RECEIVED
Jun 22 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Honorable Patrick C. Fant, III, Circuit Court Judge

Appellate Case No. 2025-000367

THE STATE, ...RESPONDENT

v.

ZACHARY DAVID HUGHES, ...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

CYNTHIA SMITH CRICK
Solicitor, Thirteenth Judicial Circuit

180 North Irby Street
Florence, SC 29501

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

Did the trial court err when it refused to instruct the jury on the defense of others, when Hughes was prepared to present evidence to the jury on each and every element of the defense of others sufficient to warrant a jury instruction on the defense of others?

II.

Did the trial court err when it improperly commented on the facts and evidence by instructing the jury that if one plans or prepares to kill another than one acts with malice for the purpose of Murder?

III.

Did the trial court err when it refused to instruct the jury that to prove "malice" for Murder the State had to prove that Hughes acted "without just cause or excuse?"

IV.

Did the trial court err when it excluded evidence of Bradly Post's participation in the production and/ or distribution of child pornography, even though he "opened the door" to such evidence while testifying on cross-examination pretrial?

V.

Did the trial court err when it excluded evidence of Christina Parcell's participation in the production and/ or distribution of child pornography, even though the State "opened the door" to such evidence during Vanessa Kormylo's direct examination?

VI.

Did the trial court err when it prevented Hughes from telling the jury why he killed Christina Parcell?

VII.

Did the trial court err when it held Zachary Hughes in contempt for violating an unlawful order?

VIII.

Did the trial court err when it prevented defense counsel from asking Bradly Post on cross-examination about the nature of his pending charges and the possible penalties he faced if convicted of these charges?

IX.

Did the trial court err when it admitted State's Exhibit 9 and testimony as to the contents of State's Exhibit 9 in the absence of sufficient evidence establishing a chain of custody in violation of S.C.R.E. 901 and 403?

X.

Did the trial court err when it admitted State's Exhibits 94, 95, 96, 97, and 100 and the expert's DNA testimony where the State failed to establish a proper chain of custody as required by S.C.R.E. 901?

XI.

Did the trial court err when it refused to grant Hughes' motion for a directed verdict on the harassment indictment on the basis that the statute is unconstitutionally vague?

XII.

Did the trial court err when it denied Hughes' directed verdict motions on the harassment and conspiracy to commit harassment charges because the State presented no evidence that Parcell suffered mental or emotional distress and no evidence of a non-legitimate purpose?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I.

Did the trial court abuse its discretion when it refused to instruct the jury on the defense of others where Appellant presented no evidence that A.M. was in imminent danger of death or great bodily injury at the time of Victim's death?

II.

Did the trial court abuse its discretion when it instructed the jury that if one plans or prepares to kill another than one acts with malice for the purpose of murder, where such an instruction was a proper instruction on express malice?

III.

Did the trial court abuse its discretion when it refused to instruct the jury that to prove "malice" for murder the State had to prove that Appellant acted "without just cause or excuse"—where such language would invite the jury to speculate on defense theories already suppressed or not supported by law?

IV.*
(Appellant's IV. & V.)

Did the trial court abuse its discretion when it excluded evidence of Bradly Post's and Victim's participation in the production and/or distribution of child sexual abuse material (CSAM), where such evidence was not relevant to any legally valid defense and would otherwise confuse the issues at trial?

V.

Did the trial court abuse its discretion when it limited Appellant's testimony where such limitations were in line with prior rulings regarding CSAM/sexual abuse evidence and the trial court's ruling on the defense of others; and where such limitations did not violate Appellant's constitutional right to testify?

VI.

Did the trial court abuse its discretion when it held Appellant in contempt for repeatedly attempting to testify to matters that were properly excluded by the trial court; and where Appellant had been repeatedly admonished by the trial court to not testify as to inadmissible evidence?

VII.

Did the trial court abuse its discretion when it prevented defense counsel from asking Bradly Post on cross-examination about the nature of his pending charges and the possible penalties he faced if convicted of these charges where such questioning was not proper impeachment showing bias under Rule 608, SCRE?

VIII.

Did the trial court abuse its discretion when it admitted State's Exhibit 9 and testimony as to the contents of State's Exhibit 9 where the State sufficiently established chain of custody; and any error admitting such evidence would be harmless?

IX.

Did the trial court abuse its discretion when it admitted State's Exhibits 94, 95, 96, 97, and 100 and the expert's DNA testimony where the State sufficiently established chain of custody; and where any error admitting such evidence would be harmless?

X.

Did the trial court abuse its discretion when it refused to grant Appellant's motion for a directed verdict on the harassment indictment

XI.

Did the trial court abuse its discretion when it denied Appellant's directed verdict motions on the harassment and conspiracy to commit harassment charges where the State presented sufficient evidence to present the case to the jury?

STATEMENT OF THE CASE

During their April, 2022 term, a Greenville County grand jury indicted Appellant Zachary David Hughes with the offense of murder and possession of a weapon during the commission of a violent crime (2022-GS-23-2194) for the killing of Christina Parcell. Later, before trial, during their September, 2024 term, a Greenville County grand jury indicted Appellant with the offenses of burglary, first degree (2024-GS-23-5425A), harassment (2024-GS-23-5412), and conspiracy to commit harassment (2024-GS-23-5413). (R. pp. *). From February 10–14 and 18–20, Appellant proceeded to a jury trial before the Honorable Patrick C. Fant, III, Circuit Court Judge. Appellant was represented by Andrew B. Moorman, Esq. and L. Mark Moyer, Esq. The State was represented by Thirteenth Circuit Solicitor W. Walter Wilkins and Assistant Solicitor Jacob Q. Hofferth. (Tr. 1).

During trial, Appellant was found in direct contempt and sentenced to six months imprisonment for testifying as to inadmissible evidence in violation of Judge Fant's repeated admonitions.[1] (Tr. 1031–1036). At the end of trial, the jury found Appellant guilty of murder, possession of a weapon during the commission of a violent crime, first-degree burglary, second-degree harassment, and conspiracy to commit second-degree harassment. The jury found Appellant not guilty of first-degree harassment and conspiracy to commit first-degree harassment. (Tr. 1159). Judge Fant sentenced Appellant to life imprisonment for murder, five years for the weapons possession charge, life imprisonment for first-degree burglary, and 30 days—time-served—for the harassment and conspiracy charges. (Tr. 1170–1171). Counsel filed timely notices of appeal for both the underlying trial convictions and the contempt citation. This appeal now follows.

[1] The circumstances leading to Judge Fant's finding of direct contempt will be discussed fully *infra* in Argument VI.

STATEMENT OF FACTS

Appellant killed Christina Parcell (Victim) by brutally stabbing her to death inside her Greer home on the morning of October 13, 2021. (*See* State's Ex. 8 (Robinson BWC) at 5:00–5:35; State's Ex. 66 (Photo)). He directly admitted to such when he testified at trial—offering extensive details into the steps and planning leading up to Victim's demise, the crime itself, and the steps taken afterwards to conceal his criminal acts from law enforcement.[2] (Tr. 1015–1039). His sole defense was that he had to kill Victim to save Victim's daughter A.M. from ongoing sexual abuse at the hands of Victim and Victim's at-the-time fiancé Bradly Post.[3] Corroborating Appellant's own detailed admissions, the State presented significant evidence at trial showing Appellant's planning, execution, and attempted cover-up of his crimes. Before describing both Appellant's own admissions and the State's significant evidence irrespective of said admissions, a general description of the background of this factually complex and nuanced case is in order.

Background—The Custody Dispute

About nine years prior to her death in 2012, Victim and a self-styled music producer named John Mello[4] had a child together—A.M. At the time, they were unmarried and did not live together,

---

[2] Appellant's plain admission to the killing itself was also no secret in his various filings with the trial court in this matter. *See, e.g.,* Trial Brief of the Defendant at 15, (R. p. *) ("On the morning of October 13, 2021, Zack killed Parcell. . . ."); Response to the State's Motion to Prevent the Defendant from Defending Himself at 2, (R. p. *) ("*At no time has Zack ever denied killing Parcell in the more than three years this case has been pending*. At no time in the last three years have defense counsel ever represented to this Court of the public that Zack *did not do it*. . . .") (emphasis added).

[3] As discussed in the relevant portion of the Argument *infra*, this defense theory was found legally deficient before trial began and the defense was prohibited from eliciting evidence of ongoing sexual abuse and/or CSAM production of A.M. by Victim and Post. Judge Fant would later provide a formal ruling excluding the defense of others theory. However, Appellant repeatedly attempted to testify regarding these matters and was eventually found in direct contempt by the court.

[4] As will be further discussed below, John Mello currently has pending charges relating to this murder. (*See* Public Index, Greenville County: *John Joey Mello* (GS Case #s 2023A2330208128, 2023A2330208129, 2025A2330201640, 2025A2330201641)).

but they maintained a co-parenting style relationship until their relationship deteriorated in late 2015.[5] This marked the beginning of a bitter custody dispute between Victim and Mello that would ultimately conclude with Victim's death in 2021. At some point, Mello obtained physical custody of A.M. while Victim retained visitation rights. Thereafter, Victim initiated multiple family court actions regarding her visitation rights. Around October 2020, Mello left the country with A.M. for Italy without notifying Victim. Once Victim realized where Mello had taken A.M.—after failing to get in touch with Mello to coordinate visitation—she began international proceedings to get A.M. back from Italy. Eventually, an Italian court, pursuant to the international Hague agreement on child custody, allowed Victim to take physical custody of A.M. from Mello and to return her to the United States. They returned on April 22, 2021. Mello remained in Italy.[6] (Tr. 214–219, 389–401, 414–416, 419–421). Returning A.M. to the United States, however, did not end the feud between Victim and Mello.

To quite the contrary, Mello was still determined in asserting his rights with respect to A.M. Vanessa Kormylo, the Guadian ad Litem appointed to represent A.M.'s interests after Mello took her to Italy, described Mello as a very hostile, difficult litigant who continued to escalate after A.M. returned to the United States with Victim. Much of his anger was directed towards Kormylo:

> He would tell me that I always needed to be looking over my shoulder, that he was coming after my license, that I was going to get arrested for criminal charges or civil charges, that I was definitely going to jail. He mentioned my children to me by name with specific information about them at one visitation I had with him. He put terrible things on the Internet about me including my office number and phone number. He actually included my husband in his posts. He said awful things, that we were trafficking children, Ukrainian children through Spartanburg. That's like on the Internet. And at one point he had said I was manufacturing child pornography in my law office and put my address and my phone number right there. *So he was definitely fired up*.

[5] At this point also, Victim began regularly seeing Bradly Post. (Tr. 231–232).
[6] Post and Victim became engaged when Victim returned to the United States with A.M. (Tr. 240–241).

(Tr. 486, ll. 9–23) (emphasis added).

Kormylo also described Mello's not-so-subtle attempts to use 'third parties' as leverage in his harassing interactions with Kormylo:

> I would start receiving emails early on, not just from Mr. Mello but from other people on his behalf, . . . one was an attorney, one was a private investigator allegedly, one was a Saint, . . . there were just multiple people that would email me from different addresses with similar threats and characterizations of me and the litigation. . . . *We had suspicions that many of them were Mr. Mello himself because of the way the emails were worded. . . .*

(Tr. 487, ll. 2–15, *see also* Tr. 497–499) (emphasis added).[7] Kormylo described the situation as the "worst case" she had worked on with respect to representing a child's interests and having a parent "like that." (Tr. 488). Key to the incident in question, Kormylo described how October 2021 was significant as this was the culmination of a six-month period that Victim retained physical custody of A.M. after returning to the United States and therefore could move to terminate Mello's rights since Mello was out of the country not visiting A.M. and was not providing child support. Notably, Mello remained in Italy only until after Victim's murder, in part because of pending prosecution relating to leaving the country with A.M.[8] (Tr. 222, 446, 494, 566–567).

Appellant Involves Himself in the Custody Dispute

Appellant, a Juilliard-trained pianist, testified that during the summer of 2020, he began playing piano in public spaces in downtown Greenville. One day in August, Appellant was playing outside a restaurant when Mello approached him accompanied by his daughter A.M. After playing

---

[7] Notably, Kormylo described one instance where Mello accidentally sent a message from the wrong email: "There was an email from Sophia . . . from John, I think, in Sophia Carlucci's email. So it's like he was emailing me but he used Sophia Carlucci's name and information." (Tr. 499 ll. 5–10).

[8] The testimony at trial suggests that the state charges relating to Mello taking A.M. out of the country were eventually resolved since Mello had legal custody of A.M. at the time he left with her for Italy. Mello would still be on the hook, however, for soliciting Victim's murder.

a song request for them, Mello left a business card with Appellant and Appellant got into contact with him shortly thereafter. Appellant testified that between August and October (when Mello left the country with A.M.), he met with Mello approximately "six or seven times." Appellant's testimony suggests that, as a result of these encounters, the two quickly became friends. However, while the two were out celebrating Appellant's birthday one night, Mello began to express "really grave concerns he had about his daughter" with respect to Victim, who had visitation with A.M. at the time. (Tr. 937–939, 952–957).

Appellant was aware of Mello's plan to take A.M. with him to Italy, but noted that after they left—between October, 2020 and April, 2021—there was minimal contact between them. However, once it became evident that Mello was not going to win the international custody dispute, he reached out to Appellant indicating his increasing concern. The two began communicating daily, with Appellant taking the lead on finding state-side counsel for Mello as well as cleaning his house and running other errands.[9] (Tr. 958, 960–963). According to Appellant, Mello began revealing all his concerns about Victim—describing her manipulative, narcissistic personality and her history of alleged drug use/prostitution. Appellant discussed this in the context of making his own realization that Victim reminded him of his adopted abusive sister Grace, who according to Appellant was also an extreme manipulator/narcissist. Thus, Appellant believed Victim was "an incredible danger" to A.M. (Tr. 969–975).

Appellant testified that Mello shared with him three types of information. First, Mello shared a series of pornographic photos of Victim allegedly connected to advertisements on an escort website. Second, Mello shared a deposition of Victim taken in 2016 for Family Court

[9] Appellant noted "So while I might have wanted to not continue communicating with John, for the sake of his daughter I felt that I had a certain sense of responsibility to help him with what he was dealing with with [sic] this custody battle for his daughter's sake." (Tr. 962, ll. 8–13).

proceedings that contain assertions of Fifth Amendment privilege when Victim was asked about whether she had ever engaged in drug use or prostitution. Third, Mello shared an affidavit by a man named Alex Fields who claims that Victim propositioned him for sex and drugs while he was eating at Halls Chophouse in downtown Greenville.[10] (Tr. 977–989; *see also* Defense Exs. 46 (Deposition Transcript) & 56 (Fields Affidavit)).[11] In May, believing A.M. was in "grave danger" in the custody of Victim and being around a "pedophile" Post, Mello offered Appellant $5,000 if he killed Victim. Appellant declined. A few weeks later, Mello offered $10,000. Appellant declined again, stating he would only "consider taking action like this . . . if I was absolutely convinced that [A.M.] was not only in danger, but that the only way to rescue her from that danger would be to take [Victim's] life." (Tr. 992–994). Towards the end of May or beginning of June, Appellant visited and stayed with Mello in Italy for approximately three to four weeks. (Tr. 996–999).

Escalation

Although Appellant was not yet convinced in his own mind that he had to kill Victim, he took actions escalating Mello's agenda against Victim. First, after returning to the United States at the end of June, he put together "mailers" containing copies of the pornographic photos of Victim along with mailing "list[s]" tending to indicate that the photos were going to be sent to additional locations—as well as an escort advertisement posted online by "Caroline Warren," an alleged alias of Victim. (Tr. 999–1001). Appellant addressed the mailers to Post, two of Post's neighbors, Post's PO box, a cigar bar frequented by Post, Kormylo, and Lutina Parcell—Victim's sister lived who together with Victim and A.M. in the Greer home. After receiving the mailers, Post and Victim

[10] The testimony suggests this affidavit was created after Fields responded to a Craigslist ad posted by Mello with pictures of Victim asking if anyone recognized her and whether they could give information for a court case. Notably, Fields was deceased as of the time of trial.
[11] These exhibits are also separately included in Appellant's Trial Brief. (R. pp. *).

contacted law enforcement. (Tr. 223–227, 401–404, 489–490). Michael Nicholson, a United States postal inspector who met with Post and Victim, testified that five out of the six mailers that Post and Victim brought to him contained postmarks indicating the mailers were deposited somewhere in the Upstate area. The other mailer Post and Victim handed over—as well as the mailer Kormylo received—were deposited somewhere in the Knoxville, Tennessee area. (Tr. 489, 546–550).

Daniel Bevill, the investigator from Greenville County assigned to handle Post and Victim's harassment complaint, testified he reviewed the six mailers brought by Post and Victim alongside Nicholson.[12] Bevill noted that each mailer had similar contents—the pornographic photos of Victim, an advertisement with an escort website posted by a "Caroline Warren," and checklists with different addresses "crossed out and checkmarks beside them." The "Caroline Warren" advertisement pointed out a specific URL address of "belladonnadigiorno.escort-site.com." Many of the photographs of Victim also had the same URL address on the bottom of them, but Bevill opined that the URLs were manually superimposed onto the images using editing software: "The words are the same. The URL is spelled out exactly the same, *but the font, the size, the alignment are all different*." (Tr. 520, ll. 15–21) (emphasis added). Bevill attempted to visit the URL as written on the advertisements and the various photos within the mailers, but stated he was redirected to another escort website which contained no photos of Victim. During their meeting, Victim told Bevill that the photos in the mailer were taken by Mello when they were still together around 2010. Lutina corroborated this timeframe in her own testimony based on Victim's age in the photographs and her knowledge of Victim/Mello's relationship. (Tr. 403–404, 515–540).

[12] As will be further discussed *infra*, Bevill also investigated the reports of A.M.'s abuse by Victim and Post both before and after Victim's murder.

After sending the mailers and perceiving they had no effect on the custody situation, Appellant then prepared an affidavit for Family Court in September and placed a phone call to child protective services alleging that he personally witnessed A.M. being verbally and physically abused by Victim. Appellant admitted this was a lie designed to provoke DSS into conducting an interview with A.M. where A.M. could possibly disclose ongoing sexual abuse. Appellant had never met or spoken to Victim prior to her death. (Tr. 1002–1005; *see also* Defense Ex. 47 (Hughes Affidavit)).[13] After feeling what he perceived as a lack of appropriate action or disinterest by the authorities with respect to A.M.'s situation, Appellant decided to kill Victim. (Tr. 1005–1007, 1013–1015).

The Crime—As Recounted by Appellant

Appellant testified that he picked October 13th because he "believed that there would be a period of time at the house when [Victim] would be alone, and I wanted to make sure that absolutely no one was there, not [A.M.], not Lutina, not Brad Post." (Tr. 1017, ll. 7–11). Appellant claimed he wanted no one else to be involved since if he was discovered, the crime would be connected to Mello and that would derail any effort for him to regain custody of A.M. (Tr. 1018). Appellant testified he purchased a .22 caliber revolver and a knife at a gun show, as well as gloves and "paint thinner." He also researched a route he would be able to take from the mountain house[14] to Victim's home that would "avoid traffic cameras." (Tr. 1018–1019). He originally planned to kill Victim on October 12th but decided to wait another day after waking up and feeling uneasy. (Tr. 1020). The morning of October 13th, Appellant departed from the mountain house he was

---

[13] Kormylo testified that this affidavit was not filed in Family Court until October 22, 2021, *nine days after* Victim's death. (Tr. 495–497).

[14] The "mountain house" in question belonged to the Winns, a couple that Appellant was living with at the time in their Greenville home after they bonded over Appellant's music and church involvement. (*See* Tr. 946–951).

staying at in Traveler's Rest in his Ford Ranger at approximately 8:00 AM. In addition to a bicycle that was in the truck bed, Appellant also brought gloves, paint thinner, the .22 revolver, a knife,[15] and a "box that was made to look like a gift wrapped box and a bunch of roses that [he] bought the day before." Appellant knew Victim was likely to be alone at the house that day because of information given by Mello.[16] (Tr. 1020–1021).

Appellant parked his truck on a road parallel to Victim's street, got his bicycle out from the back of his truck, and then rode the bike to Victim's home. Appellant testified he was wearing black pants, a black thermal, a gray shirt (over the thermal), a black beanie, a white medical mask, black gloves, and a black backpack. (Tr. 1021–1026). When he arrived around 9:00 AM, he walked up to the door and rang the doorbell holding the box and roses. Victim answered the door. Appellant told Victim he had a delivery for Lutina Parcell. Victim stated she was not home. Appellant described what happened next:

> So, at this point, I realized that [Victim] was at the house alone. And I handed her the roses, and I took the revolver out of the box and I pointed it at her and I told her to be quiet and to go back into the house, which she did. And I followed her into the house and I shut the door. . . . So I tried while she was holding the roses to strike her on the head and knock her unconscious. . . .

(Tr. 1026, ln. 24—Tr. 1027, ln. 15). Appellant testified he struggled trying to force himself to hit Victim over the head with the revolver. When he realized he was not immediately winning, he began stabbing her until they were both on the floor and she stopped struggling. (Tr. 1028–1029). During the struggle, the roses were dropped and scattered on the floor. After killing Victim, Appellant began covering his tracks:

---

[15] It is not clear from the testimony whether this was the same knife he described purchasing from the gun show.

[16] Specifically, it appears Mello told Appellant that A.M. would be at school that morning and that Victim was supposed to be going to a job interview in the morning. (Tr. 1020). It is unclear how Mello knew this information.

> So I quickly looked around to make sure I hadn't left a mask or a glove. And I started to pick up the rose petals and realized that I just didn't have time to do that. Again, I was concerned that a neighbor might have heard the commotion and that a neighbor might come by to investigate and . . . I didn't want that. *So I drew the blinds and I moved her body away from the door which had windows because I didn't want somebody to come to the door and see her*.
>
> And I put my things in the backpack, and I . . . looked in a mirror before I left to make sure everything was in order, and *I saw that she had scratched my face in the struggle. And, of course, I realized that this could leave DNA. So I used the paint thinner to try to clean her hands. And then I changed my mask and I took off my outer shirt because there was blood on it and I put it in the backpack.*

(Tr. 1030, ln. 11—Tr. 1031, ln. 2) (emphasis added).

Appellant then departed Victim's home on his bicycle, returned to his truck, and then left for the mountain house. Once back at the mountain house, Appellant disposed of the revolver and knife in a nearby lake; and then burned his clothes in a fire pit. (Tr. 1031, 1038).

The Crime—As Investigated by The State

Sometime around noon that day, Post attempted to call Victim. When Victim did not answer the phone, Post became concerned and drove to her house. Post went inside and found her dead in a "very large puddle of blood."[17] (Tr. 128–131, 219–222). Post called 911. Law enforcement soon arrived and secured the scene—with one of the first responding officer noting drag marks through the pile of blood on the living room floor, the rose petals scattered around, and a "chemical odor" he was unable to ascertain what it was. (Tr. 201–208). Another responding officer collected "a white plastic bag with a white powder substance in the living room near the front door." A presumptive field test on the substance was positive for cocaine. (Tr. 257–259).

Investigators began canvassing the neighborhood and collected videos from multiple Ring-style cameras. These videos showed a man wearing all black and a facemask riding a bicycle

[17] The forensic pathologist, Dr. Claire Rose, testified she identified "35 sharp-force injuries" to Victim, 26 of which were injuries directly to her head and neck. (*See* Tr. 743–750).

towards Victim's home that morning. One video showed the man approaching the front doorway of Victim's home wearing a backpack. (Tr. 291–297; *see also* Tr. 325–326, 335, 654). One neighbor, Donna Gorman, who lived three houses down from Victim on the other side of the street testified she saw Victim walking A.M. to school around 7:30 AM while she was drinking coffee.[18] Later, sitting in the same spot by the window, Gorman saw a "tall and skinny" man dressed in all black with a mask on (and a backpack) riding a black bicycle towards Victim's home. Gorman also testified the man was white, had "reddish sandy color hair," and was wearing gloves. Gorman identified Appellant in court as the man she saw outside. (Tr. 302–309). From the Ring videos, investigators determined that Appellant walked up to Victim's door at 9:15 AM. (Tr. 330, 340).

Investigators determined that a man named Michael Manigault was associated with Mello and spoke with him. Manigault stated he worked with Appellant doing chores and working on Mello's house. (Tr. 432–434). Thereafter, investigators began looking into Appellant and determined he was living at a house within the Greenville city limits and that he owned a 1999 Ford Ranger from his DMV records. Using Flock cameras that utilize automatic license plate reading technology, investigators pulled photos of Appellant's vehicle on the day of Victim's death with a black bicycle in the truck bed. (Tr. 441–445, 654–656). Investigators executed a search warrant at the house Appellant was staying at[19]—securing Appellant's cell phone and the bicycle in addition to other personal effects. (Tr. 446–457). In Appellant's bedroom, investigators located a backpack and gloves. BlueStar, a presumptive re-agent that can show the presence of blood, was

[18] Deputy Eric Turner, a school resource officer, confirmed that A.M. was at school at the time of Victim's death and would not be going home till the afternoon. (Tr. 379–384).

[19] This house belonged to the Winns, a couple Appellant had become close to in recent years; *see supra* note 14.

tested on the bicycle and revealed the presence of blood on the handles, the seat and the pedals. Law enforcement also collected buccal swabs from Appellant.[20] (Tr. 469–474).

Investigators also seized Appellant's 1999 Ford Ranger. While processing it, investigators collected multiple pairs of gloves and noted multiple areas "illuminated" from BlueStar. (Tr. 475–480). From Appellant's phone, investigators recovered hundreds of emails and WhatsApp messages between Appellant and Mello—in addition to location data and other useful information from the phone.[21] (Tr. 551–564, 570–585). Notably, Appellant's phone was not used between 7:42 AM and 11:34 AM on October 13th, but Appellant made multiple phone calls through WhatsApp to Mello in the afternoon after returning to the mountain house and connecting to the Wi-Fi there. (Tr. 629–641; *see also* State's Ex. 174 (Wilde CSLI Report)).

The WhatsApp messages were especially incriminating as to the plot between Appellant and Mello to send the harassing mailers to Victim, Post, and others—and to harass Victim generally. For example, one exchange, as interpreted by Sparkman, reveals Mello sending Appellant Victim's "private number" and instructing Appellant to "harass the shit out of her." (Tr. 665–666).[22] The WhatsApp messages did not however, particularly relate to the murder itself—at least in any explicit way. The emails were revealing generally to Appellant's involvement with

[20] Thereafter, investigators executed another search warrant on the Winns' mountain house and seized a trail camera that contained photos of Appellant wearing similar clothing to what he is seen wearing on the day of Victim's death. (Tr. 458–463).

[21] FBI Special Agent Matthew Wilde also testified regarding the results of a CAST analysis conducted using Appellant's cell phone records and location data pulled from the phone itself. His report and testimony show Appellant's movements around Greenville the days surrounding the murder and shows him in Knoxville, Tennessee between July 4 and July 8, 2021, the same time two of the mailers were placed in the mail system from that area. (Tr. 603–610).

[22] Mostly, the two appear to discuss ways to conceal the source of the mailers/identity when the mailers were dropped off. One message from Appellant to Mello spelled Bradly Post's name incorrectly as "poast"—the same incorrect spelling that appears on one of the mailers. Admittedly, the exact phrasing of the messages is subject to some interpretation as WhatsApp apparently scrambles archived messages. (*See* Tr. 658–676).

Mello's effort to regain custody of A.M.[23] (Tr. 683–688, 694). Finally, analysts compared DNA samples collected from underneath Victim's fingernails to Appellant's known sample, and there was a match. (Tr. 781–791).

[23] At the end of his direct testimony, Investigator Jarrad Sparkman provides a useful timeline of the day of the murder from all of the State's evidence. (*See* Tr. 696–698).

STANDARD OF REVIEW

Generally

"In criminal cases, the appellate court sits to review errors of law only." *State v. Johnson*, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Id.* (citations omitted).

As to Issues I–III

"The evidence presented at trial determines the law to be charged to the jury." *State v. Gilliland*, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *Cook v. State*, 415 S.C. 551, 556, 784 S.E.2d 665, 667 (2015). "A jury charge that is substantially correct and covers the law does not require reversal." *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (citing *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996)).

As to Issues IV, V, VIII, & IX

"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)). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). "We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment." *Id.*

As to Issue VI

"A determination of contempt ordinarily resides in the sound discretion of the [circuit] court." *Rhoad v. State*, 372 S.C. 100, 104, 641 S.E.2d 35, 37 (Ct. App. 2007). "On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the [circuit court] has abused [its] discretion." *Stone v. Reddix-Smalls*, 295 S.C. 514, 516, 369 S.E.2d 840, 840 (1988).

As to Issue VII

"This Court will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion." *State v. Gracely*, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012) (citing *State v. Johnson*, 338 S.C. 114, 124–25, 525 S.E.2d 519, 524 (2000)).

As to Issues X & XI

When considering the constitutionality of a statute, South Carolina appellate courts "must uphold the statute unless [they] find beyond a reasonable doubt it does not conform to the constitution." *Owens v. Stirling*, 443 S.C. 246, 260–61, 904 S.E.2d 580, 587 (2024) (citing *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999)). "The party challenging the validity of a statute bears the burden of proving it is unconstitutional." *Powell v. Keel*, 433 S.C. 457, 461, 860 S.E.2d 344, 346 (2021).

"We review the denial of a directed verdict motion in a criminal case under the any evidence standard of review." *State v. Cain*, 419 S.C. 24, 33, 795 S.E.2d 846, 851 (2017). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *Id.* (quoting *State v. Harris*, 413 S.C. 454, 457, 776 S.E.2d 365, 366 (2015)).

ARGUMENT

I. The trial court did not abuse its discretion when it refused to instruct the jury on the defense of others where Appellant presented no evidence that A.M. was in imminent danger of death or great bodily injury at the time of Victim's death

Appellant has consistently maintained throughout the course of this litigation that he was legally entitled to kill Victim because she sexually abused her daughter. In accordance with this position, Appellant argues now on appeal that the trial court erred in refusing to instruct the jury on the defense of others. Specifically, Appellant argues the defense of others was a legally viable way to excuse or justify Appellant's killing of Victim in her own home in defense of Victim's daughter A.M. amid ongoing and prospective sexual abuse by her and her fiancé Bradly Post—despite the fact that A.M. was safely at school at the time of Victim's death and faced no imminent threat of death or great bodily harm. Thus, Respondent contends the trial court properly barred the jury from considering Appellant's defense of others theory where Appellant presented zero evidence that A.M. was in imminent danger of death or great bodily injury and Appellant himself could not avail himself of self-defense Appellant's overreliance on as-of-then unsubstantiated allegations of sexual abuse did not give him legal justification to break into Victim's home and brutally stab her to death. This Court should affirm.

A. Relevant Facts

Over the weekend break after the end of the State's case-in-chief, the State filed a memorandum arguing for the exclusion of any defense of others evidence or defense. Specifically, the State argued that the undisputed fact that A.M. was at school at the time of Victim's death meant Appellant could never prove defense of others because of the element of imminent danger. Further, Appellant himself could not personally avail himself of self-defense because he brought on the difficulty and there were other probable means of avoiding the danger. Finally, consistent with other arguments made during trial, the State argued that introducing prior bad acts of Victim (sexual abuse evidence) was not relevant and otherwise inadmissible under Rule 403. (R. pp. *). Appellant filed a response to the State's memo arguing that excluding a defense of others theory, in addition to excluding any evidence of CSAM/sexual abuse, denied Appellant an adequate defense. (R. pp. *).

When trial resumed, the State put its argument on the record, specifically emphasizing that Appellant's defense of others theory must categorically fail because of the undisputed fact that A.M. was at school at the time of Victim's death, thus negating the imminent danger element of defense of others. The solicitor further argued that all of the sexual abuse/CSAM evidence Appellant was trying to get into was essentially speaking to a prospective or a past harm to A.M.—but it does not and cannot show imminent danger as of the time of Victim's death. (Tr. 814–816).

After hearing further argument from both parties—(Tr. 817–827)—the trial court ruled as follows:

> Under the case of <u>State vs. Cottrell</u>, a state court . . . can limit defendant's testimony without . . . violating the constitution. And that is exactly what I'm going to do as far as excluding defense of others. I have looked at . . . I know there's multiple cases on self-defense, <u>State vs. Davis</u>, the four elements that y'all have gone through . . .
>
> A.M.P. was at school. She was at Buena Vista during the murder. There was no imminency . . . or imminent danger [in] that moment to A.M.P. There was not a reasonable belief on October 13th of '21 that there was an immediate need to act. There were other means of notifying law enforcement . . . if the defendant had proof of that danger or imminent harm. I've looked at <u>State v. Long</u>, a defense of others where the defendant stands in the place and has a right to kill.
>
> In this case, the defendant entered [Victim]'s home. A.M.P. was at school and the defendant did not know [Victim]. Mr. Hughes brought about the difficulty. I've also looked at <u>State v. Sales</u> which you also just quoted.
>
> But, again, the defendant traveled to the house, sought [Victim] out who he does not know to murder her. <u>State v. Bryant</u>, one who provokes or initiates an assault cannot escape from a liability by invoking self-defense. <u>State v. Otts</u>, the defendant bars himself from invoking defense of others by the notable act of availing himself

> to the killing of [Victim]. Specifically, a defendant may not bring on the difficulty, in this case riding his bike and unlawfully entering the house and home of [Victim], and then offensively use the defense of others as a shield to his action.
>
> Basically, defense is asking of this court, which is not the law of South Carolina, that essentially, *a defendant can hear something, make assumptions on learning something about someone the defendant has no relationship and then go murder them. A defendant in this state cannot take the law into their own hands. . . .*
>
> *You can certainly not justify homicide based on belief or assumption.* And under this theory he went to the house of a person he did not know and killed her to then try and avail himself of a defense of others when A.M.P. was not there is simply not justified under and laws of our state. *It's undisputed that she was at school. This defeats any argument of self-defense and the defense of others.*

(Tr. 831, ln. 10—Tr. 833, ln. 14) (emphasis added).

After this ruling, Appellant was allowed to proffer summarized testimony of witnesses it would have presented absent the trial court's exclusion of evidence. One of those witnesses, Dr. David Corwin, an expert on the effects of child sexual abuse, would have testified regarding the harmful effects of sexual abuse on the neurodevelopment of abused children and other long-term physiological and psychological effects of abuse and trauma. (Tr. 906–925). Appellant also proffered summarized testimony regarding law enforcement's investigation into the abuse of A.M., the contents of Brad Post's electronic devices seized by law enforcement during their investigation of him after the murder, in addition to other suspicious items located in his house. Those devices contained a voluminous amount of illicit CSAM material, including material involving A.M. and other known minors. This was essentially an additional on-the-record summation of evidence Appellant had been referring to both during and before trial. (Tr. 863–891).

B. Discussion

"The law to be charged is determined by the evidence presented at trial." *State v. Gourdine*, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). "[I]n order for the trial court to give a defense of others charge, there must be some evidence adduced at trial that the defendant was indeed lawfully defending others." *State v. Starnes*, 340 S.C. 312, 323, 531 S.E.2d 903, 913 (2000) (quoting *Douglas v. State*, 332 S.C. 67, 73, 504 S.E.2d 307, 310 (1998)). Defense of others allows a defendant to step into the shoes of the person they are protecting as if that person used deadly force in self-defense. *Id.* at 322–23, 531 S.E.2d at 913. However, the defendant must still prove the following elements of self-defense—as to the person they are defending:

> (1) The person was without fault in bringing on the difficulty;
>
> (2) The person actually believed he was in imminent danger of losing his life or sustaining great bodily injury, or he actually was in such imminent danger;
>
> (3) A reasonable, prudent person would have entertained the same belief;
>
> (4) The circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm; and
>
> (5) The person had no other probably means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Otts, 424 S.C. 150, 158, 817 S.E.2d 540, 545 (Ct. App. 2018) (citing *State v. Wiggins*, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998)).

Certainly, Respondent agrees with Appellant that A.M. was not or would not be at fault for bringing on the difficulty of sexual abuse/exploitation by Victim and/or Post. However, Appellant's argument for the defense of others completely derails when considering the second factor—imminent danger. Simply put, as correctly argued by the State during trial and in briefing, A.M. was not in imminent danger at the time of Victim's death because she was safely at school:

> As the Court has already heard from several of the State's witnesses[] in this case, [A.M.] had gone to school on October 13, 2021, as expected. The testimony further showed that [A.M.] was not expected to leave school early on October 13, 2021, and would have remained at school until dismissal that afternoon. Defense counsel affirmed this fact in cross-examination of Lead Investigator Jarrad Sparkman as well. *Therefore, the fact that* [A.M.] *was not on scene at the time the Defendant entered the Victim's home is not in dispute and cannot be placed in dispute.*

> Black's Law Dictionary defines "imminent" as "[n]ear at hand; ready to take place, close rather than touching; impending; on the point of happening; threatening; menacing; perilous,"[] and the theories of self-defense and defense of others both require a showing that the accused acted pursuant to an "imminent threat" At the time of the murder, [A.M.] was safely at her school in a classroom learning as any other school age child would, she was surrounded by peers and other adults including an assigned school resource officer. Most importantly, [A.M.] would not have been expected to return to her home where she lived with the Victim until hours later. This factual scenario does not meet the definition of "imminent" which requires some showing that the threatening event concerned is close, impending, or on the point of happening. What this attempted invocation amounts to is a misinterpretation and misapplication of these facts to the theory of defense of others—a reactive defense that naturally arises through a present threat. Not a proactive, discretionary tactic for future, speculative events.

State's Memo in Support of Exclusion of Defense of Others Evidence at 3 (R. p. *) (footnotes omitted, emphasis added).

These undisputed facts alone are fatal to Appellant's claim of error. Further, Appellant's reliance on the proffered testimony of their expert witness on the effects of childhood sexual abuse (or the proffer of CSAM evidence generally) fails to show imminent danger of death or great bodily injury. Relevant to the issue of self-defense, the Protections of Persons and Property Act defines great bodily injury as "bodily injury which creates a *substantial* risk of death or which causes *serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.*" S.C. Code Ann. § 16-11-430(2) (emphasis added). Simply put, no matter how sickening or disgusting child sexual exploitation may be, there is no basis in the record to suggest that A.M. was being subjected to a *substantial* risk of death, *serious/permanent* disfigurement, or *protracted loss/impairment* of the function of a bodily member/organ at the time Victim was brutally stabbed to death.[24] This is not to say that there was or could be an instance where A.M.

---

[24] Respondent acknowledges that Appellant presented additional summarized testimony under proffer and in their various briefs before the trial court. Respondent contends, however, that none of this additional testimony or argument suggests that A.M. was in imminent danger of death or great bodily injury *at the time of Victim's death*. Even taking the testimony at face-value, Dr.

may have been in such danger *during* or immediately preceding acts of sexual abuse; rather the point is that such danger was simply impossible when A.M. was safely at school. Again, there is absolutely no basis in the record to suggest that Appellant was personally present or a witness to ongoing sexual abuse such that may have given rise to a defense of others defense *in that particular, hypothetical instance*.[25] Instead, as correctly noted by the trial court, Appellant was acting merely on his own *belief* that A.M. was being sexually abused without the benefit of *personal knowledge*.

Similarly, Appellant's argument that A.M. was in imminent danger as evidenced by law enforcement's actions taken to secure legal custody of A.M. after finding evidence of sexual exploitation on Post's devices after the murder is a red herring. Just because A.M. was in fact in danger of ongoing or future sexual abuse if appropriate custody measures were not taken does not mean A.M. was in imminent danger of *death* or *great bodily injury* at the time of Victim's death. Appellant's arguments to the contrary lack merit. Finally, as correctly noted by the trial court in its ruling excluding the defense of others, Appellant could not personally avail himself of self-defense because he brought on the difficulty by seeking out Victim and committing an unlawful act by breaking into her home, and there were other probable means of avoiding the danger. *See*, *e.g., State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) ("Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide."); *State v. Brown*,

---

Corwin's proffered testimony suggested long-term ramifications of sexual abuse rather than immediate, life-threatening physical injury.

[25] Recall, for instance, that Appellant specifically admitted to lying on a Family Court affidavit and in a phone call to child protective services averring he personally witnessed verbal and physical abuse of A.M. by Victim. (Tr. 1002–1005; *see also* Defense Ex. 47 (Hughes Affidavit)).

321 S.C. 184, 467 S.E.2d 922 (1996) ("[W]here the attacker is the homeowner, a lawful guest has a duty to retreat before a claim of self-defense will stand.").

Accordingly, the trial court did not abuse its discretion in preventing the jury from considering the defense of others theory.

This Court should affirm.

II. The trial court did not abuse its discretion when it instructed the jury that if one plans or prepares to kill another then one acts with malice for the purposes of murder where such an instruction was a proper instruction on express malice

Appellant argues the trial court improperly commented on the facts by instructing the jury that if one plans or prepares to kill another, then one acts with malice for the purposes of murder. Specifically, Appellant argues that the following instruction was an improper comment on the facts:

> Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished. *For example, any acts of preparation going to show that the deed was within the defendant's mind would be express malice*.

(Tr. 1133, ll. 10–15) (emphasis added). Appellant further contends that the court reinforced its error when it repeated the instruction on express malice after the jury, during deliberations, asked the court to define malice again. (Tr. 1148; *see also* Court's Ex. 6).

Respondent contends that Appellant plainly fails to demonstrate how such a charge was an improper comment on the facts where it did not elevate, emphasize, highlight, or comment on any *particular* fact in evidence, nor did it express an opinion on the credibility of witnesses or the weight of the evidence. Furthermore, even assuming giving the instruction was error, such error would be harmless in light of Appellant's detailed confession to Victim's killing and the State's presentation of overwhelming evidence of his guilt. This Court should affirm.

A. Relevant Facts

Following the close of testimony, during the charging conference, Appellant raised several objections to the trial court's proposed jury charges, including the charge at issue here. Specifically, regarding the court's proposed instruction on express malice, Appellant requested the Court to "strike[] everything that comes after the word 'another' in that the example is given, it has a good bit of similarity to this case and I think could be construed as a comment on the facts." (Tr. 1057, ll. 2–12).

The solicitor responded by noting that language describing lying in wait for a person could be changed to simply stating "any acts of preparation going to show that the deed was within the defendant's mind would be express malice" as a compromise. (Tr. 1057, ll. 16–24). Appellant argued that the suggested language would "still have enough similarity to some evidence that came into this case that it could be seen as a comment on the facts." (Tr. 1057, ln. 25—Tr. 1058, ln. 3). The Court noted that it had previously used this charge and that the language simply reflects an example of what can support a finding of malice. Thereafter, the Court denied Appellant's request but agreed to eliminate language referring to lying in wait. (Tr. 1058, 1073).

B. Discussion

The prohibition on commenting on the facts has its origin in our state constitution. S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."). Fundamentally, the prohibition is a shield against the court invading the fact-finding province of the jury in a trial. *See* 89 C.J.S. *Trial* § 560. This prohibition is further fleshed out in caselaw. *State v. Stukes*, 416 S.C. 493, 499, 787 S.E.2d 480, 483 (2016) ("[i]t is not within the province of the court to express an opinion to the jury on its view of the facts."); *State v. Burdette*, 427 S.C. 490, 502, 832 S.E.2d 575, 582 (2019) ("We have held in other settings that it is improper to give examples of conduct the jury may consider when determining whether the State has proven an element of a crime or when determining whether certain other facts have been proven or disproven.") (citations omitted).

In the context of jury charges, an improper comment is one that emphasizes, elevates, or highlights a particular fact, or instructs the jury about an inference it could make from the facts.

See State v. Brown, 443 S.C. 196, 198–99, 904 S.E.2d 448, 449 (2024) (holding the trial court erred by instructing the jury that malice can be inferred when one kills another during the commission of a felony because it "improperly elevated and commented to the jury upon a particular fact—the commission of a felony"); *Burdette*, 427 S.C. at 502–03, 832 S.E.2d at 582 (holding the trial court shall not instruct the jury that it may infer malice from the use of a deadly weapon because, in doing so, "the trial court has directly commented upon facts in evidence, elevated those facts, and emphasized them to the jury"); *State v. Grant*, 275 S.C. 404, 408, 272 S.E.2d 169, 171 (1980) (holding trial courts may not charge a jury on a defendant's flight because doing so places undue emphasis on circumstantial evidence); *State v. Cheeks*, 401 S.C. 322, 328–29, 737 S.E.2d 480, 484 (2013) ("[C]harging a jury that 'actual knowledge of the presence of a drug is strong evidence of intent to control its disposition or use' unduly emphasizes that evidence[] and deprives the jury of its prerogative both to draw inferences and to weigh evidence.").

It is the focus on particular facts within a case that is problematic, not generic examples of conduct that aid a jury's application of black letter law. *See Brown*, 443 S.C. at 198–99, 904 S.E.2d at 449–50; 89 C.J.S. *Trial* § 560 ("An instruction that merely sets out the law applicable to the issue in the case is not an improper comment on the evidence."). In this case, the trial court's instruction on express malice was not an improper comment on the facts because it articulated a correct statement of law and it did not highlight any particular fact in evidence. *See State v. Franks*, 432 S.C. 58, 72, 849 S.E.2d 580, 588 (Ct. App. 2020) (reciting trial court's malice charge which included: "[e]xpressed malice is shown when a person speaks words which express hatred or ill-will to another person, or when the person prepare[d] beforehand to do the act that was later accomplished. For example, laying in w[ai]t for a person *or any other acts in preparation going* *to show that the deed was within the [d]efendant's mind [would be] expressed malice.*") (cleaned up, emphasis added).

In this case, rather than referring to or emphasizing certain facts in evidence, the trial court's express malice instruction generically refers to "any acts in preparation." It does not emphasize certain facts such as, the fact that Appellant purchased gloves/masks, the fact he purchased weapons from a somewhat concealable source (gun show), the fact that he coordinated with another (Mello) to plan a time Victim would be home alone, the fact he planned a route that would avoid traffic cameras, or any other particular facts that were in evidence from Appellant's own mouth. This was not a comment on the facts, let alone an improper one. The fact that the trial court removed language referring to lying in wait is further evidence showing the court was careful in avoiding any improper comment on the facts.

Further, Appellant's reliance on prior authority is misplaced. For example, Appellant cites *Burdette* for the proposition that a "'jury instruction that (express) malice may be (proven by acts of preparation) is an improper court-sponsored emphasis of a fact in evidence— (that Hughes planned the killing) and should (not) be permitted.'" (Brief of Appellant at 46–47) (alterations original). *Burdette* was not a case involving express malice. Instead, the Supreme Court held in *Burdette* that an instruction stating malice may be *inferred* from the use of a deadly weapon was prejudicial error in the context of a case that elicited evidence tending to "reduce, mitigate, excuse, or justify Burdette's killing of Victim . . ." 427 S.C. at 493–95, 832 S.E.2d at 577–78. The quote cited by Appellant actually states: "A jury instruction that malice may be *inferred from the use of a deadly weapon* is an improper court-sponsored emphasis of a fact in evidence—*that the deed was done with a deadly weapon*—and it should no longer be permitted." *Id.* at 503, 832 S.E.2d at 582 (emphasis added). Appellant has failed to show any authority that states such an instruction on express malice at issue here has been held to be an improper comment on the facts. Furthermore, the holding of *Burdette*, itself an extension of *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), was limited as an exercise of the Court's "policy-making role under the common law." 427 S.C. at 503, 832 S.E.2d at 582. The ruling was not premised on the constitutional prohibition on comments on the facts.

Finally, as a reminder, because the "appellate court considers the charge as a whole[,]' the charge must be prejudicial to the appellant to warrant a new trial." *State v. Stukes*, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016). In this case then, even assuming the charge was an improper comment on the facts, Appellant fails to show prejudice given his detailed confession to Victim's murder and the State's corroborating evidence that provided overwhelming evidence of malice, express, implied, or otherwise. The record provided the jury with overwhelming evidence of malice despite Appellant's own self-serving savior narrative.

This Court should affirm.

III. The trial court did not abuse its discretion when it refused to charge the jury that to prove malice for murder the State had to prove Appellant acted "without just cause or excuse"—where such language would invite the jury to speculate on defense theories already suppressed or not supported by law

Appellant argues the trial court erred when it refused to charge the jury that to prove malice for murder, the State had to prove Appellant acted without "just cause or excuse." Specifically, he contends that omitting the just cause or excuse language from the malice charge deprived Appellant of the opportunity for the jury to consider his sole defense at that point—that he had a just cause or excuse to kill Victim so thus there could be no malice and no murder. This issue is largely resolved by the same argument Respondent makes in response to Appellant's Issue I—there is no *legal* justification for the killing based on the plain and uncontested facts shown. (*See infra.* at 21–24). At best it would appear Appellant had hoped with the requested language included to have room to encourage nullification by the jury, but that is not a sustainable position considering that a "trial judge must charge the correct and current law of the State." *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001). Here, there is no need for the phrase, but more than that, to include it in these particular circumstances would raise a substantial risk of confusion. Therefore, there is no abuse of discretion in the trial judge having declined to include the phrase in the jury charge.

A. Relevant Facts

The trial judge allowed lengthy discussions as to the jury charge. The State objected to the defense's requested malice instruction—that "[m]alice . . . is the intentional doing of a wrongful act without just cause or excuse"—because it would enable Appellant to rely on a defense-of-others theory that the court had not allowed. (Tr. 1043, ln. 15—Tr. 1046, ln. 9). In the alternative, the State requested that the language, if included at all, be modified to reflect "without a lawful cause" to mitigate the potential harm from the requested instruction. (Tr. 1046, ll. 10–12).

Appellant argued that the language was simply a long-accepted definition of malice that should be charged. (Tr. 1046, ln. 17—Tr. 1047, ln. 9). The judge noted that the language was originally "just cause or legal excuse" and cited *State v. Kinard* in example. (Tr. 1047, ll. 14–15). The State also argued that not only could an older case relied upon by the defense, *In re Tracy B.*,[26] be distinguished because it referenced offered evidence that could support self-defense unlike the evidence in this case, and but also argued that a recent decision, *State v. Sellers*,[27] highlighted our Supreme Court's movement to critically assess jury charges, recognizing that older language which may have been routine perhaps should not be included in modern charges. (Tr. 1048, ll. 10–20; *see also* Tr. 1051, ln. 13—Tr. 1052, ln. 17). Further, the State argued that the court should consider the defendant's wholly inappropriate testimony offering a theory of defense of the child that, even if credible, failed to fit into the legal definition supporting defense of others, and whether the requested charge would "provide[] an outlet for . . . arguing to the jury that they can interpret his testimony" to defy the plain instructions on what the law requires. (Tr. 1048, ln. 20—Tr. 1050, ln. 10).

Appellant responded with again noting the long-accepted, "black letter law" definition argument, and that it was up to the jury to determine the facts. (Tr. 1050, ll. 12–25). Appellant also argued that "the element of malice is that it is a person's mental state . . . what is in that person's mind." (Tr. 1052, ll. 22–25). Appellant argued that the defendant's reason could "undercut the malice element" as "just cause or excuse . . . in no way in the context of malice is designed to talk

[26] 391 S.C. 51, 69, 704 S.E.2d 71, 80 (Ct. App. 2010).
[27] 442 S.C. 140, 898 S.E.2d 116 (2024).

about a legal defense," rather is meant to explore "what was in the defendant's mind which under cuts hatred, ill will wickedness, all the words that go with malice." (Tr. 1052, ln. 20—Tr. 1054, ln. 24). The trial court maintained that that the charge was not appropriate and did not accept the defense requested phrasing into the charge; however, the court also noted the charge to be given to the jury did explain state of mind.

The problem with the defense argument, the Court resolved, was that it blended "just cause or excuse" with individual reason to act while those are actually "two different things." (Tr. 1053, ll. 13–19). Appellant countered, "there is a difference between the defendant believing he had just cause and excuse to undercut malice" which "goes against the wicked heart, the hatred" but conceded, "[i]t's not a legal defense, but it is potentially a defense to undercut the fact that he had this intentional doing of a wrongful act . . . it relates to the reason for doing this. . . ." (Tr. 1054, ll. 9–16). The trial court maintained its position and declined to charge the defense phrasing.

In closing, counsel underscored that Appellant "did not confess to a crime[,]" only that he killed Christina Parcell which is not a confession to murder. (Tr. 1105, ll. 20–23). Counsel argued that "the heart of the case" is the "mental component" or "What was Zack thinking?" (Tr. 1107, ll. 8–15; *see also* Tr. 1114, ln. 23—Tr. 1115, ln. 6, referencing a belief, "grounded on documents" and other "information" that Christina was a "threat" and "the one who posed the danger"; Tr. 1121, ll. 13–14, arguing "that a person who killed another to save an innocent child is not a murderer").

The trial court instructed the jury in relevant part:

> Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to have existed. . . .

> Malice is hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

(Tr. 1132, ll. 6–22). Appellant maintained his objection after the charge. (Tr. 1142, ln. 19).

During deliberations, the jury sent out a note requesting the court: "Define malice[]" and asking, "Is malice required for a murder charge?" (Tr. 1144, ll. 5–6; *see also* Court's Ex. 3). Appellant initially requested that the trial court answer "yes," and recharge the jury on malice, but agreed that the whole murder portion of the instruction be given again, though he maintained his objections to the charge as previously asserted. (Tr. 1145, ln. 17—Tr. 1147, ln. 5; Tr. 1148, ll. 19–23). The State left the matter to the judge and voiced no objection. (Tr. 1146, ll. 13–15). The jury continued deliberations. The jury asked two more questions, unrelated to the malice issue, each time receiving instructions and continuing to move through and consider the charges.[28]

As stated above, after these thorough deliberations, the jury convicted Appellant of murder, possession of weapon during the commission of a violent crime, burglary first degree, harassment, second degree, and conspiracy to commit harassment second degree. (Tr. 1159, ll. 11–25).

B. Discussion

Malice may be defined a number of different ways; however, it cannot be disputed that malice in context of a legal element "is a term of art." *State v. Doig*, 31 S.C.L. (2 Rich.) 179, 182 (1845). It has been defined as "the intentional killing a person . . . without just legal excuse." *State v. Byrd*, 72 S.C. 104, 110, 51S.E. 542, 544 (1905) (internal quotation marks omitted). Additionally, our Supreme Court has also approved an instruction that defined "[t]he term malice" as

[28] The jury returned with another question on the harassment charge, and the court instructed the jury again on harassment. (Tr. 1149, ll. 7–16). A third question was sent out requesting clarification on conspiracy, and again the jury was charged on that portion of the law and reminded them to look at the verdict form which contained directions, as well. (Tr. 1152, ln. 18—Tr. 1156, ln. 16).

"indicat[ing] a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it." *State v. Fuller*, 229 S.C. 439, 445, 93 S.E.2d 463, 466 (1956), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). Over the years, different iterations of the definition have been used rather interchangeably, but what should not be lost is necessity of the "cause or excuse" be based in law.

Historically, the concept of malice distinguishes between levels of culpability. *See State v. Summer*, 55 S.C. 32, 32 S.E. 771, 772 (1899) (affirming instruction that "although the fight might be sudden, yet it appears that there was a predetermination on the part of the slayer to bring it about, then, if he kills, it is murder, and not manslaughter."); *State v. Gallman*, 79 S.C. 229, 238 60 S.E. 682, 686 (1908) (affirming instruction defining malice as "without sufficient legal provocation, or just excuse, or legal excuse" and regarding the question of "murder or manslaughter" that the jury should "in considering that question . . . first take up murder, and consider whether or not the killing was done with malice aforethought."). However, reference to "excuse" was not to be considered a simple overlooking or pass for the action. Our Supreme Court explained, in the context of the trial court "instructing the jury with reference to murder, and malice as an essential ingredient," defining the term as '"doing of a wrongful act intentionally, without justification or excuse.'" *State v. McDaniel*, 68 S.C. 304, 47 S.E. 384 (1904). The Court explained:

> This is substantially the famous definition of "malice" by Bayley, J., in Bromage v. Proser, 10 E. C. L. 321: "'Malice', in common acceptation, means ill will against a person, but in its legal sense it means a wrongful act done intentionally, without just cause or excuse." In State v. Doig, 2 Rich. Law, 182, our court said: "In law, 'malice' is a term of art, importing wickedness, and excluding a just cause or excuse."

Id., 47 S.E. at 387. The Court further explained:

> . . . It must not be supposed that the word "excuse" is only applicable to excusable homicide, as homicide in self-defense. In the early stages of the common law there was ground for distinction between justifiable and excusable homicide, when the

> accused was not entitled to an acquittal in case of excusable homicide, but upon special verdict was entitled to pardon; but now the distinction is of no practical importance, as in both cases the accused is entitled to an acquittal, and there is no penalty whatever attaching. It would therefore be wrong to hold that the word "excuse" was intended by the court or understood by the jury to be used in the absence of something which renders one wholly excusable or justifiable, but, on the contrary, it should be held to include also any legal extenuation of the offense charged. . . .

Id.

Thus, the most precise and accurate definition remains "without sufficient legal provocation, or just excuse, or legal excuse." *Gallman*, 60 S.E. at 686; *State v. Judge*, 208 S.C. 497, 505, 38 S.E.2d 715, 719 (1946) (stating malice "is a performed purpose to do a wrongful act, without sufficient legal provocation") (quoting *State v. Heyward*, 197 S.C. 371, 375, 15 S.E.2d 669, 671 (1941)).

Admittedly, the phrase has also been shortened to "without just cause or excuse" in many cases. *See, e.g., State v. Bell*, 305 S.C. 11, 19, 406 S.E.2d 165, 170 (1991); *In re Tracy B.*, 391 S.C. 51, 69, 704 S.E.2d 71, 80 (Ct. App. 2010). But the core concept involving the absence of *legal* "cause or excuse" has not been relegated to the past. *See Belcher*, 385 S.C. at 610 n.5, 685 S.E.2d at 809 n.5 ("'The term malice indicates a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it.'") (quoting *State v. Fennell*, 340 S.C. 266, 275 n.2, 531 S.E.2d 512, 517 n.2 (2000)). *See also State v. Owens*, 433 S.C. 482, 483, 860 S.E.2d 357, 358 (2021) (collecting cases expressing malice as "the intentional doing of a wrongful act" "without sufficient *legal* provocation" or "without just *legal* excuse") (emphasis added). The disconnect is in phrasing, not meaning. Thus, the trial court did not commit an error of law, and, in turn, did not abuse its discretion in declining Appellant's request. Further, as to the context of this case specifically, the trial court was correct to consider whether the charge could be confusing.

Our Supreme Court had just indicated a similar concern in *State v. Sellers*, 442 S.C. 140, 898 S.E.2d 116 (2024).

In *Sellers*, our Supreme Court joined in the Court of Appeals' observation in the first *Sellers* opinion "question[ing]" whether "the phrase 'without just cause of excuse'" truly "added to the jury's understanding of the legal principle of malice." *Id.* at 147, 898 S.E.2d at 120. Thus, the necessity of the phrase as part of the malice definition is questionable. Notably, Appellant does not otherwise raise a question about the definition of malice included in the charge. Generally, defendants are not entitled to preferred, specific wording: "[t]he substance of the law is what must be charged to the jury, *not any particular verbiage.*" *State v. Adkins*, 353 S.C. 312, 318–19, 577 S.E.2d 460, 464 (Ct. App. 2003) (emphasis added). Appellant, likewise, was not entitled to particular phrasing for the malice definition. Additionally, the trial court accurately reasoned that the thrust of Appellant's argument took issue not with malice but with Appellant's purported reason for taking action. (Tr. 1053, ll. 13–19). Thus, the basis for the argument was faulty.

Simply, malice, while descriptive of a state of mind, does not equate to the particular defendant's purported reason to act. The personal reason to act is motive, a different concept. *See State v. Perry*, 440 S.C. 396, 405, 892 S.E.2d 273, 278 (2023) ("While intent encompasses one's resolve, commitment, or determination to act, motive represents the reason *why* a person intends an action."). The two "are distinct legal concepts." *Id. See also Motive*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Something, esp. willful desire, that leads one to act. • Generally speaking, motive (a factual incentive) should be distinguished from intent (a mental state). A motive, the reason or explanation for the offense, is generally considered to be inconsequential in substantive criminal law."). Motive is not a fact that needs to be proven to convict. *Perry*, 440 S.C. at 405, 892 S.E.2d at 278. Further, while evidence of motive may be offered under certain circumstances, even evidence of "a good motive is no defense. A wilful [sic] wrong inflicted on others, unwarranted by law, is malicious, though committed in pursuance of a general good purpose and sincere design to bring about some altruistic end." *Motive*, BLACK'S LAW DICTIONARY (12th ed. 2024) (quoting T.W. Hughes, *A Treatise on Criminal Law and Procedure* § 106, at 67–68 (1919)). *Cf. United States v. Lynch*, 162 F.3d 732, 746 (2d Cir. 1998) ("willfulness cannot be negated by a sincerely held belief, religious or otherwise, in the correctness of one's actions"); *United States v. Moylan*, 417 F.2d 1002, 1009 (4th Cir. 1969) ("defendants' motivation in the instant case— the fact that they engaged in a protest in the sincere belief that they were breaking the law in a good cause— cannot be acceptable legal defense or justification.").

Thus, whether Appellant may have held, in his mind, a good excuse to commit murder, that is not a legal excuse thus it is no defense at all. Stated plainly, the exclusion of the requested language could not have affected the defense as the defense did not exist. Consequently, there could be no prejudice to Appellant's defense in these circumstances. Yet, this Court need not consider prejudice or a lack thereof as there has been no showing of an abuse of discretion. There was no error of law or misapprehension of a probative or decisive fact in the trial judge's ruling. Therefore, Appellant is not entitled to any relief, and the lower court's ruling should be affirmed.

IV. The trial court did not abuse its discretion when it excluded evidence of Bradly Post's and Victim's participation in the production and/or distribution of child sexual abuse material (CSAM) where the State did not open the door to such evidence and the evidence would otherwise not be relevant to any legally viable defense

Appellant argues, in two separate issues, that the trial court erred when it excluded evidence of Victim and Bradly Post's participation in the production and/or distribution of CSAM where Post "opened the door" to such evidence during proffered pre-trial cross-examination and where the State opened the door to Victim's participation during the direct examination of Vanessa Kormylo, A.M.'s Guardian ad Litem. Appellant has continually argued throughout the course of this litigation that the CSAM evidence or other evidence proving ongoing sexual abuse of A.M. was crucial to understanding Appellant's justification to kill Victim. Respondent contends first, no door was opened to such testimony with respect to Post where he was testifying for a limited *in camera* examination pursuant to *State v. Lawrence*, 439 S.C. 611, 889 S.E.2d 557 (2023), and even assuming such a door was opened, Post was not on trial. Post's involvement in the production of CSAM and/or sexual abuse of A.M. was not relevant to the main issue of the case—whether Appellant killed Victim with malice aforethought. Furthermore, such evidence would be improper impeachment of Post, overly prejudicial to the State's case, and would otherwise confuse the issues before the jury.

Second, with respect to Kormylo's testimony, Respondent again contends no door was opened to evidence regarding Victim's participation in the production of CSAM and/or sexual abuse by the State. Similarly, even if such a door was opened, the testimony sought by Appellant would be irrelevant and would confuse the issues in the case. And as with other issues here on appeal, Appellant cannot show any prejudice given his own confession to Victim's killing and the State's overwhelming corroborating evidence. This Court should affirm.

A. Relevant Facts

Before trial, the State requested the trial court to rule on its previously filed motions to exclude reference to and evidence of child pornography—arguing first, with respect to Post, that whether he created or possessed child pornography was not relevant to Victim's murder and that it would otherwise be prejudicial to the State's case. At the same time, the State also requested a ruling on another previously filed motion to limit the cross-examination of Bradly Post regarding his pending charges and his participation in the creation of CSAM and/or sexual abuse at issue here. (Tr. 90–96). Regarding relevance and prejudice, the solicitor emphasized:

> Otherwise, Your Honor, at the end of the day, going into [Post's] particular crime would serve this jury absolutely no purpose as to whether Zack Hughes committed this crime or not, again, at this stage in the proceedings. . . . And we would also ask you to restrict the defense's ability to cross-examine him on that particular area as, again, it's not relevant and it's extremely prejudicial.
>
> And I remind Your Honor if this jury hears about any child pornography related to the victim in this particular case, you cannot unring that bell. You cannot unring that bell. And it is highly, highly prejudicial to the victim in this case.

(Tr. 96, ll. 7–19).

Appellant argued that the State was being disingenuous in stating that the allegations against Post were "unsubstantiated" as of Appellant's trial and that the State's requested exclusion relief was extraordinary in the sense that the trial court was not able to view and specifically consider any of the "16,000" CSAM images Appellant was potentially offering into evidence.[29]

---

[29] Notably, the solicitor clarified earlier that when the State was referring to the allegations against Post as being "unsubstantiated," it was stating so in the sense that Post's charges were still pending and Post was not convicted. (Tr. 91, 93). For purposes of review today by this Court however, Respondent notes that on March 12, 2026, Bradly Post pled guilty to one count of sexual exploitation of a minor, 3rd degree and one count of sexual exploitation of a minor, 2nd degree in exchange for the dismissal of his remaining charges. He received a sentence of seven years with credit for 1602 days time-served. Respondent contends, however, that whether the charges were substantiated is ultimately irrelevant to the issues here on appeal.

(Tr. 98–99). The trial court noted: "Mr. Moorman, assuming that is the case, their point still is I don't care if you have 45,000 videos. It's still not relevant is what they're saying . . ." (Tr. 99, ll. 11–14). Appellant responded that the CSAM/sexual abuse evidence was relevant because it would help the jury "get at the heart of the matter, to get at the truth of the case" but did not specify what legal defense it would establish as to Appellant's killing of Victim. (Tr. 99, ll. 16–25). Appellant argued that the evidence was not unfairly prejudicial to the State because "this evidence came to pass based on, in no small part, the actions instituted by Brad Post who is engaged in this illegal conduct with [Victim]. So, Your Honor, it's highly relevant." (Tr. 100, ll. 13–23). Appellant also argued that it was entitled to cross-examine Post about the nature of his pending charges as it would tend to show bias to testify favorably for the State. (Tr. 100–107).[30]

Regarding the CSAM/sexual abuse evidence, the solicitor again noted:

> What is on Brad Post's phone has nothing to do with this case, and they still can't establish a nexus to it. They can't establish any relevance to any of that. And until they can do that, there is no reason this jury needs to hear anything about what's going on with Brad Post and his separate crimes because, Your Honor, whether they like it or not, *Brad Post is not on trial here. Zach Hughes is on trial here. And so the fact that Brad Post may have child pornography on his phone really has no place in this courtroom here today*.

(Tr. 108, ll. 9–18) (emphasis added).

The trial court gave its ruling the following day with respect to CSAM/sexual abuse evidence and the cross-examination of Post as follows:

> And I am going to grant the State's motion . . . amended motion in limine, and I am going to exclude any reference to child pornography involving the victim, her juvenile daughter . . . or Bradly Post. So I'm going to be excluding that. And that also includes the cross-examination of Mr. Post. . . .
>
> I find that it is not relevant under Rule 401, 402. This evidence has no tendency to make the existence of any fact that is of consequence to this murder more or less likely. It will not assist the jury at arriving at the truth of this murder. The question

[30] These arguments will be discussed in more detail *infra*.

> is did the defendant commit this murder, *and that's the only issue*. The child pornography is not relevant. And even if so, I would exclude it under Rule 403 because the probative value is significantly outweighed by . . . and I know normally we jump to unfair prejudice *and that is part of it, but I would focus on confusion of the issues and misleading the jury.*

(Tr. 121, ll. 2–23) (emphasis added). While the trial court limited the scope of cross-examination of Post, it did allow Appellant to proffer his testimony. During the proffer, Appellant asked Post numerous questions regarding his relationship with Victim, finances, items in his house, and devices he possessed with potentially incriminating items therein, to which Post repeatedly invoked his Fifth Amendment right against self-incrimination. Lastly, Appellant asked Post if it was true that he worked with Victim to create and distribute child pornography. Post responded "No." (Tr. 157–176).

Subsequently, Appellant argued that the trial court should revisit its ruling on the exclusion of CSAM/sexual abuse evidence and its limitation on the scope of cross-examination of Post, specifically arguing that Post denying involvement in the creation/distribution of CSAM "opened the door" to being further cross-examined on the topic and to presenting extrinsic evidence tending to prove the same. (Tr. 178).[31] The solicitor again noted the information would be highly irrelevant and prejudicial. (Tr. 179). The trial court declined to revisit its prior ruling. (Tr. 180).

Later, with trial well underway, the State presented the testimony of Vanessa Kormylo, the Guardian ad Litem appointed to represent A.M.'s interests in the custody dispute between Mello and Victim. At the end of her direct testimony and before cross-examination, Appellant argued outside the presence of the jury that the State opened to door to discussion of Victim's abuse of A.M. by asking Kormylo what her custody recommendation was at the time prior to Victim's

[31] Respondent notes that Appellant did not specifically refer to the evidence of sexual abuse/CSAM as extrinsic evidence but that is exactly what it would be under the Rules of Evidence.

death, with Kormylo responding that, at that time, A.M. appeared to be thriving under the custody of Victim and would likely recommend Victim to have custody. The solicitor argued that the line of questioning was specifically tailored to developing the joint motive of Mello and Appellant to kill Victim in order to prevent her from being awarded permanent/final custody. Furthermore, the solicitor emphasized that the custody situation after the murder, including the underlying allegations of sexual abuse and the investigation of Post, was still irrelevant to the murder case. (Tr. 499–502). After taking time to consider the arguments, the trial court ruled that the door was not opened and Appellant's requested cross-examination was not permitted:

> The recommendation and the question was about the recommendation at that time. And based on what she knew at that time, she was given a recommendation based on what she had in front of her at the time which was prior to the murder. And so I don't find that the door was opened by the State. And, again, I looked at the State v. Heyward case, and this testimony did not make the child pornography evidence relevant. And her opinion now is not relevant to the murder trial. Now, maybe in a Family Court setting, but not to the murder trial. . . .

(Tr. 505, ll. 12–25). The Court did allow Appellant to proffer his intended cross-examination, to which the substance of Kormylo's response was that she would not have recommended Victim to have custody of A.M. knowing what she knows now or what she learned after the murder. (Tr. 506–507).

B. Discussion

"Relevant evidence" is defined as evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." *State v. Pagan*, 357 S.C. 132, 142, 591 S.E.2d 646, 651 (Ct. App. 2004) (citations omitted). "The trial judge's decision regarding the relevancy of evidence should only be overturned for a clear abuse of discretion." *State v. Lyles*, 379 S.C. 328, 339, 665 S.E.2d 201, 207 (Ct. App. 2008) (citations omitted).

Irrelevant evidence is inadmissible, and relevant evidence is further subject to Rule 403 of the South Carolina Rules of Evidence which allows the trial court to exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading of the jury, or other reasons. In this case, the trial court properly found that evidence of either Post's or Victim's participation in the creation/production of CSAM and/or sexual abuse of A.M. generally was irrelevant and would otherwise confuse the issues at trial or mislead the jury. As well stated by the solicitor, Appellant was attempting to put Post and Victim on trial for sexually abusing A.M. in order to establish a defense that has no basis in law. Neither Post nor Victim were on trial; Appellant was—for breaking into Victim's home and brutally stabbing her to death. Having conceded identity and essentially everything except personal moral culpability from the outset of his defense, the only essential issue left for trial was whether Appellant killed Victim with malice aforethought. And the evidence sought to be introduced by Appellant here was totally irrelevant because it could not make any more or less probable the existence of facts or elements going towards a proper legal defense such as voluntariness/duress, accident/mistake, voluntary/involuntary manslaughter, self-defense, or defense of others. The evidence could also not negate malice.

And even if relevant, the trial court properly recognized that the evidence would derail the trial in focusing the inquiry on Post/Victim's conduct rather than the brutal murder committed by Appellant. The CSAM or child pornography itself would have been highly inflammatory and invited the jury to decide based on emotion rather than the law and the proper evidence submitted at trial. As such, the trial court did not abuse its discretion in finding this evidence irrelevant, and it did not err in otherwise finding it inadmissible pursuant to Rule 403. Even assuming that the State opened the door to such an inquiry during its examination of Post and then later Kormylo, the trial court properly exercised its discretion in limiting Appellant's cross-examination.

On the point of Post allegedly opening the door specifically, Respondent contends that argument is questionable. Post was testifying under a limited proffer and was actively being screened for what questions he would exercise his Fifth Amendment right against self-incrimination pursuant to *State v. Lawrence*. When he happened to deny one of Appellant's assertions rather than invoke his right, Appellant attempted to use that as a backdoor to the otherwise inadmissible evidence, essentially "chomping at the bit" as described by the solicitor. Post was not testifying at this point before the jury, so one of the main rationales of the opening the door theory (i.e. the jury not being presented with the complete picture absent additional cross-examination) would not be served by then allowing Appellant to impeach Post with extrinsic evidence of conduct that was never put before the jury in the first place. In this way the trial court also properly exercised its discretion regarding the scope of cross-examination and the use of extrinsic evidence. *See, e.g.,* Rule 608(b), SCRE ("Specific instances of the conduct of a witness . . . may not be proved by extrinsic evidence."); Rule 611(a), SCRE ("The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence . . .").

As such, Appellant has failed to show any relevance, failed to show an abuse of discretion by the trial court regarding Rule 403, and failed to show how or why opening the door would change the ultimate decision by the court, assuming such a door was even opened in the first place. Finally, Respondent contends any error in restricting this evidence would be harmless beyond a reasonable doubt given Appellant's own admissions and the State's accompanying evidence that overwhelmingly points to Appellant's guilt, irrespective of Appellant's attempts to establish a defense not supported by law.

This Court should affirm.

V. The trial court did not abuse its discretion in limiting Appellant's testimony where such limitations were in line with prior rulings regarding CSAM/sexual abuse evidence and the trial court's ruling on the defense of others; and where such limitations did not violate Appellant's constitutional right to testify

Appellant argues the trial court erred in preventing Appellant from telling the jury why he killed Victim. Specifically, Appellant argues his constitutional right to present a complete defense was violated by not being allowed to "present his own version of the events in his own words." (Brief of Appellant at 56) (citation omitted). In line with previous arguments, Appellant argues the trial court misapplied the Rules of Evidence and that, whether applied properly or not, the Rules of Evidence should "never serve to prevent a defendant in a murder case from telling the jury why the defendant killed another person." *Id.* Respondent contends the trial court did not violate Appellant's constitutional right to present a complete defense. Further, Appellant's argument, if correct, would completely neuter the Rules of Evidence. Any criminal defendant could then argue that not allowing them to testify to inadmissible evidence (hearsay, irrelevance, prior bad acts, etc.) would violate their constitutional rights to testify and present a complete defense. Such a position is untenable and if accepted, would enable extreme mischief. This Court should affirm.

A. Relevant Facts

Before Appellant testified, the trial court had granted the State's request to exclude any evidence of sexual abuse/CSAM, in addition to excluding the defense of others theory and Appellant's request to charge the "just cause or excuse" language. *See* Relevant Facts, Arguments I, III, IV, *supra*. After these rulings, counsel for Appellant requested clarification as to whether the scope of Appellant's testimony would be limited in light of the court's rulings, leading to the following exchange:

Mr. Moorman: But I want to make sure should . . . and . . . obviously, he doesn't need to make a decision yet as to what he's going to do. But should he testify, obviously, he'd be entitled to testify as to why he did what he did . . . right? I just want to make sure I'm understanding . . . surely he'd be able to testify to that, correct?

The Court: State?

Mr. Hofferth: Judge, the State's position is he would not be entitled to testify and essentially circumvent the Court's ruling. . . . I direct the Court specifically to State v. Hamilton at 344 S.C. 359 and Chambers, which is . . . 410 U.S. 295. And in both those cases and in subsequent cases affirm that any of the defendant's testimony or evidence that they present must comply with evidentiary rulings put forth by the trial judge.

The defendant's right to present a defense is not unlimited. He can't testify to anything he wants. He can't testify to his justification in his mind of committing this killing and thereby work around, in the defense's theory, Your Honor's ruling. His testimony will have to be restricted to Your Honor's rulings. It's the State's opinion that this testimony is mitigation. It is not a defense as Your Honor has ruled, so he can't get on the stand and just sidestep what Your Honor has ruled.

Mr. Moorman: And I just want to make sure I understand this.

The Court: And that's exactly what my intent is. And I'll also reference State v. Cottrell . . . earlier, too, on limiting the testimony.

Mr. Moorman: So just so I understand, and so the State is arguing and Your Honor is ruling that Mr. Hughes cannot even explain to the jury why he did what he did if he testifies.

The Court: Essentially, within the limitations of State v. Cottrell, that's exactly what I'm saying.

Mr. Moorman: So he can't explain to the jury what his motive was, what his intent was. Can't do any of that.

The Court: I'll hear from the State.

Mr. Hofferth: Your Honor, if his testimony is along the lines of I didn't intend to kill her or I intended to hurt her essentially takes away from the element of . . . it's limited to what's in the record in the sense that he can't offer new information as to what would be evidence under defense of others by virtue of his testimony. He can't get on the stand and just because he is testifying he's not exempt from the Court's rulings. . . . [I]t's still the defense's evidence that they're putting forward.

> So he is not excluded from Your Honor's ruling. And that's what the case law provides.
>
> **Mr. Moorman:** So . . . Your Honor . . . this is just so important. So he's on trial for his freedom, for his life and he can't tell this jury why he did what he did. He can't tell them the full truth as to what happened. This is just . . . that's astonishing, Your Honor. I can't believe that that would be consistent with the law and the rights of due process. He's on trial. . . .
>
> **The Court:** It gets into limiting on this whole issue that I've ruled on on [sic] the defense of others. And it is limiting his testimony with regard to that issue.

(Tr. 838, ln. 15—Tr. 841, ln. 5).

During his testimony, Appellant attempted to testify as to these excluded matters (including prior rulings on CSAM/sexual abuse evidence and defense of others) multiple times before being interrupted, admonished, and eventually held in contempt. Respondent addresses these matters in more detail *infra* in Argument VI.

B. Discussion

The constitutional right to present a complete defense is not limitless. *State v. Cottrell*, 421 S.C. 622, 639, 809 S.E.2d 423, 433 (2017) ("The right to present a complete defense is violated by the exclusion of defense evidence pursuant to a state rule of evidence *only in rare circumstances*.") (emphasis added, citation omitted). As continually reinforced by the United States Supreme Court, "state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." *United States v. Scheffer*, 523 U.S. 303, 308 (1998); *see also Crane v. Kentucky*, 476 U.S. 683, 689–690 (1986); *Marshall v. Lonberger*, 459 U.S. 422, 438, n. 6 (1983); *Chambers v. Mississippi*, 410 U.S. 284, 302–303 (1973); *Spencer v. Texas*, 385 U.S. 554, 564, (1967) (all cited by *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006)). Even relevant evidence is subject to reasonable restrictions. *Scheffer*, 523 U.S. at 308 (citing *Taylor v. Illinois*, 484 U.S. 400, 410 (1988); *Rock v. Arkansas*, 483 U.S. 44, 55 (1987);

Chambers, 410 U.S. at 295). Rules of evidence "do not abridge an accused's right to present a defense so long as they are not 'arbitrary' or 'disproportionate to the purposes they are designed to serve.'" *Id.* (quoting *Rock*, 483 U.S. at 56). The federal right to present a complete defense is treated the same as a matter of state constitutional law. *See State v. Burgess*, 391 S.C. 15, 21–22, 703 S.E.2d 512, 515–16 (Ct. App. 2010).

As noted in the standard of review, the trial court has broad discretion to apply and enforce the rules of evidence. What Appellant seeks to argue on appeal is that he has a constitutional right to ignore the rules of evidence in pleading his innocence. Such a claim is thoroughly refuted by precedent and authority. Notably, Appellant makes a major concession regarding the application of one of his cited authorities, *State v. Rivera*, 402 S.C. 225, 741 S.E.2d 694 (2013), which held that a capital defendant's fundamental right to testify in his defense at trial was violated when he was *entirely* prohibited from testifying—even though he was going to immediately concede guilt before the jury. Appellant cannot rely on *Rivera* because he was allowed to testify. Appellant specifically acknowledges that the finding of error in *Rivera* was due to the *total* limitation of the defendant's testimony, yet attempts to relate the holding to the case at bar by stating that Appellant's testimony was so constrained as to make it a violation of his fundamental right to testify. Respectfully, this is a serious stretch of *Rivera*'s holding. *Rivera* would be more applicable here if there was a conflict between Appellant's trial counsel and Appellant; in other words, if Appellant wanted to testify that he killed Victim, but trial counsel (or the court) attempted to prevent him from doing so. This did not happen here, as Appellant has made it clear throughout the pendency of this case what his theory/strategy would be.

Moreover, Appellant's argument on this issue does little more than continue to contest the validity of the trial court's evidentiary decisions already addressed in the other issues on appeal here. *See id.* at 245–46, 741 S.E.2d at 705 ("We emphasize Appellant does not challenge the legitimate purposes served by Rules 401, 402, or 403, SCRE. Nor does Appellant contend any of those evidentiary rules in and of themselves arbitrarily restrict his right to testify. Rather, Appellant claims the trial court arbitrarily misapplied those rules, and in committing that error of law, the trial court unconstitutionally prevented Appellant from testifying during his own trial."). What the court in *Rivera* essentially found is that the trial court had stretched the rules of evidence to find the defendant's testimony irrelevant in a sort of paternalistic "desire to protect Appellant from himself." *Id.* at 243–44, 741 S.E.2d at 703–704. Appellant offers little to no briefing on how the rules of evidence at issue here "serve no legitimate purpose" or how they are "disproportionate to the ends they are asserted to promote." *Id.* at 245, 741 S.E.2d at 704–705 (quoting *Holmes*, 547 U.S. at 326). As such, he cannot show a violation of his fundamental right to testify.

And because any error in this context would not be fundamental and therefore non-structural, this issue is subject to a harmless error inquiry. *Compare id.* at 246, 741 S.E.2d at 705 ("Most trial errors, even those which violate a defendant's constitutional rights, are subject to harmless-error analysis." (citing *Arizona v. Fulminante*, 499 U.S. 279, 306–307 (1991)) *with id.* at 247, 741 S.E.2d at 705–706 ("The Supreme Court has found 'an error to be structural, and thus subject to automatic reversal only in a very limited class of cases.'") (cleaned up, citations omitted). Under the harmless error inquiry, preventing Appellant from testifying as to his ultimate rationale for killing Victim (i.e. to protect A.M. from future child abuse) would be harmless because such a rationale does not support any legally viable defense and would not negate the overwhelming evidence of guilt and malice.

This Court should affirm.

VI. The trial court did not abuse its discretion in holding Appellant in contempt for repeatedly attempting to testify to matters that were properly excluded by the trial court; and where Appellant had been repeatedly admonished by the trial court to not testify as to inadmissible evidence—yet Appellant continued to violate the court's lawful order

Appellant argues the trial court abused its discretion when it held Appellant in contempt of court for repeatedly testifying to ongoing and past sexual abuse of A.M. by Victim and her fiancé Bradly Post. Specifically, he argues that because the trial court previously erred when it prevented Appellant from arguing the defense of others, prevented the elicitation of sexual abuse/CSAM evidence, or prevented Appellant from telling the jury why he killed Victim, his order finding Appellant in contempt was void as violative of the United States Constitution and Appellant was thus under no obligation to follow it. Respondent contends the opposite. The trial court made correct rulings on the evidentiary issues before it and Appellant was bound to heed its instructions to not testify to inadmissible evidence. And even assuming these rulings were in error or in violation of Appellant's constitutional rights, Appellant was still bound to follow the lawful order of the court until he could challenge the adverse rulings on appeal. Appellant was given many chances to follow the court's instructions but willfully chose to repeatedly violate them and disrespect the inherent authority of the trial court. This Court should affirm.

A. Relevant Facts

Appellant was put on notice regarding the trial court's rulings on defenses and evidence through his attendance at his trial. *See* Relevant Facts, Arguments I, III–V. After testifying regarding his background, childhood, and his meeting of Mello and A.M., Appellant mentioned "concerns" Mello had told him about Victim, and then Appellant started to testify regarding his oldest adopted sibling, prompting an objection:

> **Mr. Wilkins:** . . . the State objects to the next line of questioning with [Appellant] based on your prior ruling. [Appellant] just testified that he had grave concerns about . . .
>
> **The Court:** My prior ruling concerning child pornography evidence.
>
> **Mr. Wilkins:** Child pornography. Yes, sir. [Appellant] just testified that he had grave concerns from what John Mello told him, and he said in relation to those grave concerns, I have two siblings. And what he's going to testify to is about that his siblings were harmed and abused when they were younger children in Russia. And that is a backdoor way to get in through Your Honor's ruling to discuss the fact that . . . he didn't have knowledge of any child pornography, but . . . he's going to try to tell this jury that the reasons he had grave concerns is because of molestation or child pornography. . .

(Tr. 963, ln. 16—Tr. 964, ln. 18). The trial court accepted the State's argument that this was a backdoor attempt to discuss A.M.'s sexual abuse situation and sustained the objection. (Tr. 964–968). Appellant was allowed to discuss how his sister Grace was abusive and caused problems for his family. (Tr. 969–976).

Later, after discussing a family court deposition of Victim that Mello had given him, Appellant was asked about what information Mello had shared with him regarding Mello's interactions with Investigator Dan Bevill, prompting another objection that Appellant was attempting to "backdoor" into Dan Bevill's investigation of allegations of sexual abuse. The trial court questioned what the relevance of this line of questioning was and sustained the objection. (Tr. 989–991). With the jury back in the courtroom, Appellant's direct examination continued:

> Q. So, Zack, you've testified about information that John has provided you relating to concerns he had about . . . Christina Parcell, especially in conjunction with [A.M.]. We talked about the time period of April. I want to move to May. In May of 2021, were you and John Mello continuing to communicate about the situation?
>
> A. Yes.
>
> Q. In May of 2021, what, if anything, did John ask you to do for him?
>
> A. Given the extremely grave nature of John's concerns for his daughter, especially while she was in the custody of her mother, Christina Parcell, *and potentially being*

exposed to her mother's boyfriend, Brad Post, who John believed was a pedophile and is a pedophile.

> **Mr. Wilkins:** Objection.
>
> **The Court:** *Sustained. I instruct you to totally disregard the last comments made by the defendant.*

(Tr. 992, ll. 5–23) (emphasis added). Appellant continued to testify regarding Mello's cash offers to kill Victim, also adding: "[h]e was becoming increasingly more worried and distressed about the safety of his daughter. I was as well. The more I learned about the situation and everything *and a lot more than what I've told you, I was also* . . .", prompting another objection that was sustained. (Tr. 993–994) (emphasis added). Appellant continued to testify regarding his visit to Mello in Italy and preparing/sending the mailers to harass Victim and Post. (Tr. 994–1002).

In discussing his fictious family court affidavit and phone call to CPS alleging personal knowledge of abuse, Appellant noted:

> So I told them that I had seen [A.M.] being verbally and physically abused by her mother. And, again, I made that up. That's not true. But I said it because I wanted to give [A.M.] an opportunity to have face time in person with an agent from DSS away from her mother *where she could tell them that her mother was sexually abusing her*.

This prompted another objection that was sustained, and the Court instructed the jury to disregard the comments. (Tr. 1004–1005). Later, Appellant was questioned regarding his state of mind as of October 2021, prompting the following exchange:

> A. I was still in the middle of this music project so I had a lot on my plate there just professionally. And, of course, I was continuing . . . increasing my support to help John save his daughter [A.M.]. And since June when I had returned, *I had absolutely been convinced that Christina Parcell was sexually abusing her daughter.*
>
> **Mr. Wilkins:** Your Honor, let's go. I mean . . .
>
> **The Court:** Take the jury out.

> . . .
>
> Mr. Moorman, *you said that you had your client under control and I had specifically excluded any reference to that and that has done this twice.*
>
> **Mr. Moorman:** And, Your Honor, so let me say what I said was he's aware of my instructions, Your Honor's instructions. I'm not going to ask him questions that are designed to elicit information that I believe is inadmissible. And I stand by that, Your Honor. I've asked him questions that go to his state of mind which I believe is very important for the purpose of malice, of all the intent elements in all these offenses. I'm not asking him questions specifically that go into sexual abuse. I just, truthfully, the posture we're in right now, Judge, it's important that he convey to the jury what's on his mind. I'm asking those questions. . . .
>
> **The Court:** *It's in direct violation of my order.*

(Tr. 1007, ln. 8—Tr. 1008, ln. 8) (emphasis added). The solicitor noted that Appellant knew exactly what the court's instructions were yet continued to violate them. (Tr. 1008–1009). After a break, the Court instructed Appellant:

> **The Court:** Mr. Hughes, I stated this to you earlier, but do you understand that you are not supposed to reference anything concerning child pornography or sexual abuse for the remainder of your testimony? Do you understand that, sir?
>
> **[Appellant]:** *I understand.*
>
> **The Court:** And you can abide by that instruction[?]
>
> **[Appellant]:** *I will do my best*, Your Honor.
>
> **The Court:** Not do my best. *You need to abide by that instruction.*
>
> **[Appellant]:** Your Honor, I put my hand on the Bible and made an oath to tell the whole truth. I'm a little confused.
>
> . . .
>
> **Mr. Wilkins:** Your Honor, *he is refusing to abide by your order.*
>
> . . .
>
> **The Court:** If there is a subsequent violation . . . and you've heard my instruction, Mr. Hughes? Do you understand?

[Appellant]: *I understand your instruction*, Your Honor.

The Court: If there's a subsequent violation, then we will discuss how to proceed at that juncture.

(Tr. 1010, ln. 14—Tr. 1011, ln. 19) (emphasis added). Thereafter, the Court gave the jury a curative instruction requested by the State. (Tr. 1012–1013).

Appellant was asked if he killed Victim on October 13. He stated yes, adding that he believed it was "absolutely necessary" to save A.M., prompting another sustained objection. (Tr. 1015). After describing in great detail the steps leading up to the murder and the brutal murder itself, Appellant stated: ". . . as I left the house, I felt the most enormous wave of relief wash over me because I knew from that moment on, . . . [A.M.] *would be safe from the sexual abuse that her mother was perpetrating on her, and there is proof to that that the State is hiding from you."* (Tr. 1031, ll. 15–25) (emphasis added). The solicitor objected, the Court excused the jury, and Appellant was instructed to stop talking. The solicitor asked the Court to prohibit Appellant from continuing his testimony or to alternatively hold him in contempt before the jury, noting that he had been warned three times by this point and yet continued to violate the Court's orders. (Tr. 1032–1033).

After an hour-long break, the Court held Appellant in contempt and sentenced him to six months imprisonment. (Tr. 1036).

B. Discussion

"Contempt results from the willful disobedience of an order of the court." *Miller v. Miller*, 375 S.C. 443, 454, 652 S.E.2d 754, 759 (Ct. App. 2007) (quoting *Bigham v. Bigham*, 264 S.C. 101, 104, 212 S.E.2d 594, 596 (1975)); *see also* S.C. Code Ann. § 14-5-320 ("The circuit court may punish by fine or imprisonment, at the discretion of the court, all contempts of authority in any cause or hearing before the same."). "A willful act is one which is 'done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.'" *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001) (quoting *Spartanburg Cnty Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 82–83, 370 S.E.2d 872, 874 (1988)). "[C]ourts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice." *Id.* at 455, 652 S.E.2d at 760 (quoting *Brandt v. Gooding*, 368 S.C. 618, 628, 630 S.E.2d, 259, 264 (2006)). "The primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders." *Id.* at 456, 652 S.E.2d at 761 (quoting *Floyd v. Floyd*, 365 S.C. 56, 75, 615 S.E.2d 465, 475 (Ct. App. 2005)). "In a criminal contempt proceeding, the burden of proof is beyond a reasonable doubt." *Id.* at 457, 652 S.E.2d at 761. "Intent for purposes of criminal contempt is subjective, not objective, and must necessarily be ascertained from all the acts, words, and circumstances surrounding the occurrence." *Id.*

"Direct contempt is defined as contemptuous conduct occurring in the presence of the court." *State v. Kennerly*, 331 S.C. 442, 450, 503 S.E.2d 214, 219 (Ct. App. 1998). "Direct contempt that occurs in the court's presence may be immediately adjudged and sanctioned summarily." *Brandt*, 368 S.C. at 628, 630 S.E.2d at 264. Notably, a party may not be held in contempt for violation of a void order. *Arnal v. Fraser*, 371 S.C. 512, 522, 641 S.E.2d 419, 424 (2007). But only a narrow class of orders can be considered void—the most common examples from case law being orders/decrees in family court matters where our appellate courts determined family courts operated outside their subject matter jurisdiction. *Compare id.* at 517–22, 641 S.E.2d at 422–25 (family court's contempt findings void based on order made while appeal was pending since appellate court had sole jurisdiction for matters on appeal); *Kosciusko v. Parham*, 428 S.C.

481, 505, 836 S.E.2d 362, 375 (Ct. App. 2019) (family court lacked jurisdiction to enforce arbitration order/awards through contempt proceedings); *Long v. McMillan*, 226 S.C. 598, 86 S.E.2d 477 (1955) (circuit court lacked capacity to initiate contempt proceedings based on violation of verbal, in chambers order issued after underlying general sessions case was already disposed), *with State ex rel. McLeod v. Holcomb*, 245 S.C. 63, 65–69, 138 S.E.2d 707, 707–709 (1964) (circuit court had jurisdiction to find dentist working without license in contempt of injunction prohibiting the same).

In this case, the record overwhelmingly supports the trial court's finding of direct contempt. Appellant was given multiple opportunities to course-correct and yet continued to flaunt the trial court's specific and direct limitations on his testimony. When directly admonished by the trial court, Appellant essentially equivocated as to whether he could/would continue to follow the trial court's orders and was warned what would happen if he continued to testify inappropriately. Construing the Court's rulings more broadly, Appellant likely violated them about five times. Even construing the Court's rulings narrowly, Appellant violated them three times. In allowing Appellant essentially three strikes, the trial court exhibited exceptional patience and prudence before being left no choice but to hold Appellant in contempt. Otherwise, the trial court would have essentially abdicated its essential role of umpire. Appellant's direct contempt before the Court thus made him liable to summary judgment, sanction, and punishment by the trial court. *Kennerly*, 331 S.C. at 450, 503 S.E.2d at 219; *Brandt*, 368 S.C. at 628, 630 S.E.2d at 264. Appellant can show no abuse of discretion in arguing otherwise.

Further, Appellant offers no briefing as to how or why the trial court's evidentiary rulings were *void*, other than relying on prior arguments that the rulings were incorrect as a matter of evidentiary law, or a cursory citation to a case from another jurisdiction. But an error in an evidentiary ruling does not make the ruling void in the same manner a lack of subject matter jurisdiction would. Appellant offers no argument why a court of General Sessions in this case would lack subject matter jurisdiction over rulings on evidence *during a criminal trial*. Respondent contends that such matters are quintessential, daily, routine functions firmly committed to the jurisdiction of courts of General Sessions during the disposition of eligible criminal offenses. Again, if the Court had failed to hold Appellant in contempt, Respondent contends it would have essentially abdicated its role as a neutral umpire. Thus, whether or not the rulings were erroneous, even constitutionally erroneous, Appellant was bound to heed the repeated admonitions of the trial court to stay within the bounds of its rulings. Accepting Appellant's arguments would neuter the authority of the trial court to maintain the integrity of its own trials and would give defendants license to act totally outside the boundaries of evidentiary rulings so long as there is a plausible argument that the rulings were made in error.

The correct method to challenge an adverse evidentiary ruling is through direct appeal, as Appellant is currently doing with respect to his other issues. *See, e.g.,* Rule 201(a), SCACR ("Appeal may be taken, as provided by law, from any final judgment, appealable order or decision."). If the evidentiary rulings truly were prejudicial error, as Appellant has painstakingly argued in his other issues, then Appellant would be entitled to relief. What is not appropriate, however, is to openly defy the clear rulings of the trial court during direct testimony and then complain on appeal that the court made void contempt findings. Finally, there is a colorable argument that Appellant's claim of error as to contempt is moot as he was only sentenced to six months imprisonment over a year ago—suggesting that his sentence for contempt would be completed and also making it unclear here what relief, if any, could be granted. *See*, *e.g.*, *Jordan v. Harrison*, 303 S.C. 522, 524, 402 S.E.2d 188, 189 (Ct. App. 1991) (finding contempt issue moot where appellant paid court-ordered fine, thus satisfying original court order) (citing *Chappell v. Chappell*, 282 S.C. 376, 377, 318 S.E.2d 590, 591 (Ct. App. 1984)); *Clamp v. Hall*, 287 S.C. 270, 335 S.E.2d 815 (Ct. App. 1985) (resolution of underlying custody dispute during pendency of appeal made contempt issue moot).

Either way, this Court should reject Appellant's dangerous arguments and affirm the trial court's finding of contempt.

VII. The trial court did not abuse its discretion when it prevented Appellant from asking Bradly Post on cross-examination about the nature of his pending charges and the possible penalties he faced if convicted of these charges where such questioning was not proper impeachment showing bias under Rule 608, SCRE

Appellant argues the trial court erred in preventing him from cross-examining Bradly Post regarding his pending charges for possession of CSAM and sexual abuse as potential evidence of bias to testify favorably for the State, pursuant to Rule 608, SCRE. He also argues this limitation violated his Sixth Amendment right to confrontation. Respondent contends first, Appellant's line of questioning was not proper impeachment going to bias under Rule 608(c) given that Post was not a codefendant, had no pending deals, and his charges were wholly unrelated to Appellant's case. Furthermore, Post's testimony was minimally inculpatory and not crucial to the State's case. Such impeachment would also represent yet another backdoor attempt to get in evidence of sexual abuse or CSAM evidence that is wholly irrelevant to the crimes charged in this case and was properly excluded by the trial court. For those same reasons, Appellant's confrontation right was not violated. And even assuming the court erred in preventing this examination, such error would be harmless given the fact that Post's testimony was not crucial to the State's case and Appellant's own detailed confession to the crime was corroborated by the State's evidence. This Court should affirm.

A. Relevant Facts

Before trial, the State filed a motion asking the trial court to restrict cross-examination of Bradly Post regarding his pending charges, specifically the names of his pending charges or alternatively, the substance of those specific charges. The solicitors argued such cross-examination would exceed the scope of reasonable impeachment given the fact that Post was not a co-defendant, his testimony was not inculpatory, and the fact that such questioning was a back-door attempt to get in abuse evidence not relevant to the charges at hand. (R. pp. *). At trial, as discussed above in the Relevant Facts of Argument V, the trial court heard the State's various motions, including the motion to restrict the scope of cross-examination of Post and the motions to exclude CSAM/abuse evidence. During that discussion regarding the motion to restrict cross-examination, the solicitor emphasized that Post's charges were not yet convictions; his testimony was minimally inculpatory; the fact the charges were still pending with no outstanding deals or offers could not show bias because Post was being charged by the Attorney General's office for the abuse crimes, not the Thirteenth Circuit Solicitor's Office; and allowing such questioning would open "Pandora's box" regarding the otherwise inadmissible abuse evidence. Appellant rejected the notion that the fact that the case was being prosecuted by the Attorney General made any difference in the Rule 608 bias analysis, and similarly rejected the notion that Post was not an inculpatory witness. The solicitor conceded that it would be impossible to avoid the fact that Post would have to testify that he is currently incarcerated and has pending charges, but emphasized that the specific nature of the charges, including possible sentencing, was inappropriate. (Tr. 94–116).

Following a break in the proceedings that day, the trial court gave its ruling restricting the scope of cross-examination in addition to granting the State's motion to exclude CSAM/abuse evidence, beginning at the end of its explanation of its decision on the latter evidence:

> If, at some point, it does become relevant, then that simply can be revisited. And, again, even if it were found to be relevant, which I don't think it is, is does not come in pertaining to Post under 608(c) for bias. I know that . . . that was your argument. Certainly, you're going to be protected in proffering.
>
> But Mr. Post, he's going to . . . have his day in court, and he's going to have to . . . you know, but he's not . . . pled and he's not been tried yet. He's not a codefendant. He's not an eyewitness to the actual crime. He basically found the body of his girlfriend/fiancée, and he's going to be here testifying under subpoena. And it's my understanding he's testifying to finding the body, reporting the murder which is corroborated by the 9-1-1 phone call and the investigator. The victim was his girlfriend, and he is a victim of harassment. He does have serious charges against

> him, but these are pending, again, and he's innocent until he's proven guilty. And he will have a trial.
>
> Also, the Attorney General's Office will handle this trial, not the Greenville solicitor's office. He's not a cooperating witness. He's not providing any type of inculpatory, I guess, evidence linking the defendant to the crime. So they're not offering him in any way to . . . inculpate the defendant of any type of wrongdoing or indication of guilt.
>
> I also looked at State v. Smith, State v. Mitchell, State v. . . . Pradubsri . . . . And I don't find that the bias issues that were in those cases are in play here. I also reviewed [Delaware v. Van Ardall].
>
> Defense can ask Mr. Post if he has any pending charges but not go into the specific charges. Certainly, on the proffer, there will be certain allowance, but I do have the right to impose a limit on the scope of defense counsel's cross-examination and not violate the confrontation clause. And that would be under [United States v. Freitekh]. Also, it would be consistent with Rule 611(a).

(Tr. 121, ln. 24—Tr. 123, ln. 17) (cleaned up).

As indicated by the Court in its ruling, Appellant was allowed to proffer his cross-examination of Post that was otherwise restricted, including questioning regarding Post's specific charges, their possible punishments, and whether he had any pending deals with respect to those charges. (Tr. 167–171).

B. Discussion

Rule 608(c), SCRE, provides that "bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." The right to cross-examine witnesses for bias is also guaranteed by the Confrontation Clause of the Sixth Amendment of the United States Constitution, subject to reasonable restriction:

> "It does not follow, however, that the Confrontation Clause of the Sixth Amendment prevents a trial court from imposing any limits on the scope of defense counsel's cross-examination and presentation of evidence related to the impeachment of a key prosecution witness's credibility." *Quinn v. Haynes*, 234 F.3d 837, 847 (4th Cir. 2000). "On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment,

> prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).

United States v. Freitekh, 114 F.4th 292, 313 (4th Cir. 2024).

Consistent with these principles, Rule 611(a) of the South Carolina Rules of Evidence gives wide latitude to the trial court in the management of testimony, including cross examination:

> The court *shall* exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

Rule 611(a), SCRE (emphasis added). This latitude is further recognized in the standard of review. *See Gracely*, 399 S.C. at 371, 731 S.E.2d at 884; *State v. Mitchell*, 330 S.C. 189, 196–97, 498 S.E.2d 642, 645–46 (1998) (citing *State v. Smith*, 315 S.C. 547, 551–53, 446 S.E.2d 411, 414 (1994)).

Moreover, whether as a matter of evidentiary law or the Confrontation Clause, an erroneous limitation of a defendant's cross-examination of a State's witness is subject to harmless error review. *See Freitekh*, 114 F.4th at 313–15; *Mitchell*, 330 S.C. at 197–98, 498 S.E.2d at 646–47; *Smith*, 315 S.C. at 552–53, 446 S.E.2d at 414; *accord Van Arsdall*, 475 U.S. at 681–84. First, Respondent contends that the trial court properly exercised its discretion in preventing Appellant from inquiring into the specifics of Post's charges because (a) his testimony was minimally inculpatory, (b) there were no pending deals or discussions of any deals that could reasonably affect Post's testimony (which is further supported by fact that the solicitors in this case had no influence over Post's charges, and (c) such examination would again go back into the "Pandora's box" of CSAM/abuse evidence that has absolutely no relevance to the central issues at trial.

Second, even if Appellant was erroneously limited from cross-examining Post, such an error could not have reasonably affected the outcome of the trial. Again, Post's testimony was minimally inculpatory, essentially to the effect of: 'I was in a romantic relationship with Victim and was aware of the ongoing custody dispute between Mello and Victim, including the general animosity and escalation between the two; I received mailers containing pornographic photos of Victim with the insinuation that such mailers were going to more people; I went to Victim's home and found her dead on October 13; and I never met Appellant.' (*See* Tr. 213–229). The mere fact that Post is/was a child predator or would be incentivized to skew his testimony a certain way due to the pendency of his charges does not change the fact that his testimony was marginally important to the State's overall case. This point was well-illustrated by the solicitor in the discussion regarding the original motion:

> [W]hat is the impact or the bias value of asking that question from the defense's perspective given what Mr. Post is testifying to, so you elicit the questions aren't you charged with sexual exploitation of a minor, *does that make the fact that he found her body that morning less likely? Does it make the fact that he received envelopes less likely? Does it make the fact that they were in a relationship less likely?* Or what doubt does that case on those bare factual bases that he's going to provide. That is the distinction when the courts are analyzing this as to the importance of the witness's testimony to the State's case. He is not sitting there saying Zachary Hughes sent those envelopes, Zachary Hughes committed this murder.

(Tr. 117–118) (emphasis added).

These points aside, Respondent emphasizes that Appellant can never show prejudice from this error or any of the other complained errors on appeal where he openly admitted to all culpable conduct for which he had no legally viable defense. Allowing cross-examination into Post's charges again gets back into Appellant's attempts to establish a sort of vigilante justice or jury nullification argument based on the perceived inefficacy of the justice system to protect A.M. As with Appellant's other arguments, Respondent asks this Court to reject such theories. Appellant was not entitled to be Victim's judge, jury, and executioner.

This Court should affirm.

VIII. The trial court did not abuse its discretion when it admitted State's Exhibit 9 and testimony as to the contents of State's Exhibit 9 where the State sufficiently established chain of custody; and any error admitting such evidence would be harmless—especially when the evidence at issue went to a collateral issue not material to guilt or innocence

Appellant argues the trial court erred in admitting fungible drug evidence (cocaine) and accompanying expert testimony by arguing that the State failed to establish a sufficient chain of custody. Specifically, Appellant contends that chain of custody was not properly established since the State only presented the testimony of the evidence collector and the final recipient of the evidence who conducted the drug testing, thereby missing links in the chain of custody between the collector and final recipient and making the items/testimony inadmissible under Rule 901, SCRE. Respondent contends that the State presented a sufficient chain of custody allowing the evidence to be submitted pursuant to Rule 901 where the collecting officer testified that he conducted a field test that was positive for cocaine and thereafter submitted the evidence with another investigator.

However, even assuming the drug evidence was improperly admitted, Appellant fails to show any prejudice given that the cocaine found in Victim's house was relevant only to the collateral issue of Appellant potentially planting the cocaine in an effort to stage the crime scene (or to make Victim look bad) and was thus not material to the issue of whether Appellant killed Victim with malice aforethought. Furthermore, as stated repeatedly throughout this brief, Appellant fails to show any prejudice from these adverse rulings when he gave a detailed confession outlining his killing of Victim, the steps taken in preparation beforehand, and the steps taken afterward to conceal his identity—irrespective of his alleged justification to save A.M. from ongoing abuse. This Court should affirm.

A. Relevant Facts

During the State's case-in-chief, Master Deputy Jonathan Garrett, one of the first investigators who arrived on the scene of Victim's death, testified that while he was looking through the scene, he found "a white plastic bag with a white powder substance in the living room near the front door"—the same room Victim was found dead in. (Tr. 257). The solicitor then presented a photo of the plastic bag and asked Garrett to identify the plastic bag. Then, the solicitor pulled out the plastic bag itself, identified as State's Exhibit 9. After positively identifying the bag, the State offered it into evidence, prompting Appellant's first objection: "I don't have a problem with the photograph coming into evidence. I don't think the full foundation has been laid . . . has been completed for 9 in order to be entered into evidence." (Tr. 258, ln. 23—Tr. 259, ln. 3). The Court admitted the photograph but instructed the solicitor to lay the foundation. (Tr. 259). The solicitor then asked Garrett what he did after collecting the bag:

> A. I conducted a field test on it to see if it was a controlled substance.
>
> Q. Why do you say . . . in your first observations, you believed it to be a controlled substance?
>
> A. Yes, sir. I have a previous assignment in narcotics for 14 years, and to me it appeared to be . . . the way it was packaged, it appeared to be a controlled substance.
>
> Q. Okay. So what occurred after you conducted a field test of it?
>
> A. Did a presumptive test for cocaine, a field test.
>
> Q. After that field test was conducted, *what did you do thereafter with State's Exhibit 9?*
>
> A. *It was ultimately secured in the Property and Evidence section at the Greenville County Law Enforcement Center to be secured as evidence.*
>
> Q. So it was thereafter submitted into evidence?
>
> A. It was.

(Tr. 259, ln. 10—Tr. 260, ln. 3).

At this point, the State again attempted to move the bag into evidence, prompting another objection from Appellant: "I continue my objection. There hasn't been a full chain established yet throughout the continuation of where that evidence went. So until that happens, we would have an objection to it being entered." The solicitor responded by stating a full chain does not need to be established at this point because Garrett was the same individual who collected State's Exhibit 9 and conducted the initial field test of State's Exhibit 9 showing it to test positive for cocaine—therefore the foundation was laid. The Court agreed and overruled Appellant's objection. (Tr. 260).

On cross-examination, Appellant inquired further into what happened to the bag after its initial collection and field test:

> Q. Okay. And so what you did with that bag was you took it to the Property and Evidence room?
>
> A. Eventually, yes, sir.
>
> Q. Okay. When would that have been? How much later?
>
> A. It was that day. . . . I think it was logged in on the 13th. Later that day myself and Investigator Sparkman together did it.
>
> Q. Okay. You and Investigator Sparkman. . . . Do you know who's . . . was it you or Investigator Sparkman in the chain of custody?
>
> A. Him. I was with him because I went and field tested before we took it, and therefore, we gave it the item number JS-4. Jarrad Sparkman 4 would be the item number.
>
> Q. And do you know who got it out of the Property and Evidence room?
>
> A. To be tested? (Reviews document)
>
> Q. . . . I'm just asking what you're pulling out there to refresh your memory with.
>
> A. Property and Evidence sheet which would document the chain of custody. Or actually the lab report. . . . I don't have what chemist, *but it would have been*

> *brought out at a later date to be positively identified* by the forensic crime lab. But I don't know which chemist did that.
>
> Q. Okay. So would the chemist have come and gotten it or did somebody else get it and take it to the chemist?
>
> A. No. *The chemist would come down*. They would put in a request saying they wanted it to be analyzed, and then the chemist would come from the lab, pick it up out of the Property and Evidence and take it back to the lab.

(Tr. 263, ln. 1—Tr. 264, ln. 6) (emphasis added).

The State's next witness was the forensic chemist, Kristen McCall. McCall testified that she became involved with the case when investigators requested the presumptive cocaine to be tested. She testified to the standard protocol she observes to maintain proper chain of custody:

> [W]hen I receive my stuff, I make sure it's sealed by the officer. And if it's not, it goes back to Property and Evidence because you want to make sure your evidence is sealed because that means that somebody could have tampered with it. So if it was open, I take it back down to Property and I say "I'm not working this item. You need to get the officer to fix this."
>
> So when it gets fixed, I will go back down there and I will get the item. And I'll come back to the lab and I'll do a chemical test that gives me an idea of what I'm looking at. And then I do two confirmatory tests which is an FTIR and a GC-MS analysis.

(Tr. 270, ll. 11–23). The solicitor then had McCall identify State's Exhibit 9 by reviewing her date and initials she placed on the outside of the bag. When McCall attempted to testify to the results of her testing, Appellant objected again on Rule 901 grounds—arguing chain of custody was still not properly established. The Court overruled his objection, and McCall testified that State's Exhibit 9 contained 4.97 grams of cocaine. (Tr. 271–273).

B. Discussion

In a case involving fungible items of evidence such as drugs or DNA samples, the party offering the items into evidence "must establish a complete chain of custody as far as practicable." *State v. Sweet*, 374 S.C. 1, 6 647 S.E.2d 202, 205 (2007). "Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." *Id.* at 7, 647 S.E.2d at 206 (citing *State v. Taylor*, 360 S.C. 78, 27, 598 S.E.2d 735, 739 (Ct. App. 2004)).

"Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." *Id.* "[W]e have never held the chain of custody rule requires every person associated with the procedure be available to testify or identified personally, depending on the facts of the case." *S. C. Dep't of Soc. Servs. v. Cochran*, 364 S.C. 621, 629, 614 S.E.2d 642, 646 (2005). "Whether the chain of custody has been established as far as practicable clearly depends on the unique factual circumstances of each case." *Id.* at 629 n.1, 614 S.E.2d at 646 n.1.

In this case, there was sufficient evidence in the record to establish that the chain of custody requirement was met. Garrett testified he observed the bag at the scene of the crime, conducted a field test on the substance, which was presumptively positive for cocaine, and then secured the bag together with Investigator Sparkman at Greenville County's "Property and Evidence" room. (Tr. 257–264). The forensic chemist, Kristen McCall, testified to the standard procedure of obtaining evidence from the custodian—emphasizing that improperly sealed items are given back to law enforcement for correction. She then testified that she retrieved the bag and tested the substance—finding it positive for approximately five grams of cocaine.[32] (Tr. 270–273).

---

[32] As an additional sustaining ground, even assuming that the chain of custody was not sufficiently established as of the time of its admission into evidence (right after Garrett testified regarding the field test and then submitting the bag into evidence), evidence of the chain of custody was further developed through Appellant's cross-examination of Garrett and the direct testimony of McCall. (*See* Tr. 263–264).

Regardless, even assuming the chain of custody requirement was not satisfied, any error in the admission of the cocaine evidence would be harmless given the fact the cocaine only went to the collateral issue of whether Appellant tampered with the scene of the crime after killing Victim. Appellant was not charged with possession of cocaine or for tampering with evidence. Thus, the cocaine was not material to the issue of whether Appellant killed Victim with malice aforethought or whether Appellant harassed Victim. Finally, with Appellant's detailed confession and the State's strong corroborating evidence, there could be no prejudice.

This Court should affirm.

IX. The trial court did not abuse its discretion when it admitted State's Exhibits 94, 95, 96, 97, and 100 and the expert's DNA testimony where the State sufficiently established chain of custody; and where any error admitting such evidence would be harmless beyond a reasonable doubt

Appellant argues the trial court erred in admitting DNA evidence and accompanying expert testimony by arguing that the State failed to establish a sufficient chain of custody. Specifically, Appellant contends that chain of custody was not properly established since the State only presented the testimony of the evidence collector and the final recipient(s) of the evidence who conducted the DNA and serology testing, thereby missing links in the chain of custody between the collector and final recipient and making the items/testimony inadmissible under Rule 901, SCRE. Respondent contends that the State presented a sufficient chain of custody allowing the evidence to be submitted pursuant to Rule 901 where the evidence collector accurately testified to following the proper method to ensure chain of custody was properly maintained and the recipient of the evidence also testified to following appropriate chain of custody measures.

Furthermore, Appellant fails to show prejudice from the admission of the DNA evidence found on Victim compared to the buccal swabs collected from Appellant when the evidence was only relevant to identity of the killer and Appellant *never* challenged identity in his defense. This Court should affirm.

A. Relevant Facts

At trial, the State's forensic technician, Kaylen Ford, testified that she assisted in processing the crime scene at Victim's home. In addition to taking photographs of the crime scene, Ford collected buccal swabs and fingernail clippings from Victim. The solicitor and Ford discussed the following:

> Q. I am going to show you State's Exhibit 94, 95, 96, and 97. I'm showing you 94, 95, 96, and 97. Starting with 94, what is 94?

A. 94 is the fingernail clippings from the victim's right hand.

Q. And could you describe for the jury when you're taking these fingernail clippings at an autopsy, what is that process like?

A. So we have a sterile set of nail clippers that we remove from the packaging. We then place a piece of paper towel underneath of the victim's hands. I use those fingernail clippers to clip the clippings from her left hand, and then I do the same process with a different paper towel from her right hand. Those are packaged individually, and then the fingernail clippers are packaged and submitted as well.

Q. And is that what you did here?

A. Yes.

Q. With both her right and her left hand with respect to 94 and 95?

A. Yes.

Q. What about 96 and 97? What are those?

A. So these are the buccal swabs that I collected from the victim at the autopsy.

Q. I know we've had some testimony to that effect, but what exactly did you do there to collect those?

A. So we take a sterile cotton swab, and we swab the inside of the person's cheek to collect those cheek cells and get DNA from them.

Q. And you collected two of those?

A. I did.

(Tr. 374, ln. 13—Tr. 375, ln. 24).

At that point, the solicitor moved into evidence State's Exhibits 94–97. Appellant objected, arguing that chain of custody was not sufficiently established for fungible evidence. The Court asked the State if they would be "putting them in later through another witness[.]"—to which the solicitor responded: "We'll have testimony through another witness, but [Ford] is the collector of these items." The Court declined to admit the evidence at that time, noting the exhibits would "remain marked." Thereafter, the solicitor asked Ford what she did with the swabs and fingernail clippings, to which she responded that she "submit[ted] them to our Property and Evidence section" for later testing. (Tr. 375–376). Ford also collected buccal swabs from Appellant when law enforcement executed the search warrant at his home—the same search that yielded Appellant's phone, bike, truck, and other evidence. (Tr. 469–473).

Later, towards the end of the State's case-in-chief, Hannah Burbage, a DNA analyst working in Greenville's forensic DNA lab, first testified to the general practice when requesting items for testing:

> So an investigator has to request the DNA to be done, so they fill out a form and what evidence they would like processed. I then review any documentation for that particular case such as incident reports, crime scene reports as well as the DNA request and any evidence collected.
>
> Once I kind of have an idea of what evidence needs to be processed and what needs to be done on those items . . . then I will request evidence from our Property and Evidence section which is the location that stores all evidence from crime scenes. They will then get the evidence together that I need. I will go to that location, they're at the Law Enforcement Center, pick up the evidence from them and bring it back to the DNA lab which is a secure facility and accessed by key card only. . .

(Tr. 757, ln. 23—Tr. 758, ln. 14).

For this case, Burbage testified that she performed serology and became involved when the investigator requested DNA evidence to be processed. After receiving the request, Burbage testified that she physically went down to "Property and Evidence" and then brought the samples back to the DNA lab. Regarding State's Exhibits 96 and 97, Victim's buccal swabs, Burbage testified that she obtained them in sealed packages which were "scanned into my custody through our digital barcoding system which is a digital chain of custody." (Tr. 759–761). Once back at the lab, Burbage testified:

> A. Once I am back at the lab and ready to begin processing the evidence, I will begin inspecting it.

> Q. And what are you inspecting it for?
>
> A. To ensure that it's the correct items as well as everything is sealed and labeled properly.
>
> Q. Did you inspect these two particular items as well?
>
> A. Yes.
>
> Q. And was there anything significant that you saw about whether they had been tampered with or not?
>
> A. No.
>
> Q. Did you inspect them to see if they were properly sealed?
>
> A. Yes.
>
> Q. And was there any issue that you noted on any reports regarding those samples?
>
> A. I have no notes regarding any issues with the evidence.
>
> Q. And would you be able to use it in testing if there was an issue or a contamination or an improper sealing?
>
> A. Typically, we would not process anything that has not been sealed.
>
> Q. Okay. And were these two items sealed properly?
>
> A. Yes.

(Tr. 761, ln. 25—Tr. 763, ln. 1).

Burbage testified similarly regarding Appellant's buccal swabs, State's Exhibit 100, and Victim's fingernail clippings, State's Exhibits 94 and 95. (*See* Tr. 764–766). Burbage testified to her own processing of the evidence in preparation for further DNA testing by another person at the lab. At that point, the State moved 94–97 and 100 into evidence, prompting another objection by Appellant on authentication grounds. The Court overruled the objection, citing *State v. Hatcher*, 392 S.C. 86, 708 S.E.2d 750 (2011), *State v. Trapp*, 420 S.C. 217, 801 S.E.2d 742 (Ct. App. 2017), and *State v. Henley*, 428 S.C. 649, 837 S.E.2d 639 (Ct. App. 2019). (Tr. 767–771).

Later, during examination of the DNA examiner working at the same lab, Appellant made another objection on chain of custody/authentication grounds that was overruled by the Court. (*See* Tr. 781–790). The DNA examiner testified that DNA collected from Victim's right fingernails matched a known sample from Appellant. (Tr. 789–790). At the end of the State's case, Appellant moved for a mistrial, raising the authentication of DNA evidence at issue here. The Court denied the motion for mistrial. (Tr. 793–798).

B. Discussion

The law applicable here is the same at issue *supra* in Argument VIII. *See Sweet*, 374 S.C. at 6–7, 647 S.E.2d at 205–206; *Cochran*, 364 S.C. at 629, 614 S.E.2d at 646. And for the same reasons the cocaine evidence was properly admitted, the DNA evidence at here was also properly admitted. First, with respect to the DNA items collected from Victim, State Exhibits 94–97, the State's evidence tech Kaylen Ford testified that she was personally present at the autopsy and collected the fingernail clippings and the buccal swabs. Then, when law enforcement executed a search warrant on Appellant's home, Ford was present to take a buccal swab from Appellant. Thereafter, she submitted the items to Property and Evidence. (Tr. 374–376). Later, Hannah Burbage, a technician who performed serological analysis at the DNA lab, testified that she personally collected these items from Property and Evidence in sealed containers. She could not identify any signs of tampering. When she completed her analysis, she left the items for the DNA examiner. Here, the State properly established chain of custody through this testimony.

But even assuming chain of custody was not properly established, and the items and DNA testimony were admitted in error, Appellant can show absolutely no prejudice from the admission of such evidence because such evidence was only probative of the killer's identity—an issue that Appellant explicitly and immediately conceded as a part of his defense. Thus, Appellant is due no relief on this issue.

This Court should affirm.

X. The trial court did not abuse its discretion when it refused to grant Appellant's motion for a directed verdict on the harassment indictment on the basis of unconstitutional vagueness where Appellant lacks standing to make an as-applied vagueness challenge and otherwise fails to show that the harassment statute is facially vague

Appellant argues the trial court erred in denying his motion for directed verdict on the harassment indictment on the basis that the harassment statute, S.C. Code Ann. § 16-3-1700, is unconstitutionally vague. Specifically, he argues that the two degrees provided in the statute, first-degree and second-degree harassment, with their "non-exhaustive" lists of proscribed conduct, fails to supply "clear statutory elements nor meaningfully differentiate the two degrees of harassment." Thus, he argues that the statute fails to provide fair notice or constrained enforcement discretion. (Brief of Appellant at 78–79).

As an initial matter, Respondent contends Appellant has not properly preserved this issue for appellate review as he failed to make a facial or as-applied constitutional objection to the *statute* pre-trial, instead opting to only raise the constitutional challenge to the harassment statute at the directed verdict stage.[33] *Compare State v. Gentry*, 363 S.C. 93, 102–103, 610 S.E.2d 494, 500 (2005) (holding challenge to sufficiency of indictment not preserved for appellate review unless raised before jury is sworn) *with State v. German*, 439 S.C. 449, 887 S.E.2d 912 (2023) (finding constitutional challenge to implied consent statute preserved for review where argument was made pre-trial and renewed throughout proceedings); *State v. Lewis*, 434 S.C. 158, 863 S.E.2d 1, 5–7 (2021) (reaching standing and merits analysis of constitutional challenge to statute where appellant

[33] As discussed below, while Appellant did challenge an aspect of the harassment indictment pre-trial (i.e. that the statute failed to specify whether the State was proceeding specifically on first-degree or second-degree harassment), Appellant in effect waived a sufficiency challenge when he suggested the indictment sufficiently outlined an offense for second-degree harassment—but not first-degree. (*See* Tr. 17–20).

had moved to quash indictment and raised vagueness objection pre-trial). Regardless, Appellant lacks constitutional standing to make a void-for-vagueness challenge as his offending conduct clearly falls within the statutory proscription of the harassment statute and is clearly the kind of conduct the legislature intended to prohibit. *See S.C. Dep't of Soc. Servs. v. Michelle G.*, 407 S.C. 499, 507, 757 S.E.2d 388, 392 (2014). Appellant has failed to demonstrate that the statute is vague "*as applied to his own conduct*, regardless of its potentially vague application to others." *Id.* at 507, 757 S.E.2d at 393 (emphasis original, citations omitted). Finally, Respondent contends that § 16-3-1700 is not unconstitutionally vague as a "person of ordinary intelligence and judgment would be sufficiently apprised of conduct that would come within the purview of the statute." *State v. Neuman*, 384 S.C. 395, 405, 683 S.E.2d 268, 273 (2009). This Court should affirm.

A. Relevant Facts

Before trial, Appellant argued the harassment indictment inadequately set forth the elements to make out an offense of first-degree harassment.[34] Appellant also believed the indictment failed to designate whether first or second-degree harassment was being sought by the State, but conceded that the allegations would be more consistent with second-degree harassment. The State responded by noting that though the harassment statute was unique for having two sections and giving examples of culpable conduct, it would "clearly be a jury question as to whether it was harassment first or harassment second." The Court appeared to implicitly agree and suggested charging both sections of the statute, which the State clarified is what they would want. (Tr. 17–18).

[34] Appellant first stated that the indictment inadequately set forth the elements of *second-degree harassment*, but immediately clarified that they would likely seek directed verdict later as to first-degree harassment and that the indictment was "more consistent" with second-degree harassment. (*See* Tr. 17–18).

Appellant continued his argument citing *State v. Crenshaw* for the proposition that "[a]n indictment is adequate if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent conviction." 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980) (citation omitted). Appellant argued that in the "absence of any designation" as to first-degree or second-degree harassment, the Court would not know which judgment to pronounce. Counsel also argued this failure of differentiation violated Appellant's right of presentment to the grand jury. The State responded by indicating it would elect a degree if requested by the Court but argued that it was not required to do so and that indictments are amended "all the time." However, the Court did not make a decision on Appellant's objection at that point—instead only agreeing to the State's request to amend the end date on the indictment from July to August. Appellant also clarified that other than his objections based on grand jury presentment and the lack of differentiation between first and second-degree harassment, he had "no problem" with the way the indictment read. (Tr. 18–22).

Following the end of the State's case-in-chief, Appellant made several motions. Relevant to this issue, Appellant first argued that he was entitled to a directed verdict on the harassment charges on the basis that the indictment failed to allege whether first or second-degree harassment was charged. He argued that in the absence of such designation and lack of proper consideration by the grand jury, the charge should be submitted to the jury as second-degree harassment, a misdemeanor. The Court did not rule on these arguments but noted that it had been discussed pre-trial and that it could be revisited later. (Tr. 802–803).

Next, Appellant argued that "it is virtually impossible to make a determination as to what conduct forms the basis for harassment in the first degree verses conduct that forms the basis of harassment in the second degree"—thereby making the harassment statute vague "both facially and as applied to this case because the conduct it prescribes [sic] is the same in both subsections." The Court denied the motion without hearing further argument. (Tr. 803–804). Going back to the charging issue however, the State reemphasized that whether Appellant was guilty of first-degree or second-degree harassment was a question of fact for the jury that could be facilitated by charging both sections of the statute. (Tr. 805). When trial re-convened over the weekend, the Court denied Appellant's indictment objections on the record and ruled that both sections would be charged to the jury. (Tr. 811–813). At the end of trial, the jury found Appellant guilty of second-degree harassment and conspiracy to commit second-degree harassment, but not guilty of first-degree harassment and conspiracy to commit first-degree harassment. (Tr. 1159).

B. Discussion

The statute at issue here, South Carolina's criminal harassment statute, sets out two degrees of harassment as follows:

> (A) "Harassment in the first degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the first degree may include, but is not limited to:
>
> (1) following the targeted person as he moves from location to location;
>
> (2) visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after the victim has filed an incident report with a law enforcement agency;
>
> (3) surveillance of or the maintenance of a presence near the targeted person's:
>
> (a) residence;
>
> (b) place of work;
>
> (c) school; or
>
> (d) another place regularly occupied or visited by the targeted person; and
>
> (4) vandalism and property damage.

> (B) "Harassment in the second degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. *Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.*

S.C. Code Ann. § 16-3-1700(A)–(B) (emphasis added).[35]

Punishment for first-degree harassment and second-degree harassment is proscribed in Sections 1720 and 1710, respectively. The main difference in punishment is that second-degree harassment is treated as a misdemeanor while first-degree harassment is treated as a felony. The statute also defines stalking and accompanying penalties which are greater than first and second-degree harassment. *See* S.C. Code Ann. § 16-3-1700(C), § -1730. The main distinction between the two degrees of harassment, other than punishment, appears to be proximity and intensity—with first-degree centered more so on harassing conduct done in-person and perhaps involving the fear of imminent/future physical violence while second-degree covers harassing conduct initiated or maintained externally through phone, mail, or other means without the fear of imminent violence or intensity of physical proximity.

As a reminder, the appellate court's review in the context of a constitutional challenge to a statute is limited "because all statutes are presumed constitutional and, if possible, will be construed to render them valid." *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001).

[35] The case law treatment of this statute is sparse. *See, e.g. Scofield v. South Carolina*, No. 2:25-cv-07866-BHH-MGB, 2025 WL 2462739 (D.S.C. July 31, 2025), *report and recommendation adopted*, 2025 WL 2462740 (D.S.C. Aug. 26, 2025) (federal district court dismissing under *Younger* abstention § 1983 claim challenging state prosecution and pre-trial detention for stalking as being violation of 1st and 14th amendment rights based on standards for 'true threats' cases set by SCOTUS); *State v. Brandenburg*, 419 S.C. 346, 797 S.E.2d 416 (Ct. App. 2017) (finding first-degree harassment to be a lesser-included offense of stalking); *United States v. Mohr*, 554 F.3d 604 (5th Cir. 2009) (finding stalking conviction from SC to be a crime of violence for purposes of federal sentencing enhancement).

“A ‘legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt.’” *In re Treatment and Care of Luckabaugh*, 351 S.C. 122, 134–35, 568 S.E.2d 338, 344 (2002) (quoting *Joytime Distribs.*, 338 S.C. at 640, 528 S.E.2d at 650). The challenger has this burden of proof. *Id.*

The void-for-vagueness doctrine is based on the idea that procedural due process requires “fair notice and proper standards for adjudication.” *State v. Houey*, 375 S.C. 106, 113, 651 S.E.2d 314, 318 (2007). “The constitutional standard for vagueness is whether the law gives fair notice to those persons to whom the law applies.” *In re Amir X.S.*, 371 S.C. 380, 391–92, 639 S.E.2d 144, 150 (2006). “A statute is not unconstitutionally vague if a person of ordinary intelligence seeking to obey the law will know, and is sufficiently warned of, the conduct the statute makes criminal.” *State v. Curtis*, 356 S.C. 622, 629, 591 S.E.2d 600, 603 (2004). However, a defendant challenging a statute on vagueness grounds lacks constitutional standing where their offending conduct clearly “falls within even the most restrictive application of the statute.” *Neuman*, 384 S.C. at 403, 683 S.E.2d at 272; *see also Lewis*, 434 S.C. at 167–70, 863 S.E.2d at 5–7 (concluding appellant lacked constitutional standing to challenge statute on vagueness grounds where statute clearly applied to his conduct); *State v. Michau*, 355 S.C. 73, 77, 583 S.E.2d 756, 759 (2003) (same); *Amir*, 371 S.C. at 392, 639 S.E.2d at 150 (same).

In this case, Appellant lacks standing to raise a void-for-vagueness challenge because his conduct clearly falls within the bounds of the harassment statute. While South Carolina does not have an explicit ‘revenge porn’ statute, this is essentially what happened here, and Respondent contends that such activity is merely a sub-category of harassment. Notably, many jurisdictions that have these statutes incorporate some of the statutory elements of the harassment statute, such as an unlawful purpose, infliction of emotional distress, and unreasonable intrusion of privacy.

See, e.g., Ariz. Rev. Stat. Ann. § 13-1425(A); Cal. Penal Code § 647(j)(4); Fla. Stat. Ann. § 784.049(2)(c); Ga. Code Ann. § 16-11-90; La. Stat. Ann. § 14:283.2(A); Tenn. Code Ann. § 39-17-318 (effective July 1, 2026). Respondent contends that even without statutory language narrowly tailored to the specific context of revenge porn, South Carolina's general harassment statutes captures Appellant's conduct: revenge porn of Victim distributed to multiple people and places for the specific purpose of harassment or intimation that in no question concerned an intimate and private aspect of Victim's life, her sexual relationship with John Mello. Appellant's actions were also consistent with an unlawful purpose of attempting to interfere with the custodial dispute between Mello and Victim. Appellant has little argument to back the claim that sending pornographic photos of Victim to Victim's neighbors, family, and friends was not "a pattern of intentional, substantial, and unreasonable intrusion into the private life" of Victim where such photos were taken in confidence by someone Victim previously trusted and were not made for the public. And Appellant cannot refute the common-sense conclusion that such conduct would cause substantial emotional or mental distress for the average, reasonable person; and cannot show how Victim would not suffer emotional or mental distress from such harassing conduct.

Appellant mostly appears to take issue with the fact that the statute specifies two degrees for harassment and provides non-exhaustive examples of culpable conduct for both degrees, but this argument does not address how his conduct escapes even the most restrictive reading of the statute. Respondent contends that even if it conceded that Appellant's conduct was not first-degree harassment, the conduct certainly falls under second-degree harassment. Thus, Appellant lacks constitutional standing to make an as-applied vagueness challenge to the harassment statute. *See Michelle G.*; *Neuman*; *Lewis*; *Michau*; *Amir*, *supra*.

Furthermore, Appellant cannot show how a person of ordinary intelligence would not be put on notice of what the statute prohibits. First, with respect to first-degree harassment, the examples provided clearly outline well-understood examples of harassing conduct. And while less severe in general intensity and less specific, common sense dictates that persons would be apprised of offending conduct under second-degree harassment based on principles of civility and decency. If someone told you to "harass the shit"[36] out of someone by sending pornographic photos and doctored escort advertisements tending to impugn the reputation of said person through the mail to that person, their friends, neighbors, and/or family, you would hopefully hesitate to consider not only the clear *moral* repugnance of such proposed action, but also consider the possible *illegality* that accompanies such acts of dubious morality. What is notable in this case especially is Appellant's open admittance to using various methods to obscure and obfuscate the source of the harassing mailers, suggesting consciousness of guilt. Regardless, the harassment statute does not ask us to guess at its meaning. It asks us to adhere to basic norms of decency and civility. Appellant fails to show unconstitutional vagueness in arguing otherwise.

This Court should affirm.

[36] Recall the WhatsApp messages between Appellant and Mello. (Tr. 665–666).

XI. The trial court did not abuse its discretion when it denied Appellant's directed verdict motions on the harassment and conspiracy to commit harassment charges where the State presented sufficient evidence to submit the case to the jury

As a final grasp, Appellant argues the trial court erred in denying his motion for directed verdict on the harassment and conspiracy to commit harassment charges on the basis that the State presented *no evidence* that Victim suffered mental or emotional distress and *no evidence* of any non-legitimate intent. Specifically, Appellant argued the State failed to present any testimony that Victim was upset, crying, distraught, or afraid when she received the harassing mailers and went to law enforcement, and that Appellant's justifications to send the mailers to disrupt ongoing abuse of A.M. was a legitimate intent that disproved any non-legitimate intent. Respondent contends the State presented substantial evidence of an illegitimate intent from Appellant mailing pornographic photos of Victim taken by Mello (what other jurisdictions would specifically call illegal 'revenge porn') in an effort to smear Victim and to manipulate the ongoing custody dispute over A.M. Additionally, evidence of Victim going to law enforcement because of the harassing mailers being sent created a question of fact on the element of emotional distress sufficient to submit the charges to the jury. This Court should affirm.

A. Relevant Facts

At the end of the State's case, Appellant moved for a directed verdict on the harassment and conspiracy charges on the basis that no evidence was presented showing that Victim experienced any mental or emotional distress as a result of the mailer situation. The solicitor argued that evidence of Victim going to law enforcement created a question of fact for the jury—regardless of the fact that Victim was dead and could not testify to her personal response to the mailer situation. (Tr. 799–801). The Court denied the motion. (Tr. 802).

After Appellant rested his case, he renewed his motion for directed verdict on the harassment and conspiracy charges on the same basis that no evidence was presented showing emotional distress of Victim. Appellant also asserted an additional basis for the directed verdict motion—that the State failed to present evidence of "no legitimate purpose" given that Appellant stated the point of sending the mailers was to reveal Victim's bad character to others in the hopes that A.M. would eventually be removed from her custody and thus be safe from abuse. (Tr. 1066–1068). The Court denied the motion without further argument or discussion. (Tr. 1068).

B. Discussion

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 477–78 (2004) (citing *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002)). "When reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the state." *Id.* at 593, 606 S.E.2d at 478 (citing *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *Id.* at 593–94, 606 S.E.2d at 478 (citing *State v. Harris*, 351 S.C. 643, 653, 572 S.E.2d 267, 273 (2002); *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272–73 (1990); *Gaster, supra*). A motion for a directed verdict must be granted only "when the evidence merely raises a suspicion that the accused is guilty." *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984).

As to Appellant's first argument that the State presented zero evidence of emotional distress, Respondent concedes that there was little to no testimony or direct evidence to the effect that Victim was crying, upset, or generally disturbed during the mailer situation, but circumstantial evidence was sufficient to establish a question of fact for the jury—namely—Victim going to law enforcement after she, Post, her sister, and others received the harassing, pornographic mailers. Appellant's argument at trial that people go to law enforcement without necessarily having emotional distress fails to refute the reasonable inference of emotional distress created by the evidence (and thus a question of fact) of Victim going to law enforcement. As such, Appellant can show no abuse of discretion by the trial court in denying the motion for directed verdict on this basis.

Regarding Appellant's argument that there was no evidence of "no legitimate purpose," Appellant conflates what is required to be proven beyond a reasonable doubt in order to secure a conviction with what is required to surpass the low bar of "any evidence." Simply put, regardless of the various supposedly legitimate purposes Appellant put forward in his defense for sending the mailers, he cannot overcome the fact that the State presented strong evidence of hostile, malicious intent on the part of Mello and Appellant to unreasonably intrude into Victim's personal life by revealing her intimate sexual affairs in order to influence the on-going dispute over A.M.'s custody. While the State's evidence does not necessarily refute Appellant's theories of legitimate intent as a matter of law, it absolutely created a question of fact such that the charges were properly submitted to the jury. Appellant putting forth his intent and state of mind during his testimony allowed the jury to consider whether the State proved no legitimate intent, thus further developing the notion that intent was a question of fact required to be considered by the jury. Appellant cannot show an abuse of discretion by the trial court implicitly recognizing that intent was a factual question on the harassment/conspiracy charges and thus denying the motion for directed verdict on this basis.

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
S.C. Bar No. 14244

P. SANDERS LINKER
Assistant Attorney General
S.C. Bar No. 107688

CYNTHIA SMITH CRICK
Solicitor, Thirteenth Judicial Circuit

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

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
June 22, 2026