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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2025-001221

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

MICHAEL C. WHITLOCK, JR.

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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1. The court did not abuse its discretion in denying the request for involuntary manslaughter when evidence showing Appellant fired fourteen shots into a crowd would not be lawful unless Appellant was acting in self-defense, which would have justified the killing. Further, the trial court did not abuse its discretion in denying the motion for a new trial on the same basis.

2. Although not preserved, Appellant did not unequivocally invoke his right to counsel by his vague question, and Detective Riedel did not further interrogate him until Appellant reinitiated the conversation. Additionally, the *Miranda* waiver was voluntary. Finally, Appellant was induced to testify by evidence other than the statement, making any error in the admission of the statement harmless beyond a reasonable doubt.

3. This Court should not reach the merits of the issue related to the solicitor's closing argument when Appellant did not raise this argument *at all* during trial, leaving it patently unpreserved.

4. The State presented direct evidence that Appellant was a shooter, direct evidence from which the jury could infer malice, and direct evidence from which the jury could infer a mutual plan or agreement between Appellant and others to commit the offenses; thus, the trial court properly denied the motion for a directed verdict.

5. The trial court did not abuse its discretion in sustaining the State's when Appellant asked Detective Riedel an irrelevant question related to Detective Rodriguez—who did not even testify at trial. Further, because Appellant did not raise this argument to the trial court or seek to proffer this alleged testimony, this Court should not reach the merits of this issue.

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RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Did the trial court abuse its discretion in denying the request for involuntary manslaughter when evidence showing Appellant fired fourteen shots into a crowd cannot be lawful unless Appellant was acting in self-defense, which would have justified the killing? Did the trial court abuse its discretion in denying the motion for a new trial on the same basis?
2. Did Appellant (1) unequivocally invoke his right to counsel by his vague question and (2) reinitiate the conversation prior to Detective Riedel further interrogating him? Was the Miranda waiver voluntary? Should this Court address these issues when they were not properly preserved? Is any error harmless beyond a reasonable doubt when Appellant was induced to testify by evidence other than his statement?
3. Should this Court reach the merits of the unpreserved issue related to the solicitor's closing argument when Appellant did not contemporaneously object or move for a mistrial, and raised this issue for the first time in a post-trial motion?
4. Did the trial court properly deny the motion for directed verdict here where the State presented direct evidence that Appellant was a shooter, direct evidence from which the jury could infer malice, and direct evidence from which the jury could infer a mutual plan or agreement between Appellant and others to commit the offenses?
5. Did the trial court abuse its discretion in sustaining the State's objection when Appellant asked Detective Riedel an irrelevant question related to Detective Rodriguez—who did not even testify at trial? Should this Court address this issue when Appellant did not raise this argument to the trial court or seek to proffer this alleged testimony?

STATEMENT OF THE CASE

Appellant is presently confined in the South Carolina Department of Corrections serving a thirty-five-year sentence. In June 2023, the Charleston County Grand Jury indicted Appellant for murder, attempted murder, and possession of a weapon during the commission of a violent crime. (Indictments) On May 20-24, 2024, Appellant proceeded to a jury trial before the Honorable Bentley D. Price. Public Defenders Amanda Monaco and Nicolas D'Angelo represented Appellant, and Assistant Solicitors Kelly E.M. Barber and Daniel W. Cooper prosecuted the case. The jury convicted Appellant as indicted, and Judge Price sentenced him to concurrent terms of thirty-five years for murder, thirty years for attempted murder, and five years for the weapon charge. This appeal follows.

STATEMENT OF FACTS

Appellant was indicted for murder and attempted murder following the fatal shooting of Shaquanna Myers and the shooting of Phillip Green during Appellant's mother's Christmas party in Charleston. Both victims attended the party as guests.

At trial, Phillip testified Appellant—whom he only knew in passing—approached him “[v]ery aggressive. Sarcastic like” and “said something along the lines of ‘I saw you and her watching each other all night. You can have the b****.’” (Tr. 122). Phillip was confused and initially chuckled; he responded, “Apparently you have a problem with the b****, not me.” (Tr. 123-24). Phillip testified two men with aggressive demeanors joined Appellant after Phillip made the comment, “[i]t got quiet very quick,” and “guns went out.” (Tr. 124-25, 150). Phillip clarified he saw at least three guns—“For sure, [Michael] Bolten and [Appellant].” (Tr. 126, 136). He recalled telling police that another person—“Rud”—also had a gun. (Tr. 145).

Phillip testified he had a Corona bottle in his hand that he emptied for protection, but one of Appellant's sisters grabbed it from him. (Tr. 125). Phillip's brother, Anthony Green, asked Phillip to unlock the car; Anthony then “tried to ease out the crowd” but “[a] gentleman booked right behind him.” (Tr. 125). Phillip ran after them. Phillip stated Bolton was chasing Anthony

with the gun. He was ducking and weaving behind cars. And I was trying to get to him as well. I was running kind of in the middle of the street, and that's when I got—that's when I got shot. As I was passing [Bolton and Anthony], I got shot.

(Tr. 127). Phillip testified the shooting paused before another round of shots erupted, and Phillip was shot during the second round. (Tr. 148). The bullet entered his back and went through his collarbone. (Tr. 127). Phillip was focused on Anthony at the time—who was being chased by Bolton—and was unsure who shot him. (Tr. 138, 143, 150).

Anthony recalled that Appellant approached Phillip toward the end of the party “frustrated,

angry,” and Appellant’s “entourage came right behind.” (Tr. 208). Anthony, who knew Appellant, attempted to diffuse the situation, but the argument drew a crowd, moved outside, and escalated after Bolton pulled out a firearm. (Tr. 210). Anthony stated he ran toward Phillip’s car and Phillip followed. (Tr. 210, 212). Anthony heard gunshots but did not see the shooter. (Tr. 212, 230). He recalled a short pause in the shots, and Phillip was shot during the second round. (Tr. 213). Anthony testified Shaquanna was checking on Phillip when she was fatally shot. (Tr. 214). After the shooting, Anthony retrieved his gun from the car; he later gave it to police. (Tr. 214-15, 228).

Antwan Campbell, Phillip and Anthony’s brother-in-law, recalled seeing Appellant and Phillip arguing. (Tr. 242). He stated everyone was trying to diffuse the situation, but it moved outside and escalated. (Tr. 243-44). Antwan saw Anthony running and heard gunshots shortly thereafter. (Tr. 244-45). He testified the only person he saw with a gun was wearing a blue shirt and had gold teeth, and he recalled seeing that person fire three rounds.¹ (Tr. 245, 249-50, 254).

Rochelle Campbell, Phillip and Anthony’s sister, recalled seeing Appellant at the party arguing with his girlfriend; Appellant was pointing toward Phillip and accusing her of wanting to “talk” to Phillip. Rochelle stated that “within two minutes, if not even that, he—[Appellant] approached Phillip” in an aggressive and argumentative manner. (Tr. 262-64). Rochelle got between the two men and began pushing her brother outside; she asked Appellant’s sisters to help diffuse the situation. (Tr. 263-64). Rochelle stated the argument escalated when Bolton and Rud approached in support of Appellant; Rochelle continued to push her brothers outside to leave, but the men followed them and Rud cornered Phillip. (Tr. 265-67, 276). Anthony began running and Bolton ran after him. (Tr. 267-68). Rochelle saw Bolton with a gun; she testified “as soon as he

¹ From the transcript, it appears the man in the blue shirt was “Rud.” (Tr. 145-46, 253-55, 265, 590). Bolton was identified as the man in white, and Appellant was wearing a black and white shirt with a white bandana on his head. (Ex. 19).

saw Phillip, that's when he just let the gun rip.” (Tr. 268-69, 278). Rochelle recalled a brief pause in the shooting and then a second round of shots. (Tr. 269). She clarified she saw Bolton shooting the first round of shots but did not see who shot the second round. (Tr. 281-82).

Bernadette Jones, who was also at the party, recalled seeing Appellant arguing with a man in a white sweater. (Tr. 296). She stated they moved outside, where it became “more of a scuffle.” (Tr. 297). Jones heard gunshots as she was leaving. She testified the shots stopped, and Appellant began firing a second round of shots. (Tr. 298). Jones clarified Appellant was standing “almost directly in front of me in the middle of the street” when she saw him firing the gun; he appeared to be shooting in Anthony’s direction. (Tr. 298, 300). On cross-examination, she maintained that Appellant shot the second round of shots. (Tr. 306, 315).

Kevin Myers, Shaquanna’s widowed husband, recalled seeing Appellant and Phillip arguing at the party; he stated Bolton became involved in the argument. (Tr. 572). Myers heard someone mention a firearm, so he went to his car to arm himself.² (Tr. 573). As Myers was going to his car, he saw Bolton shooting toward Phillip. When Bolton finished shooting, he “turned around and calmly walked directly past me. . . . I think his gun either jammed or something. He was doing something with his gun.” (Tr. 574). Myers stated that after Phillip was hit, he went to Phillip to render aid, but “[b]efore I could attend to him or bend down, the next round of fire started.” (Tr. 575). Myers took cover but looked toward the road and “saw the person firing towards us at that time.” (Tr. 575-76). Myers couldn’t tell who it was. (Tr. 576, 587-88).

Police collected twenty-five shell casings from the roadway; fourteen of the casings were 9-milimeter and eleven were .40-caliber. (Tr. 319-20). The casings were located in “two distinctive groups with a little bit of overlap.” (Tr. 333). Testing revealed that Appellant’s Glock 19 9-

² Myers had a 9-millimeter Taurus pistol.. (Tr. 583).

millimeter pistol fired all fourteen of the 9-millimeter casings. (Tr. 411-13, 617-19). Police did not recover any 40-caliber weapons for comparison, and the 40-caliber casings yielded inconclusive results. (Tr. 618).

Appellant provided a recorded statement that admitted at trial. Although he initially denied being involved in the shooting or having his gun, he later admitted to shooting but claimed self-defense. (Tr. 689-90; Ex. 108). At trial, Appellant acknowledged having a “slight argument” with his fiancée and asking Phillip whether he was looking at her, but he claimed the conversation with Phillip wasn’t aggressive. He admitted Phillip never yelled at him or pulled a gun, and he claimed he never pulled a gun on Phillip, called his friends over to help him fight, or saw anyone pull out guns. (Tr. 665-70, 678). Appellant stated he was satisfied with Phillip’s response and they had “squashed” or “deaded” the issue. (Tr. 677). Once outside, however, “it became more of a abrupt situation. I don’t know what was going on, but it kind of got a little heated.” (Tr. 678).

Appellant testified he went to his car to leave and “potentially grabbed my firearm and put it on my person because that’s how I drive when I leave.” (Tr. 680). Before leaving, he saw his fiancée and went to talk to her. (Tr. 682). While they were talking, they heard gunshots; they “stood there for a second, and they went off again.” (Tr. 682-83). Appellant clarified he was in the middle of the road at this time and claimed he saw “someone come out in the street with a firearm.” (Tr. 684). Although he did not know who it was at the time, he later believed “it was Anthony with the red sweater.” (Tr. 684). Appellant stated the man was “[j]ust raising a firearm and scrunching down, coming towards me.” (Tr. 684). Appellant was afraid he would get shot in the back, so he fired shots into the air. (Tr. 685). He clarified that he did not aim at the man in red “[b]ecause I didn’t want to hurt anyone. I didn’t want to hurt anybody—shoot anybody.” (Tr. 686). He acknowledged the man in red never fired back at him.

STANDARD OF REVIEW

“The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion.” *State v. Lee-Grigg*, 374 S.C. 388, 398, 649 S.E.2d 41, 46 (Ct. App. 2007). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). *Id.*

“On review of a jury charge, an appellate court considers the charge as a whole in view of the evidence and issues presented at trial.” *Lee-Grigg*, 374 S.C. at 406, 649 S.E.2d at 50.

Appellate courts review “the trial court’s factual findings regarding voluntariness for any evidentiary support. However, the ultimate legal conclusion—whether, based on those facts, a statement was voluntarily made—is a question of law subject to de novo review.” *State v. Miller*, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023). “Whether a criminal defendant understood the *Miranda* warnings given to him is a quintessential factual question and, therefore, must be reviewed under the deferential “any evidence” standard of review.” *Id.* at 127, 893 S.E.2d at 317.

“When reviewing a denial of a directed verdict, an appellate court views evidence and all reasonable inferences in the light most favorable to the State.” *Lee-Grigg*, 374 S.C. at 399, 649 S.E.2d at 47 (Ct. App. 2007). “If there is any direct evidence or 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.*

“The trial court is given broad discretion in ruling on questions concerning the relevancy of evidence, and its decision will be reversed only if there is a clear abuse of discretion.” *Saltz*, 346 S.C. at 127, 551 S.E.2d at 247.

ARGUMENT

1. The trial court did not abuse its discretion in denying the request for the lesser-included offense of involuntary manslaughter when evidence showing Appellant fired fourteen shots into a crowd would not be lawful under this evidence unless Appellant was acting in self-defense, which would have justified the killing. Further, the trial court did not abuse its discretion in denying the motion for a new trial on the same basis.

Appellant first contends the trial court erred in denying his request to charge involuntary manslaughter as a lesser-included offense because evidence supported a finding that he lawfully and without malice fired his weapon in a reckless manner. He contends the trial court applied an improper standard by determining that “firing fourteen shots near a crowd necessarily reflected malice and that such conduct could not fit within the lawful-act/reckless disregard framework.” (IBOA, 17). Appellant further contends the trial court “effectively decided the presence of malice and the degree of culpability as a matter of law, rather than leaving those determinations to the jury. (IBOA, 18). This unpreserved argument, however, overlooks that the trial court charged self-defense—leaving the issues of malice and justification to the jury. By inference, the presence of the self-defense charge showed the trial court did not conclude the killing occurred with malice. Rather, inferentially,³ the trial court properly concluded that firing fourteen shots into a crowd of people would be lawful *only if* Appellant was acting in self-defense—which the court left for the jury to resolve. In other words, the jury could have concluded Appellant was acting in self-defense and thus acting lawfully, but had it done so, the killing would be justified rather than involuntary manslaughter.

Appellant additionally contends this error was not harmless because it removed “a legally

³ As set forth below, this specific argument was not raised to the trial court. Had it been, the trial court would have had an opportunity to clarify its ruling—i.e., to clarify that it wasn’t deciding malice or removing the issues of malice and justification from the jury.

available intermediate verdict supported by the trial evidence” and thus undermined confidence in the verdict. (IBOA, 19). He avers “a reasonable jury could have partially credited [his] perception of danger and his testimony that he lacked a specific intent to kill, while still rejecting complete self-defense, and concluded that he unintentionally caused Ms. Matthew’s death without malice while engaged in a lawful act—defensive use of firearm—carried out with the reckless disregard for the safety of others.” (IBOA, 22). This argument, however, ignores that Appellant fired *fourteen times* into the crowd—an act that cannot be considered merely “reckless.” This argument further ignores critical points of law, including that it is the State’s burden to disprove self-defense beyond a reasonable doubt, and had the jury concluded Appellant acted without malice, it would have violated the jury charge if it then convicted him of murder.

“Involuntary manslaughter is (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others.” *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007). “Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating.” *Id.* “Recklessness has also been defined as ‘something more than mere negligence or carelessness . . . a conscious failure to exercise due care or ordinary care or a conscious indifference to the rights and safety of others or a reckless disregard thereof.’” *Id.* (quoting *State v. Tucker*, 273 S.C. 736, 739, 259 S.E.2d 414, 415 (1979) (alteration in original)).

During a charge conference, the trial court asked if Appellant was requesting voluntary manslaughter; Appellant responded, I think *involuntary* applies, your Honor.” (Tr. 731, emphasis added). After the State opposed the request, Appellant argued,

And I think the facts have come out even in [the solicitors] cross-examination of the defendant. She was specifically describing his actions and how he was—I can't—I don't want to quote it, but I thought she used the word 'recklessly' firing into the group of people.

I think there is evidence that has been presented that could leave a jury to believe that he was not involved in the lead-up to this, but in his actions that he was taking, was reckless in how he was firing that gun or how he was aiming that gun into a group of people down the street. So again, I certainly think there's been evidence that has been presented that would rise to involuntary manslaughter.

(Tr. 732-33). The State countered,

There's nothing lawful about what he did. They can try to say that it's self-defense and argue self defense may excuse his actions, but there's nothing lawful about what he did. And there's no way that it could be argued by the defense that what he did, that death or great bodily injury was not a likely result.

Judge, I think that the definition in that charge would confuse the jury because malice, in part, has language that talks about reckless disregard for human life. I think that can confuse the issue.

And the situation before, we could potentially be taking ourselves out of a conviction, but I do not think that's appropriate in any way, shape, or form. The facts the defense wants to have—that he did need to shoot, that he had self-defense, and involuntary—I don't think you can have all these existing at the same time. It's either he had the malice and self-defense excuses that or he didn't.

And in this case, there's nothing in the record that supports involuntary manslaughter. It was not a lawful activity—even if they may say it was excused by self-defense—and most certainly, death or great bodily injury was a likely result. I think wholly inapplicable is the involuntary charge.

(Tr. 733-34). Appellant merely replied, “[T]he great thing about defense is I do get to make both those arguments. And I do think the facts can support both of those arguments that a jury may find.” (Tr. 734). However, Appellant did not specifically set forth which facts he believed

supported a finding that the shooting was lawful.⁴

The trial court declined the charge, finding the facts did not support the charge:

[S]hooting 14 shots either at or near a crowd of 65 people is not an activity naturally tending to cause death or harm—er, that’s not a lawful activity, excuse me.

Or that the defendant unintentionally killed the victim without malice while engaged in a lawful activity with reckless disregard for the safety of others. Well, it’s not lawful to pop off 14 shots in the middle of a public street.

(Tr. 735). The trial court did not make a ruling as to whether the shooting was reckless.

In his post-trial Motion for a New Trial, Appellant argued for the first time that evidence “could support a finding that [Appellant] was lawfully carrying a firearm when he acted in self-defense, yet reacted in a reckless manner by firing multiple rounds in the air while people were outside the Suburban Lounge.” (Mot., 2). The court denied the motion, finding evidence did not support the charge. (Or. 1-2).

a. Many of Appellants’ arguments are unpreserved.

Initially, many of Appellant’s arguments are unpreserved. Although Appellant *did* request involuntary manslaughter and generally argued evidence supported it, he did not respond to the State’s argument that evidence did not support a finding that the shooting was lawful, nor did he set forth the evidence he believed showed the shooting was lawful (outside of self-defense) such that it would support involuntary manslaughter. (Tr. 732-34). Appellant’s *specific* argument about the evidence that supported the charge related only to whether evidence supported a finding of *recklessness*—not whether evidence supported a finding of *lawfulness*. Although Appellant raised

⁴ Admittedly, Appellant claimed (and the trial court charged) self-defense—which *would* be a lawful shooting. However, in the context of this charge conference, he did not set forth what evidence supported a finding that the shooting was lawful but not done in self-defense.

an argument in his Motion for a New Trial related to the lawfulness of him being armed, this argument was raised for the first time in the post-trial motion—leaving it unpreserved. *See State v. Prather*, 429 S.C. 583, 840 S.E.2d 551 (2020) (finding argument raised for first time in post-trial motion following criminal trial not preserved).

Further, Appellant *never* argued at trial or in his post-trial motion that the trial court was applying an improper standard in determining that “firing fourteen shots near a crowd necessarily reflected malice and that such conduct could not fit within the lawful-act/reckless disregard framework,” nor did he argue the trial court “effectively decided the presence of malice and the degree of culpability as a matter of law, rather than leaving those determinations to the jury. (IBOA, 17-18). Appellant raises these arguments for the first time on appeal, leaving them unpreserved.⁵ *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (“A party may not argue one ground at trial and an alternate ground on appeal.”). Thus, this Court should decline to address the unpreserved arguments. *See id.* (“An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved.”).

b. Firing fourteen times into a crowd would only be lawful if Appellant had been acting in self-defense—which the jury had the option of finding.

The trial court did not abuse its discretion in declining to charge involuntary manslaughter on the basis that firing fourteen times into a crowd of people would only be lawful if Appellant was acting in self-defense. Either Appellant acted in self-defense and thus lawfully, or he acted unlawfully. There are no facts outside of self-defense from which the jury could conclude

⁵ The court charged self-defense—an undisputably lawful shooting—meaning the court did *not* make a finding of malice, lawfulness, or criminal culpability. Had Appellant actually raised this argument to the trial court, it could have clarified its ruling in this regard.

Appellant's actions in firing into the crowd fourteen times were lawful. Appellant did not, for example, testify he lawfully armed himself and the gun accidentally discharged because he handled it recklessly. In fact, such an assertion would be incredulous based on evidence showing (and Appellant's acknowledgement) that Appellant fired his weapon *fourteen* times. Outside of self-defense, it is simply *not* lawful to fire fourteen times near a crowd in a public street—even if one intended to fire his shots in the air. To contend otherwise would invite a situation where individuals could randomly fire guns into the air on crowded streets (in Charleston, for example, as was the case here) for no reason other than they want to have fun. How could that ever be lawful? Other than self-defense—which the State had the burden of disproving, and which would have justified the killing—Appellant did not set forth any other conclusion from the evidence that would have made the shooting lawful, nor is there any conclusion (other than self-defense) that would have made the shooting lawful under the evidence.⁶

On appeal, Appellant argues for the first time that the trial court (1) applied the wrong standard by determining that “firing fourteen shots near a crowd necessarily reflected malice and that such conduct could not fit within the lawful-act/reckless disregard framework” and (2) “effectively decided the presence of malice and the degree of culpability as a matter of law, rather than leaving those determinations to the jury.” (IBOA, 17-18). The crux of Appellant's unpreserved argument is that the trial court made its own finding about what the evidence showed rather than submitting the dispute to the jury. However, this argument ignores that **the jury had the option of self-defense**; the judge did not remove that from the jury. Further, it was the State's burden to *disprove* self-defense. The jury had this very factual issue to resolve in reaching its

⁶ Admittedly, there *could* be situations, such as war, where firing in a crowd would be lawful, but that obviously doesn't fit these facts or any reasonable inference therefrom.

verdict; had it concluded Appellant acted in self-defense (and thus lawfully), Appellant would have been acquitted. Here, where no evidence supports a finding that the shooting was lawful outside of self-defense, the trial court did not abuse its discretion in declining to charge involuntary manslaughter.⁷

As an additional sustaining ground, Respondent submits that no evidence supported a finding that Appellant fired the shots recklessly—thus making the charge improper *even if* it was somehow lawful outside of self-defense. *See Pittman*, 373 S.C. at 571, 647 S.E.2d at 167 (“Involuntary manslaughter is . . . the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others.”). Specifically, Appellant maintained throughout his testimony that he was *not* acting recklessly:

Q. And so you saw people moving everywhere and you still decided to recklessly shoot your gun 14 times down the street?

A. **I didn’t recklessly shoot it** because there were more people on the side and this was one person coming up.

(Tr. 715, emphasis added).

Q. After you decided to shoot your weapon?

A. Yes.

Q. After your friend Michael Bolton shot his weapon?

A. Yes.

Q. And you’re saying that that wasn’t reckless?

A. **It wasn’t reckless on my end, ma’a;m.** I didn’t have anything to do with Shaquanna or either Phillip getting shot.

(Tr. 716, emphasis added).

Q. Were you thinking about their children at the time you shot 14 shots?

A. Yes, I was.

Q. And you still decided to shoot those 14 shots?

⁷ It bears repeating that self-defense is a *justification*, and a shooting done in self-defense is not a crime. Thus, a person who fires in self-defense does not commit involuntary manslaughter. Either this shooting was done in self-defense (and thus lawful and justified), or it was an unlawful shooting.

A. That's why I didn't aim at anyone. I wasn't trying to shoot anyone.

Q. So you just recklessly just fired your gun with no aim knowing people are at the end of the street?

A. **I wasn't doing that recklessly at all, ma'am.**

(Tr. 720, emphasis added). Appellant—who was in the best position to know his state of mind and intentions—consistently maintained he was *not* shooting recklessly. There is no other evidence of Appellant's intent other than his fear testimony which, as noted, would support self-defense. Based on Appellant's testimony about his state of mind (fearful and *not* reckless), there is no evidence from which the jury could have found he fired recklessly. *See Pittman*, 373 S.C. at 571, 647 S.E.2d at 167 (“**Recklessness is a state of mind in which the actor is aware of his or her conduct**, yet consciously disregards a risk which his or her conduct is creating.” (emphasis added)); *id.* (noting recklessness has been defined as “a **conscious failure** to exercise due care or ordinary care or a **conscious indifference** to the rights and safety of others or a reckless disregard thereof” (emphasis added)). Thus, the court properly found evidence did not support this charge.

c. Any error is harmless beyond a reasonable doubt.

“When considering whether an incorrect jury instruction constitutes harmless error, appellate courts review the charge in its entirety.” *State v. Burdette*, 427 S.C. 490, 498, 832 S.E.2d 575, 580 (2019). An erroneous charge is harmless if the appellate court “determine[s] beyond a reasonable doubt that the error complained of did not contribute to the verdict.” *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014). In making this analysis, the Court’s “inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered.” *Id.* This is a fact-intensive inquiry. *Id.*

Here, the undisputed evidence showed Appellant fired fourteen times into a crowd. Such an act was either self-defense or unlawful. This isn't a situation where Appellant was lawfully

armed but recklessly handling the gun and it accidentally discharged fourteen times, nor has Appellant ever claimed any type of accidental misfiring. Appellant's basis for why he was acting lawfully has been consistent throughout: self-defense. The jury *was* charged with self-defense, and it was the State's burden to disprove self-defense beyond a reasonable doubt. Once the jury determined that the State disproved self-defense, the only remaining conclusion from the evidence was that the shooting was unlawful. No other basis would make firing fourteen shots into a crowd under these circumstances lawful.

Appellant specifically argues that "a reasonable jury could have partially credited [his] perception of danger and his testimony that he lacked a specific intent to kill, while still rejecting complete self-defense, and concluded that he unintentionally caused Ms. Matthew's death without malice while engaged in a lawful act—defensive use of firearm—carried out with the reckless disregard for the safety of others." (IBOA, 22). This argument, however, ignores critical points of law, including that it is the State's burden to prove the elements of murder beyond a reasonable doubt and to *disprove* self-defense beyond a reasonable doubt, and courts presume that juries follow the law given to them.⁸ *See State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) ("[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt."); *State v. Grovenstein*, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) ("Moreover, jurors are presumed to follow the law as instructed to them.").

⁸ Even if the jury "partially credited" Appellant's fear testimony (the basis Appellant raises for arguing this was reversible error), its decision in this regard would weigh in Appellant's favor given the State's heavy burden to *disprove* self-defense beyond a reasonable doubt. In other words, if the jury partially credited his testimony that he was, in fact, afraid, it would make it *more difficult* for the State to disprove self-defense. This finding, however, would have no bearing on the other three elements of self-defense. In other words, if the jury credited Appellant's fear testimony and found he acted in fear, this finding would not be dispositive to whether the State disproved the other three elements of self-defense.

Additionally, the murder conviction required the jury to find malice aforethought—which is explicitly excluded by involuntary manslaughter. Thus, had the jury found Appellant did not act with malice, it’s only option would have been an acquittal. Based on the foregoing, the failure to charge involuntary manslaughter—had it been supported by the facts—did not contribute to the jury’s verdict beyond a reasonable doubt.

2. Although not preserved, Appellant did not unequivocally invoke his right to counsel by his vague question, and Detective Riedel did not further interrogate him until Appellant reinitiated the conversation. Additionally, the *Miranda* waiver was voluntarily. Finally, Appellant was induced to testify by evidence other than the statement itself, making any error in the admission of the statement harmless beyond a reasonable doubt.

Appellant contends the trial court abused its discretion in admitting the entirety of his recorded statement into evidence when he asked, “Where is the lawyer?”⁹ during the interrogation. (IBOA 24-28). Appellant additionally argues “the circumstances surrounding the questioning undermined the knowing and voluntary nature of any purported waiver.” (IOBA 26-27). Although these arguments are largely unpreserved, Appellant’s brief and passing question was not an unequivocal invocation of counsel, Appellant himself resumed the conversation before Detective Riedel interrogated him further, and the court did not abuse its discretion in finding the *Miranda* waiver was voluntary.

Prior to trial, the court held a hearing on the admissibility of Appellant’s statement. Detective Sam Riedel testified he took a recorded statement from Appellant during the early morning hours of the shooting. He explained Appellant voluntarily went to the police station, and when Detective Riedel first started speaking with Appellant, he did not have any plans to arrest him and Appellant was free to leave. (Tr. 45-47). Detective Riedel testified that police were

⁹ Although Appellant frames the question as, “Where is the lawyer,” he actually asked, “Do we have the lawyer already here?” (IBOA 24-27; Ex. 108, 3:37:20).

gathering information while Detective Riedel was talking to Appellant, and “as that information was further developed, we learned that he may have been involved in the shooting aspect of it.” (Tr. 48). As a result, Detective Riedel advised Appellant of his *Miranda* rights about an hour-and-a-half into the interview. (Tr. 44). Detective Riedel testified Appellant voluntarily signed a form waiving his rights, he had no concerns about Appellant’s ability to understand the rights, and he did not threaten or coerce Appellant or make any promises to procure the waiver. (Tr. 49-53).¹⁰ On cross-examination, Detective Riedel agreed that Appellant asked, “Do we have a lawyer already here? Because I do not know what’s going on.” (Tr. 67).¹¹ When asked whether he provided Appellant an attorney, Detective Riedel replied, “He didn’t ask for an attorney.” (Tr. 68). On redirect, Detective Riedel clarified that Appellant never asked for an attorney. (Tr. 73).

Following Detective Riedel’s testimony, Appellant moved to suppress the statement, first arguing that the pre-*Miranda* portion was a custodial interrogation that tainted the remainder of the interview. (Tr. 75-77). Next, he contended the waiver was not knowing and voluntary based on the totality of the factors—including the length of the interview, the time of day (early morning), and the lack of water or food breaks. (Tr. 77-78). Finally, he contended Appellant invoke the right to counsel by asking “Is the lawyer here?” (Tr. 78-79). The State countered that the initial portion of the interview was not a custodial statement (Tr. 79-85), and Appellant did not unambiguously invoke his right to counsel (Tr. 85-87). The trial court initially took the matter under advisement. (Tr. 87). Later, the court put its ruling on the voluntariness of the statement on the record. (Tr. 362). However, the court did not address Appellant’s argument that the pre-*Miranda* statement

¹⁰ Detective Riedel’s testimony is corroborated by the video of the statement; the advisement of rights begins at 5:23. (Ex. 108).

¹¹ In the recorded video, this question begins around 3:37:20. (Ex. 108).

was custodial or that he subsequently invoked his right to counsel, and Appellant did not request a ruling on those arguments. (Tr. 362). Although Appellant did not object when the statement was entered, he objected to its publication and later clarified he was objecting to its admission. (Tr. 442-44). Finally, Appellant did not request any specific redactions from the interview during trial.

a. Appellant did not contemporaneously object to the admission of the statement, leaving any argument related to it unpreserved for appeal. Additionally, the trial court never ruled on the issue of whether Appellant invoked his right to counsel—likewise leaving it unpreserved.

In his brief, Appellant seemingly acknowledges these arguments are not preserved. (IBOA 24-26). However, he avers his argument “was preserved at least as to *Miranda* and voluntariness” because it was litigated pretrial and implicitly ruled on by the trial court. He further contends that because it was raised in a post-trial motion, it is likewise preserved. Finally, he urges this Court to apply the plain-error doctrine or consider whether counsel was ineffective.¹² However, Appellant did not contemporaneously object to the admission of the statement—leaving his arguments unpreserved. *See State v. Wannamaker*, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001) (finding admissibility of statement unpreserved when defendant did not contemporaneously object to statement being read into evidence); *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (“To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court.”); *id.* at 58-59, 609 S.E. 2d at 523 (“If a party fails to properly object, the party is procedurally barred from raising the issue on appeal.”).

Further, the trial court did not rule on whether Appellant invoked counsel, and Appellant

¹² South Carolina does not recognize the plain-error doctrine, and a direct appeal is not the appropriate venue to consider claims of ineffective assistance of counsel. *See Sheppard*, 391 S.C. at 421, 706 S.E.2d at 19 (“This Court, however, has routinely held the plain error rule does not apply in South Carolina state courts.”); § 17-27-20 *et. seq.* (setting forth the procedure for post-conviction relief).

did not renew his argument or request a ruling on that issue—leaving it unpreserved. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693-94 (“In order for an issue to be preserved for appellate review, it must have been raised to *and ruled upon* by the trial judge. Issues not raised *and ruled upon* in the trial court will not be considered on appeal.” (emphasis added)).

Finally, although Appellant raised an argument in his post-trial motion related to the statement, the argument he raised in the motion was different than the one he now advances on appeal. Specifically, in his motion, he argued the statement contained inadmissible hearsay and prejudicial testimonial statements that violated the Confrontation Clause. On appeal, he argues his *Miranda* waiver was not voluntary, and he invoked his right to counsel during the interview. These are different arguments. Thus, even though a post-trial motion is insufficient to preserve an issue for appeal, this one did not even raise the argument he now advances. Thus, the post-trial motion did not preserve the arguments he now raises for appeal. *See Prather*, 429 S.C. at 583, 840 S.E.2d at 551 (concluding an argument raised for the first time in a post-trial motion following a criminal trial was not preserved); *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694 (“A party may not argue one ground at trial and an alternate ground on appeal.”). Because these arguments are unpreserved, this Court should not address them. *See id.* (“An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved.”); *State v. Morales*, 439 S.C. 600, 610-11, 889 S.E.2d 551, 557 (2023) (finding arguments addressed by the Court of Appeals were not preserved, reversing Court of Appeals’ opinion, and reinstating conviction).

b. *Appellant did not unequivocally invoke his right to counsel and then voluntarily continued the conversation after making the vague statement.*

Applicant contends the question “Do we have the lawyer already here?”¹³ “should have been treated as an unequivocal request for counsel that required the detectives to cease interrogation” because it did “not ask about abstract legal concepts or a future possibility of representation” but rather “assume[d] that a lawyers should be available and demand[ed] to know where that lawyer is.” (IBOA 26-27). He additionally avers the question was “at least as unambiguous” as “Well, I think I need a lawyer,” which was the statement made by the defendant in *State v. Kennedy*, 333 S.C. 426, 510 S.E.2d 714 (1998). (IBOA 27). However, Appellant’s vague question did not unequivocally evoke counsel. Further, Appellant reinitiated the conversation before Detective Riedel interrogated him again—thus waiving any request for counsel.

“[I]f a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation.” *Davis v. United States*, 512 U.S. 452, 458 (1994). However, courts must “determine whether the accused actually invoked his right to counsel.” *Id.* “Invocation of the *Miranda* right to counsel ‘requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.’” *Id.* at 459 (quoting *McNeil v. Wisconsin*, 501 U.S. at 178). “But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning.” *Id.* (emphasis in original). “[T]he suspect must unambiguously request counsel.” *Id.* A suspect “must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in

¹³ As noted, although Appellant frames the question as “Where is the lawyer,” he actually asked, “Do we have the lawyer already here?” (IBOA 24-27; Ex. 108, 3:37:20).

the circumstances would understand [it] to be a request for an attorney. If the statement fails to meet the requisite level of clarity, *Edwards* does not require that the officers stop questioning the suspect.” *Id.* Thus, in *Davis*, the United State Supreme Court expressly declined to “require law enforcement officers to cease questioning immediately upon the making of an ambiguous or equivocal reference to an attorney.” *Id.* In so doing, the Court agreed with the state court that the statement “Maybe I should talk to a lawyer” was not a request for counsel. *Id.* at 462.

In *Kennedy*, the South Carolina Supreme Court determined the statement “Well, I think I need a lawyer” constituted an unequivocal request for an attorney. In doing so, it considered the conduct of the parties in addition to the words used by the defendant. Specifically, the Court noted that once the defendant made the statement, “[t]he assistant solicitor stopped and left the room.” 333 S.C. at 429, 510 S.E.2d at 715. The Court reasoned, “[I]t is obvious from the record the solicitor and everyone involved viewed petitioner's request as an invocation of his right to counsel.” *Id.* at 430, 510 S.E.2d at 715. Because the parties exhibited conduct that indicated they “interpreted petitioner's request as an invocation of his right to counsel,” the Court concluded that the trial court erred in not finding an unequivocal invocation of counsel. *Id.* at 430, 510 S.E.2d at 716. However, the Court determined that even though the defendant invoked his right to counsel, he “waived this right when he initiated further discussions.” *Id.* at 430-31, 510 S.E.2d at 716.

During Appellant’s interrogation, about five to ten minutes after he waived his *Miranda* rights, the following exchanged occurred:

Det: So you would give us consent to go into the car, get your gun out—

App: I didn’t have my firearm out there.

Det: So—

App: I didn’t have my firearm....I never shot my firearm out there. I never shot my firearm.

Det: So you're saying you're never shot your firearm out there?

App: If I did have it I never shot my firearm out there.

Det: What do you mean if you did have it?

App: If I had it on me I never shot it out there.

Det: Did you have it on you?

App: I don't recall getting it, I don't believe so.

Det: You don't believe you got it out of the car—

App: No, I didn't get it out of the car.

Det: You're certain?

App: I didn't—I didn't get it out the car. This is crazy.

([3:37:16] Det: Ok. So will you consent for them to go get the gun out of the car?

App: I mean... **Do we have the lawyer already here**, because I don't know what's going on, man.

Det: We're trying, I'm trying to make what you're telling me—I'm trying—

App: —Yeah —I understand—

Det: —I'm trying to help you prove to me what you're telling me is true—

App: —Yeah, I understand, like I'm saying, I always shoot my gun if I get my gun or anything, so I don't know—

Det: —So you're saying you didn't shoot your gun—

App: —I ain't in combat, yeah, so I'm saying, if I did shot, it wasn't anything combat like that. That's crazy. That's the bad part about having a firearm in situations like this.

(Ex. 108, 5:36-5:38).

Appellant's question—"Do we have the lawyer already here"—was not an unequivocal request for counsel. Notably, Appellant asked the question immediately after Detective Riedel

asked if he would consent to police retrieving his gun from his mother's car. At no other point during the interview did he reference a lawyer. This indicates that although he may have been concerned about consenting to a search, he was not concerned about talking to Detective Riedel.

Appellant's question, "Do we have the lawyer already here," is akin to the question asked in *State v. Jett*, 423 S.C. 415, 814 S.E.2d 635 (2018). There, the defendant "merely made the vague statement—Where my lawyer at?—and did not expand upon the statement before continuing to talk to the police." *Id.* at 420, 814 S.E.2d at 637. This Court concluded the statement "was ambiguous and equivocal enough so that a reasonable officer could have decided it was not an invocation of counsel." *Id.* Like the question in *Jett*, Appellant's question was not an unequivocal request for counsel. *See also Wannamaker*, 346 S.C. at 498, 552 S.E.2d at 286 (finding defendant's request to "speak to either a lawyer or her mother" was not unequivocal request for counsel).

The conduct of the parties and Detective Reidel's testimony further support that this was not an unequivocal request. Specifically, once Appellant asked, "Do we have the lawyer already here, because I don't know what's going on, man.", Detective Riedel did not further interrogate him but rather began explaining what was going on. As he was doing so, Appellant interrupted twice to say "I understand," before volunteering, "I always shoot my gun if I get my gun or anything." (Ex. 108, 3:37:20). The ambiguous reference to an attorney did not require Detective Riedel to cease talking, and Appellant's decision to continue talking rather than unequivocally request an attorney indicates he was not invoking his right to counsel. *See Davis*, 512 U.S. at 459 ("But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning.").

Likewise, here where Detective Riedel did not immediately leave the room, his conduct

did not suggest that he believed Appellant invoked his right to counsel. *Contra Kennedy*, 333 S.C. 429-30, 510 S.E.2d 715-16 (considering the solicitor’s conduct in leaving the room immediately upon the defendant saying “Well, I think I need a lawyer” as evidence that the parties understood it to be an unequivocal request for counsel). Appellant’s conduct in continuing the conversation by interrupting Detective Ridel twice to say “I understand” and then volunteering additional information further indicates he was not unequivocally requesting counsel.

Detective Riedel’s pretrial testimony additionally indicates he did not believe Appellant was unequivocally requesting counsel. Specifically, he testified, “He didn’t ask for an attorney.” (Tr. 68). He further testified that Appellant did not ever ask for a lawyer during the interview or unambiguously say he wanted a lawyer or to cease the interview. (Tr. 73-74). Thus, the conduct of the parties and Detective Riedel’s testimony support that Appellant did not unequivocally request counsel.

Finally, Appellant himself continued the conversation—thus waiving any invocation of counsel.¹⁴ *See Kennedy*, 333 S.C. at 430, 510 S.E.2d at 716 (finding defendant invoked his right to counsel but subsequently waived it by initiating further discussion). Initially, Detective Riedel’s response to Appellant’s question, “Do we have the lawyer already here, because I don’t know what’s going on, man.”, was not an interrogation but rather an attempt to explain what was going on—which was a reasonable response to Appellant’s statement. *See State v. Sims*, 304 S.C. 409, 416-17, 405 S.E.2d 377, 381 (1991) (“Interrogation is defined as express questioning, or its functional equivalent which includes ‘words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit

¹⁴ Respondent maintains that the vague question was not an unequivocal request for counsel but contends that even if it was, Appellant subsequently waived it.

an incriminating response.” (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)); *id.* (“[Q]uestion concerning extradition was related to routine administrative processing and clearly was not an attempt to elicit an incriminating response from Sims.”).

Appellant responded by interrupting twice to say he understood and then volunteering “I always shoot my gun if I get my gun or anything.” This information—unprompted by any question from Detective Riedel—indicated Appellant wanted to continue the conversation. Thus, even if Appellant’s vague question could be considered an unequivocal request for an attorney, he waived any invocation of that right by reinitiating the conversation. *See Davis*, 512 U.S. at 458 (“[I]f a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available **or the suspect himself reinitiates conversation.**” (emphasis added)); *Sims*, 304 S.C. at 417, 405 S.E.2d at 382 (finding defendant “asked questions and made statements that ‘open[ed] up a more generalized discussion relating . . . to the investigation’” when, while discussing unrelated topics, he announced: “I’m not a murderer . . . I just got drunk . . . I knew I was doing it, but I shouldn’t of done it.” (quoting *Oregon v. Bradshaw*, 462 U.S. 1039 (1983))). Based on the foregoing, the trial court did not err in admitting the statement.

c. The totality of the circumstances show Appellant voluntarily waived his Miranda rights and gave the statement.

Appellant contends his waiver of *Miranda* was not voluntary. He specifically avers it was early in the morning after the shooting, the interview lasted three hours and fifty-eight minutes, and Detective Ridel acknowledged that during that time Appellant “had not slept, had not eaten, and had nothing to drink while with them, and [Detective Riedel] himself was exhausted from having worked through the night. (IBOA 27). However, the totality of the circumstances show the statement was voluntary.

“A waiver of *Miranda* rights is determined from the totality of the circumstances.” *Kennedy*, 333 S.C. at 426, 510 S.E.2d at 714. “Statements elicited during interrogation are admissible if the prosecution can establish that the suspect ‘knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.’” *Id.* at 429, 510 S.E.2d at 715 (quoting *Miranda v. Arizona*, 384 U.S. 436, 475 (1966)). “The *Miranda* rule and its requirements are met if a suspect receives adequate *Miranda* warnings, understands them, and has an opportunity to invoke the rights before giving any answers or admissions.” *Miller*, 441 S.C. at 127, 893 S.E.2d at 317. When determining the voluntariness of a waiver under the totality of the circumstances,

[c]ourts may consider the impact of a number of factors, such as:

1. the youth and maturity of the accused;
2. the accused's lack of education or low intelligence;
3. the failure to advise the accused of his constitutional rights, particularly the rights to remain silent and have counsel present;
4. the presence of a written waiver signed by the accused regarding his constitutional rights;
5. the physical condition of the accused, including whether the accused was intoxicated at the time of the interrogation;
6. the mental health of the accused;
7. the length of the interrogation;
8. the location of the interrogation;
9. the continuity of the interrogation;
10. the repeated or prolonged nature of the interrogation;
11. the use of physical punishment, including both physical brutality as well as the deprivation of food or sleep;
12. whether law enforcement offered specific promises of leniency, rather than general remarks that a cooperative attitude would be to the accused's benefit; and
13. whether law enforcement made deliberate misrepresentations of the evidence against the accused.

Id. at 120-21, 893 S.E.2d at 314. “None of these factors are dispositive in and of themselves; rather, they must be considered in their totality to determine whether the defendant's will was overcome.”

Id. at 122, 893 S.E.2d at 314.

Although Appellant did not contemporaneously object to the admission of the statement (leaving this unpreserved for appeal), the trial court made detailed findings on the voluntariness of the *Miranda* waiver, and its factual findings are entitled to deference. *See Miller*, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023) (“Going forward, we will review the trial court's factual findings regarding voluntariness for any evidentiary support.”); *Saltz*, 346 S.C. at 136, 551 S.E.2d at 252 (“When reviewing a trial court's ruling concerning voluntariness, [an Appellate] Court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence.”). Specifically, the Court found:

[I]n determining the voluntariness of the statement that was given on behalf of the defendant, the Court is to consider the totality of the circumstances and I have done so in watching the video. I find that there was no police coercion or misrepresentation, no threats of violence or promises of leniency. The length of custody I find was not improper or outside the norm. The location was at the police department. He was not deprived of any sleep or food. And I don't believe that it was prolonged in any way.

As to the defendant's maturity, I find him to be an intelligent person by listing to him communicate and converses with the officer on the video; and that at no time was he not given ample opportunity to request an attorney; and that he was read all of his rights and he understood, signed the document.

So therefore, I'm going to allow the statement to come in.

These findings considered the proper factors and are supported by the evidence. *See Miller*, 441 S.C. at 120-21, 893 S.E.2d at 314 (setting forth factors for determining voluntariness of a statement).

Specifically, the video supports the trial court's findings and shows the statement was voluntary. The video does not contain coercion, misrepresentation, threats of violence, or promises of leniency. In fact, Appellant testified at trial that he did not find Detective Riedel intimidating

and at several places in the video, he was relaxed enough to laugh.¹⁵ (Tr. 711). *See Miller*, 441 S.C. at 126, 893 S.E.2d at 317 (noting, as part of its analysis of voluntariness, that defendant “was relaxed enough during the interview to laugh with Agents Johnson and Merrell about his marijuana usage”). Although he now complains about Detective Rodriguez’s interrogation tactics, Detective Rodriguez—while direct in his questioning—was not overly threatening or intimidating.¹⁶ Likewise, Appellant did not appear to be threatened or intimidated by him. (IBOA 29; Ex. 108, 7:15-7:51).

Appellant signed the *Miranda* waiver after Detective Riedel read the rights, and he appeared to understand those rights and the questions he was asked. (Ex. 108, 5:23-5:30). He did not appear intoxicated, nor did he appear (or allege) to have any mental health issues. Appellant was thirty years old and had worked at Public Works for eight years. (Ex. 108, 4:08, 5:23). Although he did not have a high school diploma or GED, he answered questions intelligently. (Ex. 108, Ex. 108, 5:23). Throughout the video, Appellant appeared to have sufficient maturity and intelligence to waive the rights.

The interrogation occurred at the police station, and for most of it (other than thirty-six minutes) Appellant was alone in the room with Detective Riedel. The interview was continuous, although Detective Reidel left the room on a few occasions to gather additional information. The custodial interrogation lasted only two hours and ten minutes, and Appellant never indicated he

¹⁵ In fact, Appellant did not display any emotion or distress until he was informed he was being arrested for murder. (Ex. 108, 7:50).

¹⁶ Detective Rodriguez was not present for the *Miranda* waiver and did not enter the interview until around 7:15 a.m.—nearly two hours after Appellant waived his *Miranda* rights (Ex. 108, 5:23-5:30) and after Appellant had already admitted he “might” have fired his weapon ten times (Ex. 108, 6:51:50).

wanted to stop the interview.¹⁷ *See Miller*, 441 S.C. 106, 124, 893 S.E.2d 306, 315 (finding two-hour interview voluntary under totality of the circumstances. Appellant was not handcuffed during the statement and had not yet been charged.¹⁸ There was no physical punishment or brutality during the interview, and although Appellant did not have food or drink, he never asked for it. Based on the totality of the evidence, Appellant voluntarily waived his *Miranda* rights.. Thus, the trial court did not err in admitting the statement.

d. Here, where Appellant testified, and his decision to testify was induced by evidence other than the post-Miranda statement, any error in the admission of the statement was harmless beyond a reasonable doubt.

“A voluntary confession obtained in violation of an accused's right to counsel is subject to the harmless error rule.” *State v. Henderson*, 286 S.C. 465, 471, 334 S.E.2d 519, 522 (Ct. App. 1985). “Before determining whether the error in admitting the defendant's unlawful confession in evidence was harmless beyond a reasonable doubt, we first must consider the defendant's decision to testify and the content of his testimony.” *Id.* at 471, 334 S.E.2d at 522-23. “The question is not whether the petitioner made a knowing decision to testify, but why. If he did so in order to overcome the impact of confessions illegally obtained and hence improperly introduced, then his testimony was tainted by the same illegality that rendered the confessions themselves inadmissible.” *Harrison v. United States*, 392 U.S. 219, 223 (1968). Thus, when a defendant testifies at trial, courts consider whether evidence other than the challenged statement induced the defendant to testify. *See State v. Newell*, 303 S.C. 471, 478, 401 S.E.2d 420, 424 (Ct. App. 1991)

¹⁷ Specifically, Appellant entered the room around 4:00 a.m.; he was advised of his *Miranda* rights at 5:23; Detective Reidel questioned him for an hour and twenty-four minutes before leaving the room (from 5:30 to 6:54); Detective Riedel returned with Detective Rodriguez around 7:16; Detective Rodriguez questioned him for about thirty-five minutes; and the interview concluded about ten minutes later, around 7:59. (Ex. 108).

¹⁸ He was handcuffed and arrested at the end of the video, but the statement occurred prior to then.

("[W]e do not overlook her argument that the improperly admitted statements . . . dictated her decision to testify. In our view, the State's other evidence, outlined above, induced Newell's decision to take the witness stand. Her conviction for driving under the influence was virtually assured unless she produced some evidence that she was not influenced by the effects of alcohol when driving her automobile on the morning in question."); *Henderson*, 286 S.C. at 471, 334 S.E. 2d at 523 ("In our view, the defendant's decision to take the witness stand was dictated by the State's other evidence, outlined above. His conviction of armed robbery, which carries a much greater sentence than that of common law robbery . . . was virtually assured unless he produced some evidence either that he was elsewhere or that he was not in fact armed at the time of the robbery. On direct examination, the defendant readily admitted he robbed Carpenter. The remainder of his testimony appeared directed toward convincing the jury he was guilty of common law robbery only. His testimony emphasized the absence of a usable and a visible weapon at the time he confronted the victim. We are satisfied, then, that the defendant's decision to testify was not induced by the introduction of his statement to the police.").

Initially, Appellant does not challenge on appeal the admission of the pre-*Miranda* portion of the video—making any ruling on the argument related to the pre-*Miranda* portion (which is implicit at best) the law of the case. *See State v. Brewton*, 437 S.C. 44, 59, 876 S.E.2d 141, 149 (Ct. App. 2022) *aff'd as modified on other grounds*, 442 S.C. 169, 898 S.E.2d 132 (2024) ("[A]n unappealed ruling, right or wrong, is the law of the case." (alteration in original) (citation omitted)); *id.* ("[A]n exception to the trial court's ruling will be deemed abandoned where the appellant fails to specifically argue it in his brief." (alteration in original) (quoted source omitted)).

Here, Appellant was induced to testify not by the post-*Miranda* statement but by other evidence entered by the State. Without considering *any* post-*Miranda* statement (the only portions

challenged on appeal), overwhelming evidence showed Appellant's weapon was fired at the scene. Prior to the *Miranda* waiver, Appellant admitted he left his Glock-19 9-millimeter gun in his mother's car, and police recovered the gun from the car. (Ex. 108, 4:35-4:36). Subsequent testing indicated the Glock-19 fired fourteen of the casings recovered from the scene. (Tr. 624-25). Thus, overwhelming evidence—outside of the post-*Miranda* portion of the interview—indicated Appellant's gun was fired during the shooting.

Further, multiple witnesses testified Appellant confronted Phillip in an aggressive manner at the party (Tr. 122-25, 207-10, 262-66); Phillip testified Appellant pulled a gun prior to the shooting (Tr. 125-26); and Jones testified she saw Appellant shooting his gun (Tr. 298). Although Appellant tried to minimize his argument with Phillip, he acknowledged during the pre-*Miranda* portion of the interview that he had argued with his girlfriend and Anthony's brother about whether Phillip was looking at her. (Ex. 108, 4:28-4:35). Forensic testing indicated Appellant had gunshot residue on his hands at the time of the interview. (Tr. 607). The foregoing evidence “virtually assured” Appellant's conviction “unless he produced some evidence” to mitigate the nature of the shooting. *Henderson*, 286 S.C. at 471, 334 S.E. 2d at 523. The crux of Appellant's testimony was aimed at establishing self-defense. Thus, Appellant's “decision to take the witness stand was dictated by the State's other evidence” rather than the admission of the post-*Miranda* portion of the statement. Because Appellant ultimately testified—largely consistent with his recorded statement (other than initially denying he had his gun during the shooting)—and his testimony was induced by evidence other than the post-*Miranda* portion of the statement, any error in the admission of the post-*Miranda* statement was harmless beyond a reasonable doubt.

3. This Court should not reach the merits of the issue related to the solicitor's closing argument when Appellant did not raise this argument *at all* during trial, leaving it patently unpreserved.

Appellant avers the solicitor's closing argument violated due process. Although he acknowledges there was no contemporaneous objection, he contends the post-trial motion denying a new trial on this basis was adequate to preserve this for review. However, Appellant did not raise this argument *at all* during trial—leaving it patently unpreserved. Thus, this Court should not reach the merits of this issue.

a. This Court should not reach the merits of this patently unpreserved issue.

“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.” *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693-94. “To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court.” *Johnson*, 363 S.C. at 58, 609 S.E.2d at 523. “If a party fails to properly object, the party is procedurally barred from raising the issue on appeal. *Id.* at 58-59, 609 S.E. 2d at 523. “An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved.” *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694.

At trial, Appellant did not contemporaneously object *at all* during the State's closing argument. (Tr. 737-68, 799-803). Further, although it would not have been adequate to preserve this issue, Appellant did not offer any objection or argument at the conclusion of the closing argument or otherwise move for a mistrial. (Tr. 821). Because Appellant did not object *at all* to the State's closing argument, this argument is not preserved.

Admittedly, this issue was raised as part of Appellant's post-trial motion for a new trial,

but that is insufficient to preserve it for appeal. In *Prather*, 429 S.C. at 583, 840 S.E.2d at 551, the South Carolina Supreme Court concluded that an argument raised for the first time in a post-trial motion following a criminal trial was not preserved. There, the appellant argued “that the State committed prosecutorial misconduct and violated his right to due process when it ‘sandbagged’ the defense with LaRosa’s rebuttal testimony.” *Id.* at 605, 840 S.E.2d at 562. Although *Prather* raised the issue in a post-trial motion for a new trial, the South Carolina Supreme Court concluded that was not sufficient to preserve it for appeal: “*Prather* never raised prosecutorial misconduct or due process concerns at trial. He had the opportunity to do so during the in camera hearing concerning the admissibility of LaRosa’s testimony and at the time LaRosa testified at trial.” *Id.*

Here, like *Prather*, Appellant had an opportunity to raise this issue at trial—either properly by objecting during the State’s closing argument or, at the very least, at the conclusion of the State’s closing argument. Appellant did neither. Because he had ample opportunity to raise due process argument during trial but did not do so, this argument is unpreserved.

Appellant attempts to circumvent the lack of preservation by arguing this Court should apply the plain error doctrine. However, South Carolina does not follow the plain error rule. *See State v. Sheppard*, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) (“This Court, however, has routinely held the plain error rule does not apply in South Carolina state courts.”). Appellant alternately frames this as an allegation of ineffective assistance of counsel. However, such a claim is only properly raised through a post-conviction relief application; it is not proper for direct appeal. *See* S.C. Code Ann. § 17-27-20 *et. seq.* (setting forth the procedure for post-conviction relief). Appellant additionally contends this unpreserved issue should be reviewed because it implicates due process. Again, South Carolina law is clear: even constitutional arguments must be preserved. *See Sheppard*, 391 S.C. at 420-21, 706 S.E.2d at 19 (noting preservation rules also

apply to constitutional arguments).

Because this issue is patently unpreserved, it would be error for this Court to address it. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694 (“An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court’s opinion should be vacated to the extent it addressed an issue that was not preserved.”); *Morales*, 439 S.C. at 610-11, 889 S.E.2d at 557 (2023) (finding arguments addressed by the Court of Appeals not preserved and reversing Court of Appeals’ opinion). Thus, this Court should find this argument is not preserved.

b. The solicitor’s response was invited and “did no more than respond substantially in order to right the scale,” and the mere six-words in a closing argument and reply that spanned more than thirty-five pages did not so infect the trial with unfairness as to violate due process.

In its Order Denying Appellant’s post-trial motion, the trial court found that the “comments were made in direct response to the defense’s statements.” (Or. Denying Motion, 3). This finding is supported by the record. Specifically, a review of the closing arguments shows the solicitor’s response was invited and “did no more than respond substantially in order to ‘right the scale.’” *United States v. Young*, 470 U.S. 1 (1985).

“[A] criminal conviction is not to be lightly overturned on the basis of a prosecutor’s comments standing alone, for the statements or conduct must be viewed in context; only by so doing can it be determined whether the prosecutor’s conduct affected the fairness of the trial.” *Young*, 470 U.S. at 11. “To help resolve this problem, courts have invoked what is sometimes called the “invited response” or “invited reply” rule.” *Id.* “Inappropriate prosecutorial comments, standing alone, would not justify a reviewing court to reverse a criminal conviction obtained in an otherwise fair proceeding.” *Id.*

[T]he remarks must be examined within the context of the trial to determine whether the prosecutor’s behavior amounted to prejudicial error. In other words, the Court must consider the

probable effect the prosecutor's response would have on the jury's ability to judge the evidence fairly. In this context, defense counsel's conduct, as well as the nature of the prosecutor's response, is relevant.

Id. at 12. “[T]he issue is not the prosecutor's license to make otherwise improper arguments, but whether the prosecutor's “invited response,” taken in context, unfairly prejudiced the defendant.”

Id. “Thus the import of the evaluation has been that if the prosecutor's remarks were “invited,” and did no more than respond substantially in order to “right the scale,” such comments would not warrant reversing a conviction.” *Id.* at 12-13.

Here, the solicitor's response was invited and did no more than “right the scale.” *Id.* During closing argument, defense counsel argued the State was making the case an emotional argument (Tr. 770, 771); the “State's case relied on eyewitnesses that are biased, inconsistent, and incomplete (Tr. 771); the State chose only to call as witnesses the victims and their families (Tr. 772); the State had a double standard (Tr. 775, 779); the State omitted critical details from its closing (Tr. 776); the State's witnesses contradicted themselves (Tr. 777); the police officers contradicted themselves (Tr. 777); the State ignored a white elephant in the room (Tr. 778); the State attempted to “sweep evidence under the rug” (Tr. 779); police officers provided a bunch of excuses (Tr. 779); Jones argued with defense counsel on cross-examination (Tr. 781); the State misconstrued testimony (Tr. 782); the State ignored another “pink elephant in the room” (Tr. 783); the State bullied Appellant (Tr. 787); Detective Rodriguez bullied Appellant (Tr. 783); the State mischaracterized evidence (Tr. 794-95); Detective Rodriguez “yelled very inappropriate assumptions at Whitlock” (Tr. 795); and the State would “try and clean up their mess since you've now heard my arguments” (Tr. 796). While some of these statements may have been fair game, others crossed the line into prohibited territory. *See Young*, 470 at 8 (“It is clear that counsel on both sides of the table share a duty to confine arguments to the jury within proper bounds. Just as

the conduct of prosecutors is circumscribed, '[t]he interests of society in the preservation of courtroom control by the judges are no more to be frustrated through unchecked improprieties by defenders.'" (quoting *Sacher v. United States*, 343 U.S. 1, 8 (1952)); *id.* at 8-9 ("Defense counsel, like the prosecutor, must refrain from interjecting personal beliefs into the presentation of his case."); *id.* at 9 ("Defense counsel, like his adversary, must not be permitted to make unfounded and inflammatory attacks on the opposing advocate."); *id.* at 4-5 ("Defense counsel began his own summation by arguing that the case against respondent 'has been presented unfairly by the prosecution,' and that '[f]rom the beginning' to 'this very moment the [prosecution's] statements have been made to poison your minds unfairly.' He intimated that the prosecution deliberately withheld exculpatory evidence, and proceeded to charge the prosecution with "reprehensible" conduct in purportedly attempting to cast a false light on respondent's activities. Defense counsel also pointed directly at the prosecutor's table and stated: "I submit to you that there's not a person in this courtroom including those sitting at this table who think that Billy Young intended to defraud Apco." Finally, defense counsel stated that respondent had been 'the only one in this whole affair that has acted with honor and with integrity'" (internal citations omitted)).

In response, the solicitor argued, "She wants to point out the inconsistencies with Rochell and Bernadette and Kevin and Phillip because their stories don't match perfectly. But I promise you, if they had come in and said everything perfectly, she'd say, "It's too perfect." Their job: misdirection. Their job: confusion." (Tr. 799). Although the final six words may have been improper, the response was invited and "did no more than respond substantially in order to right the scale." *See Young*, 470 U.S. at 12-13 ("Thus the import of the evaluation has been that if the prosecutor's remarks were "invited," and did no more than respond substantially in order to 'right the scale,' such comments would not warrant reversing a conviction.").

Finally, these mere six-words in a closing argument and rebuttal that spanned more than thirty-five pages did not so infect the trial with unfairness as to violate due process. *See Brown v. State*, 383 S.C. 506, 515-16, 680 S.E.2d 909, 914-15 (2009) (“Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.”); *Darden v. Wainwright*, 477 U.S. 168 (1986) (finding prosecutor’s improper comments—which included statements such as “He shouldn’t be out of his cell unless he has a leash on him” and “I wish that I could see him sitting here with no face, blown away by a shotgun”—did not “so infect the trial with unfairness as to make the resulting conviction a denial of due process”).

4. The State presented direct evidence that Appellant was a shooter, direct evidence from which the jury could infer malice, and direct evidence from which the jury could infer a mutual plan or agreement between Appellant and others to commit the offenses; thus, the trial court properly denied the motion for a directed verdict.

Appellant next contends the trial court erred in denying his motions for directed verdict as to murder, attempted murder, and possession of a weapon during a violent crime. He contends a directed verdict must be granted in a circumstantial case if the State’s evidence amounts to no more than suspicion or conjecture, and accomplice liability “requires substantial evidence that the defendant joined in a common design to commit the shooting.” (IBOA 34). Appellant avers the State’s accomplice liability theory rested on three circumstantial “strands”; there was no eyewitness testimony “that Whitlock called Bolton or Rud over, encouraged them to shoot, brandished his gun with them during the argument, or stood with Bolton when Bolton opened fire,” and “the record also contains affirmative evidence inconsistent with a shared shooting plan” or a

“neat two-man common-design theory.” (IBOA 34-35). In attempting to re-cast this as a circumstantial-evidence case, Appellant ignores critical facts—including Phillip’s testimony that Appellant brandished a weapon when the argument first moved outside. (Tr. 125-26). Appellant additionally ignores direct—and overwhelming—evidence that he fired his weapon *fourteen times* in a crowded public street, as well as direct evidence from which the jury could infer that Appellant (1) acted with malice aforethought and (2) had a mutual plan or agreement with other person(s) to commit the offenses. Viewed in the light most favorable to the State, there was ample evidence from which the jury could convict Appellant as indicted. Thus, the trial court properly denied the motion for a directed verdict.

“On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State.” *State v. Lollis*, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001). “A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged.” *Id.* at 584, 541 S.E.2d at 256. “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.*

a. Appellant ignores direct evidence that he was a shooter, and direct evidence from which the jury could infer he acted with malice aforethought.

Contrary to Appellant’s attempt to frame this as a circumstantial case, the State presented direct evidence that Appellant was a shooter, and direct evidence from which the jury could infer Appellant acted with malice aforethought. Although the State *also* presented circumstantial evidence (mostly GSR and forensic testing of the casings), much of the evidence in this case was direct, testimonial evidence of what witnesses observed.

It is undisputed that Appellant was a shooter; Appellant himself admitted to firing his weapon. (Tr. 685-86). Likewise, Jones testified she saw Appellant firing his weapon in the middle

of the street.¹⁹ (Tr. 298). Thus, undisputed direct evidence showed Appellant fired his weapon, and the only real issue for the jury to resolve was *why*.

Further, the State presented direct evidence from which the jury could infer Appellant acted with malice aforethought. Perhaps the most compelling evidence of malice aforethought was testimony—consistent across three witnesses (Phillip, Anthony, and Rochelle, Tr. 122-25, 207-10, 262-66)—that Appellant approached Phillip in an aggressive and confrontational manner immediately prior to the shooting.²⁰ Pertinently, Phillip testified Appellant pulled a gun after Phillip responded to Appellant’s initial confrontation: “I saw guns went out—came out.” (Tr. 125); “I saw at least three guns. For sure, Bolton and Whitlock.” (Tr. 126). This is clear, direct evidence from which the jury could infer malice aforethought. This direct evidence takes this case out of the realm of a purely circumstantial case. *See Lollis*, 343 S.C. at 584, 541 S.E.2d at 256 (“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.” (emphasis added)). Thus, Applicant’s attempt to reframe this as a circumstantial case is misplaced.

There are additional ways the jury could have inferred malice from these facts. Although a directed verdict motion only requires the Court to consider whether any evidence (regardless of its weight) supports the charge, here the State went beyond that and presented overwhelming (and frankly, conclusive) evidence that Appellant was a shooter, and substantial evidence (both direct and circumstantial) from which the jury could infer malice.

¹⁹ Additionally, although circumstantial, forensic testing indicated Appellant’s gun fired the fourteen 9-millimeter casings recovered from the scene. (Tr. 298, 411-13, 617-19).

²⁰ Two additional witnesses (Antwan and Myers) recalled seeing Appellant and Phillip arguing prior to the shooting. (Tr. 242-45, 572-73).

b. The State presented substantial evidence—including direct testimonial evidence of the actions of Appellant, Bolton, and Rud—from which the jury could infer a mutual plan or agreement to commit the offenses.

Accomplice liability is a theory of liability; not an element of an offense. As noted, the State presented direct evidence that Appellant was a shooter, and both direct and circumstantial evidence from which the jury could infer he fired the weapon with malice aforethought. The State likewise presented evidence from which the jury could find Appellant had a mutual plan or agreement with another to commit the offenses. Thus, the court properly denied the motion for a directed verdict.

“[I]n a murder case involving a gunshot, the trial court should charge the law of accomplice liability when there is any evidence (1) the defendant had a mutual plan or agreement with another person to commit the murder, and (2) the other person in the mutual plan or agreement fired the fatal shot.” *State v. Johnson*, 444 S.C. 442, 449–50, 908 S.E.2d 102, 106 (2024). “In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties.” *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010).

Here, accomplice liability was only necessary because the State could not prove with certainty which bullet killed Shaquanna or injured Phillip. Under the theory of accomplice liability, the State was not required to do so. *See Johnson*, 444 S.C. at 449, 908 S.E.2d at 105 (“If Johnson was the shooter, he was clearly guilty of murder as the principal and there is no need for any discussion of accomplice liability. The accomplice liability question arises only on the possibility that Creep was the shooter instead of Johnson. Thus, the narrow question before us is whether a reasonable inference could be drawn from the evidence that Creep shot Smalls pursuant to a plan

or agreement with Johnson.”).

Viewed in the light most favorable to the State, the State presented substantial evidence from which the jury could infer Appellant had a mutual plan or agreement with Bolton and/or Rud to commit murder, and Bolton or Rud fired the shots that struck the victims. Notably, Phillip testified that others approached in support of Appellant when Appellant initially confronted Phillip, and he saw “at least three guns” after he made a comment to Appellant: “[f]or sure” Appellant and Bolton. (Tr. 125-26). Antwan likewise testified that others approached in support of Appellant, and he recalled seeing a person with a blue shirt (identified throughout trial as Rud) fire three rounds. (Tr. 245, 249-50, 254). Rochelle recalled seeing Bolton and Rud approach in support of Appellant—escalating the conflict—and seeing Rud corner Phillip and Bolton letting “the gun rip.” (Tr. 265-69, 276, 278, 281-82). Finally, Myers recalled seeing Bolton fire a gun after becoming involved in the argument between Appellant and Phillip. (Tr. 572, 574). The foregoing is direct, testimonial evidence that (1) Bolton and Rud approached the altercation in support of Appellant, (2) the three men brandished weapons after Phillip verbally responded to Appellant, and (3) Appellant, Bolton, and Rud fired shots. From the foregoing direct evidence, the jury could infer a mutual plan or agreement.

Further, the State presented direct evidence through eyewitness testimony that both Bolton and Rud fired weapons, and the forensic testing could not determine which weapon(s) fired the shots that hit Phillip and Shaquanna. Based on the direct testimonial evidence of eyewitnesses and the circumstantial evidence of the forensic testing of projectiles and casings, the jury could infer that Bolton or Rud shot Phillip and/or Shaquanna²¹ pursuant to a plan or agreement with Appellant.

²¹ There was substantial evidence that the shots were intended for Phillip—thus satisfying the specific-intent nature of an attempt crime. Because Shaquanna was murdered, however, the doctrine of transferred intent would apply to her killing. *See State v. Geter*, 445 S.C. 139, 146, 912

See Johnson. at 449, 908 S.E.2d at 105 (“[T]he narrow question before us is whether a reasonable inference could be drawn from the evidence that Creep shot Smalls pursuant to a plan or agreement with Johnson.”).

Appellant contends the State’s accomplice liability theory

rested on three circumstantial strands *the defense identified*: (1) that Whitlock argued with Phillip Green before the shooting, (2) that he was associated with Bolton and “Rud” Whitlock, who were also armed, and (3) that some witnesses saw Bolton and Rud with guns and firing, plus post-incident calls between Whitlock and Bolton.

(IBOR 34, emphasis added). In identifying these strands, Appellant conveniently ignores (1) Phillip’s testimony that *Appellant* pulled a gun after Phillip responded to him (before the shooting began and well before Appellant would have gone to his car to retrieve his weapon—as he claimed, Tr. 125-26) and (2) Jones’s testimony that Appellant fired the second round of shots from the street. (Tr. 298, 306, 315). Appellant also ignores testimony from Phillip, Anthony, Rochelle, and Myers that Bolton and Rud joined the confrontation between Phillip and Appellant in support of Appellant, which escalated the conflict.²² (Tr. 124-26, 150, 208, 265-67, 276, 572). The foregoing was substantial evidence from which the jury could have inferred that Appellant

S.E.2d 255, 258 (2025) (“To be clear about ‘transferred intent,’ however, it is a perfectly valid legal theory that applies to murder and other crimes where the State is required to prove the result of the defendant’s actions.”).

²²Although not relevant to any legal issues in this case, Respondent concedes there was evidence from which the jury could have concluded that Rud also had a gun. Such evidence, however, does not foreclose Appellant’s guilt—especially when uncontradicted and overwhelming evidence established that Appellant was, in fact, a shooter. Further, the accomplice liability theory did not depend on “any neat two-man common-design theory” (IBOR 35); the State only needed to prove that Appellant was acting with another person to establish accomplice liability. Here, the State presented substantial evidence—both direct and circumstantial—from which the jury could infer a mutual plan or agreement between Appellant, Bolton, and/or Rud.

had a plan or agreement with the others to commit the offenses.²³

Although the defense strategy was to cast the shooting as something Bolton and Rud did without Appellant's foresight or approval or knowledge—and then frame Appellant's shooting as self-defense—the jury's decision to reject that theory is not inconsistent with the evidence and the reasonable inferences to be drawn therefrom. Appellant is effectively making a jury argument on a directed verdict issue: he is setting forth reasons the appellate court should accept his version of the facts over the jury's findings. That is not the role of the appellate court, nor is it the standard for determining whether a trial court properly denied a directed verdict motion. The standard is—as it has always been—whether, viewed in the light most favorable to the State, there is evidence (and inferences therefrom) from which the jury could find the State met its burden of proof on the elements of the offense. Here, the State presented direct, testimonial evidence that Bolton and Rud joined the altercation (and escalated it) in support of Appellant; Appellant, Bolton, and Rud all brandished weapons before the shooting began; and all three men fired their weapons. From this direct evidence of the conduct of the three men, the jury could infer a mutual plan or agreement. Thus, the trial court properly denied the directed verdict motions.

²³ In attempting to unravel the State's theory of accomplice liability, Appellant contends accomplice liability "requires substantial evidence that the defendant joined in a common design to commit the shooting." (IBOR 34). Appellant seems to be borrowing the word "substantial" from law governing circumstantial evidence cases. Although cases that rely purely on circumstantial evidence require the State to present *substantial* circumstantial evidence *of guilt*, those cases don't stand for the proposition that the State must present "substantial" evidence of accomplice liability. It is enough if the State presents evidence from which the jury can infer "(1) the defendant had a mutual plan or agreement with another person to commit the murder, and (2) the other person in the mutual plan or agreement fired the fatal shot." *Johnson*, 444 S.C. at 449-50, 908 S.E.2d at 106. Regardless, the State submitted substantial evidence from which the jury could infer a mutual plan or agreement between Appellant and others (namely, Bolton and Rud).

5. The trial court did not abuse its discretion in sustaining the State’s objection when Appellant asked Detective Riedel an irrelevant question about Detective Rodriguez—who did not even testify at trial. Further, because Appellant did not raise this argument to the trial court or seek to proffer this alleged testimony, this Court should not reach the merits of this issue.

In his final argument, Appellant contends the trial court abused its discretion and infringed on Appellant’s cross-examination and confrontation rights by barring Appellant from pursuing impeachment of Detective Rodriguez. He contends this issue is preserved because Appellant attempted to cross-examine Detective Riedel about Detective Rodriguez’s employment before the State objected, and the State did not move to strike the testimony. Alternately, he contends this issue should be examined under the plain error doctrine and/or ineffective assistance of counsel. However, Appellant did not raise this argument to the trial court—leaving it unpreserved. Further, Appellant did not seek to proffer any additional testimony after the Court sustained the State’s objection; thus, this Court would be engaging in speculation if it attempted to determine the prejudicial impact—if any—to this ruling. Finally, the trial court did not abuse its discretion in limiting this irrelevant testimony that Appellant now contends would have impeached Detective Rodriguez when Detective Rodriguez did not even testify at trial.

“Only relevant evidence is admissible.” *Saltz*, 346 S.C. at 127, 551 S.E.2d at 247 (citing Rule 402, SCRE). “‘Relevant evidence’ means 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.

During Detective Riedel’s cross-examination, he agreed that Detective Rodriguez joined him during his interview of Appellant, “sort of takes over the interview,” began asking a majority of the questions, and interrupted Appellant. (Tr. 498-99). He also agreed that Appellant “did not say, ‘I was standing next to him [Bolton] shooting,’” and Detective Rodriguez “trie[d] to kind of

insert his theory of what happened into the interview.” (Tr. 500). Detective Riedel agreed that Detective Rodriguez did not interview Antwan, Anthony, Phillp, or Rochelle; and that when he (Detective Riedel) indicated that “only two people were shooting, Appellant responded, “That cannot be.” (Tr. 501-02). The following exchange then occurred:

Q. Detective Rodriguez is not testifying today.

A. He is not.

Q. Okay. Detective Rodriguez is not testifying because he was fired for dishonesty?

[The solicitor]: Objection, your Honor.

The Court: Yeah, don’t get into that.

[The solicitor]: Move to strike from the record.

The Court: I don’t strike, but don’t do it.

[Trial counsel]: I’ll move on.

(Tr. 502).²⁴ Appellant did not attempt to proffer any further testimony.

Initially, when the Court sustained the State’s objection, Appellant acquiesced to the ruling—specifically stating, “I’ll move on.” Thus, he cannot now complain on appeal. *See Brewton*, 437 S.C. at 60, 876 S.E.2d at 150 (“An appellant is barred from arguing an issue on appeal if trial counsel acquiesced [to a ruling] . . . and made no other objections regarding [that ruling].” (internal quotation marks omitted) (alteration in original)). Appellant did not argue to the trial court that the testimony was relevant for the impeachment of Detective Rodriguez—or for *any* purpose—leaving this argument unpreserved.²⁵ *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at

²⁴ At the State’s request, the trial court charged the jury to disregard this question as follows:

There was a comment or question made by [defense counsel] concerning Mr. Rodriguez’s leaving the force. It had nothing to do with this case whatsoever. I don’t know if anybody picked up on that, but just wanted to give you a curative instruction that that’s not to come into deliberation. We don’t know why he left.

(Tr. 565-66, 659, 803). Appellant did not object to this curative instruction.

²⁵ Appellant again attempts to circumvent the lack of preservation by asking this Court to engage in a plain-error analysis or consider whether counsel was ineffective. (IBOA 37-38), Again, South

693-94 (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”). Appellant likewise did not seek to proffer any additional testimony on this issue, limiting this Court’s ability to review this issue. *See State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) (“Moreover, a proffer of testimony is required to preserve the issue of whether testimony was properly excluded by the trial judge, and an appellate court will not consider error alleged in the exclusion of testimony unless the record on appeal shows fairly what the excluded testimony would have been.”). In other words, there is simply *no* evidence whatsoever of any wrongdoing by Detective Rodriguez—only an unanswered question suggesting misconduct. Because Appellant failed to proffer testimony on this issue, this Court cannot review it without engaging in speculation. This Court should thus decline to reach the merits of this unpreserved issue. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694 (“An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved.”); *Morales*, 439 S.C. at 610-11, 889 S.E.2d at 557 (finding arguments addressed by the Court of Appeals were not preserved, reversing Court of Appeals’ opinion, and reinstating conviction).

Further, the trial court did not abuse its discretion in not allowing this irrelevant testimony. Specifically, this allegation of unrelated misconduct by Detective Rodriguez did not have “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. Rather,

Carolina does not recognize the plain-error doctrine, and a direct appeal is not the appropriate venue for considering claims of ineffective assistance of counsel. *See Sheppard*, 391 S.C. at 421, 706 S.E.2d at 19 (“This Court, however, has routinely held the plain error rule does not apply in South Carolina state courts.”); § 17-27-20 *et. seq.* (setting forth the procedure for post-conviction relief).

the jurors were primarily tasked with determining *why* Appellant fired his weapon, and whether or not Detective Rodriguez was fired for dishonesty had no bearing on that determination—especially when Appellant actually maintained throughout his statement to Detective Rodriguez that he shot in self defense. (Ex.).

To the extent Appellant now contends such evidence was necessary to impeach Detective Rodriguez (an argument he did *not* raise to the trial court), Detective Rodriguez was not the witness, and there was no basis to seek to impeach Detective Riedel with any allegation of misconduct by Detective Rodriguez. The testimony was not relevant, and the trial court did not abuse its discretion in limiting it.

Finally, any error was harmless beyond a reasonable doubt. Initially, Detective Rodriguez did not even enter the interview until about three hours and fifteen minutes after it started, and Appellant did not make any additional critically damaging statements after Detective Rodriguez entered the room. (Ex. 7:16). By the time Detective Rodriguez entered the room, Appellant had already admitted the Glock-19 belonged to him and he “might” have fired it ten times. (Ex. 4:35-36, 6:51). He had likewise reluctantly acknowledged knowing Bolton. (Ex. 118). Although he subsequently admitted to Detective Rodriguez that the “may have fired fourteen or fifteen rounds,” (Ex. 7:20), that statement was largely cumulative to his prior statement that he “might” have fired ten times and forensic evidence showing his weapon fired fourteen casings recovered from the scene.²⁶ (Ex. 108, 6:51:50). Likewise, although pressed by Detective Rodriguez, Appellant maintained throughout his statement that he fired because he saw another person with a weapon—

²⁶ Additionally, Appellant equivocally agreed Bolton was shooting next to him (Ex. 108, 7:24), although he later denied “standing next to Mike and running their weapons dry.” (Ex. 108, 7:34). However, evidence that Bolton was also shooting was cumulative to other evidence entered by the State.

i.e. in self-defense. (Ex. 118).

Additionally, Appellant was able to attack Detective Rodriguez's interrogation tactics at trial. Specifically, he successfully cross-examined Detective Riedel about such tactics—getting Detective Riedel to agree with him on almost every point in this regard. (Tr. 498-502). He then utilized this cross-examination in his closing argument to again attack the credibility of the interrogation. (Tr. 787, 795). Thus, to the extent Appellant now argues this line of questioning (which was irrelevant and would not have impeached the testifying witness) was necessary to attack Detective Rodriguez's interrogation tactics, any error in not allowing further testimony on this point was harmless when Appellant's admissions to Detective Rodriguez was cumulative to Appellant's prior statements and other evidence introduced by the State, and Appellant *did* attack the interrogation tactics used by Detective Rodriguez.

CONCLUSION

Based on the foregoing, this Court should affirm.

Respectfully Submitted,

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