STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

THE STATE,

Respondent,

v.

HOLLY JO THOMPSON,

Appellant.

Appellate Case No. 2016-000340

FINAL BRIEF OF RESPONDENT

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I. The trial court did not abuse its discretion in refusing to instruct the jury on involuntary manslaughter where the evidence presented at trial did not support the charge, including testimony that appellant hit the victim seventeen times in the head and caused numerous other wounds, and appellant's own admission that she intentionally and voluntarily swung the vase at the victim to hit him and severely injure him, and where appellant's argument regarding her subsequent recklessness is tantamount to imperfect self-defense, which is not the law in South Carolina. Further, any error by the trial court during its instructions was harmless beyond a reasonable doubt.

II. The trial court did not abuse its discretion in denying a request to require the State to turn over the jury panel's criminal histories as precedent does not entitle appellant to the records, and appellant cannot demonstrate prejudice or any actual harm from the court's ruling.

III. Appellant's argument that the trial court abused its discretion in refusing to allow recross examination of a State's witness is not preserved as she did not proffer the excluded testimony which precludes review on appeal; regardless, on the merits, the court did not err in exercising its discretion where appellant was not entitled to recross as no new information was raised during redirect examination. Further, any error by the trial court was harmless beyond a reasonable doubt.

STATEMENT OF THE CASE

A Richland County Grand Jury indicted appellant, Holly Jo Thompson, for murder. (R.pp.726-27). Appellant proceeded to a jury trial on February 16, 2016 and was represented by Robert Bank, Esquire, Alicia Goode, Esquire, and Rhodes Bailey, Esquire. (R.p.1). Luck Campbell, Esquire, Meghan Walker, Esquire, and Laura Gregg, Esquire, of the Fifth Circuit Solicitor's Office represented the State. (R.p.1).

On February 19, 2016, the jury found appellant guilty of murder. (R.p.709, lines 5-11). The Honorable Robert E. Hood sentenced appellant to forty-five years' imprisonment. (R.p.724, lines 3-5).

This appeal follows.

STATEMENT OF FACTS

A man worried about his friend walked into an unexpected and bloody scene. At trial, Odell Middleton (Middleton) testified he found the body of James Solomon (Solomon) inside the victim's mobile home in Hopkins on January 27, 2014.[1] (R.p.48, line 24-p.49, line 2; p.52, line 13-p.55, line 5). Middleton saw the victim on the floor, blood around his head, and broken glass near the body. (R.p.54, line 23-p.55, line 5; p.56, lines 17-18). Further, Middleton testified he noticed signs of a possible struggle, including two rugs in the hallway which were "tangled up and kicked up." (R.p.55, lines 18-25). Middleton ran out of his friend's home and called 911. (R.p.55, line 7).

The first deputy to arrive on the scene noticed blood in multiple rooms and around the victim's head. (R.p. 63, lines 1-3; p.63, lines 11-21; p.67, lines 8-15). Deputy Collins Harper (Harper) also testified he saw blood spatter on the sheets in a back bedroom, as well as blood and a small knife on the floor. (R.p.72, line 25-p.73, line 18; p.74, line 24-p.75, line 9). Harper further stated he saw a rug "bunched up" in the hallway and shards of glass nearby. (R.p.65, lines 3-10; p.67, line 20-p.68, line 9).

Multiple investigators testified about the amount of blood found inside Solomon's home. Kerri McClary (McClary) processed the scene and testified about the blood patterns, including pooling near the victim's head, drops on the floors, and spatter on both walls of the hallway. (R.p.87, lines 11-16; p.100, lines 1-18). McClary stated the spatter indicated someone hit the victim with some force to cause the blood to land on the walls. (R.p.101, lines 15-23). Further, spatter and blood flow found low to the floor and headed away from the bedroom indicated the victim was likely trying to get away from his attacker at some point while being hit. (R.p.120,

[1] The victim was found three days after his death. (R.pp.728-27).

lines 15-23; p.122, lines 4-11). A second investigator testified blood was smeared on the door frame leading from the bedroom to the hallway, as if the victim leaned or fell against it. (R.p.214, line 20-p.215, line 1). A third investigator testified the first thing he noticed was all the blood in the hallway between the bedroom and the living room. (R.p.441, lines 15-21). Further, he stated from the amount of blood in the hallway and into the living room where the victim was found, "it was easy for [him] to deduce that he had crawled from one area to another." (R.p.444, lines 15-21).

Finally, an expert in bloodstain pattern analysis testified the attack started in the victim's bedroom and ended on the living room floor, where James Solomon (Solomon) died. (R.p.234, lines 22-24; p.236, lines 14-17; p.239, line 2-4). Stan Richards (Richards) stated the small drops of blood found in the bedroom indicated a minor injury likely began the attack. (R.p.239, line 8-p.240, line 15). However, as the victim moved into the hallway, the volume of blood increased and could be seen "all the way down on both sides of the wall and on the floor." (R.p.240, lines 16-25). Richards testified the patterns of blood spatter and blood flow indicated Solomon was continually hit as he was in motion. (R.p.241, line 1-p.242, line 12). Further, Richards stated a significant pattern of blood near the end of the hallway indicated the victim "was probably stationary for a little while in order for that much blood to be . . . flowing down the side down to the floor." (R.p.242, line 21-p.243, line 5). However, it was likely Solomon was hit again at that location, while stationary and possibly close to the floor, as Richards testified about spatter on the mobile home's HVAC unit which was below waist level. (R.p.244, line 12-p.245, line 24). Richards stated the victim eventually moved from the hallway to the living room, as evidenced by the smears of blood in the doorway, and later died in the living room. (R.p.243, lines 13-18; p.244, lines 8-11).

The pathologist who performed the autopsy testified the seventy-one year old victim suffered seventeen blows to the head, including eleven to the back of his head, several to his face, and one that broke his nose. (R.p.259, lines 17-19; p.260, lines 2-8; p.261, line 21-p.262, line 8; p.262, line 25-p.263, line 10; p.264, lines 7-14; p.293, lines 9-12). Doctor Amy Durso (Durso) also stated Solomon had multiple shallow cuts on his body that could have come from a knife or something as sharp, such as a piece of broken glass. (R.p.263, lines 10-24; p.269, lines 7-18; p.287, lines 19-22). Durso described some of the cuts as defensive wounds to the victim's right hand and forearm as he tried to protect himself from the attack. (R.p.269, line 23-p.270, line 2; p.270, lines 10-16; p.270, line 23-p.272, line 22). Durso testified it would have taken anywhere from a few minutes to an hour for Solomon to bleed out and die; however, Durso stated the victim was likely unconscious prior to his death due to the large number of blows to his head. (R.p.274, lines 2-14; p.276, lines 19-25; p.286, lines 15-23).

Evidence collected from the victim's home helped investigators narrow down their list of suspects. Crime scene technicians swabbed the bloodstains from the knife blade found in the bedroom, the blood from the bedroom, hallway, and living room, and collected the sheets from the bedroom. (R.p.139, lines 3-24; p.215, line 24-p.216, line 3; p.220, lines 2-11). The DNA from the blood matched the victim—from the knife, the sheets, the bedroom floor and door, the hallway walls and floor, and the living room. (R.p.321, lines 4-12; p.332, line 18-p.333, line 7; p.334, lines 17-23; p.335, line 23-p.336, line 19; p.337, lines 4-8; p.347, lines 17-24). Further, a technician collected the broken glass at the scene and noticed a possible palm print in the dried blood. (R.p.123, line 24-p.124, line 6). The print matched appellant. (R.p.309, lines 15-18; p.310, lines 9-20; p.311, lines 3-13).

Appellant never denied she was at the victim's home on the night of his death, but told

the deputy who arrested her that she did not kill him. (R.p.579, lines 3-14). However, appellant changed her story after learning what evidence investigators had against her, such as the palm print, and told investigators she killed the victim in self-defense. (R.p.580, lines 17-25; p.588, line 13-p.589, line 16).

At trial, appellant testified she was a prostitute and James Solomon (Solomon) was one of her clients who paid for sex with money or drugs. (R.p.472, line 22-p.473, line 13; p.474, lines 3-10). Appellant stated she and the victim smoked crack cocaine together on the night of his death and tried to have sex in the living room, but when Solomon could not perform, he got angry. (R.p.477, line 21-p.478, line 13; p.479, line 18-p.480, line 1). Appellant testified they tried to have sex again later in the bedroom; however, the victim still could not perform so appellant went to the living room to get dressed and the victim followed her. (R.p.480, line 21-p.481, line 6). Appellant testified Solomon had a small knife that he swung at her and cut her right hand, so she grabbed a glass vase to defend herself. (R.p.481, lines 7-19). Appellant stated the victim swung the knife at her again as she tried to grab her crack pipe and clothes to leave so she hit him with the vase. (R.p.482, lines 15-19; p.486, lines 2-13). Appellant testified she and the victim fell to the floor and the vase broke, and she thought she hit him five or six times. (R.p.486, line 19-p.487, line 4). Appellant testified she got up and the victim remained on the floor, threatening her, as she ran out the front door. (R.p.487, lines 5-22). Appellant admitted she did not call 911 or otherwise call for help, not even when she later learned James Solomon had died. (R.p.490, lines 18-22; p.493, lines 15-17).

ARGUMENTS

I.

The trial court did not abuse its discretion in refusing to instruct the jury on involuntary manslaughter where the evidence presented at trial did not support the charge, including testimony that appellant hit the victim seventeen times in the head and caused numerous other wounds, and appellant's own admission that she intentionally and voluntarily swung the vase at the victim to hit him and severely injure him, and where appellant's argument regarding her subsequent recklessness is tantamount to imperfect self-defense, which is not the law in South Carolina. Further, any error by the trial court during its instructions was harmless beyond a reasonable doubt.

How the Issue Was Raised

Prior to jury instructions, defense counsel requested a charge on self-defense, as well as one on involuntary manslaughter based on appellant "leaving while [the victim] is still alive and not informing police, not calling police and that contributing recklessly to his death." (R.p.543, lines 4-10). Later, the trial court noted that neither side had requested a charge that a person was entitled to continue to act in self-defense until the threat of harm has ended. (R.p.607, line 25-p.608, line 5). Defense counsel indicated he wanted that charge, to which the court replied, "Okay. Well, that's directly contradictory to your argument that she didn't mean to kill him." (R.p.608, lines 6-10). Counsel stated that their theory was that appellant "didn't know whether she killed him. Now, she used the force that she felt was necessary, had no idea whether she had killed him or not." (R.p.608, lines 11-14). The court again replied that counsel's position contradicted a charge of involuntary manslaughter, stating, "I mean, you understand at this point, those two are exclusive of each other. She either – it was either an intentional act or it was an unintentional act." (R.p.608, lines 15-19).

Defense counsel argued self-defense and involuntary manslaughter were not necessarily

mutually exclusive, to which the court agreed. (R.p.608, lines 20-25). However, the trial court stated:

> [H]er theory is I hit him in self-defense. There's evidence in the record that [appellant] hit [the victim] in self-defense, but she did it intentionally to injure him to get him to stop. It's not an unintentional act. It's not an accident. It's not reckless. It's not careless. It's not negligent. She said I picked up the vase because I had to defend myself and I hit him because I was in fear of my life. I mean, that's intentional as the day is long.

(R.p.613, lines 16-24). Defense counsel argued appellant acted recklessly in leaving the victim injured and bleeding and she did not intend to kill him, which entitled her to an involuntary manslaughter charge. (R.p.612, lines 6-15; p.613, lines 2-8; p.614, lines 6-8; p.614, line 24-p.615, line 2). The State countered that the defense's argument regarding recklessness focused on the wrong conduct and the assertion that appellant acted in self-defense, but excessively, amounted to imperfect self-defense which our Supreme Court had rejected. (R.p.611, lines 9-18; p.612, lines 16-21; p.617, line 16-p.618, line 20).

The trial court denied the request to charge the jury on involuntary manslaughter, but ruled he would instruct the jury that a person was entitled to continue to act in self-defense until the threat of harm had ended. (R.p.619, line 18-p.620, line 11).

The trial court subsequently instructed the jury at length on the law of the case, including the elements of self-defense. (R.p.687, line 14-p.703, line 18). When discussing the degree of force a person was entitled to use to defend herself, the court noted, "If the defendant is justified in defending herself and in striking the victim, then the defendant is also justified in continuing to strike until it is apparent that the danger of death or serious bodily injury has completely ended." (R.p.703, lines 14-18).

Following instructions, defense counsel again objected to the exclusion of the involuntary

manslaughter charge and asked to be heard on the issue. (R.p.707, line 19-p.708, line 3). The trial court responded that the issue had been argued and ruled upon and declined to allow counsel to address the issue again. (R.p.708, lines 4-5). The jury subsequently found appellant guilty of murder. (R.p.709, lines 5-11).

Standard of Review

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). In reviewing jury charges for error, appellate courts must consider the trial court's charge as a whole and in light of the evidence and issues presented at trial. *State v. Logan*, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013) (citation omitted). The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law. *Clark*, 339 S.C. at 390, 529 S.E.2d at 539. To warrant reversal, the failure to give a requested charge must be both erroneous and prejudicial. *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003).

Analysis

A trial court should grant a requested instruction if there is any evidence presented at trial to support the charge. *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). Involuntary manslaughter is defined as the unintentional killing of another without malice but while engaged in (1) an unlawful activity not naturally tending to cause death or great bodily harm; or (2) a lawful activity with reckless disregard for the safety of others. *Id.* at 264-65, 513 S.E.2d at 109. In determining whether to charge the lesser included offense of manslaughter, the court must view the evidence in the light most favorable to the defendant. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Importantly, our Supreme Court has emphasized that

the charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser included offense. *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000) (citation omitted); *Burriss*, 334 S.C. at 265, 513 S.E.2d at 109.

The essence of involuntary manslaughter is the unintentional nature of the killing. *See Douglas v. State*, 332 S.C. 67, 74, 504 S.E.2d 307, 310 (1998) (holding involuntary manslaughter charge not warranted where defendant admitted he *intentionally fired a gun* into a crowd in self-defense despite testimony that the defendant had been rushed by a group of people during a fight) (emphasis added); *State v. Pickens*, 320 S.C. 528, 531-32, 466 S.E.2d 364, 366-67 (1996) (holding where a defendant admitted he *intentionally shot his gun*, but stated he did so while acting lawfully but recklessly in defending himself, he was not entitled to an involuntary manslaughter charge) (emphasis added); *State v. Morris*, 307 S.C. 480, 483-84, 415 S.E.2d 819, 821-22 (Ct. App. 1991) (noting that under involuntary manslaughter, *the act must be unintentional* and defendant intentionally shot his gun though he claimed self-defense) (emphasis added). Only where there is a factual issue as to whether the killing was committed intentionally in self-defense or was committed unintentionally is there evidence sufficient to support both a self-defense and an involuntary manslaughter charge—i.e. where a gun unintentionally fires during a struggle over the weapon and the accidental discharge results in an unintentional killing. *See e.g.*, *State v. Light*, 378 S.C. 641, 650-51, 664 S.E.2d 465, 469-70 (2008) (holding the defendant, who was convicted of murder, was entitled to a jury charge on involuntary manslaughter where he negligently handled the weapon prior to the shooting, and he and the victim struggled over the gun); *State v. Crosby*, 355 S.C. 47, 52-53, 584 S.E.2d 110, 112-13 (2003) (holding the trial court erred in refusing to charge involuntary manslaughter where there was evidence the defendant did not intentionally discharge the weapon given the defendant

claimed he was trying to break up a fight between three women and the victim charged at him prior to the shooting with his hands behind his back); *Burriss*, 334, S.C. at 263-65, 513 S.E.2d at 108-09 (concluding the defendant was entitled to an involuntary manslaughter charge where there was evidence he was acting lawfully in self-defense given he pulled his weapon after being attacked and fired twice into the ground, and the defendant accidentally fired the deadly shot when one of the attackers moved threatening toward him). If such a factual issue does not exist, self-defense and involuntary manslaughter are mutually exclusive and a defendant is not entitled to both charges.

Further, our Supreme Court has twice rejected arguments similar to the one appellant is making that she acted lawfully in self-defense, but recklessly or excessively. Specifically, the Court held the argument was tantamount to imperfect self-defense, which was not the law in South Carolina, and, even if it were, only entitled a defendant to the lesser included charge of voluntary manslaughter. *State v. Scott*, 414 S.C. 482, 488, 779 S.E.2d 529, 532 (2015); *State v. Sams*, 410 S.C. 303, 314-16, 764 S.E.2d 511, 517 (2014). In *Sams*, the defendant "locked his arm around [the victim's] neck while lying on top of him" and refused to let go, even after being ordered to by a police officer. *Sams*, 410 S.C. at 306-07, 764 S.E.2d at 512-13. When Sams finally released the victim, the victim was unresponsive, and the officer noticed he was not breathing and "had a blue cast to his skin." *Id.* at 307, 764 S.E.2d at 513. The pathologist testified the victim had visible bruises and scratches on his neck, bruises to the underlying muscles, and hemorrhages in the lining of his eye, all of which indicated the victim died from being strangled. *Id.* The Court noted the defendant's theory at trial was essentially self-defense—Sams testified he did not mean to kill the victim and was trying to protect himself by restraining the victim during a fight. *Id.* at 309, 764 S.E.2d at 514. Further, the Court found

Sams's denial of an intent to kill was not sufficient to support an instruction on involuntary manslaughter where the evidence showed he "maintained a chokehold on [the victim] for well over ten minutes" and the "prolonged and continued hold on the victim's neck, until a responding officer repeatedly ordered [Sams] to release his hold, was intentional and the type of conduct that is highly likely to result in serious injury or death." *Id.* at 311-12, 764 S.E.2d at 515. The Court noted the medical evidence presented at trial indicated "the severe nature of the altercation, as there were objective signs of strangulation present." *Id.* at 312, 764 S.E.2d at 515-16.

Finally, the Court held Sams's argument that he acted lawfully in self-defense, but excessively and recklessly was tantamount to imperfect self-defense which was not the law South Carolina. *Id.* at 315, 764 S.E.2d at 517. While not adopting the doctrine, the Court went on to state imperfect self-defense was a factor in mitigation that might reduce murder to voluntary manslaughter but had no application to involuntary manslaughter. *See id.* at 315-16, 764 S.E.2d at 517-18 (citing with approval cases from multiple jurisdictions that held the use of excessive force rendered an action taken in self-defense unlawful so that the action could not be a lawful act done in an unlawful manner as required for involuntary manslaughter, but could entitle a defendant to an instruction on voluntary manslaughter).

Using the analysis developed in *Sams*, the Court in *Scott* again rejected the argument that the defendant was entitled to an involuntary manslaughter charge because the jury could have inferred that he acted recklessly in self-defense. *Scott*, 414 S.C. at 488, 779 S.E.2d at 532. Scott argued the evidence demonstrated he unintentionally killed the victim while executing a martial arts move, and therefore he must have recklessly disregarded the safety of others. *Id.* at 487, 779 S.E.2d at 531. The Court noted the only evidence of self-defense was the defendant's previous statement to an investigator that the victim charged him with a shiny, silver object and he

executed a martial arts move, which pushed her elbow up and caused her to stab herself in the throat. *Id.* The Court acknowledged the evidence supported a self-defense instruction, which Scott received, but held Scott presented no evidence he acted recklessly and he was not entitled to an involuntary manslaughter charge. *Id.* at 488-89, 779 S.E.2d at 532.

Appellant Acted Intentionally

The trial court did not abuse its discretion in rejecting appellant's request to charge the jury on involuntary manslaughter as the record demonstrates there is no evidence to support the instruction. *Cole*, 338 S.C. at 101, 525 S.E.2d at 513 (holding a charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser included offense); *Burriss*, 334 S.C. at 262, 513 S.E.2d at 108 (holding a trial court should grant a requested instruction only if there is any evidence presented at trial to support the charge).

Appellant admitted to investigators after her arrest and again before the jury that she intentionally used the vase to hit and harm the victim. (R.pp.481-82; pp.486-88; pp.497-98; p.580; p.592); *see also Douglas*, 332 S.C. at 74, 504 S.E.2d at 310 (holding involuntary manslaughter charge not warranted where defendant admitted he intentionally fired a gun into a crowd in self-defense); *Pickens*, 320 S.C. at 531-31, 466 S.E.2d at 366-67 (holding where a defendant admitted he intentionally shot his gun, but stated he did so while defending himself, he was not entitled to an involuntary manslaughter charge); *Morris*, 307 S.C. at 483-84, 415 S.E.2d at 821-22 (noting that under involuntary manslaughter, the act must be unintentional even when claiming self-defense). Specifically, in a statement to investigators describing the incident, appellant admitted her actions led to James Solomon's death and she continually and intentionally hit him with the vase because she "just wanted him to stop trying to hurt me." (R.p.581, lines 16-25; p.592, lines 10-20). During direct examination at trial, this exchange

occurred between appellant and defense counsel:

> DEFENSE COUNSEL: Ms. Thompson, when you swung that vase, did you mean to swing that vase to hit [the victim]?
>
> APPELLANT: Yes, to protect myself.

(R.p.487, line 25-p.488, line 2). Appellant further admitted she only stopped swinging the vase after she and the victim fell to the floor and the vase broke. (R.pp.486-87). Next, during cross-examination, appellant said she was not disputing that her intentional actions caused the victim's death and reiterated that she killed the victim in self-defense, and admitted she was the only one who hit him with the vase. (R.p.497, line 8-p.498, line 17).

The evidence presented at trial shows the killing was committed intentionally and there was no evidence presented that appellant acted unintentionally to support a jury instruction on involuntary manslaughter. *See Burriss*, 334 S.C. at 264-65, 513 S.E.2d at 109 (stating that involuntary manslaughter is defined as the unintentional killing of another without malice but while engaged in (1) an unlawful activity not naturally tending to cause death or great bodily harm; or (2) a lawful activity with reckless disregard for the safety of others). The evidence, including appellant's own statements, conclusively demonstrated appellant intentionally and voluntarily wielded the vase to harm the victim, and there was nothing unintentional about her actions.

While self-defense and involuntary manslaughter are not mutually exclusive, as the trial court correctly noted, the facts of this case did not entitle appellant to an instruction on involuntary manslaughter. (R.p.608). Even under appellant's version of events, the evidence only entitled her to a self-defense charge, which she received. (R.pp.687-703). Appellant claimed she swung the vase to protect herself after the victim swung a knife at her. (R.pp.481-82; pp.486-88). There was no struggle over the vase, no struggle over the knife, and appellant's

actions were not unintentional or accidental. *See e.g.*, *Light*, 378 S.C. at 650-51, 664 S.E.2d at 469-70 (holding an involuntary manslaughter charge was warranted where the defendant stated the gun "went off" immediately after he and the victim struggled over it); *Crosby*, 355 S.C. at 52-53, 584 S.E.2d at 112-13 (holding the defendant's statement that he "didn't even know he pulled the trigger" was sufficient to warrant an involuntary manslaughter charge); *Burriss*, 334, S.C. at 263-65, 513 S.E.2d at 108-09 (holding the defendant was entitled to an involuntary manslaughter charge where the gun "went off" and the defendant claimed "[i]t was an accident"). Accordingly, appellant was not entitled to an involuntary manslaughter charge as the evidence firmly established she intentionally swung the vase repeatedly at the victim's head, face, and body, and the trial court did not err in refusing the request.

Imperfect Self-Defense Not Applicable

Further, appellant's argument that she was entitled to an involuntary manslaughter charge because the jury could have determined she acted recklessly while in self-defense by failing to call police for help is without merit. Our Supreme Court has twice rejected similar arguments, holding they are tantamount to imperfect self-defense which South Carolina has not recognized and has no application to involuntary manslaughter.[2] *Scott*, 414 S.C. at 488, 779 S.E.2d at 532; *Sams*, 410 S.C. at, 314-16, 764 S.E.2d at, 517. As in *Sams*, appellant's actions were "intentional and the type of conduct that is highly likely to result in serious injury or death" where the medical evidence presented at trial objectively indicated the severe nature of appellant's attack, including the pathologist's testimony that the victim suffered seventeen blows to the head and face, multiple shallow cuts on various parts of his body, and defensive wounds on his right hand

[2] The Court held the most a defendant would be entitled to receive, even if South Carolina recognized imperfect self-defense, was an instruction on voluntary manslaughter, which appellant never requested at trial. *Scott*, 414 S.C. at 488, 779 S.E.2d at 532; *Sams*, 414 S.C. 315-16, 764 S.E.2d at 517-18.

and forearm. (R.pp.259-64; pp.269-72; p.293); *see also Sams*, 414 S.C. at 311-12, 764 S.E.2d at 515-16 (finding the defendant's denial of an intent to kill was not sufficient to support an instruction on involuntary manslaughter where the evidence showed the "prolonged and continued hold on the victim's neck" was intentional and "the type of conduct that is highly likely to result in serious injury or death" and noting the medical evidence presented at trial indicated "the severe nature of the altercation, as there were objective signs of strangulation present"). Corroborating evidence of the prolonged attack and the force appellant used to hit the victim included testimony about the amount of blood found in multiple rooms, such as spatter on both walls of the hallway, smears on the door frames, as well as the patterns that indicated the victim was continually hit as he was in motion. (R.pp.63; p.67; pp.72-73; pp.75-76; p.87; pp.100-01; pp.214-15; pp.240-44; p.441; p.444).

Appellant's argument that she acted recklessly in leaving the victim to bleed to death without calling for help focuses on the wrong conduct. As the solicitor correctly noted at trial, "It's not her leaving that killed him. It was her intentional conduct of repeatedly hitting him in the head with the – as she admitted in her testimony, she had the vase." (R.p.612, lines 16-21). In an effort to mitigate the number of blows to the victim's head, appellant requested and received the charge informing the jury that a person who was justified in defending herself and striking the victim was also justified in "continuing to strike until it is apparent that the danger of death or serious bodily injury has completely ended." (R.p.703). However, there was no evidence presented that appellant acted with reckless disregard for the safety of others where her action of intentionally arming herself with a vase, repeatedly and continually hitting the victim seventeen times in the head, and testifying she only stopped swinging the vase when she and the victim fell to the floor demonstrate a clear intent to seriously injure or kill the victim. (R.p.293;

pp.486-88); *see also* S.C. Code Ann. § 16-3-60 (stating that a person charged with involuntary manslaughter may be convicted only upon a showing of criminal negligence, "defined as the reckless disregard of the safety of others"). Accordingly, the record demonstrates appellant was entitled to an instruction on self-defense, which she received, and she was not entitled to an involuntary manslaughter charge.

Therefore, the trial court did not err in refusing to charge involuntary manslaughter as the evidence presented at trial did not support the instruction.

Harmless Error

Even if this Court were to find an abuse of discretion, any error in the jury instructions was harmless beyond a reasonable doubt. *See State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) ("Errors, including erroneous jury instructions, are subject to harmless error analysis."); *see also State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (holding harmless error analysis is appropriate for the failure to charge a lesser included offense). When considering whether an error with respect to a jury instruction was harmless, an appellate court must determine that the error complained of did not contribute to the verdict. *Middleton*, 312 S.C. at 317, 755 S.E.2d at 435 (citation omitted). Such an analysis is a fact-intensive inquiry. *Id.* (citing *State v. Jefferies*, 316 S.C. 13, 22, 446 S.E.2d 427, 432 (1994)).

Here, a fact intensive inquiry shows the trial court's decision not to charge involuntary manslaughter did not contribute to the verdict. The evidence presented by the State showed appellant followed James Solomon from a bedroom and into the hallway, continually and repeatedly hitting him with a glass vase as he tried to get away from her. (R.p.120; p.122; pp.214-15; pp.239-42; p.444). The force of the blows was severe enough to leave spatter and patterns on both walls of the hallway and pooling on the floors, and multiple investigators

testified that the amount of blood at the scene was one of the first things they noticed when they arrived. (R.p.67; p.72; pp.75-76; pp.100-01; p.441). The pathologist testified the seventy-one year old victim suffered seventeen blows to the head and likely tried to stop the attack as he had some cuts on his hand and forearm that she described as defensive wounds. (R.pp.260-64; pp.270-72; p.293). James Solomon was found in a pool of blood in his living room on January 27, 2014—three days after he died. (R.p.63, lines 13-19; pp.243-44; pp.726-27).

Further, a palm print found in the dried blood on the glass from the broken vase was later matched to appellant and, despite appellant's statement that the victim cut her finger with a knife, DNA from the blood found at the scene matched only the victim—from the knife, the bedroom floor and door, the hallway walls and floor, and the living room. (R.pp.310-11; p.321; pp.332-37; p.347).

Appellant's version of events in her statement to investigators and to the jury was she acted in self-defense. In her statement, appellant never denied she was at the victim's home on the night of his death, and told the deputy who arrested her she killed the victim in self-defense. (R.p.580; pp.588-89). Again at trial, appellant stated she and the victim smoked crack cocaine together and tried to have sex, but when he could not perform, he became angry and eventually swung a knife at her. (R.pp.477-81). Appellant admitted she hit the victim with a glass vase repeatedly and only stopped after she and the victim fell to the floor. (R.p.482; pp.486-87). Appellant also admitted she did not call 911 or otherwise call for help, not even when she later learned James Solomon had died. (R.p.490; p.493; p.590; p.592).

The jury obviously did not believe appellant's version of events as they heard appellant's testimony, were properly charged on self-defense, and found her guilty of murder beyond a reasonable doubt. (R.pp.687-703; p.709). Given the evidence in this particular case, it is clear

the failure to charge involuntary manslaughter was harmless. *Middleton*, 312 S.C. at 317, 755 S.E.2d at 435 (holding failure to charge a lesser included offense was harmless after a fact specific inquiry).

Therefore, while respondent submits the trial court's ruling was not error, any alleged error was harmless beyond a reasonable doubt.

II.

The trial court did not abuse its discretion in denying a request to require the State to turn over the jury panel's criminal histories as precedent does not entitle appellant to the records, and appellant cannot demonstrate prejudice or any actual harm from the court's ruling.

How the Issue Was Raised

Prior to jury selection, defense counsel asked the trial court to order the State to give juror rap sheets and criminal histories to the defense, as the State had provided copies to both the court and the clerk. (R.p.19, lines 1-14). Counsel stated "it doesn't seem fair that everybody in the courtroom has a copy of this information except the defendant" and further argued it could be an issue in a *Batson*[3] situation in which counsel did not know why the State was "excluding someone until later." (R.p.19, lines 14-21). The State countered that case law established it was not required to give that information to the defense. (R.p.19, line 22-p.20, line 1).

The court denied defense counsel's motion and continued with *voir dire*. (R.p.20, lines 2-5).

During *voir dire*, the trial court specifically asked the jury panel if anyone had been accused or convicted of a crime, and whether they or a family member or close friend had been the victim of a violent crime, and gave them the opportunity to explain the circumstances to the court. (R.p.21, line 8-p.27, line 24). Neither defense counsel nor the State objected once the jury was seated and, importantly, appellant never raised a *Batson* challenge to the State's decision to strike any person. (R.p.29, lines 16-24).

Standard of Review

The conduct of a criminal trial is left largely to the discretion of the trial court, and the

[3] *Batson v. Kentucky*, 476 U.S. 79 (1986).

appellate courts will not interfere unless the rights of a defendant were prejudiced. *State v. Bridges*, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Accordingly, this Court reviews errors of law only and is bound by the trial court's factual findings unless they were clearly erroneous. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

Analysis

A defendant is not entitled to the prosecution's copies of jurors' criminal histories in this jurisdiction. Rule 5(a)(1) of the South Carolina Rules of Criminal Procedure sets out the information subject to disclosure by the State and does not include juror criminal records run by the prosecution in preparation for jury selection. *See* Rule 5(a)(1), SCRCrimP (describing the information subject to disclosure including statements by the defendant, a defendant's prior record, certain documents and tangible objects, and reports or examinations and tests); *see also State v. Matthews*, 296 S.C. 379, 384, 373 S.E.2d 587, 591 (1988) (pre-Rule 5 case finding "[b]ackground information on the *venire,* if any, held by the solicitor here qualified as 'internal prosecution' matter connected with the prosecution of the case. As such it was not subject to disclosure.").

A defendant is not "entitled to criminal records checks or records of arrest" compiled by the prosecution as "[n]o right to discovery exists absent statute or court rule" and there is no such statute or court rule requiring disclosure of this information. *State v. Childs*, 299 S.C. 471, 474, 385 S.E.2d 839, 841 (1989). Interpreting *Childs*, this Court specifically addressed the holding in the context of a *Batson* challenge and found no error where the trial court refused to order the State to disclose and put into the record the criminal records information upon which the solicitor made his strikes. *State v. Casey*, 325 S.C. 447, 455, 481 S.E.2d 169, 174 (Ct. App. 1997). After noting the general rule established in *Childs*, this Court wrote:

> Neither *Batson* nor its progeny requires that the proponent of a strike present evidentiary support for the strike. *See State v. Kandies*, 342 N.C. 419, 467 S.E.2d 67, 77 (1996) ("[T]he district attorney is an officer of the court, and, as such, is sworn to represent the State honestly and to the best of his ability. Absent evidence to the contrary, it is not unreasonable for the trial court to assume that the prosecutor is telling the truth with regard to the criminal records of prospective jurors."). Accordingly, we conclude the trial court did not err in refusing Casey's motion to have the State produce the jurors' criminal records.

Casey, 325 S.C. at 456, 481 S.E.2d at 174. The decisions in *Childs* and *Casey* continue to hold true.

Almost without exception, courts in other jurisdictions have declined to find reversible error where a trial court denied the defense access to jurors' criminal histories. *See* Jeffrey F. Ghent, Annot., *Right of Defense in Criminal Prosecution to Disclosure of Prosecution Information Regarding Prospective Jurors*, 86 A.L.R.3d 571 (1978 & Supp. 2014) (collecting cases on this issue). Courts have found that absent a statute or rule mandating disclosure, no such obligation exists. *See Wansley v. State*, 352 S.E.2d 368, 369 (Ga. 1987) ("In this state the prosecution is not required to reveal or produce investigatory work routinely performed in criminal cases unless it is subject to discovery under [statute] or under *Brady v. Maryland,* 373 U.S. 83 (1963) (exculpatory evidence)."); *Albarran v. State*, 96 So.3d 131, 157-58 (Ala. Crim. App. 2011) ("arrest and conviction records of potential jurors do not qualify as the type of discoverable evidence" that falls within the scope of *Brady*); *State v. Weiland*, 540 So. 2d 1288, 1290 (La. Ct. App. 1989) (finding a defendant is not entitled to the rap sheets of prospective jurors).

Further, even courts that discussed the fairness of the prosecution using information not readily accessible to the defense found no error where the appellant could not show prejudice or where the injury, if any, was speculative. *See Artiga-Morales v. State*, 335 P.3d 179, 181-82

(Nev. 2014) (finding no basis to reverse a conviction based on the trial court's refusal to compel the disclosure of jurors' criminal histories where a defendant failed to connect his argument to the facts of his case); *State v. Goodale*, 740 A.2d 1026, 1031 (N.H. 1999) (opining that fairness may warrant the disclosure of criminal records of jurors utilized by the State in jury selection, but affirming a conviction as the defendant failed to demonstrate he was prejudiced by the trial court's ruling). Courts have found criminal histories are obtainable by questions to the individual jurors and a thorough *voir dire* is generally sufficient to uncover relevant information. *See Couser v. State*, 383 A.2d 389, 398 (Md. 1978) (holding it could not be assumed that failure to disclose the State's juror dossier resulted in a biased jury because an adequate *voir dire* will determine whether a prospective juror is prejudiced and unable to render a fair and impartial verdict); *Tagala v. State*, 812 P.2d 604, 613 (Alaska Ct. App. 1991) (finding it was difficult to determine how the defense was harmed by the fact that it did not have access to the jurors' criminal history records and noting nothing prevented the defense from asking the jurors about their records during *voir dire*).

Appellant Not Entitled to the State's Copies of Jurors' Criminal History Records

The trial court did not abuse its discretion in refusing to compel the State to turn over to appellant the criminal histories of the jury panel. Appellant was not entitled to the records as such information is not subject to disclosure in this jurisdiction. Rule 5(a)(1), SCRCrimP, does not establish a right to the information and appellant points to no other statute or court rule which would require such disclosure. *See* Rule 5(a)(1), SCRCrimP (describing the information subject to disclosure including statements by the defendant, a defendant's prior record, and other documents); *see also Childs*, 299 S.C. at 473-74, 385 S.E.2d at 841 ("Because there is no statute or rule requiring a disclosure of . . . [juror arrest, conviction, and prior jury service records], the

trial judge did not abuse his discretion in denying" a request for such information).

Further, appellant's attempt to distinguish her case from *Childs* in unavailing as the record indicates the State turned the criminal histories over to the trial court and to the clerk to aid the court in qualifying a jury. (R.p.18, lines 7-21). Such action helps ensure a fair and impartial jury.

Accordingly, the trial court did not err in refusing to require the State to turn over the jurors' criminal history records as there is no established right to such information.

Appellant Cannot Demonstrate Prejudice

Further, appellant cannot demonstrate the trial court's ruling prejudiced her defense. While appellant cites to the general concepts of fundamental fairness, reasonableness, and judicial economy as reasons the court erred, she points to no specific prejudice or injury and does not connect the theoretical argument to the facts of her case. Appellant does not argue, much less establish, that any of the jurors were not fair and impartial.

First, potential jurors were asked if they had been accused or convicted of a crime, or if they had been the victim of a crime. The trial court then gave each person the opportunity to explain the circumstances and each was specifically asked if that would affect his or her ability to be fair and impartial. (R.pp.21-27). As a result, the jurors' criminal histories were obtainable by questions to the individual jurors during *voir dire* and readily available to all parties. *See Couser*, 383 A.2d at 398 (holding an adequate *voir dire* is generally sufficient to determine whether a prospective juror is prejudiced and unable to render a fair and impartial verdict). Further, there is no indication from the record that defense counsel did not obtain prior to trial his own copy of the jurors' criminal histories, as he was permitted to do.

Second, prior to exercising their strikes, the trial court gave each party the opportunity to

put forth any additional questions and both defense counsel and the State indicated they had no further questions, and jury selection continued. (R.p.28, lines 11-14). Nothing prevented appellant from requesting the court to ask jurors additional questions about their criminal records, had she chosen to do so.

Finally, defense counsel never objected once the jury was seated and, importantly, never raised a *Batson* challenge to the State's decision to strike any person. (R.p.29). Consequently, appellant's current argument that access to the criminal histories would aid in making challenges is speculative and not connected to the facts of her case. This Court has already settled the question regarding access to jurors' criminal histories in the context of *Batson* challenges and found no right to such information gathered by the prosecution exists, and noting *Batson* does not require a solicitor to put forth record evidence to support his or her strikes. *See Casey*, 325 S.C. at 455-56, 481 S.E.2d at 174 (citing with approval case law from North Carolina which states, "Absent evidence to the contrary, it is not unreasonable for the trial court to assume that the prosecutor is telling the truth with regard to the criminal records of prospective jurors.") (citation omitted). Without a showing of how appellant was prejudiced by the trial court's ruling, her argument fails.

Therefore, the trial court did not err in refusing to order the State to disclose its copies of jurors' criminal histories as appellant has failed to demonstrate she was entitled to the information and she has further has failed to show how the ruling prejudiced her defense.

III.

Appellant's argument that the trial court abused its discretion in refusing to allow recross examination of a State's witness is not preserved as she did not proffer the excluded testimony which precludes review on appeal; regardless, on the merits, the court did not err in exercising its discretion where appellant was not entitled to recross as no new information was raised during redirect examination. Further, any error by the trial court was harmless beyond a reasonable doubt.

How the Issue Was Raised

Following cross-examination of the pathologist, the State asked questions on redirect examination to reiterate the number of injuries to the victim's head, the cuts on his hands, and the general types of injuries the victim suffered—which was testimony the pathologist had testified to previously. (R.p.292, line 5-p.293, line 23). Defense counsel attempted to begin recross-examination; however, the trial court interrupted and stated no recross would be allowed under Rule 611, SCRE. (R.p.293, line 24-p.294, line 10). Subsequently, defense counsel again objected on the record and asked why the court would not allow recross, and the court again cited to Rule 611 which granted it the discretion to control reexamination of witnesses, but told counsel, "If you want to find me some law that says you're entitled to recross, I'll be happy to revisit my opinion and make [the pathologist] come back up here. Until then, find something that says I'm wrong." (R.p.298, line 8-p.299, line 8).

Defense counsel did not proffer the proposed recross-examination, and did not revisit the issue.

During redirect examination of appellant, defense counsel elicited information that had not been raised before the jury previously, such as appellant's level of education, and then asked her to reiterate points from her previous testimony. (R.p.537, line 6-p.539, line 25). However, at the end of redirect, counsel asked appellant:

DEFENSE COUNSEL: Did you find the prosecutor's questions kind of confusing?

APPELLANT: Some, yes.

DEFENSE COUNSEL: Do you feel like she was putting words in your mouth, Ms. Thompson?

APPELLANT: Possibly trying.

DEFENSE COUNSEL: That's all the questions I have.

(R.p.540, lines 1-7). The solicitor stated she had only one question, which the trial court allowed, and she asked appellant:

THE STATE: Is there anything you need to clear up with the jury that I confused you on?

APPELLANT: No.

THE STATE: Thank you. That's all.

(R.p.540, lines 8-15). The trial continued with another defense witness, a State's witness in rebuttal, and jury instructions.

Standard of Review

The conduct of a criminal trial is left largely to the discretion of the trial court, which will not be reversed absent a prejudicial abuse of discretion. *Bridges*, 278 S.C. at 448, 298 S.E.2d at 212. Accordingly, the appellate courts sit to review errors of law only and are bound by the trial court's factual findings unless they are clearly erroneous. *Baccus*, 367 S.C. at 48, 625 S.E.2d at 220.

Analysis

Appellant's Argument is Not Preserved

To begin, it appears this issue is not preserved. Defense counsel twice objected to the trial court's ruling not allowing him to recross the pathologist; however, he never proffered the

excluded testimony, which generally precludes review on appeal. *See State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) (citing *State v. Roper*, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979)) (finding a proffer of testimony is required to preserve the issue of whether testimony was properly excluded by the trial court, and an appellate court will not consider error alleged in the exclusion of testimony unless the record on appeal fairly shows what the excluded testimony would have been). Where no proffer is made, the appellate court is unable to determine whether an appellant was prejudiced by the trial court's refusal to admit testimony into evidence. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 628, 503 S.E.2d 471, 480 (1998).

Appellant attempts to excuse the failure to preserve the issue by arguing it would have been futile to ask the trial court to proffer the pathologist's excluded testimony. *See e.g., State v. Pace*, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994) (holding counsel's failure to object did not waive the issue where the trial court's remarks were such that any objection would have been futile). Respondent acknowledges the court indicated it wanted to move on to the next witness following defense counsel's first objection. (R.pp.293-94). Yet when counsel objected a second time, the court indicated it was willing to revisit the issue and recall the pathologist if counsel could find case law to support his position that he was entitled to recross. (R.pp.298-99). This suggests it would not have been futile to ask the trial court to proffer the pathologist's excluded testimony. However, counsel never revisited the issue and never attempted to proffer the excluded testimony. There is no indication from the record what the excluded testimony would have been as the points elicited during redirect examination were limited to those previously raised during the pathologist's testimony. (R.pp.292-93); *see also Santiago*, 370 S.C. at 163, 634 S.E.2d at 29 (finding an appellate court will not consider error alleged in the exclusion of

testimony unless there has been a proffer or the record on appeal fairly shows what the excluded testimony would have been). Accordingly, counsel had the opportunity to preserve the issue but failed to do so, it would not have been futile to ask to proffer the pathologist's testimony, and the issue is not preserved for this Court's review.

Appellant Was Not Entitled to Recross Examination

Even if the Court were to find appellant's argument is preserved, respondent submits the argument fails on the merits because the trial court did not abuse its discretion in not allowing appellant to recross examine the pathologist as no new matter was introduced during redirect examination by the State.

The right to a meaningful cross-examination of an adverse witness is included in the defendant's right to confront her accusers. *State v. Aleksey*, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000). However, trial courts retain wide discretion to impose reasonable limits on examination of witnesses based upon a variety of concerns, including confusion of the issues or interrogation that is repetitive or only marginally relevant. *Id.* at 33-34, 538 S.E.2d at 255 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). Further, "[t]he right to, and scope of, recross-examination is within the sound discretion of the trial court." *Liberty Mut. Ins. Co. v. Gould*, 266 S.C. 521, 533, 224 S.E.2d 715, 720 (1976). "Absent the introduction of any new matter on re-direct examination, the rule is that recross-examination is not required. Without something new, a party has the last word with his own witness." *United States v. Fleschner*, 98 F.3d 155, 157 (4th Cir. 1996).

The trial court's discretion derives, in part, from Rule 611 of the South Carolina Rules of Evidence. The rule generally provides that the court "shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence." Rule 611(a), SCRE. As to

the re-examination of witnesses, the rule provides, "A witness may be re-examined as to the same matters to which he testified only in the discretion of the court, but without exception he may be re-examined as to any new matter brought out during cross-examination." Rule 611(d), SCRE.

The record shows the information elicited during redirect examination of the pathologist was limited to points brought up during previous testimony, including the number of injuries to the victim's head, the cuts on his hands, and the general types of injuries he suffered. (R.pp.292-93). No new information was raised during redirect, and recross by appellant was unnecessary. The trial court properly exercised its discretion in ruling recross examination was not required and allowing the State to have the last word with its own witness. *See* Rule 611(d), SCRE (providing, in part, that a witness may be re-examined as to the same matters to which she testified only in the discretion of the trial court); *Aleksey*, 343 S.C. at 33-34, 538 S.E.2d at 255 (holding trial courts have wide discretion to impose reasonable limits on examination of witnesses); *see also Fleschner*, 98 F.3d at 157 (finding without the introduction of any new matter on redirect examination, recross is not required as a party is entitled to the last word with its own witness).

As to appellant's testimony, the record shows defense counsel actually elicited new information during appellant's redirect examination regarding her level of education, and further suggested the State had deliberately attempted to confuse her with its questions during cross-examination. (R.pp.537-40). The State was entitled to rebut the new line of questioning regarding the attempt to confuse appellant, and the trial court properly exercised its discretion in allowing the solicitor to ask a question on recross examination. (R.p.540); *see also* Rule 611(a), SCRE (providing that a trial court "shall exercise reasonable control over the mode and order of

interrogating witnesses and presenting evidence"); *Liberty Mut. Ins. Co.*, 266 S.C. at 533, 224 S.E.2d at 720 ("[t]he right to, and scope of, recross-examination is within the sound discretion of the trial court")

Therefore, while respondent submits this issue is not preserved, on the merits, the trial court did not abuse its discretion in ruling appellant was not entitled to recross examine a State's witness as no new information was raised during redirect examination and a party is entitled to the last word with its own witness.

Harmless Error

Even if the Court were to find an abuse of discretion, any error in denying the request was harmless beyond a reasonable doubt. Whether an error is harmless depends on the circumstances of the particular case. *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). No definite rule of law governs the finding of harmless error; rather, the error's materiality and prejudicial character must be determined from its relationship to the entire case. *Id.*; *see also State v. Mizzell*, 349 S.C. 326, 333, 563 S.E.2d 315, 318-19 (2002) (listing the factors of a harmless error analysis, including the importance of the witness's testimony, whether the testimony was cumulative, the extent of cross-examination, and the overall strength of the State's case) (citation omitted).

Defense counsel had thoroughly cross-examined the pathologist about the victim's injuries, how long it would have taken for him to die, the difficulty in determining which blow came first, and asked her about possible injuries suffered by appellant and what could have caused them. (R.pp.278-92). Counsel asked the pathologist to point out for the jury the placement of the victim's injuries by placing stickers on his face and used pictures taken of appellant shortly after her arrest to discuss her possible injuries. (R.pp.280-84; pp.289-91).

After such a thorough cross examination and because no new information was raised during redirect examination, there is no indication how the refusal to allow recross examination prejudiced appellant.

Further, as noted, the State presented a strong case against appellant to convict her of murder. The jury heard evidence from witnesses that appellant followed the victim from a bedroom and into the hallway, continually and repeatedly hitting him with a glass vase as he tried to get away from her. (R.p.120; p.122; pp.214-15; pp.239-42; p.444). The force of the blows was severe enough to leave spatter and patterns on both walls of the hallway and pooling on the floors. (R.p.67; p.72; pp.75-76; pp.100-01; p.441). The pathologist testified the victim suffered seventeen blows to the head and likely tried to stop the attack as he had some cuts on his hand and forearm that she described as defensive wounds. (R.pp.260-64; pp.270-72; p.293). Finally, the jury heard appellant's version of events, was properly charge on self-defense, and ultimately did not believe her as she was found guilty of murder beyond a reasonable doubt. (R.pp.687-703; p.709).

Therefore, while respondent submits the trial court's ruling was not error, any alleged error was harmless beyond a reasonable doubt.

CONCLUSION

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

Respectfully submitted,

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March 29, 2017.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

THE STATE,

Respondent,

v.

HOLLY JO THOMPSON,

Appellant.

Appellate Case No. 2016-000340

CERTIFICATE OF COMPLIANCE

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

This 29th day of March, 2017.

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