THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

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

The State, ... Respondent,

v.

Montrell Deshawn Troutman, ... Petitioner.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Leric Merriweather and Montrell Troutman got into an argument on the evening of June 6, 2015 in the neighborhood where they both lived. Troutman had a gun. Merriweather threatened to get his gun, and then quickly got in and out of his car. Troutman shot Merriweather as Merriweather approached him.

Keith Mathis was Merriweather's "really good" friend and was present for (and in fact part of) this altercation. In the few minutes between the shooting and when police arrived, Mathis left Merriweather lying on the ground with a gunshot wound to the chest and fled the scene. The police never found a gun, and at trial, the police officer in charge of investigating the scene had no idea who Mathis was.

Four years earlier, Mathis pled guilty to lying to police about another shooting incident that involved Merriweather. Mathis admitted he had been convicted for this, but then he denied that he lied to the police. The trial court refused to let Troutman cross-examine Mathis about the underlying facts of his conviction for lying to the police and whether he lied to the police to protect Merriweather.

The question presented is:

Whether the trial court violated Troutman's Confrontation Clause right when it refused to allow him to cross-examine Mathis about the circumstances of his conviction for lying to police about Leric Merriweather, the decedent in this case.[1]

[1] Pursuant to Rule 242(d)(1), SCACR, counsel certifies that Troutman petitioned for rehearing, (App. 3), and the Court of Appeals denied that petition, (App. 24).

INTRODUCTION

Time and again, courts have held that cross-examination is an essential protection for criminal defendants. *See, e.g.*, *Watkins v. Sowders*, 449 U.S. 341, 349 (1981); *State v. Wallace*, 44 S.C. 357, 22 S.E. 411, 412 (1895). In a two-page, unpublished opinion, this Court did not take issue with that principle. Instead, it held that Montrell Troutman's Sixth Amendment right to confront a key witness in the State's case—Keith Mathis—was not violated.

That holding is wrong. For one, it overlooks the well-established rule that a jury is free, when a witness has lied about one thing, to reject other parts of that witness's testimony. Here, Mathis lied about having lied to the police, claiming he did not give false information to the police in 2011, despite having pled guilty to doing so. The jury therefore could have concluded that Mathis was lying about what he lied about in 2011: protecting Leric Merriweather, his "really good" friend, after a shooting incident.

For another, the Court's holding misapprehends the importance of a critical fact. Mathis fled his dying friend's side in the minutes after the shooting, before the police arrived. The State never even tried to explain why. But Troutman did. Troutman's theory was that Mathis was trying to hide the gun that Merriweather said he was going to get in the moments right before the shooting. By not getting to cross-examine Mathis about lying to protect Merriweather in 2011, Troutman was denied the opportunity to develop the facts to prove his explanation for Mathis's flight and to support his claim of self-defense.

In light of these errors and the forty-year sentence Troutman is serving, this Court should grant the petition. Vindicating Troutman's Sixth Amendment right to confront witnesses will protect every person charged with a crime in this State.

FACTUAL AND PROCEDURAL BACKGROUND

Troutman kills Merriweather in a confrontation in June 2015.

After moving from Florida to Edgefield, Montrell Troutman met Leric Merriweather, who lived nearby. (App. 443, lines 6–15; 125, lines 17–19.) The two men generally got along with each other, but at times, Merriweather would pick on Troutman, call him names, and threaten him, particularly when other people were around, and they had "problems" in late May 2015. (App. 443, line 20–444, line 10; 465, lines 22–23.)

The conflict between Troutman and Merriweather came to a head on June 6, 2015. Merriweather had friends over to grill that day, and during the afternoon, Troutman stopped by Merriweather's house with another man, while riding in that man's car. (App. 445, lines 10–15; 463, lines 13–18; 153, lines 1–11; 154, lines 17–20; 155, lines 5–8; 181, lines 9–13; 445, lines 10–15; 463, lines 13–18.) While Troutman was there, a confrontation arose between Merriweather and a man named Dwayne Jones, prompting Jones to pull a gun. (App. 155, lines 12–22.) Witnesses disagreed about how involved Troutman was in this confrontation, but they agreed that at least Merriweather shouted at Troutman. (*Compare* App. 191, lines 7–23; 198, line 22–199, line 10, *with* App. 445, line 23–446, line 11; 469, lines 7–17.)

Later that day, Troutman and Merriweather met on a street near where both men lived. Testimony conflicted on how they met this second time on June 6. According to Keith Mathis and two others, the car in which Mathis, Merriweather, and a third man were riding had stopped, and those three were talking to a fourth man when Troutman walked by, pointed at Merriweather, and showed he had a gun. (App. 218, lines 19–24; 258, line 9–259, line 19; 220, lines 2–6; 221, lines 13–16.) According to Troutman, he was walking down the road when Merriweather's car passed him, then stopped and backed up. (App. 449, lines 10–21.) Merriweather, Mathis, and the third man got out of the car. (App. 449, line 22–450, 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 was not allowed to pass. (App. 450, line 2–451, line 2.)

Whatever happened to start the confrontation, Troutman and Merriweather were soon "going back and forth." (App. 222, lines 1–7.) As Mathis himself put it, Merriweather was exclaiming "fighting words" to Troutman. (App. 262, line 13.) And he threatened to burn Troutman's house down, with his stepchildren inside. (App. 450, line 22–451, line 24; 453, line 19–454, line 1.)

Merriweather continued to challenge Troutman, demanding to know why Troutman showed 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. (App. 236, lines 8–13; 253, lines 11–15; 500, line 10.) Merriweather was still "overtalking" after getting back out of his car. (App. 234, line 11; 237, 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. (App. 222, line 21–223, line 15.)

Merriweather then got within "about two feet" of Troutman and was "talking kind of loud." (App. 223, lines 23–25.) Merriweather had his fists "balled up" as if "he wanted to fight" Troutman. (App. 237, lines 21–23; 263, 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. (App. 237, line 24–238, line 1; 485, line 14–486, line 13.) Troutman said Mathis was "ready to launch the bottle" at him. (App. 454, lines 4–7.)

Unsure of whether Merriweather had gotten a gun out of his car like he said he was going to do, (App. 453, lines 16–18), Troutman pulled the gun from his pocket and shot Merriweather in the chest, (App. 223, line 17–224, line 4; 254, lines 2–3; 487, lines 12–16). Merriweather took off running. (App. 264, lines 17–23; 489, lines 9–18.) Troutman fired multiple more times, as Mathis and the third man both ran away; the third man was grazed in the leg by one bullet. (App. 226, lines 10–12; 290, lines 12–23.)

Troutman testified that he was "scared and nervous" and "in fear of [his] life" when he fired. (App. 454, lines 8–9; 457, line 22–458, line 1). He initially showed Merriweather, Mathis, and the third man the gun only "to scare them off" so he could "just go home." (App. 452, lines 12–13.)

Mathis flees the scene before the police or EMS arrive.

Mathis and Merriweather were old friends and "had each other [*sic*] backs." (App. 270, lines 11–23.) Yet between when someone called 911 at 8:43 P.M. (right after the shooting) and the few minutes before emergency personnel responded, Mathis left the scene and his friend's side. (App. 329, lines 19–22.)

Police found "a bunch of people in the yard" when they arrived. (App. 380, line 22–381, 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." (App. 382, 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 a driveway. (App. 266, line 24.) Mathis never said where he went before the police arrived or why he fled. (App. 275, lines 12–18).

During their search of the scene, the police never found any gun. (App. 378, lines 14–16.)

Troutman is charged and convicted.

Troutman ultimately was charged in four indictments. One was for murder, two were for attempted murder, and the fourth was for possession of a weapon during the commission of a violent crime in violation of S.C. Code § 16-23-490. (App. 92, 95, 98, 101.)

Troutman was tried by a jury in Edgefield County, from October 16–20, 2017. Troutman claimed he acted in self-defense. Before the trial started, the State moved *in*

limine to exclude certain evidence. As relevant here, the State asked the trial court to exclude evidence about Mathis, particularly a 2011 shooting incident. (App. 34, line 14–p. 35, line 21.) Mathis was convicted of giving false information to police about that incident, and that false information, according to Troutman, "was covering up for Leric Merriweather." (App. 121, line 21); *see also* Case No. 71827ED (Edgefield Cty. Magistrate). Troutman opposed this attempt to limit the evidence that could be introduced about Mathis. (App. 119, line 23–122, 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," (App. 270, lines 14–21), but he denied that he would lie for Merriweather, (App. 271, lines 3–4). Mathis's testimony continued after a bench conference, and Mathis contended that, despite having admitted to being convicted of giving false information to the police on direct examination, (App. 269, lines 9–11), what he told the police "wasn't false," (App. 274, line 15). After his testimony was finished, the circuit 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. (App. 278, lines 12–24.)

The jury returned guilty verdicts on lesser-included offenses on the three most significant charges. 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 assault and battery of a high and aggravated nature and

assault and battery in the first degree. The jury found Troutman guilty of possessing a weapon during the commission of a violent crime. (App. 567, line 21–573, line 24.)

The trial court sentenced Troutman to thirty years on the voluntary manslaughter conviction. (App. 93.) It gave him twenty years on the ABHAN conviction, to run concurrently with the thirty-year sentence on the voluntary manslaughter conviction. (App. 99.) 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. (App. 96.) And finally, the court sentenced Troutman to time served (868 days) on the fourth count. (App. 102.)

The Court of Appeals affirms the circuit court.

On appeal, Troutman raised a Sixth Amendment challenge to the limitation on his cross-examination of Mathis. The court rejected that argument. It held that Troutman's proffer of Mathis did not show that that Mathis's 2011 conviction "involved a lie, a cover-up, or the removal of evidence to protect Merriweather" and that "Mathis explicitly denied he provided false information to protect Merriweather." (App. 2.)

Troutman petition for rehearing. (App. 3–21.) The Court of Appeals denied the petition. (App. 24.)

Troutman now seeks a writ of certiorari from this Court.

REASONS FOR GRANTING THE PETITION

The facts here are unusual. In most cases, a prior conviction used to impeach a witness has no connection to the case being tried. Not so here. In this case, Mathis's prior conviction involved the decedent in this case, and both the prior conviction and this case involve a gun, Mathis, and Merriweather. Given the broad scope of cross-examination to expose bias and the fundamental right to challenge the State's witnesses protected by the Sixth Amendment, Troutman had a right to confront Mathis about the circumstances of his prior conviction for lying to the police about an incident with a gun in which Merriweather was involved. The trial court refused to let do that. That was an abuse of discretion that should be corrected by this Court.

I. 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) ("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) ("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"). 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).

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 v. Texas*, 380 U.S. 400, 406 (1965) (incorporating the Confrontation Clause). This right "dates back to Roman times." *Crawford v. Washington*, 541 U.S. 36, 43 (2004). It serves as a check on the power of the government, forcing the government to prove its case in open court while having its proof challenged. *Cf. Regan v. New York*, 349 U.S. 58, 69 (1955) (Black, J., dissenting) (calling the right to confront witnesses one of the "great landmarks in the never-ceasing struggle of men to be free from despotic governmental powers").

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, 101, 226 S.E.2d 249, 250 (1976) (bias includes "anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness"); *see also* Rule 608(c), SCRE. A witness's prior convictions may be used "to expose [the witness's] bias and prejudice in the present case." *State v. Jones*, 343 S.C. 562, 571, 541 S.E.2d 813, 818 (2001)

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). 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).

II. This Court's reliance on Mathis's denial that he lied for Merriweather in 2011 is misplaced.

The cornerstone of the Court of Appeals' decision to affirm the circuit court is Keith Mathis's statement that he did not lie, cover up, or remove any evidence to help Leric Merriweather in 2011. That analysis, however, puts more weight on Mathis's denial than it can bear, for at least two reasons.

A. The jury was free to reject Mathis's denial about the subject of his 2011 conviction because Mathis already lied about having lied to police.

From a legal perspective, the Court of Appeals overlooked the legal principle of *falsus in uno, falsus in omnimbus*. Under that doctrine, a factfinder who concludes that

a witness lied about one thing may reasonably conclude that the factfinder lied about other things. *See, e.g.*, *Glenn v. W. Union Tel. Co.*, 84 S.C. 155, 65 S.E. 1024, 1027 (1909) ("If the jury concluded that they had not been received, they had the right to conclude that the testimony of the agents that they had been mailed was false, and to apply to their testimony the maxim, 'Falsus in uno, falsus in omnibus,' and to disregard their other testimony as to efforts to deliver."); *see also Black's Law Dictionary* 679 (9th ed. 2009) (defining *falsus in uno, falsus in omnibus* to mean that "if a jury believes that a witness's testimony on a material issue is intentionally deceitful, the jury may disregard all of that witness's testimony"). The logic of this rule is that if someone is willing to lie once, his likely willing to lie again. *Cf.* Thomas Jefferson, Letter to Peter Carr (Aug. 19, 1785) ("He who permits himself to tell a lie once, finds it easier to do it a second and third time, till at length it becomes habitual." (quoted in *Bartlett's Familiar Quotations* 357 (Justin Kaplan ed. 17th ed. 2002))).

It cannot be disputed that Mathis lied about his 2011 conviction in at least one respect. He was convicted for giving false information to law enforcement. (App. 269, lines 9–11.) The statute criminalizing that action makes it "is unlawful for a person to knowingly make a false complaint to a law enforcement officer concerning the alleged commission of a crime by another." S.C. Code § 16-17-725(A). To be guilty of that crime, a person must knowingly give false information. In other words, he must lie. Yet, despite admitting on direct examination he pled guilty to this crime, Mathis insisted on cross-examination that he told the police "wasn't false." (App. 274, line 15.) That denial was a false statement. Because it was false, the jury was entitled under the

falsus in uno, falsus in omnibus doctrine to conclude that Mathis's other testimony was likewise false.

Particularly so when it came to his other testimony about that 2011 conviction. If Mathis was willing to lie about having lied to the police, the jury could have reasonably concluded that Mathis was also willing to lie about what he lied about. Troutman should have been able to cross-examine Mathis about whether he lied to protect his Merriweather. Mathis, of course, could have denied doing so, (*see* App. 278, lines 12–24), but it would have then be up to the jury whether to believe that denial.

The jury, however, never got the chance to make that credibility determination. The circuit court refused to allow Troutman to cross-examination Mathis on this subject, despite the *falsus in uno, falsus in omnibus* doctrine. That was an abuse of discretion. *See Matter of Campbell*, 427 S.C. 183, 190, 830 S.E.2d 14, 18 (2019) (scope of cross-examination is within a trial court's discretion).

B. Troutman's theory of why Mathis fled his dying friend's side is a reasonable one.

From a factual perspective, the Court of Appeals ignored a puzzling but critical fact about what happened in the moments after the shooting: Mathis left Merriweather's side in the minutes between the 911 call and the police arriving. Merriweather was his "really good friend[]." (App. 270, lines 14–15.) Merriweather was lying on a driveway with a gunshot wound to his chest, clearly in pain and distress. Yet Mathis left. He must have had a reason.

The State, however, never offered one. In fact, the State's case glossed over Mathis's flight.

Troutman had a theory: Mathis fled to protect Merriweather, just like he lied to protect Merriweather four years early in 2011. Specifically, Mathis wanted to protect Merriweather from being discovered with a gun in his possession. During the altercation, Merriweather said that he was going to get his own gun and then quickly got in and out of his car. (App. 236, lines 8–13; 453, lines 11–15; 500, line 10.) Admittedly, no one testified they saw Merriweather holding a gun, but that does not mean Merriweather did not stick a gun in his pocket or in the back of his waistband or have one in his car he did not pull out. Given the close relationship between Mathis and Merriweather, the jury could have reasonably concluded Mathis would have known that Merriweather had a gun. And it could have also concluded that Mathis wanted to keep his friend's gun from being discovered by police. That Mathis would want to do so makes sense, if Merriweather did not have a permit to carry the gun. *See* S.C. Code § 16-23-20.

Cross-examining Mathis more fully about the 2011 conviction would have allowed Troutman to develop facts to support this theory. Indeed, this is exactly what cross-examination and the Confrontation Clause ensure a criminal defendant has the right to do. As the Fourth Circuit once put it, "prohibiting 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." *United States v. Turner*, 198 F.3d 425, 429 (4th Cir. 1999). That is what happened here, when

Troutman was denied the "[c]onsiderable latitude" criminal defendants are given in cross-examination. *Clark*, 315 S.C. at 481, 445 S.E.2d at 634.

The record here does not show that cross-examination of Mathis on his 2011 conviction would have been "clearly . . . .inappropriate." *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 317. Troutman's theory was not the type of "inherently speculative" argument or "fishing expedition[]" without any basis in fact that courts have treated as a reason to deny a criminal defendant the right to cross-examine a witness. *United States v. Martinez-Vives*, 475 F.3d 48, 53–54 (1st Cir. 2007). To the contrary, Troutman's theory was the only one offered by either side for why Mathis left his dying friend. Troutman had a constitutional right to question Mathis about this theory, and the circuit court wrongly denied him that right.

In fact, cross-examination is the only realistic way that the truth of Mathis's flight was likely to be uncovered. Despite the hope that no one would ever lie under oath, experience belies that aspiration. Indeed, the first murder in human history involved a lie after the fact. *See* Genesis 3:9 ("Then [after Cain had killed Abel] the LORD said to Cain, 'Where is Abel your brother?' He said, 'I do not know; am I my brother's keeper?'"). To lie in response to friendly questioning is easy, but to maintain false claims in the face of intense cross-examination is much more difficult. That is why "cross-examination has always been considered a most effective way to ascertain truth." *Watkins*, 449 U.S. at 349. Forcing Mathis to answer tough questions in front of the jury about his 2011 conviction would have ensured Troutman the chance to present the full defense that the Confrontation Clause guarantees.

III. This constitutional violation was not harmless.

In a footnote, the Court of Appeals held—without any analysis—that even if Troutman's Confrontation Clause right was violated, the violation was harmless. That conclusion is incorrect because Mathis's testimony was critical to the State's case.

A Confrontation Clause violation 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). Proving an error was harmless is a "heavy burden." *Anderson v. Warden, Md. Penitentiary*, 696 F.2d 296, 300 (4th Cir. 1982) (en banc).

Here, there was no physical evidence of who instigated the confrontation on June 6, 2015. Thus, credibility determination were all the jury had on which to base its decision on self-defense, so the "opportunity to elicit testimony from the State's witnesses regarding any potential bias was critical to [the] defense." *State v. Perez*, 423 S.C. 491, 499, 816 S.E.2d 550, 555 (2018).

This opportunity was particularly critical when it came to Mathis. *See id.* at 498, 816 S.E.2d at 554 (noting the "importance of the witness' testimony to the prosecution's case" is a factor in the harmless-error analysis). Even the State admits on appeal that Mathis's testimony "was significant." (App. 66.) Understandably so. He was an eyewitness to the confrontation between Troutman and Merriweather in the moments before the shooting, and Troutman said that Mathis even raised a bottle

to throw at him, making Mathis a participant by the end. (App. 237, line 24–238, line 1; 454, lines 4–9; 485, line 14–486, line 13.)

Alaska v. Davis, 415 U.S. 308 (1974), is instructive here. In that case, a "crucial witness for the prosecution" was a young man who had seen the defendant with the stolen safe on the day of the crime. *Id.* at 309–10. This witness had a juvenile record that could have been used to impeach him, but the trial court limited cross-examination in such a way that the defendant's "counsel was unable to make a record from which to argue why [the witness] might have been biased." *Id.* at 318. The Supreme Court reversed the defendant's convictions based on this Confrontation Clause violation. *Id.* at 320–21.

Just like the defendant in *Davis*, Troutman's right to confront a crucial witness was limited in a way that prevented him from making a record that showed that witness's bias. The limited cross-examination here may have disclosed Mathis's friendship with Merriweather and conviction for lying to police, but Troutman did not have the opportunity flesh out how those two things were connected in a way that was relevant to the facts in this case

None of the other evidence overwhelmingly proves Troutman's guilt. To be sure, the State was correct that no one testified that Merriweather was armed at the time of the shooting. But that fact does not defeat Troutman's self-defense argument. Troutman claimed that Merriweather initiated the altercation and he (Troutman) feared for his life. (App. 454, lines 8–9; 457, line 22–458, line 1.) Part of what gave rise to this fear was Merriweather's saying that he was going to get his gun and then getting back in

his car for a moment before continuing his argument with Troutman and moving toward Troutman.

This fear was an important issue for Troutman's defense. *See State v. Dickey*, 394 S.C. 491, 501, 716 S.E.2d 97, 102 (2011) ("Word accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense."). Even if a gun was not visible at the moment of the shooting, the jury could have reasonably concluded that Merriweather's actions made Troutman believe that he was in imminent danger, in light of the incident at Merriweather's house earlier that day, Merriweather's claim that he was going to get his gun, and Merriweather's aggressive approach toward Troutman. *Cf. State v. Wigington*, 375 S.C. 25, 35, 649 S.E.2d 185, 190 (Ct. App. 2007) (holding that the elements of self-defense were not met when a prior altercation between the defendant and the victim was six years old and the victim did not approach the defendant during the incident).

Moreover, the State's focus on the fact that Merriweather was not holding a gun at the moment of the shooting does not mean that Merriweather did not have a gun in his car. Indeed, all of the testimony to which the State pointed focused on whether Merriweather had a gun at the moment of the shooting when Merriweather was charging at Troutman, not whether Merriweather had a gun in his car that he may have gotten. (*See* App. 61.) Likewise, the fact that police never found a second gun does not mean that Merriweather did not have a gun in his car (or even in his pocket). If Troutman's theory of Mathis's flight from the scene is correct, then that means that Mathis was successful in covering up (again) for his friend.

To provide the jury with reasonable doubt, Troutman had to have the opportunity expose Mathis's bias in sufficient detail to reveal for the jury how close Mathis and Merriweather were and how Mathis had, in the past, tried to protect his friend after a shooting incident. *See Davis*, 415 U.S. at 317 (recognizing that cross-examination must be permitted so that a defendant can expose the "biases prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case"). Troutman had the right to present this bias to the jury, which had the exclusive right to evaluate how credible Mathis was based on all of the facts. *See Perez*, 423 S.C. at 499, 816 S.E.2d at 554–55.

IV. This case warrants a writ of certiorari.

The Court cannot take up every case the Court of Appeals considers. Nor should it. But some cases deserve this Court's attention. This is such a case.

Admittedly, the law on the Confrontation Clause is not in dispute. Rather, its application is. The Confrontation Clause's protection, however, is crucial. As the U.S. Supreme Court once put it, that right "is critical for ensuring the integrity of the fact-finding process." *Kentucky v. Stincer*, 482 U.S. 730, 736 (1987). Its misapplication by the two lower courts raises a substantial constitutional issue. *See* Rules 242(b)(3), (4), SCACR.

Also supporting granting the petition is the length of Troutman's sentence. He received the maximum of thirty years for voluntary manslaughter conviction. *See* S.C. Code §§ 16-1-20, 16-1-90, 16-3-50; (App. 93). He also received the maximum of ten years on for the assault and battery in the first degree conviction. *See* S.C. Code §§

16-1-20, 16-1-90, 16-3-600(C); (App. 96). And that ten-year sentence runs consecutively to the thirty-year sentence. (App. 96.) Thus, Troutman has been sentenced to forty years in prison. He still has more than two decades before he is even eligible for parole. The impact of the constitutional error is therefore significant and merits this Court's review.

CONCLUSION

The petition for certiorari should be granted.

Respectfully Submitted,

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