STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
J. Mark Hayes, Circuit Court Judge

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Appellate Case No. 2018-000170

THE STATE, .....RESPONDENT

v.

ALEXANDER RASHEEN MATTHEWS, .....APPELLANT.

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# INITIAL BRIEF OF RESPONDENT

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ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia Street
Spartanburg, South Carolina 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

**Page**

## TABLE OF AUTHORITIES

**Federal Cases:**



**State Cases:**

## RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly overruled Appellant's objections to the admission of allegedly "improper character" evidence about his prior criminal behavior where: (1) the testimony at issue was cumulative to similar testimony admitted at trial to which no objection was raised and (2) in the context of a bench trial, the testimony could not have been prejudicial. Furthermore, whether any possible error in admitting the evidence was entirely harmless where it could not reasonably have affected the result of the trial.

## STATEMENT OF THE CASE

Alexander Rasheen Matthews (Appellant) was indicted at the July 20, 2016 term of the grand jury for Spartanburg County for first-degree burglary (2016-GS-42-3026), third-degree arson (2016-GS-42-3027), and murder (2016-GS-42-3028). He was represented by Richard H. Whelchel, Esquire, and Daniel J. MacDonald, IV, Esquire, and the State was represented by Assistant Solicitors Abel O. Gray and Allison Mabbs of the Seventh Circuit Solicitor's Office. On January 23-25, 2018, Appellant proceeded to a bench trial pursuant to which he was found not guilty of first-degree burglary, guilty of voluntary manslaughter as a lesser included offense of murder, and guilty of third-degree arson. He was sentenced by the Honorable J. Mark Hayes to twenty-five (25) years' imprisonment for voluntary manslaughter and fifteen (15) years' concurrent imprisonment for third-degree arson. (Indictments & Sentencing Sheets). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his Appeal. This Brief of Respondent follows.

## STATEMENT OF FACTS

When the case was called for trial, Appellant advised the trial court that he wanted a bench trial. He was put under oath and questioned about his request to ensure his waiver of the right to a jury trial was knowingly and voluntarily made. (Tr.p.8-p.10). The parties then waived opening statements and the State began presenting its case-in-chief. (Tr.p.11-p.15). First, the State called a series of law enforcement officers and fire department employees to explain the events of June 17, 2014, which started with their responding to an emergency call about a house fire and culminated in discovering the body of Ms. Willie Maw Gray (Victim) in that house. Emergency responders removed Victim from the house and began resuscitation efforts but stopped after determining she was already deceased. They noted obvious facial trauma to Victim's face. (Tr.p.15-p.32). Fire Marshall John Bradley Hall was admitted as an expert in fire origin. He was able to determine which room the fire started in and opined it was intentionally set. (Tr.p.32-p.60). Next, forensic technician Courtney Burgess testified she responded to the scene to gather evidence and take photographs. She discovered a fire safe in a bedroom that was open and empty, but found no fingerprints. She also discovered dresser drawers and jewelry boxes that appeared to have been opened and gone through. (Tr.p.60-p.75).

The State then called Victim's son, Willie James Miller (Miller), to the stand. He said he grew up in the house where his mother died, and explained she was once married to a man named Billie James Gray (Gray) who lived with them. Miller said Gray was nicknamed "Tree" and was a known drug dealer in Spartanburg who always had a lot of cash. He said he was familiar with one of Gray's sons, James Gray (James), and knew him as "Little Tree." Miller noted that James once complained that after Gray died in prison, Miller's family got money Gray intended to leave to James. Miller said Gray is the one who put the safe in the house. (Tr.p.76-p.86).

Next, the State called lead investigator Louis Maceo Nelson to the stand. He responded to the incident site and also conducted the follow-up investigation. Nelson attended the autopsy and noted the cause of Victim's death was determined to be "respiratory insufficiency secondary to manual strangulation." He explained the steps taken by the police during the investigation to eliminate various suspects, including James, and how the investigation "went cold" for about eight to twelve months. Nelson testified the police later resumed their investigation by conducting a more extensive, detailed neighborhood canvas which led them to interview sisters Samantha Brewton and Sandra Brewton. He explained that Samantha lived directly across the street from Victim, and that Sandra knew Victim through her sister. He also explained that Sandra lived with and dated Appellant at the time of Victim's death. (Tr.p.87-p.98).

When police interviewed Sandra, she retrieved a prescription bottle bearing the name "Spencer Middleton" which she said belonged to Appellant. Based on his training and experience, Nelson opined the prescription bottle had been modified so it could be used to smoke crack or other illegal substances. Appellant did not object. Nelson next testified that after talking to the Brewton sisters, the police decided to speak to Appellant. When asked where Appellant was located, Nelson said: "At this particular time he was at the Evans Correctional . . . Institution in Bennettsville, South Carolina." Appellant similarly did not object. (Tr.p.98-p.101). Nelson proceeded to describe the rest of the investigation, including how the police confirmed Appellant's connection to his alias, Spencer Middleton, how they got a CODIS hit for Spencer Middleton based on fingernail scrapings taken from Victim during the autopsy, how they got a buccal swab from Appellant which was a DNA match to the scrapings, and how they recorded an interview with Appellant once he became a suspect. (Tr.p.101-p.117).

The State then called Samantha Renee Brewton to the stand. She said she lived across the street from Victim and considered Victim her best friend. Samantha described the day of the fire and how upset she was when she saw Victim lying in the yard after she was removed from the house. She also described the last time she saw Victim before her death, explaining Victim had accused her of taking things from her and had called the police. On cross-examination Samantha admitted she had been convicted of malicious burning in 2009. (Tr.p.128-p.137).

Next, the State called Sandra Marie Brewton to the stand. She first described her relationship with Appellant. She explained Appellant lived with her at the time of Victim's death and that on the night of the fire, he came home smelling like smoke and proceeded to take a shower with all of his clothes on, including his shoes, before coming to bed nude. Sandra said Appellant continued to live with her for a couple of weeks after the incident until she asked him to leave. (Tr.p.137-p.143).

The solicitor asked Sandra when Appellant finally moved out of her home for good, and "[w]hat happened?" Appellant objected to any testimony being offered about a prior incident between himself and Sandra, but the trial court ruled: "I'm going to let her answer for the limited purpose of their relationship." Sandra proceeded to describe the incident which led to Appellant's arrest, conviction, and incarceration. It began when: "he tried to start an altercation with me." Sandra said that one morning after breakfast, Appellant "kept feeling on me." She told him she did not want him touching her. Appellant had accused her of fooling around with someone else, which she claimed she never did. Sandra left and went to tell her sister what happened and when she returned, Appellant was gone and her TV was missing. Sandra called the police. After they arrived on the scene, Appellant returned to the house with a beer bottle in his hand and denied he had taken the TV. He was given a trespass notice by the police but

shortly thereafter came back down the street to the house wearing only his boxers and tried to get Sandra to take him back. Sandra said she refused and instead went to the C.V.S. to get some medication. When she returned, police officers were on the scene. They arrested Appellant for breaking her window and trying to get into her home. Sandra testified the police took Appellant to jail that day. (Tr.p.137-p.150; p.162).

The State then called additional law enforcement and expert witnesses to describe how they collected the fingernail scrapings from Victim's body, collected a buccal swab from Appellant, and matched the DNA from under Victim's fingernail to Appellant to an accuracy of one in one quintrillion. (Tr.p.164-p.206). Of particular note, Theresa Hines, a DNA analyst with SLED, testified about the CODIS "hit" she got from testing fingernail scrapings taken from Victim's body. She noted the source of the reference sample was the South Carolina Department of Corrections (SCDC) and that a match was made to an individual identified as Spencer Middleton. (Tr.p.184-p.188). SLED DNA analyst Jennifer Lynn Bartman then testified the known standard used in the DNA test was from Appellant, who is also known as Spencer Middleton. Appellant made no objection to this testimony from Hines and Bartman.

Next, the State called Spartanburg Police Department Investigator Christopher Everette Taylor to offer additional testimony about the police investigation, which was renewed in 2015 after the case had "gone cold." (Tr.p.206-p.226). He participated in the interview of Sandra Brewton. Taylor was asked if there was ever a discussion of an incident involving a physical altercation Sandra had with Appellant. Appellant objected, arguing the testimony did not have anything to do with him, and that the solicitor was going too far afield from what the judge had allowed. The trial judge overruled the objection and explained he was viewing the testimony as "simply laying some foundation for what police work was done as part of the investigation."

Taylor proceeded to testify that Appellant had been convicted of a crime involving Sandra, and as a result Appellant was interviewed by the police at Evans Correctional Institution in Bennettsville. (Tr.p.213-p.214). On cross-examination Appellant had Taylor repeat the fact that he was interviewed in a correctional facility. (Tr.p.219).

Finally, the State called Dr. John David Wren to the stand. He conducted the autopsy, was admitted as an expert in forensic pathology, and testified about the significant trauma suffered by Victim about her head and neck, as well as injuries to her legs and her internal injuries. Dr. Wren found no smoke or soot in Victim's nasal cavities, mouth, or lungs which led him to opine that she died before the fire was set. He ultimately opined the cause of death was respiratory insufficiency secondary to manual strangulation, with contributing factors of aspirated blood and sharpened blunt force trauma to the head and neck. (Tr.p.227-p.251).

After the State rested, Appellant rejected his attorney's advice and elected to testify in his own defense. He began by describing his relationship with Sandra Brewton. He said he met Sandra at church and then moved to Spartanburg to live with her. Appellant testified Sandra "started acting crazy" and wanting his social security money. He then described his relationship with Sandra's sister Samantha Brewton, and his brief contact with Victim, who was Samantha's neighbor. Appellant claimed he got scratched on the arm when breaking up a fight between Victim and Samantha the day before Victim was killed, presumably to explain the source of the DNA under Victim's fingernails. He insisted he did not go into her house to set a fire and did not strangle her to death. He then confirmed he was interviewed by the police when he was incarcerated in Evansville [sic]. (Tr.p.263-p.275).

On cross-examination, the solicitor asked if it was true Appellant went to prison for an incident involving Sandra Brewton. Appellant objected, arguing it was an improper attempt to

impeach him with a prior conviction that went beyond the parameters of the rules. The trial court noted there had already been testimony about their relationship which opened the door, including testimony from Appellant himself, and ruled the question was proper. Appellant then acknowledged he had gone to prison for burglary, volunteering this was because: "I throwed a brick through the window to get my clothes and stuff out of there." (Tr.p.275-p.276). Appellant subsequently repeated the fact that he had been interviewed by the police while he was in prison in Bennettsville. (Tr.p.277). He then admitted he had a previous conviction "where [he] killed someone," without objection. (Tr.p.281). The solicitor then attempted to cross-examine Appellant in regard to two prior sentencing sheets which were apparently issued under the name Spencer Middleton. Appellant objected; however, the trial court allowed the testimony for the limited purpose of linking the alias "Spencer Middleton" to Appellant. Appellant ultimately admitted he pled guilty to voluntary manslaughter as indicated on the sentencing sheets, but insisted he did so using the name Alexander Rasheen Matthews and not Spencer Middleton. (Tr.p.282-p.291).

Appellant rested and the parties made closing arguments. (Tr.p.291-p.304). After deliberating for approximately an hour and a half, the trial judge found Appellant not guilty of first-degree burglary, guilty of voluntary manslaughter, and guilty of third-degree arson. (Tr.p.305). The trial court then sentenced Appellant to twenty-five (25) years' imprisonment for voluntary manslaughter and fifteen (15) years' concurrent imprisonment for third-degree arson. (Tr.p.306-p.310).

## STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Baccus*, 367 S.C. 41,48, 625 S.E.2d. 216, 220 (2006). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. *Wilson,* 345 S.C. at 6, 545 S.E.2d at 829. Indeed, the admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.*

## ARGUMENT

**The trial court properly overruled Appellant's objections to the admission of allegedly "improper character" evidence about his prior criminal behavior because: (1) the testimony at issue was cumulative to similar testimony admitted at trial to which no objection was raised and (2) in the context of a bench trial, the testimony could not have been prejudicial. Furthermore, and for the same reasons, any possible error in admitting the evidence was entirely harmless because it could not reasonably have affected the result of the trial.**

Appellant argues the trial court erred in overruling his objections to the introduction of "improper character evidence" regarding an incident between Appellant and his girlfriend because the testimony at issue "was unrelated to the charges at trial," the discussion "painted Appellant in a negative light," and "the testimony yielded information about Appellant's arrest, subsequent conviction, and status as an inmate at Evans Correctional Institution." (Brief of Appellant, p.4). He contends this testimony amounted to an improper attack on his character

because it demonstrated he had a prior criminal history, and he complains that it was unnecessary and wholly irrelevant to the crimes for which he was on trial. The State submits Petitioner's argument should be denied on several grounds. First, the evidence was properly admitted where it was cumulative to prior and nearly identical testimony to which no objection was raised. Second, even if not deemed cumulative, the comments in question could not have resulted in any prejudice to Appellant where he had a bench trial rather than a trial by jury. Finally, and for similar reasons, even if the testimony was allowed by the trial court in error, its admission was entirely harmless where it could not have reasonably affected the outcome of trial. The record was replete with competent evidence to sustain the findings of the trial court and Appellant's convictions. His convictions and sentence should be affirmed.

**Relevant Facts**

During trial, lead investigator Nelson was asked if Sandra Brewton had any relationship with Appellant. He explained that at the time of the investigation Sandra and Appellant lived together as boyfriend and girlfriend. When police interviewed Sandra at their home, she retrieved and gave the police a prescription bottle bearing the name "Spencer Middleton" which *she said belonged to Appellant*. Based on his training and experience, *Nelson opined the prescription bottle had been modified so it could be used to smoke crack or other illegal substances*. Appellant did not object to Nelson painting Appellant in a negative light. Nelson next testified that after talking to the Brewton sisters, the police decided to speak to Appellant. When asked where Appellant was located, Nelson said: "At this particular time he was at the Evans Correctional . . . Institution in Bennettsville, South Carolina." Appellant similarly did not object to the revelation of Appellant's status as an inmate. (Tr.p.97-p.101).

Later, Sandra Brewton took the stand and described her relationship with Appellant. She explained Appellant lived with her at the time of Victim's death and that on the night of the fire, he came home smelling like smoke and proceeded to take a shower with all of his clothes on, including his shoes, before coming to bed nude. Sandra said Appellant continued to live with her for a couple of weeks after the incident until she asked him to leave. (Tr.p.137-p.143).

The solicitor asked Sandra when Appellant finally moved out of her home for good, and "[w]hat happened?" Appellant objected to any testimony being offered about an incident between himself and Sandra, but the trial court ruled: "I'm going to let her answer for the limited purpose of their relationship." Sandra proceeded to describe the incident which led to Appellant's arrest, conviction, and incarceration. It began when: "he tried to start an altercation with me." Sandra said that one morning after breakfast, Appellant "kept feeling on me." She told him she did not want him touching her. Appellant had accused her of fooling around with someone else, which she claimed she never did. Sandra left and went to tell her sister what happened and when she returned, Appellant was gone and her TV was missing. Sandra called the police. After they arrived on the scene, Appellant returned to the house with a beer bottle in his hand and denied he had taken the TV. He was given a trespass notice by the police but shortly thereafter came back to the house wearing only his boxers and tried to get Sandra to take him back. Sandra said she refused and instead went to the C.V.S. to get some medication. When she returned, police officers were on the scene. They arrested Appellant for breaking her window and trying to get into her home. Sandra testified the police took Appellant to jail that day. (Tr.p.137-p.150). On cross-examination, in response to a question from Appellant asking when she first talked to police about him, Sandra said: "It's been three and a half years, sir. I tried to get over this. This man tried to kill me." Appellant immediately moved to strike,

arguing the answer was unresponsive. The trial judge noted that if the case was in front of a jury he might order the response stricken, however, he did not do so because it was a bench trial.[1] (Tr.p.151-p.152).

Theresa Hines, a DNA analyst with SLED, was later testifying about the CODIS "hit" she got after testing fingernail scrapings taken from Victim's body. She noted *the source of the reference sample was the South Carolina Department of Corrections (SCDC)* and that a match was made to an individual identified as Spencer Middleton. (Tr.p.184-p.188). SLED DNA analyst Jennifer Lynn Bartman then testified *the known standard used in the DNA test was from Appellant, who is also known as Spencer Middleton.* Appellant made no objection to this testimony from Hines and Bartman, which demonstrated Appellant's status as an inmate in SCDC at the time the police were investigating Victim's death.

Spartanburg Police Department Investigator Christopher Everette Taylor subsequently testified about the police investigation, which was renewed in 2015 after the case had gone cold. He participated in an interview of Sandra Brewton. Taylor was asked if there was ever a discussion of an incident involving a physical altercation Sandra had with Appellant. Appellant objected, arguing the testimony did not have anything to do with him, and that the solicitor was going too far afield from what the judge had allowed. The trial judge overruled the objection and explained he was viewing the testimony as "simply laying some foundation for what police work was done as part of the investigation." Taylor proceeded to testify that Appellant had been convicted of a crime involving Sandra, and as a result Appellant was interviewed by the police at Evans Correctional Institution in Bennettsville. (Tr.p.213-p.214). On cross-examination

[1] *See State v. Wharton*, 263 S.C. 437, 445, 211 S.E.2d 237, 241 (1975) (recognizing that, in a bench trial, the trial judge is perfectly capable of laying otherwise impermissible testimony aside even where it is admitted during trial).

Appellant had Taylor repeat the fact that he was interviewed in a correctional facility. (Tr.p.219).

After the State rested, Appellant rejected his attorney's advice and elected to testify in his own defense. He began by described his relationship with Sandra Brewton. He said he met Sandra at church and then moved to Spartanburg to live with her. Appellant testified Sandra "started acting crazy" and wanting his social security money. He then described his relationship with Sandra's sister Samantha Brewton, and his brief contact with Victim, who was Samantha's neighbor. Appellant claimed he got scratched on the arm when breaking up a fight between Victim and Samantha the day before Victim was killed, presumably to explain the source of the DNA under Victim's fingernails. He insisted he did not go into her house to set a fire and did not strangle her to death. He then *confirmed he was interviewed by the police when he was incarcerated* in Evansville [sic]. (Tr.p.263-p.275).

On cross-examination, the solicitor asked if it was true Appellant went to prison for an incident involving Sandra Brewton. Appellant objected, arguing it was an improper attempt to impeach him with a prior conviction that went beyond the parameters of the rules. The trial court noted there had already been testimony about their relationship which opened the door, including testimony from Appellant himself, and ruled the question was proper. Appellant then acknowledged he had gone to prison for burglary, volunteering this was because: "I throwed a brick through the window to get my clothes and stuff out of there." (Tr.p.275-p.276). Appellant subsequently *repeated the fact that he had been interviewed by the police while he was in prison in Bennettsville*. (Tr.p.277). He then admitted he had a previous conviction "where [he] killed someone," without objection. (Tr.p.281). The solicitor then attempted to cross-examine Appellant in regard to two prior sentencing sheets which were apparently issued under the name

Spencer Middleton. Appellant objected; however, the trial court allowed the testimony for the limited purpose of linking the alias "Spencer Middleton" to Appellant. Appellant ultimately admitted he pled guilty to voluntary manslaughter as indicated on the sentencing sheets, but insisted he did so using the name Alexander Rasheen Matthews and not Spencer Middleton. (Tr.p.282-p.286).

**Discussion / Analysis**

Appellant takes specific issue with the testimony elicited from Sandra Brewton about the altercation which led to his arrest, conviction, and incarceration because it painted him in a negative light and yielded information about his status as an inmate. He also takes issue with related but less detailed testimony elicited from Officer Taylor. However, the evidence was properly admitted where it was cumulative to prior and nearly identical testimony to which no objection was raised. Even if not deemed cumulative, the comments in question could not have resulted in any prejudice to Appellant because he had a bench trial. Finally, and for similar reasons, even if the testimony was allowed by the trial court in error, its admission was entirely harmless where it could not have reasonably affected the outcome of trial.

**Cumulative Evidence**

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). Thus, the failure to object to evidence at the time it is offered at trial constitutes a waiver of the right to have the issue heard on appeal. *See State v. Johnson*, 324 S.C. 38, 41, 476 S.E.2d 681, 682 (1996) (holding a contemporaneous objection is required at trial to properly preserve an error for appellate review); *Geddings v. Geddings*, 319 S.C. 213, 215, 460 S.E.2d 376, 377 (1995)

(finding issue unpreserved for appellate review where appellants failed to contemporaneously object to witness's testimony). Here, Appellant failed to make a contemporaneous objection when the solicitor elicited testimony from lead investigator Nelson suggesting Appellant had modified his prescription bottle so he could smoke crack cocaine, and he failed to object to Nelson's testimony that Appellant was already an inmate when police were investigating Victim's death. Thus, any complaint about Nelson's testimony would not be preserved for appellate review.

As a consequence, even as to Appellant's preserved challenge to the testimony elicited from Sandra Brewton and Officer Taylor, that testimony was harmless because it was merely cumulative to the testimony from Nelson. *See State v. Gardner,* 332 S.C. 389, 505 S.E.2d 338 (1998) (holding the defendant could not show prejudice in connection with testimony of certain witness where different witness testified to the same matter without objection); *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) (finding the admission of improper evidence is considered harmless when it is merely cumulative to other properly admitted evidence). The allegedly objectionable testimony is similarly cumulative to the later testimony elicited from DNA analysts Hines and Bartman as to Appellant's status as an inmate, as well as Appellant's own testimony to this effect. All of this testimony went to Appellant's prior criminal history. Because the testimony was cumulative, it could not have been unfairly prejudicial, and Appellant's claim of error should be denied.

**Bench Trial**

Even if this Court determines the evidence was not merely cumulative to other admitted evidence at trial, it nevertheless could not have been prejudicial to Appellant where he elected to have a bench trial rather that a jury trial. It has long been settled that the admission of

incompetent or irrelevant evidence is not a ground for reversal when there is sufficient competent evidence to support the judgment and it does not appear that the court was induced by that evidence to make essential findings that it otherwise would not have made. *Multi-Med. Convalescent & Nursing Ctr. of Towson v. N.L.R.B.*, 550 F.2d 974, 977-78 (4th Cir. 1977); *Lopez v. United States*, 790 F.3d 867, 873 (8th Cir. 2015). Indeed, the admission of evidence in a bench trial is rarely grounds for reversal, for the trial judge is presumed to be able to exclude improper inferences from his or her own decisional analysis. *Bic Corp. v. Far E. Source Corp.*, 23 F. App'x 36, 39 (2d Cir. 2001); *See also Schultz v. Butcher*, 24 F.3d 626, 632 (4 th Cir. 1994) ("For a bench trial, we are confident that the district court can hear relevant evidence, weigh its probative value and reject any improper inferences."). Some courts have even held that in the context of a bench trial, evidence should *not* be excluded under Rule 403 on the grounds that it is unfairly prejudicial, because the court is capable of assessing the probative value of the evidence and excluding any arguably improper inferences. *Tracinda Corp. v. DaimlerChrysler AG*, 362 F.Supp.2d 487, 497-98 (D. Del. 2005).

In Appellant's case, these very principles were adopted by the trial court when it declined Appellant's request to strike the unresponsive testimony offered by a State's witness during his cross-examination, because the case was not being heard in front of a jury. (Tr.p.151-p.152). As implicitly recognized by the trial court, regardless of whether the testimony from Sandra Brewton and Officer Taylor was technically admissible under a traditional prejudice analysis, its admission was not prejudicial to the court's assessment of the evidence in Appellant's trial. It should not serve as a grounds for reversal where it was relevant to give the court a complete picture of the relationship between Appellant and Sandra Brewton and the steps the police took in the investigation, and where there was substantial circumstantial evidence in the record to

support Appellant's convictions independent of the allegedly objectionable testimony. Furthermore, there is no evidence in the record to indicate the trial court was induced by the challenged evidence to make essential findings that it otherwise would not have made. For this reason alone, Appellant's argument should be rejected.

**Harmless Error**

Errors are considered to be harmless when they could not reasonably have affected the result of the trial. *State v. Adams*, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003). "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 385, 388 (1947). Here, even if this Court determines the trial court erred in allowing the challenged testimony from Sandra Brewton and Officer Taylor, Appellant was not prejudiced by the error where it was cumulative, was offered during a bench trial, and was insignificant in the context of the remaining evidence supporting Appellant's convictions. Thus, any possible error in allowing the testimony from Sandra Brewton and Officer Taylor was entirely harmless because it could not reasonably have affected the result of the trial. *See State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial). For all of these reasons, Appellant's convictions and sentences should be affirmed.

## CONCLUSION

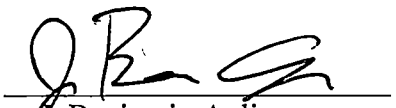
For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY: 
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
March 29, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
J. Mark Hayes, Circuit Court Judge

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Appellate Case No. 2018-000170



THE STATE, .....RESPONDENT

v.

ALEXANDER RASHEEN MATTHEWS, .....APPELLANT.

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**PROOF OF SERVICE**

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I, Troyeshi Brailey, Legal Coordinator, hereby certify that I have served the within *Initial Brief of Respondent* and *Designation of Matter*, both dated March 29, 2019, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Taylor D. Gilliam, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 29th day of March, 2019.

Troyeshi Brailey
Legal Coordinator

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

March 29, 2019

Taylor D. Gilliam, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589



Re: The State v. Alexander Rasheen Matthews
Appellate Case No. 2018-000170

Dear Mr. Gilliam:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/tb
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Advocacy Division