THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Roger M. Young, Sr., Circuit Court
Judge

Case No. 2023GS1003220-3222

State of South Carolina, Respondent,

v.

Michael Whitlock, Appellant.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE

On indictments numbered 2023-GS-10-03220, 2023-GS-10-03221, and 2023-GS-10-03222, the State of South Carolina charged Michael Christopher Whitlock, Jr., in the Court of General Sessions for Charleston County, Ninth Judicial Circuit, with murder for the shooting death of Shaquanna Matthews Myers, attempted murder for the shooting of Phillip Green, and possession of a weapon during the commission of a violent crime arising from an incident outside the Suburban Lounge on or about December 22, 2019. (Tr. 10–12; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1.) Mr. Whitlock pled not guilty and elected to be tried by a jury of his peers. (Tr. 10–12.)

Mr. Whitlock's trial commenced on May 20, 2024, in the Court of General Sessions for Charleston County before the Honorable Bentley Price, On May 24, 2024, the jury returned guilty verdicts on all three indictments, finding Mr. Whitlock guilty of murder, attempted murder, and possession of a weapon during the commission of a violent crime. (Tr. 823; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1.)

The circuit court thereafter sentenced Mr. Whitlock to thirty-five years' imprisonment for murder, thirty years' imprisonment for attempted murder, and five years' imprisonment for possession of a weapon during the commission of a violent crime, ordering that the attempted-murder and weapon sentences run concurrently with the murder sentence. (Tr. 833–834.) The sentencing was reflected in written sentencing orders filed in the Court of General Sessions. (Tr. 833–834.)

On June 3, 2024, Mr. Whitlock filed a written motion for a new trial, asserting three grounds for relief: (1) that the trial court erred in refusing to instruct the jury on the lesser-included offense of involuntary manslaughter; (2) that the court erred in admitting his

recorded custodial statement, taken after he asked "Where is the lawyer?" during interrogation; and (3) that the State's rebuttal closing argument improperly impugned defense counsel's integrity by characterizing counsel's role as to manipulate or confuse the jury. (*State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1.)

By the time the motion came on to be heard, Judge Price had left the bench, and as Chief Administrative Judge for General Sessions, the Honorable Roger M. Young, Sr., heard oral argument on the motion, reviewed the trial record and the parties' briefs, and took the matter under advisement. (*State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1.) By written order filed June 9, 2025, Judge Young denied Mr. Whitlock's motion for a new trial. (*State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–3.) Mr. Whitlock timely appealed from the jury's convictions and sentencing and from the June 9, 2025 order denying his motion for a new trial.

STATEMENT OF FACTS

On the night of December 21–22, 2019, a Christmas party hosted annually by Mr. Whitlock's mother was held at the Suburban Lounge located at 2043 Meeting Street, with family members, friends, and other guests gathering inside and outside the club. (Tr. 10–12, 90–91, 661–662; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1.) The evidence presented at trial tended to show that that police officers were dispatched to the Suburban Lounge in reference to shots being fired during party, which ultimately resulted in the death of one female attendee and a gunshot wound to another guest. (Tr. 10–12.)

As the evening progressed, guests moved between the interior of the club and the street outside, and a verbal confrontation arose outside the Suburban Lounge involving Mr. Whitlock and Phillip Green. (Tr. 646–651, 739–741.) Witnesses testified that other men, including

Michael Bolton and a man identified as Rudolph or "Rud" Whitlock, were present during the confrontation near the front of the club, and that tensions escalated into a heated exchange. (Tr. 483–485, 646–651.) Several witnesses reported seeing firearms at the scene, stating that multiple individuals were armed, including Mr. Bolton with a .40-caliber handgun and Mr. Whitlock with a 9mm Glock 19 pistol. (Tr. 483–489, 496–497, 510–512, 739–741.)

Eyewitnesses, along with law-enforcement and forensic testimony, described the shooting as occurring in at least two distinct volleys of gunfire in the street in front of the Suburban Lounge, where a crowd of approximately sixty-five people had gathered. (Tr. 483–485, 496–497, 646–648, 735; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1.)

Ballistics evidence showed .40-caliber shell casings consistent with shots fired from Mr. Bolton's handgun, as well as multiple 9mm cartridge casings recovered from the roadway, which a forensic examiner attributed to a Glock 19 pistol seized from a vehicle associated with Mr. Whitlock. (Tr. 510–512, 735–736, 739–741.) The State's ballistics expert testified that fourteen 9mm shell casings found in the road were fired from Mr. Whitlock's Glock 19, and the order denying the motion for a new trial recited that "the Defendant intentionally fired his weapon fourteen times at a crowd of people outside a suburban lounge." (Tr. 510–512, 735–736; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.)

During the gunfire, Ms. Matthews was struck by a bullet and later died as a result of her wounds, and Mr. Green suffered a gunshot injury to his arm. (Tr. 90–91, 739–741.) Testimony from Kevin Myers and Phillip Green described the sudden outbreak of shots in the street, efforts by family members to seek cover behind vehicles, and the immediate realization that Ms. Matthews had been hit. (Tr. 739–741, 760–761.) Officers responding to the scene observed

numerous spent shell casings scattered in the roadway and began securing the area and interviewing witnesses. (Tr. 460–461, 513–514.)

Detective Riedel of the North Charleston Police Department investigated the shooting and interviewed several witnesses, including Antwan and Rochelle Campbell and Anthony Green, who provided descriptions of more than one shooter and of men seen with firearms during the incident. (Tr. 483–485, 496–503, 513–514.) Antwan Campbell told Detective Riedel that he saw a man with gold teeth, later identified in photographs as Rudolph Whitlock, firing a gun, and that he heard two rounds of shots that he believed came from different shooters. (Tr. 483–485.)

Anthony Green acknowledged in his statement that he retrieved his own firearm from a vehicle but reported that he did not have time to fire it before the shooting ended. (Tr. 496–497, 500–501.) Rochelle Campbell reported to officers that she saw Mr. Bolton fire, pause, and then fire again, and she later provided a photograph to the case agent identifying Mr. Bolton as the person she believed shot Ms. Matthews. (Tr. 780–781.)

In the early morning hours of December 22, 2019, Mr. Whitlock voluntarily came to the police station to speak with detectives about the shooting. (Tr. 485–486.) Detective Riedel conducted an interview with Mr. Whitlock at the station that lasted approximately three hours and fifty-eight minutes, during which Mr. Whitlock was initially treated as a potential witness rather than a suspect and was not immediately given *Miranda* warnings. (Tr. 485–489.) As the interview progressed and the focus turned to Mr. Whitlock's involvement in the events outside the Suburban Lounge, Detective Riedel provided Mr. Whitlock with *Miranda* warnings and obtained his agreement to continue speaking. (Tr. 87–88, 485–489.) At one point during questioning by Detectives Riedel and Rodriguez, Mr. Whitlock asked, "Where is the lawyer?"

while discussing his rights, and the detectives continued the interview without ceasing questioning. (Tr. 87–88.)

Throughout the interview, Mr. Whitlock answered questions about the party, his interactions with Phillip Green, and the events leading up to the shooting. (Tr. 485–490, 496–503.) He told Detective Riedel that he had argued with Phillip Green but that he believed they quashed the disagreement before the shooting began, and he stated that he later saw another man with a gun during the confrontation. (Tr. 489–490, 496–503.) Mr. Whitlock eventually acknowledged that he was armed with a 9mm Glock 19 at the party, that he fired his gun outside the Suburban Lounge after hearing shots, and that he fired until the weapon was empty, describing that he "ran the firearm dry." (Tr. 496–497, 510–512.) He told detectives that he saw a man in a red shirt with a gun, believed that man was approaching him, and went into "defense mode," stating that he fired because he was scared and did not shoot "for no reason." (Tr. 496–497.)

At trial, the State introduced the recording of Mr. Whitlock's interview as part of its case-in-chief. (Tr. 448–454.) After a pretrial colloquy concerning *Miranda* and voluntariness, the court permitted the State to play essentially the entire multi-hour recorded interview for the jury, including the portion where Mr. Whitlock asked about a lawyer and the detectives' narrative statements and questions. (Tr. 87–88, 448–454.)

During cross-examination of Detective Riedel, defense counsel used portions of the recording and its transcript to question the detective about Mr. Whitlock's descriptions of the shooters, his account of seeing a man in red with a gun, and the sequence of phone calls Mr. Whitlock made after leaving the scene. (Tr. 483–490, 503–508.)

Mr. Whitlock testified in his own defense regarding his background and his version of the events at the party. (Tr. 661–662, 769–770.) He told the jury that he was born and raised in North Charleston, that he had worked for the City of North Charleston's public works department, and that his mother hosted the Christmas party at the Suburban Lounge each year. (Tr. 661–662.) He stated that on the night in question he attended the party with friends and family, that he spoke with his girlfriend, and that a verbal exchange occurred with Phillip Green outside the club but that he believed the dispute had been resolved. (Tr. 661–662, 769–770.)

Mr. Whitlock testified that he saw other men with guns, including Mr. Bolton, that he heard gunshots, and that he armed himself because he was scared and believed he and others were in danger. (Tr. 661–662, 760–764.) He acknowledged firing his 9mm handgun outside the club, but he told the jury that he did not intend to kill anyone, that he was not aiming at a specific person, and that he fired in what he perceived as self-defense during a chaotic situation with multiple shooters. (Tr. 661–662, 760–764.)

The defense theory at trial emphasized that Michael Bolton was the person who first brandished and fired a gun at Phillip and Anthony Green and that any shots Mr. Whitlock fired were a reaction to that initial gunfire rather than part of a preconceived plan. (Tr. 646–648, 768–769, 769–773.) In closing argument, defense counsel highlighted testimony that Mr. Bolton chased and cornered Phillip Green and that witnesses had identified Bolton and another man as shooters, and she argued that Mr. Whitlock's actions were taken in fear and without malice. (Tr. 646–651, 769–773, 780–784.) Defense counsel also told the jury that her "job" was to "show the truth" and urged jurors to consider whether the State had met its burden to prove malice beyond a reasonable doubt. (Tr. 768–769, 793–798.)

In rebuttal closing, the assistant solicitor responded to the defense's characterization of counsel's role by telling the jury that the prosecutor's duty was to "present the truth" and contrasting that with a description of defense attorneys' job as not to "manipulate, shroud, or confuse" jurors, while urging the jury to decide the case based on the evidence and the court's instructions. (Tr. 760–767; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.)

After closing arguments, the trial court instructed the jury on the law, including the elements of murder, attempted murder, self-defense, and possession of a weapon during the commission of a violent crime, and reminded jurors that the lawyers' statements were not evidence and that they were the sole judges of the facts. (Tr. 803–807, 811–813.) The jury then subsequently returned guilty verdicts on all three charges and the court imposed the sentences described in the Statement of the Case. (Tr. 823, 833–834.) Mr. Whitlock filed a motion for a new trial, which was denied, and then timely appealed from the jury verdicts and the judgments imposed thereon, as well as the order denying him a new trial.

ISSUES PRESENTED

1. Whether the circuit court abused its discretion and committed reversible error in denying Mr. Whitlock's motion for a new trial where the trial judge refused to instruct the jury on involuntary manslaughter as a lesser-included offense of murder, notwithstanding South Carolina's rule that a defendant is entitled to a lesser-included-offense charge whenever there is any evidence supporting the lesser offense, and the record contained evidence from which the jury could find an unintentional killing without malice arising from

reckless conduct rather than malice aforethought. (Tr. 661–662, 735–736, 739–741, 760–764; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.)

2. Whether the circuit court abused its discretion and violated Mr. Whitlock's rights under the Fifth, Sixth, and Fourteenth Amendments and South Carolina law by admitting his recorded custodial statement in its entirety, where he asked "Where is the lawyer?" during interrogation, trial counsel litigated *Miranda* and voluntariness before trial, the court nonetheless allowed the State to play the full multi-hour interview for the jury, and the successor judge later denied a new trial on the ground that counsel failed to preserve a wholesale objection and strategically used portions of the interview, despite the record showing a clear *Miranda* challenge, a definitive trial-level ruling, and substantial use of the statement at trial. (Tr. 87–88, 448–454; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2; *State v. Kennedy*, 333 S.C. 426, 430–32, 511 S.E.2d 244, 246–47 (1999); *Davis v. United States*, 512 U.S. 452, 458–62, 114 S. Ct. 2350, 2355–57 (1994).)

3. Whether the circuit court abused its discretion and denied Mr. Whitlock a fair trial by refusing to grant a mistrial or new trial after the assistant solicitor, in rebuttal closing, contrasted the State's asserted duty to "present the truth" with a description of defense attorneys' job as to "manipulate, shroud, or confuse" jurors and characterized certain defense arguments as "things that cannot be said to a jury," thereby impugning counsel's integrity and inviting the jury to distrust the defense as a bad-faith effort to mislead, where the successor judge later deemed the remarks a permissible invited response and found no prejudice despite federal and state authority condemning such personal attacks

on defense counsel. (Tr. 737–764, 803–807, 811–813; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2).

4. Whether the circuit court abused its discretion and violated due process by denying the defense motion for a directed verdict on the murder, attempted-murder, and weapon charges where the State's case rested on Mr. Whitlock's association with Michael Bolton and "Rud" Whitlock, a verbal argument at the party, and circumstantial evidence that at most showed mere presence and guilt by association, without substantial evidence that Mr. Whitlock personally shot with malice at Ms. Matthews or Phillip Green or that he entered into a hand-of-one-hand-of-all common design with Bolton to shoot at the victims, and where the defense argued that the State's circumstantial evidence "merely raise[d] a suspicion" of guilt and failed to negate self-defense. (Tr. 646–653, 739–741, 760–764; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2).
5. Whether the circuit court abused its discretion and infringed Mr. Whitlock's confrontation and cross-examination rights by barring defense counsel from pursuing impeachment of Detective Rodriguez—whose questioning and narrative assertions permeated the recorded interrogation the State played for the jury—through Detective Riedel with the question whether Rodriguez was "fired for dishonesty."

ARGUMENT I.

THE CIRCUIT COURT ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR IN DENYING MR. WHITLOCK'S MOTION FOR A NEW TRIAL WHERE THE TRIAL JUDGE REFUSED TO INSTRUCT THE JURY ON INVOLUNTARY MANSLAUGHTER AS A LESSER-INCLUDED OFFENSE OF MURDER.

STANDARD OF REVIEW

The question of whether to give a requested jury instruction, including an instruction on a lesser-included offense, is reviewed for abuse of discretion, but a refusal grounded on an incorrect understanding or application of the governing law constitutes an error of law that this Court reviews *de novo*. *State v. Pittman*, 373 S.C. 527, 570–71, 647 S.E.2d 144, 166–67 (2007); *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889–90 (2002).

Under South Carolina's "any evidence" rule, a defendant is entitled to a lesser-included-offense charge if there is any evidence from which the jury could infer the lesser offense, even if that evidence is weak, inconsistent, or arises from the defendant's own testimony, and the failure to give such a charge when so supported is reversible error. *Pittman*, 373 S.C. at 571, 647 S.E.2d at 167; *Tyler*, 348 S.C. at 529, 560 S.E.2d at 889–90.

ARGUMENT

Under South Carolina law, murder is the killing of any person with malice aforethought, and malice is the intentional doing of a wrongful act without just cause or excuse under circumstances demonstrating hatred, ill will, or a total disregard for human life, which must exist in the defendant's mind just before and at the time the fatal act is committed. *State v. Pittman*, 373 S.C. 527, 570–71, 647 S.E.2d 144, 166–67 (2007).

By contrast, involuntary manslaughter in South Carolina is "the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others." *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007); *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889 (2002).

Thus, the critical distinction between murder and involuntary manslaughter is the presence or absence of malice: involuntary manslaughter requires an unintentional killing without malice coupled with either unlawful conduct not naturally tending to cause death or great bodily injury, or lawful conduct carried out with reckless disregard for the safety of others. *Pittman*, 373 S.C. at 571, 647 S.E.2d at 167; *Tyler*, 348 S.C. at 529, 560 S.E.2d at 889.

South Carolina follows the "any evidence" rule for lesser-included-offense instructions. A defendant is entitled to a requested lesser-included-offense charge if there is any evidence from which the jury could infer the lesser offense, even if the evidence is weak, inconsistent, or arises solely from the defendant's own testimony. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007); *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889–90 (2002). In deciding whether to give a lesser-included-offense instruction, the trial court may not weigh credibility, resolve conflicts in the testimony, or decide which version of events to believe; instead, if any evidence supports the lesser offense, the question must be submitted to the jury. *Pittman*, 373 S.C. at 571, 647 S.E.2d at 167.

Consistent with these principles, it is also well established that a defendant may receive instructions on both self-defense and lesser-included homicide offenses when the evidence would allow a reasonable jury to find different mental states or degrees of culpability, because jurors are free to accept some evidence and reject other evidence in reaching their verdict. *Pittman*, 373 S.C. at 570–71, 647 S.E.2d at 166–67. The availability of a self-defense charge does not preclude, and often complements, submission of lesser-included options such as voluntary or involuntary manslaughter when the evidence would permit the jury to conclude that the defendant acted without malice but with a lesser culpable mental state. *Id.* at 571, 647 S.E.2d at 167.

Although this is not a capital case, federal due process principles reinforce the importance of providing the jury with a lesser-included-offense option when supported by the evidence. In *Beck v. Alabama*, the United States Supreme Court held that, in a capital case, a statutory scheme that prohibited giving a lesser-included-offense instruction when the evidence supported such an instruction violated due process because it created an impermissible all-or-nothing choice between conviction of the capital offense and acquittal, thereby increasing the risk of an unwarranted conviction. *Beck v. Alabama*, 447 U.S. 625, 637–38, 100 S. Ct. 2382, 2389–90 (1980).

South Carolina's "any evidence" rule implements this same constitutional concern in non-capital cases by requiring that juries be instructed on supported lesser-included offenses so they are not forced into an all-or-nothing choice between the greater offense and acquittal when the evidence would rationally support a middle ground. *State v. Pittman*, 373 S.C. at 571, 647 S.E.2d at 167.

These authorities establish that when the evidence would allow a reasonable jury to find an unintentional killing without malice—whether because the defendant was engaged in an unlawful act not naturally tending to cause death or in a lawful act carried out with reckless disregard for others' safety—the defendant is entitled to an instruction on involuntary manslaughter as a lesser-included offense of murder. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007); *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889–90 (2002). Under South Carolina's "any evidence" rule, the trial court must submit the lesser offense to the jury if there is any evidence from which the jury could infer that offense, however weak or inconsistent that evidence may be, and regardless of whether it arises solely from the defendant's own testimony, because it is the jury's role—not the court's—to resolve factual disputes and

determine the defendant's mental state at the time of the killing. *State v. Pittman*, 373 S.C. at 571, 647 S.E.2d at 167.

In addition, South Carolina law makes clear that a defendant is entitled to an instruction on any lesser-included offense that is supported by the evidence, however slightly, even if the evidence is weak, inconsistent, or arises solely from the defendant's own testimony, because it is for the jury—not the court—to resolve conflicts in the testimony and determine the defendant's mental state. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007); *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889–90 (2002). A trial judge therefore errs by refusing a lesser-included-offense charge if there is any evidence from which a rational jury could infer that the defendant committed the lesser, regardless of whether the State's evidence, if fully believed, would prove the greater offense. *State v. Pittman*, 373 S.C. at 571, 647 S.E.2d at 167.

Therefore, the question before this Court is not whether the circuit court believed the evidence established malice beyond a reasonable doubt, but whether there was any evidence from which a rational jury could have found that Mr. Whitlock caused an unintentional killing without malice while engaged either in an unlawful act not naturally tending to cause death or great bodily harm, or in a lawful act performed with reckless disregard for the safety of others (Tr. 735–736; *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007)).

In denying the requested instruction, the trial court stated that "shooting 14 shots either at or near a crowd of 65 people is not an activity naturally tending to cause death or harm—er, that's not a lawful activity, excuse me," and that "it's not lawful to pop off 14 shots in the middle of a public street," so he did "not find that the facts support the charge" of involuntary manslaughter. (Tr. 735–736.) Based on that reasoning, the court refused to instruct the jury on

involuntary manslaughter and instead charged only murder, attempted murder, and the related weapon offense, along with self-defense. (Tr. 735–736, 811–813.)

In the subsequent written order denying Mr. Whitlock's motion for a new trial, the successor judge adopted the trial judge's factual premise and legal conclusion, holding that "[t]he evidence at trial demonstrated that the Defendant intentionally fired his weapon fourteen times at a crowd of people outside a suburban lounge," that "[f]iring fourteen times at a crowd constitutes evidence of malice aforethought, and even if it was not malice aforethought, such an act is most certainly a total disregard for human life, not reckless disregard for the safety of others," and that "involuntary manslaughter is not appropriate when the defendant intentionally fires his weapon." *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.

On that basis, the order concluded that the involuntary manslaughter charge was "not supported by the evidence" and denied relief on this ground. *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 2.

Under South Carolina's "any evidence" rule, Mr. Whitlock was entitled to an involuntary manslaughter instruction if there was any evidence from which the jury could infer an unintentional killing without malice while he was engaged either in an unlawful act not naturally tending to cause death or great bodily harm, or in a lawful act performed with reckless disregard for the safety of others. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007); *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889–90 (2002). This standard is deliberately low: a lesser-included-offense charge must be given if any evidence, however slight, weak, or inconsistent, from any source—including solely from the defendant's own testimony—would allow a rational jury to find the lesser offense, because it is the jury's role, not the court's, to

resolve factual disputes and determine the defendant's mental state. *Pittman*, 373 S.C. at 571, 647 S.E.2d at 167.

By refusing to charge involuntary manslaughter based on its own determinations that firing fourteen shots near a crowd necessarily reflected malice and that such conduct could not fit within the lawful-act/reckless-disregard framework, as reflected in the trial judge's charge-conference ruling and the successor judge's order denying a new trial, the circuit court misapplied this standard and usurped the jury's function. (Tr. 735–736; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.)

The trial judge's on-the-record explanation at the charge conference shows that he denied the involuntary-manslaughter instruction not because there was no evidence from which a jury could find an unintentional killing without malice, but because he concluded, as a matter of law, that firing fourteen rounds near a crowd rendered involuntary manslaughter legally unavailable. (Tr. 735–736.) After reciting the standard definition of involuntary manslaughter, the court stated that "shooting 14 shots either at or near a crowd of 65 people is not an activity naturally tending to cause death or harm—er, that's not a lawful activity, excuse me," and went on to declare that "it's not lawful to pop off 14 shots in the middle of a public street," concluding, "so I do not find that the facts support the charge" of involuntary manslaughter. (Tr. 735–736.)

The successor judge adopted the same reasoning in denying the motion for a new trial, finding that "[t]he evidence at trial demonstrated that the Defendant intentionally fired his weapon fourteen times at a crowd of people outside a suburban lounge," that "[f]iring fourteen times at a crowd constitutes evidence of malice aforethought, and even if it was not malice aforethought, such an act is most certainly a total disregard for human life, not reckless disregard

for the safety of others," and that "involuntary manslaughter is not appropriate when the defendant intentionally fires his weapon."

In so ruling, the courts effectively decided the presence of malice and the degree of culpability as a matter of law, rather than leaving those determinations to the jury. (Tr. 735–736; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.) Under *Pittman* and *Tyler*, however, the proper inquiry was whether any evidence would allow a reasonable jury to find an unintentional killing without malice during a qualifying unlawful act not naturally tending to cause death or during a lawful-but-reckless act, and if there was any such evidence, the court was required to give the involuntary-manslaughter instruction. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007); *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889–90 (2002).

The trial court's categorical statement that "involuntary manslaughter is not appropriate when the defendant intentionally fires his weapon," as echoed in the successor judge's order, reflects a further misapprehension of South Carolina law. Involuntary manslaughter requires an unintentional killing without malice, but that does not mean the defendant's underlying conduct must itself be entirely unintentional; the operative question is whether the defendant intended the death or acted with malice, not whether he intended to pull the trigger. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007).

A person can intentionally engage in an act—such as firing a gun—that unintentionally results in another's death, and if that act is either unlawful but not naturally tending to cause death or lawful but carried out with reckless disregard for the safety of others, the resulting killing may constitute involuntary manslaughter rather than murder. *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889–90 (2002). By treating the mere fact that Mr. Whitlock intentionally

fired his weapon as dispositive of malice and as categorically excluding involuntary manslaughter, the circuit court collapsed the distinction between intent to act and intent to kill and thereby committed an error of law under *Pittman* and *Tyler*. *State v. Pittman*, 373 S.C. at 571, 647 S.E.2d at 167; *State v. Tyler*, 348 S.C. at 529, 560 S.E.2d at 889–90.

Because there was at least some evidence—from Mr. Whitlock's testimony and from the surrounding circumstances—supporting a view that any killing was unintentional and occurred without malice while he was engaged in a lawful act carried out with reckless disregard for the safety of others, South Carolina's "any evidence" rule required that the jury be instructed on involuntary manslaughter as a lesser-included offense of murder. By refusing that charge and later denying a new trial on the ground that involuntary manslaughter was "not appropriate when the defendant intentionally fires his weapon," the circuit court misapplied the governing legal standard under *Pittman* and *Tyler* and, in so doing, abused its discretion.

The erroneous refusal to instruct on involuntary manslaughter was not harmless; by removing a legally available intermediate verdict supported by the trial evidence, it undermined confidence in the jury's murder verdict. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007); *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2. The central disputes at trial concerned Mr. Whitlock's mental state and his asserted justification for firing his weapon, and based on his testimony and the surrounding circumstances a rational jury could have found an unintentional killing without malice arising from reckless conduct rather than a malicious killing. In that posture, forcing the jury to choose between murder and outright acquittal/self-defense, without the lesser non-malicious option of involuntary manslaughter, reasonably could have affected the outcome and therefore requires reversal. (Tr. 735–736, 805–

807, 811–813; *State v. Pittman*, 373 S.C. at 571, 647 S.E.2d at 167; *Beck v. Alabama*, 447 U.S. 625, 637–38, 100 S. Ct. 2382, 2389–90 (1980).

First, the jury was presented with an all-or-nothing choice between murder and acquittal/self-defense on the homicide count, with no non-malicious option in between. The final jury charge instructed on murder, attempted murder, self-defense, and the related weapon offense, but contained no instruction on involuntary manslaughter or any other lesser-included non-malicious homicide. (Tr. 805–807, 811–813.) The successor judge's order confirms this structure, concluding that the involuntary manslaughter charge was "not supported by the evidence" and that "involuntary manslaughter is not appropriate when the defendant intentionally fires his weapon." This all-or-nothing framework forced jurors who rejected complete self-defense to choose between convicting Mr. Whitlock of malice-based murder and acquitting him outright, even though the evidence would have allowed a reasonable jury to find an unintentional, non-malicious killing during a lawful act performed with reckless disregard for others' safety. (Tr. 661–662, 739–741, 760–764; *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007); *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889–90 (2002).)

Such an all-or-nothing submission is precisely what the United States Supreme Court condemned in *Beck v. Alabama*, which held that a capital sentencing scheme violated due process by prohibiting lesser-included-offense instructions when the evidence supported them, because forcing the jury to choose between conviction of the capital offense and acquittal created "an unacceptable risk that the jury will be tempted to resolve its doubts in favor of conviction." *Beck v. Alabama*, 447 U.S. 625, 637, 100 S. Ct. 2382, 2389 (1980).

Although this is not a capital case, South Carolina's "any evidence" rule implements the same constitutional concern in non-capital prosecutions by requiring that juries be instructed on

supported lesser-included offenses so they are not compelled to "choose between conviction of the greater offense and acquittal" when the evidence would rationally support a middle ground. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007). Here, by withholding an instruction on involuntary manslaughter despite evidence supporting that lesser-included offense, the court increased the risk that jurors who harbored doubts about malice or complete self-defense nonetheless resolved those doubts in favor of a murder conviction because no lesser non-malicious option was available.

Second, the central issues at trial—Mr. Whitlock's mental state and whether he acted in justifiable self-defense—made the availability of a lesser non-malicious option particularly critical. Mr. Whitlock testified that he armed himself because he was scared, that he believed he and others were in danger from individuals he perceived as armed, and that when he fired his weapon he did so in an effort to protect himself and others during what he perceived as a chaotic exchange of gunfire outside the Suburban Lounge, not with an intent to kill anyone. (Tr. 661–662, 760–764.)

He admitted discharging multiple rounds but stated that he was not aiming at Ms. Matthews, Mr. Green, or any particular individual, and that he did not intend to hit anyone when he "popped off" shots in what he perceived as an emergency. (Tr. 661–662, 760–764.) The State, by contrast, emphasized that Mr. Whitlock fired approximately fourteen rounds from a 9mm handgun in the roadway in front of a crowd of about sixty-five people, arguing that such conduct demonstrated malice aforethought or, at minimum, a "total disregard for human life" consistent with murder. (Tr. 735–736, 739–741; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.)

In these circumstances, a reasonable jury could have partially credited Mr. Whitlock's perception of danger and his testimony that he lacked a specific intent to kill, while still rejecting complete self-defense, and concluded that he unintentionally caused Ms. Matthews's death without malice while engaged in a lawful act—defensive use of a firearm—carried out with reckless disregard for the safety of others. South Carolina law expressly permits jurors to accept some parts of the evidence and reject others, and it is for the jury—not the court—to decide whether a defendant acted with malice, with recklessness, or with a justified intent to defend himself. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007).

By depriving the jury of the involuntary manslaughter option that matched this intermediate view of the evidence, the court effectively forced jurors who believed that Mr. Whitlock fired recklessly but without malice either to acquit him based on self-defense or to convict him of murder, thereby skewing the deliberative process on the very mental-state question the jury was required to decide.

Third, the evidentiary path to an involuntary manslaughter verdict was grounded in the testimony and circumstances presented at trial, not speculation. From the evidence, the jury heard that a large crowd had gathered outside the Suburban Lounge during Mr. Whitlock's mother's Christmas party, that an argument between Mr. Whitlock and Phillip Green escalated into a confrontation in which multiple individuals, including Michael Bolton, were armed, and that gunfire erupted in the street in front of the club from at least two different weapons—a .40-caliber pistol used by Bolton and a 9mm handgun attributed to Mr. Whitlock. (Tr. 739–741, 735; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.)

Mr. Whitlock testified that he experienced the situation as chaotic and frightening, that he fired only after perceiving an imminent threat, and that he did not aim at any specific person or

intend to kill anyone. (Tr. 661–662, 760–764.) From these facts, the jurors could reasonably have found that Mr. Whitlock, while armed at his mother's party, responded to what he believed was an immediate danger by firing multiple rounds in a reckless manner toward an area where others were present, thereby unintentionally causing Ms. Matthews's death without malice. (Tr. 661–662, 735–736, 739–741, 760–764; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.)

That scenario fits within the "lawful activity with reckless disregard for the safety of others" prong of involuntary manslaughter, and under South Carolina's "any evidence" rule, it was the jury's prerogative—not the court's—to decide whether to adopt it. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007); *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889–90 (2002).

In light of this evidentiary record, the omission of an involuntary manslaughter instruction cannot be dismissed as harmless. South Carolina courts have held that the failure to give a requested lesser-included-offense charge supported by any evidence is reversible error because it deprives the jury of a legitimate verdict option that might have been chosen and thus reasonably could affect the outcome. *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007); *State v. Tyler*, 348 S.C. 526, 529, 560 S.E.2d 888, 889–90 (2002).

Here, a rational jury could have concluded that the State failed to prove malice beyond a reasonable doubt but succeeded in proving that Mr. Whitlock unlawfully or recklessly caused an unintentional death without justification, had the jury been instructed on involuntary manslaughter and given that verdict option. By removing this supported option and confining the jury to an all-or-nothing choice between murder and acquittal/self-defense, the court created at least a reasonable probability that the error affected the verdict, and the circuit court's denial

of a new trial on the ground that the charge was "not supported by the evidence" and "not appropriate when the defendant intentionally fires his weapon" was an abuse of discretion.

Viewed as a whole, the evidence supporting a non-malicious, unintentional-killing theory based on reckless disregard, the centrality of Mr. Whitlock's mental state and self-defense claim, and the absence of any non-malicious lesser-included option demonstrate a reasonable probability that the verdict would have been different had the jury been instructed on involuntary manslaughter.

ARGUMENT II.
THE CIRCUIT COURT ABUSED ITS DISCRETION AND VIOLATED MR. WHITLOCK'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS AND SOUTH CAROLINA LAW BY ADMITTING HIS RECORDED CUSTODIAL STATEMENT IN ITS ENTIRETY, WHERE HE ASKED "WHERE IS THE LAWYER?" DURING INTERROGATION.

STANDARD OF REVIEW

A trial court's ruling on the admissibility of a defendant's statement—including *Miranda* and voluntariness determinations—is reviewed for abuse of discretion, with the court's underlying factual findings and credibility determinations upheld unless clearly erroneous and its application of *Miranda* and its progeny to those facts reviewed *de novo*. *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007); *State v. Kennedy*, 333 S.C. 426, 430–32, 511 S.E.2d 244, 246–47 (1999); *Davis v. United States*, 512 U.S. 452, 458–62, 114 S. Ct. 2350, 2355–57 (1994). The ultimate denial of a motion for a new trial challenging the admission of such a statement is likewise reviewed for abuse of discretion. *Pittman*, 373 S.C. at 570, 647 S.E.2d at 166.

ARGUMENT

Mr. Whitlock's argument on this point was preserved at least as to *Miranda* and voluntariness because before opening statements the parties litigated the admissibility of

Mr. Whitlock's interview in limine, with the State arguing that the interrogation was "textbook proper," that Mr. Whitlock was initially not in custody, that he received *Miranda* warnings "at the appropriate time," and that his mid-interview question "Where is the lawyer?" was an ambiguous inquiry that did not require the detectives to stop questioning, while defense counsel relied on *State v. Kennedy* to argue that "Where is the lawyer?" should be treated as an invocation of the right to counsel. (Tr. 87–88; see *State v. Kennedy*, 333 S.C. 426, 430–32, 511 S.E.2d 244, 246–47 (1999).)

The trial court took the *Miranda* issue under advisement, and thereafter, during the State's case-in-chief, permitted the State to play essentially the entire multi-hour recorded interview for the jury, including the "Where is the lawyer?" exchange and the detectives' narrative assertions, without any limiting instruction or redaction, and later allowed the State to correct an omission by playing the final portion of the interview in open court. (Tr. 448–454.)

Mr. Whitlock again challenged admission of the statement in his written motion for a new trial, but the successor judge denied relief on the ground that defense counsel "did not properly preserve an objection to the admissibility of the entire recorded statement," focusing on the absence of a renewed objection when the recording was played and on counsel's later use of portions of the interview on cross-examination, rather than revisiting the merits of the *Miranda* claim. *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.

On this record, the *Miranda*/voluntariness issue—centered on whether "Where is the lawyer?" was an invocation requiring questioning to cease—is preserved for review by virtue of the in-limine litigation, the court's implicit adverse ruling when it allowed the interview to be played, and the renewal of the challenge in the new-trial motion, and to the extent this Court concludes that any broader evidentiary or Confrontation Clause objections to "the entirety of the

interview being played" were not contemporaneously renewed, Mr. Whitlock alternatively invokes plain-error review and asserts that any failure to re-object after an adverse in-limine ruling constituted ineffective assistance that should not bar relief. (Tr. 87–88, 448–454; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.)

The admission of Mr. Whitlock's post-Miranda statements was erroneous because, on this record, his question "Where is the lawyer?" should have been treated as an unequivocal request for counsel that required the detectives to cease interrogation, and the circumstances surrounding the questioning undermined the knowing and voluntary nature of any purported waiver.

At the pretrial hearing, the State argued that Mr. Whitlock's interview was "textbook proper," that he was initially not in custody, that he was Mirandized "at the appropriate time," and that his question "Where is the lawyer?" was an ambiguous inquiry that did not obligate detectives to stop or clarify. Defense counsel countered by relying on *State v. Kennedy*, describing it as a case where the appellate court reversed because a defendant's statement "Well, I think I need a lawyer" was held to be a request for counsel that officers could not ignore, and argued that "Where is the lawyer?" is, if anything, a clearer invocation. Once the trial court allowed the State to play the interview, the jury heard the entire multi-hour custodial interrogation, including Mr. Whitlock's question about a lawyer and all subsequent questioning and admissions.

Under the principles defense counsel invoked from *Kennedy*, the critical question is whether a reasonable officer in the circumstances would understand the suspect's words as a present desire for counsel. "Where is the lawyer?" does not ask about abstract legal concepts or a future possibility of representation; it assumes that a lawyer should be available and demands

to know where that lawyer is, which reasonably communicates that Mr. Whitlock wanted counsel at that point in the interrogation.

Treating that language as "ambiguous" and continuing to question him, rather than ceasing interrogation or clarifying whether he was in fact requesting counsel, effectively nullified the Miranda right defense counsel invoked and directly conflicts with the way *Kennedy* was presented to the court: that "Well, I think I need a lawyer" must be treated as an invocation. If "Well, I think I need a lawyer" is sufficiently clear—as the defense represented *Kennedy* to hold—"Where is the lawyer?" is at least as unambiguous; any post-*Miranda* statements elicited after that point, including admissions about the number of shots, the location of the gun, and his reasons for firing, should have been suppressed as obtained in violation of his right to counsel.

The surrounding circumstances further undermine the voluntariness and knowing nature of any waiver and of the post-Miranda statements. Mr. Whitlock came to the station in the early morning hours of December 22, 2019, after the shooting, and Detective Riedel testified that the interview lasted approximately three hours and fifty-eight minutes. During that time, Riedel acknowledged that Mr. Whitlock had not slept, had not eaten, and had nothing to drink while with them, and that the detective himself was exhausted from having worked through the night.

Partway through, Detective Rodriguez joined the interview, "took over" questioning, spoke rapidly, repeatedly interrupted Mr. Whitlock's answers, and even acknowledged to him, "I know you're scared. You don't know what's up or down right now." The detectives also pressed a two-shooter narrative, telling Mr. Whitlock that "only two people were shooting" and that "only two volleys" could have occurred, and repeatedly confronted him with their theory that he and Michael Bolton were the only shooters, rather than neutrally eliciting his account.

In combination with the failure to honor his question about a lawyer, these conditions—a lengthy overnight custodial interrogation, physical fatigue and deprivation, an expressly acknowledged state of fear and confusion, and highly leading, interrupted questioning—call into serious question whether any post-warning waiver was the product of a free and rational choice.

Despite this, the court permitted the State to play essentially the entire recording, including all post-Miranda statements made after "Where is the lawyer?," and the successor judge later treated only preservation questions, rather than addressing whether those statements should have been excluded on *Miranda* and voluntariness grounds.

On this record, however, once Mr. Whitlock asked "Where is the lawyer?" the detectives were obliged to cease interrogation or, at a minimum, clarify whether he was invoking his right to counsel; by instead pressing on through hours of additional questioning under coercive conditions and then using the resulting admissions at trial, the State obtained and introduced statements that should have been suppressed as obtained in violation of his Fifth and Fourteenth Amendment rights and the protections described to the court through *State v. Kennedy*.

ARGUMENT III.

THE CIRCUIT COURT ABUSED ITS DISCRETION AND DENIED MR. WHITLOCK A FAIR TRIAL BY REFUSING TO GRANT A MISTRIAL OR NEW TRIAL AFTER THE ASSISTANT SOLICITOR, IN REBUTTAL CLOSING, CONTRASTED THE STATE'S ASSERTED DUTY TO "PRESENT THE TRUTH" WITH A DESCRIPTION OF DEFENSE ATTORNEYS' JOB AS TO "MANIPULATE, SHROUD, OR CONFUSE" JURORS AND CHARACTERIZED CERTAIN DEFENSE ARGUMENTS AS "THINGS THAT CANNOT BE SAID TO A JURY," THEREBY IMPUGNING COUNSEL'S INTEGRITY AND INVITING THE JURY TO DISTRUST THE DEFENSE AS A BAD-FAITH EFFORT TO MISLEAD.

STANDARD OF REVIEW

A trial court's decision to deny a mistrial or new trial based on allegedly improper closing argument is reviewed for abuse of discretion, but whether the prosecutor's comments deprived the defendant of due process is evaluated under the federal standard asking whether the conduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Darden v. Wainwright*, 477 U.S. 168, 181, 106 S. Ct. 2464, 2471 (1986) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S. Ct. 1868, 1871 (1974)); *United States v. Young*, 470 U.S. 1, 11–13, 105 S. Ct. 1038, 1044–45 (1985); *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007).

In applying this standard, courts consider factors such as the tendency of the remarks to mislead the jury or prejudice the accused, whether they were isolated or extensive, whether they were deliberate or accidental, the strength of the evidence of guilt, whether defense counsel objected, and whether curative instructions were given. *Darden*, 477 U.S. at 181–82, 106 S. Ct. at 2471–72; *Young*, 470 U.S. at 11–13, 105 S. Ct. at 1044–45.

ARGUMENT

Here, there was no contemporaneous objection when the assistant solicitor, in rebuttal closing, contrasted the State's claimed duty to "present the truth" with a description of defense attorneys' job as not to "manipulate, shroud, or confuse" jurors and characterized certain defense arguments as "things that cannot be said to a jury." (Tr. 737–764.)

However, Mr. Whitlock raised this alleged misconduct as Ground 3 in his written motion for a new trial, arguing that the prosecutor improperly impugned defense counsel's integrity and role in the adversary system, and the June 9, 2025 order squarely addressed and rejected that ground on the merits by summarizing the challenged remarks, concluding that they were permissible invited responses to defense counsel's statements about her "job" being to "show the

truth" and about the State's charging decisions, and finding that the comments were not prejudicial while noting the lack of objection. *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2.

Because the denial of a new trial on this ground was expressly adjudicated, Issue 3 is reviewable for abuse of discretion under the *Darden/Young* due-process standard as applied to the successor judge's ruling, and if this Court were to conclude that the absence of a contemporaneous objection limits review of the underlying trial-level misconduct, Mr. Whitlock alternatively seeks plain-error review and contends that counsel's failure to object to a rebuttal portrayal of defense counsel's role as manipulative or misleading constituted ineffective assistance that may serve as a backstop for relief. (Tr. 737–764, 803–813; *State v. Whitlock*, Order Denying Defendant's Motion for New Trial at 1–2; see *Darden v. Wainwright*, 477 U.S. 168, 181–82, 106 S. Ct. 2464, 2471–72 (1986); *United States v. Young*, 470 U.S. 1, 11–13, 105 S. Ct. 1038, 1044–45 (1985).)

In denying relief, the successor judge summarized the rebuttal as follows: defense counsel told the jury that her job was to "show the truth" and that the State would have dismissed the case if it believed Mr. Whitlock was not guilty; in response, the assistant solicitor told jurors that prosecutors have a duty to "present the truth," that defense attorneys' job is not to "manipulate, shroud, or confuse" jurors, and that some defense comments were "things that cannot be said to a jury." The judge characterized these remarks as permissible invited responses and concluded they were not prejudicial, also noting that defense counsel did not object contemporaneously.

Those rebuttal comments went well beyond a proportional correction of defense counsel's flourish about "showing the truth." They recast the institutional role of defense lawyers

in general as to "manipulate, shroud, or confuse" jurors, thereby impugning counsel's integrity and inviting the jury to view the entire defense presentation as a bad-faith effort to mislead rather than a good-faith application of the burden of proof and reasonable doubt.

Federal courts have repeatedly recognized that it is improper for a prosecutor to attack defense counsel personally or to suggest that counsel's function is to deceive the jury rather than to test the State's case under the law. See, e.g., *Berger v. United States*, 295 U.S. 78, 88 (1935); *United States v. Young*, 470 U.S. 1, 9–13 (1985); *Darden v. Wainwright*, 477 U.S. 168, 181–82 (1986). The successor judge's reliance on invited response does not cure the problem, because *Young* makes clear that even when defense argument invites a reply, the prosecutor remains bound by the obligation to avoid unfairly prejudicial attacks on the defense function.

The prejudice here was not abstract. Mr. Whitlock testified in his own defense about his background and his account of the confrontation and shooting, and defense counsel's closing marshaled that testimony, along with the eyewitness and forensic evidence, into a detailed self-defense and reasonable-doubt theory. The State's rebuttal—framing the prosecutor as the one who "present[s] the truth" and defense counsel as someone whose "job" is to manipulate, combined with the assertion that certain defense arguments were "things that cannot be said to a jury"—struck directly at the credibility of that entire theory at the moment when the jury was about to retire to deliberate.

Although the trial court later instructed jurors that they were the sole judges of the facts and that counsel's arguments were not evidence, those generic instructions did not specifically dispel the suggestion that the defense as an institution operates by deception, nor did they address the prosecutor's assertion that some of defense counsel's statements were categorically out-of-bounds.

Viewed under *Darden* and *Young*, the content and timing of these comments, their direct attack on the core of the adversary system, and the successor judge's approval of them as proper "responses" combined to "so infect[] the trial with unfairness" that the denial of a mistrial or new trial was an abuse of discretion. The Court should therefore reverse and remand for a new trial on this ground.

ARGUMENT IV.

THE TRIAL COURT ABUSED ITS DISCRETION AND VIOLATED DUE PROCESS BY DENYING THE DEFENSE MOTION FOR A DIRECTED VERDICT ON THE MURDER, ATTEMPTED-MURDER, AND WEAPON CHARGES WHERE THE STATE'S CASE RESTED ON MR. WHITLOCK'S ASSOCIATION WITH MICHAEL BOLTON AND "RUD" WHITLOCK, A VERBAL ARGUMENT AT THE PARTY, AND CIRCUMSTANTIAL EVIDENCE THAT AT MOST SHOWED MERE PRESENCE AND GUILT BY ASSOCIATION, WITHOUT SUBSTANTIAL EVIDENCE THAT MR. WHITLOCK PERSONALLY SHOT WITH MALICE AT MS. MATTHEWS OR PHILLIP GREEN OR THAT HE ENTERED INTO A HAND-OF-ONE-HAND-OF-ALL COMMON DESIGN WITH BOLTON TO SHOOT AT THE VICTIMS.

STANDARD OF REVIEW

The denial of a motion for a directed verdict is reviewed to determine whether the trial court properly submitted the case to the jury under the sufficiency standard, viewing the evidence and all reasonable inferences in the light most favorable to the State. *State v. Odems*, 385 S.C. 258, 266–67, 684 S.E.2d 573, 577–78 (Ct. App. 2009). A directed verdict should be denied if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, but it must be granted where the evidence merely raises a suspicion that the accused is guilty. *Id.* at 267, 684 S.E.2d at 578; *State v. Zeigler*, 364 S.C. 94, 101, 610 S.E.2d 859, 863 (Ct. App. 2005).

In cases resting on circumstantial evidence, the State must present evidence that, taken as a whole, reasonably tends to prove the defendant's guilt so as to allow more than speculation or conjecture, and on appellate review the question is whether there is any substantial evidence, viewed in the light most favorable to the State, from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Odems*, 385 S.C. at 266–67, 684 S.E.2d at 577–78; *State v. Gibson*, 390 S.C. 347, 356–57, 701 S.E.2d 766, 771–72 (Ct. App. 2010).

ARGUMENT

Mr. Whitlock contends that this argument is fully preserved because, at the close of the State's case, defense counsel moved for a directed verdict on the murder, attempted-murder, and weapon charges, arguing that the prosecution's theory against Mr. Whitlock rested on mere presence and guilt by association with Michael Bolton and "Rud" Whitlock, that there was no direct evidence of any agreement or conspiracy among them to shoot at the victims, and that the State's circumstantial evidence—which consisted largely of proof that these men were friends, that Mr. Whitlock had argued with Phillip Green, and that others saw Bolton and Rud shooting—"merely raise[d] a suspicion" of guilt and was insufficient as a matter of law. (Tr. 646–647.)

Counsel further argued that the only circumstantial evidence connecting Mr. Whitlock to the charged offenses was that he had been involved in a verbal argument earlier in the evening, that the State's case on accomplice liability amounted to "mere presence and guilt by association," and that the State had failed to disprove self-defense in light of testimony that Mr. Whitlock was alone "in the middle of the street with no cover" when multiple rounds were fired and that a reasonably prudent person in his position could have feared imminent danger with no probable means of retreat. (Tr. 646–648.)

The State responded that, viewed in the light most favorable to the prosecution, the evidence showed that Mr. Whitlock initiated and escalated the argument, armed himself, fired fourteen shots in the direction of Ms. Matthews and Mr. Green, and thereby acted with malice aforethought, and the trial court denied the motion on the record, stating that it would charge the circumstantial-evidence standard to the jury and emphasizing that the question on directed verdict was the existence—not the weight—of evidence tending to prove guilt. (Tr. 649–653.)

Under South Carolina law, a directed verdict must be granted when the State's evidence, even viewed in the light most favorable to the prosecution, amounts to no more than suspicion or conjecture in a circumstantial case, as reflected in defense counsel's reliance on *State v. Odems*, 385 S.C. 258, 266–67, 684 S.E.2d 573, 577–78 (Ct. App. 2009), and the trial court's charge that "if these circumstances merely portray the defendant's behavior as suspicious, the proof has failed." (Tr. 646–47, 808; *State v. Odems*, 385 S.C. 258, 266–67, 684 S.E.2d 573, 577–78 (Ct. App. 2009).)

The "hand of one, hand of all" doctrine likewise requires substantial evidence that the defendant joined in a common design to commit the shooting, which may be inferred from conduct but cannot rest solely on mere presence or guilt by association, as the defense argued citing *State v. Gibson*, 390 S.C. 347, 356–57, 701 S.E.2d 766, 771–72 (Ct. App. 2010). (Tr. 646–47; *State v. Gibson*, 390 S.C. 347, 356–57, 701 S.E.2d 766, 771–72 (Ct. App. 2010).)

Here, the State's "hand of one, hand of all" theory rested on three circumstantial strands the defense identified: (1) that Whitlock argued with Phillip Green before the shooting, (2) that he was associated with Bolton and "Rud" Whitlock, who were also armed, and (3) that some witnesses saw Bolton and Rud with guns and firing, plus post-incident calls between Whitlock and Bolton. (Tr. 646–47, 460–63, 507–08; State's closing, Tr. 651–52.)

Defense counsel emphasized there was "no direct evidence here of a conspiracy between Bolton, Whitlock, and/or Rud to shoot at these innocent people that night," and argued that the State's proof showed only "mere presence and guilt by association," which "are two of our principles that say that we actually cannot convict or find people guilty based on those two principle of law." (Tr. 646–47.) No eyewitness testified that Whitlock called Bolton or Rud over, encouraged them to shoot, brandished his gun with them during the argument, or stood with Bolton when Bolton opened fire; instead, defense highlighted that witnesses consistently described Bolton alone as cornering and pushing Phillip Green and as the man shown in a photo as the shooter who killed Ms. Matthews. (Tr. 483–85, 646–47, 780–81.)

The record also contains affirmative evidence inconsistent with a shared shooting plan. Antwan Campbell told Detective Riedel he saw a man with gold teeth—later identified in a photo lineup as Rudolph ("Rud") Whitlock—shooting, and that he heard two rounds of shots from different shooters, with the second shooter described as "kind of stocky" with "a little belly," a low haircut, and a beard, not a man with dreads like Michael Whitlock. (Tr. 483–85.)

Rochelle Campbell reported that she saw Bolton fire, pause, and fire again, then went to the hospital and showed Detective Woods a photograph of Bolton as "the man who shot Quanna." (Tr. 780–81.) Anthony Green admitted he retrieved his own gun but stated he did not fire before the shooting ended. (Tr. 496–97, 500–01.)

Ballistics evidence showed at least one intact projectile that could not have been fired from Whitlock's Glock 19, consistent with a third, unidentified shooter, further undercutting any neat two-man common-design theory. (Tr. 783–84.) The call-log evidence that the State invoked as "proof of '[t]he hand of one, the hand of all'" showed that the first call Whitlock made after the shooting was to his girlfriend Shalita, while all post-incident calls with "Lil Mike" (Bolton)

were incoming to Whitlock, and Detective Riedel conceded he had no idea what was said on those calls and that Bolton "could have said any number of things." (Tr. 460–63, 507–08; see also Tr. 460–61.)

Taken together, the State's "hand of one, hand of all" theory rests on Whitlock's association with Bolton and Rud, a prior argument, and speculative inferences from post-incident phone calls, in the face of eyewitness and forensic evidence pointing to Bolton (and possibly others) as acting independently. These circumstances, even viewed in the light most favorable to the State, do not supply substantial evidence of a common design to shoot but at most "portray the defendant's behavior as suspicious," which South Carolina law deems insufficient to withstand a directed verdict under the circumstantial-evidence and accomplice-liability standards described above.

ARGUMENT V.

THE CIRCUIT COURT ABUSED ITS DISCRETION AND INFRINGED MR. WHITLOCK'S CONFRONTATION AND CROSS-EXAMINATION RIGHTS BY BARRING DEFENSE COUNSEL FROM PURSUING IMPEACHMENT OF DETECTIVE RODRIGUEZ.

STANDARD OF REVIEW

Evidentiary rulings limiting the scope of cross-examination and impeachment are reviewed for abuse of discretion, and the trial court's decision will not be disturbed absent an error of law or a manifestly arbitrary, capricious, or unfair restriction on relevant inquiry. *State v. Cheeseboro*, 346 S.C. 526, 552–53, 552 S.E.2d 300, 314–15 (2001); *State v. Rosemond*, 356 S.C. 426, 430–32, 589 S.E.2d 757, 759–60 (2003). At the same time, the Sixth Amendment's Confrontation Clause guarantees a criminal defendant the right to cross-examine adverse witnesses on matters bearing on bias and credibility, and while trial courts have wide latitude to

impose reasonable limits based on concerns such as harassment, prejudice, confusion of the issues, or interrogation that is repetitive or only marginally relevant, they may not impose restrictions that unduly limit a defendant's ability to expose to the jury facts from which bias, prejudice, or a particular character for untruthfulness might be inferred. *Davis v. Alaska*, 415 U.S. 308, 315–18, 94 S. Ct. 1105, 1110–12 (1974); *Cheeseboro*, 346 S.C. at 552–53, 552 S.E.2d at 314–15; *Rosemond*, 356 S.C. at 430–32, 589 S.E.2d at 759–60.

This issue was adequately preserved because during cross-examination of Detective Riedel—after eliciting that Detective Rodriguez joined the interview around 7:00 a.m., "sort of [took] over" questioning, spoke rapidly, repeatedly interrupted Mr. Whitlock, acknowledged that Mr. Whitlock was scared and disoriented, and participated in advancing the theory that only two people, Bolton and Mr. Whitlock, were shooting—defense counsel asked Riedel, "Detective Rodriguez is not testifying because he was fired for dishonesty?" (Tr. 496–503.)

The State immediately objected, the trial court sustained the objection, instructed counsel, "Yeah, don't get into that," and, although it did not formally strike the unanswered question, it clearly prohibited any further inquiry into whether Rodriguez had been fired for dishonesty or otherwise impeaching his character for truthfulness, thereby limiting the defense's ability to attack the credibility of a non-testifying detective whose voice, questioning, and narrative assertions permeated the recorded interrogation the State played for the jury. (Tr. 503.)

That contemporaneous objection, ruling, and restriction on the scope of cross-examination and impeachment preserve Issue 5 for abuse-of-discretion review; to the extent this Court were to conclude that any more detailed proffer of the basis for the impeachment was required, Mr. Whitlock alternatively invokes plain-error review and asserts that any omission in making such a proffer amounted to ineffective assistance that should not bar

consideration of the constitutional implications of limiting impeachment of a key law-enforcement interviewer whose statements were effectively presented to the jury through the recording. (Tr. 496–503, 509–512.)

ARGUMENT

As to Issue 5, the trial court abused its discretion and infringed Mr. Whitlock's confrontation and cross-examination rights when it sustained the State's objection and instructed defense counsel "don't get into that" after counsel attempted to ask Detective Riedel whether Detective Rodriguez—the non-testifying detective whose voice, questioning, and narrative assertions permeated the recorded interrogation—was "fired for dishonesty," thereby precluding any further exploration of whether Rodriguez had been terminated for untruthfulness or bias bearing directly on the reliability of the custodial interview the State presented to the jury. (Tr. 496–503.)

Given Rodriguez's central role in the interrogation and the State's reliance on the recorded interview, the categorical bar on this line of impeachment arbitrarily curtailed a reasonable and highly probative inquiry into character for truthfulness and potential bias that lay at the core of the right to confront adverse law-enforcement witnesses, and this evidentiary error prejudiced Mr. Whitlock by insulating from challenge a key source of the State's narrative of guilt. *Davis v. Alaska*, 415 U.S. 308, 315–18, 94 S. Ct. 1105, 1110–12 (1974); *State v. Cheeseboro*, 346 S.C. 526, 552–53, 552 S.E.2d 300, 314–15 (2001); *State v. Rosemond*, 356 S.C. 426, 430–32, 589 S.E.2d 757, 759–60 (2003).

CONCLUSION

Because each of these five errors independently undermined confidence in the verdict and, considered cumulatively, deprived Mr. Whitlock of the fair trial guaranteed by the South Carolina and United States Constitutions, Defendant–Appellant Michael Christopher Whitlock, Jr., respectfully requests that this Court vacate his convictions for murder, attempted murder, and possession of a weapon during the commission of a violent crime and remand this matter to the circuit court for a new trial.

RESPECTFULLY SUBMITTED:

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