RECEIVED
Apr 08 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2025-000444

THE STATE, ...RESPONDENT

v.

TRAVON DERRELL RAGIN, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

P. SANDERS LINKER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-0918

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

Is *State v. Orr*, 128 S.C. 279, 122 S.E. 771 (1924), still good law such that a defendant need not object to an unconstitutional comment on the facts in order to challenge the jury charge on appeal?

II.

Did the trial court err by allowing a detective to speculate about the movements of the victim and assailant at the time of the shooting?

III.

Did the trial court err by allowing a detective to give his opinion about the location of the shooter and victim based on shell casings where he was not qualified as an expert in crime scene reconstruction?

IV.

Did the trial court err in allowing a detective to testify he arrested appellant "as a result of" interviewing two codefendants, thereby introducing hearsay by implication?

V.

Did the trial court err by allowing a detective to testify about the nature of the victim's wounds expressly based on the hearsay findings of the forensic pathologist?

VI.

When considered together, did these errors prejudice appellant at trial and did the trial court err by denying his motion for a new trial based on the cumulative errors made during trial?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I.

Can Appellant argue against an instruction on implied malice on appeal where Appellant failed to object, and where he cannot rely on *State v. Orr*, 128 S.C. 279, 122 S.E. 771 (1924) to raise a constitutional argument not applicable to this case?

II.*
(Appellant's II. & III.)

Did the trial court abuse its discretion in finding Detective Hansen's opinion about Victim's movements permissible under Rule 701, SCRE where such an opinion was not an improper lay witness opinion and any such error would be harmless?

III.

Did the trial court abuse its discretion by allowing Detective Hansen to testify that Appellant was arrested after interviewing co-defendants Brock and Spann where such testimony did not elicit the substance of the co-defendants' statements and was merely testifying to the investigative steps of the case?

IV.

Did the trial court abuse its discretion by allowing Detective Hansen to testify regarding what he learned about Victim's injuries from the autopsy where such testimony was not hearsay and any error would be harmless since Victim's manner and cause of death was never disputed by Appellant?

V.

Can Appellant rely on a cumulative error argument that was never presented to the trial court and regardless would be inapplicable to this case?

STATEMENT OF THE CASE

During their May, 2021 term, a Sumter County grand jury indicted Appellant Travon Derrell Ragin with offenses of murder, armed robbery, and possession of a weapon during the commission of a violent crime. (R. pp. * (Indictment)). From February 24–26, 2025, Appellant proceeded to a jury trial before the Honorable Clifton Newman, Circuit Court Judge. Appellant was represented at trial by Elaine Cooke Esq. while Third Circuit Solicitor Ernest Finney, III represented the State. (Tr. 1). At the end of trial, the jury found Appellant guilty on all charges. (Tr. 378–379). Judge Newman sentenced Appellant to life imprisonment for murder and thirty years for armed robbery. (Tr. 406). This appeal follows.

STATEMENT OF FACTS

In the early morning, late-night hours of April 3, 2020, Tenika Ragin[1] was outside her Sumter home sitting in the passenger seat of her friend, Sherrod Smith's (Victim) car. Victim and Ms. Ragin were hanging out in the car for a couple of hours that night. Ms. Ragin testified that without warning, someone opened the driver's side door. As soon as the door opened, Ms. Ragin saw a gun[2] "and a shot went off immediately." (Tr. 110–117). Ms. Ragin immediately fled the vehicle through the passenger door and began scrambling to get inside her home. While entering the house, she heard another gunshot. Once safely inside, she called 911. Ms. Ragin testified she did not get a good look at the shooter, stating she could only see "a black silhouette of someone, no color or anything, just . . . a silhouette of a person." (Tr. 118–122). Ms. Ragin emphasized she did not hear or see anything prior to Victim's door being opened. She also stated she was unharmed.

Law enforcement arrived on scene shortly after 3:00 AM and found Victim lying dead face-down in the grass next to the passenger side of the vehicle, with a gunshot wound to the back of his head and his pant pockets "turned out."[3] (Tr. 145–150). A dollar bill and a nickel were collected near Victim's pockets. (Tr. 170). The car was parked about 100 feet from the roadway towards the back of the house. (Tr. 171). Investigators found a fired 9mm cartridge case right next to the driver's door, another one on the passenger side of the vehicle close to Victim's body, and a fired projectile lodged in the driver's seat. Both doors were open and blood was found on the inside of the passenger door. DNA testing of items on scene was inconclusive. (Tr. 157–162, 164–171).

---

[1] As noted by Appellant in his Statement of Facts, Ms. Ragin and Appellant were not related despite sharing the same last name.
[2] Ms. Ragin described the gun as "a blocky handgun." (Tr. 121).
[3] The forensic pathologist, Dr. Ellen Riemer, testified that Appellant was shot in the left elbow and the back of the neck. (Tr. 236–237).

However, at trial, the State and Appellant entered a joint stipulation stating that samples of DNA were collected and analyzed, but reported no profile of DNA from Appellant was found. (*See* Tr. 221–222, 334–335).

Investigators believed that Victim crawled out of the car through the passenger side from the driver's side based on the blood found on the passenger side and the minimal amount of dirt on Victim's white socks—suggesting he did not run around the outside of the car. Once on the ground on the passenger side, investigators believed Victim was shot a second time in the back of the head as evidenced by the shell casing found next to Victim's body. (Tr. 185–190). Investigators believed the shooter was by the driver's side door while firing the first shot and then over Victim's body by the passenger side of the car while firing the second shot. (Tr. 192). Agent James Green, a firearms examiner, testified that the two casings were fired from the same gun. The bullet and casings were both consistent with being fired from a Glock 9mm handgun. (Tr. 212–214, 218–219).

At first, investigators were unsuccessful in identifying potential suspects. However, in November, investigators received information implicating co-defendants Fre'Dron Spann and Justice Brock. The two were then taken in for interviews. While being interviewed, both co-defendants gave statements implicating themselves and Appellant with the shooting/robbery. Appellant was interviewed shortly thereafter, and all three were arrested and charged. (Tr. 193–196, 205–206).

At trial, both co-defendants, Spann and Brock, pled guilty to accessory after the fact before testifying against Appellant in exchange for the State dismissing their more serious charges—with sentencing deferred until after their testimony. (Tr. 222–224, 233, 262–263, 267–268, 288–290, 324–325). Brock testified that the three of them (Appellant, Spann, and Brock) were friends who

used to do "[a] little bit of everything." (Tr. 245). One activity they frequently engaged in together was breaking into cars at night. Brock testified they would go around town after dark and would check for unlocked doors—using a shirt to avoid leaving fingerprints. (Tr. 246–248). Brock testified that Appellant would have a weapon with him and in fact had one on the night of April 3. (Tr. 249). He stated that they had been out for a couple of hours by the time they were walking within the vicinity of the crime scene on South Main Street. Brock testified Appellant decided to check the silver vehicle that was parked there. Brock stated he and Spann stayed by the street while Appellant walked towards Victim's vehicle near the backyard. He heard a gunshot, began running with Spann, and then heard another gunshot shortly after. Brock stated he saw Appellant running behind him shortly after. (Tr. 249–254). After splitting up, Brock testified the three met up the following day at a park, where Appellant told them to "not talk about it." When asked by the solicitor if Appellant said anything about taking money from Victim, Brock stated Appellant told him that he "found it all." (Tr. 256–259). Brock testified there was no plan to shoot anybody that night and that he did not know Appellant was going to shoot someone. (Tr. 264).

Spann testified similarly. Spann, Brock, and Appellant knew each other from hanging out together and would often break into cars together at night. (Tr. 290–291). Spann also noted that Appellant would sometimes carry a gun with him while they were breaking into cars. However, he did not know Appellant had a gun with him on the night of April 3rd. (Tr. 292). Spann stated they came up upon the house and Appellant decided to check the vehicle there. While staying back with Brock by the road, he saw Appellant open the driver's side door, quickly followed by a shot, and then another shot.[4] Spann and Brock both ran—leaving Appellant behind. (Tr. 294–297, 301–

[4] Spann testified he did not directly see Appellant shoot. (Tr. 301).

302). Spann also testified to receiving a handwritten letter while both he and Appellant were in jail asking him to "put the blame on Brock." (Tr. 303–319).

Appellant did not testify.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Johnson*, 413 S.C. 458, 776 S.E.2d 367, 371 (2015). "When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (quoting *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998)). "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).

ARGUMENT

I. Appellant failed to object to the trial court's instruction on implied malice and thus failed to preserve the issue for appeal. Furthermore, Appellant cannot rely on *State v. Orr*, 128 S.C. 279, 122 S.E. 771 (1924) to raise a constitutional argument not applicable to this case

Appellant argues the trial court gave an unconstitutional comment on the facts by instructing the jury: "[i]nferred malice may also arise when the deed was done with a deadly weapon, which is any article or instrument which is likely to cause death or great bodily injury." (Tr. 365, ll. 12–15). Appellant plainly concedes that counsel failed to object to the charge. (Brief of Appellant at 5). Regardless of the apparent procedural bar, Appellant asks this Court to consider the improper implied malice charge as an unconstitutional comment on the facts based on the holding of *State v. Orr*, 128 S.C. 279, 122 S.E. 771 (1924)—where our Supreme Court bypassed the procedural bar and found a trial court's instruction to the jury that they were "relieved of the necessity of determining whether or not there has been a homicide" since the defendant "admit[ted] that he slew the deceased with a deadly weapon [—the defendant claimed self-defense]"to be an unconstitutional comment on the facts, and reversed for a new trial. He argues that because the implied malice charge violates the South Carolina Constitution, the issue can be raised on appeal without prior objection per *Orr*.

Respondent contends that such an argument fails where the holding of *State v. Burdette* and its progeny was limited to finding such an implied malice instruction improper "solely under the common law; pursuant to our policy-making role under the common law . . ." 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019). These rulings were not constitutionally based. As such, Appellant cannot rely on *Orr* and similar cases to excuse the procedural default. This Court should affirm.

The charge at issue here was error. However, having failed to object to the charge at trial, Appellant argues now on appeal that the implied malice charge should be held to be an unconstitutional comment on the facts that requires reversal even in the absence of an objection—despite acknowledging that in almost every recent "comment-on-the-facts" case, the issue was properly preserved for review. (*See* Brief of Appellant at 6–7) (citations omitted). Appellant also acknowledges that *Orr* has not been applied since 1924—suggesting that *Orr* is more so an anomaly rather than a well-applied rule. *Id.* Even so, if applied, *Orr* was applicable only to a specific constitutional violation—not just a comment on the facts but an incorrect and highly prejudicial one as well. *See Orr*, 128 S.C. at 279, 122 S.E. at 771.

Accordingly, Appellant cannot overcome the fact that the prohibition of this implied malice charge was rooted solely in the common law and not in the constitutional limitation on comments on the facts. Consider the history of this issue.

First, in *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), our Supreme Court held that an implied malice from the use of a deadly weapon instruction in a murder prosecution was inappropriate where "evidence is presented that would reduce, mitigate, excuse or justify the homicide." *Id.* at 600, 685 S.E.2d at 804. In doing so, the Court abrogated a long line of cases that had found the instruction permissible in most instances. *Id.* at 602–10, 685 S.E.2d at 803–809 (citations omitted). However, the Court explicitly declined to make its ruling a constitutional one:

> Belcher asserts the permissive inference charge violates our common law and our constitutional prohibition against charging juries on the facts.[] We elect to decide this appeal *solely under the common law*. *Relying on Belcher's common law challenge*, we conclude that our modern day usage of this jury charge has strayed from this Court's original jurisprudence.

Id. at 602, 685 S.E.2d at 804 (emphasis added, footnote omitted).[5]

Ten years later, in *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019), the Court expanded *Belcher* in holding that "regardless of the evidence presented at trial, a trial court shall no longer instruct a jury that malice may be inferred from the use of a deadly weapon." *Id.* at 493, 832 S.E.2d at 577. In doing so, however, the Court again limited the scope of its decision: "We decide this issue solely under the common law; *pursuant to our policy-making role under the common law . . ." Id.* at 503, 832 S.E.2d at 583. Additionally, while noting the implied malice instruction was erroneous going forward, the Court still applied harmless error analysis and found the error in that case was not harmless when coupled with the trial court's failure to instruct the jury that "malice was not an element of voluntary manslaughter." *Id.* at 496–501, 832 S.E.2d at 578–82.

This Court should apply the procedural bar and reject Appellant's attempt to expand the holding of *Burdette* and the cases that followed it. As conceded by Appellant, *Orr* has never been applied since 1924 to suggest that a constitutional limitation on commenting on the facts of a case can override a defendant's failure to object to an improper jury charge. *Burdette* made it clear that the ruling on the implied malice instruction was premised on the Supreme Court's policy-making role under the common law and it was not a constitutional ruling. Even so, irrespective of issue preservation, the cases just cited above show that such an error regarding the implied malice instruction would be subject to harmless error analysis. Since *Burdette*, other cases have held that giving the implied malice instruction was error, but such error was harmless. *See State v. Campbell*,

[5] The Court reiterated its reliance on its policy-making role under the common law towards the end of the opinion: "Under our policy-making role in the common law, we hold that the 'use of a deadly weapon' implied malice instruction has no place in a murder . . . prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing . . ." *Id.* at 610, 685 S.E.2d at 809.

443 S.C. 182, 185–86, 904 S.E.2d 441, 442–43 (2024) (reversing court of appeals in finding that erroneous implied malice instruction was harmless in light of "overwhelming evidence of malice"); *State v. Franks*, 432 S.C. 58, 80–83, 849 S.E.2d 580, 592–93 (Ct. App. 2020) (finding erroneous instruction harmless where record contained no evidence jury was confused/misled by instruction, no evidence that would reduce/mitigate/excuse, or justify the homicide, and no conflicting evidence regarding shooter's intent); *State v. Brooks*, 428 S.C. 618, 837 S.E.2d 236 (Ct. App. 2019) (same, instruction erroneous but harmless in light of other evidence of malice in the record).

In this case, the error would be harmless in light of other evidence of malice such as (1) the fact Victim was unarmed and posed no threat to Appellant, (2) the fact that Victim had no relations to Appellant and it was completely unnecessary to kill him in order to effectuate a robbery, and (3) the fact that Victim was attacked again while fleeing while posing no threat to Appellant. Despite Appellant's contention, the use of the weapon itself was not the only evidence of malice in this case. Thus, no relief is due.

This Court should affirm.

II. The trial court did not abuse its discretion in finding Detective Hansen's opinion about Victim's movements permissible under Rule 701, SCRE where such an opinion was not an improper lay witness opinion and any such error would be harmless

Appellant, in two issues, argues that the trial court erred in admitting Detective Hansen's opinion testimony regarding Victim's movements as he was being killed based on the relative absence of dirt on Victim's socks and the location of shell casings on the scene. He argues that such testimony was not proper lay witness opinion testimony under Rule 701, SCRE. Respondent contends that such testimony was proper lay witness testimony where it was based on the rational perception of Hansen, was helpful to understanding his testimony or to the determination of a fact in issue, and did not require special knowledge, skill experience, or training. Furthermore, any error in the admission of such testimony would be harmless where both co-defendants testified to Appellant walking towards Victim's vehicle on the driver's side, hearing two gunshots, and then fleeing with Appellant trailing behind him, and where the cause and manner of Victim's death was not a serious issue in contention at trial. This Court should affirm.

A. Relevant Facts

Detective Hansen testified at trial about the crime scene and the investigation leading to Appellant's arrest. Relevant to this issue, Hansen testified to the position of Victim's body relative to the vehicle. Hansen emphasized the scene was undisturbed as he arrived. (Tr. 184–185). He continued:

> Q. I want to show you State's Exhibit No. 7 and ask if you can identify it.
>
> A. Yes, sir. This is a silver Chrysler 200 that [Victim] was driving that night.
>
> Q. All right. And that is the position that you found [Victim] in when you got there that night?
>
> A. Yes, sir. He was lying next to the passenger side of the vehicle with both driver and passenger doors open.

Q. Both doors open?

A. Yes, sir.

Q. All right. . . . By the time this picture was taken, had the evidence custodian located evidence near the body?

A. Yes, sir. There's the marker there marker 1.

Q. Marker 1 . . .

A. Yes, sir.

Q. . . . is near the body?

A. Yes, sir.

Q. All right.

A. And that was a cartridge casing or a shell casing.

(Tr. 185, ln. 9—Tr. 186, ln. 4).

At this point, the solicitor asked Hansen whether he could "tell from the position of the door and the position of the body whether [Victim] had gone around since . . . we heard that there was testimony that he was shot on the driver's side of the car?" Hansen said that was correct. The solicitor also asked if Victim was found on the passenger side of the vehicle, which Hansen also confirmed. Appellant did not object to *either* of these exchanges. (Tr. 186, ll. 4–10). The solicitor continued:

Q. *Did you have any information that led you to believe how he got there?*

A. Yes, sir. So with both doors being open . . . one thing I noticed on the driver's side was that his shoes, he had some slides, some sandals that were left on the driver's floorboard, and one thing we noticed as well was the bottom of his socks . . . he had on white socks, and they were fairly bright white socks, and they were essentially clean, aside from the ball, or the area around his toes, *where we believe he ran a short distance, but what we believe is that he went from the driver's seat where he was laying when the door opened and . . .*

(Tr. 186, ll. 11–22) (emphasis added).

At this point, Appellant objected as to "what he believes." Judge Newman sustained the objection. (Tr. 186, ll. 23–25). The solicitor continued:

> Q. Based on your observing the scene, did you examine the socks on the feet of [Victim]?
>
> A. We did.
>
> Q. All right. And I want to show you what's marked as State's Exhibit No. 12. Could you identify that?
>
> A. Yes, sir, those are [Victim]'s white socks as he was wearing.
>
> Q. All right. *And based on your examination of the feet of [Victim] that day, do you believe that he ran around the car to the passenger side?*
>
> A. Not outside of the car. We don't believe he got out and ran around.
>
> Q. All right. What do you believe he got out and ran around.

(Tr. 187, ll. 1–14) (emphasis added).

At this point, Appellant made the same objection, which Judge Newman again sustained. The solicitor then asked why Hansen "believe[d] that [Victim] did not run around the car[,]" to which Hansen started to say "the limited amount of dirt on his . . ." before being interrupted by another objection. This time, Judge Newman overruled the objection. (Tr. 187, ll. 15–24). Hansen finished his statement, noting the "limited amount and small amount of dirt on the bottom of his socks." The solicitor continued:

> Q. All right. So your theory, as far as examining the evidence that you found at the scene, is how did he get on the passenger side?
>
> A. Through the . . . over the center console, over the passenger seat, and then out of the open passenger door.
>
> Q. Did you notate any evidence inside the vehicle that supported your theory that he crawled across the passenger seat?
>
> A. There were phones that were scattered across the driver's seat and passenger seat that was believed [sic] he went there.

(Tr. 188, ll. 1–13). The solicitor then clarified Hansen's theory by asking whether he believed that Victim went through the car based on the blood on the passenger seat and the condition of Victim's socks. Hansen said that was correct. He also confirmed that after going through the car, Victim ended up on the ground next to the passenger side of the vehicle. (Tr. 188, ln. 18—Tr. 189, ln. 6).

Relevant to Appellant's second issue regarding this testimony, Hansen later opined that evidence supported the idea that Victim was further injured after he was on the ground based on the shell casing found near his body on the passenger side of the vehicle and the gunshot wound to the back of his head. (Tr. 189–192). The solicitor continued:

> Q. Could you . . . decipher from an injury where the shooter was and where the victim was?
>
> A. *Based on shell casings*, *the first shot would have been on the driver's side. The second shot would have been on the passenger's side as Mr. Smith was fleeing, running from the car*.

(Tr. 192, ll. 13–18) (emphasis added). At this point Appellant objected on the basis that Hansen was not qualified as an expert in crime scene reconstruction. Judge Newman overruled the objection, stating that Appellant had objected after Hansen had already answered. (Tr. 192, ll. 19–24).

B. Discussion

Rule 701, SCRE provides:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

Our courts have previously held that Rule 701 allowed an officer to testify that they observed what they believed to be a bite mark on a defendant. *See State v. Cauthen*, 447 S.C. 45, 53–54, 923 S.E.2d 655, 660 (Ct. App. 2025); *accord State v. McClinton*, 265 S.C. 171, 176–77,

217 S.E.2d 584, 586 (1975). Both courts held that such statements were opinions of laymen based on their personal observations and did not require specialized knowledge or training. *Cauthen*, 447 S.C. at 53, 923 S.E.2d at 660 (citing *McClinton*, 265 S.C. at 176–77, 217 S.E.2d at 586); *see also State v. Gibbs*, 438 S.C. 542, 547–53, 885 S.E.2d 378, 381–84 (2023) (holding that testimony explaining the operation of a single action revolver vs. a double action revolver was a "'rudimentary explanation'" that did not require expert testimony, and court of appeals was correct in not relying on Rule 701 given simplistic nature of testimony)

In contrast, our Supreme Court held in *State v. Pickrell* that an investigator's testimony regarding "various ejection patterns of a semi-automatic pistol" was inadmissible absent an expert qualification. 443 S.C. 497, 500–504, 905 S.E.2d 374, 375–77 (2024). The Court also held that another investigator's testimony to the effect of stating that he had "trouble understanding" the defendant's account of a shooting was also improper lay witness testimony under Rule 701. *Id.* at 501–503, 905 S.E.2d at 376–77. However, the Court found both errors harmless in light of the fact that the location of the shooting was not in dispute (the defendant argued self-defense), and the existence of other corroborating testimony regarding the defendant's account to law enforcement by another investigator. *Id.* at 500–504, 905 S.E.2d at 375–77.

In the present case, the record thoroughly supports the assertion that Detective Hansen's opinion regarding Victim's movements was rationally based on his own personal observations, was helpful to the trier of fact, and did not require special knowledge or training. First, the opinion on Victim's movements from the driver's seat to the ground next to the passenger side of the vehicle via the front passenger door based on the relative absence of dirt on Victim's white socks was perfectly reasonable. Considering the fact both doors were opened, the fact Victim was initially in the driver's seat, the fact that Ms. Ragin was in the front passenger seat and fled

unharmed, combined with the fact that there was blood on the passenger seat area, it was reasonable to make the inference that Victim crawled through the vehicle rather than running around the car based on the simple premise that running through grass with white socks on would make the socks dirtier than momentarily making contact with the ball of their foot before collapsing to the ground.

For the same reasons, it was perfectly reasonable to suggest that Victim went through the vehicle rather than running around the vehicle based on the location of the shell casings. Recall Ms. Ragin's testimony. She clearly testified that the driver's door was opened, immediately saw a gun thrusted towards Victim, and then heard a gunshot. While scrambling towards her house from the passenger door, she heard another gunshot. (Tr. 112–123). The shooter was at if not inside the driver's side door when the first shot was fired. Where else was Victim supposed to go? It beggars belief to suggest he would attempt to go through the driver's side door and around the car when there was a person pointing a gun at him who has already shot him, and he was unarmed. The shell casing by the driver's door simply corroborates Ms. Ragin's prior testimony and further confirms the validity of Hansen's theory. These commonsense observations and conclusions are exactly the kind of lay witness testimony envisioned and permitted under Rule 701 and other authorities. *See Cauthen*; *McClinton*; *Gibbs*, *supra*.

A cursory review of the record on this issue reflects another fundamental flaw with Appellant's argument—he totally fails to show prejudice in light of other competent evidence that supports the State's assertion that Victim crawled through the passenger side of the door before being shot again in the back of the head, and where such testimony/evidence was not objected to and is not currently being challenged on appeal. *See, e.g., State v. Sweet*, 374 S.C. 1, 5, 647 S.E.2d 202, 205 (2007) ("To properly preserve an issue for review there must be a contemporaneous

objection that is ruled upon by the trial court."); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("An unappealed ruling, right or wrong, is the law of the case.") (citations omitted).

Consider Ms. Ragin's testimony regarding the shooting combined with the unobjected testimony and evidence presented regarding the state of the vehicle and Victim's body when law enforcement arrived on scene.[6] For example, Detective Amanda Snapp testified to finding shell casings under the driver's door and next to Victim's body, finding dried blood drops on the passenger seat, and the position of Victim's body relative to the passenger side of the vehicle. Other than an objection to Snapp's purported opinion on how the blood drops got on the seat that was sustained, Appellant generally made no objections to her testimony. (Tr. 155–167). Such testimony and evidence (the admitted photographs and the bodycam) combined with Ms. Ragin's testimony regarding the shooting was enough on its own to support the theory that Victim crawled through the passenger side in an effort to escape from the shooter. Finally, the cause and manner of death of Victim was generally undisputed, and Appellant offered no evidence or cross-examination to adequately rebut the State's theory regarding Victim's movements. Thus, Appellant cannot show any prejudice from the admission of Hansen's opinion testimony regarding Victim's movements.

This Court should affirm.

[6] Respondent does note however that Appellant did challenge the presentation of Officer James Salmon's bodycam footage and other photos of Victim's body on the basis that showing Victim's injuries would be unfairly prejudicial to Appellant. After discussions between counsel and Judge Newman however, efforts were made to reduce the prejudicial impact by for example, only presenting a black and white photo of Victim's body depicting the head injury. Appellant made an additional objection to the presentation of the bodycam footage but was overruled. (*See* Tr. 134–159). Those rulings by Judge Newman are not being challenged here on appeal. *See Sweet*; *Atl. Coast*, *supra*.

III. The trial court did not abuse its discretion by allowing Detective Hansen to testify that Appellant was arrested after interviewing co-defendants Brock and Spann where such testimony did not elicit the substance of the co-defendants' statements and was merely testifying to the investigative steps of the case

Appellant argues the trial court erred by allowing Hansen to imply the co-defendants implicated Appellant over Appellant's hearsay objection. Specifically, Appellant argues that such testimony was hearsay implied by conduct that impermissibly allowed the jury to infer that the co-defendants implicated Appellant. Respondent contends such testimony was plainly not hearsay as it is a well-recognized rule that investigators testifying as to what they did during the course of their investigation as a result of speaking to people or after learning certain information is non-hearsay—so long as the testimony does not elicit the substance of any out-of-court statement. This is sometimes referred to as the "investigative hearsay" exception. Appellant's argument flies squarely in the face of multiple cases with similar fact patterns where our appellate courts have affirmed this practice. Appellant cannot show any error by the trial court in following our caselaw. And Appellant can show no prejudice where both co-defendants testified and were thoroughly cross examined. This Court should affirm.

A. Relevant Facts

Later in Hansen's testimony, the solicitor questioned him regarding the steps of the investigation taken after securing the scene. Hansen described interviewing Ms. Ragin and Victim's family members to pursue any leads, as well as executing search warrants for social media and phone records, but the case stalled shortly thereafter. However, in November, Hansen testified that law enforcement received "additional information"—prompting investigators to pick up co-defendants Brock and Spann for questioning. Hansen stated: "After picking them up . . . or getting their names and picking them up, they were interviewed, and they provided statements saying that

they were all together." Appellant objected on hearsay grounds. (Tr. 193–194).

The solicitor noted that they were "not going into the substance of their statements" but instead "getting the officer to go through the protocol of why he acted the way he acted . . . after he interviewed them, after they interviewed." The solicitor offered to rephrase the question, which the Court accepted. (Tr. 194). The solicitor then asked about the first two people Hansen interviewed—Brock and Spann, specifically whether they gave a statement and whether they were Mirandized. The solicitor asked if both of them gave "details" and "names," prompting objection by Appellant. (Tr. 195–196). After the second objection, Judge Newman excused the jury. Appellant argued that the two co-defendant's statements were on video, Hansen was not there, and it would be hearsay since they had not testified yet. (Tr. 197). The solicitor again emphasized that the State was not intending to elicit the substance of the co-defendant statements, and that Hansen was supposed to be the State's last witness but was moved up due to a schedule conflict.

The solicitor surmised: "I'm going into the fact *that as a result of the interviews*, information was gathered, and *based on that information*, warrants were served on all three individuals . . ." (Tr. 198). The Court and the solicitor continued:

> **The Court:** Well, if the testimony was limited to what you just said that would be fine, but it appears the witness . . . is adding in statements given by the co-defendants.
>
> **Mr. Finney, III:** But not the substance of the statements. I did ask him: Did this co-defendant give a statement, and he said yes, but I wasn't going to ask the substance or the details.
>
> **The Court:** Well . . . he said yes, and then said some other things so. . . it appears . . . and I know you've moved him out of order that he might need to be subject to being recalled to fill in some blanks that Ms. Cooke thinks will exist because she is correct.
>
> You know, you have problems of statements of non-testifying co-defendants. I don't think you can admit a statement of a non-testifying co-defendant.

> **Mr. Finney, III:** And respectfully, the State was not going to go into the details just that the information led them to a suspect who, based on their statements, were charged, which led us to being here.
>
> **The Court:** And he said all of that and more there's the problem. The "and more" is the problem, so to that extent, the objection is sustained.

(Tr. 198, ln. 24—Tr. 199, ln. 24). Later, with the jury back in the courtroom, the solicitor and Hansen continued:

> Q. . . . The information that you say led to the suspects, when was it received?
>
> A. It was November 2nd.
>
> Q. And when did you talk to the first suspect, Mr. Brock?
>
> A. November 6th, four days later.
>
> Q. Four days later. How about Mr. Spann?
>
> A. Same day, four days later.
>
> Q. Same day. And how about [Appellant]?
>
> A. Same day.
>
> Q. All right. So on November 6th, you had accumulated information from three people.
>
> A. That's right.
>
> Q. All right. *As a result of that information, what happened?*
>
> A. A warrant . . . was drawn and served on each of the three people involved.

(Tr. 206, ll. 1–17) (emphasis added).

As discussed above in the Statement of Facts, co-defendants Brock and Spann both testified, implicating Appellant as the shooter. (*See* Tr. 243–325).

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 (in this case more so oblique references to 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).

Consider first an example of improper "investigative hearsay." In *State v. King*, 422 S.C.

47, 810 S.E.2d 18 (2017), our 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).

In contrast, consider two cases that are factually similar to this case. First, 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 the 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.

Regardless of Appellant's argument regarding "hearsay implied by conduct," he still fails to show the statements at issue here impermissibly elicited the substance of an out-of-court statement for the truth of the matter asserted. Hansen testified here that police interviewed co-defendants Brock and Spann, and *as a result of* speaking to them, they arrested all three of them—meaning Brock, Spann, and Appellant. Respondent does note that earlier in his exchange, Hansen likely did impermissibly start to get into the substance of the co-defendant statements by noting

"they provided statements *saying they were all together*." Appellant objected and the Court sustained the objection after the solicitor offered to rephrase the question. (Tr. 194). Then, the solicitor, with respect to both co-defendants, asked Hansen if they gave "details and names." Appellant objected again and, after discussion between counsel and the Court, the Court sustained the objection to the extent Hansen was "about to say more." (Tr. 194–200). Back in front of the jury, Hansen stated all three were arrested as a result of the interviews.

Thus, like in *Kromah* and *Weaver*, Hansen permissibly testified that Appellant was arrested as a result of speaking to his two co-defendants without eliciting the substance of their statements. Furthermore, Appellant fails to show prejudice when his objection regarding the substance of the co-defendant statements was already sustained, twice, by the trial court. Also, even assuming substantive hearsay was elicited through Hansen, Appellant cannot show prejudice because both co-defendants testified and Appellant had ample opportunity to cross-examine them regarding their prior statements to law enforcement. In fact, Appellant's entire defense relied on impeaching the co-defendants with their prior statements to law enforcement. Accordingly, this Court should affirm.

IV. The trial court did not abuse its discretion by allowing Detective Hansen to testify regarding what he learned about Victim's injuries from the autopsy where such testimony was not hearsay and any error would be harmless since Victim's manner and cause of death was never disputed by Appellant

Appellant argues the trial court erred by allowing Hansen to testify about the pathologist's conclusions because such out-of-court findings were hearsay. Respondent contends that no hearsay was implicated as Hansen was testifying to what he learned from the autopsy (potentially based on personal observation), not from the pathologist, and even assuming such testimony was hearsay, Appellant cannot show any prejudice where the pathologist later testified as to her findings without cross-examination or objection by Appellant, and where the cause and manner of death of Victim was not an essential issue in contention at trial. This Court should affirm.

A. Relevant Facts

In the middle of their discussion regarding the crime scene and the steps of the investigation, the solicitor and Hansen engaged in the following exchange:

> Q. Did you get information *from the autopsy* about the injury to [Victim]?
>
> A. Yes.
>
> Q. Can you tell us *what you found* or *what you learned*?
>
> **Ms. Cooke**: Objection. Hearsay of pathologist is testifying [sic].
>
> **The Court:** All right. Let me hear that question again.
>
> **Mr. Finney, III:** I asked the investigator: Based on the information you received *from the autopsy*, did you learn about injuries that [Victim] received, and . . . what were those injuries? That's the question.
>
> **The Court:** All right. I overrule the objection.
>
> A. Two gunshots. There were actually three marks or indications. One gunshot to his left arm, which . . .
>
> Q. Left arm?

> A. . . . would have been on the driver's side, which would have been close to the door. There was a graze to his chest that would have been consistent with that one bullet being one shot altogether, and then there was a second gunshot to the back of the head, or the head.
>
> Q. So the gunshot would have been to the back of the head?
>
> A. Yes, sir.

(Tr. 191, ln 2—Tr. 192, ln. 2) (emphasis added).

Later, Dr. Ellen Riemer, the forensic pathologist, testified to similar findings based on the autopsy she conducted. (Tr. 235–241). Appellant made no objection and declined to cross-examine Dr. Riemer.

B. Discussion

This testimony was likely not hearsay as the testimony could just as easily have been based on Hansen's own personal attendance at the autopsy. Read carefully, this testimony was actually not a statement by the pathologist repeated by Hansen. *See* Rule 801(c), SCRE ("'Hearsay' is a statement, *other than one made by the declarant while testifying*. . . , offered in evidence to prove the truth of the matter asserted.") (emphasis added). It was also not a description of a non-verbal "assertion." Rule 801(a), SCRE. Though not explicitly elicited during his direct examination, it is a common practice that investigators personally attend the autopsy of the victim in a murder case. Thus, Hansen would have had the opportunity to personally observe the same wounds and injuries he had already seen while at the crime scene.

Regardless, Appellant cannot show prejudice from Hansen's testimony regarding Victim's wounds where (1) Hansen and others had already testified to Victim's wounds (primarily the lethal gunshot wound to the back of his head) when he was found dead, thus making any hearsay cumulative; (2) the pathologist later testified to the same *without* any cross-examination by

Appellant, thus curing any hearsay from the pathologist; and (3) Victim's manner and cause of death was not in serious dispute at trial; making such hearsay ultimately irrelevant to any viable defense. Appellant unsuccessfully premised his defense on attacking the credibility of the co-defendants and the State's investigation. As a consequence of that, Appellant did not challenge the manner and cause of Victim's death. *See State v. Torres*, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error, which results in prejudice to the defendant."). Because Appellant did not contest these facts, he cannot show prejudice and reversal is not warranted.

This Court should affirm.

V. Appellant cannot rely on a cumulative error argument that was never presented to the trial court and in any event would be inapplicable to this case where Appellant has shown no errors insignificant by themselves that accumulated to deny Appellant a fair trial

As a last-ditch effort, Appellant makes a cumulative error argument that he plainly concedes was never presented to the trial court: "Appellant presented the first theory below in a motion for a new trial, which the trial court erred by denying. . . . *He presents the second theory now on appeal* . . . " (Brief of Appellant at 23). The first theory Appellant refers to is the proposition that "a defendant may make a motion for a new trial arguing the errors that occurred in the trial necessitate re-trial when considered together." *Id.* This is not cumulative error. Appellant's second theory more closely follows actual cumulative error doctrine, but it now must fail under basic issue-preservation principles as Appellant failed to articulate this ground to the trial court. Furthermore, Appellant fails to show any aggregation or accumulation of otherwise insignificant errors such as to deny him his right to a fair trial. For these reasons, this Court should affirm.

First, with respect to Appellant's first theory which he argues was a variation of a cumulative error argument, consider the entire exchange relating to the post-trial motion. After requesting individual polling and the bailiff announcing a unanimous verdict, the following exchange took place:

> **The Court:** All right. Thank you, sir. Are there any post-trial motions?
>
> **Ms. Cooke:** *No, Your Honor.*
>
> **The Court:** Pardon?
>
> **Ms. Cooke:** *No, Your Honor*.
>
> **The Court:** All right. Note . . . the Court will note . . . I'm not going to give any additional time. The Court will note that this is the appropriate time to ask for a new trial, or judgment, an arrested verdict or . . . whatever based on rulings made by the Court during the trial.

Do you have any such motions to make? Defense, any motions.

Ms. Cooke: Yes . . . Judge, I would ask for a new trial *based on the objections that were overruled* including playing the whole video and . . . *this whole part*.

The Court: Which video.

Ms. Cooke: The impeachment of Mr. Brock, Mr. Justice Brock.

The Court: Oh, okay. *The one you opted not to play?*

Ms. Cooke: Yes, Your Honor.

The Court: All right.

Ms. Cooke: Because I was going to have to play the inadmissible parts.

. . .

Mr. Finney, III: On behalf of the State . . . it was my understanding that . . . *the objection was withdrawn*, so I don't know that it's still part of the record to go forward on, but . . .

The Court: *Yeah*.

Mr. Finney, III: . . . we offered to let her hear parts of the testimony that the defendant did say on tape. She said she doesn't remember the defendant saying that. I told her that, but we had the clip ready for her to hear if she wanted to hear.

The Court: Yeah, well, the defendant, through defense counsel, *decided not to offer that particular video*, . . . audio and video. Which was it audio or video?

Mr. Finney, III: Audio and video.

The Court: Audio and video. *Defense decided not to offer it*. The Court took a break to have the defense decide what the defendant wanted to offer or present.

Following the break, counsel indicated that *she did not wish to offer it*, and I say that to keep the record clear that there was no ruling that the defense had to play anything that was inadmissible. *Nothing was offered*.

The counsel reconsidered her position and . . . *did not offer that video* following a break. All of that, notwithstanding. *I den[y] the motion for a new trial*. . . .

(Tr. 383, ln. 7—Tr. 385, ln. 8) (emphasis added). The discussion here refers to the attempted

impeachment of co-defendant Brock with an interview statement, but as noted by the Court, defense counsel eventually decided not to use it. (*See* Tr. 272–280). It is clear from this exchange that Appellant's main argument for the motion for a new trial, and the Court's corresponding ruling, was based on not presenting a video to impeach Appellant's co-defendant—a video that Appellant specifically decided not to play after deliberation and an issue that is not currently being raised on appeal. The fact that the focus of the discussion was related to this specific video demonstrates that Appellant's "first theory" regarding the motion for a new trial was not a cumulative error argument.

Thus, the issue must be deemed procedurally barred as there is no indication Appellant raised an actual cumulative error issue below to show a denial of his right to a fair trial on either "theory." *See State v. Durant*, 430 S.C. 98, 111 n.3, 844 S.E.2d 49, 55 n.3 (2020) (finding cumulative error argument not preserved for review on appeal where the defendant "never argued this ground to the trial court"); *State v. Eubanks*, 437 S.C. 458, 489, 878 S.E.2d 335, 352 (Ct. App. 2022) ("Eubanks did not raise the cumulative error doctrine before the circuit court or in his motion for a new trial. Therefore, this argument is not preserved for our review."). Alternatively, Appellant's motion for a new trial that was only supported by the cursory basis of "the objections that were overruled" was overly broad and fundamentally vague—and was therefore not sufficient to preserve any cumulative error argument. The only other potential basis, as discussed above, was Appellant's own failure to offer a video for impeachment. *See also State v. Varvil*, 338 S.C. 335, 340, 526 S.E.2d 248, 251 (Ct. App. 2000) ("A general objection is ordinarily insufficient to preserve an issue for appeal.") (citing *State v. Taylor*, 333 S.C. 159, 508 S.E.2d 870 (1998); *State v. Nelson*, 331 S.C. 1, 501 S.E.2d 716 (1998)) (parentheticals omitted).

Further still, Appellant is unable to show any error in the trial court's evidentiary rulings

as contested in this appeal. "[B]ecause the trial court did not commit any reversible errors[,]" this Court must "reject [the] contention that a new trial is warranted." *Durant*, 430 S.C. at 111 n.3, 844 S.E.2d at 55 n.3 (citing *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999)) ("Respondent must demonstrate more than error in order to qualify for reversal [pursuant to the cumulative error doctrine]. Instead, the errors must adversely affect his right to a fair trial."). *Johnson* is instructive here.

In *Johnson*, our Supreme Court found that "the facts of th[e] case d[id] not support a finding cumulative errors warranted reversal" and looked in detail at each of the evidentiary issues: one in which the court found "prejudicial error," one that "was not prejudicial," and another that "was not error." 334 S.C. at 93, 512 S.E.2d at 803. Given a review of the individual issues, the Court decided that Johnson had failed to show a combination of errors that "adversely affect his right to a fair trial." *Id.* (citing *Tennant v. Marion Health Care Found., Inc.*, 459 S.E.2d 374 (W. Va. 1995)). In essence, the appealing party "'must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground.'" *State v. Gleaton*, 444 S.C. 394, 429, 906 S.E.2d 630, 648 (Ct. App. 2024) (quoting *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013), *aff'd*, 415 S.C. 632, 785 S.E.2d 202 (2016)). Even multiple errors do not automatically necessitate a finding of deprivation of a fair trial. *Gleaton*, 444 S.C. at 430, 906 S.E.2d at 649. Notable, though, is the *Johnson* court's parenthetical from the cited West Virginia case: "[C]umulative error doctrine provides relief to a party when a combination of errors that are *insignificant by themselves* have the effect of preventing a party from receiving a fair trial and it requires the *cumulative effect of the errors* to affect the outcome of the trial[.]" *Johnson*, 334 S.C. at 93, 512 S.E.2d at 803 (citing *Tennant*, 459 S.E.2d at 374) (emphasis added).

At most, Appellant here suggests that the purported evidentiary errors as well as the implied malice instruction at issue here were all reversible error. That presents no argument on how otherwise insignificant errors have combined to deny him a fair trial. Procedural bars apart, Appellant has thus failed to raise an argument that could support relief under the cumulative error doctrine.

This Court should affirm.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

P. SANDERS LINKER
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY: *s/ P. Sanders Linker*

P. Sanders Linker
S.C. Bar No. 107688

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-0918

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
April 8, 2026