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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Writ of Certiorari to the Court of Appeals
APPEAL FROM BEAUFORT COUNTY
Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2023-001169

THE STATE .....RESPONDENT,

v.

DALE EUGENE KING..... PETITIONER.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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1. The Court of Appeals erred in upholding the trial judge's ruling that the opening remark that "a trial is a search for the truth" did not require a mistrial because it was clear that this comment shifted the burden of proof in violation of petitioner's right to due process of law.

2. The Court of Appeals erred in upholding the trial judge's denial of petitioner's mistrial motion after testimony surfaced that exceeded the parameters of prior difficulties between the parties evidence because this ultimately morphed into prior bad act evidence that was inadmissible at trial.

RESPONDENT'S COUNTERSTATEMENT OF ISSUES PRESENTED

1. Whether the Court of Appeals properly upheld the trial court's denial of the mistrial motion when this Court already ruled that when the phrase "search for the truth" is used by a court before the trial begins, it is not a reversible error in *State v. Beaty*, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018)?

2. Whether the Court of Appeals properly upheld the trial court's denial of the mistrial motion after the victim's sister testified about prior difficulties her sister had had with Petitioner when the court immediately gave a curative instruction and we presume juries follow their instructions in this state?

STATEMENT OF THE CASE

The Beaufort County Grand Jury true-billed Petitioner's indictment for murder (2017-GS-07-00810) in October of 2018. Petitioner proceeded to trial by jury on December 9, 2019 after which he was found guilty of the May 16, 2017 murder of his wife Veronica King. ROA. 1, 190. He was prosecuted by Assistant Solicitors Kimberly Smith and Hunter Swanson and was represented by Trasi Campbell, Esq. ROA. 1. He was sentenced by the Honorable Edgar W. Dickson to thirty-five years' imprisonment after the three-day trial concluded on December 11, 2019. ROA. 200–201. Petitioner timely filed a notice of intent to appeal his conviction and sentence on December 17, 2019 and subsequently submitted a brief in support of his appeal. The South Carolina Court of Appeals dispensed with oral argument and affirmed in an unpublished, per curiam opinion on March 15, 2023. *State v. King*, No. 2023-UP-091 (S.C. Ct. App. Filed March 15, 2023); App. 1-3.

Petitioner filed a petition for rehearing on May 22, 2023, and Respondent made its timely return on June 2, 2023, in response to the court's request. App. 4–20. The petition was denied on June 22, 2023, so Petitioner filed his petition for writ of certiorari with this Court on July 24, 2023. App. 21. This return of Respondent follows.

STATEMENT OF FACTS

Dale King hit his wife Veronica in the face while their daughter hid in their hotel room's bathroom on March 18, 2017. ROA. 137, ROA. 140. Both parties had been drinking and arguing, but only King resorted to violence. ROA. 136. Veronica's face was badly bruised as a result and King was arrested for Domestic Violence Second Degree. ROA. 137, ROA. 142.

A little less than two months later, Dale and Veronica King were drinking with friends in that same hotel room around 10 or 11:00 PM. ROA. 70, ROA. 94–95. Dale King initially told law enforcement and his brother-in-law that he and Veronica had gone to bed around 10:30 or 11:00 PM when their friends left. R. 69–70, ROA. 94. However, he later changed his story and said they were up drinking vodka and beer until 2 or 3:00 AM. ROA. 70. Witnesses related seeing both full and empty beer cans and liquor all over the room, as both Dale and Veronica drank daily. ROA. 61, ROA. 84.

Sometime during the late night or early morning hours of May 15 to 16, 2017, Dale King got into an argument with his wife about her wanting to bathe. ROA. 95. "She wanted to take a shower and I just told her to get her ass in bed and we'd wash up in the morning when we [got] up. I don't know why she just made her head so hard. She just wouldn't listen to me." ROA. 71–72. They had argued about her showering at night after drinking many times before, ROA. 102, and he admitted to being angry at her for wanting to take a shower that night. ROA. 100–101.

Veronica King was found "unresponsive, laying on the sofa, stiff and cold to the touch [with] . . . signs of blood and a cut to the lip and also blood coming from her nose" around 8:00 AM the morning of May 16, 2017. ROA. 42–43. An autopsy revealed she had been strangled to

death.[1] ROA. 96, ROA. 100. There were three areas of bruising on the left side of her neck, two areas of bleeding in her left eye, an abrasion on her tailbone that showed she may have been dragged, discoloration around her neck, and hemorrhages in six of her ten neck muscles. ROA. 43, ROA. 117, ROA. 121. The hemorrhages wrapped around her esophagus. ROA. 122. Blunt force trauma and petechiae were also located on her body, accompanied by bruises of all different colors and ages. ROA. 87, ROA. 124. Her body appeared to have been moved. ROA. 25, ROA. 43.

When asked what happened, King initially denied knowing what happened to Veronica at all. ROA. 67, ROA. 69. He did not report a disturbance or argument with her. ROA. 94–95. When he found his wife stiff and cold, he did not call 911. ROA. 56. Instead, he got dressed and went to the hotel office where he reported her unresponsive to a hotel employee. ROA. 56. When first responders arrived, he said she had a history of seizures, ROA. 46, ROA. 106, and claimed she may have had a seizure and/or slipped in the shower and hit her head. ROA. 67–68. No seizure medication was found in the room. ROA. 47. He denied knowing where the injury on her mouth came from. ROA. 96, ROA. 102. He was highly intoxicated at the scene and was crying. ROA. 66–67.

Later that day, however, he said, "I have to – I have to face this the rest of my life." ROA. 68. "What did I just do? What was I thinking? What did I just do?" ROA. 70. He then changed his story and said he "thought something happened," and added if he was responsible it was not intentional and he did not mean to hurt his wife. ROA. 103. "If I hurt her, it ain't been planned." ROA. 103. He then admitted that they had been "fussing and fighting" that night so he

[1] The autopsy was conducted by Dr. Nick Batalis, a Forensic Pathologist from The Medical University of South Carolina. ROA. 117–126. He declared the cause of death to be homicide by strangulation. ROA. 125.

hit her and slapped her across the face. He described his hand as being open when he hit her. ROA. 103–104. King said she "slipped and felt like dead weight" when he put her into and took her out of the shower, and that he grabbed her by the neck while getting her out when she accidentally fell and hit her mouth. ROA. 73.

He later related a third version of events to investigators when he said he threw her on the bed where she somehow slipped and slid between the bed and the couch. ROA. 74. Even though he initially denied knowing where her lip injury came from, he later admitted to getting a green towel to wipe up her mouth "because it was busted." ROA. 74. He was the only one in the hotel room with her between 11:00 PM and 8:00 AM the next morning. ROA. 104.

State v. King, 2023-UP-091 (S.C. Ct. App. Filed March 15, 2023).

STANDARD OF REVIEW

The decision to grant or deny a mistrial is within the sound discretion of the trial court, and "[t]he trial court's decision will not be overturned . . . absent an abuse of discretion amounting to an error of law." *State v. Wilson*, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010). "The power . . . to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record." *State v. Stanley*, 365 S.C. 24, 33–34, 615 S.E.2d 455, 460 (Ct. App. 2005). "The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case." *State v. White*, 371 S.C. 439, 447, 639 S.E.2d 160, 164 (Ct. App. 2006).

DISCUSSION

I. The Court of Appeals properly upheld the trial court's denial of the mistrial motion because the use of the phrase "search for the truth" has never been held to be reversible error by this Court when utilized at the beginning of trial.

Petitioner argues the Court of Appeals erred by affirming because the trial court shifted the burden of proof to petitioner when it used the phrase "search for the truth" in its opening comments to the jury. ROA. 26–35. The State respectfully disagrees. The Court of Appeals properly noted this Court's holding in *State v. Beaty* that when used at the beginning of trial the phrase was not reversible error, as it was a "mere statement to the jury and not a charge on the law." *State v. Beaty*, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018). Even if that precedent were not in place, however, the judge, the State, and the defense attorney all spent considerable amounts of time throughout the trial instructing the jury on the State's burden of proof: guilty beyond a reasonable doubt. Therefore, Petitioner cannot prove the result of his trial would have been different but for this alleged error. This Court should deny the petition.

Before the trial began, Judge Dixon made a few comments to the jury to familiarize them with what they were about to experience. ROA. 26–35. He explained that the criminal trials they may have seen on TV were full of drama and intense action that might:

> [b]e true at times [but] this trial is not for entertainment. It is a fundamental part of our democracy. **A search for the truth** in an effort to make sure that justice is done between the parties before this Court. **Searching for the truth** and making sure justice is done is often slow, deliberate and repetitive . . . .
>
> The attorneys appearing before you . . . are officers of this Court, sworn to uphold the integrity and fairness of our judicial system and to help you in **the search for the truth** . . . . These instructions are intended as an introduction to the trial. *They are not a charge on the law.* This is merely an explanation of the procedure that we will follow . . . to help you better understand what's happening . . . .
>
> The Defendant has pled not guilty to this indictment. Therefore, the State has the burden of proving each of the elements of the indictment beyond a reasonable doubt. It is your duty . . . to decide whether the State has met its burden.

ROA. 27–29 (emphasis added).

The defense objected to the trial court's opening remarks and moved for a mistrial. ROA. 77. They argued the remarks were an "unconstitutional shift of the burden of proof" but did admit the distinction in case law between the Court making the statement in opening remarks versus at the end of the trial during jury instructions. ROA. 76. In response to the motion, the State highlighted the Court's thorough review of the presumption of innocence and reasonable doubt and stated a mistrial was not permitted. ROA. 77. The State also noted, "Your Honor . . . you prefaced those comments with, 'this is not a charge on the law.'" ROA. 78.

The Court denied the defense's motion, noting:

> I'm always impressed when the Jury listens to anything that I say . . . I think it's just a cautionary thing to tell them that I want them to get to the bottom of this. But that is the charge that we were given when I first got on the bench and I've made my cases to it as I've gone along and when you mentioned that you had something to take up, I figured that that's where we were going with this.
>
> I'm not going to grant a mistrial. I think my closing charge on the law should take care of that . . . we'll go forward with it. You've got a pretty good jury. I don't know that it will get better next time, if there was a next time.

ROA. 178.

The State addressed their burden of proof beyond a reasonable doubt in their opening statement, ROA. 37, and the defense addressed Petitioner's presumption of innocence at length in theirs. ROA. 39–41. The defense said, "If [we] were to dim the lights . . . and I could project on each of the four walls in this courtroom one thing, that would be the word innocent." ROA. 39. "[T]he presumption of innocence is the law. It's real. It's not just a concept." ROA. 39. During closing arguments, defense counsel advised the jury on the presumption of innocence, the State's burden of proof, and reasonable doubt:

> [I]n this country, in this county, we citizens, we never shift the burden of proof of guilt an accused . . . . No man, no woman could or should be forced to have to come in here into a court and try to prove that they're innocent. The founding fathers of this country, they knew this. They made it the law and the law still holds today. All men are presumed innocent and no man is called to prove he did not commit a crime . . . .
>
> Proof of guilt beyond a reasonable doubt is the standard and make no mistake, today you are the anchor that must hold the State of South Carolina accountable and stand firm in the rule of law and the presumption of innocence.

ROA. 163–164.

After the closing arguments concluded, the judge instructed the jury on the law. He notably said, "The presumption of innocence is like a robe or righteousness placed about the shoulders of the Defendant. This presumption of innocence remains with the Defendant until it has been stripped from him by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt." ROA. 170. "Your sole purpose is to determine whether the State has proven the Defendant's guilt to the charge of murder beyond a reasonable doubt from the evidence that has been presented to you in this case." ROA. 180.

Analysis

The decision to grant or deny a mistrial is within the sound discretion of the trial court, and "[t]he trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." *State v. Wilson*, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010). "The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." *State v. Stanley*, 365 S.C. 24, 33–34, 615 S.E.2d 455, 460 (Ct. App. 2005). A mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial. *Id.* at 585–86; 698 S.E.2d at 865. "[It] is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be

removed in no other way." *Stanley*, 365 S.C. at 33–34. "Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." *State v. White*, 371 S.C. 439, 447, 639 S.E.2d 160, 164 (Ct. App. 2006).

South Carolina appellate courts analyze cases where judges use "search for the truth" phrases by determining when and how the phrase was used and whether it was connected to reasonable doubt or innocent until proven guilty explanations. *State v. Beaty*, 423 S.C. 26, 33, 813 S.E.2d 502, 505–506 (2018) "[I]instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000). A determination must be made whether there was a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt." 343 S.C. at 27, 538 S.E.2d at 251; *Estelle v. McGuire*, 502 U.S. 62, 72 (1991). "Jurors do not sit in solitary isolation booths parsing instructions for subtle shades of meaning in the same way that lawyers might. Differences among them in interpretation of instructions may be thrashed out in the deliberative process, with commonsense understanding of the instructions in the light of all that has taken place in the trial likely to prevail over technical hairsplitting." *Boyde v. California*, 494 U.S. 370, 380–81 (1990).

This Court has found the level of possible error differs when the phrase is used at the end of the trial during the jury charge versus at the beginning in the judge's opening comments to the jury. *Cf.*. *Aleksey*, 343 S.C. at 20, 27–29, 538 S.E.2d at 251–52 (2000) and *Beaty*, 423 S.C. at 33–34 (2018), 813 S.E.2d at 505–506. The error is more likely to be harmless when a trial judge uses the phrase at the beginning of a trial when the jury is first learning about the relative structure of the trial rather than when they are being told what the law is by the judge at the end.

Aleksey, 343 S.C. at 27-29, 538 S.E.2d at 251–52; *Beaty*, 423 S.C. at 33–34, 813 S.E.2d at 505–06. No South Carolina court has held the "search for the truth" language to be reversible error when it was given at the beginning of the trial, as the jury is less likely to have applied the phrase in a manner inconsistent with the State's burden, effectively altering [their] perception [of it], "substituting justice and fairness for the presumption of innocence and the State's burden of proving the [D]efendant's guilt beyond a reasonable doubt." *State v. Daniels*, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012) (regarding the danger of "inaccurate and misleading" jury instructions on the law). The error is more likely to be insubstantial at that juncture, unlikely to have affected the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991) (providing appellate courts will "not set aside a convictions due to insubstantial errors not affecting the result."); *State v. Needs*, 333 S.C. 134, 157–158, 508 S.E.2d 857, 869 (1998).

In *State v. Beaty*, the judge used the language in question at the beginning of the trial:

> [This] trial . . . is a **search for the truth** in an effort to make sure that justice is done. **Searching for the truth** and ensuring that justice is done is often slow, deliberate, and repetitive. [The attorneys] are sworn to uphold the integrity and he fairness of our judicial system and to help you as jurors to **search for the truth**."

Beaty, 423 S.C. at 34, 813 S.E.2d at 505–506 (emphasis added).

While the court held these comments to be improper yet harmless error,[2] they also held that "the disputed comments can be distinguished from *Aleksey* because they were a mere statement to the jury and not a charge on the law. Further, the remarks were not linked to either the reasonable

[2] "[It] could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice." *Beaty*, 813 S.E.2d at 506.

(continued) "We therefore instruct trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt." *Id.*

doubt or the circumstantial evidence charges as was condemned in *Aleksey*." *Id.* The Court of Appeals held to this Court's precedent. Therefore, this Court should deny the petition.

II. The Court of Appeals properly upheld the trial court's denial of the mistrial motion after the victim's sister testified about prior difficulties between the victim and Petitioner because the court immediately gave a curative instruction, and we presume juries follow their instructions in this state.

Petitioner argues the Court of Appeals erred by affirming because the court denied the motion for a mistrial after the victim's sister testified about having to go to the hospital and check on her sister for "being beaten and stuff." Petition at 13. To the extent Petitioner raises any other argument about prior difficulties, the Court of Appeals properly found Petitioner failed to preserve them for appellate review. After the "beaten and stuff" statement, the trial court immediately instructed the jury to disregard the statement, and as the Court of Appeals properly held, we presume juries follow their instructions. This Court should deny the petition.

Before the trial began, the judge ruled that testimony about generalized difficulties in the relationship between Petitioner and the victim were admissible but that details of such difficulties were not. After the witness made the statement in question, the defense objected and the judge instructed the jury to disregard her answer. He never specifically ruled the statement qualified as a "detail" of the difficulty. Further, there is no evidence in the record that demonstrates Petitioner was prejudiced by it. There is independent, competent, and conclusive evidence, however, that Petitioner was guilty of the crime. The timing of the death could only have occurred when the two parties were in the room, and it was not a natural death: the autopsy determined the cause of death was homicide by strangulation. Petitioner made statements from which it could be determined that he committed the crime and that he knew he did it. He admitted to being angry with her that night, to striking her in the face, and to grabbing her by the neck. This Court should deny the petition.

Relevant Facts

Before trial, the State moved to admit the "prior history of difficulties between the parties under current South Carolina case law . . . ." ROA. 3.

> [The] prior difficulties between the parties . . . go to prove animus and motive in a homicide case . . . . [T]he couple had been married for 35 years and I'm not seeking to have law enforcement testify to it, but the victim's sister, Bessie Bates, can testify about the fact that they had a tumultuous relationship . . . .
>
> [I]n a domestic homicide case, it's extremely relevant and probative to talk about the relationship because it goes into the cycle of abuse basically.

ROA. 3–4.

The State proffered Ms. Bates to elucidate the testimony they sought to admit. ROA. 5–9. The State asked her, "How would you describe [the victim and defendant's] relationship?" She answered, "As long as I can remember, there was days they had some pretty good days but for the most part, it was arguing, fighting, fussing." ROA. 6. "Did you ever give [the victim] any advice about Dale?" "Yes. There was several times I told her, went to see her and she –." The State: "Without telling me what she said, what was your advice to her?" ROA. 6. "Oh, that she needed to move away from the situation." The State: "Did you give her that advice once, twice, a number of times?" "Several times." ROA. 7.

The State argued the testimony was admissible pursuant to *State v. Smith,* 337 S.C. 27, 522 S.E.2d 598 (1999) and *State v. Williams,* 2018 WL 2049985, C/A No. 2015-001727 (Ct. App. 2018).[3] They argued, "[T]he probative value certainly outweighs the prejudicial value in determining and allowing the jury to hear the testimony about the state of their relationship . . . ." ROA. 15.

[3] The State: "I think *State v. Williams,* in particular, where the court pulled the evidence and marital discourse was admissible, a husband's trial for the murder of his wife, it's just that the details of the difficulties are not admissible and I certainly think that the advice to her sister over the years of marriage was completely admissible." ROA. 21.

> I don't have the luxury of knowing what the defense is going to present, and I have to prove murder. I have to prove malice aforethought and state of mind and that comes into play and this is proper evidence admissible to prove state of mind and intent.
>
> That whole slew of cases that examined evidence of prior disputes, ill feelings and hostile acts in the homicide case is to establish a turbulent relationship between Defendant and Victim in order to point towards state of mind. Those are all – that's good South Carolina case law.

ROA. 20–21.

The defense objected, arguing they wanted to defend on the indictment alone, as "by the time the State gets to closing arguments, we'll have a full-fledged violent drunk who beats his wife . . . ." ROA. 18. The court admitted the testimony over the objection, finding "the convictions came in [in *Smith*] . . . to establish the Defendant's state of mind and to rebut his claim of accident . . . ." ROA. 20. The court continued by saying:

> I do think in trying to prove malice and things like that, the State will get to put in the testimony of the prior difficulties and the prior – the *generalized prior difficulties* that the sister talked about and the testimony about the events two months before, which I think would be appropriate.
>
> [The State] is going to have some leeway about going as to any bad, any crimes or anything like that . . . . [I]f we want the Jury to get kind of a full flavor of it, we need to at least give them a chance to get acquainted with it.

ROA. 23–24. (emphasis added).

During the trial, the State asked Ms. Bates, "How would you describe [the victim and defendant's] relationship?" She answered, "The truth is, their relationship was not the best of relationships." ROA. 131. "I didn't see them fighting directly, but when I would see my sister, yeah, you could tell that she – it wasn't good." ROA. 132. "Did you ever give your sister any advice about her relationship with Dale?" "Yes . . . Seeing – witnessing the times when I had to go to the hospital and to check after her *for being beaten and stuff like that*." ROA. 132 (emphasis added). The defense objected and **the court said, "Don't say anything, Ms. Bates.**

I'm sorry. Are you going to redirect your question?" The State: "Yes. Yes, sir." The court: "You all disregard that last answer. Go ahead." ROA. 132 (emphasis added). The State: "Not getting into any details of fights or things that you did not personally observe, did you give [the victim] any advice about her relationship with Dale? . . . What advice was that?" ROA. 132. Ms. Bates said, "That you need to – you need to come out of the situation that you're in." ROA. 133. The defense moved for a mistrial and the judge denied it, noting, "I cautioned them to disregard that answer." ROA. 143–144.

Analysis

"We start by presuming the cure worked, for we also presume *juries follow their instructions." State v. Young*, 420 S.C. 608, 623, 803 S.E.2d 888, 896 (Ct. App. 2017). *Richardson* v. *Marsh*, 481 U.S. 200, 206 (1987) (emphasis added). While "an instruction to disregard incompetent evidence usually is deemed to have cured the error in its admission," a mistrial may still be required if "on the facts of the particular case it is probable, notwithstanding such instruction or withdrawal, the accused was prejudiced." *State v. Simpson,* 325 S.C. 37, 43, 479 S.E.2d 57, 60 (1996). However, even without a curative instruction, an error not shown to be prejudicial to the defendant does not constitute grounds for reversal. *State v. Patterson*, 367 S.C. 219, 228, 625 S.E.2d 239, 243 (Ct. App. 2006). "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of a party is affected . . . ." Rule 103, SCRE.

The decision to grant or deny a mistrial is within the sound discretion of the trial court, and "[t]he trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." *State v. Wilson*, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010). "The granting of a motion for a mistrial is an extreme measure that should only be taken

if an incident is so grievous that the prejudicial effect can be removed in no other way." *State v. Stanley*, 365 S.C. 24, 33–34 (Ct. App. 2005). The judge must first exhaust all other methods to cure possible prejudice before aborting a trial. *State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). "The Constitution entitles a criminal defendant to a fair trial, not a perfect one." *State v. White*, 371 S.C. 439, 449, 639 S.E.2d 160, 165 (Ct. App. 2006).

Here, the trial judge held that generalized testimony about the prior difficulties between Petitioner and the victim was admissible. He properly ruled that the evidence went to the state of mind and intent of Petitioner and was admissible because it helped the trier of fact determine whether the State proved Petitioner's malice aforethought.[4] He found the testimony relevant and probative and that the probative value was not substantially outweighed by any prejudice to Petitioner. Therefore, Bessie Bates' testimony that Petitioner and the victim had been fussing and fighting for years was admissible.

If it was error for Bates to testify about having to visit her sister at the hospital for being beaten, it was harmless error. The trial judge did not specifically rule on the record whether the statement "for being beaten and stuff" qualified as a detail of the generalized difficulties. If it was an inadmissible detail, however, there is no evidence in the record to show that, but for this error, the jury would have found Petitioner not guilty of murder. Instead, Petitioner's own statements and the autopsy competently and conclusively proved he was guilty of strangling his wife. He was the only person in the room that night and admitted to fighting with her about taking showers at night after drinking in the past. He changed his story about what had happened multiple times, but eventually admitted his anger toward her that night. He admitted he slapped

[4] This Court found in a different *State v. Williams* that evidence of marital discord between a victim and a defendant is admissible to show that animus existed between them but that the details of such disputes were not. *State v. Williams*, 321 S.C. 327, 335–36, 468 S.E.2d 626, 31 (1996).

her. He also admitted to grabbing her neck when she got out of the shower. He said he would have to live with what he had done for the rest of his life and claimed it was an accident. The autopsy conclusively showed she had been strangled to death and the injuries corresponded to certain things Petitioner said about what happened that night. A mistrial for Bates' statement was not absolutely necessary as no grievous error was shown to have occurred and his guilt was independently proven by competent and conclusive evidence.

In *State v. Harris*, the Court of Appeals upheld a trial court's decision to deny a mistrial when the State elicited, according to the defendant, improper character evidence testimony. *State v. Harris*, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). The defendant, later convicted of murder and ABWIK, cross-examined a child about the relationship they shared. *Harris*, 382 S.C. at 119, 674 S.E.2d at 538. On redirect, the State asked the child, "[The defendant] hit you, didn't he?" *Id*. The Court of Appeals found the trial court's immediate instruction to the jury to disregard the question properly cured any error or prejudice to the defendant. *Harris*, 382 S.C. at 119–20, 674 S.E.2d at 538–39. The facts and issue of the case currently before this Court are substantially similar. In *Harris*, the witness did not respond to the question. In this case, the witness also never explained the advice she gave to the victim. The advice remained a question and substance was never established because the court stepped in and had the State redirect the question. This Court should deny the petition for writ of certiorari.

If there was an error here, any prejudicial effect of the witness's statement was cured by the trial judge's instruction. Such an instruction is deemed to cure error unless on the facts of the particular case – looking at the record as a whole – the defense can prove that Petitioner was prejudiced or that a substantial right of his was affected, notwithstanding the instruction. Here, he has not done so. For this Court to grant the writ, Petitioner must have shown the error

contributed to the verdict obtained, and the Court of Appeals erred by failing to so find. He has not done so. In fact, guilt was conclusively proven by his own statements and the autopsy which competently showed the victim was strangled. If error did occur, to be entitled to a mistrial, he must have been able to prove that the error could not be corrected in any other way. Instead, this Court should deny the petition as South Carolina juries are presumed to have followed their instructions. The curative instruction did what it was designed to do.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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