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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Patrick Cleburne Fant, III

Appellate Case No. 2024-002140

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ISRAEL ROBINSON,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in allowing the elected coroner to testify about findings from an autopsy report without requiring the pathologist who conducted the autopsy to testify when the evidence included testimonial hearsay in violation of the Sixth Amendment right to confront witnesses?

2. Did the trial judge err in refusing to instruct the jury on the law of self-defense?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Here, where the cause of death was undisputed and Melendez-Diaz and its progeny do not address autopsy reports, did the trial court abuse its discretion in allowing the coroner to testify about the findings in the autopsy report? Further, here where the testimony from the coroner was cumulative to other unobjected-to testimony, this was not a case of self-defense, and the cause of death—gunshot wounds—was undisputed, was any error harmless beyond a reasonable doubt?

2. Did the trial court properly deny self-defense when the evidence only showed either Appellant (1) returned to Pinecrest looking for "hunters" and "hopped" out of his car with an assault rifle immediately before the shooting or (2) "bailed" from his car and did not return?

STATEMENT OF THE CASE

Appellant is presently confined in the South Carolina Department of Corrections serving an aggregate fifty-five-year sentence. In June 2024, the Charleston County Grand Jury indicted Appellant for murder, attempted murder, and possession of a weapon during the commission of a violent crime (2024-GS-10-3096, -3097, -3098). On December 9-12, 2024, Appellant proceeded to a jury trial before the Honorable Patrick C. Fant, III. Assistant Public Defenders Karla C. Martinez and Jason T. King represented Appellant, and Assistant Solicitors Lemuel C. Zeigler and Daniel W. Cooper prosecuted the case. The jury convicted Appellant as indicted, and Judge Fant imposed concurrent sentences of fifty-five years for murder, thirty years for attempted murder, and five years for the weapon charge. On December 18, 2024, Appellant served a timely notice of intent to appeal. This appeal follows.

STATEMENT OF FACTS

Appellant was indicted for murder and attempted murder following a shooting at Pinecrest Apartments on June 22, 2021. At trial, Detective David Pritchard testified he responded to a "shots fired" call at Pinecrest that day and saw Jaquez Butler's (Victim's) deceased body lying facedown on the playground with "several gunshots" in his back. (Tr. 128). During Detective Pritchard's testimony, the State entered surveillance videos from Pinecrest Apartments depicting Appellant's gold Nissan Altima[1] circling the parking immediately before the shooting.[2] (Tr. 130-31, 134-47; Exs. 201-208). Detective Pritchard testified the Nissan caught his attention because it entered the parking lot "very fast"—so fast it passed another car entering the complex at the same time—and "was circling the area . . . like it was looking for somebody, and in a rush." (Tr. 135-36, 139; Ex. 201, 203, 205). According to Detective Pritchard, after the Nissan circled the parking lot and took another lap, gunshots rang out. (Tr. 140-41). Detective Pritchard pointed out a person in the video running towards the area the Nissan was located, and he stated another person appeared in the area where that person was running. (Tr. 141-43). The Nissan left after the gunshots. (Tr. 143).

Investigator Moseley responded to the scene and recovered twenty-eight .22-caliber Aguila shell casings, grouped in two distinct areas of twelve and sixteen casings. (Tr. 156-58). She also collected sixteen projectiles from the coroner, which were removed at the autopsy. (Tr. 180, 182). Moseley examined Victim's body at the scene and observed eleven gunshot entrance wounds on his back and six "spalling effect" points—"basically where there was something that had terminated just under the skin and created a little lump"—on the front of his body. (Tr. 177-78).

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[1] Officer Sean Bernard testified law enforcement began looking for a gold Nissan after receiving information that it was a vehicle of interest. When he located the vehicle, Appellant told Officer Bernard the car belonged to him. (Tr. 251-52).

[2] One of the videos, State's Ex. 206, captured the audio of the shooting.

Sanguni Dotson testified she was with Victim and her boyfriend Eugene Morgan ("E.J.") the day of the shooting. (Tr. 299). She recounted returning to Pinecrest to drop off Victim:

> A. When they got out the car, all I know is a couple minutes later I saw somebody tall, skinny, with dreads run around from the building, get into a car, and then E.J. came back to the car, running, and he sounded like he was out of breath.
>
> Q. And what did E.J. say when he got back in the car?
>
> A. All he said was someone was standing over [Victim]. Somebody was shooting at them. Somebody was standing over [Victim].

(Tr. 300). She stated E.J. told her there were two shooters, although she only saw one person with a weapon. However, she acknowledged she "probably" told law enforcement that she saw two people with assault-style rifles. (Tr. 301, 303). Dotson recalled seeing both Victim and E.J. with guns prior to the shooting; she stated Victim moved his gun from his jacket to the side of his pants. (Tr. 301-02). After the shooting, Dotson stated the shooters got into a silver Nissan that was parked behind her and left. (Tr. 302, 307). She clarified that she heard the shooting but did not see it, and she could not see the shooters' faces: one of them had a mask but the "other one I can't remember what I seen." (Tr. 307, 315).

Framon Fraiser teistifed he was with Appellant the day of the shooting.[3] He recalled that in the month prior to the shooting, "[s]omebody went after [Appellant's] brother, and they came to his place and a shooting happened." (Tr. 319). Frasier stated he was with Appellant on June 22 at Pinecrest (where Appellant lived), and they drove to Max's Quick Stop[4] to get cigars. (Tr. 320-

[3] Frasier also went by E.J., but he is not the same person that Dotson was with. (Tr. 299, 318).

[4] The State introduced surveillance footage from the Quick Stop to corroborate this testimony. (Ex. 162).

21). While waiting outside the Quick Stop, Frasier spoke to Lorenzo "Smily." Johnson[5] (Tr. 321). Frasier stated he and Appellant both had assault-style rifles; Frasier had a .22 caliber but did not recall what caliber Appellant had. (Tr. 322). He testified Appellant told him "people was looking for him" at Pinecrest, so they returned to Pinecrest and circled the area multiple times "looking for the guys who was supposedly running around his house." (Tr. 326). Frasier recounted the shooting:

> A. After we parked the vehicle, I stayed in the vehicle and he hopped out of the vehicle and shots went off.
>
> Q. Did you eventually go up there too?
>
> A. Yes, sir.
>
> Q. Okay. So who shot first?
>
> A. They did.
>
> Q. "They"?
>
> A. The guys—no. The—well, it was around the 4th of July time so, don't know if it was shots or fireworks. You know what I'm saying? But it was loud, a couple of loud shots—supposedly sounded like shots.
>
> Q. Do you remember Israel Robinson shooting his firearm at any time?
>
> A. Yes, sir.
>
> Q. Did he shoot first before you?
>
> A. Before me, yes.
>
> Q. Okay. About how many times did he shoot?
>
> A. I don't know.

[5] Although Johnson denied seeing Appellant and Frasier at the Quick Stop, the State introduced evidence that he told law enforcement that the occupants of the gold Nissan showed him a rifle that day. (Tr. 81-83, 278).

(Tr. 326-27). He clarified there were three people on the playground at the time, and Frasier "shot back to protect myself." (Tr. 327-28). He further clarified that Appellant shot first, and the other individuals may have shot back, but he was unsure. (Tr. 331). Frasier did not know or recognize the other people. He stated he got into Appellant's car after the shooting, and Appellant drove him home. (Tr. 328).

When police later spoke to Appellant, he admitted he owned the gold Nissan but stated he had it parked all night the night of the shooting. After being confronted with video surveillance from the Quick Stop, however, Appellant admitted he went to the Quick Stop with Frasier that day. (Tr. 257-59). He initially denied returning to Pinecrest but later admitted he returned to Pinecrest after leaving the Quick Stop. (Tr. 258). However, he claimed "he bailed out of the car with some friends and never went back to the car." (Tr. 258). Appellant told police "his brother was beat up a few days prior[,] . . . but he didn't know who did it." (Tr. 259).

Police searched Appellant's car and found a black bag in the trunk with Plinker Tactical magazine packaging; a black bookbag in the trunk with two boxes of .22 Aguila long rifle ammunition; a magazine containing .22-round ammunition; another box of Aguila .22 ammunition in the center console; a fired cartridge casing with a REM (Remington) headstamp; eight live rounds; and additional spent cartridge cases. (Tr. 226, 229-33, 237). Appellant's fingerprint was on one of the ammunition boxes. (Tr. 246). Police did not find any guns around Victim. (Tr. 281).

Appellant did not testify or present a defense. The trial court denied his request to charge voluntary manslaughter and self-defense. (Tr. 446). The jury convicted him as indicted. (Tr. 515).

STANDARD OF REVIEW

An appellate court's review "extends only to corrections of errors of law." State v. Benton, 443 S.C. 1, 6, 901 S.E.2d 701, 703 (2024). Appellant courts "view evidentiary rulings for abuse of discretion." Id. However, "whether a statement is testimonial and therefore subject to the confrontation clause is a question of law reviewed de novo." State v. Brewer, 438 S.C. 37, 44, 882 S.E.2d 156, 160 (2022).

"An appellate court will not reverse the trial judge's decision regarding jury charges absent an abuse of discretion." State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006). "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." Id.

ARGUMENT

1. Because the cause of death was undisputed and Melendez-Diaz and its progeny do not address autopsy reports, the trial court did not abuse its discretion in allowing the coroner to testify about the findings in the autopsy report. Further, any error is harmless beyond a reasonable doubt when the testimony from the coroner was cumulative to other unobjected-to testimony, this was not a case of self-defense, and the cause of death—gunshot wounds—was undisputed.

Appellant argues the trial court erred in allowing the corner to testify about findings from an autopsy report when the testimony was inadmissible hearsay that violated the Confrontation Clause. He specifically contends the autopsy report did not fit the public record and vital statics hearsay exceptions in Rules 803(8) & (9), SCRE, and the testimony was likewise inadmissible under Rule 703, SCRE. Regarding the Confrontation Clause, Appellant contends these facts are distinguishable from State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005) because in Cutro, the pathologists who performed the initial autopsies on two of the victims "both testified at trial and were subject to cross-examination." (IBOA 9). Appellant additionally notes Cutro was decided prior to Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009) (holding a drug analysis report was testimonial in nature), and he contends this case is akin to State v. Brewer, 438 S.C. 37, 882 S.E.2d 156 (2022), where the South Caroliana Supreme Court held a drug analysis report was testimonial. Appellant avers there is a split in authority in federal and state courts as to whether autopsy reports are testimonial but acknowledges South Carolina concluded in Cutro that autopsy reports are not testimonial. (IBOA 12-18).

Contrary to Appellant's assertion, however, Melendez-Diaz and its progeny did not consider whether autopsy reports are testimonial or otherwise change the validity of Cutro. Thus, here where the cause of death (gunshot wounds) was undisputed, the trial court did not abuse its discretion in allowing the coroner to testify to the cause of death. Further, the testimony that

Appellant objected to is cumulative to other unobjected-to testimony—making any error harmless beyond a reasonable doubt.

Prior to trial, the State indicated its intent to call the coroner rather than the pathologist to testify about the autopsy report. Critically, the solicitor stated, "[T]he cause of death is not in dispute in this case. The victim was shot 16 times. The majority of them were from the back." (Tr. 43-44). Because the cause of death was not in dispute, the State contended this case was more akin to Cutro than Brewer. The State further argued the report fit two exceptions to the hearsay rule: Rule 803(8) & (9), SCRE. (Tr. 43-47).

Appellant did not disagree with the State's contention that the cause of death was undisputed; in fact, Appellant later clarified to the Court that he was not disputing the cause of death. (Tr. 348). However, Appellant objected as follows:

> We do ask that you exclude Dr. O'Neal's testimony and to require the State to produce Dr. Upshaw Downs to testify about the findings in his autopsy report. Crawford requires that where an out-of-court statement is testimonial, the Courts apply the primary purpose test. And in this situation of the report, your Honor, the primary purpose for the report—the autopsy report was to serve—I'm sorry, your Honor.
>
> So your Honor, because the State law requires that the coroner conduct the autopsy, we believe that the statements in the autopsy report are testimonial in nature and that the State should call Mr. Upshaw Downs to testify at this trial.
>
> The State mentioned—cited to Cutro, which came out in 2004, which also cited to Crawford. That came out around the same time. And then there are the other cases. There's State v. Brewer that came out in 2022. We just think that Cutro was decided when this law was being developed, and so we think that the statements in the autopsy report are testimonial.
>
> . . . .
>
> Your Honor, the cases that I was referencing earlier that came after Crawford was decided were Melendez-Diaz, Bullcoming, State v.

Brewer, after the law in Crawford was developed.

(Tr. 48). The Court found testimony about the report admissible under Rules 803(8) and (9), and further found it was non-testimonial and thus did not implicate the Confrontation Clause. (Tr. 49).

The Court revisited the issue later in trial:

> The Court: I don't know that—I don't know that I ever asked y'all. I know it's just been kind of spoken and y'all did not dispute it. But, I mean, you didn't say anything.
>
> **But, I mean, do you dispute the cause of death**?
>
> [Defense counsel]: **No**. But we're not going to be able to cross-examine [the coroner] about any findings in the report. Like, for example, your Honor, if I wanted to ask her any questions about the direction of shooting, you know, the examiner could tell the direction of shooting or how many people were shooting, soot and stippling. I don't think she can testify to that because she didn't conduct the autopsy examination. That is something that we would cross-examine the medical examiner and—
>
> The Court: Well, I believe when we heard this motion earlier that the State indicated they're not going to be eliciting any type of opinions from her. Basically, she's testifying—er, she will testify as to the conclusions in the autopsy report. That's my understanding.
>
> [The solicitor]: Just and the location of the entrance wounds.
>
> The Court: The location—I mean—
>
> [The solicitor]: And that's all. It's all in the report. Additionally, we have the pictures from the clothing of the victim that we're intending on using, not any pictures form the body, which I think is—personally, I would like to use the pictures of his body, but I understand the case law. So, we're just opting to use the clothing. I don't think there's anything—
>
> Yeah, I think that's it.
>
> [Defense counsel]: Is the State planning to submit the entire report into evidence?
>
> [The solicitor]: No. We were planning on using—

> [Defense counsel]: Because—
>
> The Court: They're saying they were not—
>
> [[The solicitor]: —her oral testimony as evidence.
>
> The Court: So they were not going to admit it.
>
> [The solicitor]: It's just going to be her testimony and pictures of the clothing.

(Tr. 348-49, emphasis added).

Following the testimony of James Green, a firearm identification expert, the State called the coroner, Bobbi Jo O'Neal. (Tr. 368, 405). When asked the pathologist's conclusion about the cause of death, O'Neal testified, without objection, "He has it listed as multiple gunshot wounds." (Tr. 408). O'Neal then testified, again without objection, that Victim had "15 different wound paths, but we have 19 different types of injuries," and the paths were all "predominantly from the back" to the front. (Tr. 408-09). Thereafter, the State asked O'Neal to "walk through each of those wound paths," and Appellant objected based on "[h]earsay and confrontation." (Tr. 409). The Court overruled the objection. (Tr. 410). After O'Neal described the wound paths, the State introduced—without objection—pictures of Victim's clothes taken by the pathologist depicting holes that lined up with wounds. (Tr. 416-20; Exs. 169-176).

a. The trial court did not abuse its discretion in allowing the coroner to testify over Appellant's hearsay objection.

"[A]utopsy reports are not hearsay under Rule 803, SCRE." State v. Cutro, 365 S.C. 366, 377, 618 S.E.2d 890, 895 (2005). Rather, autopsy reports fit the hearsay exception set forth in Rule 803 (8) & (9) because they are "public records and reports containing matters there is a duty to report," and they are reports of death required to be kept by the medical examiner's office. Id.

Initially, Appellant's pretrial motion to exclude the coroner's testimony raised only a

Confrontation Clause issue; Appellant did not argue pretrial that the coroner should not be permitted to testify about the autopsy report based on hearsay. (Tr. 48-49). Appellant did object based on hearsay, however, when the solicitor questioned the coroner about the wound paths. (Tr. 409). Thus, the only testimony to which Appellant preserved a hearsay objection is the coroner's testimony related to the wound paths. (Tr. 409-15).

The trial court did not abuse its discretion in allowing the coroner's testimony over a hearsay objection. See Cutro, 365 S.C. 366, 377, 618 S.E.2d 890, 896 (2005) ("[A]utopsy reports are not hearsay under Rule 803, SCRE."). Appellant's attempt to differentiate Cutro on the basis it predated Melendez-Diaz v. Massachusetts, 557 U.S. 305, 310 (2009) is misplaced here where Melendez-Diaz addressed only the issue of the Confrontation Clause—not hearsay. See id. at 307 ("The question presented is whether those affidavits are 'testimonial,' rendering the affiants "witnesses" subject to the defendant's right of confrontation under the Sixth Amendment."); id. at 324 (noting the distinction between hearsay exceptions and the Confrontation Clause). Under Cutro, the trial court did not abuse its discretion in allowing the testimony over a hearsay objection.

b. Melendez-Diaz and its progeny did not address whether autopsy reports were testimonial; thus, the trial court did not abuse its discretion in finding the testimony was non-testimonial under these facts and Cutro.

The Sixth Amendment's Confrontation Clause bars testimonial statements of a non-testifying witness unless the witness is unavailable and the defendant has had a prior opportunity to cross-examine the witness. Crawford v. Washington, 541 U.S. 36 (2004). However, nontestimonial hearsay does not implicate the Confrontation Clause. Id.; see also Smith v. Arizona, 602 U.S. 779, 800 (2024) ("To implicate the Confrontation Clause, a statement must be hearsay ("for the truth") and it must be testimonial—and those two issues are separate from each other.").

Testimonial statements include

> ex parte in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially; extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions; statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.

Crawford, 541 U.S.at 51-52, 68 (internal quotation marks and citations omitted). The term "applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations." Id. at 68. When assessing whether a statement is testimonial, courts should "identify the out-of-court statement introduced, and . . . determine, given all the 'relevant circumstances,' the principal reason it was made." Smith, 602 U.S. at 800-01 (citing Michigan v. Bryant, 562 U.S. 344, 369, 131 S. Ct. 1143 (2011)). "[T]he court should consider the range of recordkeeping activities that lab analysts engage in," as not all records will be testimonial. Id. at 802. To be testimonial, the document's primary purpose must have "a focus on court." Id.

"Under the primary purpose analysis required by the Confrontation Clause, where the primary purpose of an out-of-court statement is to serve as evidence or an out-of-court substitute for trial testimony, the statement is considered testimonial." State v. Brockmeyer, 406 S.C. 324, 342, 751 S.E.2d 645, 654 (2013) (internal quotation marks omitted). However, "[w]here no such primary purpose exists, the admissibility of a statement is the concern of state and federal rules of evidence, not the Confrontation Clause." Id. (quoting Bryant, 131 S. Ct. at 1155) (alteration in original).

> In determining the primary purpose of the out-of-court statement, 'the relevant inquiry is not the subjective or actual purpose of the individuals involved in a particular encounter, but rather the purpose that reasonable participants would have had, as ascertained from the individuals' statements and actions and the circumstances in which the encounter occurred.'

Id. at 342–43, 751 S.E.2d at 655 (quoting Bryant, 131 S. Ct. at 1156).

In Cutro, 365 S.C. at 377-78, 618 S.E.2d at 896, the South Carolina Supreme Court determined testimony from the State's medical expert, Dr. Ophoven, about 274 autopsy reports of SIDS deaths that she reviewed was non-testimonial. After noting that Crawford "observed that business records are not 'testimonial,'" Cutro reasoned a public record such as an autopsy report, "very much like a business record, is not testimonial and its admission similarly does not violate the defendant's confrontation rights." Id. at 378, 618 S.E.2d at 896. The Court additionally noted Cutro "was able to cross-examine Dr. Ophoven regarding the possible inaccuracies in these autopsy reports and presented extensive expert testimony reinterpreting the significance of their findings." Id.

Initially, Appellant did not contemporaneously object when the coroner testified that the pathologist listed the cause of death as multiple gunshot wounds or Victim had fifteen wound paths, "predominantly from the back" to the front." (Tr. 408-09). Appellant likewise did not object when the State introduced pictures of Victims' clothing with markers from the pathologist showing bullet holes. (Tr. 416-17). Thus, the only line of testimony to which Appellant preserved an objection for this Court's review was O'Neal's testimony about the wound paths. [6] (Tr. 409-16). See State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) ("To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court."); State v. Morales, 439 S.C. 600, 607, 889 S.E.2d 551, 555 (2023) (providing a contemporaneous objection is usually required when additional evidence is offered between a court's preliminary ruling and

[6] Appellant did not make any objection or argument related to expert testimony and thus did not preserve any issue related to expert testimony. See State v. Westmoreland, 421 S.C. 410, 418, 807 S.E.2d 701, 706 (Ct. App. 2017) (finding coroner's testimony about cause of death constituted improper opinion testimony by a lay witness in violation of Rule 701(a), SCRE).

the admission of evidence because "evidence developed during [the interim] may warrant a change in the ruling" (alteration in original)).

Under Cutro, the trial court did not abuse its discretion in allowing the coroner to testify about the autopsy report. Specifically, Cutro concluded the autopsy reports were non-testimonial because "[a] public record, very much like a business record, is not testimonial and its admission similarly does not violate the defendant's confrontation rights." Id. at 378, 618 S.E.2d at 896. Appellant attempts to distinguish Cutro on the basis the pathologists who performed the initial autopsies on Parker C. and Ashlan D. "both testified at trial and were subject to cross-examination." (App. Br. 9). However, the issue on appeal in Cutro was whether the trial court erred in allowing Dr. Ophoven to testify about 274 *other* autopsy reports she reviewed—not whether the trial court erred in allowing testimony about Parker C. and Ashlan D's autopsy reports. Id. at 377, 618 S.E.2d at 896. Thus, similar to the instant case, the witness in Cutro testified about findings from autopsy reports in cases where she did not conduct the autopsy.

Much of Appellant's argument is premised on an assertion that Cutro was decided before Melendez-Diaz[7] and its progeny. However, as noted by other jurisdictions, Melendez-Diaz and its progeny do not address whether an autopsy report is testimonial. See Hensley v. Roden, 755 F.3d 724, 732 (1st Cir. 2014) ("Melendez–Diaz did not say one way or the other whether autopsy reports should be considered testimonial."); Gines v. State, No. 2026 WL 696353, at *18 (Ga. Mar. 12, 2026) ("Smith does not answer the question of whether the absent pathologist's written statements in the autopsy report at issue were testimonial."); People v. Cortez, 402 Ill. App. 3d 468, 474, 931 N.E.2d 751, 756 (2010) (finding Melendez-Diaz did not upset its prior holding that autopsy reports

[7] Melendez-Diaz v. Massachusetts, 557 U.S. 305, 310 (2009) (holding affidavits reporting the results of forensic drug analysis were testimonial because they were "quite plainly affidavits"—which was mentioned twice in Crawford's list of testimonial statements).

are business records that do not implicate Crawford).

In fact, several jurisdictions since Melendez-Diaz have concluded an autopsy report is non-testimonial.[8] Melendez-Diaz was not groundbreaking; in fact, as noted by the United States Supreme Court, it "involve[d] little more than the application of" Crawford. Melendez-Diaz, 557 U.S. at 329. Melendez-Diaz, Bullcoming,[9] and Smith[10] all dealt with drug analysis reports; none of those cases considered whether an autopsy report is testimonial. Although Melendez-Diaz and Bullcoming found the drug analysis reports testimonial because they were certified (and thus affidavits), Smith expressly declined to consider whether the drug analysis report was testimonial,

[8] See. e.g., United States v. James, 712 F.3d 79, 99 (2d Cir. 2013) ("[T]he autopsy report was not testimonial because it was not prepared primarily to create a record for use at a criminal trial."); Cortez, 931 N.E.2d at 756 (Illinois) (finding autopsy report not testimonial where it was "created for the administration of [the medical examiner's affairs]" and "was not admitted to establish or prove some fact at trial and did not lend itself to establishing defendant's guilt or innocence"); People v. Dungo, 286 P.3d 442, 450 (Cali Sup. Ct. 2012) ("[C]riminal investigation was not the primary purpose for the autopsy report's description of the condition of Pina's body; it was only one of several purposes. The presence of a detective at the autopsy and the statutory requirement that suspicious findings be reported to law enforcement do not change that conclusion. The autopsy continued to serve several purposes, only one of which was criminal investigation. The autopsy report itself was simply an official explanation of an unusual death, and such official records are ordinarily not testimonial."); Banmah v. State, 87 So. 3d 101, 103 (Fla. Dist. Ct. App. 2012) ("Further, autopsy reports are non-testimonial because they are prepared pursuant to a statutory duty, and not solely for use in prosecution."). Admittedly, some jurisdictions have concluded pathology reports are testimonial. See Appellant's brief at 14-17. However, as explained in the next section, this Court does not need to revisit Cutro or consider this issue because any error here is harmless beyond a reasonable doubt.

[9] Bullcoming v. New Mexico, 564 U.S. 647, 657 (2011) ("[T]he Confrontation Clause does not "permit the prosecution to introduce a forensic laboratory report containing a testimonial certification, made in order to prove a fact at a criminal trial, through the in-court testimony of an analyst who did not sign the certification or personally perform or observe the performance of the test reported in the certification.").

[10] Smith v. Arizona, 602 U.S. 779, 800, 800-01 (2024) (finding drug analysis report was offered for the "truth of the matter" but declining to determine whether it was testimonial).

instead remanding that issue to the State court.[11] In other words, the only statements the United States Supreme Court has concluded are testimonial are statements that were "quite plainly affidavits"—which is expressly testimonial under Crawford. See id. An autopsy report is not "plainly" an affidavit, and thus Cutro remains good law.[12]

Under these facts, where the cause of death was not disputed, the trial court properly concluded the testimony was non-testimonial. This case is different than Brewer, where the South Carolina Supreme Court concluded a pathologist's testimony about a toxicology report from an independent lab violated the Confrontation Clause. 438 S.C. at 37, 882 S.E.2d at 156. First, the objectional testimony in Brewer was testimony about a toxicology report from an analyst who was not called to testify—not a autopsy report. Second, and critically, the cause of death in Brewer was disputed, and thus the findings of the toxicology report involved a key fact at issue: "the State had to establish the cause of death and disprove Brewer's contention that the child accidently ingested oxycodone by swallowing a pill or pills." Id. at 53, 882 S.E.2d at 165. Here, however, the cause of death—gunshot wounds—was not disputed. Thus, Brewer is distinguishable.

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[11] See Melendez-Diaz, 557 U.S. at 310 ("The documents at issue here, while denominated by Massachusetts law 'certificates,' are quite plainly affidavits: 'declaration[s] of facts written down and sworn to by the declarant before an officer authorized to administer oaths.'" (quoting Crawford, at 51) (alteration in original)); id. ("There is little doubt that the documents at issue in this case fall within the 'core class of testimonial statements' thus described. Our description of that category mentions affidavits twice."); Bullcoming, 564 U.S. at 665 ("Like the analysts in Melendez–Diaz, analyst Caylor tested the evidence and prepared a certificate concerning the result of his analysis. Like the Melendez–Diaz certificates, Caylor's certificate is 'formalized' in a signed document . . . ." (internal citation omitted)); Smith, 602 U.S. at 800-01 (declining to determine whether drug analysis report was testimonial and remanding to State court to consider that issue).

[12] In fact, Justice Thomas—the necessary fifth vote for the Melendez-Diaz majority opinion—limited his support to "formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions," and joined in the majority opinion "because the documents at issue in this case 'are quite plainly affidavits.'" 557 U.S. at 329-30 (J. Thomas, concurring). It is thus unlikely a majority of the Melendez-Diaz Justices would have concluded an autopsy report is testimonial.

This case is more akin to Brockmeyer, where the South Carolina Supreme Court concluded computerized chain-of-custody logs were non-testimonial.[13] 406 S.C. at 324, 751 S.E.2d at 645. The Court reasoned the evidence logs, which "were kept as business records for the purpose of identifying and storing evidentiary items," were non-testimonial because they "were not created 'for the sole purpose of providing evidence against the defendant." Id. at 352, 751 S.E.2d at 660. The Court elaborated:

> Indeed, the evidence logs do not purport to prove any fact necessary to the conviction, and the custodians who did not testify were in no manner involved in the testing or analysis of the recovered items; thus, the statements by non-testifying custodians contained in the chain-of-custody logs are not testimonial in nature because their "primary purpose" is not to constitute evidence in a criminal trial. Because we find these statements are not testimonial, they are exempt from Confrontation Clause scrutiny.

Id. at 352, 751 S.E.2d at 660.

Like the evidence logs in Brockmeyer and the autopsy reports in Cutro, the autopsy report here was not created "for the sole purpose of providing evidence against the defendant." Rather, section 17-5-530 of the South Carolina Code requires investigations into certain deaths (not limited to homicide), and the examiner is required to make a report. Further, not every autopsy results in criminal charges. Thus, autopsy reports have purposes other than serving as evidence in a criminal trial. See, e.g., Dungo, 286 P.3d at, 450 ("The usefulness of autopsy reports, including the one at issue here, is not limited to criminal investigation and prosecution; such reports serve many other equally important purposes. For example, the decedent's relatives may use an autopsy report in determining whether to file an action for wrongful death. And an insurance company may use an autopsy report in determining whether a particular death is covered by one of its policies. Also, in

[13] Brockmeyer was decided after Melendez-Diaz and Bullcoming, and the Brockmeyer Court considered both cases in its analysis.

certain cases an autopsy report may satisfy the public's interest in knowing the cause of death, particularly when (as here) the death was reported in the local media. In addition, an autopsy report may provide answers to grieving family members." (internal citation omitted)).

Additionally, like the evidence logs in Brockmeyer, the testimony about the autopsy report here did not purport to prove any fact necessary to the conviction. Rather, the cause of death—gunshot wounds—was undisputed. Thus, under the facts of this case—where the cause of death was undisputed—the trial court properly concluded the coroner's testimony was non-testimonial. See also Cortez, 931 N.E.2d at 756 ("Conversely, the autopsy report in this case was created for the administration of [the medical examiner's] affairs. Furthermore, the autopsy report was not admitted to establish or prove some fact at trial and did not lend itself to establishing defendant's guilt or innocence. Defendant's theory at trial was that Martinez shot and killed the victim. The cause and manner of the victim's death were not contested." (internal quotations marks and citation omitted) (alteration in original)).

c. Because the cause of death was undisputed, O'Neal's testimony was cumulative to other un-objected to testimony, and this was not a self-defense case, any error is harmless beyond a reasonable doubt.

Here, where the cause of death was undisputed, the coroner's testimony about wound paths was cumulative to other unobjected-to testimony, and this was not a self-defense case, any error was harmless beyond a reasonable doubt.

"The violation of the Sixth Amendment right to confrontation is not per se reversible error." State v. Young, 420 S.C. 608, 626, 803 S.E.2d 888, 897 (Ct. App. 2017) (applying a harmless error analysis to a Bruton violation). "This Court must determine whether the error was harmless beyond a reasonable doubt." State v. Gillian, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004), aff'd as modified, 373 S.C. 601, 646 S.E.2d 872 (2007)).

> Whether an error is harmless depends on the particular facts of each case and upon a host of factors including:
>
> the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case.

State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002).

Initially, defense counsel acknowledged the cause of death was not disputed. (Tr. 348). Likewise, there was no evidence elicited at trial of any alternative cause of death. Contra Brewer, 4438 S.C. at 54, 882 S.E.2d at 165 ("The State violated Brewer's Sixth Amendment right to confront the witnesses against her because it was permitted to use a surrogate witness to explain the results of a test *involving a key fact at issue* and to essentially vouch for the accuracy of that lab without undergoing the crucible of cross-examination." (emphasis added) (internal quotation marks omitted)). Here, the undisputed evidence showed Victim died of gunshot wounds.

Further, the coroner's testimony that Victim died of gunshot wounds was cumulative to other unobjected-to testimony. Detective Pritchard testified Victim was lying face-down when he arrived at the scene. He elaborated, "Whenever the coroner got there, he started examining his body. He noticed several gunshots but we kind of were limited on just what we could find without removing all his clothes. And all the gunshots appeared to be into the back." (Tr. 128). Likewise, Investigator Moseley testified that when she responded, she "was advised that [Victim] had succumbed to their injuries on scene." (Tr. 152-53). She noticed "spalling effect" on Victim's body—"where there was something that had terminated just under the skin and created a little lump. And it corresponded later on with what we found to be gunshot wounds that was located on the back of the body." (Tr. 177). Investigator Mosley clarified there were eleven entrance wounds

on the back of Victim's body, and six spalling effects on the front of his body. (Tr. 177-78). The foregoing testimony—which was not objected to—showed Victim died of gunshot wounds.

Additionally, the coroner testified—without objection—that the cause of death was gunshot wounds, and the bullets travelled predominantly from the back to the front. (Tr. 408-09). Likewise, the State entered—without objection—pictures of Victim's clothing depicting multiple holes from bullets; thus, the jury had the opportunity to examine Victim's clothes and see where the bullet holes were located. (Tr. 416-20; Exs. 169-76). It is undisputed that Victim died as a result of being shot multiple times.

Finally, this was not a self-defense case, so the trajectory of the bullets was irrelevant.[14] Appellant's closing argument focused on his assertion that he left the scene before the shooting and was not the shooter. (Tr. 469-77). In fact, throughout closing argument, Appellant refuted the State's theory that Appellant went back to Pinecrest because "hunters" were looking for him. (Tr. 471, 474, 477). Thus, the primary consideration for the jury was whether Appellant was a shooter—not how Victim died, why Victim was shot, or whether the shooting occurred in self-defense.[15] Because the cause of death was undisputed, unobjected-to evidence established Victim was shot multiple times and died of gunshot wounds, and self-defense was not an issue, any error in allowing the coroner to testify about the pathologist's findings of bullet trajectory was harmless

[14] Even if relevant, it was largely cumulative to Investigator Moseley's testimony that she observed eleven entrance wounds on the back of Victim and six spalling effects on the front. (Tr. 177-78).

[15] Although Appellant half-heartedly requested a self-defense charge, the trial court properly denied that request. (Tr. 437-38). Appellant now contends that cross-examining the pathologist would have aided him in developing self-defense. However, this argument was not raised to the trial court—making it unpreserved. Further, under these facts, cross-examination about the trajectory of the bullets would not have any bearing on whether Appellant was without fault in bringing on the difficulty. Finally, the unobjected-to testimony showed Victim was shot in the back—making any assertion that cross-examining the pathologist about trajectory would have aided a self-defense charge unlikely and speculative at best. (Tr. 177-78).

beyond a reasonable doubt.

2. The trial court properly denied self-defense because the evidence only showed Appellant either (1) returned to Pinecrest looking for "hunters" and "hopped" out of his car with an assault rifle immediately before the shooting or (2) "bailed" from his car and did not return.

Appellant contends the trial court erred in denying his request for a self-defense charge. Specifically, he contends he was without fault in bringing on the difficulty because (1) "hunters" were looking for his brother, (2) his brother had been attacked, and (3) he lived at Pinecrest. Appellant does not address whether evidence supports the remaining elements of self-defense. However, because the evidence only showed Appellant either (1) returned to Pinecrest looking for "hunters" and "hopped" out of his car with an assault rifle immediately before the shooting or (2) "bailed" from his car and did not return, the trial court properly denied self-defense.

At the conclusion of trial, Appellant requested a self-defense charge: "Again, Mr. Framon Frasier testified that they were shot at first. And he said it on direct. When Mr. Zeigler inquired why he shot, he said he was defending himself." (Tr. 437). The Court responded, "I'm not going to charge self-defense. . . . [T]hey came there with guns. There had been a phone call. And I don't see any way where self-defense is appropriate." (Tr. 437-48). Appellant replied that he lived at the apartment complex and thus had a right to be there. After hearing form the State, the Court declined the charge, reasoning, "[T]here could have been a call to the police rather than, you know showing up with guns." (Tr. 438). The Court did not charge self-defense, and Appellant did not make any additional argument or objection. (Tr. 496).

"If there is any evidence to support a jury charge, the trial judge should grant the requested charge." Santiago, 370 S.C. at 159, 634 S.E.2d at 26. "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." Id. "To warrant

a reversal, however, the error must result in prejudice to the party requesting the charge." Id.

> To establish self defense in South Carolina, four elements must be present: (1) the defendant was without fault in bringing on the difficulty; (2) the defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonable, prudent person of ordinary fitness and courage would have entertained the same belief; and (4) the defendant had no other probable means of avoiding the danger of losing his life or sustaining serious bodily injury other than to act as he did.

Id. at 159, 634 S.E.2d at 27. "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense." State v. Slater, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007). In Slater, the South Carolina Supreme Court found the defendant was not entitled to a self-defense charge when "the record clearly reflect[ed] that Slater approached an altercation that was already underway with a loaded weapon by his side," which "could be reasonably calculated to bring the difficulty that arose in this case." Id. at 70, 644 S.E.2d at 52.

The trial court did not abuse its discretion in denying Appellant's request to charge self-defense. First, no evidence showed that Appellant was without fault in bringing on the difficulty. According to Frasier, he and Appellant had assault rifles and returned to Pinecrest because Appellant told him that "people was looking for him"; once there, they circled the area multiple times "looking for the guys who was supposedly running around his house." (Tr. 326). The video surveillance shows Appellant's car circling the neighborhood. (Exs. 203, 205). The only reasonable conclusion from the foregoing is that Appellant approached the situation armed with an assault rifle. Like the defendant in Slater, Appellant cannot show he was without fault in bringing on the difficulty. See id. at 71, 644 S.E.2d at 53 ("Slater was not merely in unlawful possession of a weapon; he carried the cocked weapon, in open view, into an already violent attack in which he had no prior involvement.").

In his statement to police, Appellant initially denied returning to Pinecrest; he later admitted he returned to Pinecrest but claimed he "bailed" from his car and did not return to his car. (Tr. 258). Appellant's statement does not support self-defense because it indicates he was not involved in the shooting. The only other evidence about the shooting was the testimony of Dotson, who testified she saw two shooters with assault-style rifles but did not see the shooting. Nothing about the foregoing showed Appellant was without fault in bringing on the difficulty.

Appellant argues the following supported a finding that he was not without fault in bringing on the difficulty: (1) "hunters" were looking for him, (2) his brother was attacked a few days before, and (3) he lived at Pinecrest. Initially, Appellant did not argue to the trial court that self-defense was supported by evidence that his brother had been attacked and "hunters" were looking for him. Thus, this Court should not consider this argument. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal."); State v. Williams, 439 S.C. 620, 623, 889 S.E.2d 562, 563 (2023) ("We are a court of review, not of first view." (internal quotation marks omitted)); id. ("The trial court never had the chance to consider the transferred intent issue against the arguments Williams now unveils on appeal.").[16] Further, although evidence showed Appellant lived in Pinecrest, there is no evidence that the shooting occurred at or near his apartment building.[17] Under the evidence, the jury could either believe Appellant (1) returned to Pinecrest armed with an assault rifle looking for the individuals who attacked his brother or (2) returned to Pinecrest but "bailed" from his car and

[16] This argument also lacks merit. Although the State's theory of the case was Appellant returned to Pinecrest because the people who had attacked his brother were there, Appellant himself refuted that theory at trial, instead maintaining he simply wasn't present for the shooting. (Tr. 469-77). Further, Appellant told police the attack on his brother occurred a few days before the shooting, but Appellant did not know who did it. (Tr. 259).

[17] Based on the videos, the apartment complex was large and contained multiple buildings.

did not return. Neither scenario supports self-defense.

Likewise, no evidence showed Appellant believed he was in imminent danger of losing his life or sustaining serious bodily injury when he left his vehicle. By Frasier's account, Appellant "hopped" out the car with an assault rifle. By Appellant's account, he simply bailed. Neither version shows Appellant fired because he believed he was in imminent danger of losing his life or sustaining serious bodily injury.

Finally, no evidence showed Appellant had no other probable means of avoiding the danger. Although he lived in Pinecrest, no evidence showed the shooting occurred at or near the building his apartment was located in. Likewise, no evidence showed anyone fired at his car or approached his car armed. Thus, Appellant had a duty to retreat. Appellant was in his car when he returned to Pinecrest, and no evidence showed he was prevented from just driving away. By Frasier's account, Appellant "hopped" out of the vehicle with an assault rifle. By Appellant's account, he bailed. Neither version supports self-defense. Based on the foregoing, the trial court did not abuse its discretion in denying the request for self-defense.

CONCLUSION

Based on the foregoing, this Court should affirm.

Respectfully Submitted,

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This 15th day of May, 2026.