STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

ROBERT CARL WARE,

Appellant.

Appellate Case No. 2016-000133

FINAL BRIEF OF RESPONDENT

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I. Whether the trial court erred by allowing the highly prejudicial reply testimony of Phillip Williams that he refused to rent a suite at the Wave Rider to appellant because of "problems with him in the past," since this involved a collateral matter, it was not proper reply testimony, it was also impermissible character evidence, and it should also have been excluded under Rule 403, SCRE, even if it was relevant?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. The trial court did not abuse its discretion in allowing the reply testimony of the Wave Rider's property manager as it was relevant and admissible evidence that was probative of the critical element of malice the State was required to prove and was not impeachment on a collateral matter. In addition, the testimony was proper rebuttal evidence, admissible after appellant opened the door by putting his good character at issue during direct examination, and admissible as part of the *res gestae* of the crime, and was not unfairly prejudicial as the property manager testified to information appellant previously admitted to without objection from defense counsel.

STATEMENT OF THE CASE

A grand jury in Horry County indicated appellant, Robert Carl Ware, for murder and possession of a weapon during the commission of a violent crime. (R.p.377-82). Appellant proceeded to trial on January 12, 2016 and was represented by Grant Smaldone, Esquire. (R.p.1). George DeBusk, Esquire, and J. Stephen Grooms, Esquire, of the Fifteenth Circuit Solicitor's Office represented the State. (R.p.1).

On January 14, 2016, the jury found appellant guilty of both charges. (R.p.375, lines 7-17). The Honorable Larry B. Hyman, Jr., sentenced appellant to concurrent terms of life imprisonment for murder and five years' imprisonment for the weapons charge. (R.p.376, lines 15-20).

This appeal follows.

STATEMENT OF FACTS

A man who gave his friend a place to stay could not know his act of generosity would lead to his murder. Randy Banks and his fiancée, Sabrina Boatwright (Boatwright), lived in a one-bedroom condominium at the Wave Rider complex in Myrtle Beach. (R.p.30, lines 8-11; p.30, lines 16-19; p.33, lines 8-11). Boatwright testified the couple knew appellant for several years and when he needed a place to stay in August 2014, the victim did not hesitate to let appellant stay with them. (R.p.35, lines 14-15; p.35, line 25-p.36, line 9; p.37, line 22-p.38, line 6). Boatwright testified appellant did not have any money for rent, so he paid to stay in the condo using pain medication.[1] (R.p.39, lines 12-25).

Boatwright testified the victim and appellant were both loud, opinionated men who liked to debate each other, but their interactions were never physical. (R.p.36, lines 13-18; p.37, lines 5-14). Boatwright described the victim as a neat and orderly person who did not like that appellant did not clean up after himself while staying with the couple or help out around the condo. (R.p.30, line 24-p.31, line 4; p.39, lines 2-5). In fact, the day before the murder, the victim told appellant he had to move out. (R.p.40, line 24-p.41, line 6).

On August 6, 2014, Boatwright got home from work and, while appellant was not there, she gathered some of his clothes and saw a rifle inside his bag. (R.p.42, lines 15-21; p.43, line 25-p.45, line 5). Boatwright testified appellant arrived at the condo with a half-gallon bottle of vodka and she left shortly thereafter, leaving appellant to finish collecting his belongings. (R.p.46, lines 3-8; p.46, lines 17-19; p.49, lines 7-15). Appellant was still at the condo when Boatwright and the victim returned, but he subsequently left to move out, taking the bag and rifle

[1] Boatwright testified the victim was a plumber and was in constant pain from several past work injuries. (R.p.31, lines 9-20). The victim took pain medication which he generally received from friends and Boatwright admitted the victim not have his own prescription. (R.p.32, lines 6-22).

with him. (R.p.50, lines 14-25; p.51, lines 13-16).

At about two o'clock in the morning, appellant knocked on the back door of the condo, which was in the bedroom. (R.p.54, lines 8-17). The victim answered and told appellant to go to the front door and he would let him in. (R.p.54, lines 18-25). Boatwright testified she stayed in bed, but she heard the victim tell appellant he could sleep on the couch for another night because he could not find another place to stay, but that the victim was tired of the disrespect appellant showed them and they would talk about it in the morning. (R.p.55, lines 5-22).

The victim returned to the bedroom, but then walked back out to the living room to speak to appellant. (R. p. 57, line 16-p.58, line 1). Boatwright testified appellant angrily yelled, "Stop it! Stop it! I don't want to hear it anymore!" and she heard a "bam" and she ran into the living room. (R.p.58, lines 1-9; p.73, lines 1-11). Boatwright stated the victim looked at her and said, "Oh, my God, Sabrina, I can't believe he just shot me" and fell to the floor.[2] (R.p.58, lines 9-14). Boatwright testified appellant was sitting on the couch holding the rifle, so she ran into the bedroom, grabbed her cell phone, and ran out the back door to call for help. (R.p.58, lines 14-20; p.61, lines 10-12; p.62, lines 2-3). Boatwright was outside when she saw appellant leave the condo carrying his bag, with the rifle sticking out of it, and he yelled that it was self-defense as he left the complex. (R.p.64, lines 9-17).

Later that morning, police arrested appellant sitting in a truck in a parking lot down the street from the Wave Rider. (R.p.17, lines 19-23; p.22, lines 11-24). Appellant had the rifle with him. (R.p.102, line 21-p.103, line 3; p.104, lines 1-10; p.106, lines 13-24). During his arrest, appellant dropped several .22 caliber bullets out of his hand and onto the ground. (R.p.26, lines

[2] The pathologist confirmed the victim was shot once in the chest from a fairly close range of three to four feet. (R.p.119, lines 13-14; p.121, lines 16-18; p.122, lines 2-6; p.124, line 25-p.126, line 1).

2-11). Crime scene technicians who responded to the scene at the condo found a fired .22 caliber cartridge casing on the floor. (R.p.83, lines 8-15; p.90, lines 15-22; p.91, lines 2-4). Later analysis determined the casing was fired from appellant's rifle. (R.p.156, lines 15-22; p.158, lines 10-15; p.163, lines 5-14).

Also at trial, the owner of a liquor store testified he saw appellant a few hours before the murder and corroborated earlier testimony that appellant seemed angry. (R.p.147, lines 17-20; p.148, lines 11-16; p.149, lines 15-18). Matthew Giffin testified appellant was mad, seemed "cold" and muttered to himself, "I'm going to kill that motherfucker" as he walked through the store. (R.p.149, line 19-p.150, line 11).

Appellant attempted to explain that remark when he took the stand at trial. Appellant testified he was angry at the person who stole his moped and he was referring to the unknown thief when he made the comment about killing someone. (R.p.179, lines 10-19; p.181, lines 2-11). Further, appellant advanced his assertion that the living situation at the condo was not tense and he always bought food, beer, and cigarettes. (R.p.177, line 15-p.179, line 9). Appellant testified he told the victim he wanted to help out more, but the victim would not let him because he was a guest. (R.p.182, lines 7-16).

Appellant also testified about the victim's personality. Appellant stated the victim "was a little bipolar" and "[o]nce he got into a manic mode, his personality would flip over," but appellant could calm him down. (R.p.172, lines 7-15; p.187, line 25-p.188, line 5). Just hours before the shooting, the victim arrived home and appellant testified he could tell the victim was angry with Boatwright and was "building up" to an argument with her, so he grabbed his bag to leave. (R.p.186, lines 13-20; p.187, lines 2-11; p.187, lines 18-24).

Appellant testified he returned to the condo later that night and the victim let him in the

back door. (R.p.192, lines 5-22). Appellant stated he went into the living room and put his bag between the couches, and admitted the rifle was in the bag. (R.p.192, line 23-p.193, line 4; p.195, lines 6-9). Appellant testified the victim had been drinking as he was acting aggressively and "ranting and raving about nothing." (R.p.196, lines 16-25; p.197, lines 1-8; p.198, lines 2-11; p.199, lines 1-2). Yet, when appellant asked the victim what he had done wrong, appellant stated the victim told him, "Robert, you're the greatest. You buy everything, pay for everything, if I need something, you are there" and the victim apologized and returned to the bedroom. (R.p.200, lines 12-18).

Appellant testified the victim came out to the living room a final time, but did not say anything, rushed to the couches, and reached for the rifle. (R.p.201, line 2-p. 202, line 5). Appellant also grabbed the gun and both men tugged on it. (R.p.204, lines 1-8). Appellant testified the victim let go of the rifle and appellant lost his balance. (R.p.205, lines 1-9). Appellant stated the gun fired when his "hand just spasmed," despite appellant's assertion that the safety was on. (R.p.205, lines 9-14). The State's expert in firearms analysis contradicted appellant's claim when he testified his examination revealed the rifle could not accidentally or spontaneously fire with the safety on. (R.p.156, line 15-p.157, line 24; p.159, line 21-p.160, line 15; p.168, lines 17-25).

The trial court instructed the jury on murder, involuntary manslaughter, and the defense of accident. (R.p.359, line 11-p.372, line 20).

ARGUMENT

I.

The trial court did not abuse its discretion in allowing the reply testimony of the Wave Rider's property manager as it was relevant and admissible evidence that was probative of the critical element of malice the State was required to prove and was not impeachment on a collateral matter. In addition, the testimony was proper rebuttal evidence, admissible after appellant opened the door by putting his good character at issue during direct examination, and admissible as part of the *res gestae* of the crime, and was not unfairly prejudicial as the property manager testified to information appellant previously admitted to without objection from defense counsel.

The trial court properly admitted the reply testimony of the Wave Rider's property manager because it was relevant and supported the necessary element of malice. The testimony helped explain for the jury why appellant would be angry with the victim for kicking him out of the condo just days after being told by someone else he could not rent a unit at the complex, leaving appellant with no place to stay. The testimony was also proper rebuttal evidence offered by the State under Rule 404(a)(1), SCRE, after appellant put his good character at issue during his direct testimony. Additionally, the court properly weighed the probative value of admitting the testimony against the danger of unfair prejudice pursuant to Rule 403, SCRE, finding there was no risk of undue prejudice as appellant himself previously admitted to the jury someone ordered him off the Wave Rider property. Finally, any error by the court was harmless beyond a reasonable doubt.

How the Issue Was Raised

During direct examination, appellant testified about his good character and general reputation and told the jury about all the ways he helped out around the condo, including buying food, calming the victim, and helping the victim's fiancée clean. (R.p.172, lines 7-15; p.177, line 15-

p.179, line 9; p.186, lines 13-20). Further, appellant testified the victim acknowledged how helpful he was when the victim told him he was the "greatest," paid for everything, and was always there when the victim needed him. (R.p.200, lines 13-18).

On cross-examination and to impeach appellant's credibility, the solicitor asked appellant if he and the victim ever got into any arguments. (R.p.233, lines 2-11). The solicitor next confirmed appellant was staying with the victim and his fiancée at the Wave Rider, and if he wanted to get back into the condo to sleep, and asked appellant if management ever told him to stay off the property and appellant responded, "No." (R.p.233, line 12-p.234, line 23). Upon further questioning, appellant finally admitted a maintenance worker told him he was not allowed on the property, but appellant stated the victim went to the office and told the manager that appellant was his guest and staying with him.[3] (R.p.234, line 23-p.235, line 16). However, appellant maintained no one from management ever told him he could not be on the property. (R.p.235, line 17-p.236, line 1).

Defense counsel did not object to the nature of the State's questioning.

The State continued with its cross-examination of appellant, defense counsel called an expert witness and then rested his case. (R.p.236, line 14-p.256, line 4; p.258, line 3-p.279, line 7).

The solicitor subsequently informed the trial court he intended to call two reply witnesses, including the property manager of the Wave Rider. (R.p.279, lines 15-16; p.279, line 23-p.280, line 1). The solicitor indicated the property manager would testify he told appellant just days before the shooting he was not allowed on the Wave Rider property and he would not

[3] Appellant attempted to explain the situation by stating he used to live at the Wave Rider and previously reported the maintenance worker to management for trying to break into his condo. (R.p.236, lines 4-13).

rent a condominium to appellant. (R.p.280, lines 1-9). Defense counsel argued it was impeachment on a collateral matter, "the fact that hearing that [appellant] was kicked out might impact – might look not only on the credibility, but his character," and attempted to assert it was inadmissible under Rule 403, SCRE. (R.p.280, lines 10-12; p.280, lines 14-16; p.281, lines 1-3). The solicitor told the court he would not ask the property manager to give details about why appellant was ordered off the property, to avoid undue prejudice. (R.p.280, lines 19-23). The trial court stated, "Well, the allegations have already been made. I'm going to allow it," ruling the testimony was being offered to challenge appellant's credibility which was "a huge evidentiary matter." (R.p.280, line 13; p.280, lines 17-18; p.280, lines 21-22; p.280, lines 24-25; p.281, lines 4-5).

Over defense counsel's renewed objection, the State called P. Gregory Williams (Williams) who was the property manager of the Wave Rider. (R.p.288, lines 22-23; p.289, lines 7-13). Williams testified appellant went to the office in August 2014, just a few days prior to the shooting, and asked if he could rent a condominium, but Williams told him no because management had problems with him in the past. (R.p.289, lines 16-25; p.290, lines 1-9; p.290, lines 22-24). Williams did not elaborate. Williams further stated he told all the employees appellant was not allowed on the Wave Rider property, including the maintenance staff. (R.p.290, lines 16-21).

Defense counsel cross-examined Williams and the trial continued with a second reply witness, followed by closing arguments and jury instructions.

Standard of Review

The admission of evidence is within the trial court's discretion and will not be disturbed on appeal absent an abuse of discretion. *State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247-

48 (2000); *see also State v. Cope*, 405 S.C. 317, 335, 748 S.E.2d 194, 203 (2013) (holding an abuse of discretion occurs when the trial court's ruling is based on an error of law); *Wilder v. State*, 388 S.C. 282, 285, 696 S.E.2d 587, 588 (2010) (holding an abuse of discretion occurs when the ruling lacks factual support in the record). Likewise, "[t]he scope of cross-examination is within the discretion of the trial judge, whose decision will not be reversed on appeal absent a showing of prejudice." *Colf*, 337 S.C. at 625, 525 S.E.2d at 247-48. The same is true for the admission of reply testimony. *State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 340-41 (1986). Accordingly, this Court reviews errors of law only and is bound by the trial court's factual findings unless they were clearly erroneous. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

Analysis

Testimony Was Not Impeachment on a Collateral Matter, but Was Supportive of the Existence of Malice and Appellant's State of Mind

The trial court did not abuse its discretion in allowing the State to call the property manager as a reply witness as his testimony was not impeachment on a collateral matter. The fact that appellant had previously been ordered off the property was not collateral. It was relevant and probative of the State's theory of the case that appellant was angry with the victim on the night of the murder after the victim told appellant to leave the condominium—the second time someone told appellant he was not welcome on the Wave Rider property in a short period of time—and appellant was left with nowhere to stay.

Any testimony which is presented to rebut, contradict, or impeach the case presented by the defense is generally proper on reply as long as it is not a collateral matter. *Todd*, 290 S.C. at 214, 349 S.E.2d at 340-41; *State v. Beckham*, 334 S.C. 302, 320-21, 513 S.E.2d 606, 615 (1999) (citing *State v. DuBose*, 288 S.C. 226, 341 S.E.2d 785 (1986)) (holding when a witness denies an

act involving a matter collateral to the case in chief, the inquiry ends and the opposing party is not permitted to introduce contradictory evidence to impeach the witness). Collateral matters "are such as afford no reasonable inference as to the principal matter in dispute." *State v. Brock*, 130 S.C. 252, 254-55, 126 S.E. 28, 29 (1925). The rule against impeachment on collateral matters is to prevent confusion of the issues and unfair surprise. *State v. Williams*, 263 S.C. 290, 302, 210 S.E.2d 298, 304 (1974). Because of the difficulty in deciding what matters are collateral, "considerable latitude and discretion should be allowed the trial [court] in determining the admissibility of impeaching testimony." *Id.*

Appellant testified in his direct examination that everything was fine between him and the victim and the victim "was really happy" when he moved in because he bought food, cigarettes, and beer. (R.p.178). On cross-examination, as correctly prompted by the direct testimony, the solicitor asked appellant if he ever got mad at the victim or had any arguments with him. (R.p.233). Appellant responded no, and that the last argument he got into with the victim was two years before the shooting. (R.p.233). This response created a false impression before the jury on a critical point the State was required to prove beyond a reasonable doubt—appellant's state of mind on the night of the victim's murder, or malice. *See* S.C. Code Ann. § 16-3-10 (providing that murder is the killing of any person with malice aforethought, either express or implied); *State v. Bell*, 305 S.C. 11, 19, 406 S.E.2d 165, 170 (1991) (defining malice as the doing of a wrongful act intentionally and without cause or excuse); *State v. Johnson*, 291 S.C. 127, 128, 352 S.E.2d 480, 481 (1987) (further defining malice as the wrongful intent to injure another). Two previous witnesses had testified differently about their observations of appellant's possible state of mind prior to the murder. The owner of a liquor store saw appellant before the shooting and testified appellant seemed angry and muttered he was "going to kill that

motherfucker." (R.pp.147-50). The victim's fiancée testified the victim told appellant he had to move out of the condo just hours before the deadly shooting, she heard the men arguing in the minutes before the shooting, and she heard appellant yell at the victim just before she heard the gunshot. (R.pp.40-41; pp.54-58; p.73).

On further cross-examination of appellant, the solicitor noted appellant returned to the Wave Rider property because "he didn't want to sleep outside anymore" and asked appellant to confirm he wanted to get back into the victim's condo, which was on the property. (R.pp.233-34). Then, the solicitor asked appellant, without objection, if management ever told him to stay off the Wave Rider property, which appellant denied, until appellant admitted a maintenance worker confronted him about it. (R.pp.234-35). The only objection raised was that the question had been "asked and answered." (R.p.235, line 9). Defense counsel never objected to the nature of the questioning.

The reply testimony by the Wave Rider's property manager was proper and admissible as it directly contradicted appellant on a specific point regarding whether he was told, by someone in addition to the victim, he could not be on the Wave Rider's property and was directly relevant to the issue of appellant's guilt or innocence. *See* S.C. Code Ann. § 16-3-10 (providing that murder is the killing of any person with malice aforethought); *State v. Groome*, 274 S.C. 189, 191, 262 S.E.2d 31, 32 (1980) (holding a co-defendant's testimony was proper on reply as it directly contradicted a defendant's earlier testimony that "he had not seen the witness for 'a good substantial period of time'" prior to his arrest). The manager's testimony that he told appellant days before the shooting that he would not rent a condominium to him was indicative of appellant's state of mind as it tended to show he would have been angry at the victim when the victim kicked him out and told him he needed to find someplace else to stay because the victim

was the second person within a matter of days to order him off the property. Accordingly, the reply testimony was not impeachment on a collateral matter, was relevant and admissible, and the trial court did not abuse its discretion in allowing its admission. *See Williams*, 263 S.C. at 302, 210 S.E.2d at 304 (recognizing "considerable latitude and discretion should be allowed the trial [court] in determining the admissibility of impeaching testimony"); *Brock*, 130 S.C. at 254-55, 126 S.E. at 29 (stating collateral matters "are such as afford no reasonable inference as to the principal matter in dispute").

Testimony Was Proper Rebuttal Evidence, Admissible Under the Res Gestae Theory, and Not Unduly Prejudicial Under Rule 403, SCRE

The fact that the testimony could also be considered character evidence is not a bar to admissibility. The questions on cross-examination regarding whether appellant had been ordered off the Wave Rider property by management and subsequent impeachment evidence by the property manager were proper rebuttal evidence admissible after appellant opened the door by putting his good character at issue during direct examination. Further, the property manager's testimony was not unduly prejudicial under Rule 403, SCRE, as appellant himself had previously admitted without objection that someone, in addition to the victim, told him to leave the Wave Rider property.

Generally, the State may not attack a defendant's character unless he has placed it in issue. *See* Rule 404(a)(1), SCRE ("Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except: [] [e]vidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same[.]") When a defendant takes the stand, he becomes subject to impeachment, like any other witness and may be cross-examined about past actions tending to affect his credibility. *State v. Major*, 301 S.C. 181, 183, 391 S.E.2d 235, 237 (1990). Further, it is well-

settled that a defendant may introduce evidence of his good character, which the State is entitled to rebut. *See State v. Lyles*, 210 S.C. 87, 92, 41 S.E.2d 625, 627 (1947) (recognizing that when a defendant during his direct examination testifies about his good character, the State may test it on cross-examination) (citation omitted).

Appellant continually testified on direct that everything was fine between him and the victim, that he could calm the victim when he got "manic," that he always helped out around the condo and bought food, and the victim told appellant how helpful he was and he was the "greatest." (R.p.172; pp.177-79; p.186; p.200). On cross-examination, as correctly prompted by this direct testimony, the solicitor asked appellant if he was as combative with the victim as he was when answering questions and how often they argued. (R.pp.232-33). The solicitor noted appellant had been staying with the victim and his fiancée, left, but returned to the Wave Rider property because "he didn't want to sleep outside anymore" and asked appellant to confirm he wanted to get back into the victim's condo or his fiancée's car. (R.pp.233-34). Then, the solicitor asked, without objection, if management ever told appellant to stay off the Wave Rider property, which appellant denied. (R.p.234). However, appellant admitted a "maintenance guy that works there, he said, Oh, no, you are not allowed on the property." (R.p.235). This questioning by the State was proper rebuttal evidence, admissible to impeach appellant's credibility and rebut his previous testimony regarding his good character. *See* Rule 404(a)(1), SCRE (providing character evidence is generally inadmissible except "[e]vidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same"); *Major*, 301 S.C. at 183, 391 S.E.2d at 237 (holding a defendant who takes the stand is subject to impeachment like any other witness); *Lyles*, 210 S.C. at 92, 41 S.E.2d at 627 (recognizing the State is entitled to rebut evidence of a defendant's good character first offered during his direct

examination).

Similarly, the property manager's subsequent testimony in reply that he would not rent a condominium to appellant because of past problems was also proper to rebut appellant's testimony about his good character. As discussed above, the testimony was proper impeachment evidence as it centered on contradicting appellant on a relevant point—whether the Wave Rider's management told appellant days before the murder that he was not allowed on the property.

Further, the testimony was also admissible as part of the *res gestae* of the crime to help explain why appellant would be angry with the victim. *See State v. Adams*, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996) (quoting *United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980)) (holding the *res gestae* theory recognizes evidence of other bad acts may furnish part of the context of the crime if they are "'so linked together in point of time and circumstances with the crime charged'"). Contrary to appellant's argument, the manager's testimony was not unduly prejudicial under Rule 403, SCRE. *See State v. Bolden*, 303 S.C. 41, 43, 398 S.E.2d 494, 495 (1990) (holding even if the evidence is relevant under the *res gestae* theory, the trial court should determine whether its probative value outweighs any unfair prejudice).

First, the property manager did not testify about specific problems management had with appellant which led to the decision not to rent a condo to him and not to allow him on the property. (R.p.290); *see also* Rule 403, SCRE (providing relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury). The manager simply stated "we have had problems with him in the past" and confirmed there was a reason appellant was not allowed on the property, but neither the State nor defense counsel asked the manager to go into detail. (R.pp.290-91). Second, as the trial court noted, the information was already before the jury by the time the property manager

was called to testify. (R.pp.280-81). Appellant had previously admitted during cross-examination that a maintenance worker at the Wave Rider ordered him off the property. (R.pp.234-35); *see also State v. Brooks*, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000) (holding a determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case). As noted, defense counsel never objected to the nature of the questioning. The only objection raised was that the question had been "asked and answered." (R.p.235). It was not until the State indicated it intended to call the property manager as a reply witness to further impeach appellant that counsel objected. (R.pp.279-81). Accordingly, there is nothing in the record to suggest the property manager's reply testimony was unfairly prejudicial and it was properly admitted as rebuttal character evidence. *See State v. Saltz*, 346, S.C. 114, 127, 551 S.E.2d 240, 247 (2001) (holding evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one).

Therefore, the trial court did not err in admitting the property manager's testimony as it was not impeachment on a collateral matter, it was relevant and admissible, was proper rebuttal evidence, and was not unfairly prejudicial.

Harmless Error

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

the testimony was cumulative, the extent of cross-examination, and the overall strength of the State's case) (citation omitted).

The property manager's testimony was cumulative to testimony previously heard by the jury. *See Mizzell*, 349 S.C. at 333, 563 S.E.2d at 318-29 (holding that whether an error is harmless depends on the facts of each case and on a host of factors, including whether the testimony was cumulative). Without objection from defense counsel, appellant admitted during cross-examination that a maintenance worker at the Wave Rider ordered him off the property. (R.pp.234-35). Further, to avoid the risk of undue prejudice, the State did not allow the manager to testify about the specific details of the past problems he had with appellant which led to his decision not to rent a condominium to appellant. However, the manager spoke generally about it and defense counsel cross-examined him on those general details. (R.p.291). There is no indication from the record how the testimony unduly prejudiced appellant.

In addition, the State presented a strong case against appellant to support a murder conviction. *See Mizzell*, 349 S.C. at 333, 563 S.E.2d at 318-29 (holding one of the factors in a harmless error analysis includes the overall strength of the prosecution's case). The jury heard evidence about arguments between the victim and appellant, and the victim told appellant shortly before the murder that he had to move out because the victim was tired of appellant's disrespect and failure to clean up after himself. (R.pp.30-31; pp.35-41; p.55). Further, witnesses testified appellant yelled at the victim and seemed angry prior to the shooting, even muttering to himself that he was going to "kill that motherfucker." (R.p.58; p.73; pp.147-50). In addition to appellant's own admission that he shot the victim, physical evidence also connected him to the scene, including the murder weapon and .22 caliber bullets, and an expert's testimony that it was unlikely the rifle could accidentally fire with the safety on as appellant claimed. (R.p.26; pp.42-

45; pp.50-51; p.64; pp.90-91; pp.102-04; p.106; pp.158-60; p.163; p.168; pp.204-05). Finally, the jury heard appellant's version of events, was charged on involuntary manslaughter and the defense of accident, and ultimately did not believe appellant as it found him guilty of murder beyond a reasonable doubt. (R.pp.359-72).

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

CONCLUSION

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

Respectfully submitted,

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June 28, 2017.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

ROBERT CARL WARE,

Appellant.

Appellate Case No. 2016-000133

CERTIFICATE OF COMPLIANCE

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

This 28th day of June, 2017.

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