THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

ORIGINAL

Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2017-002224

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SC Court of Appeals

Case Nos. 2017-GS-19-01817,
2017-GS-19-01818,
2017-GS-19-01819, and
2015-GS-19-00351

The State,..Respondent,

v.

Montrell Deshawn Troutman, ...Appellant.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE ISSUE ON APPEAL

Whether the trial court violated Troutman's right under the Confrontation Clause when it refused to allow him to cross-examine a critical witness about the witness's bias.

INTRODUCTION

Cross-examination plays an essential role at trial. *Watkins v. Sowders*, 449 U.S. 341, 349 (1981). It provides a defendant with "[o]ne of the most effective modes" to unmask a witness's bias or lack of credibility. *State v. Wallace*, 44 S.C. 357, 22 S.E. 411, 412 (1895). The Sixth Amendment's Confrontation Clause protects a criminal defendant's right to cross-examine a witness to expose such defects in the witness's testimony. *Pointer v. Texas*, 380 U.S. 400, 406 (1965).

During his trial for murder and attempted murder, the trial court denied Troutman his right to confront and cross-examine a critical witness against him: Keith Mathis. Mathis was a "really good friend" of Leric Merriweather (whose death resulted in Troutman's voluntary manslaughter conviction but whom Troutman maintains he killed in self-defense), and Mathis had previously lied to the police to cover up for Merriweather after Merriweather shot at another man in 2011. In the immediate aftermath of the shooting in this case, Mathis fled the scene, rather than staying to help his dying friend and talk to police. Troutman never had the opportunity to question Mathis in a meaningful way about his bias to develop for the jury an alternative to the State's theory: Mathis fled the scene that night to cover up, once again, for his friend. Therefore, Troutman's Sixth Amendment right was violated, and Troutman is entitled to a new trial.

STATEMENT OF THE CASE

Troutman Moves to Edgefield and Meets Merriweather

Montrell Troutman moved from Miami, Florida to Edgefield around New Year's 2015 to be closer to his fiancée's family. (Tr. p. 590, lines 6–15). Within three or four weeks of moving to Edgefield, Troutman met Leric Merriweather, who lived down Rosa Hill Street from Troutman. (Tr. p. 590, lines 17–19). Although Troutman and Merriweather got along, Merriweather would pick on him, call him names, and threaten him, particularly when other people were around. (Tr. p. 590, line 20–p. 591, line 10). The two men had "problems" just a week before June 6, 2015. (Tr. p. 612, lines 22–23). During his six months in Edgefield, Troutman discovered Merriweather's temper and grew afraid of Merriweather. (Tr. p. 591, lines 4–14).

The Cookout at Merriweather's House on June 6, 2015

On the afternoon of June 6, 2015, Merriweather was at home with Abigail Carter and their two sons when Dwayne Jones came over and then more people stopped by, after seeing the initial crowd grilling. (Tr. p. 259, lines 1–11; p. 260, lines 17–20; p. 261, lines 5–8; p. 287, lines 9–13). Keith Mathis and Carlo Harris also came over for a while, but they left so that they could go "smoke some weed." (Tr. p. 261, lines 16–17; p. 354, line 11–p. 355, line 10).

Meanwhile, Troutman was grilling out at his friend Elliott's house. Around mid-afternoon, Troutman, Elliott, and another friend, named OB, left to buy cigarettes from a nearby gas station. (Tr. p. 591, line 15–p. 592, line 9).

On the way back to their cookout, OB, Elliott, and Troutman stopped by Merriweather's house, which was OB's decision. (Tr. p. 592, lines 10–15; p. 610, lines 13–18). When they arrived at Merriweather's house, Troutman went far enough into Merriweather's yard to greet Merriweather and others, before walking back toward the car in which they had arrived that was on the edge of the road. (Tr. p. 592, lines 22–24; p. 611, line 18–612, line 2).

At this point, the testimony diverges. According to Abigail Carter, Troutman and Dwayne Jones "had . . . a few words," which led Jones to pull a gun. (Tr. p. 261, lines 12–22). Merriweather was upset when Jones pulled the gun because Merriweather's children were at the house. Merriweather told both Troutman and Jones to leave, ultimately trying to push Jones out of the yard. Jones fell down, and then he got up and left. (Tr. p. 261, line 17–p. 263, line 1). As Merriweather was demanding that Troutman and Jones leave, Merriweather and Troutman argued and cussed at each other. (Tr. p. 297, lines 7–23; p. 304, line 22–p. 305, line 10).

According to Troutman, the altercation at Merriweather's cookout began between Merriweather and Jones. Troutman was standing by the road, listening to music, when he heard Merriweather shout that Troutman "can get it too," despite the fact that Troutman hadn't said anything to Merriweather other than hello. (Tr. p 592, line 23–p. 593, line 11; p. 616, lines 7–17). Merriweather got within three or four feet of Troutman's face before Troutman left, walking back down the street toward his house. (Tr. p. 593, lines 12–15; p. 620, lines 11–25).

Shortly after this altercation ended, Merriweather called Mathis and Harris to tell them what happened. (Tr. p. 356, lines 11–13). Mathis and Merriweather were old friends and "had each other [*sic*] backs." (Tr. p. 376, lines 11–23). Mathis and Harris "ran back" to Merriweather's house, where they found Merriweather "upset" about Troutman "trying to fight him in his own yard." (Tr. p. 356, lines 14–18; p. 358, lines 1–13).

The Time Between the Cookout and the Shooting

Troutman walked the short distance from Merriweather's house down the street to his house. After telling his fiancée and then her mother about what happened, Troutman and his fiancée's mother went to Johnny Martin's house for a short time and then to the store to buy beer and cigarettes. (Tr. p. 593, lines 19–25; p. 617, lines 17–23; p. 619, lines 7–14).

When he arrived home from the store, Troutman lay down, but he heard Raymond Harris calling his name. Based on what Harris told him,[1] Troutman went into his backyard and dug up a gun that he had buried. (Tr. p. 594, line 9–p. 595, line 3).

The Shooting

Troutman shot Merriweather. That much is undisputed. But the testimony about the moments that led up to the shooting conflicts in significant ways.

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[1] At trial, Troutman didn't testify as to what Raymond Harris told him (presumably because it would have been hearsay). During his *in camera*, pretrial testimony, he said that Harris told him that Merriweather, Mathis, and Carlo Harris were "riding around in the car with guns looking for" him. (Tr. p. 147, lines 14–18).

After getting the gun from his backyard, Troutman went through a path behind his house to his friend TK's house to "vent" about what had happened that day with Merriweather. But TK wasn't home, so Troutman turned around to go back to his house. Instead of retracing his steps through that backyard path, Troutman went to the road, to walk home down Morange Street (which interested with Rosa Hill Street, where his house was) to "release some steam." (Tr. p. 595, line 10–p. 596, line 1; p. 625, line 7–p. 626, line 1).

According to Keith Mathis, Carlos Harris, and Santonio Ryans, Merriweather, Mathis, and Harris had gone to purchase beer so that Merriweather could calm down. (Tr. p. 359, lines 2–17; p. 403, lines 16–23). On their way back to Merriweather's house, they spotted Ryans in his yard, so the three men (Merriweather was driving) stopped to tell Ryans what had happened at Merriweather's house that afternoon. (Tr. p. 317, line 17–p. 321, line 1; p. 360, line 10–p. 362, line 20; p. 412, line 21–p. 413, line 8).

As they were talking, Troutman came walking down Morange Street toward Rosa Hill Street.[2] (Tr. p. 321, lines 2–14). He was on the right side of the road, but he cut over to the left side and walked by Merriweather's driver's side door and into the edge of Ryans's yard. (Tr. p. 324, lines 1–18; p. 393, lines 1–14). Then Troutman retraced his steps by the driver's side door back to the road, without saying anything

[2] The witnesses whose testimony the State offered were in tension in at least one respect. Mathis and Harris testified that Troutman got out of a green Honda on Morange Street. (Tr. p. 363, lines 9–17; p. 391, line 24–p. 392, line 3). Ryans, however, didn't mention any car in his testimony; he said that Troutman was simply "walking down the road." (Tr. p. 321, line 6). Troutman denied having gotten out of a car. (Tr. p. 596, lines 4–9).

but pointing at Merriweather. (Tr. p. 324, lines 19–24; p. 364, lines 9–23; p. 365, lines 1–19). When he got back into the road, Troutman showed that he had a gun. (Tr. p. 326, lines 2–6; p. 327, lines 13–16).

Troutman's version of how he ended up by Merriweather's car was different. Troutman testified that he was walking down Morange Street when Merriweather's car passed him, then stopped and backed up. (Tr. p. 596, lines 10–21). Merriweather, Mathis, and Harris got out of the car. (Tr. p. 596, line 22–p. 597, line 1). Troutman showed the three men his gun in an effort to try to go by, without pointing at anyone or trying to start a fight, but he wasn't allowed to pass. (Tr. p. 597, line 2–p. 598, line 2).

Once Merriweather, Mathis, and Harris were out of the car, the testimony becomes more consistent in what happened. Merriweather, now out of the car, was upset when he saw the gun, but he claimed that it was the same gun that was at his house and didn't have any bullets. (Tr. p. 328, lines 2–4; p. 367, lines 4–8; p. 600, lines 7–8).

Harris and Mathis then got out of the car (Harris on the driver's side near Merriweather, and Mathis on the passenger's side). By this time, the men were "going back and forth." (Tr. p. 328, lines 1–7). Merriweather was exclaiming "fighting words." (Tr. p. 368, line 13). And he threatened to burn Troutman's house down, with his stepchildren inside. (Tr. p. 597, line 22–p. 598, line 24; p. 600, line 19–p. 601, line 1).

Merriweather continued to challenge Troutman as to why Troutman pulled a gun with no bullets. Merriweather said that he was going to get his own gun and moved back toward his car, sat down in his car, and then got back out. (Tr. p. 342, lines 8–13;

p. 600, lines 11–15; p. 647, line 10). Merriweather was still "overtalking" after getting back out of his car. (Tr. p. 340, line 11; p. 343, lines 7–11).

The confrontation continued. As Merriweather and Troutman exchanged more words, Merriweather knocked Troutman's phone off of the trunk of the car. Troutman picked it up and took two or three steps back. (Tr. p. 328, line 21–p. 329, line 15).

Merriweather then got within "about two feet" of Troutman and was "talking kind of loud." (Tr. p. 329, lines 23–25). Merriweather had his fists "balled up" as if "he wanted to fight" Troutman. (Tr. p. 343, lines 21–23; p. 369, lines 1–6). At the same time, Mathis—standing on the other side of the car and approaching from a different direction—had a bottle in his hands. (Tr. p. 343, line 24–p. 344, line 1; p. 632, line 14–p. 633, line 13). Troutman said Mathis was "ready to launch the bottle" at him. (Tr. p. 601, lines 4–7).

Unsure of whether Merriweather had gotten a gun out of his car like he said he was going to do,[3] (Tr. p. 600, lines 16–18), Troutman pulled the gun from his pocket and shot Merriweather in the chest, (Tr. p. 329, line 17–p. 330, line 4; p. 601, lines 2–3; p. 634, lines 12–16). Merriweather took off running toward Ryans's backyard. (Tr. p. 370, lines 17–23; p. 636, lines 9–18). Troutman fired multiple more times, as Mathis and Harris both ran away; Harris was grazed in the leg by one bullet. (Tr. p. 332, lines 10–12; p. 396, lines 12–23).

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[3] It was undisputed that no one saw Merriweather, Mathis, or Harris with a gun when Troutman fired.

Troutman testified that he was "scared and nervous" and "in fear of [his] life" when he fired his gun. (Tr. p. 601, lines 8–9; p. 604, line 22–p. 605, line 1). He initially showed Merriweather, Mathis, and Harris the gun only "to scare them off" so he could "just go home." (Tr. p. 599, lines 12–13).

The Hour After the Shooting

Immediately after the shooting, Troutman began walking down Morange Street toward Rosa Hill Street. (Tr. p. 333, lines 11–13). When he reached the intersection of those streets, Troutman turned left, away from the direction of his house. (Tr. p. 397, lines 8–23).

Meanwhile, a 911 call was placed at 8:43 PM. (Tr. p. 435, lines 19–22). Emergency personnel responded within minutes. Merriweather was put in an ambulance and taken to a hospital, (Tr. p. 549, lines 14–25), but he died from the gunshot wound, (Tr. p. 558, line 20–p. 559, line 14).

Police arrived at Ryans's house five minutes after the 911 call and found "a bunch of people in the yard." (Tr. p. 486, line 22–p. 487, line 1). During the process of securing the scene, the police never spoke to Mathis. In fact, the officer in charge of the scene testified that he did not "know that name." (Tr. p. 488, lines 11–13). And no one testified to seeing Mathis at the scene after the shooting. Mathis testified that he "sat there with Mr. Merriweather for a second" in the moments after the shooting when Merriweather fell in Ryans's driveway. (Tr. p. 372, line 24). Mathis never said where he went before the police arrived. (Tr. p. 381, lines 12–18). Harris, however, remained

with Merriweather until help arrived. (Tr. p. 396, lines 15–23). During their search of the scene, the police never found any gun. (Tr. p. 484, lines 14–16).

After Troutman turned left on Rosa Hill Street after the shooting, he made his way into the woods, toward a railroad track. (Tr. p. 430, lines 1–15). He eventually reached his fiancée on her cell phone, who was at their home with the police. Troutman spoke to the police and turned himself in as he walked out of the woods. (Tr. p. 442, line 18–p. 446, line 12; p. 603, line 16–604, line 1).

The Charges against Troutman

Troutman ultimately was charged in four indictments. The first indictment—for murder in violation of S.C. Code § 16-3-10—was issued on August 26, 2015. (Indictment). The last three indictments were issued in October 2017. Two were for attempted murder in violation of S.C. Code § 16-3-29, (Indictments), and the third was for possession of a weapon during the commission of a violent crime in violation of S.C. Code § 16-23-490, (Indictment).

Evidentiary Rulings at Trial

Before the trial started in October 2017, the State moved *in limine* to exclude certain evidence. Relevant to the issue on appeal, the State asked the trial court to exclude evidence about Mathis, particularly the 2011 shooting incident. (Tr. p. 229, line 14–p. 230, line 21). Mathis was convicted of giving false information to police, and that

false information, according to Troutman, "was covering up for Leric Merriweather." (Tr. p. 226, line 21); *see also* Case No. 71827ED (Edgefield Cty. Magistrate).[4]

Troutman opposed this attempt to limit the evidence that could be introduced about Mathis. (Tr. p. 224, line 23–p. 227, line 3).

During the trial, Mathis was cross-examined on his relationship with Merriweather. He admitted that he and Merriweather were "really good friends" and "had each other [*sic*] back," (Tr. p. 376, lines 14–21), but he denied that he would lie for Merriweather, (Tr. p. 377, lines 3–4). Mathis's testimony continued after a bench conference, during which he contended that, despite having admitted to being convicted of giving false information to the police on direct examination, (Tr. p. 375, lines 9–11), what he told the police "wasn't false," (Tr. p. 380, line 15). After his testimony was finished, the court gave Troutman the chance to proffer evidence about the 2011 conviction. Mathis admitted that the 2011 conviction involved a shooting incident with Merriweather, but he denied that he was "covering up for" his friend. (Tr. p. 384, lines 12–24).

The Jury's Verdict and Sentencing

Troutman was tried by a jury in Edgefield County, from October 16-20, 2017.

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4 Although this conviction was never entered in to the record, this Court may of course take judicial notice of court records. *See, e.g., Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) (observing that "the most frequent use of judicial notice of ascertainable facts is in noticing the contend of court records" (internal alteration omitted)); *see also* Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.").

After both sides presented their cases, the trial court charged the jury. As Troutman requested, the court charged the jury on lesser-included offenses, including voluntary manslaughter, assault and battery of a high and aggravated nature (ABHAN), and assault and battery in the first degree. The court also instructed the jury on self-defense. (Tr. p. 693, line 12–p. 718, line 20).

The jury returned guilty verdicts on all four counts. On the murder indictment, the jury's guilty verdict was for voluntary manslaughter. On the two attempted murder indictments, the jury came back with guilty verdicts on ABHAN and assault and battery in the first degree. And on the possession of a weapon during the commission of a violent crime, the jury found Troutman guilty. (Tr. p. 723, line 21–p. 729, line 24).

The court sentenced Troutman to thirty years on the voluntary manslaughter conviction. (Sentencing Sheet, 2015-GS-19-00351). It gave him twenty years on the ABHAN conviction, to run concurrently with the thirty-year sentence on the voluntary manslaughter conviction. (Sentencing Sheet, 2017-GS-19-01817). The trial court imposed a sentence of ten years on the assault and battery in the first degree conviction, to run consecutively to the other two sentences. (Sentencing Sheet, 2017-GS-19-01818). And finally, the court sentenced Troutman to time served (868 days) on the fourth count. (Sentencing Sheet, 2017-GS-19-01819).

Troutman timely appealed. (Notice of Appeal).

STANDARD OF REVIEW

The admission of evidence at trial is within a trial court's discretion. *State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247 (2000). An abuse of discretion occurs

whenever "the court's decision is unsupported by the evidence or controlled by an error of law." *State v. King*, 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017).

Legal questions, such as the interpretation of constitutional provisions, are reviewed *de novo*. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016).

ARGUMENT

The Trial Court Denied Troutman His Constitutional Right by Limiting the Cross-Examination of Mathis.

A. The Confrontation Clause Ensures that a Defendant May Meaningfully Cross-Examine the State's Witnesses about Bias.

A critical function of cross-examination is to expose a witness's bias or lack of credibility. *E.g.*, *State v. King*, 367 S.C. 131, 137, 623 S.E.2d 865, 868 (Ct. App. 2005) (noting that "bias or other defects in a witness's testimony [are] revealed primarily through cross-examination"). Indeed, cross-examination is one of a defendant's most effective ways to create reasonable doubt. *See Delaware v. Van Arsdall*, 475 U.S. 673, 687–88 (1986) (Marshall, J., dissenting) (observing that "denial of cross-examination concerning a witness' bias may deprive the defense of its best opportunity to expose genuine flaws in the prosecution's case"); *Watkins*, 449 U.S. at 349 ("[U]nder our adversary system of justice, cross-examination has always been considered a most effective way to ascertain truth."). As the United States Supreme Court has explained, cross-examination serves the purpose "not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief."

Douglas v. Alabama, 380 U.S. 415, 419 (1965) (quoting *Mattox v. United States*, 156 U.S. 237, 242–43 (1895)).

Effective cross-examination is most important in a criminal trial, when the defendant's liberty is at stake. The Founders recognized this, and in the Sixth Amendment, a defendant is assured the right "to be confronted with the witnesses against him." U.S. Const. amend. VI; *see also Pointer*, 380 U.S. at 406 (incorporating the Confrontation Clause against the states through the Fourteenth Amendment). This right "guarantees a defendant the opportunity to cross-examine a witness concerning bias." *State v. Gracely*, 399 S.C. 363, 372, 731 S.E.2d 880, 885 (2012). Bias, of course, is a sweeping concept. *See State v. Brewington*, 267 S.C. 97, 100–01, 226 S.E.2d 249, 250 (1976) ("Since it is the function of the jury to determine the credibility of witnesses and the weight to be given their testimony, as a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony, and on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." (internal citation and quotation marks omitted)); *see also* Rule 608(c), SCRE.

A defendant's Confrontation Clause right is violated whenever "he is prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias from which jurors could draw inferences relating to the reliability of the witness." *Gracely*, 399 S.C. at 372, 731 S.E.2d at 885 (internal alteration and quotation mark omitted) (citing *Van Arsdall*, 475 U.S. at 680). A trial

court may only "impose reasonable limits on the scope of cross-examination," for reasons such as "harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant." *State v. Gillian*, 360 S.C. 433, 451, 602 S.E.2d 62, 71 (Ct. App. 2004), *aff'd as modified*, 373 S.C. 601, 646 S.E.2d 872 (2007).

But the trial court may not "limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness" unless "the record . . . clearly show[s] the cross-examination is inappropriate." *State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002); *see also State v. Graham*, 314 S.C. 383, 385–86, 444 S.E.2d 525, 527 (1994). Ultimately, given the liberty interests at stake, "[c]onsiderable latitude is allowed in the cross-examination of a witness for potential bias." *State v. Clark*, 315 S.C. 478, 481, 445 S.E.2d 633, 634 (1994); *see also United States v. Turner*, 198 F.3d 425, 429 (4th Cir. 1999) ("[P]rohibiting a criminal defendant from cross-examining a witness on relevant evidence of bias and motive may violate the Confrontation Clause, if the jury is precluded from hearing evidence from which it could appropriately draw adverse inferences on the witness's credibility.").

B. Troutman Was Denied the Opportunity to Cross-Examine Mathis about Issues that Would Expose His Bias.

Troutman's theory of the case was that Merriweather, Mathis, and Harris initiated the confrontation that led to the shooting. In addition to Troutman's own testimony that supported that theory, Troutman argued that the jury shouldn't believe Mathis's testimony about what happened, given the fact that Mathis was

admittedly a close friend of Merriweather. (Tr. p. 679, line 17–p. 680, line 1; p. 681, lines 12–19).

Troutman not only generally attacked Mathis's bias as Merriweather's close friend. He also pointed specifically to what Mathis did in the immediate aftermath of the shooting to cast doubt on his testimony. Troutman noted that he wasn't the only person who left the scene right after the shooting—Mathis did too. (Tr. p. 685, lines 1–9). Mathis and Merriweather were "really good friends." (Tr. p. 376, lines 14–15). Mathis knew that his really good friend had been shot in the chest. Yet, rather than provide aid and comfort to that friend, Mathis fled the scene. *See* (Tr. p. 372, line 24; p. 488, lines 11–13).

Troutman was denied the chance to cross-examine Mathis in a meaningful way about why Mathis left the scene. Although the State elicited from Mathis a two-word confirmation that he had been convicted of giving false information to the police in 2011, (Tr. p. 375, lines 9–11), drawing out the underlying facts of that conviction was essential to demonstrating Mathis's bias and lack of credibility to the jury. That conviction, according to the police report, involved an incident in which Merriweather and another man shot at each other, with Merriweather using a sawed-off shotgun. Mathis lied to the police when first questioned about his role in the incident, during which he knocked on the other man's door to get the other man to come outside before Merriweather shot at that man.

In short, Mathis had lied to protect his really good friend, who had shot at someone else. Given that he had lied for Merriweather once about an incident

involving a gun, it was not a wild leap to think that he might do so again. Multiple witnesses, including witnesses offered by the State, testified that Merriweather said he was going to get his gun in the moments leading up to the shooting. (Tr. p. 328, lines 12–15; p. 342, lines 8–13; p. 600, lines 11–15; p. 647, line 10). The police, however, never found any gun. (Tr. p. 484, lines 14–16).

A reasonable inference is that Mathis—who fled the scene and abandoned his dying friend—took the gun that Merriweather said he was going to get out of his car so that the police wouldn't find it when they arrived. The record contains no other reason for why Mathis (who was simply a victim under the State's theory) should have run away before the police arrived.

Were Troutman's theory lacking evidentiary or logical support, the trial court could have constitutionally prohibited cross-examination about it. *See, e.g.*, *United States v. Martinez-Vives*, 475 F.3d 48, 53–54 (1st Cir. 2007) ("[T]he Confrontation Clause does not give a defendant the right to cross-examine on every conceivable theory of bias. . . . Where the theory of bias is inherently speculative, the court may prohibit cross-examiners from mounting fishing expeditions." (internal quotation marks and citation omitted)). But Troutman's wasn't such a theory. Rather, it was well grounded in the facts, offering to make sense of Mathis's flight in a way that the State never could (or even tried to do). And if the jury believed that Mathis was again lying to protect his friend and had reasonable doubt about whether Merriweather did have a gun with him that night (even if Merriweather didn't actually grab it or use it), that would lend strong support to Troutman's claim of self-defense. Put simply,

when the trial court prohibited Troutman from asking Mathis questions about the 2011 incident that could show his bias and lack of credibility, the trial court denied Troutman a "meaningful opportunity to present a complete defense." *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006).

Moreover, the record does not "clearly show" that this cross-examination of Mathis was inappropriate. *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 317. After the *in camera* proffer after the testimony of Keith Mathis, the trial court offered no explanation for its decision not to allow cross-examination of Mathis about the 2011 incident. (Tr. p. 385, lines 2–15). That leaves the pretrial discussion of the State's motion as the only place in the record with any substantive discussion of this issue. Troutman sought to be allowed to cross-examine Mathis about lying to help Merriweather in 2011, leaving the scene, and failing to talk to the police until May 2017 to show Mathis's bias and develop support for his self-defense claim. (Tr. p. 226, line 14–p. 227, line 3; p. 227, line 19–p. 228, line 24). The court's conclusion—with which the State agreed—was that no rule of evidence allowed cross-examination on the facts underlying the 2011 incident. (Tr. p. 229, line 6–p. 230, line 21).[5]

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[5] During this argument, Troutman made explicitly clear that his goal was to confront Mathis about his bias. Troutman admittedly did not use the words "Confrontation Clause" or "Sixth Amendment." But magic words have never been required to preserve this issue for appellate review. As this Court has observed, trial objections that make clear the nature of the objection, "together with the arguments . . . presented on appeal," are sufficient to preserve a Sixth Amendment issue for review, given that this is a right that "must remain inviolate." *State v. Mitchell*, 378 S.C. 305, 314, 662 S.E.2d 493, 498 (Ct. App. 2008).

Thus, the entire basis for preventing cross-examination about Mathis's bias was that it wasn't allowed under the South Carolina Rules of Evidence. This conclusion, however, suffers from multiple flaws. For one, no South Carolina case appears to address whether the facts giving rise to a conviction that could be introduced under Rule 609(a) may be elicited from a witness under Rule 608(b). Some federal courts, such as the Ninth Circuit, have held that they cannot. *See United States v. Osazuwa*, 564 F.3d 1169, 1173 (9th Cir. 2009). Whatever persuasive authority those cases may be, no South Carolina court has directly addressed the issue of whether the facts that led to a conviction—rather than the conviction itself—may be the subject of cross-examination under Rule 608(b). Here, the trial court never offered any analysis of this issue, so the record does not clearly show that this cross-examination was impermissible.

For another, even if the trial court were right about the scope of cross-examination under Rule 608(b), its conclusion still ignores the relationship of the Sixth Amendment and the South Carolina Rules of Evidence. Like every part of the U.S. Constitution, the Sixth Amendment's Confrontation Clause is the "supreme Law of the Land." U.S. Const. Art. VI, cl. 2. A defendant's right to confront witnesses is thus "potentially broad enough to require admission of evidence that is otherwise excludable under" the rules of evidence. *United States v. Oliver*, 278 F.3d 1035, 1041 (10th Cir. 2001) (citing *United States v. Abel*, 469 U.S. 45, 56 (1984)); *see also Holmes*, 547 U.S. at 324 (observing that the latitude to establish rules of evidence for excluding evidence from criminal trials has constitutional limits); *United States v.*

Canan, 48 F.3d 954, 959 (6th Cir. 1995) (noting that the Sixth Amendment may impose "independent" rules on the introduction of evidence); *United States v. Mikos*, No. 02 CR 137-1, 2003 WL 22110948, at *11 (N.D. Ill. Sept. 11, 2003) ("Simply put, the Constitution exists independent of the Federal Rules of Evidence."); *cf.* Fed. R. Evid. 609, Note to 1990 Amendments ("In any case in which the trial court believes that confrontation rights require admission of impeachment evidence, obviously the Constitution would take precedence over the rule.").

In this case, cross-examining Mathis about the events underlying the 2011 conviction was essential to showing Mathis's bias and to casting doubt about his credibility regarding what happened leading up to and immediately after the shooting. Even if the South Carolina Rules of Evidence didn't allow that cross-examination, the Confrontation Clause did so that Troutman would have "a fair trial." *Gillian*, 360 S.C. at 449, 602 S.E.2d at 71.

No other reason was necessary for excluding this testimony. *See id.* at 451, 602 S.E.2d at 71. For instance, the State never argued that it would be harassing or confusing. The trial court never indicated that the testimony would be either repetitive or only marginally relevant. And the prejudice arguments from the State all focused on Merriweather, not Mathis. (Tr. p. 216, line 21–p. 235, line 11). Indeed, the decision to prevent Troutman from cross-examining Mathis hung entirely—and incorrectly—on the rules of evidence, without recognizing the constitutional import of the bias argument that Troutman raised.

C. Troutman Was Prejudiced by the Trial Court's Limitation on Cross-Examination.

A violation of a defendant's constitutional right requires that a conviction be set aside whenever that violation is not harmless beyond a reasonable doubt. *Mizzell*, 349 S.C. at 333, 563 S.E.2d at 318. Whether an error is that harmless "depends on the particular facts of each case." *Id.* Factors to consider include "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecution's case." *Id.*, 563 S.E.2d at 318–19 (quoting *Van Arsdall,* 475 U.S. at 684).

Ultimately, the violation of a defendant's right under the Confrontation Clause is harmless only "if the evidence is overwhelming and the violation so insignificant by comparison that [a court is] persuaded, beyond a reasonable doubt, that the violation did not affect the verdict." *State v. Holder,* 382 S.C. 278, 285, 676 S.E.2d 690, 694 (2009); *see also State v. Bryant,* 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]n insubstantial error not affecting the result of the trial is harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached."). Proving that a constitutional error was harmless is a "heavy burden." *Anderson v. Warden, Md. Penitentiary,* 696 F.2d 296, 300 (4th Cir. 1982) (en banc).

Troutman's inability to cross-examine Mathis cannot be harmless given the lack of physical evidence related to the issues on which that cross-examination would

have focused. The State offered no physical evidence of who instigated the confrontation in the moments before the shooting or about what Mathis did in the moments right after the shooting before the police arrived; the only evidence was testimony. In other words, the jury's conclusion about what happened in the moments leading up to and right after the shooting "rested solely on credibility determinations." *State v. Perez*, --- S.C. ---, --- S.E.2d ---, No. 2015-001576, 2018 WL 2709474, at *4 (2018); *cf. State v. Broadnax*, 414 S.C. 468, 479, 779 S.E.2d 789, 794 (2015) (holding that an error was harmless because of "overwhelming evidence" of the defendant's guilt, including the recovery by police of a gun and a bag of money after an armed robbery). Credibility determinations, of course, belong solely to the jury, which "may believe all, some, or none of the testimony" from any witness, and not to an appellate court reviewing a transcript. *Perez*, 2018 WL 2709474, at *4 (quoting *Ross v. Paddy*, 340 S.C. 428, 434, 532 S.E.2d 612, 615 (Ct. App. 2000)).

Furthermore, not hearing cross-examination of Mathis was particularly significant, given that no other witness testified about either Mathis's close friendship with Merriweather (including having lied to police to protect Merriweather in 2011) or where Mathis went (and what he may have taken with him) when he fled the scene. Thus, even if the prejudice caused by the limitations on the cross-examination of Mathis wasn't already established by the lack of physical evidence on these subjects, the jury didn't hear conclusive or overwhelming evidence on these particular issues that could make this constitutional error harmless. *See Gracely*, 399 S.C. at 376, 731 S.E.2d at 877 (describing *Mizzell* as holding that an error was

not harmless because "if the jury found [the witness whose cross-examination was limited] unbelievable, there would be no other evidence before them tying the defendant's to the scene of the crime").

At its core, the violation of Troutman's right under the Confrontation Clause denied him the opportunity to present facts necessary to present his theory to the jury. That means the error cannot be harmless. *See Davis v. Alaska,* 415 U.S. 308, 317 (1974) ("We cannot speculate as to whether the jury, as sole judge of the credibility of a witness, would have accepted this line of reasoning had counsel been permitted to fully present it. But we do conclude that the jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on [a witness's] testimony which provided a crucial link in the proof of petitioner's act." (internal alteration and quotation mark omitted)); *Gracely,* 399 S.C. at 377, 731 S.E.2d at 887 (observing that "a ruling preventing a full picture of the possible bias of those witnesses cannot be harmless").

CONCLUSION

The judgment should be vacated, and the case should be remanded for a new trial.

Respectfully Submitted,

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August 27, 2018
Columbia, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2017-002224

Case Nos. 2017-GS-19-01817,
2017-GS-19-01818,
2017-GS-19-01819, and
2015-GS-19-00351

RECEIVED
AUG 27 2018
SC Court of Appeals

The State,..Respondent,

v.

Montrell Deshawn Troutman, ...Appellant.

CERTIFICATE OF SERVICE

I certify that this APPELLANT'S INITIAL BRIEF was served on counsel for the State on August 27, 2018:

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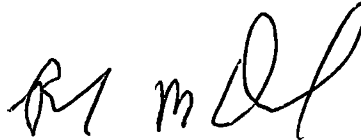

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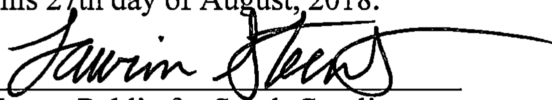
This 27th day of August, 2018.



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