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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Honorable Courtney Clyburn-Pope, Circuit Court Judge

Appellate Case No. 2024-001526

THE STATE, ...RESPONDENT

v.

XABIAN URONIE BAILEY, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court committed reversible error in failing to grant a mistrial when the State elicited evidence of a consent search of Twaine Carroll's residence that undercut the claims of Appellant's counsel that no such search was conducted for firearms removed from the crime scene before police arrived when the State misled the trial court that the search had been disclosed to appellant's counsel during a prior hearing?

II.

Whether the trial court erred in restricting Appellant's cross-examination of the State's rebuttal witness to only the material elicited by the State on direct examination when the witness had not previously testified during trial?

STATEMENT OF THE CASE

In 2022, an Aiken County grand jury indicted Appellant Xabian Uronie Bailey for three counts of murder and one count of possession of a weapon during a violent crime arising from the shooting deaths of Willie Garrett, Ivan Perry, and Cameron Carroll that occurred on June 26, 2022. (R. * Indictments). Appellant proceeded to a jury trial before the Honorable Courtney Clyburn-Pope from September 3–6, 2024. Solicitors Jacueline Charbonneau and Hurmayonne Wygina Morgan represented the State while William McKellar and Bill Thompson represented Appellant. (Tr. 1–2). The jury returned a guilty verdict on all charges and the trial court subsequently sentenced Appellant to life imprisonment for each count of murder. (Tr. 573–574, 595–596).

This appeal now follows.

STATEMENT OF FACTS

In the early afternoon (approximately 1:20 PM) of June 26, 2022, Larry Carroll, Twaine Carroll, Joshua Smith, and the three decedents Willie Garrett, Ivan Perry, and Cameron Carroll (hereinafter collectively referred to as "Victims") were hanging out outside of Larry's trailer at 226 Wadley Drive in Aiken when, unexpectedly, Appellant and five others—Alvin Artis and Antonio Jones (Appellant's co-defendants), Fantasia Carroll, Richard Carroll, and Heavenly Reedy—approached the group. (Tr. 36–40). Appellant and his group were there to settle a dispute regarding an accusation of a break-in of Joshua Smith's house by members of Appellant's group (Tr. 174–175, 186–189). The testimony is conflicted as to who was talking to who or what was said, but essentially, members of the two groups were briefly arguing about the accusations when suddenly, Alvin Artis pulled out a handgun that "sounded like a machine gun" and began shooting at Willie, Ivan, and Cameron. (Tr. 46, ln. 11—Tr. 47, ln. 9; Tr. 132, ln. 16—Tr. 133, ln. 12). At the same time, Appellant began shooting at Victims while running away from the scene. (Tr. 47, ll. 13–22; Tr. 133, ll. 13–23; Tr. 177, ln. 2—Tr. 178, ln. 9). Surveillance video captured from another trailer on the same street corroborates survivors' account that Appellant and his group were only there for about six minutes before the shooting started. (Tr. 255–256).

All members of Appellant's group, including Appellant, quickly fled except for Fantasia, Larry's daughter, who stayed behind. (Tr. 351–352). Fantasia, following the direction of her father Larry, called 911. (Tr. 352; State's Ex. 3 (911 Audio)). A neighbor, after hearing the gunshots from inside her house, saw three black males running from the scene. (Tr. 160, ln. 13—Tr. 161, ln. 11).[1] Willie and Ivan were killed immediately as a result of multiple fatal gunshot wounds while

[1] The neighbor, Yolanda Miller, testified that one of the bullets came through her bedroom and hit a lamp. (Tr. 164). Further testimony confirmed that her house would have been behind Victims from the perspective of Appellant and his group. (Tr. 167; Tr. 254–255).

Cameron was left struggling for his life—he would later die in the hospital. (Tr. 48, ln. 13—Tr. 49, ln. 6; Tr. 51, ll. 10–20; Tr. 178, ln. 19—Tr. 179, ln. 9). Larry, Twaine, and Joshua, the survivors of the shooting, all testified that Victims were unarmed.[2] After Victims were shot, the three survivors did not move Victims or otherwise go near them. When police arrived, all three were unresponsive on the ground near each other, and no one was standing near them or walking away from them. No guns were found on or near their persons. (Tr. 117, ln. 8—Tr. 118, ln. 15; Tr. 243, ll. 9–13).

Later that evening, after determining Appellant's location with the help of Fantasia and obtaining a search warrant, police found Appellant hiding under a bathroom sink inside a house at 173 Lloydtown Road. (Tr. 233, ln. 19—Tr. 236, ln. 23). In the days following the shootings, police conducted lineups with Twaine and Joshua. Both identified Appellant as a shooter. (Tr. 150, ln. 15—Tr. 151, ln. 11; Tr. 183). Fantasia told investigators that both Appellant and Alvin Artis went to Larry's trailer with guns since she saw them pull their guns out of their waistbands and shoot at Victims. (Tr. 477–478). A forensic examination of the shooting scene revealed that the only shooters were in front of the Victims due to the location of the shell casings left behind and the bullet strikes found behind them. No shell casings were found near Victims, nor were there any bullet strikes behind where Appellant and his group would have been standing. (Tr. 242–243, 255) A gunshot residue examination performed on Appellant's shirt, the same shirt he was observed wearing at the time of the shooting, came back positive on the back of the shirt—corroborating survivors' account that Appellant was shooting while running away. (Tr. 292–297).

Regarding the shell casings and bullets/bullet fragments found on the scene, SLED's

[2] The three also testified that neither of them were armed, and police did not find any weapons on them or in their houses. (Tr. 46, 131–132, 174, 242, 253). The only weapon found on scene was a Gen 4 Glock 19 found in Larry's blue pickup truck. (Tr. 209–210).

forensic firearms examiner made the following conclusions at trial: (1) none of the shell casings or bullets/bullet fragments, whether 40 S&W or 9mm, matched with the Gen 4 Glock 19 found in Larry's truck. (Tr. 309, ll. 5–16); (2) twenty-one 9mm cases found on the scene were fired from a single gun, a single 9mm case was fired from a second gun, and four 40 S&W cases were fired from a third gun; (3) all bullets and bullet fragments found on the scene and collected from Victims' autopsies that could be identified had rifling marks consistent with being fired from a Glock Marksman Barrel, something only found with newer Gen 5 Glocks. (Tr. 310–325).

Appellant's case-in-chief revolved around the testimony of members of his group, but Appellant did not testify. Fantasia testified that Appellant's group were staying at Appellant's grandfather's house when someone called them saying that Larry wanted to talk to them about the alleged break-in of Joshua Smith's house. Fantasia claimed that they then walked over to Larry's trailer so they could "clear their names" and emphasized that she did not see weapons on Appellant or his co-defendants—despite previously telling investigators the exact opposite. (Tr. 340–345, 477–478). When they arrived at Larry's trailer, Victims were not there. However, after a few minutes of arguing between the two groups, Fantasia claimed that Victims "came out the side of the house" with weapons out "in front of them," but they did not make any threatening gestures with the guns before shots were fired. (Tr. 346–351). After collecting herself, Fantasia claimed she saw Larry, Twaine, and Josh pick up the weapons from Victims and hide them in Twaine's house. (Tr. 353). On cross-examination, Fantasia denied telling another relative/friend that Victims were unarmed and did not acknowledge her prior statement to investigators that Appellant was armed. (Tr. 362–364, 369–372).

Heavenly Reedy gave a similar account but claimed that she saw Victims on the right side of Larry's trailer "sitting in the chairs" with "guns sitting on their lap" when they were walking

up. Heavenly claimed that after the two groups started arguing, Victims stood up and approached them with their guns, making threatening remarks and pointing their guns at them. Shots were fired and Heavenly left the scene. She did not see anyone picking up guns from Victims. (Tr. 385–390, 394–398). On cross-examination, Heavenly denied previously telling investigators that she saw Appellant and Alvin Artis with a gun. (Tr. 419–421).

Finally, Appellant's co-defendant (but not on trial here) Alvin Artis testified, claiming that he was the sole shooter and was shooting in self-defense. Like Fantasia, Alvin claimed that when they first arrived and started arguing with Larry, Twaine, and Smith, Victims were not there. However, after about a minute, Alvin claimed he saw Victims come "out of the woods" from the right side of Larry's trailer pointing guns at them and making threatening remarks. Alvin then shot "all three of them" with a 9mm Glock equipped with a "binary trigger."[3] (Tr. 434–437). Alvin claimed his other two co-defendants, including Appellant, were unarmed and did not fire any shots. (Tr. 440, 445–449). Artis then fled to Oklahoma and discarded his gun into a river while traveling through North Carolina. (Tr. 451–456).

[3] Alvin stated he fired until he ran out of bullets. (Tr. 458).

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Johnson*, 413 S.C. 458, 776 S.E.2d 367, 371 (2015). "The decision to grant or deny a mistrial is within the sound discretion of the trial court." *State v. Makins*, 433 S.C. 494, 500, 860 S.E.2d 666, 670 (2021) (citing *State v. Dawkins*, 297 S.C. 386, 394, 377 S.E.2d 298, 302 (1989)). "A mistrial should not be granted unless absolutely necessary." *State v. Council*, 335 S.C. 1, 13 515 S.E.2d 508, 514 (1999) (citing *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989)).

"[A] trial court's ruling on the proper scope of cross-examination will not be disturbed on appeal absent a manifest abuse of discretion." *State v. Whatley*, 407 S.C. 460, 466, 756 S.E.2d 393, 396 (Ct. App. 2014) (citing *State v. Quattlebaum*, 338 S.C. 441, 450, 527 S.E.2d 105, 109 (2000)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

ARGUMENT

I. The trial court did not abuse its discretion in denying Appellant's motion for mistrial based on an alleged discovery violation where, irrespective of the State's knowledge regarding the search of Twaine Carroll's residence, the State did not fail to disclose any discoverable document regarding said search in violation of Rule 5, SCRCrimP.

Appellant argues that the trial court reversibly erred in failing to grant him a mistrial when the State elicited evidence of a consent search that was not previously known to the defense, thereby violating Rule 5 of the South Carolina Rules of Criminal Procedure. (Initial Brief of Appellant at 11–12). He further argues that Appellant's defense strategy was compromised as a result of not knowing about this search and that the solicitor misled the trial court when referring to the prior hearing and saying that the search was disclosed there—further compounding the court's error in failing to grant a mistrial. *Id.* However, based on a plain reading of Rule 5 and its application to the facts of this case, the trial court did not abuse its discretion in denying Appellant's motion for mistrial. The facts supported a finding that there was no Rule 5 violation. Therefore, no relief was due and this Court should affirm.

A. Relevant Facts

At trial, Appellant argued in opening before the jury that the evidence would demonstrate that Victims were armed and that, according to Fantasia Carroll, their weapons were hidden in Twaine Carroll's residence and that Twaine's house was never searched by law enforcement—which he argued explained why the Victim's weapons were never found. (Tr. 24). Later, under direct examination by the state, Twaine Carroll testified to the following:

Q. Were you there . . . when the police first arrived?

A. Yes, I was.

Q. Okay, And did – at any time, did you talk to the police that day?

A. Yes, they came and talked to me.

Q. Now, *did there come a time that the police searched your home?*

A. Yes, they did.

Q. *Did they search your home?* Do you know – do you recall when they searched you –

A. I don't know what day they searched, but they searched my home.

Q. Okay, And now, *did they find any guns in your home?*

A. *No they did not.*

Q. Did you give the police the names of the shooters?

A. Yes, I did.

Q. Okay.

(Tr. 137, ll. 6–24) (emphasis added). At this point, Appellant stated that he had a matter of law, and the trial court excused the jury. Appellant argued that this lack of disclosure was a discovery violation:

> **Mr. McKellar:** Your Honor, we just heard for the first time that Mr. Twaine Carroll's house was searched. *That is, to my knowledge, not mentioned anywhere in discovery.* And I've consulted with my Co-Counsel and Counsel for Alvin Artis attorneys [sic]. They're not aware that any mention in discovery of his house ever being searched. Now, if that's true, that would be it happen [sic]. *I believe that would be a discovery violation.*
>
> **The Court:** Okay, Madam Solicitor?
>
> **Ms. Charbonneau:** Judge, *I've always known that that house was searched*, so I'm not sure, I can't point to something standing right here right now as far as how it was, but that's something that I've always known. *He gave verbal consent.* It was the day that he did his photo lineup. . . .
>
> **The Court:** . . . Mr. McKellar, can you help me understand the significance . . . to your defense with regards to the home being searched?
>
> **Mr. McKellar:** Well, Your Honor, the theory of the defense is that the guns have moved and moved into Twaine's house. . . . There is no mention to my knowledge

anywhere discovery [sic] of this house searched.

. . .

Ms. Morgan: . . . I believe that the witness said . . . he didn't know when it was searched, but it was searched. So there was no indication that it was a search on the day. *And there is no search warrant that would've been given to defense counsel in discovery . . . that the house was searched.*

(Tr. 138, ln. 5—Tr. 139, ln. 13) (emphasis added). At this point, the Court interjected, asking whether there was any additional documentation of the search at issue:

The Court: Sir, is there any documentation that, *and I believe that's what you're asking for.*

Mr. McKellar: Right, I'm not aware of any. I mean, it's a huge file and it is possible that I missed it, but I don't think I have, . . . we've talked to other lawyers who they don't recall seeing. I don't think it's there. If the house was searched, that's a significant omission not to self [sic] Defense counsel that it was searched.

(Tr. 139, ll. 15–22).

At this point, the Court stood down and gave counsel the opportunity to determine "if there is any documentation as to whether or not there was a search." (Tr. 140). When court resumed, Appellant was asked whether his objection was related to *Brady*, but Appellant responded that his objection was based on "Rule 5." (Tr. 141). Appellant then continued to argue that his defense was compromised because of not knowing about this "vital piece of evidence" and his assumption that Twaine's residence was never searched combined with the fact that Fantasia Carroll had told law enforcement that the Victims' guns were hidden in his house. However, the Court recognized that this was a consent search, meaning a search warrant would not be required:

The Court: So . . . this was a search that was no search warrant [sic]. This is a consented to search. . . .

Ms. Charbonneau: This is a verbal consent. And it's the same day he gave the photo lineup, which is three days later, which doesn't change the defense. *Because in three days anything could happen.* We've already put on testimony that there were no guns to hide. And we have witnesses that will rebut anything that Fantasia

Carroll says. . . .

(Tr. 143, ll. 7–15) (emphasis added). During this same discussion, the solicitor argued that any failure to disclose would have been cured as of a prior motion hearing that occurred on April 18, 2024, when an investigator testified under cross-examination that Twaine Carroll's house was not searched on the day of the incident but that it was searched later. (Tr. 143, ln. 18—Tr. 144, ln. 4). However, the fact of the search itself was not revealed during that prior hearing as the discussion between Mr. McKellar and Investigator Neel was only in regards to a search warrant for Twaine's house:

Q. Did [Fantasia Carroll] say what happened to those three victims' firearms?

A. She claimed that they were picked up and hidden prior to our arrival.

Q. Did she say where they were hidden?

A. She stated they were hidden in her uncle's [house].

Q. And her uncle is who?

A. [Twaine] Carroll.

Q. *And did y'all get a search warrant for [Twaine] Carroll's house?*

A. *No, sir.*

Q. Why not?

A. I wasn't aware that she had said that the day that this incident happened.

Q. Okay. When did you become aware?

A. . . . I would estimate four to five days later.

. . .

Q. Okay. Have you discussed this issue with Investigator Faulkner?

A. Yes.

Q. *Did he explain why he did not get a search warrant for [Twaine] Carroll's house?*

A. *He did not.*

(4/18/24 Hrg. Tr. 8, ln. 4—Tr. 9, ln. 6) (emphasis added). Appellant stated he did not have any recollection as to whether the search was specifically disclosed during that April hearing but noted that he would not have built the defense around the house not being searched if he knew about the search. (Tr. 144). In any event, what happened at the prior hearing is ultimately irrelevant because there is no indication that the trial court received/reviewed a transcript of that prior hearing or relied upon what was disclosed at the prior hearing for its ruling on the Rule 5 objection. At this point, the Court interjected:

> **The Court:** . . . But Mr. McKellar, . . . my ruling *still remains the same even after hearing that this is a Rule 5 discovery motion*, excuse me, . . . an objection under the belief that this is a Rule 5 discovery violation. I do not believe that it is. *I do believe that whatever defense you built from a statement of one witness or several witnesses, this was a warrantless search.* And so I do not believe that the discovery four five [sic] still was violated in any way. . . .

(Tr. 144, ll. 11–19) (emphasis added).

Appellant then moved for a mistrial "on the basis of the State not providing any documentation of this house ever searched." Solicitor Charbonneau responded, again arguing that any violation would have been cured as of the prior hearing when Investigator Neel testified that the house was searched. The Court then denied Appellant's motion for mistrial. (Tr. 144–145). Appellant later renewed his motion for mistrial but did not argue any additional grounds. (Tr. 337).

B. Discussion

Rule 5 of the South Carolina Rules of Criminal Procedure governs disclosure of evidence in criminal cases. Relevant to this appeal, Rule 5(a)(1)(C), SCRCrimP provides:

> **Documents and Tangible Objects.** Upon request of the defendant the prosecution shall permit the defendant to inspect and copy *books*, *papers*, *documents*,

> *photographs, tangible objects, buildings or places*, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

Id. (emphasis added). Upon a plain reading of this excerpt, Rule 5 does not cover non-documentary or non-tangible evidence, including the abstract *fact* that a search was or was not conducted. Admittedly, if such a search *was* documented in the form of a search warrant or another document intended to be used in evidence at trial by the prosecution, Rule 5 would likely require disclosure of said document. But in the case where a document simply does not exist, or the document in question is attorney work product not intended to be used in evidence at trial, there is nothing for Rule 5 to require disclosure of. And the other subsections of Rule 5 do not help Appellant either. This is not a statement of Appellant, Appellant's prior record, nor is it a result of an examination or test. Finally, Rule 5 specifically prohibits the disclosure of attorney work product that may otherwise fall under Subsection (C):

> **Information Not Subject to Disclosure**. Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule *does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case, or of statements made by prosecution witnesses or prospective prosecution witnesses* provided that after a prosecution witness has testified on direct examination, the court shall, on motion of the defendant, order the prosecution to produce any statement of the witness in the possession of the prosecution which relates to the subject matter as to which the witness has testified; and provided further that the court may upon a sufficient showing require the production of any statement of any prospective witness prior to the time such witness testifies.

Rule 5(a)(2), SCRCrimP (emphasis added). Note that this section specifically omits subsection (C) which Appellant must rely on for his Rule 5 argument. Again, this is not a statement of Appellant, Appellant's prior record, nor is it the result of an examination or test. Accordingly, even if the search was documented in some fashion, such documentation would likely constitute non-

discoverable attorney work product—and Appellant did not address this limitation at trial and does not currently do so on appeal.

Appellant further argues that the trial court's error was compounded by the solicitor's misrepresentations regarding the prior hearing and that such misrepresentations could rise to the level of prosecutorial misconduct. (*See* Initial Brief of Appellant at 12–13). However, prosecutorial misconduct was not specifically presented to the trial court as a basis for granting a motion for mistrial, meaning such an argument is not preserved for appellate review.[4] "[I]n order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge." *State v. Carmack*, 388 S.C. 190, 200, 694 S.E.2d 224, 229 (Ct. App. 2010) (citing *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003)). "Arguments raised for the first time on appeal are not preserved for our review." *Id.* (citing *Knight v. Waggoner*, 359 S.C. 492, 496, 597 S.E.2d 894, 896 (Ct. App. 2004)).

Second, these alleged misrepresentations could not have affected the trial court's ruling when the ruling was based solely off a strict application of Rule 5, SCCrimP. When the Court denied Appellant's motion for mistrial, it was relying on its ruling regarding the general objection holding that there was no violation of Rule 5 by the State.[5] Simply put, it is irrelevant whether or not the search was previously known/disclosed by the state because there was no "book[], paper[], document[], photograph[], tangible object[], building[] or place[]" that would fall under the letter

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[4] Appellant had the opportunity to raise additional arguments when he later renewed his motion for mistrial. But he specifically stated to the Court that "[t]he motion for a mistrial is based on Rule 5." (Tr. 337).

[5] To the extent Appellant argues that the State further compounded its misrepresentation regarding disclosure of the search at the prior hearing with the direct testimony of Investigator Neel and therefore contributed to the trial court's error (*See* Initial Brief of Appellant at 11), this is irrelevant because the Court had already made its ruling regarding the Rule 5 objection and motion for mistrial—and the issue was not revisited later other than a basic renewal of the motion for mistrial. (*See* Tr. 337).

of Subsection (C) and be subject to disclosure.[6] And even assuming such a document existed, it would likely constitute work-product protected from disclosure in the form of law enforcement notes, internal prosecution memoranda, etc. *See* Rule 5(a)(2), SCCrimP, *supra.* Mistrial is a rare and extraordinary remedy that should not be used absent rare and extraordinary circumstances. *See Council*, 335 S.C at 13, 515 S.E.2d at 514. This is not an extraordinary case. Combined with the corresponding deferential standard of review that this Court employs, the trial court did not abuse its discretion in failing to grant a mistrial where the mere fact that a search occurred is not a discoverable "document" under a plain reading of Rule 5(a)(1)(C), SCCrimP. And since Appellant raised no other grounds for his motion for mistrial other than Rule 5, his other arguments must fail.

This Court should affirm.

[6] Again, Appellant's reliance on the fact that the search was not actually disclosed at the prior hearing is misplaced because the Court's ruling was based solely on a strict application of Rule 5. There is nothing in the record to suggest that the Court reviewed a transcript from the prior hearing.

II. The trial court did not abuse its discretion in restricting Appellant's cross-examination of the State's rebuttal witness given the limited nature of the testimony; and any perceived error would be harmless given the overwhelming evidence of Appellant's guilt and Appellant's prior opportunities to express his point regarding guns hidden in Twaine Carroll's house.

Appellant argues that the trial court erred in restricting his cross-examination of the State's rebuttal witness in violation of his constitutional right to confrontation and right to present a complete defense. However, keeping in mind the broad deference given to the trial court regarding the scope of examination, Appellant fails to show an abuse of discretion where the rebuttal witness's testimony was limited to providing extrinsic evidence of a prior inconsistent statement and nothing more. And even assuming the trial court erred in restricting cross-examination of the State's rebuttal witness, such error would be harmless in light of the overwhelming evidence of Appellant's guilt and the fact that Appellant already developed the point he wanted to get out on prior examination, meaning the further cross-examination of the State's rebuttal witness on his point would be cumulative and could not have swayed the jury. This Court should affirm.

A. Relevant Facts

During Appellant's case-in-chief, Fantasia Carroll gave inconsistent testimony to the effect of suggesting that she did not know that Appellant had a gun on him when they (Appellant's group) left to go to Larry Carroll's house on Wadley drive—despite having previously told law enforcement the opposite. (Tr. 345). On cross-examination, when confronted with this inconsistency, Fantasia equivocated and gave ambivalent responses regarding her prior statements to law enforcement. (Tr. 369–372). After Appellant rested his case, the State proffered Investigator Faulkner's testimony as extrinsic evidence of Fantasia's prior inconsistent statement. After argument between the parties regarding Rule 613B, SCRE, the trial court allowed the testimony

to be heard before the jury. (Tr. 461–475). The substance of the State's questioning of Investigator Faulkner was as follows:

> Q. [D]uring that interview, did you ask Ms. Fantasia Carroll when she, on the day of June 26, 2022, when they walked to 226 Wadley Drive, did you ask her whether or not any of the people that went to the address with her if they had guns?
>
> A. Yes, ma'am.
>
> Q. How did she respond?
>
> A. She responded Xay and Alvin.
>
> Q. And by Xay, who do you mean?
>
> A. Xabian Bailey.
>
> Q. . . . And did you ask her where they had the guns – where they carried the guns?
>
> A. Yes, ma'am.
>
> Q. And what did she say?
>
> A. In their pants.
>
> Q. Did you ask her how she knew they had guns?
>
> A. Yes, ma'am.
>
> Q. What did she say?
>
> A. She knew because she saw them shoot.

(Tr. 477, ln. 12—Tr. 478, ln. 5).

On cross-examination, Appellant attempted to get into his theory regarding guns being hidden in Twaine Carroll's house, which led to the sustaining of the State's objection at issue here on appeal:

> Q. *I might change gears a little bit.* You interviewed Fantasia Carroll on day of [sic] the shooting, right?
>
> A. Yes, ma'am. Yes, sir. Sorry.

> Q. And you were informed that weapons used at the incident may have been hid in Twaine's [house, correct?]
>
> **Ms. Morgan:** Objection.
>
> **The Court:** What's the basis?
>
> **Ms. Morgan:** *It's beyond the scope.*
>
> **The Court:** What's your question, Mr. McKellar?
>
> **Mr. McKellar:** It is – Your Honor, *I will be beyond the scope of my cross.* . . . I'm allowed a through . . . cross-examination.

(Tr. 478, ll. 12–25) (emphasis added). Following a sidebar, Appellant noted on the record that the Court had sustained the State's objection, and Appellant asked no further questions. (Tr. 479).

B. Discussion

"The right to a meaningful cross-examination of an adverse witness is included in the defendant' s Sixth Amendment right to confront his accusers. . . . This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination." *State v. Aleksey*, 343 S.C. 20, 33–34, 538 S.E.2d 248, 255 (2000) (citing *State v. Smith*, 315 S.C. 547, 446 S.E.2d 411 (1994); *State v. Lynn*, 277 S.C. 222, 284 S.E.2d 786 (1981)). Among other reasons to limit cross-examination, trial judges retain "'wide latitude'" to restrain cross-examination where there could be confusion of the issues or the questioning "'is repetitive or only marginally relevant.'" *Id.* at 34, 538 S.E.2d at 255 (quoting *Delaware v. Van Arsdall*, 465 U.S. 673, 679 (1986)).

In this case, it was reasonable for the trial court to restrict Appellant's questioning of the State's rebuttal witness Investigator Faulkner where Faulkner's only direct testimony was relating the prior inconsistent statement of Fantasia Carroll (thus making the scope of his testimony extremely narrow) and Appellant had already elicited testimony supporting his theory that guns

were hidden in Twaine Carroll's house, meaning eliciting the same testimony from another investigator would be "repetitive or only marginally relevant."[7] *Van Arsdall, supra.*

Even assuming the trial court erred in restricting Appellant's cross-examination of Investigator Faulkner, such error was likely harmless. Error is harmless when it could not have reasonably affected the result of the trial. *State v. Simmons*, 423 S.C. 552, 566, 816 S.E.2d 566, 573–74 (2018) (quoting *State v. Byers*, 392 S.C. 438, 447–48, 710 S.E.2d 55, 60 (2011)). Errors regarding the scope of cross-examination, including those involving confrontation, are also subject to harmless error analysis. *See, e.g., State v. Perez*, 423 S.C. 491, 498, 816 S.E.2d 550, 554 (2018) ("'A [C]onfrontation [C]lause error is harmless if the evidence is overwhelming and the violation so insignificant by comparison that we are persuaded, beyond a reasonable doubt, that the violation did not affect the verdict.'") (citing *State v. Holder*, 382 S.C. 278, 285, 676 S.E.2d 690, 694 (2009)). When determining whether a Confrontation error is harmless, the Court considers (1) the importance of the witness' testimony in the State's case, (2) whether the testimony was cumulative, (3) the presence/absence of evidence corroborating or contradicting the witness' testimony on material points, (4) the extent of cross-examination otherwise permitted, and (5) the overall strength of the State's case. *Id.* (quoting *Delaware v. Van Arsdall*, 465 U.S. 673, 684 (1986)).

First, Faulkner's testimony was not necessary to the State's case. Although his testimony was useful in clarifying exactly what Fantasia Carroll said to law enforcement in her initial statement regarding Appellant having a gun, Fantasia was still thoroughly cross-examined and impeached regarding her prior inconsistent statement. In this way, Faulkner's testimony was also cumulative to the State's impeachment of Fantasia under cross-examination. Next, Appellant

[7] Specifically, Appellant already asked Investigator Neel Scott about the alleged hidden guns and was able to develop his theory further through the direct testimony of Fantasia Carroll. (*See* Tr. 268–269, 352–353).

failed to present evidence or engage in cross-examination that contradicted the fact that Fantasia initially told law enforcement that Appellant possessed a gun when he went to Larry's house. And while Appellant effectively engaged in no cross-examination of Faulkner since he was not allowed to ask about guns being hidden in Twaine's house, Faulkner's rebuttal testimony was limited to just relating the prior inconsistent statement—meaning there would effectively be nothing else to cross-examine him on.

Finally, the State's case against Appellant was overwhelming. The record demonstrates (1) Appellant and his co-defendant Alvin Artis came to Larry Carroll's house armed and ready to engage in a violent altercation; (2) the Victims were unarmed and did not start any fight or otherwise provoke Appellant and his group; (3) Artis and Appellant started shooting at Victims with no justification and fled the scene; (4) the forensic evidence corroborated the State's case, namely—Appellant had GSR on the back of his shirt which corroborated the survivors' account that Appellant was shooting at Victims while running away, and there were no shell casings by Victims or bullet impacts behind where Appellant and his group were standing, corroborating the fact that Appellant and Artis were the only shooters and that Victims were unarmed; (5) Appellant's witnesses lacked credibility and Artis's self-serving testimony that he was the sole shooter acting in self-defense only further undermined Appellant's case.

Accordingly, any error in limiting cross-examination of Investigator Faulkner would be harmless beyond a reasonable doubt. This Court should affirm.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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