STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable Kristi Lea Harrington, Circuit Court Judge
Appellate Case No. 2010-165126

THE STATE,

Respondent,

vs.

JUSTIN RYAN HILLERBY,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

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

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Other Authorities:

STATEMENT OF ISSUES ON APPEAL

I.

Any issue was the admission of Appellant's pre-trial statements to law enforcement was not properly preserved for appellate review because defense counsel indicated he had no objection to the statements when they were offered into evidence during trial. However, even if the issue was properly preserved, the trial judge correctly determined Appellant's statements were made knowingly, voluntarily, freely, and without coercion after Appellant had been informed of his rights and waived his rights, and her ruling was supported by the evidence

II.

Any issue with the trial judge's failure to conduct a pre-trial hearing on the admissibility of the prior bad evidence or to rule on whether the prior bad acts were proven by clear and convincing evidence was not properly preserved for appellate review because Appellant never raised any arguments on those grounds to the trial judge. Regardless, the trial judge did not abuse her discretion in admitting the prior bad act evidence because it was admissible under the res gestae theory and admissible to prove intent and absence of mistake or accident. Furthermore, even if the trial judge erred in admitting the prior bad act evidence, any error was harmless in light of the cumulative nature of the evidence and in light of the other overwhelming evidence of guilt, which included statements by Appellant to law enforcement and to the victim's mother admitting he struck the victim prior to the victim's death.

III.

The trial judge did not abuse her discretion in overruling Appellant's objections to Georgoulis' testimony because the challenged testimony was relevant to the context of the events leading up to Victim's death, the credibility of Appellant, and the bias of Georgoulis. Furthermore, any error in the admission of the challenged testimony was entirely harmless in light of the other overwhelming evidence of guilt and the lack of prejudice that resulted from the admission of the testimony

STATEMENT OF THE CASE

In September of 2008, Appellant Justin R. Hillerby was arrested following an investigation into the death of a twenty-two-month-old child. In December of 2008, the Berkeley County grand jury indicted Appellant for one count of homicide by child abuse. On February 22, 2010, a jury trial was commenced in the Berkeley County court of general sessions with the Honorable Kristi Lea Harrington, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to life imprisonment without the possibility of parole. On February 26, 2010, Appellant filed a motion seeking reconsideration of his sentence, and a hearing was conducted on the motion on April 27, 2010, with Judge Harrington again presiding. Thereafter, the trial judge issued an order affirming Appellant's sentence. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

In September of 2008, Jennifer Spoerl and her twenty-two-month-old son, Blaise S. ("Victim"), lived in Summerville, South Carolina, with Spoerl's eight-year-old daughter, Serena S., Spoerl's roommates, Eric Riggins and Brandi Mihill, and Appellant Justin R. Hillerby, who had been dating Spoerl for approximately one year. (Vol. 2 Tr. pp. 75-76; p. 98; pp. 117-118; p. 138; Vol. 3 Tr. p. 186). Around 6:15 a.m. on the morning of September 15, 2008, Spoerl got up, left Appellant in bed, sent her daughter to school, and then returned to bed and went back to sleep. (Vol. 2 Tr. p. 125). At approximately 10:45 a.m., Spoerl got back out of bed and went to check on Victim because she had not yet heard him awaken for the day, and Appellant followed her to Victim's bedroom. (Vol. 2 Tr. p. 46; p. 126). When Spoerl opened Victim's bedroom door, Appellant stated Victim was still asleep and advised her to let Victim keep doing so but to leave the door open so he could wake up naturally. (Vol. 2 Tr. p. 126). Spoerl started to close the door but noticed something on Victim's face. (Vol. 2 Tr. p. 126). She then walked over to Victim's crib, discovered he was cold to the touch, rolled him over, and observed blood coming from his mouth and nose. (Vol. 2 Tr. pp. 126-127).

After discovering Victim's condition, Spoerl became hysterical. (Vol. 2 Tr. p. 46; p. 128). Appellant then called 911 and reported: "He's bleeding. His face is bleeding. He's not moving. He's hard as a rock. He's fucking dead." (Vol. 2 Tr. p. 46; Court's Ex. # 1, p. 2). Shortly thereafter, Leonard Spoerl ("Grandfather"), Spoerl's father and Victim's grandfather, responded to the scene after his wife received a call from Spoerl about Victim and found Spoerl sitting outside of the house crying. (Vol. 2 Tr. pp. 33-34; p. 128). After speaking with Spoerl, Grandfather ran into the house, went to check on Victim, and discovered he was not breathing. (Vol. 2 Tr. p. 34; p. 128). Grandfather

then picked up Victim to try and resuscitate him but immediately realized Victim was deceased because Victim was stiff and cold to the touch. (Vol. 2 Tr. pp. 34-35). A few minutes later, firefighters and paramedics from the Summerville Fire Department arrived at the residence, but they also were unable to revive Victim and confirmed he was deceased. (Vol. 2 Tr. p. 128; Vol. 3 Tr. p. 10; pp. 13-15).

Thereafter, law enforcement officers began arriving on the scene and secured the residence while Appellant, Spoerl, Spoerl's parents, Mihill, and Riggins all waited outside. (Vol. 2 Tr. p. 35; pp. 161-162; p. 164; pp. 167-168). While they did so, Appellant did not exhibit any outward signs of an emotional response but repeatedly told Spoerl he was sorry. (Vol. 2 Tr. p. 35; Vol. 3 Tr. p. 11; pp. 16-17). As they continued to wait, Appellant approached Captain George Ploth of the Summerville Fire Department and asked when they would know what had happened.[1] (Vol. 3 Tr. p. 17).

Subsequently, Spoerl, Appellant, Mihill, and Riggins were taken to the police department and separately interviewed. (Vol. 2 Tr. pp. 104-105; p. 129). During his interview, Appellant spoke with Detective Shannon Sharp and Sergeant Cassandra Williams of the Summerville Police Department in an open area for approximately two hours. (Vol. 1 Tr. pp. 10-11; p. 25; pp. 28-29; Vol. 3 Tr. p. 73; p. 75; Vol. 3 Tr. pp. 74-75). At the outset of the interview, Detective Sharp noted Appellant appeared to be suffering from a hangover and smelled slightly of alcohol, but Appellant did not appear to be intoxicated to the officer. (Vol. 1 Tr. p. 31; Vol. 3 Tr. p. 76). Prior to any questioning, Appellant was advised of his constitutional rights, indicated he understood those rights, and signed a waiver form indicating he wished to waive his rights. (Vol. 1

[1] During trial, Captain Ploth testified he perceived Appellant's question and demeanor to be unusual. (Vol. 3 Tr. p. 21).

Tr. p. 30; Vol. 3 Tr. p. 76; pp. 78-81; State's Ex. # 2 (Denno Hearing)). Appellant was then verbally interviewed by Detective Sharp before taking a cigarette break when he stated he did not feel well.[2] (Vol. 3 Tr. p. 82). When he returned, Appellant stated he felt fine and wrote the following statement:

> Went to pick up Rory stopped by Melissas first to see my son me and her argued a little went to Rorys picked him up came home first grabbed blaise to go to the pool I drove Jenn walked stayed at the pool all day about 2 or 3 noticed a bruze on his face figured he hit his head on the pool some how came home I started to feed the kids fed blaise first the Serena I told Serena to go to bed I let blaise stay up with me he spilt my drink on the table I grabbed him and pointed to the corner for 10 minutes I let him out he played for awhile still. I didnt have any milk so I gave him some corn dog bites he started to bob his head. I tried to get him to stand up but he wouldnt so I put him to bed. he was fine then. We woke up this morning to check on him and it looked like he was sleeping Jenn tried to shake him but he didnt move she rolled him over and he was already gone. I called 911 and tried to keep her away

(Vol. 3 Tr. p. 82; pp. 85-86; State's Ex. # 2 (Denno Hearing)). After Appellant wrote his statement, he said he felt dizzy and was having chest pains, and he terminated the interview. (Vol. 1 Tr. pp. 29-31; p. 42; Vol. 3 Tr. pp. 86-87). Appellant was then examined by paramedics and medically cleared, and he left the police department. (Vol. 1 Tr. p. 29; Vol. 3 Tr. p. 87).

After leaving the police department, Appellant and Spoerl stopped by Spoerl's parent's house and then returned home. (Vol. 2 Tr. p. 40; p. 71; p. 86; p. 129). After arriving home, Appellant behaved in a nervous manner, appeared to be angry instead of upset, and researched secondary drowning with Spoerl as the possible cause of Victim's death. (Vol. 2 Tr. pp. 71-72; p. 86; p. 105; p. 129). Additionally, he informed his roommates he was waiting for law enforcement officers to come arrest him because he

[2] Earlier, Appellant had stated he was feeling sick and dizzy while he was waiting with the others outside of Spoerl's residence, and he fell to his knees while standing in the driveway. (Vol. 2 Tr. pp. 35-36; pp. 70-71). However, afterwards, he indicated he did not need any medical assistance. (Vol. 2 Tr. pp. 35-36).

believed boyfriends were always blamed in situations like Victim's death. (Vol. 2 Tr. p. 86; p. 105).

On September 16, 2008, Dr. Nicholas Batalis, a forensic pathologist and an expert in forensic pathology, performed an autopsy on Victim. (Vol. 3 Tr. p. 132; p. 135). During the autopsy, he discovered Victim had suffered fourteen facial injuries, including numerous fresh bruises, along with nine skull injuries. (Vol. 3 Tr. p. 138; p. 142; p. 162). Additionally, he located subdural hemorrhages and subarachnoid hemorrhages in Victim's brain, a bruise inside of Victim's ear cavity, and retinal hemorrhages in Victim's eyes. (Vol. 3 Tr. p. 147; pp. 152-153). Due to the severity and number of the injuries, he determined Victim's injuries were caused by a significant amount of force and were not consistent with an accident. (Vol. 3 Tr. p. 138; pp. 140-141; p. 144; p. 147). Based on his findings, he concluded Victim would have displayed immediate symptoms after sustaining the injuries, would likely have appeared unsteady or groggy, and died at some point between 9:00 p.m. on September 14, 2008, and 9:00 a.m. on September 15, 2008.[3] (Vol. 3 Tr. p. 138; pp. 156-157; pp. 178-179). Ultimately, Dr. Batalis determined Victim's death was a non-accidental homicide resulting from blunt head trauma. (Vol. 3 Tr. pp. 137-138).

On the following morning, Appellant, Spoerl, Mihill, and Riggins drove themselves to the Dorchester County Sheriff's Office in order to take polygraph examinations in regards to Victim's death. (Vol. 1 Tr. pp. 32-34; p. 45; Vol. 3 Tr. p. 87; p. 110). After they arrived, Sergeant Raymond Dixson, a polygraph examiner with the Dorchester County Sheriff's Office, met with Appellant and discussed the polygraph

[3] Consistent with Dr. Batalis' findings, Dr. Michelle Amaya, an expert in forensic pediatrics, testified during trial that Victim's brain injuries would have prevented him from speaking, yelling, walking, or holding his head up, and she opined he would not have been able to function normally after the brain injury was inflicted. (Vol. 3 Tr. pp. 180-181; p. 185; pp. 195-197).

examination with him. (Vol. 1 Tr. p.p. 87-88; Vol. 3 Tr. p. 109). At the outset of the interview, he questioned Appellant to ensure that he was not under the influence of alcohol or drugs. (Vol. 1 Tr. p. 88; Vol. 3 Tr. pp. 110-111; p. 119). In response to his questions, Appellant informed the officer he drank a few beers and took sleeping pills on the preceding night but was not still under the influence of alcohol. (Vol. 1 Tr. p. 88; Vol. 3 Tr. pp. 110-111; p. 119). Sergeant Dixson then advised Appellant of his rights, and Appellant signed a waiver form indicating he understood his rights and wanted to make a statement without the assistance of an attorney. (Vol. 1 Tr. pp. 89-92; Vol. 3 Tr. pp. 111-115; pp. 117-118; State's Ex. # 10 (Denno Hearing)). Sergeant Dixson then conducted a pre-polygraph examination interview and asked Appellant if he inflicted any injury to Victim that would have caused his death. (Vol. 1 Tr. pp. 92-94; Vol. 3 Tr. pp. 120-121). Upon hearing the question, Appellant declined to take the polygraph examination and indicated he only wished to speak with the officer.[4] (Vol. 1 Tr. p. 34; p. 94; p. 96; p. Vol. 3 Tr. pp. 120-121; p. 124). Appellant then informed Sergeant Dixson he hit Victim with his knee and also admitted he may have grabbed Victim and shaken him a little. (Vol. 1 Tr. p. 94; Vol. 3 Tr. p. 125).

Thereafter, Appellant asked to speak with Detective Sharp and was transported to the Summerville Police Department for another interview. (Vol. 1 Tr. pp. 34-35; p. 60). At the outset of the interview, Appellant was advised of his rights and again waived his rights by signing a waiver form. (Vol. 1 Tr. p. 35; p. 59; Vol. 3 Tr. p. 88; State's Ex. # 3 (Denno Hearing)). Appellant was then interviewed for approximately an hour and a half to an hour and forty-five minutes and wrote the following statement about Victim's death:

[4] Unlike Appellant, Spoerl and her roommates took polygraph examinations. (Vol. 1 Tr. p. 33; p. 46).

> I ran out of my Room and he was running towards me I caught his head with my knee he was a little groggy and I was getting tired I tried to feed him but he kept nodding off I may have clipped his head on the way to his crib and maybe again on his crib I believe he hit his head at the pool early that day and probably the corner where I caught him all these together I believe is what caused it.
>
> I was in my bedroom I grab the door jam to swing out into the hallway quicker and he was running into the hallway I caught the top of his head hard enough to throw his head dow and his feet up. He moved slowly so I helped him up and went back into the room when I came out he was on the futon so I tried to feed him but he got more tired on the way to the bedroom I believe I clipped his head in the hallway and maybe the crib too I was intoxicated and tried to memory that everything that happened when I put him to sleep and the last time I saw him alive.

(State's Ex. # 3 (Denno Hearing)). After Appellant wrote his statement, Detective Sharp asked Appellant several follow-up questions, and Appellant admitted he grabbed Victim's shoulder and neck after Victim spilled a drink. (Vol. 3 Tr. pp. 92-94; State's Ex. # 3 (Denno Hearing)). Following his admissions, Appellant was arrested for homicide by child abuse and incarcerated. (Vol. 1 Tr. p. 53; Vol. 3 Tr. p. 97).

On the following day, Appellant was transported back to the Summerville Police Department for a bond hearing and was denied bond. (Vol. 3 Tr. pp. 97-98; p. 115; State's Ex. # 5 (Denno Hearing)). After the hearing, Officer Richard Darling of the Dorchester County Sherriff's Office transported Appellant to the Berkeley County Detention Center. (Vol. 1 Tr. pp. 62-63). During the drive, Appellant initiated a conversation with the officer, began discussing his case, claimed Victim ran into his knee, and indicated he believed he should have been charged with a less serious offense. (Vol. 1 Tr. pp. 63-64; p. 72; p. 76). In response, Officer Darling reminded Appellant of his right to remain silent, and Appellant stated he was aware of that right. (Vol. 1 Tr. p. 64). Officer Darling then indicated to Appellant that the autopsy results and physical evidence would reveal if he had been truthful. (Vol. 1 Tr. pp. 72-73). Thereafter,

Appellant asked the officer what he thought would happen to him, and Officer Darling told him he did not know but that God and the criminal justice system generally help people who help themselves. (Vol. 1 Tr. pp. 76-77). Appellant then told him he wanted to speak to the detectives again. (Vol. 1 Tr. p. 77).

After arriving at the detention center, Officer Darling dropped Appellant off and contacted one of the detectives with the Summerville Police Department to let them know Appellant wished to speak with them again. (Vol. 1 Tr. pp. 78). The detective then asked Officer Darling to bring Appellant back, so he went to retrieve Appellant. (Vol. 1 Tr. p. 66). When he did so, he discovered Appellant had encountered a public defender at the detention center, and he verified with Appellant that he still wanted to go back and speak with the detectives. (Vol. 1 Tr. pp. 66-67; pp. 78-79). Appellant confirmed that he did, so Officer Darling transported him back to the police department. (Vol. 1 Tr. p. 63; pp. 65-66; Vol. 3 Tr. p. 98).

Once back at the police department, Appellant met with Detective Sharp again, and Detective Sharp advised Appellant of his rights one more time. (Vol. 3 Tr. p. 98). Detective Sharp also asked Appellant if he wanted to make a statement even though he had spoken with a public defender, and Appellant confirmed that he did. (Vol. 3 Tr. pp. 98-98). Thereafter, Appellant indicated he wished to tell the truth and stated he wanted to get his side of the story out because he believed he was being portrayed unfairly by the media. (Vol. 3 Tr. pp. 101-102). Appellant then wrote the following statement after signing a waiver form:

> He split my drink I called him in the kitchen I knelt down and said what is wrong with you I smacked him open handed a couple of times the last time his head hit the floor I went and cleaned up the mess when I came back he was still laying there with his eyes open. I put him on the futon

and made another glass of tea. When I looked at him he looked like he was falling asleep. I then put him to bed.

(State's Ex. # 1 (Denno Hearing)). Following the statement, Detective Sharp asked Appellant a series of questions about the incident, and Appellant indicated he hit Victim all over the head. (State's Ex. # 1 (Denno Hearing)). Appellant further confirmed his previous statements were untruthful and wrote he was sorry he waited so long to tell the truth. (State's Ex. # 1 (Denno Hearing)).

Subsequently, Appellant was indicted for homicide by child abuse, and he proceeded to trial. (Vol. 1 Tr. pp. 129-130; Indictment). At the outset of trial, defense counsel requested a hearing on the admissibility of Appellant's statements, and the trial judge conducted a pre-trial hearing on the matter. (Vol. 1 Tr. p. 6; p. 10). During the hearing, Detective Sharp testified he took three statements from Appellant. (Vol. 1 Tr. p. 11). At the time those statements were given, Detective Sharp confirmed Appellant had not been threatened, coerced, or promised anything, Appellant was not handcuffed, Appellant did not appear to be under the influence of alcohol or drugs, Appellant had been advised of his rights, and Appellant voluntarily waived his rights and agreed to make the statements. (Vol. 1 Tr. pp. 13-14; pp. 17-21; pp. 30-31; p. 35; p. 60). Additionally, Officer Darling testified Appellant initiated a conversation with him while he was transporting Appellant to the detention center, indicated he knew he had a right not to speak to him, and requested to speak with the detectives investigating his case. (Vol. 1 Tr. pp. 63-66; p. 77; pp. 78-79). Finally, Sergeant Dixson testified he interviewed Appellant and attempted to conduct a polygraph examination of Appellant after Appellant agreed to submit to the test. (Vol. 1 Tr. pp. 84-85). Sergeant Dixson noted Appellant was not handcuffed, did not appear to be under the influence of alcohol or

drugs, was advised of his rights, and waived his rights. (Vol. 1 Tr. pp. 86-92). He further stated Appellant chose to stop the polygraph examination but indicated he still wished to speak with him. (Vol. 1 Tr. pp. 94-96). Following the officers' testimony, Appellant did not testify and did not offer any evidence in regards to his statements. (Vol. 1 Tr. p. 101).

Thereafter, the solicitor argued each of Appellant's statements was knowingly, voluntarily, and intelligently made. (Vol. 1 Tr. pp. 101-102). In support of that position, the solicitor asserted Appellant was repeatedly advised of his rights, waived those rights, and never requested to speak with an attorney. (Vol. 1 Tr. p. 102). The solicitor further noted that Appellant had not been appointed an attorney before making any of the statements and, regardless, was the person who initiated contact with the officers before making the statements.[5] (Vol. 1 Tr. pp. 102-105). In response, defense counsel argued Appellant made the statements, was advised of his rights, and understood his rights. (Vol. 1 Tr. pp. 107-108). However, he argued the officers' comments about the potential for the death to have been an accident, comments about the accuracy of forensic evidence, and remarks about religion coupled with the fact Appellant smelled of alcohol and had been drinking and taking sleeping pills "the night before" one of the statements rendered the September 18th statement coerced under the totality of the circumstances. (Vol. 1 Tr. pp. 108-111). Responding to defense counsel's argument, the solicitor noted Appellant had substantial prior experience with the criminal justice system, Appellant initiated the conversations with the officers, and Appellant was not intoxicated before his statements. (Vol. 1 Tr. pp. 111-113). Finally, defense counsel contended the "buddy-buddy" nature of Detective Sharp's question and the officer's representations that

[5] During the pre-trial hearing, documentation was presented confirming Appellant was again advised of his right to counsel during the bond hearing, filed an application for appointed counsel on September 23, 2008, and was appointed a public defender on October 3, 2008. (State's Ex. # 4 (Denno Hearing); State's Ex. # 6 (Denno Hearing); State's Ex. # 7 (Denno Hearing)).

Appellant would not get in trouble if Victim's death was simply an accident were promises or "inferred promises" and a form of coercion. (Vol. 1 Tr. p. 113). After considering the arguments of counsel, the trial judge found the statements were knowingly, voluntarily, and intelligently made under the totality of the circumstances, Appellant had been informed of and understood his rights, there was no coercion on the part of the police officers, and Appellant was not under the influence of alcohol to an extent where his understanding of his rights had been impaired. (Vol. 1 Tr. pp. 115-116).

Following the trial judge's ruling, defense counsel moved to prohibit the introduction of any evidence related to Appellant's behavior at the pool on September 14, 2008, because he contended such testimony would constitute inadmissible prior bad act evidence and because he had no responsibility to watch over the children at the pool. (Vol. 1 Tr. pp. 117-118). In response, the solicitor indicated she intended to introduce the testimony of two witnesses as to their observations of Appellant's statements and actions toward Victim at the pool and asserted the evidence was admissible to establish Victim's death was not the result of an accident at the pool and to show Appellant's behavior towards Victim hours before the time period in which Victim died. (Vol. 1 Tr. pp. 118-119). Following the solicitor's argument, defense counsel asserted the substance of that testimony was "clearly a prior bad act" and that Appellant's statements and behavior at the pool did not establish intent or motive. (Vol. 1 Tr. p. 120). He further asserted he did not intend to introduce testimony establishing Victim was injured at the pool. (Vol. 1 Tr. pp. 120-121). In rebuttal, the solicitor asserted the testimony was highly probative and was admissible to establish motive, intent, and absence of mistake or accident and was also admissible under the res gestae theory. (Vol. 1 Tr. pp. 121-122). After considering the arguments of counsel, the trial judge denied Appellant's motion to suppress the

evidence and ruled the testimony was admissible to prove intent and the absence of an accident and was also more probative than prejudicial. (Vol. 1 Tr. pp. 123-124).

Subsequently, during trial, Brandon Hall, a sixteen-year-old high school student, testified that he went to a neighborhood pool with several friends, including a sixteen-year-old friend named Courtney Thaman, on September 14, 2008.[6] (Vol. 2 Tr. pp. 51-52; p. 59). Hall stated Appellant, Spoerl, and Victim were also at the pool that day. (Vol. 2 Tr. p. 52). While they were there, Hall indicated Appellant yelled at Victim, told him to stand in the corner because no one cared about him, and yanked Victim by the arm a few times. (Vol. 2 Tr. p. 54; p. 56). Furthermore, Hall testified he personally pulled Victim from the pool one time after his head went underwater and heard Appellant state that he should have kept Victim in there. (Vol. 2 Tr. p. 53). Hall further stated he was bothered by the way Victim was treated that day but did not believe he needed to report the behavior to the police at the time. (Vol. 2 Tr. p. 54; pp. 56-57).

Likewise, Thaman testified she went to the pool with Hall and several other friends on September 14, 2008, and encountered Spoerl, Appellant, and Victim there. (Vol. 2 Tr. pp. 59-61). While at the pool, Thaman stated she observed Victim repeatedly jump into the deep end of the pool, and she and Hall pulled him out several times while Appellant and Spoerl drank, listened to music, and paid no attention to Victim. (Vol. 2 Tr. pp. 601-61; p. 63). However, on the last occasion Victim jumped into the pool, Thaman indicated Appellant and Spoerl came over to get him, Appellant called him a "pussy" and told him to go ahead and cry because no one wanted him, and then Appellant dragged Victim away by his arm. (Vol. 2 Tr. p. 61; p. 64).

---

[6] Prior to Hall's testimony, an off-the-record bench conference was conducted. (Vol. 2 Tr. p. 50). Following the bench conference, defense counsel renewed an unspecified objection, and the objection was noted. (Vol. 2 Tr. p. 50).

In addition to Hall and Thaman's testimony, Spoerl testified about the events leading up to Victim's death and stated Appellant called Victim a "pussy" at the pool on September 14, 2008. (Vol. 2 Tr. p. 118). She further testified Appellant told her he hit Victim but he did not believe it was what killed him. (Vol. 2 Tr. p. 130; p. 135). She also acknowledged Appellant called her several times from jail, and a recording of a call Appellant placed to Spoerl on September 26, 2008, was played for the jury. (Vol. 2 Tr. p. 130). In the recording, Appellant told Spoerl:

> Baby, I smacked him, I didn't smack him that hard, but when he hit the floor is when, I guess, it started. And, I didn't notice it because I was drunk, I guess. And, I put him on the futon. I gave a true statement on Thursday, the day I got fucking jumped, and I guess they put it on the news that night, and when everyone saw it, that was it.[7]

(Vol. 2 Tr. p. 135; Court's Ex. # 2, p. 5).

Following Spoerl's testimony, the solicitor called Melissa Georgoulis, the mother of Appellant's child, to the stand. (Vol. 2 Tr. pp. 152-153). At the outset of her testimony, the solicitor asked Georgoulis if she saw Appellant on the evening of September 13, 2008, and defense counsel objected to the relevancy of the question and "any further line of questioning about what happened the day before."[8] (Vol. 2 Tr. pp. 152-153). However, the trial judge overruled the objection, and Georgoulis testified Appellant spent the night with her on that date and left around 10:00 a.m. the next morning. (Vol. Tr. p. 153). The solicitor then asked Georgoulis what Appellant's mood was when he left the house, and defense counsel objected, asserting: "I don't see any relevance of what his mood was at ten o'clock the day before." (Vol. 2 Tr. p. 153). The

---

[7] The day Appellant and Spoerl took Victim to the pool was Sunday, September 14, 2008. (Vol. 2 Tr. p. 120). Thereafter, Appellant gave his final written statement to law enforcement four days later on September 18, 2008, which was a Thursday. (Vol. 4 Tr. pp. 179-180).

[8] Earlier during trial, Spoerl testified Appellant told her he spent the night of September 13, 2008, at the location of a house party he attended as opposed to Georgoulis' house. (Vol. 2 Tr. p. 119).

trial judge again overruled the objection, and Georgoulis testified Appellant was upset. (Vol. 2 Tr. p. 153). Thereafter, the solicitor asked Georgoulis if she had any houseguests at the time of trial, and defense counsel objected, asserting: "I don't see what relevance that has about who is staying in the home now." (Vol. 2 Tr. p. 154). The solicitor responded the question related to bias, and the trial judge conducted an off-the-record bench conference. (Vol. 2 Tr. pp. 154-155). Following the bench conference, the solicitor repeated the question, and Georgoulis confirmed Appellant's mother was currently staying with her. (Vol. 2 Tr. p. 155). Georgoulis then testified Appellant was upset with her on the morning he left her home because a former friend accused her of sleeping with her husband. (Vol. 2 Tr. p. 156). Georgoulis further stated Appellant tried to get back together with her that morning. (Vol. 2 Tr. p. 156). Subsequently, on cross-examination, Georgoulis reaffirmed Appellant's mother was staying with her at the time of trial and stated she was doing so because she was stationed overseas. (Vol. 2 Tr. pp. 158-159). She further testified she and Appellant were both mad at each other at the time Appellant left her home. (Vol. 2 Tr. pp. 159-160).

Subsequently, Detective Sharp testified about his investigation into Victim's death and about the statements Appellant made to him. (Vol. 3 Tr. pp. 74-75). During his testimony, the solicitor introduced each of Appellant's written statements, defense counsel indicated he had no objection to their admission, and the trial judge admitted the statements without objection. (Vol. 3 Tr. p. 83; p. 91; p. 101). Thereafter, on cross-examination, defense counsel asked Detective Sharp if he was trained in the Reid technique of interrogation, and he confirmed that he was. (Vol. 3 Tr. p. 108). However, Detective Sharp never testified he used the Reid technique or any other techniques in interviewing Appellant about Victim's death. (Vol. 3 Tr. pp. 73-129).

Following Detective Sharp's testimony, the State presented the testimony of Dr. Batalis and Dr. Amaya in regards to Victim's injuries and cause of death before resting its case. (Vol. 3 Tr. pp. 137-138; p. 193; p. 200). Thereafter, Appellant testified in his own defense and offered his own account of what happened around the time of Victim's death.[9] (Vol. 4 Tr. p. 9). At the outset of his testimony, defense counsel asked Appellant if he hit Victim, and Appellant responded that he had no reason to hurt Victim. (Vol. 4 Tr. p. 9). He then recounted his version of what happened on the night of September 14, 2008, admitted he punished Victim for spilling a drink, stated he grabbed Victim's arm but did not put his hands on him, and claimed he collided with Victim after leaving him in a room unattended. (Vol. 4 Tr. pp. 16-21). However, he testified Victim was fine after the collision and he later put Victim to bed when he started to appear tired. (Vol. 4 Tr. pp. 21-27). On the following day, Appellant stated they discovered Victim was deceased and he called 911. (Vol. 4 Tr. pp. 30-31). He then indicated he went to the police department, was not there for a long period of time, wrote a statement accurately reflecting the majority of what happened on the night before they found Victim, and went home. (Vol. 4 Tr. pp. 40-42). Thereafter, Appellant stated he agreed to take a polygraph examination on September 17, 2008, but claimed the officers never hooked him up to a machine. (Vol. 4 Tr. p. 43). He further asserted they wrongly accused him of refusing to take the examination when he told them he did not know what happened to Victim. (Vol. 4 Tr. p. 43). After the officers told him Victim died of blunt force trauma, Appellant claimed the officers told him it looked like an accident, stated no one gets in trouble for

[9] In addition to his own testimony, Appellant offered the testimony of his stepfather, John Williams. (Vol. 3 Tr. p. 218). Williams testified Appellant was dating both Spoerl and Georgoulis during the same time period and would go from one to the other. (Vol. 3 Tr. pp. 220-211). Williams' testimony was consistent with the earlier testimony of Riggins and Mihill, who confirmed Appellant occasionally left Spoerl's home to move in with his ex-girlfriend. (Vol. 2 Tr. p. 76; p. 98).

an accident, and advised him to tell them about it. (Vol. 4 Tr. p. 45). At that point, Appellant claimed he told the officers about running into Victim and then included in his statement that he bumped Victim's head on the door and crib after he was asked about that by one of the officers. (Vol. 4 Tr. pp. 45-46). Following his statement, he indicated he was arrested and subsequently denied bond. (Vol. 4 Tr. pp. 47-48). After his bond hearing, Appellant stated he was transported to the detention center and informed "they're going to fry [his] ass" if his story did not match what happened. (Vol. 4 Tr. pp. 49-50). Thereafter, Appellant acknowledged he asked to speak with the detectives again, claimed he was repeatedly placed in and out of a cell and questioned, and asserted he agreed to write he hit Victim because he was told the forensic evidence had to match his statement. (Vol. 4 Tr. pp. 52-53). However, he denied hurting Victim and insisted he had no reason to do so. (Vol. 4 Tr. p. 57).

Subsequently, on cross-examination, Appellant acknowledged he bounced back and forth between Spoerl and Georgoulis on a weekly basis. (Vol. 4 Tr. p. 60). He further denied hitting Victim and denied ever calling any child a "pussy." (Vol. 4 Tr. p. 60; p. 62). However, he admitted he called Spoerl after being incarcerated and told her he smacked Victim to the floor. (Vol. 4 Tr. p. 65). He also stated he wrote numerous letters to Spoerl and Georgoulis from jail in which he told Melissa he was done with Spoerl and told Spoerl he was only dating Georgoulis to see his child. (Vol. 4 Tr. pp. 67-68). He also acknowledged he wrote letters stating he knocked Victim over, he "popped" Victim in the head "no harder than we have smacked his hands," and he was going to "beat" his charge. (Vol. 4 Tr. p. 70; pp. 72-73; p. 93). He further admitted he requested the interview with Detective Sharp but claimed he wrote his apology about waiting to tell the truth in his final statement because he was promised doing so would get him bond.

(Vol. 4 Tr. p. 90). Additionally, he claimed he was told people do not get in trouble for accidents but conceded what happened to Victim was not accidental. (Vol. 4 Tr. p. 94).

Thereafter, the defense rested, and the State called several witnesses in rebuttal. (Vol. 4 Tr. p. 97; p. 101; p. 109). Initially, Georgoulis was recalled to the stand and testified Appellant never called her son a "pussy." (Vol. 4 Tr. p. 101). However, she subsequently admitted Appellant did, in fact, call her son a "pussy" but stated "[h]e wasn't directly talking about him being a pussy." (Vol. 4 Tr. p. 104). Georgoulis further testified Appellant never "laid a hand" on her other children and never beat her son. (Vol. 4 Tr. p. 105). However, she admitted she told the police that Appellant "popped" her son on the butt after he spilled a beer on one occasion. (Vol. 4 Tr. p. 106). Additionally, Sergeant Dixson testified about the polygraph examination he was scheduled to perform on Appellant on September 17, 2008, and noted Appellant refused to take the exam when asked if he purposefully did anything to Victim that could have caused his death. (Vol. 4 Tr. pp. 109-110; pp. 124-125).

Subsequently, the State again rested its case, and the trial judge instructed the jury on the applicable law, including on its duty to determine if Appellant made the statements attributed to him and if those statements were voluntarily made by Appellant of his own free will. (Vol. 4 Tr. p. 130; pp. 204-205). Thereafter, at the conclusion of trial, the jury convicted Appellant as indicted. (Vol. 4 Tr. p. 217). Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of life without the possibility of parole. (Vol. 4 Tr. p. 226).

ARGUMENT

I.

Any issue was the admission of Appellant's pre-trial statements to law enforcement was not properly preserved for appellate review because defense counsel indicated he had no objection to the statements when they were offered into evidence during trial. However, even if the issue was properly preserved, the trial judge correctly determined Appellant's statements were made knowingly, voluntarily, freely, and without coercion after Appellant had been informed of his rights and waived his rights, and her ruling was supported by the evidence.

Appellant contends the trial judge erred in failing to suppress the statements he made to law enforcement both before and after his arrest. Appellant maintains the statements were involuntary and inadmissible because they were allegedly the product of misrepresentations and coercion on the part of the police, were made while he was under the influence of alcohol and sleeping pills, and were made after he invoked his right to counsel. Initially, any issue with the trial judge's ruling on the admissibility of the statements is not preserved for appellate review because defense counsel specifically indicated he had no objection to the admission of the statements when they were offered into evidence during trial. Regardless, the testimony and evidence presented during trial established Appellant voluntarily made each of his statements to law enforcement after being informed of his rights and waiving his rights, and no testimony was presented suggesting Appellant's will was overborne during the interview process. Therefore, the trial judge properly admitted Appellant's statements during trial, and her ruling was supported by the evidence. Appellant's conviction should be affirmed.

A. Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v.

Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993).

In the case at bar, any issue with the admission into evidence of Appellant's statements to law enforcement was not properly preserved for appellate review. At the outset of trial, defense counsel challenged the admissibility of Appellant's statements, and the trial judge conducted a pre-trial hearing before preliminarily ruling those statements were knowingly, voluntarily, and intelligently made and would be admissible during trial. Thereafter, when the solicitor moved to introduce the first and second statements into evidence during trial, defense counsel indicated he had no objection to the admission of the statements, and the trial judge admitted the statements without objection. Cf. State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue

Dicapua had with the videotape."). Subsequently, when the solicitor moved to introduce the third statement into evidence, defense counsel again indicated he had no objection to the admission of the statement while noting he had made objections earlier, and the trial judge admitted the statement into evidence "without objection."[10] (Vol. 3 Tr. p. 101). Accordingly, because the statements were admitted into evidence without objection and because no contemporaneous objections to the admission of the statements were raised during trial, Appellant's pre-trial objection to the admission of the statements was expressly waived, and the issue cannot properly be raised or reviewed on appeal. See Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) ("When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review."); see also State v. Johnson, 298 S.C. 496, 497-498, 391 S.E.2d 732, 733 (1989) ("Appellant stated that he had no objection to the second order . . . . Since appellant expressly consented to admission of the second order, he has waived his right to raise the issue on appeal."); State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct induced."); State v. Burton, 326 S.C. 605, 613, 486 S.E.2d 762, 766 (Ct. App. 1997) ("This testimony was admitted without objection. Because Burton failed to object, he is barred from raising this issue on appeal."). Appellant's conviction should be affirmed.

B. Voluntariness and Admissibility of Appellant's Statements

[10] Specifically, defense counsel stated: "Your Honor, without objection. We've already made these objections earlier." (Vol. 3 Tr. p. 101). Significantly, defense counsel simply noted his earlier objections **without** renewing those objections. (Vol. 3 Tr. p. 101).

"[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda v. Arizona, 384 U.S. 436, 444 (1966). Prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, he has a right to an attorney, and an attorney will be appointed to him prior to any questioning if he desires one and cannot afford one. Id. at 479. Once those warnings are given to a suspect and the suspect is afforded an opportunity to exercise his rights, the suspect may knowingly and intelligently waive those rights and make a statement. Id.

However, a confession or statement by a defendant is not admissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). If a defendant is advised of his constitutional rights and then chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence the defendant voluntarily waived his rights. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990). "The process for ascertaining whether a statement is voluntary is bifurcated because the process involves determinations by both the trial judge and the jury." State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008). Pursuant to the bifurcated process, the trial judge must first determine in an evidentiary hearing whether the State proved the statement was voluntarily made by a preponderance of the evidence and then, if the trial judge finds the State met its burden, the statement is submitted to the jury where its voluntariness must be proven beyond a reasonable doubt. Id.

The critical factor in an evaluation of the voluntariness of a defendant's statements is whether the defendant's will was overborne when he confessed. State v. Von Dohlen, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996); see also Miller v. Fenton,

796 F.2d 598, 604 (3rd Cir. 1986) ("We emphasize that the test for voluntariness is not a but-for test: we do not ask whether the confession would have been made in the absence of the interrogation. Few criminals feel impelled to confess to the police purely of their own accord, without any questioning at all."). "If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting confession offends due process." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

When considering the voluntariness and admissibility of a defendant's statements, the trial judge should examine the totality of the circumstances under which the statements were made, including the characteristics of the accused and the details of the interrogation, to determine whether the State has met its burden of proof. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). Factors to be considered in the totality of the circumstances analysis include: (1) the age of the accused; (2) the educational level and intelligence of the accused; (3) the accused's knowledge of his constitutional rights; (4) the length of the accused's detention; (5) the nature of the questioning and whether it was repeated and prolonged; and (6) the presence or absence of the use of punishment, including deprivation of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973).

On appeal, the trial judge's decision as to the voluntariness of a statement will not be reversed unless the ruling was so erroneous it constituted an abuse of discretion. State v. Simmons, 384 S.C. 145, 162, 682 S.E.2d 19, 28 (Ct. App. 2009). "Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion." State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct. App. 2007). "When reviewing a trial court's ruling concerning voluntariness, [the appellate court] does not reevaluate the facts based on its own view of

the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by **any evidence**." Saltz, 346 S.C. at 136, 551 S.E.2d at 252 (emphasis added).

In the case sub judice, the trial judge did not abuse her discretion in ruling Appellant's statements were admissible during trial. During the pre-trial hearing, testimony was presented establishing Appellant voluntarily made several statements after repeatedly being informed of his rights. The officers who testified during the hearing confirmed Appellant waived his rights and voluntarily agreed to speak with them, was not handcuffed during the interviews, was not threatened in any way, was not promised anything in exchange for his statements, was not deprived of food or any other personal liberties during the interview process, was not coerced into making the statements, never invoked his right to counsel, and was not interviewed for a continuous or extended period of time. In fact, illustrating the voluntary nature of the interview process, Appellant was **not** prevented from terminating the interviews, which was demonstrated by the fact he chose to stop the first interview and go home, or from declining to take the polygraph examination, and Appellant voluntarily came in for the second interview two days after Victim's death after he had previously terminated an interview when he was not feeling well on September 15, 2008. Additionally, regarding the circumstances related to Appellant himself, Appellant was an employed adult who had previously had several prior experiences with the criminal justice system, and he was able to personally write and sign each of his statements.[11] Accordingly, when viewed in their totality, the circumstances surrounding Appellant's statements demonstrated Appellant made his statements knowingly, voluntarily, and freely after being informed of his rights and

[11] During trial, Appellant stated he self-employed in the roofing industry. (Vol. 4 Tr. p. 30).

waiving those rights. Cf. Von Dohlen, 322 S.C. at 245, 471 S.E.2d at 696 ("[Von Dohlen] was repeatedly read his Miranda rights, was questioned from approximately 7:00 to 10:00 p.m., was permitted to use the phone, bathroom, etc., and was not threatened or coerced. Accordingly, the trial court properly admitted his statement to police. It was then within the province of the jury to determine the voluntariness of the statement."). Therefore, the trial judge did not abuse her discretion in admitting Appellant's statements and submitting the question of their voluntariness to the jury.

In arguing the trial judge abused her discretion in admitting the statements, Appellant first contends the statements were inadmissible because the law enforcement officers used impermissible coercive tactics and misrepresentations during the interview process and broke down his physical will. In support of that position, Appellant points to several factors allegedly establishing his statements were coerced. First, Appellant contends Detective Sharp admitted to using the Reid technique of interrogation on Appellant. However, no such testimony was presented during Appellant's trial. Instead, Detective Sharp simply admitted he was trained in the Reid technique but did not indicate he used or needed to use any techniques on Appellant during the interview process. Regardless, had the officer used the Reid technique, such a method of interrogation does not automatically render a confession involuntary unless the suspect's will is overborne by the interrogation process, and no evidence was presented suggesting Appellant's will was overborne by the officers or their method of questioning him. See Myers, 359 S.C. at 47, 596 S.E.2d at 492 (finding Myers' confession was properly admitted into evidence even though the officers who interviewed Myer used the Reid technique of interrogation where the totality of the circumstances supported a finding Myers' will was not overborne, including that Myers was free to leave the interview if he chose, Myers was

repeatedly advised of his rights, and none of the interviews lasted more than a few hours). Next, Appellant contends his will was clearly overborne because he ended his first interview after feeling poorly. However, notwithstanding the fact Appellant manifested symptoms of feeling poorly well before the interview began when he stated he was feeling dizzy while waiting outside of Spoerl's residence, no testimony was presented at any point during the pre-trial hearing or during trial linking Appellant's dizziness or chest pains at the end of the first interview to anything the officers said or did, including from Appellant himself when he testified during trial. Accordingly, the fact Appellant stopped the first interview based on how he was feeling at the time did not establish Appellant's will was overborne during that interview or any of the subsequent interviews. Finally, Appellant contends the statements were coerced because the officer suggested Victim's death could have resulted from an accident and informed him no one would get in trouble if the death was an accident. However, the officer's comments to Appellant regarding accidental deaths merely constituted an accurate statement of the law and were not a misrepresentation in any way. See State v. Brown, 205 S.C. 514, ___, 32 S.E.2d 825, 828 (1945) ("Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal responsibility attaches to the act of the slayer. If it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence, the homicide will be excused on the score of accident."). Additionally, the officer's act of reviewing what potentially could have caused Victim's death with Appellant was an appropriate interview method that simply offered Appellant an opportunity to reveal the details of what occurred, and it did not constitute an coercive inducement or promise of some reward to Appellant in any way. See People v. Carrington, 47 Cal. 4th 145, 171, 211

P.3d 617, 640 (Cal. 2009) ("Defendant also contends that Detective Lindsay's assurances that the police merely were attempting to understand defendant's motivation in committing the crimes impermissibly coerced her to confess. To the contrary, Detective Lindsay's **suggestions that the Gleason homicide might have been an accident**, a self-defensive reaction, or the product of fear, were not coercive; they merely suggested possible explanations of the events and offered defendant an opportunity to provide the details of the crime. This tactic is permissible." (citations omitted and emphasis added)); see also State v. Parker, 381 S.C. 68, 91, 671 S.E.2d 619, 631 (Ct. App. 2008) ("Here, there is no indication Parker's will was overborne by Agent Boykin's congenial and rationalizing interview."); see, e.g., Miller, 796 F.2d at 605 ("[I]t is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect. For example, the interrogator may play on the suspect's sympathies or explain that honesty might be the best policy for a criminal who hopes for leniency from the state . . . . These ploys may play a part in the suspect's decision to confess, but so long as that decision is a product of the suspect's own balancing of competing considerations, the confession is voluntary." (citations omitted)). Accordingly, the trial judge properly determined Appellant's statements were not coerced, and her ruling was supported by the evidence.

Appellant next appears to contend his statements should not have been admitted because they were made while he was under the influence of drugs and alcohol. However, during the pre-trial hearing, **no** testimony was presented suggesting Appellant was under the influence of any substances at the time of the interviews or was too impaired to be able to comprehend what he was saying to law enforcement. Instead, regarding Appellant's first statement, the testimony presented during the pre-trial hearing

suggested Appellant may have been suffering from a hangover based on the drinking he admittedly did on **the day before** but was not still under the influence at the time of the statement. Regarding Appellant's statements on September 17, 2008, the testimony established Appellant was not impaired but had been drinking and using sleeping pills **the night before** instead of immediately prior to the interview.[12] Finally, regarding Appellant's final statement on September 18, 2008, no testimony was presented suggesting Appellant, who had been incarcerated since giving his last statement on the preceding day, was intoxicated or under the influence of any substance at the time of the interview. Therefore, the unchallenged testimony presented during the pre-trial hearing established that Appellant, if impaired at all, was not impaired to such a degree that his statements were rendered involuntary at the time any of his statements were made, and Appellant did not even imply to the jury during his trial testimony that he was intoxicated at the time his statements were made. See, e.g., State v. Saxon, 261 S.C. 523, 528, 201 S.E.2d 114, 117 (1973) ("The fact that one is intoxicated at the time a confession is made does not necessarily render him incapable of comprehending the meaning and effect of his words. Therefore, proof that an accused was intoxicated at the time he made a confession does not render the statement inadmissible as a matter of law, unless the accused's intoxication was such that he did not realize what he was saying."). Accordingly, the trial judge did not abuse her discretion in in declining to exclude Appellant's statements due to alleged intoxication. Cf. State v. Collins, 266 S.C. 566, 573, 225 S.E.2d 189, 193 (1976) ("The evidence, including the condition of the

[12] Notably, regarding the sobering effects that naturally result from the passage of time, Appellant testified: "Anybody that drinks beer knows that eight, nine hours later you're not still going to be drunk." (Vol. 3 Tr. p. 84).

defendant, presented a factual situation which the judge determined unfavorably to the defendant. We cannot say that he erred.").

Finally, Appellant appears to contend his statements were inadmissible because they were made after he invoked his right to counsel. Initially, Appellant never raised such an argument during trial and, thus, is precluded from raising such an argument for the first time on appeal. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). However, even if that particular argument had been properly preserved for appellate review, no testimony was presented during trial suggesting Appellant **ever** invoked his right to counsel prior to making any of his statements to law enforcement. Instead, each of the officers who spoke to Appellant testified he was repeatedly informed of his right to counsel and waived that right before making each of his statements, and Appellant confirmed that fact through his signature on the waiver form associated with each of his statements. See Montejo v. Louisiana, 556 U.S. 778, 786 (2009) ("Our precedents also place beyond a doubt that the Sixth Amendment right to counsel may be waived by a defendant, so long as relinquishment of the right is voluntary, knowing, and intelligent. The defendant may waive the right whether or not he is already represented by counsel; the decision to waive need not itself be counseled. And when a defendant is read his Miranda rights (which include the right to have counsel present during interrogation) and agrees to waive those rights, that typically does the trick, even though the Miranda rights purportedly have their source in the *Fifth* Amendment." (citations omitted and italics in original)). Therefore, none of Appellant's statements resulted from the denial of his right to counsel, and nothing presented during trial would support such a finding.

When viewing the totality of the circumstances surrounding Appellant's statements to law enforcement, the evidence presented to the trial judge during the pre-trial hearing established each of Appellant's statements was made freely, knowingly, and voluntarily after Appellant was informed of his rights and waived those rights. Furthermore, no evidence was presented during the hearing suggesting Appellant made his statements involuntarily or after his will had been overborne by any improper actions on the part of the officers who interviewed him. See, e.g., Breeze, 379 S.C. at 545, 665 S.E.2d at 251 ("Conversely, Breeze did not contradict [the officer]'s testimony with respect to the issue of whether the statement was voluntary. . . . Faced with [the officer]'s undisputed testimony the trial court concluded the State had showed that Breeze voluntarily made the statement. Based on [the officer]'s testimony, we cannot conclude the trial court's ruling is unsupported by any evidence."). Accordingly, regardless of any issue preservation concerns, the trial judge did not err in ruling Appellant's statements were voluntary and admissible, and her ruling was supported by the evidence. See Arrowood, 375 S.C. at 369, 652 S.E.2d at 443 ("The trial judge's determination is not in error if there is any evidence in the record to support it."). Appellant's conviction should be affirmed.

II.

Any issue with the trial judge's failure to conduct a pre-trial hearing on the admissibility of the prior bad evidence or to rule on whether the prior bad acts were proven by clear and convincing evidence was not properly preserved for appellate review because Appellant never raised any arguments on those grounds to the trial judge. Regardless, the trial judge did not abuse her discretion in admitting the prior bad act evidence because it was admissible under the res gestae theory and admissible to prove intent and absence of mistake or accident. Furthermore, even if the trial judge erred in admitting the prior bad act evidence, any error was harmless in light of the cumulative nature of the evidence and in light of the other overwhelming evidence of guilt, which included statements by Appellant to law enforcement and to the victim's mother admitting he struck the victim prior to the victim's death.

Appellant asserts the trial judge erred in admitting prior bad act evidence related to his behavior and actions at the pool on the afternoon before Victim was killed. Appellant contends the evidence should not have been admitted because no pre-trial hearing was conducted on its admissibility, a proper foundation was not presented for the evidence, the evidence was not established by clear and convincing evidence, the evidence did not have a clear and logical connection to the charged crimes, and the evidence's probative value was substantially outweighed by its prejudicial effect. Initially, any issues related to the lack of a pre-trial hearing, the lack of a proper foundation for the evidence, and the lack of proof by clear and convincing evidence were not preserved for appellate review because those issues were not raised to the trial judge. Regardless, the trial judge properly admitted the prior bad act under the res gestae theory and to establish intent and lack of accident or mistake. Furthermore, even if the trial judge erred in admitting the prior bad act evidence, any error was entirely harmless in light of the cumulative nature of the evidence and in light of the other overwhelming evidence of guilt, which included admissions by Appellant to both law enforcement officers and Victim's mother. Therefore, Appellant's conviction should be affirmed.

A. Issue Preservation

"Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review." In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009). If an error is not presented to and ruled upon by the trial judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). The appellate court will not consider any issues that were not presented to or passed upon by the trial judge. State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and **arguments**." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000) (emphasis added).

An issue must be raised in a sufficiently specific manner to call attention to the exact error to the trial court. Johnson, 363 S.C. at 58, 609 S.E.2d at 523; see State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A]n objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge."). "Where an objection and the ground therefor is not stated in the record, there is no basis for appellate review." State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991).

"A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). A defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court. State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); see State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003)

("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."). Instead, an appellant is limited on appeal solely to the grounds raised to the trial judge. Patterson, 324 S.C. at 19, 482 S.E.2d at 767.

In Appellant's case, defense counsel moved prior to trial to exclude any testimony related to Appellant's behavior at the pool several hours before Victim's death as improper prior bad act evidence, arguing Appellant's prior bad acts at the pool did not establish motive or intent in regards to the homicide by child abuse charge. Subsequently, in challenging the admission of the prior bad act evidence on appeal, Appellant contends the trial judge erred in admitting the prior bad act evidence for several reasons never previously raised during trial, now arguing the trial judge erred because no pre-trial hearing was conducted on the issue, the foundation of the evidence was not properly examined, and no ruling was made on whether the prior bad acts were proven by clear and convincing evidence. However, none of those arguments were raised to the trial judge during trial, and, as a result, the trial judge did not have an opportunity to respond to or address those particular contentions. See I'On, 338 S.C. at 422, 526 S.E.2d at 725 ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments."). Accordingly, because the grounds Appellant is now raising on appeal were not presented to the trial judge, those grounds cannot properly be considered or addressed on appeal. See Patterson, 324 S.C. at 19, 482 S.E.2d at 767 ("Appellant is limited to the grounds raised at trial."); see also Dunbar, 356 S.C. at 142, 587 S.E.2d at 694 ("An issue

that was not preserved for review should not be addressed by the Court of Appeals[.]"). Appellant's conviction should be affirmed.

B. Admissibility of the Testimony Regarding Appellant's Behavior Towards Victim at the Pool

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "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). "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." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

Generally, evidence of prior bad acts is not admissible to prove a defendant's guilt for the charged crime. State v. Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006). "This is so because under our system of justice, a conviction must be based upon evidence of the offense for which the accused is on trial rather than upon prior criminal or immoral acts." State v. Hough, 319 S.C. 104, 107, 459 S.E.2d 863, 865 (Ct. App. 1995). However, pursuant to Rule 404(b), SCRE, evidence of prior bad acts may be admissible "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." See State v. Lyle, 125 S.C. 406, 416, 118 S.E. 803, 807

(1923) (recognizing evidence of other crimes is competent to prove a charged offense if it tends to establish: (1) motive; (2) intent; (3) the absence of mistake or accident; (4) common scheme or plan; or (5) identity).

Additionally, evidence of a defendant's prior crimes or bad acts may also properly be admitted if those acts form part of the res gestae of the charged offense. Anderson v. State, 354 S.C. 431, 435, 581 S.E.2d 834, 836 (2003). The res gestae theory recognizes that evidence of other bad acts may be an integral part of a charged crime or may be necessary to aid the fact finder in understanding the context in which the crime occurred. State v. Preslar, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005). To constitute part of the res gestae of an offense, it is important that the prior bad acts have a close temporal proximity to the charged crime. State v. Martucci, 380 S.C. 232, 258, 669 S.E.2d 598, 612 (Ct. App. 2008).

In State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-371 (1996), the Supreme Court explained the res gestae theory:

> One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its "environment" that its proof is appropriate in order "to complete the story of the crime on trial by proving its immediate context or the 'res gestae' " or the "uncharged offense is 'so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other . . .' [and is thus] part of the res gestae of the crime charged." And where evidence is admissible to provide this "full presentation" of the offense, "[t]here is no reason to fragmentize the event under inquiry" by suppressing parts of the "res gestae."

(citations omitted and alteration in original). Thus, where a prior bad act is "inextricably intertwined" with a charged offense, the evidence of the prior bad act is admissible as part of the res gestae of the crime. Id. at 122, 470 S.E.2d at 371.

In the case at bar, Appellant was charged with homicide by child abuse, which meant the State was required to prove that Appellant "cause[d] the death of a child under the age of eleven while committing child abuse or neglect, and the death occur[red] under circumstances manifesting an extreme indifference to human life[.]" S.C. Code Ann. § 16-3-85(A)(1). Extreme indifference in the context of the homicide by child abuse statute "is a mental state akin to intent characterized by a deliberate act culminating in death." State v. Jarrell, 350 S.C. 90, 98, 564 S.E.2d 362, 366 (Ct. App. 2002). Thus, it was necessary for the State to establish Appellant's state of mind at and around the time of Victim's death in order to establish Victim's death occurred under circumstances manifesting an extreme indifference to human life.

Significantly, due to the necessity of establishing Appellant's mental state and intent in order to prove the required elements of homicide by child abuse, Appellant's behavior and actions shortly before Victim's death were highly relevant and probative in demonstrating Appellant acted with extreme indifference towards Victim. See id. at 98, 564 S.E.2d at 366 ("We find the events of the day of the baby's death to be the most significant to our analysis regarding Jarrell's extreme indifference."). In order to demonstrate that behavior and those actions, the State offered the testimony of Hall, who stated Appellant told him he should have left Victim in the pool after he pulled Victim up from underneath the water, Appellant yelled at Victim, Appellant told Victim no one cared about him, and Appellant yanked Victim by the arm several times on the afternoon before Victim was killed. Likewise, the State also offered the testimony of Thaman, who testified Appellant paid no attention to Victim at the pool while Victim repeatedly jumped in, Appellant called Victim a "pussy," Appellant told Victim to go ahead and cry because no one wanted him, and Appellant dragged Victim by his arm during the same

time period. Critically, that testimony established Appellant behaved in an indifferent, cruel, and hostile manner towards Victim shortly before Victim's death, which was relevant towards establishing Appellant's mental state and intent in regards to Victim. Cf. Martucci, 380 S.C. at 252, 669 S.E.2d at 609 (finding abuse or neglect that occurred weeks before the child's death was relevant and admissible to show Martucci's state of mind in a homicide by child abuse case). Therefore, Appellant's prior actions at the pool possessed a clear and logical connection to the indicted offense of homicide by child abuse by constituting evidence of Appellant's intent towards Victim, which was necessary to establish Victim's death occurred under circumstances manifesting extreme indifference towards his life, and also by refuting any potential claim that Victim's death was the result of some accident that occurred at the pool as Appellant suggested in one of his statements to law enforcement.[13] See id. at 254, 669 S.E.2d at 609-610 ("The prior abuse or neglect at issue was so close in time to the infliction of the fatal injuries that the evidence was relevant and probative to refute their claims and demonstrate Martucci intended to hurt Child."). Furthermore, Hall and Thaman's testimony was also admissible to establish the context in which the incident occurred and to allow for a full presentation of the events leading up to Victim's death under the res gestae theory. See

[13] On appeal, Appellant argues the trial judge erred in admitting the prior bad act evidence to show an absence of accident or mistake due to the fact defense counsel asserted he did not intend to argue Victim's death resulted from an accident at the pool. However, regardless of whether defense counsel intended to argue Victim's death was accidental or not, the State was required to prove each element of the indicted offense of homicide by child abuse, including that Victim's death occurred under circumstances manifesting extreme indifference towards his well-being as opposed to accidental circumstances. See Estelle v. McGuire, 502 U.S. 62, 69-70 (1991) ("By eliminating the possibility of accident, the evidence regarding battered child syndrome was clearly probative of that essential element, especially in light of the fact that McGuire had claimed prior to trial that Tori had injured herself by falling from the couch. The Court of Appeals, however, ruled that the evidence should have been excluded because McGuire did not raise the defense of accidental death at trial. But the prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense. . . . The evidence of battered child syndrome was relevant to show intent, and nothing in the Due Process Clause of the Fourteenth Amendment requires the State to refrain from introducing relevant evidence simply because the defense chooses not to contest the point."). Accordingly, the trial judge did not err in finding the prior bad act evidence was admissible to show the absence of an accident.

id. at 258, 669 S.E.2d at 612 ("The overall view of the facts provides the context in which the crime occurred and demonstrates the culminating impact on Child. The incidents were relevant to establishing Martucci's state of mind and whether or not he manifested an extreme indifference to human life. The alleged child abuse occurred in the month and a half to several weeks before the fatal trauma was inflicted. The evidence was necessary to establish the crime charged. Its admission was essential and relevant to a full presentation of the evidence in this case. The testimony regarding the prior bad acts was relevant to show the complete, whole story relating to the charge of homicide by child abuse."). For those reasons, the trial judge did not abuse her discretion in admitting the prior bad act evidence or in finding the probative value of the evidence outweighed the potential prejudicial effect the might have resulted from its admission. See State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 594 (Ct. App. 2001) ("If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal."), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); see also State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (" 'Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.' " (citations omitted)). Accordingly, Appellant's conviction should be affirmed.

C. Harmless Error

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. Baccus, 367 S.C. at 55,

625 S.E.2d at 223. 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." Bailey, 298 S.C. at 5, 377 S.E.2d at 584. Thus, when overwhelming evidence of guilt has been presented or when erroneously admitted evidence is merely cumulative to other properly admitted evidence, any trial error may be harmless. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) ("[I]n view of the overwhelming evidence of appellant's guilt, we hold any error harmless beyond a reasonable doubt."); 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.").

In the case sub judice, even assuming the trial judge erred in admitting the testimony of Hall and Thaman, any error was entirely harmless in light of the cumulative nature of the evidence and in light of the insignificance of the testimony when considered in relation to the other overwhelming evidence of Appellant's guilt. Regarding the cumulative nature of the testimony, Spoerl testified in a manner consistent with Thaman without objection and stated Appellant called Victim a "pussy" at the pool prior to his death, which constituted cumulative evidence of Appellant's cruel, indifferent, and

hostile behavior towards Victim shortly before Victim's death. See State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983) ("Immediately prior to the testimony of the victim's mother and aunt the victim's cousin testified *without objection* as to what the victim related to her about the incident. It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence." (italics in original)). Furthermore, regarding the relationship of the prior bad act evidence to the other evidence presented during trial, the testimony regarding Appellant's statements to Spoerl and to law enforcement constituted overwhelming evidence of guilt and rendered any error in the admission of the prior bad act evidence entirely harmless. Notably, Appellant admitted to repeatedly striking Victim in his final written statement and confessed to striking Victim in a recorded phone call to Spoerl from the detention center. In the recorded phone call, Appellant candidly admitted to Spoerl that his final statement to law enforcement in which he admitted his guilt was a truthful account of what caused Victim's death. Accordingly, in light of Appellant's candid admissions to Victim's mother and to the law enforcement officers he spoke with, the prior bad act evidence, even if improperly admitted, could not have impacted the verdict and was harmless.[14] See Bailey, 298 S.C. at 5, 377 S.E.2d at 584 ("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."). Accordingly, Appellant's conviction should be affirmed.

[14] Following his conviction, Appellant acknowledged the importance of his statements to the verdict, commenting: "And I know my statements are probable what convicted me." (Vol. 4 Tr. p. 225).

III.

The trial judge did not abuse her discretion in overruling Appellant's objections to Georgoulis' testimony because the challenged testimony was relevant to the context of the events leading up to Victim's death, the credibility of Appellant, and the bias of Georgoulis. Furthermore, any error in the admission of the challenged testimony was entirely harmless in light of the other overwhelming evidence of guilt and the lack of prejudice that resulted from the admission of the testimony.

Appellant contends the trial judge erred in admitting the testimony of his ex-girlfriend, Georgoulis, regarding his whereabouts on the night before Victim's death, his mood when he left Georgoulis' house before taking Victim to the pool, and his mother's living arrangements at the time of trial. Appellant contends the evidence was irrelevant to the matter in controversy and its probative value was substantially outweighed by its prejudicial effect.[15] To the contrary, the trial judge properly admitted Georgoulis' testimony because the objected-to portions of her testimony were relevant towards establishing the full context of the events leading up to Victim's death and were relevant towards the credibility of Appellant and the bias of Georgoulis. However, even if the trial judge erred in admitting Georgoulis' challenged testimony, any error was harmless in light of the other overwhelming evidence of guilt and the lack of prejudice that resulted from the admission of the testimony. Appellant's conviction should be affirmed.

A. Admissibility and Relevancy of the Challenged Testimony

The reception or exclusion of evidence is a matter left largely to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32

[15] During trial, Appellant solely objected to the testimony of Georgoulis on the basis of relevancy and did not allege the prejudicial effect of the testimony substantially outweighed its probative value. (Vol. 2 Tr. pp. 153-154). Accordingly, any issue regarding the comparative probative value and prejudicial effect of Georgoulis' testimony was not preserved for appellate review. See Thomason, 355 S.C. at 288, 584 S.E.2d at 148 ("[A] party cannot argue one theory at trial and a different theory on appeal."); Adams, 354 S.C. at 380, 580 S.E.2d at 795 ("[A] defendant may not argue one ground below and another on appeal."); see also Patterson, 324 S.C. at 19, 482 S.E.2d at 767 ("Appellant is limited to the grounds raised at trial.").

(1980). A trial judge's ruling on the admission or exclusion of evidence will not be reversed on appeal unless that ruling constituted "a **manifest abuse of discretion** accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) (emphasis added). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." Byers, 392 S.C. at 444, 710 S.E.2d at 58. On appeal, an appellate court will give "great deference" to the trial judge when reviewing a ruling on the admissibility of evidence. State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010).

Only relevant evidence should during admitted at trial. Rule 402, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (" 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' "). Evidence which could assist the jury in arriving at the truth of an issue is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986).

"Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Rule 608(c), SCRE. Regarding evidence of bias, the United States Supreme Court has instructed:

> Bias is a term used in the "common law of evidence" to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' like, dislike, or fear of a party, or by the witness' self-interest. **Proof of bias is almost always relevant**

> because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony.

United States v. Abel, 469 U.S. 45, 52 (1984) (emphasis added). Thus, any evidence tending to shed light on the accuracy, truthfulness, or sincerity of a witness can be presented during trial and considered by the jury in evaluating the credibility weight to be given to a witness' testimony. State v. Jones, 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2001).

In Appellant's case, the trial judge did not err in overruling Appellant's objections to the relevancy of Georgoulis' testimony. First, Appellant contended Georgoulis should not have been permitted to testify about whether he was at her home on the night before Victim was killed. However, that testimony was relevant and admissible to provide a full account of the circumstances leading up to Victim's death and was also highly relevant in regards to Appellant's credibility, which was one of the most pivotal issues in Appellant's case. Significantly, prior to Georgoulis' testimony, Spoerl had testified Appellant told her he spent the night of September 13, 2008, at the location of a party he attended and not Georgoulis' house, but Georgoulis testified Appellant stayed with her when asked about Appellant's whereabouts on that night. For that reason, Georgoulis' testimony demonstrated Appellant had been untruthful to Spoerl, which was a significant fact for the jury to consider when attempting to determine not only the truthfulness of Appellant's statements to law enforcement and to Spoerl but also his testimony during trial. See State v. McMillian, 349 S.C. 17, 22, 561 S.E.2d 602, 604 (2002) (instructing the fact that a witness previously lied about an address was relevant to the witness' overall credibility). Next, Appellant contended Georgoulis should not have been permitted to testify about his mood when he left her home on September 14, 2008.

However, Appellant's mood directly before he went to pick up Victim was relevant to show the entire context of the circumstances leading up to Victim's death.[16] See State v. Holder, 382 S.C. 278, 289, 676 S.E.2d 690, 696 (2009) (finding Holder's co-worker's testimony regarding changes in Holder's behavior and manner of dress several weeks prior to the victim's death was relevant and admissible to establish Holder manifested an extreme indifference towards the victim's well-being, which was an element of the indicted offense of homicide by child abuse). Finally, Appellant contended Georgoulis should not have been permitted to testify about the fact his mother was staying at her home at the time of trial. However, the fact Appellant's mother was staying with Georgoulis at that time was highly relevant on the issue of any bias Georgoulis might have had towards Appellant because it showed she still had some connection with or relationship to him. See State v. Starnes, 340 S.C. 312, 325, 531 S.E.2d 907, 915 (2000) ("A witness' romantic relationship with a party is a source of potential bias of which the jury should be aware in order to fully evaluate the witness' testimony."). For the foregoing reasons, the trial judge did not err in overruling Appellant's objections to the relevancy of Georgoulis' testimony, and her ruling was not manifestly erroneous. See State v. McEachern, 399 S.C. 125, 140, 731 S.E.2d 604, 611 (Ct. App. 2012) ("The trial court has broad discretion in determining the relevancy of evidence and its decision to admit or exclude evidence will not be reversed on appeal absent an abuse of that discretion and a showing of prejudice.").

[16] Notably, defense counsel elicited cumulative testimony about Appellant's mood at the time he left Georgoulis' home on cross-examination. (Vol. 2 Tr. pp. 159-160). Thus, Appellant waived any objection he had to the admission of that testimony during the direct examination of Georgoulis. See State v. McKinney, 258 S.C. 570, 571, 190 S.E.2d 30, 30 (1972) ("During the course of the trial certain testimony was admitted over the objection of [McKinney's] counsel. Thereafter, counsel for the appellant cross-examined the witness thereabout without reserving the objection previously made. The objection was thereby lost and if any error had been committed in the admission of the testimony it was cured.").

B. Harmless Error

Errors are considered to be harmless when they could not reasonably have affected the result of the trial. Adams, 354 S.C. at 380, 580 S.E.2d at 795. "It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him." State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 285, 288 (1947). When a review of the entire record establishes an error is harmless beyond a reasonable doubt, an appellate court should not reverse a conviction. State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003).

In the case at bar, any error resulting from the admission of Georgoulis' testimony regarding Appellant's presence at her house on the night of September 13, 2008, Appellant's mood when he left her home the next morning, and Appellant's mother staying with her at the time of trial was entirely harmless when considered in the context of the entire record. In addition to Georgoulis' testimony, which simply established Appellant spent the night at her home on the night before Victim was killed, Appellant was angry when he left, and Appellant's mother was staying with Georgoulis at the time of trial, other highly damaging and overwhelming evidence of Appellant's guilt was presented during trial, including Appellant's signed statements to law enforcement admitting his role in Victim's death and a recording of Appellant's acknowledgement to Spoerl that he knocked Victim to the floor before he died. When considering the significance of the challenged testimony in relation to the other evidence presented during trial, it could not have impacted the verdict. Thus, its admission, even if

erroneous, was entirely harmless.[17] See Fletcher, 379 S.C. at 25, 664 S.E.2d at 484 ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."). Accordingly, Appellant's conviction should be affirmed.

[17] Notably, the only prejudice Appellant identified as resulting from the admission of Georgoulis' testimony was that the challenged testimony established "Appellant was in a relationship with two women at the same time and stayed with one on September 13th and the other on September 14th." (App. Br. p. 34). However, numerous other witnesses, including Appellant and his stepfather, testified to the fact Appellant was seeing Georgoulis and Spoerl at the same time. Accordingly, any prejudice that resulted from the admission of the challenged testimony was merely cumulative to the prejudice that resulted from the other properly admitted testimony confirming the same allegedly-prejudicial fact. See State v. Garner, 389 S.C. 61, 68, 697 S.E.2d 615, 618 (Ct. App. 2010) ("An insubstantial error is harmless when guilt is proven by competent evidence such that no other rational decision could be reached or when the evidence is merely cumulative of other evidence."); 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.").

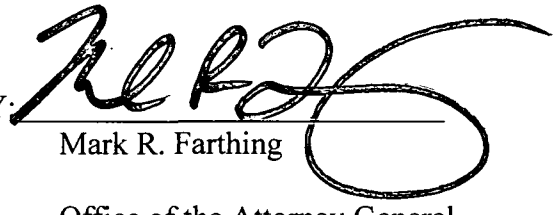
CONCLUSION

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

BY: 
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

December 27, 2012