STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
The Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

GENE ALEXZANDER SCOTT,

APPELLANT.

Appellate Case No. 2024-000900

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Did the trial court properly find that Agent Clamp's testimony was not pitting because she discussed inconsistencies between witnesses; and was any error harmless?

STATEMENT OF THE CASE

Respondent accepts Appellant's statement of the case for the purposes of this appeal.

STATEMENT OF FACTS

Shortly after noon on Father's Day, 2020, 9-1-1 in Chester County received a call regarding the shooting deaths of two individuals. (Tr. p. 223, ll. 3 – 14). As the first law enforcement officers began to arrive in the scene, they encountered Appellant, dressed in a purple shirt with black pants and wailing about the deaths of his grandfather—later determined to be a grandfather figure[1]—and the grandfather's mother. (Tr. p. 239, ll. 6–16; State's Ex. 3). "He shot them in the f****** back like cowards," Appellant cried. (Ex. 3). Sergeant Claude Powell entered the modest home and found the victims—Gene Rogers and his mother, Billie—both obviously dead. (Tr. p. 240, l. 20–p. 241, l. 4; Ex. 3). Gene Rogers had been shot in the arm and head; Billie had been shot in the head as well. (Tr. p. 561, ll. 1–8; p. 585, l. 19 – p. 586, l. 1; p. 594, ll. 1–5).

Neighbors would later report hearing shots the previous day. (Tr. p. 335, ll. 5–11; p. 344, l. 25–p. 345, l. 9; p. 359, ll. 7–16). Another reported that his dogs "went a little berserk" at one point. (Tr. p. 501, ll. 17 – 24).

Appellant told police that he was on the way to see his grandfather figure for Father's Day. (Tr. p. 248, l. 24–p. 249, l. 12; p. 290, ll. 13–20; State's Ex. 139). Sergeant Powell would later recall the impression that Appellant was "putting on a show." (Tr. p. 251, ll. 16–25).

One neighbor recalled that Gene Rogers "loved" Appellant "with all his heart. He bragged about him all the time. . . . He was, I guess, his favorite." (Tr. p. 499, ll. 9–11). The relationship included financial support. Gene told a coworker he gave Appellant somewhere around $90,000 or $100,000 to start a business. (Tr. p. 538, l. 25–p. 539, l. 18). The coworker later sensed that Gene was growing concerned about how Appellant was using the money. (Tr. p. 539, l. 8–p. 540,

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[1] Gene Rogers had at one point been married to Appellant's grandmother. (Tr. p. 941, ll. 19–22).

l. 6). Other acquaintances heard similar things. (Tr. p. 848, l. 22–p. 849, l. 5). Appellant wanted to start a security company. (Tr. p. 1101, ll. 21–23; p. 1174, ll. 8–12).

Company records showed that in January 2020, Gene Rogers had withdrawn $120,000 from his retirement account. (Tr. p. 763, ll. 14–19). After taxes were taken out, a check for $91,000 was sent to Gene Rogers. (Tr. p. 865, l. 17–p. 866, l. 1). At least $86,000 of that went to Appellant. (Tr. p. 872, ll. 17–21). By June 8, the account in which Appellant had deposited most of the funds had a balance of $3.00. (Tr. p. 875, ll. 21–24). Gene Rogers wrote another check to Appellant for $2,500. (Tr. p. 876, ll. 11–14). In early June 2020, Appellant abruptly left the graduation party of a cousin when he heard that Gene Rogers was about to arrive. (Tr. p. 1306, l. 17–p. 1307, l. 2). Gene Rogers explained to Appellant's uncle that Appellant was likely mad at Gene Rogers for declining to give Appellant more money. (Tr. p. 1307, ll. 3–12).

Retirement funds were not all the financial ties Gene had to his job. Between the life insurance policies the company provided and those that Gene Rogers supplemented them with, he had almost $700,000 in life insurance—but only until the 61-year-old retired. (Tr. p. 767, l. 20 – p. 768, l. 15). Appellant was one of two beneficiaries. (Tr. p. 867, ll. 18–24). He would receive $346,000 if Gene Rogers died before retiring. (Tr. p. 868, ll. 2–4). Gene Rogers had discussed retiring at 62. (Tr. p. 946, ll. 17–23).

Appellant's electronic footprint also played a role at trial. Internet searches on Appellant's phone related to how long gunshot primer and residue would remain on a person's hands. (State's Ex. 195). Other searches included "can a detective recommend death penalty" and "50 cal damage to human." (Ex. 195). Appellant apparently searched for "plastic bag suffocation statistics" and "how long does it take for life insurance to pay." (Ex. 195). Searches recorded on his phone also included "what is needed for evidence of murder" and "what is needed to charge someone wity

[*sic*] murder"; "what do police look for in a murder investigation" and "how solid are alibis" (Ex. 195).

In April, Appellant sent a message to one of the people he knew from the interview, asking "How would you like to never have to work another day in your life[?]" (Ex. 195). Attempting to set up a call about this opportunity, Appellant asked the associate to "[m]ake sure you aren't around anyone when I call." (Ex. 195). Correspondence with someone looking to buy a gun on Facebook lapsed for three-and-a-half hours on June 20. (Ex. 195).

One of the associates, Evan Webb, testified that Appellant said that "his grandfather had murdered his parents and that he could -- he hated him for it." (Tr. p. 1094, ll. 18–25).[2] On May 9, Webb said, Appellant held a meeting with Webb, Ian Little,[3] and another man. (Tr. p. 1111 15–16; p. 1113, ll. 7–9). Appellant then discussed his plan to kill Gene Rogers. (Tr. p. 1114, ll. 8–15). Webb testified that his job was to help provide an alibi by using Appellant's phone in Columbia while the murders were going on. (Tr. p. 1114, l. 11–p. 1115, l. 6). However, the attempt on May 9 was aborted because of animal noise that Appellant was afraid would get the attention of humans. (Tr. p. 1123, ll. 8–13). On June 20, Appellant again asked Webb for help with an alibi; this time, Webb simply turned off his phone at his home in Jacksonville, North Carolina, so he could claim that Appellant picked him up that day and Webb had forgotten his phone. (Tr. p. 1125, l. 25–p. 1126, l. 25).

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[2] According to Appellant's biological uncle, Appellant's biological mother died of a drug overdose. (Tr. p. 1291, l. 21– p. 1292, l. 7). The uncle testified that as far as he knew, Appellant's biological father was still alive. (Tr. p. 1295, ll. 18–21).

[3] Little committed suicide before trial, though jurors were told only that he was dead. (Tr. p. 127, ll. 5–11; Tr. p. 1176, ll. 11–12).

The other man at the apartment May 9 was John Cravener. (Tr. p. 1235, l. 11–p. 1236, l. 4). On June 20, Appellant asked Cravener and his wife to stay at a hotel, rather than Appellant's apartment, so that the apartment could be used for a business meeting. (Tr. p. 1251, l. 21–p. 1252, l. 8). Later, Cravener spoke with Appellant on his balcony. (Tr. p. 1262, ll. 3–7). He asked Appellant if Appellant had killed his grandparents. (Tr. p. 1262, ll. 11–17). Appellant checked to see if Cravener was wearing a recording device. (Tr. p. 1262, ll. 23–25). Appellant then told Cravener that he had killed his grandparents, and that they should never again talk about the subject. (Tr. p. 1263, ll. 7–13).

Among those who testified at Appellant's trial was SLED Agent Kimberly Clamp, who consulted with the Chester County Sheriff's Office in the investigation of the murders. (Tr. p. 1357, l. 4–p. 1358, l. 13). Relevant to this appeal, Clamp gave the following testimony:

> So, whenever I get involved in a case, the very first thing I want to know is everything I possibly can about my victims, who they are, where they come from, what they do for money. Just anything and everything as far as that -- far back as I can go.
>
> Basically what I identify is there any potential skeletons in somebody's closet, what is their public life, what is their personal life, who would potentially have anything against them. so this way we can then go from there as, you know, into the investigation that might be important to talk to.

(Tr. p. 1368, ll. 10–20). In discussing a trip she had taken to Ohio to try to speak with Little, Clamp explained to the jury how the information they were receiving from some of those in Appellant's orbit, and Appellant himself, were not consistent. (Tr. p. 1372, l. 24–p. 1373, l. 12). Appellant objected that the testimony was an example of pitting the witnesses against each other, and the trial court initially sustained the objection. (Tr. p. 1373, ll. 13–17). After arguments outside the presence of the jury about the pitting objection and to memorialize a sidebar argument to Clamp's testimony about victims, Agent Clamp again testified about the inconsistent stories after the court overruled

the pitting objection. (Tr. p. 1375, l. 2–p. 1388, l. 17; p. 1389, l. 11–1390, l. 24). Jurors also heard testimony from SLED Agent Richard Cullop who, after lengthy *in camera* discussions and argument about his testimony, provide testimony placing some of the various evidence that had been put before jurors into context. (Tr. p. 1592, l. 2–p. 1649, l. 7; Cullop Trial Presentation).

During his case-in-chief, Appellant presented two witnesses and testified on his own behalf. Appellant said he did not discuss plans to kill his grandparents at the May 9 gathering. (Tr. p. 1780, l. 21–p. 1781, l. 3). He said he asked others to leave the apartment June 20 because he and Little were sexually involved. (Tr. p. 1788, l. 23–p. 1789, l. 24). Appellant also testified that he had attempted suicide in jail, and summarized a suicide note in which he proclaimed his innocence. (Tr. p. 1829, l. 1–p. 1830, l. 8).

After less than an hour and a half of deliberations, the jury found Appellant guilt of the murders of Billie Rogers and Gene Rogers and guilty of possession of weapon during a violent crime. (Tr. p. 1989, l. 12–p. 1991, l. 24). The court sentenced Appellant to 60 years imprisonment for each of the murders and five years on the weapons charge, all to be served concurrently. (Tr. p. 2005, l. 20–p. 2006, l. 2).

STANDARD OF REVIEW

This Court reviews a trial court's decision to allow certain evidence under an abuse of discretion standard. *See State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." (citation omitted)).

ARGUMENT

I. The trial court properly admitted Agent Cullop's testimony because it was permissible lay testimony based on Agent Cullop's role in the investigation; additionally, because the evidence was cumulative by Appellant's own argument, its admission was without a doubt harmless.

Appellant argues that the trial court improperly allowed Agent Cullop's testimony at the end of the State's case-in-chief, contending that it was impermissible lay opinion that was impermissibly cumulative. That argument misses the mark; the trial court's admission of the evidence was not an abuse of discretion.

First, the trial court did not get the standard wrong. The court was making the very determination that Appellant wanted it to make. If the judge could look at the evidence and—without "special knowledge, skill, experience or training," Rule 701, SCRE—draw the same connections that Agent Cullop made, then drawing those connections did not require those attributes. The trial court understood that if specialized knowledge was needed to understand the production of the opinion, that was problematic.

It's helpful to understand exactly what Appellant is challenging, because it is essentially only Agent Cullop's testimony. Many of the slides contain evidence that had already been admitted or were demonstrative of evidence that had already been admitted. The slideshow itself was a demonstrative aid, and while Appellant relies on it to support some of his points, he does not appear to be questioning the admissibility of the underlying evidence. *Cf. Clark v. Cantrell*, 339 S.C. 369, 383, 529 S.E.2d 528, 535 (2000) ("Demonstrative evidence often is admitted only for use in the courtroom to explain and illustrate a witness's testimony, but it also may be admissible as an exhibit for the jury to examine and consider during deliberations.").

In any event, it's useful here to consider this Court's decision in *State v. Ostrowski*, 435 S.C. 364, 867 S.E.2d 269 (Ct. App. 2021). In that drug possession case, this Court differentiated

between two investigators. One of the investigators testified about his perceptions of the significance of potential drug paraphernalia found in the defendant's home, and the other testified about the results of a phone extraction, decoding the meaning of certain slang terms for drugs as he went along. *See id.* at 375–76, 867 S.E.2d at 274–75. This Court found the first investigator's testimony did not require the investigator to be qualified as an expert, but it found that the testimony of the second was not permissible lay opinion. *See id.* at 384–88, 867 S.E.2d at 279–81.

In *Ostrowski*, this Court first laid out a general guideline for when law enforcement officers can offer lay opinion during their testimony and when that testimony would require an expert.

> The dividing line that many courts have drawn—and that our supreme court appears to have adopted—is that officers may provide lay opinions based on their observations, experience and training, but may not provide lay opinions on such matters if they did not either observe the events in question or actively participate in the investigation.

Id. at 385, 867 S.E.2d at 279. For that reason, this Court found that the investigator who was discussing the significance of drug paraphernalia during the investigation was permitted to offer lay opinion about the significance of those items. *See id.* at 388, 867 S.E.2d at 281 (allowing the investigator's testimony because he "was discussing how the objects he found were sometimes used in drug trafficking based on what he had seen in previous investigations and how it informed his perception of what he saw while investigating Appellant"). But this Court barred the second investigator's testimony about drug jargon, because the investigator's role was limited to an after-the-fact review of the drug messages and his general knowledge of drug terminology. *See id.* at 388–90, 867 S.E.2d at 281–82 (finding testimony required an expert because the investigator "was not personally involved in the surveillance," was not otherwise part of the investigation, and used his general knowledge of drug jargon to decode the messages).

While at first glance Agent Cullop might look more like the second investigator than the first, a closer examination reveals that his testimony was closer to the testimony of the first officer than the second. No doubt, he did not come into the investigation until its later stages. (Tr. p. 1593, ll. 20–23). But he also did not simply put together a slide show based on the phone extraction. Instead, Agent Cullop set out to make sure that any shortcomings in the investigation were remedied. (Tr. p. 1596, ll. 1–3). He determined that the entire phone extraction had never been examined by investigators working the case, but he also wanted to get additional interviews done. (Tr. p. 1596, ll. 4–10). He reached out to law enforcement authorities, including those in West Virginia, to gather more background information on the victims. (Tr. p. 1597, l. 23–p. 1598, l. 19). He obtained a search warrant for some of Gene Rogers' cell phone records. (Tr. p. 1600, l. 24–p. 1601, l. 22). He interviewed and reinterviewed witnesses. (Tr. p. 1603, ll. 10–25).

As a result, when Agent Cullop was testifying about how the facts gathered by the investigation fit together, he was not doing so based solely on looking at cold evidence and applying his general knowledge to it. He was basing his testimony on an investigation in which he had been an active part, and basing the statements he made on specific information about the case, not as an outside observer analyzing investigators' findings. *See Ostrowski, supra*; *see also United States v. Johnson*, 617 F.3d 286, 293 (4th Cir. 2010) (" Furthermore, Agent Smith admitted that he did not participate in the surveillance during the investigation, but rather gleaned information from interviews with suspects and charged members of the conspiracy *after* listening to the phone calls. His post-hoc assessments cannot be credited as a substitute for the personal knowledge and perception required under Rule 701.").[4]

[4] Importantly, the appellant in *Johnson* challenged Smith's testimony because his "opinions regarding the calls were not based on his own perception, but rather on his experience and

Furthermore, this evidence is without a doubt harmless for the very reason that Appellant contends it is not harmless—because it was almost entirely cumulative to other evidence that had been presented throughout the trial. *See, e.g., State v. Griffin*, 339 S.C. 74, 77–78, 528 S.E.2d 668, 670 (2000) ("There is no reversible error in the admission of evidence that is cumulative to other evidence properly admitted."); *State v. Kirton*, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008) ("The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence.") (collecting cases); *Ramos v. Hawley*, 316 S.C. 534, 537, 451 S.E.2d 27, 28 (Ct. App. 1994) ("[A]s a settled principle of law, the admission of improper evidence is harmless where it is merely cumulative of other evidence.").

Appellant attempts to sidestep this by turning an exception into the rule. *See State v. Barrett*, 299 S.C. 485, 487, 386 S.E.2d 242, 243 (1989) ("To the contrary, it is precisely this cumulative effect which enhances the devastating impact of improper corroboration."). But *Barrett* is a bolstering case, so that makes sense; the very point of bolstering is to bring additional statements or opinions forward to prove that the contested evidence should be believed. Agent Cullop's testimony was to place that other testimony into context, not to bolster it.[5]

For these reasons, Appellant cannot show that Agent Cullop's testimony was impermissible. His convictions should be affirmed.

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training." *Johnson*, 617 F.3d at 292. Here, Agent Cullop was testifying about facts specific to this case, not based on his general experience.

[5] As far as the allegation that Agent Cullop's testimony "corroborated the state's theory of the case," it is hard to see how the concept of contested litigation could survive his proposed standard. Evidence is intended to corroborate a party's theory of the case; that is the standard for relevance. *See* Rule 401, SCRE (defining "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). If evidence is not corroborating a party's theory of the case, it is difficult to understand what purpose it serves.

II. The trial court properly admitted Agent Clamp's testimony about the victims' lifestyles, because it was based on an investigation in which Agent Clamp participated and because her assessment did not require expertise.

Appellant next argues that the trial court erred by refusing to find that Agent Clamp's testimony about the victims' lifestyles—and whether those lifestyles would have exposed them to a greater risk of crime—required an expert. But the trial court did not abuse its discretion in finding that the testimony was admissible, and in any event the error is beyond a doubt harmless.

The admissibility of opinion evidence is assessed under two different standards in South Carolina. First, a lay witness is allowed to testify to opinions "rationally based on the perception of the witness," as long as that information is helpful to the jury and doesn't rely on "special knowledge, skill, experience or training." Rule 701, SCRE. Qualified expert witnesses, meanwhile, can "testify . . . in the form of an opinion or otherwise" without the same requirements. Rule 702, SCRE. And while law enforcement officers who are not qualified as experts face the same restrictions on opinion testimony as other lay witnesses, "in limited circumstances" they "are allowed to draw on their experiences while testifying." *Ostrowski*, 435 S.C. at 384–85, 867 S.E.2d at 279–80.

Again, *Ostrowski* and the cases cited there are instructive. First, we know from *Ostrowski* that the judge recognizing Agent Clamp's experience in making his rule does not automatically render her an expert, because the same thing happened in *Ostrowski*. *See* 435 S.C. at 386, 867 S.E.2d at 280. In *Ostrowski*, like in this case, the trial court observed as part of his ruling that the investigator "can testify all about that in his experience and knowledge and skill as an officer . . . without attaching the label of an expert on that." *Id.* On appeal, this Court looked past that statement to find that the investigator was allowed to testify because of his personal observations and the effect they had on the investigation. *See id.* at 386–88, 867 S.E.2d at 280–81. The same is

true here. *See also United States v. Perez*, 962 F.3d 420, 436 (9th Cir. 2020) ("[W]hether evidence is more properly offered by an expert or a lay witness 'depends on the basis of the opinion, not its subject matter.'" (quoting *United States v. Barragan*, 871 F.3d 689, 704 (9th Cir. 2017))).

In this case, Agent Clamp was discussing how the evidence officers were gathering prompted them to cast their net in the directions that they did. She was looking into "who would potentially have anything against" Gene and Billie. (Tr. p. 1368, ll. 15–18). And the reason? To inform where the investigation needed to go from there. (Tr. p. 1368, ll. 18–20).

To be sure, Agent Clamp did briefly discuss at times whether Gene and Billie were "high risk" or "low risk" victims. (Tr. p. 1368, l. 25–p. 1369, l. 2; p. 1370, ll. 6–7). But the thrust of her testimony was that investigators found that neither of the victims used drugs or frequented drug-related locations. (Tr. p. 1369, ll. 8–17). Investigators also found that the two of them didn't regularly visit bars and clubs. (Tr. p. 1369, ll. 18–20). Billie was a retiree taking shelter during the COVID-19 pandemic, and Gene was largely a homebody when he wasn't at work or going to church. (Tr. p. 1369, l. 24–p. 1370, l. 7). In light of that, Agent Clamp's testimony agreeing with the solicitor that the two were not "putting themselves in high risk situations" was hardly the kind of conclusion that requires "special knowledge, skill, experience or training." Rule 701, SCRE. It was essentially an observation that their lives were banal—information that could help investigators determine where to focus their efforts, but hardly required any of them to hold a doctorate. *See Ostrowski*, 435 S.C. at 387, 867 S.E.2d at 281 ("Courts have frequently held that law enforcement officers can offer their opinion on certain aspects of the drug trade based on their *personal experience or knowledge* regarding the *particular investigation* at issue, or how those experiences and knowledge shaped their contemporaneous perceptions of what they saw *while acting in the course of an investigation.*") (collecting cases).

The cases Appellant musters to the contrary don't undermine that conclusion.

For example, this case is not a repeat of *Tapp*—as the trial court recognized. (Tr. p. 1387, ll. 8–16). In *Tapp*, as part of his extensive testimony, an expert discussed his belief that the victim was targeted for sexual assault in part "because of the victim's relatively low risk for encountering a violent crime." *State v. Tapp*, 398 S.C. 376, 390, 728 S.E.2d 468, 475 (2012). He also testified about how the assailant likely got into the victim's home; what other reasons there were to believe that the victim was the target of a sexually motivated crime; whether the assailant's original intent was to kill the victim; and how the attacker likely "posed" the body. *Id.* at 376, 728 S.E.2d at 475–76.[6] Additionally, this Court's opinion on Tapp—later reversed on legal grounds, to be sure—noted that the expert testified based on "a review of crime scene photos, autopsy reports, and other information provided by the police and prosecution" *State v. Tapp*, 387 S.C. at 163, 691 S.E.2d at 167, *rev'd,* 398 S.C. 376, 728 S.E.2d 468 (2012)

Unlike Agent Clamp's observations here, the significance of the expert's observations in *Tapp* and the conclusions he drew from them required expertise. *See* Rule 701(c), SCRE; *cf. State v. Jones*, 423 S.C. 631, 638, 817 S.E.2d 268, 271 (2018) ("Whether the subject matter of a proposed expert's testimony is outside the realm of lay knowledge is a determination left solely to the trial judge and his or her sense of what knowledge is commonly held by the average juror."). And unlike the expert witness in *Tapp*, Agent Clamp was a participant in the investigation.

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[6] Interestingly, the courts in *Tapp* didn't have to rule on whether victimology testimony required an expert witness because, as this Court acknowledged in its later-reversed opinion, both sides conceded in that case "that crime scene analysis and victimology are nonscientific areas of expertise." *State v. Tapp*, 387 S.C. 159, 167, 691 S.E.2d 165, 169 (Ct. App. 2010), *rev'd,* 398 S.C. 376, 728 S.E.2d 468 (2012). That is not determinative in this case, because as the Ninth Circuit observed in *Perez*, whether opinion testimony must be delivered by an expert or can instead come from a lay witness "depends on the basis of the opinion, not its subject matter." *Perez, supra* (quoting *Barragan, supra*).

Finally, any error resulting from the admission of this testimony was harmless. Appellant was not identified as a suspect in this case or convicted through the process of elimination; he was identified as a suspect and convicted because of thorough and overwhelming evidence demonstrating his guilt. At least two individuals implicated him in having arranged a false alibi as part of a previous attempt to carry out the murders; one of those individuals testified that Appellant had confessed to killing a grandfather figure and that man's mother; multiple electronic communications implicated Appellant; and there was abundant evidence leading to the conclusion that Appellant was running low on money and could have seen his grandfather figure's death as a way to create a financial windfall. Even if Gene and Billie had been more adventurous, an overwhelming amount of evidence pointed in Appellant's directions.

Appellant's convictions should be affirmed.

III. The trial court appropriately found that Agent Clamp's testimony did not constitute "pitting" because she discussed inconsistencies between witnesses; even if the trial court was mistaken, the error was harmless.

Appellant argues that the trial court erred in allowing Agent Clamp's testimony regarding the inconsistencies between the accounts of different witnesses because that testimony included impermissible "pitting." But Appellant is wrong. The trial court correctly held that the testimony was not pitting, and even if Appellant was right, the error would be harmless.

"Pitting" has a clear definition under South Carolina law. It is where a witness is asked to comment about the truthfulness or the credibility of another witness—generally one that is adverse. That did not happen here.

"It is improper for the solicitor to cross-examine a witness in such a manner as to force him to attack the veracity of another witness." *State v. Sapps*, 295 S.C. 484, 486, 369 S.E.2d 145, 145–46 (1988). "No matter how a question is worded, anytime a solicitor asks *a defendant* to comment on the truthfulness or explain the testimony of *an adverse witness*, the defendant is in effect being pitted against the adverse witness." *Burgess v. State*, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998) (emphases added). *See also State v. Bryant*, 316 S.C. 216, 221, 447 S.E.2d 852, 855 (1994) (Moore, J., dissenting) (agreeing with the majority that "a Solicitor may not attack a defendant's veracity by pitting the defendant's testimony against that of a State's witness"); *State v. Daise*, 421 S.C. 442, 458, 807 S.E.2d 710, 718 (Ct. App. 2017) ("Our courts have previously held that the assessment of witness credibility is within the exclusive province of the jury, and that witnesses generally are not allowed to testify whether another witness is telling the truth." (quoting *State v. Kromah*, 401 S.C. 340, 358, 737 S.E.2d 490, 499–500 (2013)) (cleaned up by removing internal quotation marks and brackets)); *State v. Benning*, 338 S.C. 59, 63, 524 S.E.2d 852, 855 (Ct. App.

1999) ("It is improper to cross-examine in a way that requires a witness to attack another witness's credibility.").

The summation of Agent Clamp's testimony is this: Evan said Ian was the one who transported Evan to Columbia; Ian said Appellant did so; the statements of Caroline Deaton seemed to make it impossible for either Ian or Appellant to be Evan's ride from North Carolina. (Tr. p. 1389, l. 10–p. 1390, l. 24).[7] The truth or falsity of any of the individual statements—including Appellant's—were not as relevant as the fact that they were inconsistent with one another. Before this Court, Appellant attempts to turn this into pitting by isolating a phrase from Agent Clamp's testimony regarding inconsistencies that raised her concerns. In full, Agent Clamp's initial testimony about the inconsistencies: "So, I had reviewed the interview that the defendant had done at the Sheriff's Department with them *as well as* any interviews that they had conducted on their own, and *throughout these interviews*, I had found multiple inconsistencies that rose to a high level of concern for me." (Tr. p. 1372, l. 24–p. 1373, l. 3) (emphases added).[8]

Appellant's attempts to invoke *Pickrell* fall flat. First of all, *Pickrell* isn't really a pitting case. *See State v. Pickrell*, 443 S.C. 497, 504, 905 S.E.2d 374, 377 (2024) ("We agree with Pickrell that a witness such as Bailey should not be permitted to testify that another person's account of events should not be believed. However, that is not what Bailey did."). Secondly, the concern of the court was that the investigator's testimony was irrelevant because it only showed the

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[7] Evan Webb testified at trial that Appellant picked him up in North Carolina. (Tr. p. 1111, ll. 17–24). However, other testimony at trial indicated he had originally said it was Ian Little. (Tr. p. 737, ll. 1–5).

[8] Without conceding that the statements were hearsay, as Appellant alleges here, that issue is irrelevant in the consideration of whether Agent Clamp's testimony constituted pitting. Additionally, the trial court did order some of Agent Clamp's testimony struck because of a hearsay objection. (Tr. p. 1389, l. 24–p. 1390, l. 7).

investigator's personal "puzzlement" at how the facts of the crime matched up with the defendant's narrative of events. *See id.* at 502–03, 905 S.E.2d at 376–77.

But the most telling difference between this case and *Pickrell* comes to whether the challenged testimony helped to explain the actions that investigators took. The *Pickrell* Court was dubious about that argument, finding that neither the State's question nor the investigator's actions after the defendant's statement suggested that it played a role in the investigation. *See id.* at 503, 905 S.E.2d at 377. However, in this case, the testimony about inconsistencies among the witnesses' accounts came up as Agent Clamp testified about why she had traveled to Ohio to try to speak to Ian Little. (Tr. p. 1372, l. 18–p. 1373, l. 12). When the jury returned, the State framed it question around investigators' efforts to establish a timeline of events—an investigatory step. (Tr. p. 1389, ll. 2–23). Eventually, the testimony again returned to Agent Clamp's efforts to talk to Ian Little. (Tr. p. 1391, l. 16–p. 1392, l. 6). Here, the testimony logically connected to the State's efforts to outline how a long and complicated investigation focused on Appellant.

But even if this testimony was pitting, the error was without a doubt harmless. As discussed above, the State presented a wide array of evidence through Appellant's electronic activity, the testimony of witnesses with varying levels of knowledge about his plot to kill his grandfather figure, and extensive financial documentation that Appellant had a significant motive to commit the murders. This was not a simple swearing contest between witnesses with inconsistent stories. *See Sapps*, 295 S.C. at 486, 369 S.E.2d at 146 ("Because credibility was the crucial issue in this case, we hold appellant was unfairly prejudiced by the solicitor's improper cross-examination."). The aspect of Agent Clamp's testimony to which Appellant objects could not reasonably be said to have provided the final quantum of evidence to flip a tentative juror. *See id.* at 486, 369 S.E.2d at 146 (1988) ("This error is reversible if the accused is unfairly prejudiced thereby.").

For these reasons, this Court should affirm Appellant's convictions.

CONCLUSION

Appellant has not shown that the admission of any of the evidence he challenges constituted an abuse of discretion on the part of the trial court. His convictions should be affirmed.

Respectfully Submitted,

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