15-23; 92, l. 2; 124, l. 13-24; 145, l. 8-16). They initially found Tyvon Threatt on the front porch of a trailer, lying in the arms of his girlfriend. (R. 51, l. 3-14; 341, l. 21). He was "bleeding profusely" from a gunshot wound to the lower abdomen. (R. 107, l. 20; 173, l. 6). The officers moved Tyvon inside the trailer so that he and EMS would have cover from additional gunfire. (R. 146, l. 21-23; 173, l. 3-23). When asked what happened, Tyvon repeatedly told EMS

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of a violent crime because the underlying violent offense for those two charges was murder. (R. 534, l. 2-15).

that "Shawn Little shot me."[3] (R. 351, l. 24; 352, l. 9). Tyvon said that he just went to check on appellant after hearing gunshots and had no idea why appellant shot him. (R. 343, l. 13-14). Tyvon Threatt would die at the hospital from hypovolemic shock, or loss of blood from the gunshot wound. (R. 37, l. 20-25).

While EMS personnel treated Tyvon, Lieutenant Jordan and his team approached appellant's trailer. He could hear a female inside say either "I can't come out" or "I ain't coming out." (R. 53, l. 18-20). The officers also heard children "just hysterically crying." (R. 54, l. 10). As Lieutenant Jordan knocked on the front door, a back light came on. (R. 97, l. 2-6). Then, out of nowhere, someone inside began firing at the officers through the walls. (R. 54, l. 11-14). Two officers saw sparks flying "right at [Lieutenant Jordan's] head." (R. 97, l. 8-11; 109, l. 23; 150, l. 9-13). The responding officers, including Lieutenant Jordan, thought he had been hit. (R. 54, l. 18; 151, l. 10-13). When the shooting stopped, Lieutenant Jordan dove across the hood of a parked car. (R. 55, l. 10-13). He and the other officers would not have much time to figure out their next move.

As Lieutenant Jordan called to another officer, the trailer's front door flew open. (R. 56, l. 10-12). Appellant appeared in the doorway, guns blazing in both hands.[4] (R. 56, l. 9-25). Some of the officers fired back. (R. 57, l. 13; 73, l. 9; 99, l. 19). One officer explained that he returned "cover" or "suppression fire," which means he was trying "to stop the defendant from shooting

[3] Three witnesses testified to Tyvon Threat's dying declaration that appellant shot him: his father (R. 356, l. 9-13), his girlfriend, and an emergency medical technician (R. 351, l. 19-24).

[4] The five responding officers testified during the State's case-in-chief. Three identified appellant as the man firing at them from the front doorway of the trailer. (R. 56, l. 25; 100, l. 12; 177, l. 7-15). The other two officers could see an individual firing from the doorway, but could not identify appellant as that individual. (R. 135, l. 15-20; 152, l. 3-4; 166, l. 13-14).

us." (R. 99, l. 19-23). According to the officer, "it was like something you would see in the movies." (R. 99 l. 11-12).

When the shooting stopped, the front door of the trailer swung shut. (R. 155, l. 25; 156, l. 1). The officers checked on their teammates, reloaded their weapons, and moved to better positions. (R. 128, l. 5-6; 156, l. 3-4). As Lieutenant Jordan considered whether to storm the trailer, appellant walked around the corner with his hands up. (R. 57, l. 18-25; 58, l. 18-22). His shirt was covered in blood. (R. 102, l. 12). One of the officers yelled, "what do we do, Lieutenant?" (R. 59, l. 6). Lieutenant Jordan responded, "do not shoot him, I don't see a gun. He does not have a weapon, don't shoot." (R. 59, l. 6-8). Rather than firing their weapons, the officers ordered appellant to the ground. (R. 59, l. 8-9). Ignoring those commands, appellant walked over to a Cadillac, got inside, and threw it in drive. (R. 157, l. 11-12; 162, l. 8-9). As appellant sped away, one of the officers fired at the tires and engine block. (R. 180, l. 16-17). Lieutenant Jordan told his team not to pursue appellant as he drove away in the Cadillac. (R. 60, l. 18-25).

Instead, they cleared the trailer for additional shooters and victims. (R. 60, l. 20-25). By that point, they could hear "this god-awful screaming" from the children inside. (R. 104, l. 25). As they entered, they saw Shannon Little's body in the living room, face-up in a pool of blood. (R. 61, l. 4-5; 105, l. 21). She was "obviously deceased." (R. 61, l. 10-11). Underneath her neck was a Smith & Wesson .380 caliber pistol. (R. 233, l. 1-2; 256, l. 10-14). Shannon's three children were also hovering on top of their mother. (R. 105, l. 23-24; 163, l. 5). One officer testified that "you could feel it in the pit of your stomach. It was awful." (R. 105, l. 1-2). After clearing the home, officers tried to bring the children outside. But one of the children simply would not let her mother go. (R. 61, l. 16). When Lieutenant Jordan picked her up, she was holding so tightly that she dragged Shannon's dead body across the floor. (R. 61, l. 18).

As the dust settled at the trailer park, other law enforcement officers passed by a Cadillac driving with its tire out. (R. 193, l. 19-22; 194, l. 1-3). They later found appellant's car on an access road leading to a swamp. (R. 194, l. 12). The headlights were on, the engine was still running, and the driver's door was wide-open. (R. 194, l. 13-16). With appellant nowhere in sight, the officers waited for assistance from a fugitive apprehension team. (R. 196, l. 8-16). SLED agents would arrive with bloodhounds and a helicopter equipped with infrared night vision. (R. 201, l. 14-19).

After searching through the night, a SLED agent spotted appellant at 5:00 am the next morning. (R. 201, l. 19-24). The agent quickly drew his weapon and ordered appellant to the ground. (R. 203, l. 6-9). Rather than following the command, appellant said, "I ain't got no strap[5] on me no more" and started heading for some woods. (R. 203, l. 13-25). Seeing that appellant was unarmed, the agent called for non-lethal munitions. (R. 204, l. 2-3). A canine officer released his apprehension dog, Egor, to subdue appellant. (R. 205, l. 1-7). As Egor jumped to catch his target, appellant punched the dog in the face. (R. 205, l. 10-11). The dog fell to the ground, and appellant kicked it. (R. 205, l. 11). Undeterred, Egor tried again. (R. 205, l. 12). But once more, appellant punched and kicked the dog away. (R. 205, l. 12-13).

When appellant kicked Egor the second time, he slipped and fell down. (R. 205, l. 14). The agent drew his taser and ordered appellant to remain on the ground. (R. 205, l. 16-20). Once again, appellant refused to comply, so the agent tazed him. (R. 205 l. 23). Appellant temporarily froze from the electrical shock, allowing other officers to "swarm on top of him." (R. 206, l. 2-3). Nevertheless, appellant continued to resist once the electrical shock from the taser wore off. (R.

[5] The agent clarified that "strap" is a "street term[] for a handgun or some sort of weapon." (R. 228, l. 15-16).

206, l. 5-7). It would take three rounds of taser blasts before appellant would allow agents to put him in handcuffs. (R. 206, l. 4-11).

Following appellant's arrest, authorities conducted an autopsy of Shannon Little.[6] The official cause of death was a gunshot wound to the upper neck. (R. 32, l. 11; 534 l. 22). The bullet penetrated her C1 vertebrae, pierced the brainstem, and stopped in the vertebral bone. (R. 35, l. 1-3). She died instantly. (R. 44, l. 6-8). Given the amount of soot surrounding the entrance wound, the forensic pathologist assessed that the gun was only a few inches away from her neck when it was fired. (R. 36, l. 3-12). Although the pathologist noted that it was theoretically possible for someone to shoot themselves in that part of the neck, he had never seen a suicide committed like that during his career. (R. 41, l. 9-16).

B. <u>Appellant's Trial</u>

1. Excited Utterances

Luther Chambers' girlfriend testified for the State at trial. She explained that on the evening of murders, Chambers drove to appellant's house to borrow some money. (R. 330, l. 2-3). The girlfriend subsequently received a phone call from Chambers. (R. 331, l. 9). She could tell that Chambers was "in distress" and "in shock" when he called. (R. 331, l. 19). He explained, "Bay, I've been shot." (R. 332, l. 2).

After receiving the phone call, the girlfriend drove to appellant's house to figure out what happened. (R. 332, l. 5-6). She asked appellant if Chambers was there because he had just called and told her about the shooting. (R. 332, l. 12-15). Appellant replied that Chambers was not there. (R. 332, l. 14). The girlfriend then saw the police arrive on scene and ran towards them. (R. 332,

[6] The authorities also conducted an autopsy of Tyvon Threatt. As noted above, he died from hypovolemic shock, or loss of blood from the gunshot wound. (R. 37, l. 20-25).

l. 20-21). She would later hear gunshots, followed by someone "hollering that … Tyvon had [been] shot." (R. 333, l. 7-8).

Chambers' father subsequently arrived at the trailer park looking for his son. (R. 334, l. 5). He and the girlfriend drove to the hospital where Chambers was initially taken, CMC-Union in Monroe, North Carolina. (R. 334, l. 8-12). There, the girlfriend saw that Chambers "was still in shock from the gun wound." (R. 334, l. 17). Chambers told her "that Shawn shot him." (R. 334, l. 23). The girlfriend explained to the jury that she knew Chambers "was referring to the defendant." (R. 335, l. 12).

Following his treatment at CMC-Union, Chambers would receive more treatment at CMC-Main Hospital in Charlotte. (R. 334, l. 12). By that point, SLED had begun its investigation. (R. 290, l. 1-3). At approximately 6:59 am,[7] a SLED agent approached Chambers while he "was in the hospital awaiting treatment for a gunshot wound." (R. 292, l. 4-5). According to the agent, Chambers seemed "very frustrated and aggravated that he had been shot." (R. 292, l. 4-6). Stated differently, the agent believed Chambers "was still under the stress of the situation … specifically having been shot." (R. 292, l. 10-12; 293, l. 22-23). In fact, Chambers could not even initial a police form because he "was unable to write." (R. 292, l. 18). Recall that Chambers had been shot in the arm. (R. 48, l. 17-18).

After finding Chambers at the hospital, the agent asked Chambers if he knew why law enforcement was there to talk. (R. 295, l. 16-18). Over appellant's objection, the agent testified that Chambers immediately responded, "Shawn shot me." (R. 295, l. 17-18). At the time, the

[7] On direct exam, the agent could not recall when he interviewed Luther Chambers on the morning of October 26, 2015. (R. 291, l. 20-22). On cross-examination, he testified that the time reflected on the police form was 6:59 am. (R. 312, l. 25).

agent did not know who Rashawn Little was because he had just begun to investigate the case. (R. 295, l. 6-7).

2. Expert Firearms Identification Testimony

The State also presented testimony from Suzanne Cromer, a firearms identification expert from SLED. Among other things, Cromer assessed whether the pistol found underneath Shannon Little's neck fired the bullet removed from her brainstem and four cartridge cases recovered at the scene. (R. 442-47). The defense conceded that Cromer was qualified to give expert testimony, but challenged the "reliability of the science" she used in formulating her opinion.[8] (R. 412, l. 14-15). Specifically, the defense objected to "the language that this bullet was fired by this particular firearm to the exclusion of all other firearms in the world." (R. 409, l. 7-9). Following the objection, the trial court heard the State's proffer on reliability. (R. 409-22).

a. The State's Proffer

Cromer first defined the technical discipline: firearms identification. (R. 413, l. 4). The process analyzes ammunition components, primarily bullets and cartridge cases, to determine whether they were fired by a specific weapon. (R. 413, l. 5-7). If there is no firearm for comparison, the examiner identifies potential models or manufacturers that could have fired a bullet or cartridge case. (R. 413, l. 7-13). A firearm will mark a cartridge case at five specific points: the breach face, the firing pin impression, the ejector, the extractor, and the chamber. (R. 413, l. 15-20). The examiner looks at each of these specific areas when analyzing a cartridge case. (R. 413, l. 19-20).

[8] Cromer did provide the trial court a brief summary of her qualifications. (R. 410-11). Of note, at the time of trial she had been qualified as an expert in firearms analysis approximately 120 times. (R. 437, l. 3). See e.g., State v. Taylor, 404 S.C. 506, 514, 745 S.E.2d 124, 128 (Ct. App. 2013) (considering the admissibility of Cromer's ballistics report).

Analyzing a fired bullet "is a little different because it's marked by a different part of the firearm." (R. 413, l. 20-22). The examiner first weighs the bullet to determine its caliber. (R. 414, l. 7-11). Next, the bullet is placed under a microscope to identify the type of rifling from the gun barrel. (R. 414, l. 15-23). From there, the examiner counts the number of "lands and grooves," i.e., raised and depressed areas on the bullet. (R. 414, l. 23-25; 415, l. 1). The number varies by firearm manufacturer. (R. 414, l. 23-25). After that, the examiner will determine which direction the barrel makes the bullet spin. (R. 415, l. 6-9).

If all of these characteristics on a bullet match a known standard, the examiner will compare microscopic markings on each. (R. 415, l. 14-18). These tiny markings arise from imperfections on a firearm that are left during the manufacturing process. (R. 435, l. 17-21). According to Cromer, this final step is "the only subjective part of our job." (R. 420, l. 2). For quality assurance, a second examiner must also conduct an independent microscopic comparison. (R. 420, l. 4-8). The second examiner does not know the result of the first analysis. (420, l. 13-14). The rationale is that the examiner must be "completely blind" to prevent "cognitive bias." (R. 420, l. 18; 421, l. 2). Both examiners must independently arrive at the same conclusion before an official finding is reached. (R. 420, l. 9-10).

Cromer explained that this methodology has been around since the early twentieth century and is generally accepted in the field. (R. 416, l.1, l. 25; 417, l. 1). It has also been subjected to peer review in various journals about firearms identification. (R. 417, l. 2-3). The firearms identification unit at SLED is also accredited according to international standards by the American Society of Crime Lab Directors. (R. 417, l. 22-25). In other words, she and other analysts at SLED conduct firearms identification "the same way as all of these other international organizations and

crime labs." (R. 418, l. 2-3). Finally, Cromer must pass an annual proficiency test conducted by an independent agency. (R. 417, l. 7-19).

b. The Trial Court's Ruling

After hearing the proffer, the trial court ruled that the State had established reliability. (R. 422-25). The court noted that firearms identification has been around since the early twentieth century and is generally accepted as reliable. (R. 425, l. 1-6). In fact, the methodology is used not only in the United States but also throughout the world. (R. 425, l. 6-7). Moreover, it has been subjected to peer review and publication. (R. 423, l. 19-20). Finally, the court identified the quality control mechanisms employed by SLED. (R. 424, l.8-24). Most importantly, a second examiner must conduct an independent evaluation on the case. (R. 423, l. 23-25). Only if both examiners reach the same conclusion will a report the issued. (R. 424, l. 1-3). In light of these factors, the court ruled Agent Cromer's testimony was reliable under State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) and State v. Jeffrey L. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001). (R. 422, l. 14-23).

Defense counsel then stated, "Our specific request is that she be allowed to testify but not be able to renew [sic] the ultimate opinion that this bullet was fired from this particular firearm." (R. 425, l. 12-15). The trial court found that Rule 704, SCRE allowed opinion testimony even when "it embraces an ultimate issue" in the case, then overruled the objection. (R. 425, l. 16-20).

c. The Expert's Testimony to the Jury

Cromer testified that "in my opinion," the pistol found under Shannon's body fired four cartridge cases recovered at the crime scene.[9] (R. 445, l. 17-18; 446, l. 3-17). Two of those

[9] Cromer's language varied slightly when describing her conclusions on one of the four cartridge cases. Instead of "in my opinion," Cromer testified that "again, I did that microscopic comparison, and it was my conclusion that it was fired from" the .380 caliber pistol. (R. 446, l. 16-18).

cartridge cases were found outside the trailer, and two inside. (R. 445, l. 21-24; 446, l. 2-17). Additionally, the bullet removed from Shannon Little's brainstem had the same caliber, type of rifling, number of lands and grooves, and direction of twist as the .380 pistol. (R. 447, l. 4-6). Therefore, Cromer conducted a microscopic comparison. (R. 447, l. 6-7). According to Cromer, the result of microscopic comparison was that "in my opinion there was enough of those individual identifying markers that matched up for me to say that I believe that this was fired by the … 380 Smith and Wesson Bodyguard pistol." (R. 447, l. 7-10).

On cross-examination, Cromer conceded that the microscopic comparison involved a subjective analysis. (R. 448, l. 5-22). There are no "set number of points to match or anything like that." (R. 448, l. 18-20). Rather, Cromer analogized the process to evaluating a signature. (R. 449, l. 4-5). Although her signature can differ based on her focus and if she is in a hurry, "you can pretty much make out my S and my C … I know it's mine." (R. 449, l. 9-10). Stated differently, each bullet may have differences, but "we're looking for similarities and the individual matching identifying criteria." (R. 449, l. 17-18).

3. Additional Evidence

a. Recorded Interviews of Shannon Little's Children

The State also introduced recorded interviews of Shannon Little's three children.[10] (St. Ex. 99). One of Shannon's daughters, Zara, told the interviewer that appellant said "I wanna kill Bam because he's a snitch." (St. Ex. 110, p. 10). The jury had previously learned that "Bam" was a nickname for Luther Chambers. (R. 291, l. 5-6; 322, l. 9; 330, l. 14). Appellant also said,

[10] The Defense consented to the introduction of the recorded interviews in lieu of live testimony. (R. 358, l. 1-8). Additionally, the State introduced transcripts of the interviews. (R. 359, l. 22-25; 360, l. 1-3; R. 587-627).

"today's the day," which Zara understood to mean "[e]veryone dies." (R. 622). Zara further explained that:

> I was looking in the living room my dad was holding my mama and she couldn't move and she was saying 'I don't want to die I don't want to die' he said 'open up the door' and she said 'if you love me you'll let me go back there with my children' and he wouldn't let her and that's when he was holding in the chair and then someone shot her and she fell on the ground.

(R.617-18).

Shannon's other daughter, Carmella, corroborated much of that account. Prior to the murders, appellant said "today is the day." (R. 600, 602). Carmella explained that a man came over to their home and said "hey Shawn." (R. 600, 602). Appellant replied, "hey snitch" and shot the man. (R. 600, 602). Carmella later saw appellant holding her mom around the waist. (R. 603). According to Carmella, Shannon was trying to get to her kids, but appellant would not let her go. (R. 603). Carmella did not know who shot her mom because she was in her bedroom. (R. 600). By the time she came out and found her mom on the floor, appellant had left the house. (R. 600).

b. Appellant's Statement to Law Enforcement

After appellant's arrest, he requested to speak with the SLED agents investigating the case. (R. 303, l. 21-22). Appellant told the agents that there had been another shooting at the trailer park a few days before the murders. (R. 304, l. 21-22). A family member, whose name appellant did not provide, advised that "somebody was out to get him." (R. 304, l. 23-24). On the day of the murders, appellant smoked marijuana for most of the day with his cousin, Marques Tyson. (R. 305, l. 1-4). Appellant explained that "weird things were happening" that day, but would not elaborate further. (R. 306, l. 13-17). At some point, Luther Chambers was shot. (R. 305, l. 7-8). Appellant believed Chambers was either "the police" or "worked for the police." (R. 308, l. 15-17). Although appellant admitted being present when Chambers was shot, he claimed he did not

pull the trigger. (R. 305, l. 7-8). Appellant later hid in the woods. (R. 305, l. 10). He apparently had no idea what happened to his wife, Shannon Little. (R. 305, l. 12).

Upon hearing appellant's story, a SLED agent asked bluntly, "who shot [your] wife." (R. 305, l. 14-15). Appellant responded that "he didn't want to talk anymore and that he would contact [the agents] back if he wanted to talk." (R. 305, l. 15-17). Nevertheless, appellant said "he wanted to talk to the feds" as the agents were getting ready to leave. (R. 305, l. 18). The agents ended the interview and walked out the door. (R. 305, l. 19).

STANDARD OF REVIEW

Admission of Expert Testimony

"A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). The trial court abuses its discretion when "the ruling is unsupported by the evidence or controlled by an error of law." State v. Roy Lee Jones, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018).

Admission of Evidence

The standard of review for the admission or exclusion of evidence is an abuse of discretion. State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 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." State v. Anderson, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009)(quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

ARGUMENT

I. The Trial Court Properly Admitted The Firearms Identification Testimony Because the Expert's Methodology Is Widely Accepted, Has Been Subjected to Peer Review and Publication, and Includes Quality Controls to Ensure Reliability.

A. The Expert Testimony Was Reliable

Prior to admitting expert testimony under Rule 702, the trial court must determine whether the substance of the testimony is reliable. State v. Roy Lee Jones, 423 S.C. 631, 637, 817 S.E.2d 268, 270 (2018). In cases involving "scientific" evidence, it considers the four *Council* factors: (1) whether the expert's methodology has been published and subjected to peer review, (2) has previously been applied in similar situations, (3) includes quality control procedures, and (4) is consistent with recognized scientific laws and procedures. State v. Council, 335S.C. 1, 20, 515 S.E.2d 508, 517 (2001). In contrast, the same "formulaic approach" does not apply when a party offers nonscientific, or experience-based expert testimony. Roy Lee Jones, 423 S.C. at 638-39, 817 S.E.2d at 272.

Regardless of the type of expert testimony, the trial court must act as a "gatekeeper" to ensure reliability of the evidence. State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009). But the "gatekeeping" role does not mean the trial court decides if the expert is "correct." Roy Lee Jones, 423 S.C. at 640-41, 817 S.E.2d at 272. In fact, the trial court must be careful to avoid doing so. Id. Only the jury gets to accept or reject the expert's opinion. Id. Instead, "[t]rial courts are tasked only with determining whether the basis for the expert's opinion is sufficiently reliable such that it be may offered into evidence." Id. Stated differently, "the trial judge must remain at the gatepost and not tread on the advocate's or the jury's turf." State v. Warner, 430 S.C. 76, 87, 842 S.E.2d 361, 366 (Ct. App. 2020) *overturned on other grounds*, 436 S.C. 395, 872 S.E.2d 638 (2022). Once a party demonstrates that "the expert's testimony consists of a reliable method

faithfully and reliably applied, the gate of admissibility should be opened." Id. On appeal, the ruling is reviewed for abuse of discretion. White, 382 S.C. at 269, 676 S.E.2d at 686.

The trial court satisfied its gatekeeping role in this case. Although Agent Cromer's opinion falls in the nonscientific, or experience-based category, the court addressed all of the *Council* factors. (R. 422-25). First, the methodology has been published and subjected to peer review. (R. 417, l. 1-4). Agent Cromer explained those include trade publications and the Journal of the American Medical Association. (R. 417, l. 2-4). Second, law enforcement agencies routinely use the methodology to determine whether a specific weapon fired a bullet or cartridge case. (R. 415-18). According to Agent Cromer, law enforcement has employed the methodology since the early twentieth century. (R. 446, l.1). Third, Agent Cromer discussed the quality control procedures adopted at SLED. For example, a second agent conducts an independent, blind comparison on every case. (R. 420, l. 2-8). Only if both agents reach the same conclusion will SLED issue a report. (R. 420, l. 7-8). Additionally, the SLED lab is accredited by American Society of Crime Lab Directors. (R. 417, l. 22-25). Finally, Agent Cromer and SLED use the same methodology as law enforcement agencies across the globe. She testified that they do it "the same way as all of these other international organizations and crime labs." (R. 418, l. 2-3). In other words, SLED's methodology is consistent with recognized scientific law and procedures. See Council, 335 S.C. at 19, 515 S.E.2d at 517.

Furthermore, the trial court's ruling aligns with other jurisdictions that have considered the issue. See e.g., United States v. Brown, 973 F.3d 667, 704 (7th Cir. 2020) (noting that firearms identification has been "almost uniformly accepted by federal courts"); United States v. Hicks, 389 F.3d 514, 526 (5th Cir. 2004) ("[T]he matching of spent shell casings to the weapon that fired them has been a recognized method of ballistics testing in this circuit for decades."); Amaro v.

State, 272 So. 3d 853, 855 (Fla. Dist. Ct. App. 2019) ("Forensic firearm and tool-mark identification evidence is not a new or novel methodology, and its admissibility in criminal cases is well-documented in Florida's jurisprudence."); Al Amin v. State, 597 S.E.2d 332, 344 (Ga. 2004) (noting that firearms identification evidence "is not novel, and has been widely accepted in Georgia courts.") *overruled on other grounds by* State v. Lane, 838 S.E.2d 808, 819 (Ga. 2020); State v. Britt, 718 S.E.2d 725, 729 (N.C. Ct. App. 2011) ("Courts in North Carolina have upheld the admission of expert testimony on firearm toolmark identification for decades.").

For example, in Brown the United States Court of Appeals for the Seventh Circuit considered the reliability of an expert's opinion on "whether a bullet or casing was fired from a particular firearm." Brown, 973 F.3d at 702. The court noted that firearms identification has been tested and subjected to peer review, has a low rate of error, and "is widely accepted beyond the judicial system." Id. As such, the methodology satisfied the *Daubert*[11] standard for reliability. Id. The Seventh Circuit's analysis mirrors that of the trial court here. See Warner, 430 S.C. at 86, 842 S.E.2d at 366 (noting South Carolina's standard for reliability is "extraordinarily similar" to the *Daubert* test).

Appellant even concedes that "firearm identification testimony has generally been found admissible." (App. Br. 7). He simply objects to the *scope* of that testimony. (App. Br. 7). Specifically, appellant believes that experts such as Agent Cromer should not be allowed to testify that a particular weapon fired a bullet or shell casing "to the exclusion of all other firearms." (App. Br. 6). According to appellant, if an expert testifies that a firearm "is a 'match' to an absolute certainty," the opinion exceeds what "is currently justified by the prevailing methodology." (App. Br. at 8) *quoting* United States v. Monteiro, 407 F. Supp. 2d 351, 372 (D. Mass. 2006). In support

[11] Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

of the argument, appellant cites a handful of cases from federal district courts in Massachusetts and New York. (App. Br. 7-9).[12]

Appellant's argument fails because – regardless of other arguments concerning the phrasing as forwarded in the Monteiro case – Agent Cromer never rendered an opinion "to the exclusion of all other firearms." (App. Br. at 6). Nor did she express "absolute certainty" in her conclusion. (App. Brief at 8). Quite the opposite. Agent Cromer "determined that *in my opinion* those four fired cartridge cases were fired by that firearm." (R. 445, l. 8-10) (emphasis added). As for the bullet removed from Shannon Little's brainstem, Agent Cromer testified that "*in my opinion* there was enough of those individual identifying markers that matched up for me to say that *I believe* that this was fired by the … 380 Smith and Wesson Bodyguard pistol." (R. 447, l. 7-10) (emphasis added). By repeatedly using terms such as "in my opinion" and "I believe," Agent Cromer is acknowledging the existence of other possibilities, not ruling them out. The jury was simply under no illusion Agent Cromer employed an objective, mathematical process that could and did rule out all other possibilities. She even compared the process to analyzing signatures. (R. 449, l. 4-13).

In other words, Agent Cromer's testimony avoided the concerns identified in the case law appellant cites. See e.g, Monteiro, 407 F. Supp. 2d at 372; United States v. Green, 405 F. Supp. 2d 104, 124 (D. Mass. 2005). Her testimony never went beyond what "is currently justified by the prevailing methodology." Monteiro, 407 F. Supp. 2d at 372. Instead, her testimony mirrors what the Seventh Circuit approved in Brown. In that case, the court noted that firearms identification

[12] Even while acknowledging some courts have imposed limitations, it has been suggested that phrasing limitations such as those reflected in the cited cases results in an improper judicial "rewrite [of] an expert witness's opinion" since there is no provision in case law or court rule that empowers a court to do so. *See* Colonel (Ret.) Jim Agar, The Admissibility of Firearms and Toolmarks Expert Testimony in the Shadow of Pcast, 74 Baylor L. Rev. 93, 188-89 (2022).

"is used to determine *whether a bullet or casing was fired from a particular firearm*". Brown, 973 F.3d at 702 (emphasis added). The language in Brown is nearly identical to the Agent Cromer's testimony. Because that "testimony consists of a reliable method faithfully and reliably applied," the trial court acted within its discretion in admitting it. Warner, 430 S.C. at 87, 842 S.E.2d at 366.

Further, as the trial court additionally found, our rules of evidence specifically allow for admissibility of an opinion even where "it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE. Nothing in the rule requires specific phrasing along the lines of those appellant suggests. *Accord* Sprague v. Avalon Care CR., 2019 UT App 107, ¶ 25, 446 P.3d 132, 140 (state precedent "does not require that an expert expressly state the phrase, 'to a reasonable degree of medical probability' for their testimony to be admissible or entitled to weight"); *see also* United States v. Cyphers, 553 F.2d 1064, 1072 (7th Cir. 1977) (finding "no requirement" in law that "an expert's opinion testimony must be expressed in terms of a reasonable scientific certainty in order to be admissible").

For all these reasons, the record and relevant precedent and rule well-demonstrate that the trial court did not abuse its discretion in admitting the testimony. Its ruling should be affirmed.

B. To the Extent the Trial Court Should Have Limited The Expert's Conclusion, Such Error is Harmless.

Some errors "are so insignificant and inconsequential they do not require reversal of a conviction." State v. Reyes, 432 S.C. 394, 405-06, 853 S.E.2d 334, 340 (2020). If a reviewing court is satisfied beyond a reasonable doubt that the error did not contribute to the guilty verdict, then the conviction should be affirmed under a harmless error analysis. State v. Tapp, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012). Such an inquiry "depends on the circumstances of the particular case. No 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." Reyes, 432 S.C.

at 406, 853 S.E.2d at 340 (quoting State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985)). Stated differently, "the harmless error rule embodies a commonsense principle our appellate courts have long recognized—'whatever doesn't make any difference, doesn't matter.'" Id. (quoting State v. Jolly, 304 S.C. 34, 39, 402 S.E.2d 895, 898 (Ct. App. 1991)).

To the extent the trial court should have limited Agent Cromer's conclusion "to a reasonable degree of ballistic certainty," the error is harmless. (App. Br. 8). Given the context of Agent Cromer's testimony, such a limitation "doesn't make any difference." See Reyes, 432 S.C at 406, 853 S.E.2d at 340. Agent Cromer informed the jury of the nature and limitations of firearms identification. (R. 431-36). Rather than expressing her findings in terms of "absolute certainty" or "to the exclusion of all other firearms," Agent Cromer repeatedly framed her conclusion as "in my opinion." (R. 445, l. 8-9; 447, l. 7; 448, l. 16-17). On cross-exam, counsel ensured the jury understood that her conclusion was not based on a mathematical formula. (R. 448, l. 5-20). Agent Cromer also explained that if there were "not enough markings" on the evidence, her official finding would be "unsuitable" for comparison. (R. 436, l. 1-3). Additionally, if there was no agreement on the markings, the finding would be "inconclusive." (R. 436, l. 3-7). Agent Cromer's testimony implies that she reached her conclusion based on a reasonable degree of ballistic certainty.

Appellant alternatively argues that "Agent Cromer's testimony should have been limited to consistencies she observed." (App. Br. 9). But it practically was. (R. 447, l. 6-10; 449, l. 17-18). In discussing the rationale for concluding that the .380 pistol was the murder weapon, Agent Cromer explained that "in my opinion there was enough of those individual identifying markers that matched up for me to say that I believe that this was fired by the … 380 Smith and Wesson

Bodyguard pistol." (R. 447, l. 7-10). Moreover, the last words Agent Cromer said to the jury were, "[w]e're looking for similarities and the individual matching criteria." (R. 449, l. 17-18).

In light of the context in which Agent Cromer placed her opinion, the alleged error in framing that opinion "doesn't make any difference." See Reyes, 432 S.C. at 406, 853 S.E.2d at 340. Had the trial court limited Agent Cromer's opinion as appellant argues, the jury's verdict would have been the same. Therefore, any error at trial is harmless.

II. The Trial Court Properly Held That The Declarant's Statement at the Hospital Qualified as an Excited Utterance Because The Declarant Had Been Shot During An Active Shooter Incident, Appeared Agitated and Under Stress, Was Receiving Emergency Medical Treatment for the Gunshot Wound, and Was Physically Unable to Write His Initials on a Police Form.

A. The Trial Court Had A Sufficient Factual Basis To Conclude That The Declarant Was Still Acting Under The Stress of the Active Shooter Incident When He Replied To The SLED Agent's Question At The Hospital.

South Carolina Rule of Evidence 803(2) codifies the "Excited Utterance" exception to the hearsay rule. It allows the admission of "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Rule 803(2), SCRE. There are three elements to the exception: (1) the statement must relate to a startling event; (2) the declarant must be under the stress of excitement; and (3) the startling event must cause the declarant's stress. E.g., State v. Prather, 429 S.C. 583, 611, 840 S.E.2d 551, 555-56 (2020). The second element—that the statement was made while the declarant was under stress—is in dispute here. (App. Br. 10-12). When assessing that element, the trial court must consider the "totality of the circumstances." State v. Washington, 379 S.C. 120, 125 665 S.E.2d 602, 604 (2008). Useful factors include the severity of startling event, the declarant's demeanor, and the amount of time that has passed since the startling event. State v. Sims, 348 S.C. 16, 21-22, 558 S.E.2d 518, 521 (2002). The Supreme Court of South Carolina has recognized that this is a fact-driven inquiry that "is generally left to the sound discretion of the trial court." State v. Burdette, 335 S.C. 34, 43-44, 515 S.E.2d 525, 530 (1999).

The trial court did not abuse its discretion here. First, consider the severity of the startling event. Sims, 348 S.C. at 22, 558 S.E.2d at 521. As described above, the declarant was involved in an active shooter incident. Chambers was shot in the arm, and two others were murdered. The responding officers described an absolutely "chaotic scene" that was "like something you would

see in the movies." (R. 99, l. 11-12; 124, l. 22-24). The trial transcript even reads as if one officer might still be dealing with post-traumatic stress years later. (R. 120, l. 2-5). In short, it is hard to imagine a more compelling event to serve as the basis of an excited utterance.

Next, consider the declarant's demeanor. See Sims, 348 S.C. at 22, 558 S.E.2d at 521. When the responding officers first encountered Chambers on Evans Mill Road, he was bleeding from a gunshot wound to the arm. (R. 91, l. 3). One officer could "just remember [Chambers] saying Jesus, Jesus, Jesus. He was being uncooperative." (R. 91, l. 7-8). Additionally, Chambers' girlfriend testified that Chambers was "in shock" when he called her after being shot.[13] (R. 331, l. 19). According to the girlfriend, he was "still in shock from the gun wound" when she visited him at CMC-Union Hospital in Monroe, North Carolina. (R. 334, l. 17). The SLED Agent's description of Chambers at CMC-Main Hospital was similar. (R. 292, l. 2-22). He testified that Chambers was "very frustrated and aggravated that he had been shot." (R. 292, l. 4-6). More specifically, the agent believed Chambers "was still under the stress of the situation … specifically having been shot." (R. 292, l. 10-12; 293, l. 22-23). When the agent asked Chambers if he knew why law enforcement was at the hospital, Chambers immediately replied, "Shawn shot me." (R. 295, l. 17-18).

[13] The girlfriend testified after the jury heard the challenged statement given to the SLED Agent. (R. 328-337). Nevertheless, the State offers her testimony in support of its argument that the challenged statement was properly admitted as an excited utterance. See Equivest Financial, LLC v. Ravenel, 422 S.C. 499, 507-08, 812 S.E.2d 438, 442 (Ct. App. 2018) (Noting that on appeal, a respondent may raise "any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.") (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000)); See also, United States v. Luna, 649 F.3d 91, 103 (1st Cir. 2011) ("If evidence is admitted prematurely because it is not yet authenticated, a court of appeals need not remand for a new trial if later testimony cures the error.").

Chambers was also likely in severe pain when he responded to the SLED agent. This too guides the analysis. See State v. Ladner, 373 S.C. 103, 117, 644 S.E.2d 684, 691 (2007) ("The victim was complaining of pain and was bleeding when the statements were made, and thus, the victim made the declaration while under the stress of her attack."). Apparently, CMC-Union Hospital in Monroe, North Carolina could not adequately treat the gunshot wound. (R. 291, l. 13-16). The SLED Agent approached Chambers while he was waiting on additional treatment at CMC-Main, a larger hospital in Charlotte. (R. 292, l. 4-5). The agent further testified that Chambers was physically unable to initial a police form. (R. 292, l. 18).

Despite the severity of startling event, the declarant's demeanor, and the obvious pain from a gunshot wound, appellant points out that several hours had elapsed between the active shooter incident at the trailer park and the excited utterance. (App. Br. 10-11). But the passage of time is just "one factor to consider, it is not the dispositive factor." Sims, 348 S.C. at 21, 558 S.E.2d at 521. "Even statements after extended periods of time can be considered an excited utterance as long as they were made under continuing stress." Id. at 21-22, 558 S.E.2d at 521. For example, in Sims a child gave a statement to a police officer after finding his mother lying in a pool of blood. Id. at 18, 558 S.E.2d at 520. Although twelve hours had passed between the attack on the mother and the child's statement, the court affirmed its admission as an excited utterance. Id. at 21, 558 S.E.2d at 521. The rationale was the child was still "under the continuing stress of excitement" when he gave the statement. Id. at 23, 558 S.E.2d at 522.

The same reasoning applies here. If anything, this case presents even stronger grounds for admission as an excited utterance. Unlike Sims, the declarant here did not just witness the aftermath of a violent attack. Id. at 22, 558 S.E.2d at 522 (noting the child possibly saw the attack and "at the very least, was left alone with his severely injured mother whom he could not wake").

Chambers was a *target* of that violent attack. According to the SLED agent, Chambers was awaiting emergency medical treatment in the hospital when he identified appellant as the shooter. (R. 317, l. 4-5). Chambers' demeanor reflected that he was still acting under the stress of the shooting. As the case law makes clear, there is no time limit for the admission of an excited utterance. See Id. Rule 803(2) does not have a "play clock." Therefore, given the extreme nature of this startling event, the trial court acted within its discretion in admitting Chambers' statement into evidence.

Finally, appellant argues that the statement should not have been admitted under State v. Washington, 379 S.C. 120, 665 S.E.2d 602 (2008). In that case, a female witnessed her ex-boyfriend stab her current boyfriend. Id. at 123, 665 S.E.2d at 603. The police arrived on scene, brought the female witness to headquarters, and took her formal statement ninety minutes later. Id. The statement "consisted of a written narrative of the incident, which [the female witness] wrote, and three pages of questions and answers, which the Officer transcribed." Id. An officer would later testify the witness was "extremely upset" and "became hysterical" upon learning her current boyfriend had died. Id.

The Supreme Court of South Carolina held the statement did not qualify as an excited utterance because it arose from "a formal interview with law enforcement at police headquarters." Id. at 124, 665 S.E.2d at 604. Moreover, "[n]one of the statements were independent assertions or exclamations regarding the events." Id. To the contrary, the police were "seeking detailed answers regarding the specific facts of the incident as opposed to emotional, unprompted, or inherent responses." Id. Nevertheless, the court acknowledged that statements made to law enforcement can qualify as excited utterances "under other circumstances." Id. at 125, 665 S.E.2d at 604. For example, "off-the-cuff, volunteered responses to law enforcement" are admissible as excited

utterances. Id. However, the "formal police interview" in Washington was "fundamentally different" than those off-the cuff responses. Id.

Appellant's reliance on Washington misses the mark. Here, the declarant's statement did not occur during a formal interview at a police station. Instead, the SLED agent caught up with Chambers while he was waiting on emergency medical treatment at the hospital. Also, the agent was not "seeking detailed answers regarding the specific facts of the incident." Washington, 379 S.C. at 124, 665 S.E.2d at 604. Instead, he simply "asked the general question do you know why agents are here to see you." (R. 295, l. 16-18). Chambers gave an "off-the-cuff, volunteered response," not a three page written statement like in Washington. See Id. at 125, 665 S.E.2d at 604.

Furthermore, the Washington court identified a handful of cases in which statements to law enforcement qualified as excited utterances. Id. One is particularly relevant here. In State v. Quillien, 263 S.C. 87, 665 S.E.2d 602 (1974), the police approached a rape victim after she arrived at a hospital by ambulance. Id. at 96, 665 S.E.2d at 819. The victim told police that an unknown man ordered her into a car, drove her behind an apartment, and raped her. Id. According to the victim, the police spotted them driving away, prompting a high speed chase. Id. The court found no error in admitting the victim's statement at the hospital. Id. at 97, 665 S.E.2d at 819. It reasoned that "instinctive, spontaneous utterances of the mind while under the active, immediate influences of the transaction" are exceptions to the hearsay rule. Id. The rationale is that the statements are not "the result of reflection or designed to make false or self-serving declarations." Id.

The same could be said for this case. Like Quillien, the SLED Agent approached Chambers while he was awaiting additional medical treatment at the hospital. Chambers' reply was even more "instinctive and spontaneous" than the victim's statement in Quillien. See Id. The

State never sought to introduce anything beyond Chamber's "off-the-cuff" remark to an open ended question. See Washington, 379 S.C. at 125, 665 S.E.2d at 604. There were no additional details or facts offered. Accordingly, the trial court acted within its discretion in admitting the statement as an excited utterance.

B. Any Error in Admitting The Declarant's Statement to the SLED Agent Was Harmless Because It Was Cumulative to The Declarant's Statement to His Girlfriend And The Evidence Of Guilt Was Overwhelming.

To the extent Chamber's statement to the SLED Agent was not an excited utterance, appellant suffered no prejudice. As the Court is aware, "[t]he improper admission of hearsay is reversible error only when the admission causes prejudice. State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006). Here, appellant suffered no prejudice because Chambers' statement to the SLED agent was cumulative to his statement to his girlfriend. See e.g. State v. Jennings, 394 S.C. 473, 478, 716 S.E.2d 91, 93-94 (2011) ("Improperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless."). Additionally, any error is harmless because the evidence appellant's guilt was overwhelming. See e.g., State v. McDonald, 412 S.C. 133, 142, 771 S.E.2d 840, 845 (2015) (holding that the overwhelming evidence of guilt rendered an error harmless beyond a reasonable doubt).

As discussed above, Chambers spoke to his girlfriend prior to the SLED Agent approaching him at CMC-Main Hospital. The girlfriend noticed that Chambers was "still in shock from the gun wound." (R. 334, l. 17). Chambers told her "that Shawn shot him." (R. 334, l. 23; 335, l. 3). The girlfriend understood Chambers "was referring to the defendant" when he used the name "Shawn." (R. 335, l. 12). Because the subsequent statement to the SLED Agent was cumulative

to the statement to the girlfriend, any error is harmless.[14] State v. Parvin, 413 S.C. 497, 505, 777 S.E.2d 1, 5 (Ct. App. 2015) (holding that the trial court's error in admitting hearsay was rendered harmless because they subsequently became cumulative to other testimony).

Furthermore, the evidence of appellant's guilt in this case was overwhelming. See e.g., State v. Hughes, 419 S.C. 149, 159, 796 S.E.2d 174, 170 (Ct. App. 2017) ("any error in admitting the testimony was harmless due to the existence of overwhelming evidence of Hughes's guilt."). Three witnesses described Tyvon Threatt's dying declaration that appellant shot him. (R. 343, l. 2-14; 351, l. 19-24; 352, l. 7-14; 356, l. 9-13). Three of the responding police officers identified appellant as the man who fired on them from doorway of the trailer. (R. 56, l. 11-25; 100, l. 12; 177, l. 7-15). All five responding officers testified appellant appeared from behind the trailer after the firefight, disobeyed their commands, and drove away in a Cadillac. (R. 58-59, 102-04, 128-29, 156-162, 178-80). Appellant was on the lam until the next morning. (R. 201, l. 19-24). When confronted by law enforcement, he said, "I aint got no strap on me no more" and continued to flee. (R. 203, l. 13-25). The arresting officers had to taze appellant three times before he submitted. (R. 206, l. 9-11).

The jury also watched the recorded interviews of Shannon Little's daughters, Zara and Carmella. (St. Ex. 99). On the day of the murders, Zara heard appellant say "I wanna kill Bam[15] because he's a snitch." (St. Ex. 110, p. 10). Carmella explained that a man came over to their home and said "hey Shawn." (St. Ex. 109, p. 3, 5). Appellant replied, "hey snitch" and shot the man. (St. Ex. 109, p. 3, 5). Both sisters overheard appellant say "today is the day" prior to the

[14] At trial, the defense objected to the admission of Chambers' statement to the girlfriend. (R. 359, l. 23). Appellant has not challenged the admission of Chambers' statement to the girlfriend on appeal. (App. Br. 9-12).

[15] The jury previously learned that "Bam" was Chambers' nickname. (R. 291, l. 5-6; 322, l. 9; 330, l. 14).

murders. (R. 600, 622). According to both sisters, appellant was holding Shannon Little around the waist immediately before she was shot. (R. 600; 617-18). Zara saw her mother fall to the ground. (R. 617-18).

The children's observations that appellant was restraining Shannon Little before she was shot is particularly damning in light of the forensic evidence. Recall that the forensic pathologist assessed that the murder weapon was only a few inches away from Shannon's neck when it was fired. (R. 36, l. 3-12). That means only appellant could have shot his wife. Furthermore, Agent Cromer believed the same weapon that fired the fatal round into Shannon's brainstem also fired the cartridge cases found outside the trailer. (R. 445-47). Thus, the responding officer's testimony that appellant fired on them from the doorway puts the murder weapon in appellant's hand. (R. 56, l. 25; 100, l. 12; 177, l. 7-15).

In light of this evidence, Chamber's excited utterance to the SLED agent had *zero* effect on the jury's verdict on the two murder charges, the two weapons charges arising from the murders, and the five attempted murder charges against the responding officers. See State v. Brewer, 411 S.C. 401, 409, 768 S.E.2d 656, 660 (2015) (holding that an error was harmless as to a shooting inside a nightclub but not harmless error as to a second shooting in the parking lot of the nightclub); State v. Huckabee, 419 S.C. 414, 798 S.E.2d 584 (Ct. App. 2017) (holding that an error was harmless as to a charge of unlawful conduct toward a child but not harmless as to other charges). Regarding the attempted murder of Luther Chambers and the accompanying weapons charge, there was still overwhelming evidence of guilt. This case was not a "whodunit." Chambers' presence at the scene with a gunshot wound, the girlfriend's testimony that Chambers identified appellant as the shooter, and the daughters' interviews render any error harmless beyond a reasonable doubt.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the convictions and sentences of the trial court be affirmed.

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February 28, 2023
Columbia, South Carolina

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2021-001385

THE STATE, ...RESPONDENT

v.

RASHAWN MONTEZ LITTLE, ...APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 28th day of February 2023.

s/Melody J. Brown
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