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May 30 2025
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Appeal from Richland County
The Honorable Clifton Newman, Circuit Court Judge

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THE STATE,

RESPONDENT,

v.

CHARLES JASON CARMICHAEL,

PETITIONER.

Appellate Case No. 2025-000686

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

THE HON. BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, South Carolina 29202-0192

**ATTORNEYS FOR RESPONDENT**

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## STATEMENT OF ISSUES ON CERTIORARI

I. The trial court erred in admitting the testimony of child witness R.C., where the court failed to assess R.C.'s state of fear to permit his testimony via CCTV, and where R.C.'s testimony as the sole witness was inconsistent and permitted inadmissible hearsay to be introduced, prejudicing Appellant.

II. The trial court erred in admitting hearsay testimony which was improperly used to bolster the declarant and resulted in material prejudice to Appellant.

III. The Solicitor committed a flagrant error by improperly pitt[ing] Appellant against adverse witnesses on cross-examination constituting prejudice and warranting review.

## STATEMENT OF THE CASE

Charles Jason Carmichael (hereinafter "Petitioner") was indicted for four charges: two counts of murder and two counts of possession of a weapon during the commission of a violent crime. (2021-GS-40-5204, 5205; 2022-GS-40-4327, 4328). Petitioner proceeded to a jury trial before the Honorable Judge Clifton Newman on November 28, 2022 through December 2, 2022. Petitioner was represented by attorney Deon O'Neil, Esq. The State was represented by Senior Assistant Solicitor Kathryn Cavanaugh for the 5th Circuit, along with Assistant Solicitors Grayson Hill and Paul Walton. At the conclusion of the trial Petitioner was found guilty of all four charges. (R. p. 292-293). Judge Newman sentenced Petitioner to life without parole for each murder conviction. (R. p. 294).

Petitioner noticed his appeal on December 5, 2022. On April 1, 2024, Petitioner perfected his appeal with the filing of his Final Brief of Appellant. The State filed its own Final Brief of Respondent on April 26, 2024. Oral argument was held on October 9, 2024. On January 29, 2025, the Court of Appeals filed its unpublished per curium opinion affirming Petitioner's conviction and sentence. *State v. Carmichael*, No. 2022-001717, 2025 WL 326560 (S.C. Ct. App. Jan. 29, 2025). Petitioner sought a Petition for Rehearing, which was then denied on March 11, 2025. Petitioner now seeks a Writ of Certiorari to the South Carolina Court of Appeals, and this Return now follows.

## STATEMENT OF FACTS

### *The Crime*

In the early morning of March 13, 2021, Ashli Haigler (hereinafter "Ashli" or "Victim Ashli") was found murdered with two gunshot wounds to the chest while inside her boyfriend's Toyota Tundra at the corner of Malcom and McCaw in Columbia, South Carolina. Her five year

old son, R.C. was in the back seat of the truck at the time of the crime. Hours later, Ashli's boyfriend, Rufus Carmichael (hereinafter "Rufus" or "Victim Rufus")[1], was found dead off the side of the road in Aiken County with three gunshot wounds. The State put forth the following evidence at trial:

***Events leading up to the murder of Ashli Haigler***

Jessica Edwards testified that Petitioner, a new acquaintance of hers, was angry at his brother, Victim Rufus, though she did not know the precise reason for his anger. (R. 163). She testified that she was with Petitioner on March 12, 2021, when they went to the U-Haul rental vendor together. She had some furniture she needed to move from her mom's house. (R. 164-166). She rented the U-Haul in her name with Petitioner being listed as a secondary contact. (R. 166-167). Petitioner's credit card, ending in 7461, was used to pay for the U-Haul. (R. 194-195).

She testified that they also went to Wal-Mart that night (March 12, 2021). While there they bought clothes and Petitioner purchased a shovel. (R. 168-169). They also went out drinking, during which time Petitioner did both marijuana and cocaine. Ms. Edwards testified that she noticed a change in Petitioner's mood during that time. He was more aggressive than when she had first met him. This mood escalated to the point that Ms. Edwards feared that Petitioner was having psychotic hallucinations. (R. 168-170).

During the night of March 12, she witnessed Petitioner digging a hole in the front of his yard, and it appeared as if he was seeing things come out of the hole. She recalled Petitioner's reference to the hole and testified that he described it as "a grave that his brother made for him or something like that." (R. 171-172). He also stated that he believed Victim Rufus was trying to spiritually attack him and he explicitly stated that he wanted to kill Rufus. The night escalated to

[1] Victim Rufus is often referred to as "R.J." by witnesses during the trial.

the point that Petitioner put a gun in Ms. Edwards' face while insinuating that he wanted her to help him hurt his brother. (R. 173-175). She later escaped the situation, hid at a neighbor's house, and then fled to her mother's home. Petitioner came looking for her but did not find her.[2] (R. 175-177).

Ms. Edwards testified that she called Petitioner that night out of concern for the U-Haul being in her name, and the financial consequences that may arise if he did not return it. Records show that Petitioner's phone dialed her xxx-5965 number multiple times in the early morning hours of March 13, 2021. She did not see the U-Haul in person again after fleeing that night. The following day she filed a report with the police about the U-Haul and how she believed Petitioner was in possession of it. (R. 180-182; 213-221).

Witness Miko Dreher testified that she was with Victim Rufus in his truck on the evening of March 12, 2021. She was present when Rufus received a phone call from Petitioner through the Bluetooth connection of Rufus's truck. She testified that she knew Petitioner to be the caller because she is familiar with Petitioner's voice and because Petitioner was calling Rufus "bro". The conversation that Ms. Dreher heard was not pleasant in nature. (R. 148-149).

She described Petitioner as being "very upset," "very belligerent," and cursing. She testified that Petitioner explicitly said he was going to "bury him" and that he was "going to kill him". (R. 150). The call ended when Rufus hung up the phone. She testified that Petitioner tried to call again but that Rufus blocked the number. (R. 152). Ms. Dreher later learned of Rufus's murder from the news and called the Crimestoppers hotline to report her knowledge of the matter. (R. 153-154).

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[2] Ms. Edwards also indicated that in her time with Petitioner, it appeared as though he had two different personalities.

Witness Tracey Sandel testified that she lives at **** Gilmore Street, with her property also abutting Senn Street. (R. 134-135). She had surveillance cameras on her property that captured Senn Street on March 13, 2021. Her surveillance footage from 4:00am on March 13, 2021 was provided to police, and said footage was admitted at trial. (R. 135-137). She testified that *** Senn Street (Victims' address) is just two blocks away. She identified the video as showing the U-Haul truck in question going down Senn Street in the direction of *** Senn Street. (R. 138; 254; 289-290).

Victim Ashli's sister, Tiara Haigler (aka Aunt T.T.), testified that she received a call from her sister at 4:25am on March 13, 2021. It was not uncommon that her sister would call her in the early morning hours each day. However, she could tell by Victim Ashli's voice that she was frantic and worried. (R. 100). She testified that Ashli had heard a loud noise outside. Ashli told her that when she ran to the door and looked out, she saw the tail end of a truck leaving the neighborhood.

Ms. Haigler testified that the reason victim went out to look and investigate was because Victim Rufus (aka R.J.) had gone to investigate the noise but had disappeared. (R. 102; 255). Ms. Haigler testified that before Victim Ashli ended the telephone call, Victim Ashli told her that she was "going over to Jason's house to see if Rufus had went over there or to see if he knew what had happened to Rufus because he disappeared." She also learned that Ashli was taking her son R.C. with her.[3] (R. 103). The last time she spoke with Ashli was when Ashli was about to pull up to Petitioner's home. (R. p. 112). In response to all of this, Ms. Haigler called 911 for the West Columbia area. (R. 104).

[3] On cross-examination Petitioner demonstrated that Ms. Haigler harbored concern that this was a set up to harm or kill Ashli, and that Victim Rufus may be involved. This was stated to the police, but her assertion was made before learning that Rufus had been murdered as well.

### *The Murder of Ashli Haigler*

Ms. Haigler testified that after the phone call with Ashli ended, she later received a phone call from R.C. Based on his voice, and her familiarity with how he normally sounded, she could tell that he was scared. He told her on the phone that "Uncle Jason shot mommy four times." (R. 106). She then communicated with the police and drove to the scene.

Two separate calls to 911 were placed at 5:12am. The first call came from **** McCaw Road and reported hearing gunshots in the area approximately 20 to 25 minutes prior. (R. 53). A second call from 1831-1843 area of Malcom Drive also came in at 5:12am and reported a "shooting hit" (indicated someone had sustained a gunshot wound). Additional comments from the caller indicated that the shots were approximately 30 minutes prior to the call, and that they could now see a boy getting in and out of the truck looking for help. (R. 55-58). Karen Boyd, a resident who lived near the scene of the crime, testified that she heard a voice, maybe two voices. She heard frustration rise in the voice and then heard two gunshots. She then heard a vehicle speed away. (R. 128).

Law enforcement arrived at the corner of Malcom and McCaw. Investigator Davis saw a young child (R.C.) hanging out of the truck's back window. (R.26-27). He went to assist the child and asked what happened. In response the child stated that his mommy was dead, and that his Uncle Jason had shot his mommy. (R. 27-28). The officer's efforts to assist, along with the statements by R.C., were recorded via Officer Davis's body-cam, and a clip of R.C.'s statements was admitted. (R. 29-34).

R.C. is the son of Victims Ashli and Rufus, and he was seven years old at the time of his trial testimony. He testified that he last saw his dad at home the night before the crimes. (R. 86). He testified that he was asleep when his mom woke him up, got him dressed, and put him in the

truck. R.C. testified that his mom was in a hurry, "going real fast", and telling him to hurry up. He testified that the reason they were getting up and getting in his daddy's truck was to go look for his daddy and that his mom seemed worried. (R. 84-86). R.C. testified that they stopped at some houses, but he did not recall seeing any other vehicles until the final stop. At the last stop his mom stopped in front of some trees and began to look around. He then says that his Uncle Jason pulled up. He testified that he knew it to be his Uncle Jason because his mom said: "Jason, where is my baby's daddy?" (R. 87-88).

He was in the back seat hiding and he testified that after his mom asked the question, his Uncle Jason shot her. He heard yelling and four gunshots. (R. 89). He testified that the vehicle that approached their truck that night was a "square" van. (R. 91). He also described the van as blue but agreed that a portion of the van he saw was blue.[4] He testified that the "van" stayed for two minutes and then left. (R. 91-92).

After the van left, R.C. went to check on his mom but her eyes were closed. He then got out of the truck and knocked on nearby doors to try and get help, but no one would answer. He then got back in the truck and used his mom's phone to call his Aunt T.T. He told Aunt T.T. what he had seen and also told the police when they arrived. (R. 94).

Video surveillance from the area showed two vehicles, a U-Haul and a Toyota Tundra truck following closely behind turn onto Albritton (near and headed toward Malcom and McCaw) at 4:43am. (Supp. R. 1; R. 250-251). At 4:46am only one vehicle returned and turned back onto Two Notch coming from Albritton. (R. 146-147; 250-251). Deputy Smith was on patrol and handling a separate crime in the area. He testified that he heard approximately four gunshots in the nearby

[4] The witness appeared confused by this questioning, as he stated both that the portion he saw was blue, and that van was "only" blue as well.

area and alerted dispatch. At 4:46am he saw a U-Haul box truck come speeding through, screeching its tires, and nearly topple over while turning at the intersection of Two Notch and Cushman. (R. p. 129-130). His body-cam also caught this moment on video, and the tape was played for the jury. (R. p. 131-133).

***The Discovery of Rufus Carmichael's Body***

At 2:04pm on March 13, 2021, Officer Scott Neel received the call that a body had been found in Aiken County. (R. 139). The body was identified as Victim Rufus Carmichael. He was found 65 feet off the roadway at *** Holder Road, with gunshots wounds and concrete blocks placed on his abdomen. (R. 140; 141). Officer Neel testified that there was very little blood at the scene, and in light of his years of experience, that fact led him to conclude that this was not where the murder took place. (R. 142).

Officer Neel obtained surveillance footage from an Exxon gas station near I-20; the gas station was approximately half a mile from the location where Rufus's body was found. (R. 143). The video showed that a U-Haul style truck drove past the station away from I-20 and in the direction of Holder Road. The video then showed a U-Haul drive back toward I-20 approximately six minutes later. (R. 144-145). The time stamp for the video was 5:27am on March 13, 2021. (R. 145). Investigator Glenn Oxendine testified that the location of the two bodies were 43 miles apart, and the video evidence shows that 40 minutes passed between the cameras surveilling the U-Haul near the two crime scenes. (R. 252-253).

***Petitioner's Arrest***

Officer Sean Kilcoyne, with the Fugitive Task Force, learned of the U-Haul's connection to the crime and went back to Petitioner's home to investigate. He found the U-Haul parked at the back of Petitioner's residence. He called it in and proceeded to conduct surveillance of the U-Haul.

When the U-Haul began to drive away from the home a traffic stop was initiated by the surrounding officers. (R. 155-157).

Petitioner was driving the U-Haul and when the police vehicles pursued him, he attempted to evade arrest by putting the truck into reverse and fleeing. He was responsible for causing a traffic collision with a SLED vehicle as a result, and the U-Haul truck was quickly stopped. (R. 190). During his pat down Petitioner was found to be in possession of two fired cartridge casings in his left pocket. (R. 191). He was also in possession of Victim Rufus's driver's license and the credit card ending in 7461 that he used to pay for the U-Haul. (R. 192; 194-195). Inside the U-Haul cab, in plain view, was a pistol. Petitioner's clothing appeared to have blood on them. Also inside the passenger side of the cab was a substantial amount of blood – so much so that it was essentially dripping out of the vehicle and seeping through the hull components of the truck and coming out of the undercarriage of the truck. (R. 158-161; 188; 189). The cabin also contained a bag with four towels, three wash cloths, and a sun visor which all appeared to have blood stains on them. More blood was also found in the cargo area of the U-Haul truck. (R. 186-187).

The pistol recovered from driver's seat of the U-Haul was a Car Arms CW-40 handgun. (R. 183). It contained an unfired cartridge in the chamber, and two more in the magazine. (R. 185). Beyond asking for his name, which Petitioner did not provide, Petitioner was not questioned and did not speak to the officers. Petitioner's identity was ultimately confirmed by fingerprint technology. (R. 158-160).

### *Forensic Analysis*

The autopsy of Victim Ashli demonstrated that she had two gunshot wounds, one to the heart and another to her bowels. Two projectiles were recovered from her body, no soot or stippling was present, suggesting the shooting was committed at a distance of more than two feet. (R. 226-

234). Victim Rufus suffered three gunshot wounds, one to each of his cheeks, and one to his back. Two projectiles were recovered from his body, with evidence of stippling present, suggesting a shooting as close as possibly nine inches, and up to three feet. (R. 235-244). Two fired shell casings were recovered from the crime scene of Ashli's murder. (R. 245-248). Two fired shell casings were recovered from Petitioner's pocket. (R. 191; 193). The State's ballistics expert testified that the four shell casings and the four projectile bullets were all fired by the recovered CW-40 handgun. (R. 256-263).

The blood from the U-Haul was determined to be that of Victim Rufus Carmichael. Among the many DNA evaluations performed, the DNA analysis concluded that, via likelihood ratio of 29 octillion, Petitioner had three different bloodstains from Victim Rufus on his pants. (R. 196-197). Via a likelihood ratio of 28 sextillion, Petitioner's fingernail scraping from Petitioner's left hand (Item 1.1) contained DNA of Victim Rufus. (R. 198-200). GSR tests performed on the inside of the U-Haul cabin were positive, suggesting that the gun was discharged while inside the cabin. (R. 223-225).

Cellular data analysis demonstrated that Petitioner's phone was active during the hours immediately prior to and after the murder of Ashli Haigler. *Of particular importance, Petitioner's phone left an outgoing voicemail on Victim Rufus's phone at 4:02am.*[5] (R. 210). The tower sector data demonstrated that Petitioner's phone was in the area of Victims' home. (R. 212). Based on the tower and sector data, expert Houck testified that the movement of the phone also demonstrated that Petitioner's phone left the West Columbia area and continued to get closer to the Columbia

[5] In light of the *many* shortcomings of Petitioner's testimony and explanation of events, he claims to have lent his phone to Rufus because Rufus left his phone at home. This leaves no logical reason that Rufus would then call his own cell phone a couple of hours later. Nor did Petitioner have an explanation for why Rufus would be repeatedly calling his girlfriend, Ms. Edwards.

area and his home at **** Koon Road, as time progressed between 4:00am and 4:16am. The records also demonstrated that Petitioner's phone called his girlfriend, Jessica Edwards' xxx-5965 number multiple times during that time frame. (R. 210-222). Lastly, the cellular data provided a text message history between Petitioner and Victim Rufus on March 12, 2021, which reflected Victim Rufus's concern over Petitioner's mental health and drug use. (R. 206-209).

***Petitioner's Case-in-Chief at Trial***

Petitioner took the stand and testified in his own defense. He testified that in addition to Ms. Edwards needing the U-Haul for moving furniture, he needed it to move an engine for his business and expected to do so with his brother Rufus on March 13th. (R. 270-271). He claimed that the dispute with his brother during this time was the result of Rufus doing poor work on a vehicle repair and not owning up to it. (R. 268-269). Petitioner testified Victim Rufus showed up at his house at approximately 2:15am on March 13, 2021. Petitioner claimed Rufus was upset with Ashli, and asked to borrow both his cell phone and the U-Haul. He testified that Rufus had a pistol and was accompanied by a man he knew as Alonzo. Petitioner testified that his understanding was that Victim Rufus was "supposed to get rid of Ashli and her things." He claims that the two men left with Alonzo driving and Rufus in the passenger seat, after which he went back to bed. (R. 275-277).

He testified that he then woke up "in the morning, that afternoon" and saw that the U-Haul had been returned. He proceeded to get in the U-Haul to leave his house at 3:00pm and saw blood everywhere. Petitioner claimed that he panicked. He had no other explanation for why he put the cell phone back in his pocket, why he put the spent shell casings in his pocket, why he did not call the police, and why he chose to try and drive the U-Haul in its bloody condition. Petitioner testified that the reason he was in possession of Rufus's driver's license was because his license was

suspended, and that since they look a lot alike, they often shared a license when the other is dealing with a suspended license issue. (R. 265-266). Petitioner testified that the reason there was a large hole in his front yard was because he had a dead tree he wanted to dig up and remove. (R. 273). Petitioner also testified that he "did not see" the pistol sitting in the open in the front seat of the U-Haul, and says that he got Victim Rufus's DNA under his fingernails when he moved one of the bloody rags in the U-Haul cabin. (R. 281; 282).

## STANDARD OF REVIEW

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b}, SCACR. The South Carolina Appellate Court Rules set forth a nonexclusive list of the circumstances in which review may be granted. Therein, Rule 242(b) continues: "[t]he following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court."

Rule 242(b), SCACR.

## ARGUMENT

**I. Certiorari is not warranted because the Court of Appeals' recitation of the controlling facts and law demonstrate that there was no abuse of discretion and therefore no basis for appellate relief. The Court of Appeals correctly found that the trial court made a case specific determination based upon appropriate testimony.**

Petitioner has failed to present any meritorious basis for certiorari in this matter. The Court of Appeals properly concluded that the trial court made a case specific determination of R.C.'s need for special consideration in testifying in Petitioner's trial, pursuant to S.C. Code of Laws § 16-3-1550(E), and that Petitioner did not endure any violation of his constitutional right to confront the witnesses against him.

At the time of the hearing, R.C. had just turned seven years old, and he was only five at the time of the crime. The trial court heard the testimony of R.C.'s licensed trauma therapist, Hannah Hucks, as well as his grandmother, Rachel Alston. Ms. Hucks was qualified as an expert witness and testified that she diagnosed R.C. with PTSD as a result of the murder of his parents. She further testified to the numerous symptoms that R.C. experienced as a result of his condition, and the importance of preventing R.C. from being further exposed to the individual who was the cause of his PTSD.[6] She testified that R.C. was "extremely nervous" about testifying, and that in her professional opinion R.C. would "very, very likely" experience a "severe setback in his symptoms" and recovery therefrom were he to be forced to testify in front of Petitioner. She also expressed concern that Petitioner's presence may be so detrimental to R.C. that he may be rendered unable to testify or communicate at all during trial. (R. p. 2; 9-19).

[6] She listed R.C.'s symptoms to include intrusive memories, regular flashbacks to the crime, nightmares, alterations in cognition and mood, irritability, hyper-arousal, and hyper-vigilance. She agreed that part of conducting R.C.'s therapy is to avoid being exposed to the person who caused the trauma – Petitioner.

The trial court then heard from Rachel Alston who likewise had concerns with R.C. testifying in front of Petitioner. She reiterated the concerns that Ms. Hucks had raised, the fear that R.C. feels of Petitioner, and the symptoms R.C. had exhibited as a result of the crime and his PTSD. She testified that if Petitioner were to be present at trial, she doubted R.C.'s ability to communicate what he observed take place that night. R.C. had explicitly told her that he was scared of Petitioner and never wanted to see him again. She believed that, if forced to testify in Petitioner's presence, R.C. would revert to the condition he was in when she first began to care for him after the crime: "total fear, not wanting to go outside, not wanting to be around others", and suspicion of innocuous matters. The trial court also had R.C.'s school records, held under seal, for consideration and set forth on the record that he had reviewed them. (R. p. 19-23).

In reliance upon *State v. Carter*, 433 S.C. 352, 857 S.E.2d 910 (Ct. App. 2021), the trial court then found on the record that based upon the testimony and records presented, the court was convinced that R.C. would be traumatized by testifying in Petitioner's presence, and would likely cause a significant and damaging relapse in his listed PTSD symptoms. For the reasons stated, the trial court ordered that R.C. testify in open court while Petitioner observes from a separate room. (R. p. 25). At the time of the implementation of this arrangement, Petitioner was also given separate counsel to ensure he could communicate with his defense attorney during R.C.'s trial testimony. (R. p., 68-74). The Court of Appeals correctly found that there was no abuse of discretion by the trial court in this matter, and that its holding was in keeping with this Court's directives in *Bray* and *Murrell*. *State v. Carmichael*, No. 2022-001717, 2025 WL 326560, at *1 (S.C. Ct. App. Jan. 29, 2025). The Court of Appeals further found that the trial court reached a proper, and case-

specific determination for R.C. requiring special considerations under 1550(E) and that as such there was no deprivation of Petitioner's constitutional right to confrontation.[7]

Petitioner's arguments to the contrary fail to present any basis for an abuse of discretion, and instead rely on the suggested but not mandatory possibility of having the child in question testify during a 1550(E) hearing. Petitioner also failed to acknowledge the distinguishing facts of *Bray*, where the testimony from the expert is clearly about the witness's discomfort with testifying in front of the defendant and the family members that had not believed her statement. *State v. Bray*, 342 S.C. 23, 28, 535 S.E.2d 636, 639 (2000). The characterization of R.C.'s basis for special consideration is one of severe risk of relapsing symptoms of emotional trauma brought on by being in Petitioner's presence; it bares no similarity to Petitioner's reliance upon *Bray*. Moreover, Petitioner appears to base his argument for error on the fact that neither Ms. Hucks nor Ms. Alston "stated with *certainty* that testifying in front of Petitioner would trigger or be harmful to R.C." (See Petition for Writ of Certiorari, p. 8)(emphasis added). Nothing within the case law requires a certainty of harm, nor could trauma professionals ever provide such, and Petitioner otherwise disregards the witnesses' *strong* confidence that such harm would manifest if R.C. were to be forced to testify in front of Petitioner.

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[7] As was argued to the Court of Appeals, R.C. testified in open court, before the jury, and was cross-examined by defense counsel, in the same manner as any other witness while Petitioner watched the testimony by a live-stream in a separate room. As Petitioner was not representing himself, and had the ability to communicate electronically with his attorney as R.C. was testifying, there is no substantive difference or inhibition to the legal process. The distinction between the arrangement Petitioner was provided to the other approaches of video-taped testimony or having the witness testify outside the presence of the jury (while not improper) leave Petitioner with no legitimate constitutional basis to dispute.

The ruling of the trial court was proper, as was the Court of Appeal's affirmance. Petitioner's argument provides no meritorious basis for certiorari and Ground One of the Petition should therefore be denied.

## II. Certiorari is unwarranted for review of the hearsay matters ruled upon by the Court of Appeals as either qualified as an excited utterance exception, or harmless error admissions of hearsay.

### *R.C.'s Excited Utterance*

The Court of Appeals correctly found that R.C.'s statement to the responding officer constituted an excited utterance. The Court of Appeals was also correct in finding that even if R.C.'s statement to police (which contained no assertion of someone else's statement) was based on Victim's Haigler's utterance: "Jason, where is my baby's daddy?", the statement remained admissible because Victim's statement was likewise an excited utterance. As such, there was no abuse of discretion, no basis for reversal, and now no basis for certiorari.

Looking at the rule, the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition. *Ladner*, 373 S.C. at116, 644 S.E.2d at 691. Here, all three elements are met concerning R.C.'s statement, regardless of whether its admission is challenged via Officer Davis, via body-cam footage, or via R.C.'s direct testimony. (See R. 27-28; 36; 88-89). R.C.'s statement is simple: "My Mommy is dead. Uncle Jason shot my mommy." The circumstances of the statement and Officer Davis's testimony demonstrate that R.C. was in fact "frantic". Thus, his statement was 1) related to a startling event or condition, 2) it was made while R.C. was under the stress of excitement, and 3) the stress of excitement was caused by the startling event. See *State v. Burdette*, 335 S.C. 34, 43, 515 S.E.2d 525, 530 (1999)(noting that the passing of an hour was insufficient to remove the condition of

excitement from the witness); *State v. Burroughs*, 328 S.C. 489, 499, 492 S.E.2d 408, 413 (Ct. App. 1997) ("[T]he mere fact that a statement was made some time after the incident occurred does not mean the statement cannot qualify as an excited utterance, provided that the circumstances surrounding the statement indicate its reliability."). The Court of Appeals correctly applied the law, and the facts satisfy the elements necessary for admission of the statement.

Petitioner next attempts to argue that the Court of Appeals erred on the grounds that R.C.'s basis of knowledge for his statement, claiming that since he did not personally see the shooter, his statement cannot meet the excited utterance standard. No such limitation exists, and it would appear that Petitioner has conflated an element necessary for present sense impression with those needed for excited utterance.[8] The statement is admissible, and while the basis of knowledge for which the statement is made can be attacked on cross examination to suggest to the jury that it be given little weight, that does not render the statement inadmissible as an exception to hearsay under Rule 803(1).

Additionally, as was correctly decided by the Court of Appeals, even if this issue were to be viewed as a hearsay within hearsay type of matter, Victim's statement of "Jason, where is my baby's daddy?" is likewise admissible as an excited utterance.[9] "A court must consider the totality of the circumstances when determining whether a statement falls within the excited utterance exception, and that determination is left to the sound discretion of the trial court." *State v. Ladner*,

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[8] Petitioner misinterprets the assertion from *State v. Hill* that requires firsthand information. Such addresses the fact that a witness cannot provide an excited utterance to a circumstance that they did not actually experience. R.C. was present for the murder, the fact that he could not see his Uncle Jason does not render him no longer "an actual witness to the event." In any case, he can and did testify at trial to the same assertion, rendering this argument about hearsay ultimately unprejudicial.

[9] Petitioner did not challenge on appeal the trial court's ruling on the admission of Victim Ashli's statement.

373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007). The record demonstrates that Victim Ashli was concerned and in a hurry based on R.C.'s testimony and the fact that these events took place at 4:00am. The record also demonstrates that the basis for her concern and efforts to hurry were because they needed to look for his daddy who had disappeared. These facts are further bolstered by Tiara Haigler's testimony which demonstrated that Ashli was specifically seeking out Petitioner to ask about Rufus's disappearance. Lastly, the video evidence shows that Victim Haigler purposefully followed the U-Haul to where this confrontation with Petitioner ultimately ended up taking place. As such, her statement of "Jason, where's my baby's daddy?" was related to the startling event of having her baby's daddy disappear in the middle of the night less than an hour before her confrontation with Petitioner, it was made under the stress of trying to find her missing baby's daddy, and the stress she was experiencing was "caused" by the disappearance of her baby's daddy in the middle of the night. It was soundly an excited utterance.[10]

Petitioner's reliance upon *Burroughs* and *Hendricks* do not support his arguments. *State v. Burroughs* is not applicable because the ruling reached by the Court of Appeals was that the nearly *ten hours* of lapsed time between the event and the reporting of the event to nurse and police officer could not satisfy the present sense impression standard, and that this timeframe for reflection by the victim rendered excited utterance inapplicable as well. *State v. Burroughs*, 328 S.C. 489, 500, 492 S.E.2d 408, 413 (Ct. App. 1997). The basis for these rulings bear no similarity to R.C.'s statement to police in this case. In *Hendricks*, the 911 recording provided two levels of hearsay: the first being Victim's statement to her mother, Lisa Gilstrap, and the second being Gilstrap's

[10] Respondent would also argue that Ashli's statement would constitute a present sense impression, as she is 1) identifying the person she is talking to and asking where her baby's daddy is, 2) the statement/question was made contemporaneous with the events of looking for the disappeared victim, and 3) she personally experienced Victim disappearance that night after investigating a noise and immediately attempted to find him.

statement to the 911 operator. The court found the first level of hearsay was admissible as an excited utterance by the daughter, but because Gilstrap was not present when the rape occurred her statement could not qualify for the exception. It was likewise not a present sense impression because, the actual rape was not contemporaneous to Gilstrap's 911 call reporting it. *State v. Hendricks*, 408 S.C. 525, 532-34, 759 S.E.2d 434, 438 (Ct. App. 2014). *Hendricks* is simply not applicable to the facts of this case.

The trial court's admission of R.C.'s statement was well within its discretion and was indeed proper under the law. The Court of Appeals properly affirmed that decision, and there is no basis in which to grant certiorari. Ground Two, subparts A through C, of the Petition should be denied.

***Harmless Error Admission of Victim Rufus's Text Messages***

The Court of Appeals did not err in finding the admission of Victim Rufus's texts messages to be harmless. The content of the messages was not prejudicial, and the overwhelming evidence of guilt against Petitioner rendered the matter harmless as a matter of law. Certiorari is not warranted.

The text messages in question follow just minutes after a verbal conversation was held between Victim Rufus and Petitioner via the truck's Bluetooth speakers. (See R. 205-206). Ms. Dreher was able to hear this conversation and testified that the verbal discussion included Petitioner's threat to Victim Rufus that he would kill him. (R. 148-150). The State then sought to admit the disputed text messages pursuant to SCRE 803(3) and demonstrate Victim's state of mind as to how he was going to handle his brother in light of recent communications. The substance of the text messages is as follows:

(Texts from Rufus)
It's time for you to take a break again, dog.

You're clearly not thinking right at this time. I love you, Bruh. Bye. You're too old to be regressing over and over again. Please Jason, take a break, get your mind right and continue to prosper in life. That's all I have to say. And dog, jail is not an illusion. Your mindset you have right now is the only illusion. I wish you well. Peace. And I'm sure you know you ain't fucking nothing up over here, so just get your mind right, little brother. Love you man.

(Text from Petitioner)

No, the brainwash has stopped. I see clearly now. You be safe. We fight different. I already fucked you up.

(Text from Rufus)

Who's acting like a bitch now? You

(Text from Petitioner)

I came direct. You chose a sneak attack.

(Text from Rufus)

Ain't nothing sneaky about me. I'm going to end the talking because it's the dope. I love you, little brother.

(R. 206-208).

The State sought to have this evidence admitted to demonstrate Victim Rufus's plan as it relates to dealing with his brother and his mental state following the threat. (R. 202; Supp R. 3). The trial court found that the texts were admissible because it provided context following Petitioner's threat against Victim Rufus's life that had just occurred, and the Victim's existing emotional state of mind in response to those threats. (R. 204). Respondent maintains that the trial court was within its discretion to admit the evidence under the Rule 803(3) exception, and that no error arises regarding the matter. Regardless, the Court of Appeals was correct in finding that the issue was harmless in affirming Petitioner's conviction and sentence.

The Court of Appeals found that the content of the messages created no basis for prejudice against Petitioner "because they do not include any threat on Carmichael's part to harm Rufus and do not provide any evidence of guilt." *Id.*, 2025 WL 326560, at *2. These are objective findings as to the content of the messages, and the findings carry no error. Additionally, the Court of

Appeals set forth a fairly comprehensive recitation of the evidence against Petitioner and noted that in light of the evidence of guilt, the admission of the disputed text message evidence was harmless as it did not affect the result of the trial. *Id.* The Court of Appeals was correct to reference the overwhelming evidence against Petitioner in this case, and such soundly supports its decision to affirm. "'[O]verwhelming evidence' of a defendant's guilt is a relevant consideration in the harmless error analysis." *State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) (citing *State v. Kromah*, 401 S.C. 340, 361-62, 737 S.E.2d 490, 501 (2013).

Petitioner has failed to demonstrate any error on the part of the Court of Appeals that would support a basis for certiorari. Ground Two, subpart D of the Petition should therefore be denied.

## III. The Court of Appeals correctly concluded that Petitioner's argument that the solicitor improperly pitted witnesses during cross-examination was not preserved for appellate review.

The Court of Appeals correctly concluded that Petitioner's claim that the solicitor's questions constituted the pitting of witnesses was not preserved for appellate review. "To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court." *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). "The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error." *Id.* "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." *Id.* Similarly, preservation requirements cannot be circumvented by claiming error on the part of the court for not *sua sponte* addressing an issue at trial. See *State v. Peay*, 321 S.C. 405, 411, 468 S.E.2d 669, 673 (Ct. App. 1996). The Court of Appeals correctly concluded that a contemporaneous objection was not raised by defense counsel, nor was the issue raised in a post-trial motion to the trial court, under the narrow exception provided by *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994). While Respondent maintains that no error

occurred on the part of the solicitor,[11] Petitioner conceded the lack of contemporaneous objection to preserve this issue, and the narrow exception requires a post-trial motion which was not sought.

There is therefore no basis for certiorari to review of the Court of Appeals decision in this matter. Ground Three of the Petition should therefore be denied.

## CONCLUSION

As set forth above, the Court of Appeals' reasoning and legal bases for affirming Petitioner's conviction and sentence decisions were well-founded and proper. For all the foregoing reasons, it is respectfully submitted that certiorari be denied in this matter.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851

HON. BYRON E. GIPSON
Fifth Circuit Solicitor's Office
Post Office Box 192
Columbia, SC 29202-0192

BY: *s/ W. Joseph Maye*
W. Joseph Maye

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

May 30, 2025.

[11] See Final Brief of Respondent, p. 27-30.