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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No: 2023-00288

The State,.....Respondent

v.

Justin Brodie Granet.....Appellant

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

I. The trial court erred by excluding evidence of the alleged victim's reputation for violence as inadmissible hearsay when this evidence met an exception to the hearsay rule, or alternatively, fell outside the definition of hearsay.

II. The trial court erred by excluding evidence of the alleged victim's reputation for violence as inadmissible hearsay when this evidence was offered not for the truth of the matter asserted but instead to discredit the caliber of the investigation or the decision to charge the Appellant.

STATEMENT OF THE CASE

The Appellant, Justin Granet, was arrested on March 11, 2019 and initially charged with one count of Kidnaping, Assault and Battery, First Degree, and Possession of a Weapon During the Commission of a Violent Crime. Arrest Warrants: 2019A0710400101, 102 and 106, respectively. He was eventually indicted for Kidnaping, Assault and Battery, First Degree, Possession of a Weapon During the Commission of a Violent Crime, Possession with Intent to Distribute Marijuana and a second count of Kidnaping. Indictment Numbers: 2019GS0700478, 0479, 0561, 0562, and 2022GS0701822, respectively. The State called all of the counts for trial together but the trial court granted a motion made by Appellant's trial counsel and severed the trial of the drug charge from the trial of the rest of the counts. Tr, p. 6, l. 20 - p. 17, l. 17. The State did not seek to try co-defendant, Chris Bliss, jointly with Appellant.

Prior to the commencement of the trial but following jury selection, on February 13, 2023, the trial court entertained pre-trial motions brought by both the defense and the State. Tr, p. 81 - p. 177. The majority of these motions concerned redaction of pre-trial statements made by different parties. Principal among these motions made by the defense was a "Snapchat"[1]

[1]Snapchat is an American multimedia instant messaging app and service developed by Snap Inc., originally Snapchat Inc. See https://en.wikipedia.org/wiki/Snapchat

conversation made between the Appellant and a third party named Josh Smith. Tr, p. 108, l. 7 - 124, l. 24.

The trial court agreed to exclude certain statements including a portion of the "Snapchat" thread in which Appellant indicated that the alleged victim, Corey Eckles, would be food for crabs if law enforcement had not arrived when they did. Tr, p. 122, l. 4 -15. The trial court also took under advisement motions concerning statements made by the Appellant. Tr, p. 160, l. 1 - p. 177, l. 6. The trial court also entertained a motion concerning the prior record of alleged victim, Corey Eckles, and other matters contained on the criminal history report provided by the State to the defense. Tr, p. 86, l. 6 - p. 89, l. 18. The attempted use of a portion of the information contained in the criminal history reports is at issue on this appeal.

The trial commenced on February 14, 2023. The State called nine witnesses. Five of these witnesses worked for the Beaufort County Sheriff's Office.

Both of the alleged victims, Corey and Lauren Eckles, testified during the State's case. The third party in the Snapchat conversation, Josh Smith, also testified. Finally, the State called the treating physician from Beaufort Memorial Hosptial, to testify concerning the injuries suffered by Corey Eckles.

Appellant then took the stand in his defense. His testimony supported the defense theory that Appellant was not the aggressor and that his use of force was justified under various theories including self defense, defense of habitation and ejectment of a trespasser.

The parties and the trial court presented argument concerning jury instructions. Tr, p. 821 - p. 850. Pertinent to this appeal, the Defense requested several instructions concerning various facets of the law addressing justified use of force. Tr, p. 821, l. 20 - p. 849, l. 9. Ultimately, the

trial court agreed to charge the law concerning self defense and the defense of habitation.

Following closing arguments and jury instructions, the jury began deliberations. Prior to reaching a verdict, the jury returned two notes to the trial court. In one note, the jury requested a floor plan of the home, which was not an item submitted into evidence. See Court's Exhibit 12. In another note, the jury requested that it receive instructions concerning the "definition" of "assault and battery of the first degree" and "kidnapping (sp)." See Court's Exhibit 13. Affixed to the top of Court's Exhibit 13 was an indication that at least two jurors considered Appellant "not guilty."

Following the restatement of the requested jury instructions, the jury returned guilty verdicts as to all counts on February 17, 2023. Tr, p. 976, l. 16 - p. 983, l. 10. The trial court then proceeded to imposing of sentence following presentation of evidence in aggravation by the State and in mitigation by the defense. Tr, p. 986, l. 16 - p. 1005, l. 10. The trial court sentenced Appellant to five years incarceration for the charge of Possession of a Weapon during the Commission of a Violent Crime; 10 years to the charge of Assault and Battery, First Degree; and 20 years, suspended to the service of 14 years with two years of probation on each of the kidnaping charges with all sentences to run concurrent with each other. Judgment Forms.

Following the sentence, undersigned took over as retained counsel for Appellant and trial counsel was relieved of further obligations. A Notice of Appeal was filed and served by undersigned counsel on February 27, 2023. Notice of Appeal and Proof of Service. This brief follows.

STATEMENT OF THE FACTS[2]

As a general overview of the facts, during the trial, the jury heard from 10 witnesses. The State presented testimony from nine witnesses. Appellant testified in his own defense.

Of the State's nine witnesses, five were employed by the Beaufort County Sheriff's Office (BCSO). Two witnesses were the alleged victims of the criminal conduct at issue in the trial. One witness was a lay witness to pre-trial statements made by Appellant and one was an expert who treated one of the victims for his injuries suffered during the incident presented to the jury.

The State's opening asserted that Appellant and a co-defendant, Chris Bliss, lured Lauren and Corey Eckles to South Carolina to take out frustrations about Appellant's wife having an affair while in Tennessee visiting the Eckles. Tr, p. 204, l. 11 - p. 205, l. 15. In contrast, Appellant countered in his opening that the only actions he took were justified and that Corey was the primary aggressor. Tr, p. 215, l. 12 - p. 216, l. 22. Appellant's trial counsel opined that Corey traveled to South Carolina and conspired with Chris Bliss to prevent Appellant from learning that his wife had also been cheating on him with Corey and Chris Bliss as well as a house guest of the Eckles when she was visiting them in Tennessee. Tr, p. 217, l. 17 - p. 222, l. 24.

During its case in chief, the State first presented the testimony of a 911 Audio Clerk employed by the BCSO. Tr, p. 223 - p. 226. It was through this witness that the State introduced a 911 recording which was played for the jury. Tr, p. 225, l. 16 - 24. On cross examination, this witness admitted that she did not know who was the primary aggressor in the fight that occurred

[2] This statement is provided pursuant to SCACR Rule 208(b)(E).

on March 11, 2019. Tr, p. 226, l. 13 - 14.

The State's second witness was BCSO Investigator Dustin Kline. Tr, p. 227 - p. 252. Kline indicated that he worked Road Patrol on March 11, 2019. Tr, p. 227, l. 21 - 23. He testified that he was the second officer who arrived at 18 Chaplin Drive on St. Helena Island which is in Beaufort County, South Carolina. Tr, p. 228, 2 - 14.

He testified that the first officer who responded heard voices when he arrived and then saw the lights inside the home turn off. Tr, p. 228, l. 14 - 18. Kline testified that he went around back after the first officer was unable to obtain a response when he knocked on the front door. Tr, p. 228, l. 16 - 18. When Kline went to the back door, he saw shattered glass on one French door and various items of disarray inside the home. Tr., p. 228, l. 21 - p. 229, l. 2.

Specifically, he saw what he believed to be furniture out of place and zip ties and rope on the floor. Tr, p. 229, l. 6 - 21. He also believed he saw blood in the area of the zip ties. Tr, p. 229, l. 8 - 10. He indicated that he waited on his supervising Sergeant to arrive and that the decision was then made to breach the front door as part of a protective sweep of the home. Tr, p. 229, l. 23 - p. 230, l. 9.

Kline indicated that he saw Ms. Lauren Eckles being removed from the home with duct tape around her face and her hands bound by rope. Tr, p. 230, l. 15 - 21. He indicated that he later found Mr. Eckles unresponsive with what appeared to be bleeding head injuries. Tr, p. 233, l. 11 - 15 and p. 241, l. 2 - 3. Kline indicated that when Mr. Eckles was moved, he began to "projectile vomit." Tr, p. 240, l. 24 - 25.

Kline indicated that Mr. Corey Eckles indicated that "Justin and Chris" "did this" when questioned. Tr, p. 241, l. 17 - 19. He also provided testimony related to various photographs of

the home admitted into evidence by the State and an exhibit which detailed the floor plan of the home. Tr, p. 232 - 240, generally.

On cross examination, Kline testified that he saw rope behind a chair and around Lauren Eckle's wrists, zip ties, and a clear plastic bag. Tr, p. 242, l. 14 - p. 243, l. 6. He indicated that he did not collect these items as evidence and that he was unsure if they were submitted for DNA testing. Tr, p. 242, l. 7 - 22. He agreed with defense counsel that DNA testing of the zip ties would make sense but that this was not his responsibility. Tr, p. 243, l. 23 - p. 244, l. 18.

Kline agreed that when he arrived, the "incident itself" was "done." Tr, p. 244, l. 11 -1 8. He agreed with defense counsel that he had no information about what "led up to the fighting" or who was the "first aggressor." Tr, p. 244, l. 19 - p. 245, l. 19.

When Kline was asked about other important information he learned that night, he indicated that a flashlight was found near Mr. Eckles but he did not know about any DNA testing of it. Tr, p. 246, l. 4 - 10. Importantly, Kline indicated that he found silver "duct tape" used in the HVAC[3] business at the scene and that the co-defendant, Chris Bliss, had driven his HVAC work vehicle to the scene. Tr, p. 246, l. 20 - p. 248, l. 11.

The cross examination of Kline concluded with him agreeing that he did not mention Chris Bliss at all during his direct examination even though the police reports indicated that he was also located in the home during the protective sweep. Tr, p. 248, l. 12 - p. 250, l. 5.

On redirect, Kline indicated that he was only involved in the protective sweep of the home and was not the investigator assigned to the case. Tr, p. 251, l. 8 - 13.

Next, the State presented the testimony of Lauren Eckles. Tr, p. 254 - p. 330. She

[3] HVAC is an acronym for Heating, Ventilation, and Air Conditioning.

testified that she lived in Tennessee with her husband, Corey Eckles. Tr, p. 254, l. 11 - 12 & l. 23 - 24. She also testified that she had previously been convicted of crimes including two counts of theft, two counts of fraudulent use of a credit card and four counts of forgery. Tr, p. 255, l. 20 - p. 256, l. 9.

Lauren also testified about the events that led up to March 11, 2019. Tr, p. 255, l. 10 - l. 16. She indicated that when Appellant's wife[4] visited them in Tennessee prior to March 11, Lauren overheard the wife in bed with another man. Tr, p. 255, l. 17 - 22. Lauren testified that her husband told Appellant about his wife's affair and that, following Appellant's despondency over this event, a trip to Beaufort was planned. Tr, p. 255, l. 23 - p. 256, l. 20.

Lauren indicated that she and Corey were invited to Appellant's home and that when they arrived both Appellant and co-defendant Chris Bliss were present in the home and no one else. Tr, p. 257, l. 21 - p. 258, l. 24. Lauren testified that they were greeted into the home and that Appellant insisted that Corey drink shots of liquor to catch up with him and Chris. Tr, p. 259, l. 11 - 20. Lauren stated that the plan was to drop off their clothing at their rental and go out for the evening. Tr, p. 259, l. 17 - 23.

Lauren indicated that as they approached the door to leave, Appellant grabbed her husband "in a sleeper hold" while Chris Bliss presented a gun to her head and directed her to the couch. Tr, p. 262, l. 18 - 25. She indicated that Appellant and Corey continued to wrestle on the ground while Chris Bliss held a gun to her. Tr, p. 262, l. 11 - p. 264, l. 23. Lauren indicated she saw a gun in Appellant's back pocket in addition to the gun being pointed at her by Chris Bliss.

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[4]The transcript indicates that Appellant, "Justin Granet", visited the Eckles but from context it is clear that the witness is referring to Appellant's wife, Sally Granet. Compare Tr., p. 256, l. 15 -16 with Tr., p. 256, l. 22 ("she was sleeping with someone").

Lauren testified that Chris Bliss then used his gun to pistol whip Corey in an effort to knock him out. Tr, p. 264, l. 24 -25. Lauren continued to describe the assault as Chris and Appellant "taking turns hitting him with flashlights and guns and passing guns back and forth and Chris was holding both.... hitting [her] husband in the head." Tr, p. 265, l. 24 - p. 266, l. 4. She said at this time she was able to surreptitiously called 911 from her cell phone and left the line open. Tr, p. 266, l. 1 - 21.

Lauren continued to describe the events including efforts to zip-tie Corey and bind her to a chair with rope and place "air conditioning duct tape" "all around [her] whole head, mouth, hair, about all of it." Tr, p. 267, l. 9 - p. 268, l. 14 and p. 269, l. 4 - 20. Lauren indicated that her cell phone call to 911 was still open at this time and that, when lights approached, Appellant and Chris Bliss moved them all down the hallway. Tr, p. 271, l. 4 - 22. She then described law enforcement entering the home. Tr, p. 274, l. 7 - 11.

Lauren described Corey's injuries as "classic gashes" to his head and that she "could see down in his skull." Tr, p. 275, l. 17 - 20. She identified various photos which were entered into evidence. Tr, p. 277, l. 2 - p. 278, l. 11. Her testimony on direct concluded with her indicating she did not feel free to leave and that she was in fear for her life during the events. Tr, p. 279, l. 17 - 24.

On cross examination, Appellant's counsel brought out the fact Lauren had a conviction for fraudulent use of a credit card forgery, a conviction for aggravated burglary and a third conviction for theft which were not disclosed on direct. Tr, p. 281, l. 9 - p. 282, l. 5. She indicated that she was on the run from probation for three years. Tr, p. 282, l. 17 - 20. She agreed with Appellant's counsel that she had to lie about many things when she was on the run

from probation. Tr, p. 283, l. 19 -25.

On cross, Lauren admitted that Appellant's wife visited Corey in Tennessee, without Appellant present, and that she "ha[d] no idea" if these visits occurred while Lauren was in jail for a year. Tr, p. 286, l. 2 - p. 287, l. 14. She indicated that she did not believe the rumor that Appellant's wife and her husband were having a "five-year affair." Tr, p. 287, l. 15 - 25.

Lauren conceded that Corey did admit an affair while she was incarcerated. Tr, p. 288, l. 19 - 23. Lauren explained that she felt like Corey would have admitted the affair with Appellant's wife if he was willing to admit this other affair. Lauren conceded that she would have kicked Corey out of the home if she learned of an affair between him and Appellant's wife. Tr, p. 290, l. 17 - p. 291, l. 23.

Lauren indicated she only heard about the affair from the media coverage after Appellant's arrest. Tr, p. 292, l. 1 - 18. She could not explain why Appellant's wife would say she was having an affair with Corey but not tell her first. Tr, p. 292, l. 19 - p. 293, l. 1. Lauren also conceded that Corey had threatened to tell Appellant about his wife's adultery in Tennessee if Appellant's wife did not come clean. Tr, p. 297, l. 1 - 15.

Lauren tried to explain that her DNA could be on both guns because they were both used to restrain her. Tr, p. 299, l. 19 - p. 300, l. 12. Lauren denied that her DNA would be "on the handle of the gun or anything like that." Tr, p. 300, l. 13 -23.

Lauren also stated that Corey had sent messages to Chris Bliss about Appellant learning of his wife's affair. Tr, p. 301, l. 10 - p. 302, l. 3. Lauren also indicated that Chris Bliss informed her and Corey of an affair with Appellant's wife. Tr, p. 302, l. 12 - p. 303, l. 1. Lauren indicated that Chris Bliss told them this while they were driving down for the March 11,

2019 visit with Appellant. Tr, p. 303, l. 2 - 20.

Lauren conceded that Chris Bliss duct taping her mouth would be a way for him to keep her and Corey from telling Appellant about his wife and Chris Bliss' adultery. Tr, p. 305, l. 10 - p. 306, l. 4. Lauren also testified that she spoke with law enforcement about this case several times but never told anyone about Chris Bliss's affair with Appellant's wife until the testimony in trial. Tr, p. 323, l. 14 -20 and Tr, p. 324, l. 16 - 22. Lauren agreed that she did not tell the prosecutor about the affair between Appellant's wife and Chris Bliss even though they did speak in preparation for trial. Tr, p. 325, l. 20 - p. 327, l. 6.

Next the State presented testimony from Corey Eckles, Tr, p. 352 - p. 408. Corey first identified Appellant as Justin Granet. Tr, p. 352, l. 19 - p. 353, l. 2. He then discussed his prior convictions for forgery and theft. Tr, p. 353, l. 4 - 10.

Corey then testified about the visit from Appellant's wife during which Corey and Lauren caught her sleeping with Zane Croft who was staying with them in Tennessee. Tr, p. 353, l. 16 - p. 354, l. 21. Corey described his communications with Appellant's wife after that evening in which he told her that he was going to tell Justin about this affair. Tr, p. 355, l. 2 - 23. Corey then indicated that he believed he text messaged Appellant about the affair but he was unsure how this communication was made. Tr, p. 355, l. 24 - p. 356, l. 17.

Corey indicated that he also communicated with Chris Bliss about the situation. Tr, p. 356, l. 18 - p. 357, l. 2. Corey testified that Appellant later texted about his despair and that he was feeling suicidal. Tr, p. 357, l. 3 - 10. Corey indicated that this was when the trip to Beaufort was planned. Tr, p. 357, l. 10 - 21.

Corey explained that he and Lauren were surprised to see Chris Bliss' work van at

Appellant's home on March 11, 2019 because Chris indicated that Appellant's wife was freaking out and that Chris had already explained the situation in which Appellant's wife groped him on a boat. Tr, p. 358, l. 12 - p. 359, l. 8. Corey testified about the greetings between the four of them when they first entered Appellant's home on that night and how they offered him three shots of liquor. Tr, p. 359, l. 9 - 23. Corey then indicated that Appellant jumped on his back as he was heading out of the back door. Tr, p. 359, l. 24 - p. 360, l. 19.

Corey indicated after he went to the ground that he heard Chris Bliss speaking to Lauren and that he saw Bliss was pointing a gun at her. Tr, p. 360, l. 19 - 23. Corey testified that Appellant then took out a gun and struck him with it repeatedly and shattered his teeth when he shoved the gun into Corey's mouth. Tr, p. 361, l. 15 - 24. Corey testified that he was struck repeatedly with blunt objects during his altercation with Appellant and he identified a flashlight from one of the crime scene photos. Tr, p. 362, l. 9 - p. 364, l. 8.

Corey testified that he struggled with Appellant and Chris Bliss until law enforcement arrived and he was placed on a gurney and passed out. Tr, p. 364, l. 22 - p. 367, l. 6. Corey indicated that he was transported first to Beaufort Memorial Hospital and later to MUSC in Charleston because of concerns about brain swelling. Tr, p. 367, l. 7 - 23. He indicated that he still suffered short term memory issues and seizures resulting from this evening. Tr, p. 368, l. 1 - 21.

On cross examination, Corey denied having an affair or any type of physical relationship with Appellant's wife. Tr, p. 371, l. 3 - 22. Corey admitted that Appellant's wife visited with him in Tennessee when Lauren was in jail but he could not recall how many times Appellant's wife visited or if Appellant accompanied her. Tr, p. 371, l. 15 - p. 372, l. 6. Corey indicated that

he received some Snapchat messages from Josh Smith and he forwarded those to law enforcement even though he admitted he did not tell law enforcement about the call with Chris Bliss when he learned that Appellant's wife had groped Bliss. Tr, p. 374, l. 5 - p. 378, l. 4.

Corey testified that he intended to tell Appellant he should leave his wife. He agreed that Appellant's wife would come visit him when neither of their significant others were present but that he worked and did not know her to be promiscuous until "later on down the road." Tr, p. 379, l. 1 - 25.

Corey described Appellant's attack with the gun to include Appellant pressing the gun into Corey's mouth with both of his hands on the gun. Tr, p. 385, l. 1- 10. Corey indicated that he had the police reports from the lawyer he hired to file a lawsuit and that he knew that Appellant's DNA was not found on the guns. Tr, p. 385, l. 11 - 16. Corey opined that Appellant must have wiped his fingerprints off the gun. Tr, p. 385, l. 17 - 25.

Corey could not explain how Appellant would have wiped his DNA and fingerprints off the guns but the DNA of Chris Bliss, Corey and Lauren was still present on the guns. Tr, p. 387, l. 8 - p. 389, l. 2. Corey was also examined about the disconnect between his statement about the call from Chris Bliss while traveling to South Carolina and the phone records for that phone. Tr, p. 389, l. 5 - p. 390, l. 22. Corey also indicated that he had a burner phone which he described as a phone for drug dealers to "make deals and no one catches them" but that he did not know if he turned that phone over to the police. Tr, p. 391, l. 1 - 22.

Corey and Appellant's trial counsel sparred over Corey's alleged benevolence in reaching out to Appellant about his wife's promiscuity. Tr, p. 392, l. 7 - p. 395, l. 11. Corey admitted he did not tell law enforcement about this information. Tr, p. 394, l. 19 - 22. Corey admitted that

he had fathered nine children with nine different women. Tr, p. 395, l. 12 - 24.

Corey discussed his work in the tattoo business and admitted that he opened a tattoo parlor under a different name. Tr, p. 397, l. 2 - p. 399, l. 5. When asked if this was similar to using a burner phone, he conceded he had a "very bad past." Tr, p. 399, l. 6 - 9. Corey then denied he had a way with women but conceded that he had read and was familiar with the "Art of Seduction." Tr, p. 399, l. 18 - p. 402, l. 4.

Corey continued to deny any involvement with Appellant's wife. Tr, p. 402, l. 5 - p. 405, l. 17. Corey denied that Appellant whispered to him that his wife had told him everything and that is when Corey became the first aggressor in the physical altercation. Tr, p. 405, l. 18 - 24.

The State then presented the testimony of former BCSO Investigator Brandon Disbrow. Tr, p. 416 - p. 441 and p. 465 - p. 532. Investigator Disbrow testified that he was the duty investigator who responded to the scene on March 11, 2019 and executed a search warrant which led to the seizure of multiple items of evidence. Tr, p. 417, l. 1 - p. 430, l. 2. He explained what the various photographs entered into evidence depicted and these photographs were published for the jury. Tr, p. 422, l. 17 - p. 429 l. 15.

Disbrow also discussed the various items of physical evidence he collected including two handguns which were entered into evidence. Tr, p. 430, l. 11 - p. 435, l. 25. Disbrow testified that DNA swabs were collected from the two handguns. Tr, p. 436, l. 2 - 16. Disbrow also testified about collecting zip ties and duct tape strips. Tr, p. 436, l. 17 - p. 441, l. 5.

During a break, the court admitted into evidence by stipulation items including DNA samples taken from Lauren Eckles, Appellant, and Chris Bliss. Tr, p. 448, l. 17 - p. 450, l. 12. Disbrow's testimony continued to discuss the collection of various items of evidence including a

DNA swab from Mr. Corey Eckles, a piece of white rope, a flashlight and various items of ammunition and a roll of duct tape. Tr, p. 465, l. 9 - p. 472, l. 18.

On cross examination, Disbrow admitted that his role as lead investigator meant that he was responsible to oversee all of the police reports and the collection of items. Tr, p. 473, l. 20 - p. 475, l. 25. Disbrow agreed that he had been involved in the investigation of altercations occurring at residences and that sometimes it is hard to determine "who's the defendant and who's the victim." Tr, p. 476, l. 1 - p. 477, l. 7. He agreed that even in situations where someone was shot or dead that it did not mean a crime was committed because of doctrines such as self-defense. Tr, p. 477, l. 8 - 16.

Disbrow confirmed that "everybody gave a statement" during this investigation and that Appellant spoke with Sergeant Parnell before being Mirandized and before Disbrow arrived on scene. Tr, p. 481, l. 5 - p. 483, l. 9. Importantly, Disbrow confirmed that people outside of the four in the home that night confirmed knowledge of the affair between Corey Eckles and Appellant's wife. Tr, p. 484, l. 8 - 24. He also indicated that the Eckles informed him of the affair between Appellant's wife and the third party, Zane Croft, at their home in Tennessee but that he did not follow up and speak with Mr. Croft. Tr, p. 485, l. 1 - p. 487, l. 25.

Disbrow also conceded that he did not learn of the call from Chris Bliss to the Eckles which had been referenced in both of their testimonies earlier in the trial. Tr, p. 488, l. 17 - p. 489, l. 9. Disbrow agreed that it would have been important to know that Bliss also was involved in an incident involving Appellant's wife's infidelity as well as the incident at the Eckles' home with Croft. Tr, p. 489, l. 10 - p. 490, l. 14. Disbrow admitted that additional information assists to "have a complete picture" in a criminal investigation and that this additional information

would have been included in his report if he had known about it. Tr, p. 490, l. 14 - 25.

Disbrow agreed it would be beneficial to know if a witness lied. Tr, p. 491, l. 5 - 10. He confirmed he had contact information for Chris Bliss and the Eckles and that the process is easy to obtain a search warrant for phone records to confirm whether the call occurred. Tr, p. 491, l. 11 - p. 494, l. 25. He had not done so in this case. Tr, p. 493, l. 21 - p. 494, l. 4.

Disbrow discussed his knowledge of the collection of DNA swabs from items of evidence, including a sample from Appellant, and his request for DNA testing of these swabs. Tr, p. 496, l. 14 - p. 499, l. 13. He acknowledged that a black bag, containing ammunition and other apparent items of evidence, was not collected and any evidentiary value as to that bag and its' contents was lost. Tr, p. 499, l. 14 - p. 501, l. 21.

Disbrow recalled that Appellant was the first person interviewed that night. Tr, p. 501, l. 22 - p. 502, l. 2. He recalled that Appellant made a statement later at the detective's office at which time he was arrested. Tr, p. 502, l. 13 - 19. Disbrow recounted that Appellant waived his Miranda rights twice. Tr, p. 503, l. 13 - p. 503, l. 19.

Disbrow agreed that Chris Bliss was the second person interviewed. Tr, p. 502, l. 3 - 6. Disbrow could not recall whether the issue of self-defense was brought up by Bliss during his interview because he did not conduct that interview and he did not review the statement even though he was the lead investigator. Tr, p. 505, l. 5 - p. 507, l. 1. Disbrow agreed that self defense "is important in any case" but could not recall if any law enforcement tried to contact Appellant to discuss the information learned from the statements provided by Bliss and others. Tr, p. 504, l. 20 - p. 505, l. 6.

Disbrow confirmed that a phone belonging to Corey Eckles was seized and submitted into

evidence and that certain text messages were photographed. Tr, p. 513, l. 18 - 515, l. 12. But he denied any efforts to perform a phone extraction or other type phone record search. Tr, p. 515, l. 13 - p. 517, l. 6. He admitted the only real phone items sent to him later during the investigation were from Lauren Eckles and that she alone selected what she sent. Tr, p. 517, l. 7 - p. 518, l. 21.

Disbrow admitted that none of the physical items demonstrated how the incident started; saying: "I don't think we're really sure how it started, right?" Tr, p. 518, l. 22 - p. 519, l. 2. Disbrow admitted that no photographs of injuries suffered by Appellant were taken even though he was also treated at the hospital for injuries. Tr, p. 519, l. 5 - p. 521, l. 22. Disbrow was not aware that Appellant's injuries required a return visit because of infection. Tr, p. 521, l. 23 - 522, l. 1.

Disbrow could only offer a guess that Lauren Eckles' DNA appeared on the handle of both guns through touch DNA transfer. Tr, p. 522, l. 8 - p. 523, l. 5. He agreed this would mean that she would have touched "something." Tr, p. 523, l. 9 - 11. Disbrow eventually conceded that the phone conversation between Bliss and the Eckles on the drive from Tennessee to South Carolina "would give a little bit of weight" to prove that the Eckles were not surprised to find Bliss at the home. Tr, p. 525, l. 2 - p. 526, l. 11.

He admitted that a phone extraction and phone records might have revealed the existence of this communication during the four years between the arrest and the trial. Tr, p. 526, l. 12 - 19. Disbrow admitted that no burner phone was taken into evidence and he never heard about one until trial. Tr, p. 526, l. 20 - p. 531, l. 20. He admitted that hiding the existence of phone records or other reasons of a "criminal nature" could explain Corey Eckles' possession of a burner phone. Tr, p. 530, l. 18 - p. 531, l. 9.

The State called Josh Smith. Tr, p. 532 - p. 563. Smith testified that he was a friend of the Eckles. Tr, p. 533, l. 5 - 6. He testified that he was employed in the construction industry. Tr, p. 534, l. 1 - 5.

Smith testified that he became "Snapchat friends" with Appellant and engaged in a conversation with him about the events of March 11, 2019. Tr, p. 534, l. 5 - 11. Smith indicated that he captured images of these messages by using a second electronic device to record the device he was using to communicate with Appellant. Tr, p. 535, l. 9 - 20. He used the second device instead of the first device to make this recording surreptitiously. Tr, p. 535, l. 20 - 22.

Smith authenticated messages in which Appellant admitted that he engaged in combat with Corey Eckles over Eckles' adultery with Appellant's wife. Tr, p. 536, l. 16 - p. 537, l. 20. Appellant's messages admitted that Eckles' lost his teeth and that he had dentures now. Tr, p. 540, l. 16 - 19. Smith, in the message conversation, told Appellant that he would have done the same thing if he was in Appellant's situation. Tr, p. 540, l. 11 - 15.

Smith also agreed, in the conversation, with Appellant's statement that he was in a better legal position because the altercation was in Appellant's residence. Tr, p. 543, l. 17 - p. 544, l. 3.

On cross examination, Smith admitted that he intended to be surreptitious and that he considered himself friends with the Eckles. Tr, p. 545, l. 6 - 18. He also confirmed his belief that Eckles got what he deserved. Tr, p. 545, l. 19 - 25. Finally, he confirmed that he possessed various items at his own home because of his employment in the construction trade, including: a hammer, duct tape, zip ties, and bungy cords. Tr, p. 559, l. 5 - p. 560, l. 16.

Smith concluded that he heard Appellant's position that he acted in self defense and that Smith agreed with this statement after hearing both sides of events. Tr, p. 561, l. 1 - 11.

The State called Tim French, an analyst with the BCSO Forensic Lab. Tr, p. 564 - p. 599. French provided a general discussion concerning DNA and then testified as to various items of evidence submitted to his lab. Specifically, he analyzed swabs from Lauren Eckles' keys, two handguns, a flashlight, a piece of rope, and a piece of tape. Tr, p. 567, l. 8 - p. 573, l. 3. He also analyzed buccal swab samples contributed by Lauren and Corey Eckles, co-defendant Chris Bliss, and Appellant. Tr, p. 573, l. 4 - p. 575, l. 10.

French identified the DNA on Lauren Eckles' keys as that of Lauren, an officer with the BCSO and Chris Bliss. Tr, p. 575, l. 19 - p. 576, l. 20. French identified the DNA on the trigger of one gun as a mixture of Corey and Lauren Eckles' DNA and that of Chris Bliss. Tr, p. 578, l. 3 - 24. French also identified Corey's and Bliss' DNA on another swab from the gun. Tr, p. 578, l. 25 - p. 579, l. 17.

French identified both Eckles' and Bliss' DNA on the handle of the second gun and Corey Eckles' and Bliss' DNA on the receiver of the second gun. Tr, p. 579, l. 18 - p. 580, l. 22. French identified Corey Eckles' DNA on both the front and back of the flashlight. Tr, p. 580, l. 23 - p. 581, l. 15. French identified both Eckles' DNA on the duct tape through assumption of the tape being on their bodies and finding no "other inclusionary results." Tr, p. 582, l. 16 - p. 583, l. 16. French identified both Eckles' DNA and Chris Bliss' DNA on the rope. Tr, p. 583, l. 16 - p. 584, l. 18.

On cross, French testified that Appellant was excluded as a contributor to any of the mixtures found on the gun. Tr, p. 589, l. 3 - p. 594, l. 4. Appellant was also excluded as a contributor to the DNA on any of the swabs on the flashlight. Tr, p. 594, l. 5 - p. 596, l. 12. Finally, Appellant was excluded from all DNA from the duct tape and not matched to DNA on

the rope. Tr, p. 596, l. 13 - p. 597, l. 19.

Daniel Duhamel testified as to his employment as an investigator with the BCSO on March 11, 2019. Tr, p. 599, l. 23 - p. 600, l. 19. He testified that he was called to assist with interviews of both Appellant and Chris Bliss. Tr, p. 600, l. 20 - p. 601, l. 12. He testified that Appellant was read his Miranda rights, waived those rights and that this was all captured on audio and video. Tr, p. 601, l. 13 - p. 602, l. 2.

Duhamel testified that Appellant indicated he was injured and that he had red swollen hands. He testified that Appellant's clothes appeared to be blood stained and that photos admitted into evidence depicted these observations. Tr, p. 602, l. 3 - p. 605, l. 2. Duhamel testified that Appellant was eager to speak and get things out and was the person on the recording who did not want Corey Eckles to get away with this. Tr, p. 605, l. 3 - p. 608, l. 20.

On cross examination, Duhamel confirmed that he knew Appellant had already waived his Miranda rights and spoke with BCSO Officer Parnell and provided a statement. Tr, p. 611, l. 3 - p. 612, l. 1. Duhamel confirmed that it was standard practice to use information from one interview to conduct subsequent questioning of a witness but that he did not go back to speak with Appellant after speaking with Chris Bliss. Tr, p. 612, l. 7 - p. 613, l. 24. Duhamel admitted that he would have liked to have had DNA analysis results at the time of interviews. Tr, p. 616, l. 12 - p. 617, l. 4.

Duhamel conceded that although Appellant initially indicated that everything was his fault and not Chris Bliss, eventually Appellant attributed the use of the rope to tie Lauren Eckles, the use of the guns, and the use of the flashlight to Chris Bliss. Tr, p. 617, l. 5 - p. 620, l. 20. Duhamel conceded that Appellant did most of the talking but was asked a few specific questions.

Tr, p. 621, l. 23 - p. 622, l. 9. Duhamel admitted that Appellant was not asked to identify the primary aggressor. Tr, p. 622, l. 10 - p. 626, l. 21.

Duhamel admitted that law enforcement did not follow up with Appellant to ask any more questions after interviewing the other witnesses or receiving the DNA results. Tr, p. 620, l. 1 - 20. Duhamel again confirmed that Appellant was injured and needed medical treatment. Tr, p. 627, l. 5 - 21. Finally, Duhamel admitted Appellant expressed concern for his family. Tr, p. 628, l. 7 - 10.

Dr. Baxley testified that he worked as an emergency room physician at Beaufort Memorial Hospital on March 11, 2019. Tr, p. 629, l. 6 - p. 630, l. 14. He was qualified as an expert in emergency room medicine and then provided an overview of review of a trauma patient. Tr, p. 630, l. 15 - p. 631, l. 14. He testified it began with a review of any life-threatening concerns followed by a second level of review after any tests were conducted. Tr, p. 631, l. 16 - p. 633, l. 18.

Baxley testified that he had some question about the life-threatening nature of Corey Eckles' injuries because of the amount of head trauma. Tr, p. 633 - p. 643. He testified that he identified at least four major skull lacerations including some of full thickness which means the laceration extends all the way to the meningeal tissue. Tr, p. 637, l. 6 - 12. He testified that because of the skull fractures, he consulted with a doctor at the Medical University of South Carolina (MUSC), in Charleston. Tr, p. 638, l. 7 - 22.

He testified that the neurosurgeon at MUSC had to remove a portion of the skull to identify the location and cause of brain swelling and that a subdural hematoma is a very serious and life-threatening injury. Tr, p. 639, l. 4 - p. 640, l. 17. He also testified regarding the injuries

to Corey Eckles' teeth which required a referral to a facial plastic surgeon. Tr, p. 639, l. 23 - p. 640, l. 9. He testified that it was his opinion that hard blunt force was used and that these injuries were lethal type but not lethal in this case. Tr, p. 641, l. 24 - p. 642, l. 23.

In the defense's case in chief, the Appellant, Justin Granet, testified in his own defense. Tr, p. 668 - p. 804. Appellant testified that he lived with his wife and their youngest daughter and a step son and a 15 year-old troubled teen at the same home on St. Helena where the incident being litigated occurred. Tr, p. 669, l. 12 - p. 671, l. 25. He testified as to the other family members who were in attendance at trial as well as the efforts he and his wife took to become foster parents to the troubled teen after his father passed away. Tr, p. 672, l. 1 - p. 674, l. 20.

Justin testified that his oldest daughter was in Kentucky at a cancer center receiving treatment and that she is the same person Josh Smith mentioned when he began the Snapchat conversation discussed previously. Tr, p. 674, l. 21 - p. 677, l. 3.

Justin testified that he grew up in Beaufort and lived with his mom and step-father after he was molested by his real father. Tr, p. 677, l. 11 - 16. He testified that he was then abused by his step-father and moved out when he was 16 years old. Tr, p. 677, p. 13 - 24. He testified that the police asked if he had somewhere else to live and that he packed his bags and left. Tr, p. 678, l. 1 - 21.

He testified that he married his wife in 2009 and they are still married today. Tr, p. 678, l. 22 - p. 679, l. 2. He then began construction work and does design and custom construction builds. Tr, p. 679, l. 3 - 15. He testified that the difficulties with Corey Eckles began about a week before the incident when Corey texted him a message indicating that his wife was having an affair. Tr, p. 679, l. 16 - p. 680, l. 4.

Granet testified that he knew Corey Eckles for about six years and they met when Corey was engaged in the tattoo business. Tr, p. 680, l. 8 - 25. He said that he knew that Corey was dangerous because of his association with dangerous biker gangs and that he knew him to carry a gun on him or in his vehicle. Tr, p. 682, l. 21 - p. 683, l. 15. Granet testified that he and Corey became friends and that during this friendship there were times that his wife, Sally, would visit with Corey in Tennessee even when Lauren Eckles was not there. Tr, p. 685, l. 11 - p. 687, l. 3.

Granet testified that he trusted Corey at the time but did not now. Tr, p. 686, l. 24 - p. 687, l. 3. Granet testified that Corey indicated Sally was sleeping with Zane Croft but that Sally told him she was sleeping with Corey. Tr, p. 687, l. 4 - p. 688, l. 11. Granet denied sending Corey any suicidal messages or asking him to come to South Carolina. Tr, p. 688, l. 12 - p. 689, l. 8.

Instead, Granet indicated that Corey told him he was coming down. Tr, p. 689, l. 9 - 12. He also testified that he never knew that Corey shared any text messages with Chris Bliss until he heard that during the trial. Tr, p. 689, l. 15 - p. 690, l. 6. Granet testified that Corey was both taller and weighed more than he did at that time. Tr, p. 692, l. 11 - 18.

Granet testified that he told Chris Bliss about the meeting and asked him to be there. Tr, p. 694, l. 10 - p. 698, l. 8. Granet indicated that he did not ask Bliss to bring any weapons but that he did HVAC work. Tr, p. 696, l. 21 - p. 698, l. 19. Granet testified that he never discussed any plans to assault or kidnap anyone. Tr, p. 699, l. 7 - 12.

Granet testified that when the Eckles arrived on March 11, 2019, they discussed tattoos and that he left them for about 10 minutes to use the restroom while the Eckles and Bliss were alone in the other room. Tr, p. 700, l. 11 - p. 705, l. 17.

Granet testified that as the four of them were leaving to go to dinner, he whispered into Corey Eckles' ear and told him that his wife had told him "everything." Tr, p. 705, l. 18 - p. 709, l. 3. Granet indicated that Corey had a crazed look in his eye and took a swing at him but missed. Tr, p. 708, l. 5 - p. 709, l. 8. Granet indicated that is when he jumped on Corey's back and placed him in a choke hold. Tr, p. 709, l. 6 - 15.

Granet testified that he was concerned for his safety at that point because of Corey's size, his reputation for violence and his anger at the comment. Tr, p. 709, l. 20 - p. 710, l. 23. Granet testified that he had martial arts training but had not competed as a pro and suffered an abdominal injury which ended his martial arts training. Tr, p. 710, l. 24 - p. 714, l. 11. Granet testified in detail about the struggle with Corey.

Granet testified that Corey continued to try and hit him and that Corey eventually got on top of Granet and began choking him. Tr, p. 715, l. 9 - p. 716, l. 15. Granet denied ever striking Corey with a flashlight. Tr, p. 715, l. 21 - 24. Granet denied ever using a gun or even knowing that Bliss had a gun or pulled or pointed one at Lauren Eckles. Tr, p. 717, l. 17 - p. 718, l. 4.

Granet testified that he feared he would be rendered unconscious by the choke hold Corey had him in and that Bliss then began to help free him. Tr, p. 718, l. 5 - p. 719, l. 22. Granet indicated that Bliss eventually used the flashlight that was beside his backdoor to strike Corey until he released his hold on Appellant. Tr, p. 720, l. 6 - p. 722, l. 3. Granet indicated that Bliss tried to restrain Corey with zip ties. Tr, p. 723, l. 2 - p. 724, l. 11.

Granet testified that Corey continued to fight and that the two of them struck the glass door and that it shattered and cut Corey's head. Tr, p. 725, l. 12 - p. 730, l. 14. Granet stated that he did not know Bliss had restrained Lauren until he saw the police lights and that he did not tell

Bliss to do this. Tr, p. 730, l. 15 - p. 732, l. 18. Granet discussed his contact with the police that night and that as he walked by Corey after the police entered the home, he heard Corey say that he "got" Appellant, Tr, p. 732, l. 12 - p. 736, l. 5.

Granet discussed speaking multiple times with different law enforcement officers on March 11, 2019. Tr, p. 737, l. 2 - p. 744, l. 25. He described his confusion that night and how he tried to take up for Bliss but that he did not bring any items to his house to kidnap or assault anyone. Tr, p. 744, l. 6 - 11. Granet testified that law enforcement never asked him who started the fight. Tr, p. 743, l. 3 - 12.

Granet testified that he was injured in the altercation and that he received treatment at the scene and later at the hospital. Tr, p. 745, l. 1 - p. 748, l. 9. He concluded his direct testimony by stating that he would have been dead if Bliss had not struck Corey with the flashlight when he was on top of Appellant. Tr, p. 749, l. 22 - p. 750, l. 5.

On cross examination, the State elicited testimony that Granet welcomed the Eckles in his home that evening, that he did not tell them that Bliss would be there and that he did not tell them he knew about the allegations involving his wife. Tr, p.761, l. 13 - p. 764, l. 19. Granet conceded that he wanted to confront Corey with the allegation of adultery face to face and did so as they were about to leave. Tr, p. 764, l. 20 - p. 766, l. 9. Granet testified that he thought he had told the police about Corey taking a swing at him when he spoke with them on March 11, 2019. Tr, p. 768, l. 20 - p. 769, l. 18.

Granet testified that he did not know that Chris Bliss was armed with two guns until the police arrived. Tr, p. 773, l. 12 - 18. Granet recounted how the confrontation began with Corey throwing a punch and that he was later choked by Corey. Tr, p. 775, l. 19 - p. 779, l. 25. Granet

testified that Corey continued to assault him even after being struck with the flashlight but he did not see any blood on Corey until he ran into the back door. Tr, p. 782, l. 3 - p. 785, l. 2.

Granet testified that Corey continued to fight until he struck the baseboard at the corner of the wall. Tr, p. 785,l. 11 - p. 787, l. 9. Granet testified that he asked Bliss and Lauren into the hallway in the hopes the police would leave and no one would get in trouble even though he felt like he was the victim. Tr, p. 787, l. 10 - p. 789, l. 10. Granet blamed Bliss for restraining Lauren and said he did not see the restraints until they were in the hallway. Tr, p. 790, l. 3 - 20.

Granet indicated that he took responsibility for things that Bliss did because he did not want Bliss to get in trouble. Tr, p. 792, l. 5 - p. 793, l. 7. He explained that his conversations with Josh Smith were an emotional response to Corey's false story about what happened and that he clearly told Josh he acted in self - defense. Tr, p. 793, l. 16 - p. 794, l. 11.

On redirect, Granet testified that he considered Corey a trespasser after he became "the aggressor." Tr,p. 799, l. 16 - 23. Granet testified that no law enforcement officer followed up with questions about self-defense and he agreed that the doctor's description of one loose tooth and the head injuries proved that Corey exaggerated about having all of his teeth knocked out and brain matter on the floor. Tr, p. 799, l. 24 - p. 803, l. 2 - 18. Granet concluded by stating that he was defending himself from Corey's assault and that Corey was trespassing. Tr, p. 803, l. 19 - 22.

STANDARD OF REVIEW

In criminal cases, an appellate court sits solely to review errors of law. *State v. Baccus*, 625 S.E.2d 216, 220 (SC 2006). An appellate court reviews the exclusion of evidence under an abuse of discretion standard. Similarly, an appellate court will not disturb a trial court's ruling

concerning the scope of cross-examination of a witness absent an abuse of discretion. *State v. Gracely*, 731 S.E.2d 880, 884 (SC 2012). The appropriate question under is whether there has been any interference with the defendant's opportunity for effective cross examination at trial. *State v. Shuler*, 545 S.E.2d 805, 815 (SC 2001). An abuse of discretion occurs when the trial court's ruling is based on an error of law or is based on findings of fact that are without evidentiary support. *State v. Perez*, 816 S.E.2d 550, 553 (SC 2018).

SUMMARY OF ARGUMENT

Because the trial court erred by excluding evidence that law enforcement considered the alleged victim "armed and dangerous", Appellant's convictions should be reversed. This appeal from convictions for assault and battery, 1st degree, kidnaping, and possession of a weapon during a violent crime examines the intersection of the law concerning justified use of force, evidence rules concerning character and reputation evidence of an alleged victim and the hearsay exception for such reputation evidence. This appeal also involves the exclusion of evidence impugning the integrity of law enforcement's investigation of Appellant's justified use of force defense.

ARGUMENT

I. The trial court erred by excluding evidence of the alleged victim's reputation for violence as inadmissible hearsay when this evidence met an exception to the hearsay rule, or alternatively, fell outside the definition of hearsay.

The trial court erred by excluding evidence that the victim, Corey Eckles, had a reputation as armed and dangerous according to statements made by the State and law enforcement. Even though the trial court ruled this was inadmissible hearsay, a specific hearsay exception applied to evidence of reputation which removed this evidence from the general hearsay exclusion. The

rules of evidence expressly provided for the admission of reputation evidence of an alleged victim as to his character for violence. Alternatively, the excluded statement fell outside of the definition of hearsay.

In South Carolina, the admission or exclusion of evidence is generally governed by the South Carolina Rules of Evidence.

These rules generally exclude hearsay which is defined as an out of court statement which is offered to prove the truth of the matter asserted. SCRE Rule 801(c) and Rule 802. However, many out of court statements fall outside of this definition. See Rule 801(d). Further, there are many hearsay exceptions which place certain statements outside of the general rule of exclusion. See SCRE Rules 803 and 804.

A) Hearsay exception for "Reputation as to Character"

One of these hearsay exceptions involves "[r]eputation as to [c]haracter." See SCRE Rule 803(21). This rule states that "[r]eputation of a person's character among associates or in the community" is "not excluded by the hearsay rule, even though the declarant is available as a witness." Id. The commentary to this rule indicates that there are no South Carolina cases interpreting this exception but that Rules 404, 405 and 608 also address the admissibility of reputation evidence. SCRE Rule 803(21), note subsection 21.

Aside from questions related to the credibility of a witness, the rules provide for the admission of "testimony as to reputation or by testimony in the form of an opinion" when such "evidence of character or a trait of character of a person is admissible." SCRE Rule 405(a). Likewise, evidence of a "person's character or trait of character" is admissible to prove action in conformity with this character in instances where the "pertinent trait of character of the victim of

the crime" is "offered by the accused." SCRE Rule 404(a) and (a)(2), respectively.

Undersigned has not been able to locate any cases interpreting either of these rules as it pertains to the exclusion of evidence of an alleged victim's *reputation* for violence. Nonetheless, the comments to these rules are instructive. As to Rule 404(a)(2), the commentary indicates that this rule is "consistent with the law in South Carolina." SCRE Rule 404, note subsection (a)(2).

The commentary regarding Rule 405(a) indicates that this subsection "changes the law in South Carolina in one respect." SCRE Rule 405, note subsection (a). This note indicates that the law before the Rules of Evidence went into effect restricted the admission of reputation evidence to a person's general reputation in the community. Id, citing *State v. Groome*, 262 SE2d 31 (SC 1980). However, Rule 405(a) now "allows evidence of character to be in the form of opinion or reputation evidence." SCRE Rule 405, note subsection (a).

Case law predating the rules of evidence suggests that opinion or reputation of violence is a pertinent trait of character of the victim when offered by the accused to support a justification defense. For more than a century, South Carolina law has provided that in "an action for assault and battery, the defendant has the right to attack the reputation of the prosecuting witness for violence but this cannot be done by showing specific instances of violence." See *State v. Hawkins*, 425 S.E.2d 50, 56 (SC Ct. App. 1992) citing *State v. Boyd*, 119 S.E. 839 (SC 1923). In *Hawkins*, the South Carolina Court of Appeals approved a definition of reputation by reference to the persuasive authority from our sister state, found in the opinion *Barrett v. State*, 231 S.E.2d 116, 117 (GA 1976), indicating the "reputation of a person is the kind of person other people say he is". *Hawkins*, at 56 citing *Barrett*.

Similarly, a case from the beginning of the 20th century indicates that:

> "In order that there may be no misunderstanding about this matter, when you attempt to prove the good character, or the bad character, by reputation, not by what you know about it, or what the witness knows about it, but by showing what people generally say about the witness whose character is assailed, or whose character is sought to be bolstered up.[5] Reputation is what people say and think about a man. This witness's testimony will be taken in connection with what he said about what people said about the deceased."
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> *State v. Miller*, 53 S.E. 426, 427 (SC 1906)(footnote added by undersigned).

The citations to this general rule extend even further into the past when the South Carolina Supreme Court "sustained" appellate exceptions raised on appeal by the accused "in not allowing certain witnesses to testify as to the general reputation of the deceased for violence." *State v. Dean*, 72 S.C. 74, 51 S.E. 524, 527 (1905) citing *State v. Turner*, 6 S. E. 891 (SC 1888). The *Turner* matter was also cited in *State v McDaniel* which held that "[i]n a prosecution for murder, evidence of the general bad character of the deceased is irrelevant, but evidence of his character or reputation for violence, treachery, etc., is admissible under a plea of self-defense." *State v. McDaniel*, 47 S.E. 384, 384 (SC 1904) citing *State v. Turner*.

B) Rules concerning the definition of hearsay and "not hearsay."

As an alternative argument, the trial court erred because the proffered evidence did not fall within the definition of hearsay but instead met the definition of "not hearsay." Specifically, SCRE Rule 801(d)(2) provides that certain admissions by a party-opponent are "not hearsay." While there are five distinct types of admissions of a party opponent which fall outside the definition of hearsay, four of these five would appear to apply to the case at bar.

First, a statement offered against a party is not hearsay if it is "the party's own statement in either an individual or a representative capacity." SCRE Rule 801(d)(2)(A). Second, a

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[5]Undersigned would note that this appears to be an incomplete sentence but would suggest that this may be attributed to misplaced punctuation found in the written opinion.

statement falls outside the definition if the statement is one "which the party has manifested an adoption or belief in its truth." SCRE Rule 801(d)(2)(B). Third, excluded from the hearsay definition are statements "by a person authorized by the party to make a statement concerning the subject." SCRE Rule 801(d)(2)(C). Finally, a "statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship" does not meet the definition of hearsay. SCRE Rule 801(d)(2)(D).

C) Analysis

In the case at bar, Appellant attempted to elicit information provided to his trial counsel by the State indicating that Corey Eckles had a reputation as "Armed and Dangerous." Tr, p. 332 - p. 342 and Court Exhibits 9 and 10. Trial counsel specifically referenced Rule 404(a)(2) and Rule 405(a) of the Rules of Evidence as a basis for admission. Tr, p. 334, l. 1 - 25. The prosecutor responded that this evidence was hearsay for which no exception applied and that this was "purely porpensity evidence" not allowed under the rules of evidence. Tr, p. 337, l. 10 - p. 338, l. 18.

The trial judge noted that the offered evidence was opinion. Tr, p. 342, l. 3 - 19. The trial judge even noted that the propensity to be derived from the proffered evidence was that it would be "strong" evidence suggesting victim Corey Eckles "was armed then, he's armed now, he's always armed." Tr, p. 341, l. 15 - 19. However, instead of finding that this was opinion evidence of the reputation of Corey Eckles' as a violent person, the trial court excluded this evidence on the basis that it constituted "propensity evidence" and "hearsay." Tr, p. 341, l. 12 - p. 342, l. 25. This was error.

This reputation evidence was provided to Appellant's trial counsel on criminal history

reports with the prosecutor's office letterhead affixed to the top. Court Exhibits 9 and 10. These two reports were provided months apart but are consistent with each other as to this reputation information. These reports were provided as required under the South Carolina Rules of Criminal Procedure Rule 5 which provides for disclosure of the criminal history of the accused upon request. SCRCrim P Rule 5(a)(1)(B). The State never indicated to either Appellant's counsel or the court that these statements were false. Tr, p. 86, l. 7 - p. 90, l. 1. To the contrary, the prosecution explicitly discussed the contents of these rap sheets during the pre-trial hearings about impeachment of Corey Eckles as if the information contained therein was truthful. Tr, p. 88, l. 4 - 25.

The evidence rules clearly except from the hearsay prohibition statements concerning the reputation as to character when it involves the reputation of the alleged victim for violence. In fact, while there are no cases discussing this hearsay exception in South Carolina, the commentary to the rule actually indicates the purpose of including this exception is "to insure that reputation evidence is not excluded on the basis of hearsay." See SCRE Rule 803(21), note subsection 21, citing Weinstein's Evidence ¶ 803(21)[01] (1994). And even though reputation evidence might appear to be an out of court statement of others offered for the proof of the matter asserted, nearly a century and a half of case law has provided for it's admission. See *State v. Turner*.

Undersigned can not think of a more succinct statement of the reputation of an alleged victim for violence than one indicating this person is considered "Armed and Dangerous." Further, while the rule concerning the admission of reputation evidence does not require any particular indicia of reliability, one can not think of a better authority for the reputation of an

alleged victim as violent than that formed by law enforcement professionals trained in criminology. In fact, this information was clearly reliable enough that this was included in a criminal history compiled by the National Crime Information Center and republished to Appellant's trial counsel by the Office of the Solicitor for the Fourteenth Judicial Circuit. See Court Exhibits 9 and 10.

This evidence concerned the reputation of character of Corey Eckles. Eckles' reputation as a violent person was a trait which was pertinent to the State's claim that he was the victim, to Appellant's claim of justification for the use of force, to the identity of the primary aggressor, and to Eckles' unruliness as a guest in Appellant's home. This information is what people said about Eckles. This evidence met the hearsay exception.

It is also the source of this information which proves the error in the trial court's exclusion as hearsay. As stated earlier, this evidence was in the form of a statement made not only by law enforcement but one expressly adopted by the State of South Carolina when this information was provided to Appellant's trial counsel. The prosecutor's office actually afixed it's own letterhead to these documents evidencing the adoption of the contents as truthful.

Because of these features, the "Armed and Dangerous" designation was an admission by the State of South Carolina. The State was the party opponent of Appellant. The Fourteenth Circuit Solicitor's Office made this admission in it's capacity as a representative of the State.

Further, the State of South Carolina manifested an adoption or belief as to the truth of this statement when it affixed it's letterhead to it and provided it to Appellant's trial counsel in keeping with the rules and law concerning counsel's truthfulness in disclosures to opposing counsel. The Fourteenth Circuit Solicitor was authorized under the constitution to make

statements on behalf of the State of South Carolina during discovery in a criminal case. Finally, the state employees who actually gathered this opinion and reputation evidence and affixed the letterhead were agents of the State of South Carolina and undertook these actions during and within the scope of their employment and agency.

The evidence Eckles was armed and dangerous simply falls outside of the hearsay definition and should be considered an admission by a party opponent and "not hearsay."

Appellant asserted a justification defense as to his actions involving Corey Eckles. Tr, p. 880, l. 5 - p. 881, l. 11. Appellant testified as to the elements required to establish self-defense and the defense of habitation. Tr, p. 705, l. 18 - p. 736, l. 5; p. 745, l. 1 - p. 750, l. 5; and p. 799, l. 16 - p. 803, l. 22. Appellant's justification argument specifically referenced Eckles' DNA being found on the guns while Appellant's was not. Tr, p. 897, l. 7 - p. 898, l. 5.

The trial court charged the jury as to both of these defenses. Tr, p. 944, l. 6 - p. 950, l. 10. These instructions specifically informed the jury that it should consider the reputation of Mr. Eckles as a violent person. Tr, p. 947, l. 23 - p. 948, l. 13. These instructions also indicated the reputation for violence may be relevant to "the need for force", whether the defendant could act more harshly or quickly in using force, and whether "he actually was in such imminent danger." Tr, p. 948, l. 1- 14.

While the fact that Corey Eckles had a reputation as a violent person may not be the determinative factor as to whether Appellant's actions were legally justified, this evidence was very relevant to Appellant's justification defenses. A claim of self defense has within it a question as to the primary aggressor and whether the acts of the accused were reasonably related to a real threat of harm. The defense of habitation may center around the peacefulness of the

guest. As defense counsel is frequently reminded, it is the jury's role to assign the proper weight to be given a piece of evidence once it meets the minimum threshold for admission. For this reason, the improper exclusion prejudiced Appellant in his trial.

Thus, the trial court erred in excluding the evidence of the reputation of the alleged victim for violence as contained in the subject description on his criminal history report indicating he should be considered "Armed and Dangerous." This error constitutes an abuse of discretion because it is based upon an error of law. Because Appellant was prejudiced by this ruling, reversal of the convictions is the appropriate remedy.

II. The trial court erred by excluding evidence of the alleged victim's reputation for violence as inadmissible hearsay when this evidence was offered not for the truth of the matter asserted but instead to discredit the caliber of the investigation or the decision to charge the Appellant.

The trial court erred by excluding, as hearsay, evidence that law enforcement knew the alleged victim was considered armed and dangerous. The presentation of this evidence to the jury through cross examination of law enforcement would have impugned law enforcement's charging decision and investigation because they did not investigate Appellant's claims of justification. Specifically, this would have been relevant to the identity of the primary aggressor, the reasonableness of Appellant's fear and the alleged victim's status as an unruly trespasser.

Even though the trial court found that the evidence was inadmissible hearsay, the use of this evidence to discredit the caliber of law enforcement's investigation does not meet the definition of hearsay. To constitute hearsay, an out of court statement must be offered for the purpose of proving the truth of the matter asserted. However, on this point, Appellant proffered this evidence in an effort to prove the effect, or in this case the lack thereof, upon the listener;

thus, impugning law enforcement's work.

A) Relevant Law

In South Carolina, it is clear that out of court statements which are offered for reasons other than proving the truth of the matter asserted fall outside of the hearsay exclusion. SCRE Rule 801(c). Further, South Carolina recognizes that an out of court statement offered to prove the effect on the listener falls outside of the definition of hearsay. *State v. White*, 821 S.E.2d 523, 527, n 2 (SC Ct. App. 2018)("Other jurisdictions have similarly held statements were not hearsay when they were offered to show the effect of the statement on the listener's state of mind when the listener's state of mind was relevant to the case. See *People v. Kline*, 414 N.E.2d 141, 144 (IL App Ct, 1st Dist., 3rd Div. 1980) ("If the out-of-court statements are offered to prove the resultant effect of those words on the listener's state of mind, then the speaking of the words is independently relevant regardless of the truth of their content and the statements are admissible as non-hearsay."); *Sullivan v. Popoff*, 360 P.3d 625, 633 (OR Ct App 2015) (De Muniz, S.J., concurring) ("[A]n out-of-court statement may be offered to show that the making of that statement had some effect on the person who heard the statement if that person's state of mind is relevant to an issue in the case.")") and 2 McCormick on Evidence § 249 (Robert P. Mosteller ed., 8th ed. 2020)("Statements offered to show their effect on the listener are not hearsay")).

Similarly, the Supreme Court of the United States has acknowledged the defense of inadequate police investigation. *Kyles v. Whitley*, 514 U.S. 419, 446 (1995). The *Kyles* Court stated that a "common trial tactic of defense lawyers is to discredit the caliber of the investigation or the decision to charge the defendant." *Kyles*, at 446 (internal citation omitted). In fact, the *Kyles* Court discussed this defense in relation to the examination of law enforcement about their

knowledge of the out of court statements of third parties who were not called to the stand. *Kyles*, at 446 ("Even if Kyles's lawyer had followed the more conservative course of leaving Beanie off the stand, though, the defense could have examined the police to good effect on their knowledge of Beanie's statements and so have attacked the reliability of the investigation ...").

While there are no cases in South Carolina discussing this defense, federal courts within the Fourth Circuit have issued various opinions acknowledging this defense. See *Monroe v. Angelone*, 323 F.3d 286, 312 (4th Cir. 2003) and *United States v. Mason*, 954 F.2d 219, 222 (4th Cir. 1992). In fact, this defense has been acknowledged in opinions issued by judges within the District of South Carolina. *Leaphart v. Eagleton*, No. 2:15-CV-04910-JMC, 2017 WL 1160418, at *11 (D.S.C. Mar. 29, 2017) ("As the court explained above, trial counsel's strategy was to attack the police investigation as shoddy or underhanded . . . .") and *Brown v. Warden*, Lee Corr. Inst., No. 2:18-CV-1276-DCC-MGB, 2019 WL 6091000, at *14 (D.S.C. July 31, 2019), report and recommendation adopted, No. 2:18-CV-01276-DCC, 2019 WL 4509190 (D.S.C. Sept. 19, 2019) ("Second, the State's failure to conduct DNA testing played into counsel's plan of painting the investigation as sloppy; rather than create evidence the State should have obtained itself, counsel wanted to emphasize the evidentiary holes the State left open.")

B) Analysis

In the case at bar, Appellant's trial counsel repeatedly emphasized law enforcement failure to investigate or interview witnesses as to the theory of self-defense even though this issue was mentioned by co-defendant Chris Bliss early in the investigation. Trial counsel did establish through Appellant that he knew Eckles always was armed and may have brought a gun with him that evening. Tr, p. 682, l. 21 - p. 683, l. 15. Trial counsel unsuccessfully sought to elicit the

statements from co-defendant Chris Bliss to law enforcement detailing Appellant's justified use of force. Tr, p. 505, l. 7 - p. 512, l. 11.

Buttressing these efforts, trial counsel also sought to examine law enforcement about the State's own information showing Corey Eckles was considered "Armed and Dangerous." Tr, p. 332, l. 10 - 342, l. 25. Aside from whether or not Corey Eckles was actually armed and dangerous, this evidence was offered to show the jury law enforcement's failure to consider or investigate this information. Tr, p. 336, l. 3 - 16. This would have undercut the State's position that law enforcement had no reason to investigate a justified use of force claim.

In response to Appellant's proffer of this evidence for this reason, the trial court stood by its ruling that this information was hearsay. Tr, p. 341, l. 12 - p. 342, l. 25. However, as indicated above, this information was offered to show the lack of effect upon the listener (law enforcement). Had Appellant been allowed to examine law enforcement about their failure to investigate the defense of justification even though their own records warn of Eckles' dangerous character, this would have supported his theme that law enforcement's theory ignored significant facts such as the DNA exclusion of Appellant on the weapons and restraints and Eckles' motive to cover up his affair with Appellant's wife.

Thus, the statement that identified Corey Eckles as "Armed and Dangerous" would fall outside the definition of hearsay as offered for this use and the trial court's ruling was erroneous as a matter of law. Further, this error improperly limited the cross examination and confrontation rights of Appellant. This error constitutes an abuse of discretion because it is based upon an error of law. Because Appellant was prejudiced by this ruling, reversal of the convictions is the appropriate remedy.

CONCLUSION

Because the trial court improperly excluded evidence and this exclusion prejudiced Appellant's defense of justified use of force, this Court should reverse the convictions and remand these matters for a new trial.

Respectfully submitted by,

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No: 2023-00288

The State,.....Respondent

v.

Justin Brodie Granet.....Appellant

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Initial Brief complies with SCACR Rule 208.

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January 2, 2024

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