STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2024-001877

THE STATE, ...RESPONDENT

v.

SHAMAR LATRELL STANLEY, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in allowing a police officer to testify that he began investigating "Trell" when this statement could only be the result of inadmissible hearsay?

2. Did the trial court err in refusing to excuse for cause Juror 174, who was employed by the solicitor's office?

STATEMENT OF THE CASE

In their October 2023 term, a Charleston County grand jury indicted Appellant Shamar Latrell Stanley and his co-defendant Kassiem Taiquon Mitchell of two counts of murder and one count of possession of a weapon during a violent crime for the shooting deaths of Antonio Heyward and his brother J'Quan Brown. Appellant proceeded to a joint jury trial before the Honorable Deadra L. Jefferson from October 28 to November 1, 2024. The State was represented by Assistant Solicitors Timothy F. Finch and Jewell Gearding. Appellant was represented by Assistant Public Defenders Helen R. Dovell and Douglas Henley. Appellant's co-defendant Mitchell was represented by Melisa W. Gay, Esq. and Sarah Norton, Esq. (R. 1–3).

The jury convicted Appellant of all charges but acquitted Mitchell. (R. 908–909, 915). Judge Jefferson then sentenced Appellant to two terms of forty years for the murder charges and a five-year sentence for the weapons charge, all to be served concurrently. (R. 913).

This appeal now follows.

STATEMENT OF FACTS

In the early afternoon (approximately 1:42 PM) of September 15, 2019, surveillance footage[1] from a neighbor's camera across the street from Lot 175 of Dundrum Street in North Charleston shows a gray Nissan Altima park in front of Antonio Heyward's trailer. Heyward, also known as "York," was a known drug dealer who sold marijuana and kept large amounts of cash in his home. (R. 149). At the time of the incident, Heyward's brother J'Quan Brown, the other decedent, was staying with him. An individual—later identified by his girlfriend as Appellant—wearing dark pants, a blue hoodie, and a sleeveless white T-shirt can be seen getting out of the driver's seat while Heyward opens the back door of the trailer. While approaching Heyward, Appellant turns around, gets back in the car, and parks the Altima on the side of the trailer. Appellant goes into the trailer followed by another man wearing gray pants and a black sleeveless T-shirt.[2] Roughly two minutes later, the back door opens and the man with the black shirt can be seen running out the door towards the Altima with a large plastic trash-bag that appears to be "weighed down."[3] Appellant can be seen picking up items in the threshold of the doorway and shoving them into his pockets as he strides toward the Altima. The two men then get in the car and quickly leave the scene. (State's Ex. 1).

Santonio Scott was inside the trailer in the back bedroom sleeping with his young son while Appellant and his accomplice were inside. He testified that he woke up to gunshots and then heard

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[1] This video was produced at trial as State's Exhibit 1. As testimony elicited suggests, the timestamp of the surveillance video was approximately 56 minutes slow. (R. 194–195, 353, 505). The relevant portion of the video cited in this introduction runs from 1:42:27 to 1:46:30 on the video player or from 12:46:00 to 12:50:02 on the video's marked timestamp.

[2] The State's theory was that this second man was Appellant's co-defendant Kassiem Mitchell. (*See* R. 829–831).

[3] Something appears to flutter away from the black bag as he gets in the Altima. Law enforcement later found a $5 bill on the ground next to Heyward's trailer where the Altima was parked. (R. 111–112, 162–163).

"a lot of rumbling in the house" before the assailants fled. When Scott eventually got up and left the room, he found Heyward and Brown dead on the floor. Scott then left the trailer with his son and is seen talking with his girlfriend Anaijah Green who drives up shortly thereafter in a white Kia Soul. Green also briefly went inside and saw the two bodies along with loose marijuana scattered across the floor. (R. 65–70, 745–753; State's Ex. 1 at 1:47:15–1:55:40). At the crime scene, law enforcement collected loose currency, shell casings, loose marijuana, and Heyward's phone, among other evidence.[4] (R. 122–124).

Law enforcement performed a Cellebrite digital analysis of Heyward's phone and found multiple text and call exchanges between his phone and another phone, (843) 568-1405 in the hours and minutes leading up to his death.[5] In a text exchange from that morning, after missing an incoming call, Heyward texts "Who dis?" Shortly thereafter, the other number responds: "Trell." The two then engaged in a series of calls in the minutes leading up to the incident.[6] (R. 337–344). The number texting "Trell" was connected to Appellant through his Facebook account, booking report, and girlfriend's testimony. (R. 485–487, 710–711, 726–727). A CAST analysis of Appellant's phone records revealed he was in the vicinity of the incident scene in the minutes leading up to the crime as he was exchanging calls with Heyward—and then traveling north afterwards.[7] (R. 562–565; State's Ex. 142 at 9–10). A close look at the surveillance footage also

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[4] No guns were recovered at the scene—Scott testified that he was missing a 9mm handgun after the robbery and that he took his other 40 caliber handgun with him when he left. The later recovered 40 caliber handgun was determined to not be connected to the shootings. DNA and fingerprint evidence was also collected from the trailer but proved to be inconclusive. (R. 304–308, 354–360, 747, 759).

[5] Heyward's phone number was (803) 979-0243. (R. 719).

[6] The first phone call came in at 12:37 PM and the text exchange occurred at 12:42 PM. Heyward then calls "Trell" about a minute later for about "10 to 15 seconds." Finally, Heyward receives two incoming calls from "Trell" at 1:35 and 1:42 PM. (R. 343–346).

[7] Specifically, Appellant first receives a call from Heyward at 12:43PM while in downtown Charleston north of Highway 17. Then, at 1:32 PM, Appellant receives a text message while in the

revealed the same Altima make multiple passes by the trailer in the minutes leading up to the shooting—the same time frame that Appellant is calling Heyward and his phone is pinging cell towers in the vicinity of the Dorchester Village neighborhood. (State's Ex. 1 at 1:28:30–40, 1:31:30–40, 1:39:40—1:40:00; R. 819–820).[8]

Investigators could not determine the license plate number of the Altima seen in the neighbor's surveillance video from the video itself. However, they eventually narrowed their focus down to a 2014 gray Nissan Altima with plate number NLC218 owned by Demetria Ravenell, Appellant's girlfriend at the time—based on identifying characteristics and automated license plate reader data showing the car driving around North Charleston the day of the murders. Police eventually located the Altima at Ravenell's house on Woodlawn Drive in North Charleston. When Appellant got into the vehicle and started driving, police attempted a traffic stop, but Appellant fled. While attempting to exit the interstate at high speed, the car hit a curb—disabling it, and Appellant was taken into custody. When asked for information so that police could fill out a tow sheet, Appellant stated that Ravenell was the registered owner and that only she and Appellant used that vehicle. (R. 678–684, 688, 720–726; State's Ex. 162 (ALPR Report)).

While in custody and after being informed that he was being charged with two counts of murder and possession of a weapon during the commission of a violent crime, Appellant was served with a search warrant for a buccal swab. Alone in the room and while reading the warrant

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vicinity of Heyward's neighborhood. Then, at 1:35 PM, Appellant calls Heyward, again in the same vicinity. Finally, at 1:41 PM, Appellant calls Heyward for the last time—once again in the same vicinity.

[8] The cited transcript section comes from the State's closing argument and gives a good summation of the times the car passes by Heyward's trailer and the differences between the video's recorded timestamp vs. the actual time of day due to the suspected difference of 56 minutes.

affidavit, Appellant says "I'm going to hell, bra."[9] (R. 436–439, 521, 531–534; State's Ex. 189).[10]

Ravenell, Appellant's girlfriend, was also interviewed by police. She testified that Appellant lived at her house at the time of the murders and that she personally knew Heyward. Ravenell was shown a photo of the Altima at Heyward's trailer captured from the surveillance footage. She identified it as her own. Ravenell was also shown other photos taken from the surveillance footage and positively identified Appellant as the man wearing the dark pants, sleeveless white T-shirt, and blue hoodie. Ravenell said that Appellant was out with her car that day until she heard about the murders—at which point she called him and asked him to bring the car back. (R. 705–708; State's Exs. 137, 138, 139). Appellant, wearing a sleeveless white T-shirt, and the Altima were also spotted by a CPD camera on the corner of Allway and Flood in downtown Charleston around noon. Appellant's phone also pings in the general vicinity of this camera in that timeframe.[11] (R. 615–617; State Ex. 142 at 8; State Exs. 177, 178, 181).

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[9] Defense counsel argued that Appellant could have been saying something else like "them boys hell, bra." Admittedly, the audio quality is not great in this particular clip. However, the trial court was convinced that Appellant said "I'm going to hell, bra" and Respondent respectfully submits the same. (R. 458–461, 841).

[10] In the transcript, it appears that the video clip of Appellant's statement was originally admitted as State's Ex. 105. However, State's Ex. 189 was later referenced as a shorter, five-second clip of the same statement. Since it appears to be the same video and Appellant has already identified it in their designation of matter, Respondent submits the same. (*See* R. 808–810).

[11] Respondent would respectfully submit that the man with the blue hoodie on surveillance footage has the same build, hairstyle, and clothing (at least the pants and shirt) as Appellant seen in the downtown Charleston Allway & Flood photos.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Johnson*, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015). "The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'" *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 848 (2006)). "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).

"When reviewing an alleged error in the qualification of a juror, we conduct a three-step analysis, giving *particular deference* to the trial judge who sees and hears the juror." *State v. Jones*, 440 S.C. 214, 228, 891 S.E.2d 347, 354 (2023) (citing *State v. Green*, 301 S.C. 347, 352, 392 S.E.2d 157, 159–60 (1990); *State v. Evins*, 373 S.C. 404, 418, 645 S.E.2d 904, 911 (2007)) (emphasis added).

ARGUMENT

I. The trial court did not abuse its discretion in allowing a police officer to testify that he looked for "Trell" on victim Heyward's Facebook where (a) the officer did not directly relate any statements made to him while on scene and was merely testifying to the investigative steps he took; (b) the issue is potentially unpreserved due to Appellant's failure to object to further mentions of "Trell" by the officer; and (c) Appellant cannot demonstrate any prejudice from the court's alleged error due to the other strong evidence connecting Appellant to the scene of the crime.

Appellant argues that but for the erroneous admission of an alleged hearsay identification of Appellant as "Trell" by an officer investigating the case and looking at victim's Facebook, a jury would have acquitted him. However, Appellant not only fails to demonstrate how the trial court made an erroneous hearsay ruling, but he also fails to consider the other significant evidence in this case that would render any potential error harmless. Appellant's additional argument that the jury who acquitted his co-defendant Mitchell would also have acquitted Appellant but for the alleged hearsay identification is speculatory and, at any rate, fails to distinguish the evidence connecting Appellant to the crime from the lack of evidence connecting his co-defendant to the crime.[12] Respondent would respectfully submit that the trial court did not abuse its discretion in overruling Appellant's hearsay objection—meaning a harmless error inquiry would not be needed. Even so, there was plenty of competent evidence for a jury to find Appellant guilty without this alleged hearsay. This Court should affirm.

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[12] *See, e.g. State v. Garrett*, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002). There, the Court of Appeals reversed the trial court's grant of a new trial and held that although the defendant was convicted of more offenses than his co-defendant, this did not render his verdict "inconsistent" such as to warrant a new trial; and even assuming such, the prohibition of inconsistent verdicts in criminal cases was "abolished" by *State v. Alexander*, 303 S.C. 377, 383, 401 S.E.2d 146, 150 (1991). In this case then, the fact that the jury acquitted Mitchell but convicted Appellant is legally irrelevant. *See also Butler v. State*, 435 S.C. 96, 98, 866 S.E.2d 347, 348–349 (2021) (holding that disposition of indictments of co-defendants is irrelevant, rather, the question is whether the State proved what is necessary at trial to convict the defendant of the offense charged).

A. Relevant Facts

At trial, Anaijah Green, the State's first witness, testified that when she arrived at Heyward's trailer to pick up Santonio Scott and his child, Scott was frightened and "foaming at the mouth." After collecting Scott's and the child's belongings from inside the trailer (and seeing both Heyward and Brown dead on the floor), Green and Scott departed in Green's vehicle. (R. 66–72). When asked to describe how Scott was acting while in the car, Green stated that he was on the phone with someone, at which point Appellant objected on hearsay grounds. The Court overruled the objection. (R. 73). Green continued to testify that Scott was "freaking out" and "stuttering" while talking on the phone. When asked if she heard him say anything on the phone, Appellant objected again, and the Court noted "[s]he can answer yes or no, but she cannot repeat . . . what she overheard unless it fits within an exception, which it might well be an excited utterance. . . ." (R. 74–75). Eventually, the solicitor asked what Green heard Scott say on the phone, at which point the jury was excused and Green's testimony was proffered. (R. 76). Green testified that Scott said over the phone that he heard Heyward say "No, Trell." Appellant argued this was hearsay within hearsay and not subject to an exception. The State argued that this was an excited utterance, but the Court sustained the objection, citing cross-examination concerns.[13] (R. 77–80). Appellant won on this issue, and it was not revisited at any point later in the trial. Scott would later testify that he did not hear anything other than shots while Appellant and his accomplice were in the trailer. (R. 749–751).

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[13] The Court however appeared to recognize that the statement would likely constitute an excited utterance and would be admissible if Scott was subject to cross-examination: "The purpose of an excited utterance is that, under the stress of an impending event, it is presumed what the person is saying is truthful because they have not had the ability to recollect, reflect, and make up a story. And it is also contemplated that the person is subject to cross-examination. He is not here. He can't be cross examined. *If you find him, I think it is probably an excited utterance*, because he would have made a statement under the stress of an impending event. . . ." (R. 80 ll. 10–25).

Later, the State called former NCPD detective Charles Benton to the stand. He was part of the "call-out" team that initially responded to the scene of the double homicide on September 15. He stated he arrived on-scene at about 2:45 PM and remained there till "10:30 that night." While there, he stated that he spoke with "higher-ups on patrol, some of the supervisors who had already been talking with their initial response patrol officers and gathering information," along with his "superiors in investigations." When asked whether he spoke to any "laypeople" or "citizens" while on-scene, Benton stated that he spoke to "the gentleman that actually owns the trailer" and "a young lady who was the registered tenant but who was not actually living there at the time," along with "several other people." (R. 153–155). Benton then described processing the crime scene. (R. 156–160). After leaving the scene that evening, Benton returned to the detective bureau where he started watching the neighbor's surveillance footage for the first time. The solicitor and Benton then discussed what they observed on video. (R. 161–163). After describing going home late that evening, the solicitor asked him what was the next thing he did the following day. Benton stated: "The next day, the 16th, which would have been a Monday, I came into the office and *began looking at one of the victim's Facebook pages*, Mr. Heyward's Facebook page." (R. 164, ll. 1–8) (emphasis added). At this point, Appellant objected on relevance grounds and the Court asked the solicitor to restate the question. The following exchange then occurred:

> Q. Was the . . . the evidence we just discussed in the photographs *the only information you had about the case*?
>
> A. No, sir.
>
> Q. Had you . . . *heard other things about the case from people you talked to* at the scene?
>
> A. Yes, sir.
>
> **Ms. Dovell**: Objection, Your Honor; hearsay.

The Court: Please approach.

(Bench conference off the record)

The Court: The objection is overruled. He's not to repeat what anyone said to him. We do not have investigative hearsay. *He can only say what he did within the scope of his employment and within the range of his duties and responsibilities.* Please rephrase the question.

Q. On the 16th, what investigative steps did you take? *What actions did you take when you went back into work?*

A. I *looked* on Mr. Heyward's Facebook page. I *went down* his friends list, and I was *looking* for any friends that were on his list with the name of Trell.

(R. 164, ln. 20—R. 165, ln. 16) (emphasis added). At this point, there was no objection to the name "Trell" being mentioned. Benton then described finding an account with a vanity name of "YGG Trell," an accompanying name of "Latrell Stanley," and a birthdate. At this point, Appellant objected on the basis of relevance—not hearsay—but was overruled. (R. 166, ll. 3–12). Comparing the Facebook info to DMV records, Benton matched the account to Appellant. (R. 165–167). Later, under cross-examination by Mitchell's attorney, Benton was asked who he interviewed during the course of his investigation. He stated that one of the people he interviewed was Crystal Seabrook. (R. 171–172).

Before redirect, the jury was sent out so that the State could proffer testimony—who at that point was arguing that Mitchell's attorney had opened the door to what Seabrook said about the case. Benton, under proffer, stated that Seabrook told law enforcement that "somebody named Trell was involved in the homicide." (R. 172–173). After arguments by both defendants and the solicitor, the court ruled that the statement would be hearsay and that Mitchell's attorney did not open the door to such statement. (R. 189–190). Nothing further was admitted.

B. Discussion

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial

or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "A 'statement' is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Rule 801(a), SCRE. "Hearsay is not admissible unless there is an applicable exception." *State v. Brockmeyer*, 406 S.C. 324, 351, 751 S.E.2d 645, 659 (2013); Rule 802, SCRE.

And while it is true that there is not an explicit "investigative hearsay" exception, courts have recognized that statements that would otherwise constitute hearsay if offered for their truth may be considered non-hearsay if offered for a different purpose, such as being offered to explain the steps of a law enforcement investigation. *See, e.g., State v. Kromah*, 401 S.C. 340, 355–56, 737 S.E.2d 490, 497 (2013) (finding investigator's testimony that he arrested defendant for child abuse after speaking to minor victim was non-hearsay where investigator did not directly relate statements by minor victim and relied on multiple sources of information in addition to child's testimony); *State v. Weaver*, 361 S.C. 73, 85–86, 602 S.E.2d 786, 792–93 (Ct. App. 2004), *aff'd as modified*, 374 S.C. 313, 649 S.E.2d 479 (2007) (finding officer's testimony that "all the evidence" led to defendant was non-hearsay where officer did not repeat statements made to him and was merely describing his investigative steps); *State v. Brown*, 317 S.C. 55, 63, 451 S.E.2d 888, 893–94 (1994) (finding officers' statements explaining why they began their surveillance of defendant's apartment were not hearsay); *State v. Thompson*, 352 S.C. 552, 558, 575 S.E.2d 77, 81 (Ct. App. 2003) ("'[A]n out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken.'") (quoting *Brown*, 317 S.C. at 63, 451 S.E.2d at 894); *State v. Kirby*, 325 S.C. 390, 393–97, 481 S.E.2d 150, 151–53 (Ct. App. 1996) (collecting cases).

In this case, Appellant argues that the facts are most aligned with the facts and rationale of

State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017). There, the Supreme Court held that an officer's statement that she "learned there was more than one shot" and "approximately three or four shots" were fired after talking to neighborhood witnesses in a prosecution for attempted murder was based *exclusively* on statements made by witnesses and "was offered to prove *that King fired more than one gunshot*," therefore constituting inadmissible hearsay. 422 S.C. at 66, 810 S.E.2d at 28 (emphasis added); *State v. King*, 412 S.C. 403, 411–12, 772 S.E.2d 189, 193 (Ct. App. 2015) (cleaned up). The Court cautioned prosecutors "against using 'investigative information'" as an end run around the hearsay rules, but it still left in place the proper use of investigative information when it is "couched in terms of explaining an officer's conduct during an investigation" while not "offer[ing] the substance of an out-of-court statement that would otherwise violate our state's rules against hearsay." *King*, 422 S.C. at 66–68, 810 S.E.2d at 28–29. The Court of Appeals distinguished this case from other cases where officers needed something to add context to explain their investigation:

> Here, the State had no purpose for offering Officer Butler's testimony except to prove the truth of the neighbors' statements that more than one shot was fired. The State did not argue at trial or on appeal that her testimony on this subject was necessary to explain her conduct or to give context to other testimony. . . . The State appears to concede it offered the testimony *to prove the number of shots King fired* by arguing "Officer Butler merely testified about what her investigation revealed."

King, 412 S.C. at 415–16, 772 S.E.2d at 195–96 (emphasis added).

Respectfully, this case is more in line with *Kromah* and *Weaver*, not *King*. In *Kromah*, 401 S.C. 340, 737 S.E.2d 490—a child abuse case—the Supreme Court found that the following exchange between the solicitor and an investigator did not constitute inadmissible hearsay:

> Q. *And you can't say what [the Child] said, but what were you asking him about. Do not say what he said.*
>
> A. I was asking what happened to him and who did it.

Q. Was the child—*you can't say what he said*, but was he able to communicate with you?

A Yes, he was.

. . .

Q. And . . . was he able to relate information to you?

A. Yes, he did.

Q. And *based on your investigation at that point,* the next day did you arrest Miama Kromah?

A. Yes, I did.

[Objection is made by Kromah and court overrules after bench conference]

Q. Based on your investigation, *what did you do the next day*, Investigator Livingston?

A. I placed Ms. Kromah under arrest.

Id. at 352, 737 S.E.2d at 496 (cleaned up). Specifically, the Court reasoned:

> Livingston *testified in detail about his investigative process* and the *numerous individuals* he spoke to, including the Child, and that he made his decision to arrest Kromah based on *all of this information*. Livingston did not directly relate to the jury any statements made by the Child, and the defense had the opportunity to cross-examine Livingston extensively. Even as posed by Kromah in her issue on appeal, she challenges the testimony of the State's witnesses as to what actions they took in response to information they received from the Child. However, Livingston *never revealed* any of the Child's statements in the presence of the jury.
>
> Moreover, even if Livingston's testimony were considered some form of indirect hearsay, we find the trial court *did not abuse its discretion*. Livingston's testimony referencing his interview of the Child . . . was only *one part of the information he recited* in his investigative process leading up to his conclusion that there was sufficient evidence to arrest Kromah, and we find his testimony in this regard was proper as *he did not repeat* what the Child said to him.

Id. at 355, 737 S.E.2d at 498 (emphasis added, cleaned up).

Similarly, in *Weaver*, 361 S.C. 73, 602 S.E.2d 786—a homicide case—the Court of Appeals found that the following exchange between the solicitor and an investigator did not constitute inadmissible hearsay:

> Solicitor: Did—Let me ask you this, Lieutenant Weston. Why didn't you do gunshot residue tests on these other people?
>
> Weston: Well, all evidence that the people they interviewed there at Rob's Place—
>
> Defense counsel: I'll object to *what these people said*, Your Honor.
>
> Court: All right. I'm going to sustain it as such because you did ask him the question, so *he can give a reason without saying what the people told you. You can say what his investigation revealed.* Thank you.
>
> Weston: *All the evidence led to Levell Weaver.* I didn't see no blood stain on none of the witnesses that I was talking to at that table. *All of the witnesses that I talked to led me to believe that—*
>
> Defense Counsel: I'll object to that, Your Honor.
>
> Court: Overruled.
>
> Weston: Led me to believe that the subject that we were looking for was the only suspect that really was involved with doing the killing at this crime scene, and I didn't see no reason to take swabs from those subjects at that table.

Id. at 85, 602 S.E.2d at 792 (emphasis added). The Court noted that this was not hearsay because (1) Weston "never repeated statements made to him by individuals at the crime scene[,]" instead testifying "only to conclusions he made based on what his investigation had thus far revealed[;]" (2) the testimony was in response to questions asked on cross as to why he did not perform a GSR test on people at the crime scene; and (3) Weston did not "testify to any specific statements that identified Weaver." *Id.* at 86, 602 S.E.2d at 792–93.

Appellant argues that, per *King*, this is a straightforward hearsay analysis. We agree. Detective Benton, after a lengthy examination covering his arrival on-scene and investigative steps taken that day (including reviewing the crime scene, talking to other investigators and multiple people on-scene, *and* reviewing the security footage later that evening), describes going on Victim's Facebook and looking up "Trell" on Victim's friends list. Unlike *King*, where the State offered the statement that "approximately three or four" shots were fired for the purpose of proving

that the defendant fired multiple shots, this is not an out-of-court statement offered for the truth of the matter asserted. Instead, it is a proper explanation of Benton's investigative steps, and it does not rely on repeating illicit hearsay out-of-court statements of on-scene witnesses. It merely describes going on a particular person's Facebook page (in this case Victim's) and looking up a particular name on their friend's list (which happened to be Appellant's nickname). Like in *Kromah* and *Weaver*, this is not a situation where the testifying officer is simply repeating what someone told him and then disguising it as a conclusion made by the officer.

Rather, Benton's statement thoughtfully describes his investigative process after being well-involved in the case for over half a day and taking into consideration all of the evidence and testimony gathered up to that point. Arguably, this testimony is even more non-hearsay than the testimony in *Kromah* and *Weaver*, where officers were allowed to directly state, in one way or another, that evidence led them directly towards the respective defendant. This type of damning conclusion is not even present in this case, since it was not till much later in the trial that the strongest evidence connecting Appellant to the crime was introduced to the jury. Benton simply says he looks up Trell on Victim's Facebook. He is not saying at this point in the trial that the evidence pointed towards Appellant or that he knew Appellant killed Victim—which at this early point in the investigation *could* impermissibly be interpreted as relating a hearsay statement of someone on-scene. The best way to describe Benton's testimony is like a primer that helps give context to what the jury would later hear rather than an impermissible accusation of wrongdoing offered solely from illicit hearsay statements. Considering this Court's standard of review, the trial court did not abuse its discretion in finding that Benton's testimony did not constitute impermissible hearsay.

There is also the lingering question of whether this issue was even properly preserved or

whether there was any prejudice. Although Appellant objected to the question asking Benton whether he "heard other things about the case from people" he talked to on scene and such objection was overruled following a bench conference, Appellant made no further objection to specifically the name "Trell" being mentioned by Benton as he describes going through Victim Heyward's Facebook. Only after the third time "Trell" was mentioned by either Benton or the solicitor in this exchange did Appellant object, but it was on relevance grounds, not hearsay. (*See* R. 164–166).

Even assuming the trial court abused its discretion in admitting this testimony, such error was harmless. Unlike what Appellant suggests, the State's case against Appellant did not solely depend on a tainted identification of Appellant on grainy images. 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)). The testimony at issue here merely identified Appellant as an associate of Victim through Facebook. Appellant's argument omits the evidence showing Appellant's connection to a cell phone contacting the Victim multiple times that day and then pinging in the general vicinity of Victim's neighborhood in the moments leading up to the crime caught on surveillance footage. Additionally, as mentioned previously, the State was able to get in the "Trell" name in other ways that were either not specifically objected to or in ways that are not currently being assigned error on appeal.

First, there are at least two mentions of "Trell" following the bench conference that were not objected to on hearsay grounds. (*See* R. 164–166). Second, there is the analysis of Victim's cellphone revealing the "Trell" message from (843) 568-1405 and the associated CAST analysis of Appellant's phone—both showing calls, texts, and proximity to the crime scene. (R. 337–344, 562–565). Third, there is the ALPR report and surveillance pictures from Allway & Flood

corroborating Appellant's movements around Charleston County that day. (*See* R. 616–617; State Exs. 162, 177, 178, 181). Finally, Appellant's own statements show he was the only other driver of the NLC218 Honda and his girlfriend's testimony showed he was driving the car that day. (*See* R. 678–684, 688, 705–708, 720–726).

Thus, Benton's testimony was merely cumulative to other admissible testimony connecting Appellant to the crime scene that is not currently being assigned error in this appeal. Accordingly, even assuming error in the court's admission of Benton's testimony, such error was harmless beyond a reasonable doubt.

This Court should affirm.

II. The trial court did not err in refusing to excuse Juror 174 for cause even though she was employed by the solicitor's office where (a) no statute or caselaw prohibits such a person from serving on a jury, (b) the trial court found she could be fair and impartial and that she did not have any personal knowledge or involvement in Appellant's case; and (c) Appellant was able to exercise a peremptory strike, and does not currently challenge the fairness or impartiality of the jury actually seated for his trial.

Appellant argues that he was denied a fair trial when he had to use a peremptory challenge to dismiss Juror 174—who should have been disqualified for cause based on her employment with the solicitor's office. However, keeping in mind the limited standard of review when it comes to challenges to juror qualifications generally, as reiterated most recently by our Supreme Court in *State v. Jones*, 440 S.C. 214, 891 S.E.2d 347 (2023), and the statutes circumscribing the court's discretion in jury qualification, Appellant fails to show that Juror 174 was erroneously qualified. And even assuming Juror 174 was unqualified, Appellant further fails to show that he was deprived of a fair trial in violation of his Constitutional rights. Appellant's citations to non-binding authority from other states simply attempts to get around the fact that current South Carolina law does not support his argument. We do not have a categorical rule that prohibits employees of the solicitor's office from serving on a jury and, even assuming such a rule, Appellant fails to show prejudice from the jury actually seated for his trial. This Court should affirm.

A. Relevant Facts

During *voir dire*, the trial court engaged in the following colloquy with Juror 174 after asking the prospective jury panel about any relations with the attorneys in this case:

> **The Court**: . . . Is there any member of the panel related by blood or marriage to, or have a close personal or social relationship with any of the attorneys involved in this case, any of the lawyers in their offices, or any person employed in any capacity whatsoever in their offices? If so, please stand at this time. Yes ma'am, tell me your name and juror number.
>
> **Juror**: [redacted], 174.

The Court: And you're employed in. . .

Juror: The Ninth Circuit Solicitor's Office.

The Court: Have you had any personal involvement in this case?

Juror: No.

The Court: Do you have any personal knowledge of this case[?]

Juror: No.

The Court: As a result of . . . this affiliation, do you feel that you can remain fair and impartial and render a fair and impartial decision in this case based solely on the evidence as it will be presented and on the law as this Court will instruct?

Juror: Yes, ma'am.

The Court: Thank you. You may take your seat. . . .

(R. 22, ln. 12—R. 23, ln. 11). The first juror presented for strikes was Juror 174. Counsel for both defendants stated that they had a matter of law to discuss, but the court rejected it:

The Court: No, we do not. She is qualified as a juror. You can exercise peremptory challenge if you decide you want to. I did make an inquiry first of whether she had any involvement in this case or any personal knowledge, and she answered negatively.

Ms. Gay: However, she does work with every single person there.

The Court: I have ruled. She's indicated to me should [sic] can be fair and impartial. You can exercise a peremptory challenge if you so desire.

Ms. Dovell: Your Honor, in light of . . . your ruling, I will exercise a peremptory challenge. I do believe . . .

The Court: I did not ask for speaking objections . . . especially not in the presence of the panel.

Ms. Dovell: Thank you, Judge.

The Court: It's noted and overruled. . . . Ms. Dovell has struck No. 174.

(R. 31, ln. 10—R. 32, ln. 15). Appellant exercised all his peremptory strikes. (R. 31–43).

B. Discussion

In South Carolina, the jury qualification and selection process is governed by statute. *See* S.C. Code Ann. § 14-7-1010 ("The presiding judge shall determine whether any juror is disqualified or exempted by law and *only he shall disqualify or excuse any juror as may be provided by law.*") (emphasis added). *State v. Dunlap*, 346 S.C. 312, 317, 550 S.E.2d 889, 892 (Ct. App. 2001), provides a useful summary of those disqualified from jury service:

> (1) Persons who do not come within at least one of the following categories: (a) registered voter; (b) possessor of a valid South Carolina driver's license; or (c) possessor of an identification card issued by the South Carolina Department of Public Safety. S.C.Code Ann. § 14–7–130;
>
> (2) Persons convicted in a state or federal court of a crime punishable by imprisonment for more than one year whose civil rights have not been restored by pardon or amnesty. S.C.Code Ann. § 14–7–810(1);
>
> (3) Persons unable to read, write, speak, or understand the English language. S.C.Code Ann. § 14–7–810(2);
>
> (4) Persons incapable by reason of mental or physical infirmities to render efficient jury service. S.C.Code Ann. § 14–7–810(3);
>
> (5) Persons with less than a sixth grade education or its equivalent. S.C.Code Ann. § 14–7–810(4);
>
> (6) "No clerk or deputy clerk of the court, constable, sheriff, probate judge, county commissioner, magistrate or other county officer, or any person employed within the walls of any courthouse is eligible as a juryman in any civil or criminal case." S.C.Code Ann. § 14–7–820;
>
> (7) "No member of the grand jury which has found an indictment may be put upon the jury for the trial thereof." S.C.Code Ann. § 14–7–830;
>
> (8) "No person is liable to be drawn and serve as a juror in any court more often than once every three calendar years and no person shall serve as a juror more than once every calendar year, but he is not exempt from serving on a jury in any other court in consequence of his having served before a magistrate." S.C.Code Ann. § 14–7–850.

Note that none of the statutory categories listed explicitly states that employees of a solicitor's office are prohibited from jury service on a case that their office is prosecuting. The only statute listed here that may be applicable here is S.C. Code Ann. § 14-7-820 which prohibits court employees or "any person employed within the walls of any courthouse" from serving on a jury. However, although solicitor offices are often physically located within the same complex as the courts in which they serve, they are still a legally distinct office/employer, and their employees should not be the type of employees covered under this statute—and even assuming such an argument was plausible, Appellant does not raise this argument on appeal. The only statute then that Appellant can rely on is the statute outlining the court's responsibility to root out jurors with a potential interest in the case—since none of the other statutes discussed so far help Appellant. S.C. Code Ann. § 14-7-1020 provides:

> The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that cause and another must be called.

Although the statute contemplates an examination of the juror in question only *after* motion of a party, in practical terms, trial courts already address these potential issues by asking all the usual questions during the jury selection process—*but only after* going through all statutory exemptions and disqualifications with the full jury panel. In this case, although it does not appear in the transcript, it is likely safe to assume the trial court went through the standard list of exemptions and disqualifications with the full jury panel in some form or fashion. Then, when this case was called for trial, the court addressed the potential issues outlined in § -1020, including relationship to the parties which is at issue here on appeal. (*See* R. 15–28). Accordingly, the

question then is whether the juror at issue is "indifferent in the cause." S.C. Code Ann. § 14-7-1020.

Generally speaking, when evaluating a potential juror, "the challenged juror's responses must be examined 'in light of the entire *voir dire*.'" *Jones*, 440 S.C. at 228, 891 S.E.2d at 354 (citing *Evins*, 373 S.C. at 418, 645 S.E.2d at 911; *Green*, 301 S.C. at 354, 392 S.E.2d at 161; *State v. Woods*, 382 S.C. 153, 159, 676 S.E.2d 128, 131 (2009)). "The ultimate consideration is that the juror be unbiased, impartial, and able to carry out the law as explained to him." *Id.* (quoting *State v. Sapp*, 366 S.C. 283, 291, 621 S.E.2d 883, 887 (2005)) (internal quotations omitted). It is the trial court's "solemn duty to ensure 'that every juror is unbiased, fair, and impartial.'" *State v. Rowell*, 444 S.C. 109, 113, 906 S.E.2d 554, 556 (2024) (quoting *State v. Gulledge*, 277 S.C. 368, 370, 287 S.E.2d 488, 489 (1982)).[14]

Appellant, without addressing the fact that Juror 174 stated she could be fair and impartial and did not have any personal knowledge or involvement with the case—and the fact that the trial court found the same—merely points to Appellant's employment with the solicitor's office as a categorical bar to serving on a jury. In doing so, Appellant asks this Court to ignore clear statutory restraints on the court's authority and to instead adopt a categorical common-law bar applied in two other states. He also asks this Court to disregard the strong deference the trial court is entitled to in the province of jury selection. *See Jones*, 440 S.C. at 228, 891 S.E.2d at 354. Appellant even acknowledges that prior, non-overruled authority in this state has rejected a similar challenge. (*See* Brief of Appellant at 13).

[14] Note that these non-capital cases outline the same standard that *Jones* and other capital cases cite.

In *State v. Nicholson*, 221 S.C. 399, 70 S.E.2d 632 (1952), our Supreme Court held that the trial court did not err in refusing to disqualify a prospective juror that was the brother of the prosecuting solicitor on the basis that "(1) [t]here is no rule of common law, *nor is there a statute* disqualifying a juror on account of his relationship to an attorney in the case, either by affinity or consanguinity, within any degree. (2) The juror was not placed on his *voir dire*. (3) The defendant had not exhausted his chanenges [sic]." *Id.* at 406, 70 S.E.2d at 635 (emphasis added).[15] This is so even despite the fact that the brother was not interrogated by trial counsel or the court as to "whether he felt any bias or prejudice in the case, and whether he could give [appellant] a fair and impartial trial." *Id.* In this case, the court engaged in a colloquy with Juror 174 asking not only whether she could be fair and impartial despite her affiliation with the solicitor's office, but also whether she had any personal knowledge/involvement in Appellant's case. (R. 22, ln. 12—R. 23, ln. 11). Juror 174 was clear in stating she could be fair and impartial and that she did not have any personal involvement in the case. *Id.* Accordingly, keeping in mind this Court's deference to the position of the trial judge in evaluating jurors during jury selection—and the statutes limiting the trial court's discretion—Appellant fails to show that Juror 174 was erroneously qualified—instead focusing only on her employment.[16]

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[15] The Court acknowledged the fact that having the solicitor's brother serving on the jury was bizarre, but still emphasized that it would not be barred as a matter of law: "We are, to say the least, mildly surprised at the failure of the Solicitor to join in the request of counsel for appellant that his brother . . . be stood aside even though he may not have been disqualified as a matter of law from serving as a member of the jury trying the case. However, the issue before us is whether this juror was disqualified *as a matter of law* on account of his relationship to the prosecuting solicitor." *Id.* (emphasis added).

[16] Regarding the standard of review and applicable analysis, although *Jones* and the line of cases it cites all dealt with the qualifications and seating of capital juries, Respondent would respectfully submit that the same logic for seating capital juries, at least in terms of bare qualifications should also apply to non-capital juries. With that in mind, *Jones* and its cases require appellate courts to conduct a three-step analysis when assessing alleged error in the qualification of a capital juror—while giving "particular deference to the trial judge who sees and hears the juror." 440 S.C. at 228,

And even assuming that the trial court erred in qualifying Juror 174, Appellant's claims must fail because he cannot show that he was denied a fair trial. In other words, he fails to demonstrate prejudice in having to exercise one peremptory strike on Juror 174 when the jury ultimately seated was unbiased or otherwise qualified. In *Green*, 301 S.C. 347, 392 S.E.2d 157, one of the cases that *Jones* cites, our Supreme Court held that despite the fact that the trial court erred in qualifying a racially-biased juror, Green could not demonstrate that he was denied a fair trial since he was still able to excuse the biased juror with a peremptory strike. In doing so, the Court adopted the analysis of the United States Supreme Court in *Ross v. Oklahoma*, 487 U.S. 81 (1988):

> In this case however, we reach the third step and are called upon to determine whether the judge's error warrants reversal. In making this analysis, *we are guided by the decision of the United States Supreme Court* in [*Ross*]. . . . [SCOTUS] held that in examining whether an appellant received a fair trial, *we focus on those jurors who were ultimately seated*. . . . Here, as in *Ross*, none of the jurors ultimately seated was challenged for cause. In fact, after appellant exercised his final peremptory challenge, only two additional jurors were seated, neither of whom was challenged for cause.
>
> . . .
>
> We have carefully reviewed the voir dire responses of all of the jurors who ultimately heard this case and are convinced that appellant received a fair trial. . . . We are at a loss to ascertain the prejudice in this case, thus, we hold that appellant has failed to demonstrate the third step of the process[—]that the error found deprived him of his right to a fair trial.

Id. at 352–53, 392 S.E.2d at 160 (emphasis added, cleaned up). *Ross*, itself citing a line of cases going back to 1919, also held that the loss or lack of the peremptory challenge itself does not implicate the constitutional right to an impartial jury. *Ross*, 487 U.S. at 88–89 ("[Peremptory

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891 S.E.2d at 354. First, the appellant must have exhausted all of their preemptory challenges. *Id.* Second, the appellate court must determine that the disputed juror was erroneously qualified. *Id.* Third, the appellate court must conclude "the erroneous qualification deprived the appellant of a fair trial." *Id.* Since Appellant did in fact exercise all of his peremptory challenges, only steps two and three would be relevant to this appeal.

challenges] are a means to achieve the end of an impartial jury. So long as the jury that sits is impartial, the fact that the defendant had to use a peremptory challenge to achieve that result does not mean the Sixth Amendment was violated.") (citations omitted). Since *Ross*, the United States Supreme Court has not disturbed their holding that no constitutional violation occurs in the claimed scenario at issue here. In fact, *United States v. Martinez-Salazar*, 528 U.S. 304, 307 (2000) extended *Ross* to federal jury selection and held that the erroneous refusal of a trial judge to dismiss a potential juror for cause, followed by the defendant's exercise of a peremptory challenge to remove that juror does not implicate Due Process so long as the jurors that ultimately sat were unbiased or otherwise qualified. *See Satcher v. Pruett*, 126 F.3d 561, 574 (4th Cir. 1997) ("[t]he trial court's refusal to strike a juror for cause does not affect the right to an impartial jury if the defense in fact strikes the juror with a peremptory challenge. . . . There is no Sixth Amendment right to peremptory challenges, so losing one peremptory is not a constitutional violation in and of itself.") (citing *Ross*, 487 U.S. at 88); *State v. Patterson*, 324 S.C. 5, 14 482 S.E.2d 760, 764 (1997) ("Any claim that a jury was not impartial must focus on the jurors who were ultimately seated.") (citing same); *Palacio v. State*, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) ("[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury."); *State v. Simpson*, 325 S.C. 37, 41, 479 S.E.2d 57, 59 (1996) ("A juror's competence is within the trial [court's] discretion and is not reviewable on appeal unless wholly unsupported by the evidence.").

Based on these cases and the plain lack of contrary authority, Appellant fails to demonstrate that he suffered prejudice when he exercised a peremptory challenge to correct what he argues to be an erroneous qualification of Juror 174. Not only does he fail to show that Juror 174 is unqualified in the first instance, but there is also not a single argument in his brief that challenges

the impartiality or qualifications of the jurors *actually seated* for his trial. Accordingly, this claim must fail as a matter of law.

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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