STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Williamsburg County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case No. 2018-001365

THE STATE,

Respondent,

vs.

TERRY WILLIAMS,

Petitioner.

RESPONDENT'S PETITION FOR REHEARING

During the course of Petitioner Terry Williams's trial on charges stemming from his act of repeatedly shooting and killing a romantic rival with an AK-47 rifle while shielded behind his vehicle's open door, defense counsel conducted cross-examination of Reva McFadden. (R. p. 361; pp. 370-371; pp. 387-406; pp. 438-439; p. 450; p. 613). Significantly, McFadden was a crucial eyewitness to the shooting. (R. p. 213; pp. 370-371). Beyond that, she was also Williams's wife, still loved him, did not want him to be convicted of any charges, and had only been willing to meet with defense counsel to discuss the case leading up to the trial.[1] (R. p. 25; p. 38; p. 55; p. 58; pp. 82-83; p. 248; p. 321; p. 385).

[1] Depending on whether she was being questioned during trial by the solicitor or defense counsel, Williams's wife alternately claimed she did not discuss Williams's case at all and did, in fact, discuss aspects of the case when repeatedly visiting with defense counsel at his office prior to the trial. (R. pp. 329-332; pp. 382-383; p. 385; pp. 405-408).

In conducting his cross-examination of McFadden, defense counsel elicited testimony from her establishing she had known Williams for fifteen years, was familiar with his mannerisms and facial expressions, and could tell when he was happy, sad, mad, or scared. (R. pp. 389-390). Upon eliciting the details of McFadden's substantial personal knowledge regarding Williams, defense counsel then sought for McFadden to apply that knowledge and opine what Williams's demeanor was at the time he gunned down her then-boyfriend. (R. pp. 394-396). In response to defense counsel's questions in that regard, McFadden explained: (1) Williams appeared to be scared at the time of the shooting; (2) she could not really see his face because it was very dark at that time; and (3) her belief Williams was scared was based on her "instincts." (R. pp. 394-396).

Despite eliciting testimony from McFadden that established she believed Williams was scared at the time of the incident *and* that included a direct explanation as to exactly why she held that particular belief, defense counsel—for reasons never stated, clarified, or explained—probed further still on that exact same point and again asked McFadden to explain why she believed Williams was scared while urging her to do so based on her historical knowledge of him. (R. p. 396). At that point, McFadden responded: "Because he, he really never been in a confrontation in his whole entire life with anyone in an argument. He tries to stay away from people 'cause he's scared, and that's why when I say he always take his gun because he be scared." (R. p. 396). Upon receiving that response, defense counsel did not move to strike it or take any other action suggesting it was not exactly what he was seeking from the witness. (R. p. 396). Instead, he accepted it without challenge or comment, continued on with his questioning, emphasized through it McFadden was the only eyewitness to the shooting, and elicited further

testimony from McFadden establishing she personally believed Williams was in reasonable fear for his life at the time he repeatedly shot the victim.[2] (R. pp. 396-406).

Thus, through his questioning of McFadden, defense counsel was able to elicit testimony from her establishing Williams was so timid and non-confrontational by nature he had never been in a confrontation with *anyone* at any point in his life. (R. p. 396). Likewise, defense counsel was able to elicit testimony establishing Williams had a reputation for and habit of *only* carrying a firearm for defensive purposes since he only did so due to his timid and fearful nature. (R. p. 396). Critically, that testimony powerfully bolstered the self-defense theory that served as Williams's primary defense.[3] (R. p. 398; pp. 401-402; p. 840). It was also patently false in all regards, and McFadden, defense counsel, the solicitor, and the trial judge were all well aware of its false nature at the time it was presented to the jury in light of the testimony McFadden had earlier provided during the pre-trial immunity hearing.[4] (R. p. 396).

At its core, a criminal trial is a search for the truth. See Portuondo v. Agard, 529 U.S. 61, 73 (2000) (stating "the central function of [a] trial . . . is to discover the truth"); United States v. Havens, 446 U.S. 620, 626 (1980) ("There is no gainsaying that arriving at the truth is a

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[2] Significantly, defense counsel had been emphasizing to the jury since his opening statement McFadden was the only eyewitness to the shooting. (R. p. 213).

[3] As support for the self-defense claim, defense counsel went so far as to assert to the jury during his closing argument he *personally* believed Williams was acting in self-defense when Williams shot the victim by stating: "What is my belief on this case? I one hundred percent belie[ve] that it is a self-defense case. I do, and I'm not wavering on that." (R. p. 840).

[4] Specifically, during that pre-trial hearing, McFadden testified in response to defense counsel's questioning Williams was a nice and quiet person who did not really bother anyone. (R. p. 34). However, in response the solicitor's cross-examination, McFadden subsequently admitted Williams pulled an AK-47 rifle on her during an incident that occurred roughly eleven months before the killing, pointed the gun at her during that incident, pulled a different gun on her during an entirely separate incident that occurred roughly six months before the killing, and was known to carry *and* pull guns. (R. p. 43 pp. 46-47).

fundamental goal of our legal system."); State v. Wren, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996) ("A trial is a search for the truth[.]"); see also State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) (explaining "a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict" due to such language's potential to confuse the jury while in no way suggesting a criminal trial is not actually a search for the truth). In order for that core purpose to be realized, the evidence and testimony presented to the jury indisputably *cannot* be false as the presentation of false matters to the finders of fact would jeopardize the very integrity of the justice system. See Havens, 446 U.S. at 627 (explaining false testimony going to the jury without challenge results in "impairment of the integrity of the factfinding goals of the criminal trial").

Since false testimony was unquestionably presented to the jury in Williams's case in response to defense counsel's questioning of McFadden and that false testimony was directly relevant to a critical issue in dispute, it threatened to subvert the trial's fundamental truth-seeking purpose *unless* its false nature was exposed to jury, and, therefore, it had to be sufficiently addressed in order to ensure the trial ended in a just and fair verdict. Recognizing that fact, the trial judge correctly alerted the parties he was not going to permit Williams's wife to mislead the jury through her false testimony, and he pointed out she had presented testimony to the jury inaccurately suggesting both Williams had never been in a confrontation with anyone throughout his life *and* Williams only carried a gun due to his fearful nature despite her own direct personal knowledge neither of those things was true.[5] (R. pp. 416-418; p. 421). Then, to address that

[5] Regarding McFadden's testimony, the trial judge explained he considered it to be significant McFadden falsely stated "[Williams] was scared and . . . had never been in a confrontation with anyone in his life" *and* further stated "that's why he carried a begun [*sic*]." (R. p. 421).

false testimony and ensure the jury was not mislead on matters directly relevant to a critical issue in dispute, the trial judge permitted the solicitor—over defense counsel's objection—to make *limited* inquires designed solely to impeach McFadden on *both* the key untruthful aspects of her testimony.[6] (R. pp. 427-432). By doing so, the trial judge protected the integrity of the trial and ensured the jury was not misled on matters relevant to the issue of self-defense by knowingly false and inaccurate testimony. See Atkins v. Zenk, 667 F.3d 939, 946 (7th Cir. 2012) ("[T]he rule against presenting false evidence to the jury is to protect the integrity of the truth-finding function of courts—not to protect the rights owed to the defendant."); see also Rule 611(a), SCRE ("The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation *effective for the ascertainment of the truth*, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." (emphasis added)).

In finding error on the part of the trial judge, reversing Williams's convictions, and remanding for a new trial, this Court concluded the trial judge erred as a matter of law by allowing the solicitor to elicit the limited testimony that was elicited to expose the false nature of

[6] Notably, through the brief questioning the trial judge permitted for purposes of correcting the false testimony that had been presented to the jury, the solicitor simply elicited testimony from McFadden establishing: (1) Williams had, in fact, been in confrontations during the course of his life as he had engaged in confrontations with her; (2) one of those confrontations occurred six months before the shooting, Williams presented a firearm of unspecified type during it, and she alerted the police; and (3) another confrontation with Williams occurred roughly eleven months before the shooting, Williams presented a different firearm of unspecified type during it, and she alerted the police. (R. pp. 429-432). Meanwhile, reducing the potential for that limited testimony to be construed as propensity evidence or to result in any other unfair prejudice to Williams, the solicitor did *not* elicit any testimony from McFadden in front of the jury establishing Williams was arrested as a result of the earlier incidents, Williams was convicted of any charges in connection to those incidents, Williams actually specifically pointed a firearm at McFadden during those incidents, or Williams used the exact same type of firearm—an AK-47 rifle—in one of the incidents as he subsequently used to kill the victim. (R. p. 43; pp. 46-47; pp. 429-432).

McFadden's testimony to the jury. In reaching that conclusion, this Court initially looked to Rule 404(a)(1) of the South Carolina Rules of Evidence, interpreted it to require "the accused must first offer evidence of [a] character trait into the trial" before responsive testimony can be presented, and further explained "[t]he rule does not allow rebuttal character evidence from the State when a witness other than the accused gratuitously testifies about a character trait of the accused." Then, without identifying what defense counsel was actually seeking through his question that elicited the false testimony if not the testimony actually elicited and without considering the fact the trial judge expressly found McFadden's answer to defense counsel's question was a responsive one, this Court found Rule 404(a)(1) was inapplicable in Williams's case since the trial judge had not abused his discretion when finding defense counsel's questions "were not designed to elicit a response from McFadden about a character trait of Williams."[7] [8] Upon reaching that conclusion, this Court shifted its analysis to Rule 607 of the South Carolina

[7] Significantly, although the trial judge clearly faulted McFadden for the presentation of the false testimony more than defense counsel, the trial judge specifically found McFadden's answer to defense counsel's question was, in fact, "responsive" to the question asked, and he explicitly characterized defense counsel's cross-examination of McFadden as "artful," which demonstrated the trial judge viewed it as a cunning, skillful, and clever questioning as opposed to questioning that resulted in highly favorable—but false—evidence for the defense by nothing more than pure happenstance. (R. p. 417; p. 422; p. 427).

[8] In conducting its analysis of the applicability of Rule 404(a)(1), this Court stated: "During trial, defense counsel elicited testimony from McFadden that it appeared to her that Williams was in fear of death at the hand of Victim. Then the following exchange occurred[.]" At that point, this Court quoted defense counsel's question that led to McFadden's false testimony along with McFadden's exact response. Respectfully though, by the point in time the quoted exchange occurred, defense counsel had *not*, in fact, elicited testimony from McFadden during the trial indicating it appeared to her Williams was in fear *of death* at the hands of the victim. (R. pp. 387-396). To the contrary, defense counsel had simply elicited testimony establishing McFadden witnessed a "disagreement" happening between Williams and the victim, she believed Williams was "afraid" or "scared" at that time based on her "instincts," and she was not able to see Williams's face due to how dark it was at the time. (R. pp. 387-396). It was only later in defense counsel's questioning that McFadden suggested Williams was in such fear that he was actually afraid for his life during the course of the "disagreement." (R. p. 401).

Rules of Evidence, looked solely to McFadden's testimony about Williams having never been in a confrontation with anyone in his lifetime, correctly found that testimony was false, and concluded "[t]he trial court properly allowed the State to ask McFadden if she had been involved in two prior confrontations with Williams." However, because this Court's analysis solely focused on one of the *two* crucial *false* aspects of McFadden's response to defense counsel's question, this Court went on to find the trial judge erred by permitting the solicitor to elicit any further impeachment evidence. Furthermore, this Court found the error was not harmless, holding: "The inadmissible details of the prior incidents amounted to extremely prejudicial propensity evidence, which likely eroded Williams' theory of self-defense and likely influenced the jury to base its verdict on improper considerations." Respectfully, pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the State petitions for rehearing because this Court appears to have overlooked several crucial points in finding reversal was warranted under the specific facts and circumstances of Williams's case.

Initially, this Court may have overlooked the different ways in which evidence can be offered in finding defense counsel had not actually offered character evidence through his questioning of McFadden such that rebuttal testimony was warranted and permissible pursuant to Rule 404(a)(1). Significantly, Rule 404(a)(1) permits the defense to introduce evidence of an accused's character for the purpose of establishing action in conformity therewith while *also* permitting the State to attempt to rebut such evidence with evidence of its own once character evidence has been offered by the defense. See Rule 404(a)(1) (instructing "[e]vidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same" is excepted from the general rule prohibiting the admission of character evidence for the purpose of proving action in conformity therewith on a particular occasion). Most commonly, an offer of

evidence through a non-defendant witness for purposes of the rule would take the exact form this Court appeared to recognize would have permitted rebuttal testimony if it occurred during the trial—questioning designed to directly and clearly elicit a response from the witness about the accused's character. But what if defense counsel elicits character evidence in a less direct manner just as occurred in Williams's case? Regardless of whether the character evidence was elicited directly or indirectly, it has still been presented to the jury, and the jury—unless told to do otherwise—would be able to consider it in the deciding the case. Cf. State v. Fuller, 227 S.C. 138, 147, 87 S.E.2d 287, 291 (1955) (recognizing character evidence can still be offered through cross-examination even when not offered by directly calling character witnesses and explaining: "While [Fuller] did not place in issue his reputation by offering character witnesses, the record does reveal some evidence of good reputation. When the witnesses, Mr. and Mrs. Coleman, former employers of [Fuller], were on the stand, [Fuller]'s attorneys developed on cross-examination that he was trustworthy, courteous and reliable. All of which went to his good reputation."). Logically, under such circumstances, the State's ability to rebut it should not hinge on whether defense counsel's act of eliciting it was accomplished by clear and direct questioning or by cunning and "artful" questioning that was less direct but achieved the same end. Otherwise, the matter of whether the rule's language designed to ensure one-sided character evidence does not go to the jury—unless there is nothing to rebut it—could be unjustly subverted simply by the skill of defense counsel's questioning ability or the willingness of a witness to participate in trial preparations with the defense.

That leaves the question of how the word "offered" should be and was designed to be interpreted in the context of Rule 404(a)(1). Excellent guidance for answering that question can be found in the manner in which the rule prohibiting the introduction of false evidence has been

interpreted. Significantly, that rule prohibits a party from offering or presenting false evidence, and it is applicable regardless of whether a party intentionally solicits false testimony *or* a party knowingly acquiesces in such false testimony once it has been presented. Cf. Giglio v. United States, 405 U.S. 150, 153 (1972) (explaining an attorney allowing false testimony to go uncorrected is incompatible with the rudimentary demands of justice even if the false testimony was not intentionally solicited); Napue v. Illinois, 360 U.S. 264, 269 (1959) (instructing an act of allowing false evidence "to go uncorrected when it appears" will be treated the same as an act of knowingly soliciting false evidence as both acts end in the same result); United States v. Collins, 799 F.3d 554, 587 (6th Cir. 2015) (explaining the prohibition against the presentation of false evidence applies to both the intentional solicitation of false evidence and *knowing acquiescence* in false testimony). For the same reasons knowing acquiescence in false testimony is treated identically to a direct offer of such testimony for purposes of the rule prohibiting the presentation of false evidence, knowing acquiescence in character evidence elicited through questioning should likewise constitute an offer of character evidence in the context of Rule 404(a)(1) regardless of the whether the questioning was direct or less clearly so.

With that in mind and looking to what actually occurred in Williams's case, defense counsel—through his "artful" questioning—elicited "responsive" testimony from McFadden regarding Williams's non-confrontational and fearful character *along with* his reputation for and habit of carrying a gun purely for defensive purposes due to his timid nature. Once that testimony was elicited, defense counsel did *not* move to strike it or take any other action even though it was clearly evidence related to Williams's character *and*, perhaps even more importantly, was clearly false. See State v. Rivera, 402 S.C. 225, 243, 741 S.E.2d 694, 703 (2013) ("We recognize that counsel for an accused has a duty to prevent false testimony."); see

also Nix v. Whiteside, 475 U.S. 157, 173 (1986) ("[T]here is no right whatever—constitutional or otherwise—for a defendant to use false evidence."). Under such circumstances, the solicitor had to be permitted to rebut that evidence pursuant to Rule 404(a)(1) to prevent the jury from improperly deciding Williams's case based on rebuttable and false character evidence that went to a critical issue in dispute. See State v. Kennedy, 143 S.C. 318, __, 141 S.E. 559, 560 (1928) ("*Whatever may have been the moving purpose of [Kennedy]'s counsel in his examination of Smith* with regard to former difficulties between Smith and Kennedy, the scope and method of such examination *resulted in* more than the mere showing of the mental attitude of the parties or of hostile declarations and threats made by the witness against Kennedy. Counsel went into details of previous difficulties between the two men, asking the witness questions which clearly implied that Smith was the wrongdoer in those difficulties. The testimony then brought out by the solicitor on redirect examination was along the same line, tended to combat [Kennedy]'s theory, and was in response to that elicited by [Kennedy] from the same witness. Under these circumstances, it was not improper or error for the circuit judge to allow the solicitor to examine the witness as indicated." (emphasis added)); cf. Harris v. New York, 401 U.S. 222, 226 (1971) ("The shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances. We hold, therefore, that petitioner's credibility was appropriately impeached by use of his earlier conflicting statements."). For those reasons, this Court should reconsider its analysis pursuant to Rule 404(a)(1) in light of the manner in which the false character evidence was offered in Williams's case and affirm the trial judge's decision to permit the admission of the limited rebuttal evidence he allowed to be admitted in order to prevent the false character evidence from

improperly misleading the jury, which is exactly what the portion of Rule 404(a)(1) permitting rebuttal evidence was designed to do.

Additionally, beyond a need for reconsideration of the applicability of Rule 404(a)(1) under the specific circumstances of Williams's case, this Court should also reconsider its decision in regard to the degree of impeachment that was permitted by McFadden's false testimony because it appears to have overlooked the full extent of what the trial judge recognized needed to be rebutted in order for the jury not to be misled. Significantly, this Court correctly recognized "McFadden's testimony that Williams had 'never been in a confrontation in his whole entire life with anyone in an argument' was not true" and proceeded to analyze the extent by which that untruthful testimony could properly be impeached. However, in doing so, this Court failed to consider—as the trial judge had done—the fact McFadden's false testimony did *not* solely consistent of an inaccurate claim regarding Williams's purported non-confrontational nature but, instead, also included a claim Williams had a reputation for and habit of carrying a firearm solely due his timid nature. That particular testimony obviously and logically could have created an impression in the jurors' minds Williams only carried a weapon for defensive purposes, but, as his threatening usage of firearms during his earlier confrontations with his wife demonstrated, that testimony was simply not true and had a high potential to mislead the jury on an important point in light of the fact Williams's defense primarily rested on whether he reasonably used his firearm in self-defense when he repeatedly shot his victim. Based on that, there was a clear need for the solicitor to be able to rebut the false testimony regarding Williams's reputation and habits regarding his firearm usage, and the trial judge properly allowed the solicitor to do just that in the *limited* manner permitted to prevent the jury from being misled, which is critically important in any criminal trial in order for a just and fair result

to be obtained. Cf. State v. Dunlap, 353 S.C. 539, 541, 579 S.E.2d 318, 319 (2003) (holding defense counsel opened the door to the admission of rebuttal evidence related to Dunlap's prior convictions in order to prevent the jury from being misled because defense counsel's "opening statement created the impression that petitioner had no prior connection to the sale of narcotics" and reaching that holding even though the remarks defense counsel made that opened the door were "technically accurate"). Therefore, this Court should reconsider its decision and specifically analyze the significance of McFadden's false testimony regarding Williams's alleged reputation for and habit of only carrying guns due to his timid nature.

Furthermore, since this Court appears to have failed to consider the significance of both false aspects of McFadden's testimony, this Court's analysis pursuant to Rule 403 of the South Carolina Rules of Evidence similarly needs to be reconsidered. Significantly, in conducting it Rule 403 analysis, this Court questioned whether the rebuttal testimony related to Williams's past usage of firearms during his conflicts with his wife had *any* probative value and, based on that conclusion, faulted the trial judge for permitting the admission of any testimony related to that point. However, in doing so, this Court failed to recognize what the trial judge expressly did recognize when he made the decision to allow the admission of such testimony during trial. Specifically, the trial judge recognized the rebuttal testimony related to Williams's reputation and habits for firearm usage was significant because McFadden's testimony could be construed as suggesting—inaccurately—Williams only carried a gun due to his timid nature. In light of the fact McFadden specifically linked Williams's gun usage to his non-confrontational and timid nature, McFadden's testimony certainly could have been interpreted in that manner, and, as a result, the testimony rebutting McFadden's testimony in that regard had a high degree of probative value in Williams's case. See State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751, 754

(Ct. App. 2012) (explaining probative value is the measure of the importance of a piece of evidence's tendency to prove or disprove some fact or issue relevant to the outcome of a case), rev'd on other grounds, 409 S.C. 524, 763 S.E.2d 22 (2014); see also Napue, 360 U.S. at 269 ("The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."). Meanwhile, Williams's act of presenting—but not firing—a firearm during the domestic confrontations with his wife could not logically have been interpreted as evidence establishing he had a propensity for actually shooting others—including his wife—with AK-47 rifles, which helped to minimize its potential to be improperly used by the jury. See State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (" 'Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.' " (citations omitted)); cf. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding evidence Haselden tended to golf, fish, or go to his mother's house presented during a murder trial was not evidence tending to prove Haselden had a tendency towards abusing and murdering his son). Thus, the rebuttal testimony's potential for unfair prejudice did not *substantially* outweigh its clear probative value towards preventing the jury from being misled by McFadden's false testimony, which meant it should not be found to be inadmissible pursuant to the plain language of Rule 403. See Rule 403, SCRE ("Although 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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). Accordingly, this Court should reconsider its analysis pursuant to that rule and

afford the required high degree of deference to the evidentiary decision of the trial judge, who fully considered the significance of *both* aspects of the false testimony defense counsel elicited from McFadden before electing to permit the limited rebuttal he allowed. See State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 594 (Ct. App. 2001) ("A trial judge's balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence. If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." (citations omitted)), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Finally, even if this Court is unwilling to reconsider any other aspect of its decision, this Court should take another look at all the evidence presented during the trial and reconsider its decision to find the admission of the limited rebuttal testimony found to be problematic was not, in fact, harmless when considered in relation to case as a whole. That is true because, looking to the evidence this Court found was improperly admitted, the presentation of a firearm—which was all McFadden stated occurred during the earlier incidents through her trial testimony—could not logically have been interpreted as establishing Williams had a propensity to repeatedly shoot another person with an AK-47 rifle, and, notably, no one ever suggested to the jury such a conclusion should—or even could—be drawn from that limited evidence. In fact, once McFadden's false testimony had been fully impeached through the limited rebuttal testimony, the solicitor never mentioned anything about the rebuttal testimony at any point going forward and certainly never asked the jury to use that testimony to conclude Williams had a propensity to commit the charged crimes. (R. pp. 805-828). Likewise, to the extent the rebuttal testimony

revealed the police had been called in regard to the two prior domestic incidents, no testimony whatsoever was presented to establish Williams was arrested in connection to those incidents, charged with any crimes, or convicted of anything at all based on them, which—as this Court has recognized in the past time and time again—meant that particular testimony was simply too vague to actually result in any unfair prejudice to Williams's case. See State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (finding no prejudice resulted from the admission of testimony establishing law enforcement already had Council's fingerprints on record at the time of his arrest for the charged offense); State v. Singleton, 284 S.C. 388, 392, 326 S.E.2d 153, 156 (1985) (finding an arresting officer's vague references to prior crimes in the jury's presence did not warrant the granting of a mistrial), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Robinson, 238 S.C. 140, 150-151, 119 S.E.2d 671, 676 (1961) (finding a witness's testimony Robinson told him he was on the way to the "probition office" did not create an inference Robinson had been convicted of another crime), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); see also State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) ("[A] vague reference to a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes."). Thus, the purported improper testimony—even if erroneously admitted—had a low potential to contribute to the verdict in Williams's case in any improper or unfair manner. Meanwhile, the other evidence presented did *not* actually support a conclusion Williams was acting in self-defense, which eliminated the rebuttal testimony's ability to improperly erode Williams's attempt to assert that particular defense. Specifically, even viewing the evidence and testimony presented in a light most favorable to Williams, McFadden's testimony established Williams

fatally shot the victim, who was smaller than Williams, while the victim was doing nothing more than angrily "mouthing off" from no closer than ten feet away from Williams with *empty* hands raised in the air. (R. p. 358; pp. 360-361; p. 399; p. 410; p. 412; p. 432; pp. 434-435). Similarly, her testimony established she had even gotten between Williams and the victim when the shots were fired. (R. pp. 369-371). Based on that, it is entirely unclear what was presented to the jury that could have supported a conclusion Williams was acting in reasonable fear for his life when he repeatedly shot an unarmed person from his shielded position behind the open door to his vehicle, and, thus, Williams could not have properly been found to have been acting in self-defense from the testimony presented regardless of whether the limited rebuttal testimony was given any consideration at all.[9] See State v. Harvey, 110 S.C. 274, 277, 96 S.E. 399, 400 (1918) ("Tillman Harvey might have been without fault in provoking the difficulty, and still there might have been no necessity to kill. . . . While a man may take life in defense of himself or another, yet the slayer, or the person in whose behalf the slayer strikes, must not only be without fault in provoking the difficulty, but *there must be a necessity to kill*." (emphasis added)); see also State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) (recognizing it is "an axiomatic principle of law" self-defense has not been established if even a single element is not present). Thus, when the limited rebuttal testimony is properly considered in relation to the other evidence presented during trial, that testimony simply could not have contributed to the verdict in a manner unfairly or improperly prejudicial to Williams, which meant its admission was harmless beyond a reasonable doubt even if erroneous. See State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d

[9] Notably, while Williams elected not testify before the jury to attempt to establish he was acting out of self-preservation when he shot his victim, an individual named Levonne Croker offered trial testimony about what Williams was thinking on the night of the incident and confirmed Williams—after bringing up the victim unprompted—directly stated he was going to kill the victim that night if the victim "messed" with him shortly before doing just that. (R. p. 283).

480, 484 (2008) (recognizing an error is harmless beyond a reasonable doubt when it does not contribute to the verdict); see also United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]"). Accordingly, this Court should reconsider its decision reaching a contrary conclusion.

Conclusion

In Williams's case, the trial judge permitted the solicitor to present limited rebuttal testimony to respond to and correct *false* testimony elicited by defense counsel from Williams's own wife. The trial judge did so to prevent the jury from being misled by that false testimony, and, had he not done so, the jury would have been left to decide Williams's case based on untruthful evidence that went to a critical issue in dispute. Therefore, what the trial judge did had to have been exactly what any trial judge should do when confronted with important false evidence being presented to a jury. Otherwise, the core purpose of the criminal trial process would be at risk. For all the previously-stated reasons coupled with the reasons already advanced by the State through briefing and oral argument, the State respectfully urges this Court to rehear this matter pursuant to Rule 221(a), reconsider its decision, vacate its previous opinion, and affirm Williams's convictions along with the trial judge's prudent evidentiary decisions, which only served to ensure Williams's case ended in a just result for all involved.

Respectfully submitted,

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