STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable J. Michael Baxley, Circuit Court Judge
Appellate Case No. 2013-001916

THE STATE,

Respondent,

vs.

TIMOTHY CARSON RYDER,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville County Courthouse
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge did not manifestly abuse his discretion by admitting extrinsic evidence of the prior inconsistent statements of several witnesses because those witnesses did not admit they made their prior written statements unequivocally and without qualification. However, even if the trial judge somehow erred in admitting the written statements, any error was entirely harmless in light of the fact the written statements were wholly cumulative to the trial testimony of the witnesses who wrote those statements.

STATEMENT OF THE CASE

On February 1, 2012, Appellant Timothy Carson Ryder was arrested at his estranged wife's residence after law enforcement responded to a report of a domestic disturbance in progress at that location. In July of 2013, the Pickens County Grand Jury indicted Appellant for one count of third-offense criminal domestic violence. On August 26, 2013, a jury trial was commenced in the Pickens County Court of General Sessions with the Honorable J. Michael Baxley, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of thirty months. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On the night of February 1, 2012, Erica Ryder ("Wife"), the estranged wife of Appellant Timothy Carson Ryder, called 911 and reported Appellant was making threats at her home in Six Mile, South Carolina. (R. pp. 12-14; p. 40; p. 120). In response, Detective Anthony Raines from the Pickens County Sheriff's Officer quickly headed to the residence, met Wife in the driveway, and was advised Appellant was being held down inside of the home. (R. pp. 120-122). Detective Raines then entered the home and found Appellant, who appeared to be angrily struggling to get up, right inside of the doorway being restrained by Phillip Towe and Ernest Baldwin. (R. pp. 122-123). At that time, Detective Raines handcuffed Appellant and secured him inside of his patrol car. (R. pp. 123-124). Once Appellant was secured in the patrol car, Detective Raines spoke with Wife, who was shaking and upset, along with Towe, Baldwin, and Wife's daughter, Katelyn Choiniere, while Deputy Keith Gilstrap from the Pickens County Sheriff's Office took written statements from each of the witnesses. (R. p. 87; p. 124). Appellant was then arrested and subsequently indicted for third-offense criminal domestic violence, and he proceeded to trial. (R. p 127; pp. 185-186).

During trial, Wife, Towe, Baldwin, and Choiniere each testified about the details of the incident. (R. p. 13; p. 53; p. 76; p. 87). During the solicitor's questioning of Wife, she admitted to calling 911 on the night of the incident and reporting Appellant was making threats towards her. (R. pp. 14-16). Wife further stated Appellant threw a beer bottle "in [her] direction," but she alleged in her trial testimony she did not know whether he was trying to hit her with the bottle. (R. p. 17). The solicitor then asked Wife if she remembered speaking with Detective Raines on the night of the incident, and she stated she was "sure [she] did." (R. p. 17). In response, the solicitor asked her if she

remembered telling the officer Appellant threw a glass bottle at her, narrowly missed her with it, and stated he was going to kill her. (R. p. 18). Wife responded she did not recall every word that was said but admitted the solicitor's remarks sounded like something she said. (R. p. 18). The solicitor then went over the details of the incident with Wife and asked her when Appellant threatened to kill her. (R. pp. 18-19). At that point, Wife denied Appellant ever made such a threat and stated she did not recall telling Detective Raines Appellant threatened to kill her. (R. p. 19). The solicitor then asked Wife if she recalled giving a written statement in the case, and she admitted she did. (R. p. 21). After that, the solicitor showed Wife a copy of the statement, and she acknowledged she wrote it.[1] (R. p. 21). Specifically, Wife stated: "This here is my statement. And it states that he had threatened to kill me." (R. pp. 21-22). The solicitor then inquired of Wife how her written statement differed from her earlier testimony, and Wife asserted the "brief" statement was not a thorough explanation of the night of the incident and was "missing a whole lot of elements." (R. p. 22). As the questioning continued, the solicitor asked Wife if she denied saying Appellant threw a bottle at her attempting to hit her with it, and Wife responded she wrote the statement. (R p. 28). However, when asked if she recalled saying Appellant threatened to kill her, Wife asserted the statement was "not accurate" and remarked: "It's written here, but I do not recall that being said at all." (R. p. 29). The solicitor then asked Wife if she recalled Appellant stating he had bullets and would take her out, and she again responded she wrote that statement while again asserting she did recall such a statement actually being made. (R. p. 30). She further

[1] In her written statement, Wife wrote "Timothy Ryder threw a 24 oz beer bottle attempting to hit me with it The bottle missed hitting me I had a friend of mine present[ ] My daughter [and] son in law had just left the house I immediately called my son in law and daughter asking them to return to my home At this time Tim threatened to kill me[ ] 'I have bullettes[ ]' I 'will take you out[ ]' My son in law [and] friend Ernie then tackled Tim to [the] ground [and] subdued him till police arrived" (R p 181)

asserted there was "a lot that's not even included" in the statement. (R. p. 33). The solicitor then again asked Wife whether Appellant threatened her on the night of the incident, and, once again, she indicated she did not remember him threatening her. (R. p. 33). However, she admitted she obviously made such a statement since she wrote it but denied she "even remember[ed]" Detective Raines. (R. p. 34). As the questioning continued, Wife admitted she stated Appellant threatened to get a gun and kill her along with the others at the scene. (R p. 34). However, she denied Appellant ever threatened to kill anyone with a gun. (R. pp. 35-36). Subsequently, on cross-examination, defense counsel questioned Wife about her written statement, and she admitted writing Appellant threatened to kill her and take her out while insisting it was "very possible" she exaggerated what happened out of anger. (R. p. 48). As defense counsel continued to question her about whether she exaggerated in her statements from the night of the incident, Wife asserted: "If that's what the statement states, what they were telling me, then, yes, I did." (R. p. 49).

Following Wife's testimony, Baldwin testified for the State, admitted writing a statement on the night of the incident indicating Appellant threw a bottle at Wife, and asserted he did not actually know what Appellant's intent was in throwing in the bottle.[2] (R. pp. 55-57). Baldwin also acknowledged writing in his statement Appellant came after Wife, but he contended he just meant Appellant was walking towards Wife. (R. p. 60; p. 70). Furthermore, Baldwin admitted he wrote in his statement he and Towe stopped Appellant and then Appellant was let up and began saying he was going to get a gun. (R. pp. 60-63)

[2] Specifically, in his statement, Baldwin wrote "Saw Tim Ryder throw a glass bottle at Erica Ryder then was coming after her Me and Phillip Towe stopped him He was also talking about killing himself and went for a gun " (R p 182)

Thereafter, Towe testified about the details of the incident. (R. p. 76). Specifically, he stated he was informed by Wife Appellant was throwing bottles at her, he returned to Wife's residence, Appellant came after him, he threw Appellant to the ground, he released Appellant once Appellant calmed down, Appellant said he was going to end it and went towards Wife's house, and he stopped and restrained Appellant until law enforcement officers arrived. (R. pp. 76-81). The solicitor then showed Towe his statement from the night of the incident, and Towe admitted he wrote in the statement he let Appellant up and Appellant ran into the house in the direction of the guns.[3] (R. p. 81). However, Towe insisted Appellant never actually entered the house even though that information was contained in his statement. (R. p. 81). Furthermore, Towe indicated he did not remember talking to Detective Raines, he knew he talked to the deputies but could not remember which ones, and he was intoxicated at the time of the incident. (R. pp. 83-84)

Following Towe's testimony, Choiniere testified for the State and recounted what she remembered of the incident. (R. p. 87). Specifically, she stated she left Wife's residence with Towe but returned after Towe received a phone call from Wife. (R. pp. 88-89). When they arrived back at the residence, she indicated she believed Baldwin was holding Appellant down in the driveway. (R. p. 89). After that, she stated Appellant was let up, said he was going to end it and started walking towards the house, and was then tackled by Towe and Baldwin when he entered the doorway of the home. (R. pp. 89-90). The solicitor then asked Choiniere about her written statement, and she admitted she wrote it on the night of the incident. (R. pp. 91-92). Regarding its contents, she

[3] In Towe's statement, he wrote "I Phillip Towe came back after my mother-in-law called sayin[g] 'Tim' threw a beer at her[ ] I came back to the home gettin[g] out my van an[d] Tim running at her[ ] I step[ped] in an[d] stop[ped] him throwing him to the ground[ ] About a few min later I let him up an[d] he runs in the house toward the guns so I stop[ped] him again till the police show[ed] up " (R p 183)

acknowledged she wrote in the statement they returned to Wife's house after they were notified Appellant was acting threateningly towards Wife, Appellant was yelling and trying to come after Wife when they arrived, Towe and Baldwin restrained Appellant while wife called 911, Appellant was released, and then Appellant ran into the house threatening to obtain a gun he was going to use on himself or Wife.[4] (R. pp. 91-95). However, when asked if she recalled writing the statement, she indicated she wrote it before asserting she did not recall writing it. (R. pp. 93-94). The solicitor then again asked Choiniere if she recalled writing the statement, and she responded. "I mean, this is two years ago, really. The night to me is vague." (R. pp. 93-94).

Subsequently, during Deputy Gilstrap's testimony, the solicitor moved to admit Wife's written statement into evidence, and defense counsel objected, arguing Wife had already testified to the contents of the statement, the statement was already in evidence through her testimony, the written statement was unnecessary and cumulative, and Wife had already acknowledged writing the statement during her testimony. (R. p. 115). In response, the solicitor contended the statement was admissible because Wife equivocated in her responses to his questions about the statement by indicating she did not remember saying several of the things contained within it. (R. pp. 115-116). After considering the arguments of counsel, the trial judge overruled defense counsel's objection, ruling:

> First of all, rule 613 would permit this statement to come into evidence. Secondly, on your basis that it's cumulative, the Court overrules that objection because there is some disparity between the testimony and the statement.

---

[4] In Choiniere's statement, she wrote "I Katelyn Choiniere age 21 daughter of Erica Ryder arrived back at my mother's house after receiving a phone call that Timothy Ryder was acting threatening[ly] towards my mom When we arrived (Phillip Towe [and] I) Tim was yelling and trying to come after my mother Ernie [and] Phillip restrained Tim against the pavement while my mom called 911[ ] Tim then was let up and he ran into my mother's house threatening to obtain a gun and use it on either himself or my mom[ ] It was then Ernie [and] Phillip restrained him again until police arrived[ ]" (R p 184)

> And I believe the jury would benefit for whatever weight they deem to give it to have – having listened to the testimony and also have before the written statement at that time So for those reasons the objection is overruled.

(R. p. 116). The solicitor then indicated he intended to introduce two of the other written statements into evidence, and defense counsel responded by asking for all of the remaining statements to be admitted while asserting he had no objection to the admission of Baldwin's statement. (R. p 117). The trial judge then admitted into evidence the written statements of Wife, Towe, and Choiniere over defense counsel's objection and Baldwin's written statement with defense counsel's consent. (R. p. 118).

Following the admission of the statements, Detective Raines testified about his response to the incident and Appellant's arrest. (R. pp. 120-124). During his testimony, he recounted Wife informed him Appellant had thrown a beer bottle at her, the beer bottle just missed her, Appellant ran towards the house and was tackled, she called 911, Appellant was let up, Appellant ran into the house saying he had bullets and was going to take her out, and then Appellant was tackled to prevent him from retrieving the guns. (R pp. 126-127).

Thereafter, the State and the defense rested their cases, and the parties presented their closing arguments to the jury. (R. p. 131; pp. 132-157). During the solicitor's closing argument, the solicitor challenged the credibility of the witnesses by identifying the inconsistencies between the versions of the incident relayed by the witnesses to the officers on the night of incident and the versions of the incident relayed by those same witnesses during trial, by pointing out the witnesses' difficulties in recalling various details from the night of the incident, and by asserting "they" could not even remember writing their statements (R. pp. 137-145). Following those remarks, defense counsel

asserted during his closing argument· "Now the solicitor, you know, he's submitting that at least some of these witnesses, you know, denied even writing these statements or remembered even writing them I heard the testimony a little differently. You decide for yourself, but they all admitted writing the statements." (R. pp. 149-150). However, defense counsel acknowledged to the jury Wife stated during her testimony she wrote the statement but did not remembering saying what was in the statement to the officers.[5] (R. p. 150).

Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 170). Following the verdict, the trial judge sentenced Appellant to a thirty-month term of incarceration. (R. pp. 179-180).

[5] Notably, defense counsel also informed the jury his interpretation of Wife's statements was she meant she did not remember "verbalizing" certain information to the officers when she stated she did not remember saying the things in her statement to those officers (R p 150) However, he conceded what Wife actually meant by her testimony was an issue of "semantics " (R p 150)

ARGUMENT

The trial judge did not manifestly abuse his discretion by admitting extrinsic evidence of the prior inconsistent statements of several witnesses because those witnesses did not admit they made their prior written statements unequivocally and without qualification. However, even if the trial judge somehow erred in admitting the written statements, any error was entirely harmless in light of the fact the written statements were wholly cumulative to the trial testimony of the witnesses who wrote those statements.

Appellant contends the trial judge reversibly erred by admitting the written statements of Wife, Towe, and Choiniere into evidence during trial. In support of that contention, Appellant maintains those witnesses unequivocally admitted they made their prior inconsistent statements, which allegedly rendered extrinsic evidence of their prior written statements inadmissible. To the contrary, the witnesses in Appellant's case did not unequivocally admit they made their prior inconsistent statements but, instead, qualified their admissions in a variety of different ways. As a result, the trial judge had wide latitude to admit extrinsic evidence of the witnesses' prior inconsistent statements and did not abuse his broad discretion by admitting their written statements into evidence during trial. However, even assuming the trial judge somehow erred in admitting the written statements, any error was entirely harmless in light of the fact the written statements were completely cumulative to the trial testimony of the witnesses. Accordingly, Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling, the appellate court gives great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390

S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). An appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). "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 McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)

ANALYSIS

A. Admissibility of the Statements

If a witness makes a statement on a particular issue and then subsequently contradicts that prior statement during the witness' trial testimony, the prior contradictory statement is important evidence tending to discredit the witness' trial testimony. State v. Suber, 82 S.C. 159, 161, 63 S.E. 684, 685 (1909). As a result, a prior inconsistent statement can be admitted as evidence to impeach the declarant of the statement. See, e.g., State v. Lynn, 277 S.C. 222, 224, 284 S.E.2d 786, 788 (1981) ("If a witness admits a

prior inconsistent statement, he has impeached himself, and further evidence is inadmissible."). Furthermore, such a statement can also be "admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination." State v. Stokes, 381 S.C. 390, 398-399, 673 S.E.2d 434, 438 (2009); see State v. Copeland, 278 S.C. 572, 581, 300 S.E.2d 63, 69 (1982) ("Henceforth from today, we will allow testimony of prior inconsistent statements to be used as substantive evidence when the declarant testifies at trial and is subject to cross examination. . . . We believe the adoption of this rule will more effectively aid in the discovery of the truth, and more adequately insure the freedom of the innocent and the conviction of the guilty.").

Rule 613 of the South Carolina Rules of Evidence governs issues involving the admissibility of prior inconsistent statements. State v. Carmack, 388 S.C. 190, 201, 694 S.E.2d 224, 229 (Ct. App. 2010). Pursuant to the rule, extrinsic evidence of a prior inconsistent statement is admissible if a witness – after being advised of the substance of the statement, the time and place the statement was made, and the person to whom it was made – does not admit making the statement after being given an opportunity to explain or deny it. Rule 613(b), SCRE; see State v. Galloway, 263 S.C. 585, 591, 211 S.E.2d 885, 888 (1975) ("The requirement of notice is met when the cross-examiner advises the witness of the substance of the prior statement and the time when, the place where and the person to whom it was made."). "However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible." Rule 613(b), SCRE.

"When the issue is whether the witness admitted making the prior inconsistent statement, the admission **must be unequivocal**." Carmack, 388 S.C. at 201, 694 S.E.2d at 229 (emphasis added); see State v. Blalock, 357 S.C. 74, 80, 591 S.E.2d 632, 635 (Ct.

App. 2004) ("In determining whether a witness has admitted making a prior inconsistent statement and thereby obviated the need for extrinsic proof, the courts of our state and other jurisdictions have held that the witness must admit making the prior statement unequivocally and without qualification."). Significantly, "where the witness has responded with anything less than an unequivocal admission, trial courts have been granted wide latitude to allow extrinsic evidence proving the statement." Blalock, 357 S.C. at 80, 591 S.E.2d at 636. Moreover, a trial judge's decision as to whether to admit such extrinsic evidence will not be reversed absent a manifest abuse of discretion resulting in prejudice to the defendant. Carmack, 388 S.C. at 201, 694 S.E.2d at 229.

In the case sub judice, Wife, Towe, and Choiniere all admitted during their trial testimony they made their written statements. However, their admissions were **not** completely unqualified and unequivocal. Instead, Wife qualified her admission by indicating on multiple occasions her statement was missing numerous details, by asserting her statement was inaccurate, by indicating she did not remember the things contained within it, and by stating she did not remember the officer she spoke with on the night of the incident. Cf. State v. Miller, 262 S.C. 369, 371, 204 S.E.2d 738, 738-739 (1974) (holding extrinsic evidence of a witness' prior inconsistent statement was admissible where the witness admitted he signed the prior statement but stated he did not remember when asked about the contents of the statement); Carmack, 388 S.C. at 201-202, 694 S.E.2d at 230 (finding a witness' admission he made a prior inconsistent statement was not unequivocal where – although he testified his prior statement was accurate – the witness indicated certain details were not contained in his original statement because such details were not inquired into at the time the statement was given). Similarly, Towe qualified his admission by indicating the statement was not

completely accurate, by claiming he could not remember speaking with Detective Raines, and by asserting he was intoxicated on the night of the incident. See Blalock, 357 S.C. at 80, 591 S.E.2d at 636 ("[A] witness's failure to **fully** recall her prior statement has been found to be sufficient denial to allow extrinsic evidence." (emphasis added)). Likewise, Choiniere admitted she wrote her statement but claimed she could not actually recall writing it See State v. Moses, 390 S.C. 502, 522, 702 S E.2d 395, 406 (Ct. App. 2010) ("This wide latitude [to allow extrinsic evidence proving a prior inconsistent statement] extends to a witness indicating an inability to recall or to remember a previous statement[.]"). Under those circumstances, the trial judge did not manifestly abuse his discretion in admitting the written statements into evidence during trial. See Carmack, 388 S.C. at 201, 694 S.E.2d at 229 ("A decision to admit extrinsic evidence of a prior inconsistent statement will not be reversed absent a manifest abuse of discretion that prejudiced the defendant."); cf. Blalock, 357 S.C. at 80, 591 S.E.2d at 636 ("Considering we are governed by an abuse of discretion standard, we cannot say under these facts that the trial judge erred in admitting extrinsic evidence of Ms. Blalock's prior inconsistent statement."). Appellant's conviction should be affirmed.

B. Harmlessness of Any Error in the Admission of the Statements

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). An error is

harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); see United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]").

In the case at bar, even if the trial judge somehow erred in admitting the written statements into evidence, any error was entirely harmless in light of the fact the written statements were wholly cumulative to the testimony of the witnesses who wrote those statements. See State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence."). Critically, during their trial testimony, each of the witnesses acknowledged their written statement contained all of the allegations that were, in fact, contained within it. See State v. Oglesby, 384 S C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009) ("[T]he admission of improper evidence is deemed harmless if it is merely cumulative to other evidence."). Because the jury fully heard the contents of

each of the statements through the witnesses' trial testimony, the statements themselves were merely cumulative to that testimony. See State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983) ("It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence."); see also Blalock, 357 S.C. at 82, 591 S.E.2d at 636 ("Moreover, Detective Lindsey's publication of the prior statement was cumulative to Ms. Blalock's previous, unchallenged publication of the relevant portions of her statement."); cf. State v. Wyatt, 317 S.C. 370, 373, 453 S.E.2d 890, 891 (1995) (finding any error in the admission of irrelevant evidence establishing Wyatt's wife initially sought a divorce from him on the ground of physical cruelty was harmless beyond a reasonable doubt where Wyatt's wife had already testified in a manner suggesting Wyatt had hit her countless times in the past, which rendered the irrelevant evidence of physical cruelty merely cumulative to the other evidence in the record). Under those circumstances, the admission of the cumulative evidence could not have resulted in any cognizable prejudice to Appellant. See Duncan v. State, 281 S.C. 435, 439, 315 S.E.2d 809, 811 (1984) ("[T]he **additional** impeaching evidence of the inconsistent statement would not have had a meaningful impact on Davis' credibility " (emphasis added)); see also State v. Jennings, 394 S.C. 473, 478, 716 S.E.2d 91, 93-94 (2011) ("Improperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless."); State v Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006) ("The improper admission of hearsay is reversible error only when the admission causes prejudice."). Accordingly, even assuming the trial judge somehow erred in admitting the written statements, any error was harmless beyond a reasonable doubt. See Blackburn, 271 S.C. at 329, 247 S.E.2d at 337 (finding any error in the improper admission of the victim's hearsay statements implicating Blackburn was harmless

because the statements were cumulative to other evidence received in the case); see also State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."), State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: _____
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 6th day of November, 2014.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727