STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable William Jeffrey Young, Circuit Court Judge
Appellate Case Tracking No. 2016-001785

The State, Respondent,

vs.

Rhajon Akeem Reshae Sanders, Appellant.

FINAL BRIEF OF RESPONDENT

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II. The trial court did not err in limiting Appellant's ability to go into testimony regarding the type of neighborhood in which he lived because it was not relevant to why the victim was shot and would likely serve to either confuse or prejudice the jury. Additionally, the trial court did not err in limiting Appellant's closing argument and in preventing discussion of the characteristics of the neighborhood in front of the jury. Further, any error is entirely harmless in light of the information provided to the jury. (Appellant's Issues II and III).

III. The trial court did not err in allowing the solicitor to question whether items seen in a picture were marijuana. Appellant denied it was marijuana and no evidence of any prior bad act was admitted. Accordingly, Appellant could not have been prejudiced where the only evidence in the record was his denial and the prosecution's acceptance of that denial. (Appellant's Issue VI).

IV. The trial court did not err in refusing to admit the statement as a prior inconsistent statement when the victim admitted he was on the phone, admitted walking around and near the trash can while on the phone, and admitted everything in the statement was the truth. Further, it is questionable whether the issue is properly preserved for review on appeal because Appellant never explained the inconsistencies he planned to expose through the statement. (Appellant's Issue VII).

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On the day after Christmas in 2014, Nicholas Washington was visiting his aunt and family on Kent Avenue in North Charleston. (T.67-68; R.28-29). Washington, dressed in black jeans and his Wal-Mart uniform, stepped out of the house about seven in the evening to smoke a cigarette and talk on the phone. (T.70; 87-88; R.31; 48-49). Washington got off the phone, flicked out his cigarette and got up from the step he was sitting on. (T.71; R.32). While he was outside, he saw three people sitting on the porch at the house across the street. (T.71; R.32). Washington had no interactions that night with the people outside across the street. (T.79; R.40). He made another phone call, then got out his headphones and began listening to music on his phone. (T.72; R.33).

Washington put his phone in his pocket and reached into another pocket to grab a lighter to light another cigarette. He saw his little brother come out of his aunt's house and run through a gate. He heard the gate close and then saw something that looked like a firecracker. He heard multiple shots. (T.78; R.39). Washington fell and could not get up because he had been shot. (T.73-74; R.34-35). After he was shot, Washington saw one person drive off in an automobile. (T.74-75; R.35-36). Then, someone else came up to Washington and apologized for shooting him. (T.75-76; R.36-37).

Washington was taken to the hospital where he had surgery on his leg. He sustained a gunshot wound to his left tibia. (T.152; R.113). The result was a "highly broken up fracture of his tibial shaft." (T.152; R.113). A permanent aluminum rod was placed in his lower leg and, as a result, he walks with a limp. (T.77; 153-154; R.38; 114-115). According to the doctor's note, Washington "was standing on the sidewalk smoking a cigarette when someone walked by and simply shot him in the leg." (T.160; R.121).

ARGUMENT

I. **The trial court, based on the facts and circumstances of this case, properly charged the jury with regard to self-defense. First, Appellant was not entitled to a self-defense charge as a matter of law and any error in giving the requested charges would be entirely harmless. The court did not err in declining to charge Appellant had the right to "act on appearances" when it was not applicable under his version of events. Even if the court should have charged Appellant had "no duty to retreat" any error was entirely harmless as the failure to charge could not have impacted the jury's verdict. Finally, the court did not err in charging the jury "if [self-defense] is established then you must find the defendant not guilty" because this was the exact language requested by Appellant and does not impermissibly shift the burden, especially in light of the entire jury charge given. (Appellant's Issues I, IV, and V).**

Appellant contends the trial court erred in its charges to the jury related to self-defense. He contends the trial court failed to give several requested charges, which he asserts are applicable in this case. Finally, he argues the court improperly gave a charge to the jury which shifted the burden to Appellant to prove self-defense. The charges requested by Appellant were not applicable in this case under any version of events. Further, the charge given that Washington now contends shifted the burden and was in error was specifically requested by Appellant and does not impermissibly shift the burden, especially when reading the charge as a whole. The charge as a whole given by the trial court was a correct and thorough statement of the law.

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)). "In general, the trial court is required to charge only the current and correct law of South Carolina." Sheppard v. State, 357

S.C. 646, 665, 594 S.E.2d 462, 472 (2004). "'A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused.'" State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (quoting State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989)).

"Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21. "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (citations omitted). "The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "'In reviewing jury charges for error, [the Court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial.'" Brandt, 393 S.C. at 549, 713 S.E.2d at 603 (quoting State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2013)). "Jury instructions should be designed to enlighten the jury and aid it in arriving at a correct verdict." State v. Stukes, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016) (citing State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). "In charging self-defense, we instruct the trial court to consider the facts and circumstances of the case at bar in order to fashion an appropriate charge." State v. Fuller, 297 S.C. 440, 443, 377 S.E.2d 328, 330 (1989).

Propriety of Self-defense Charge

Initially, the State maintains Appellant was not entitled to the self-defense charge he received so there can be no error in failing to tailor the charge to the facts and circumstances of this case when those facts and circumstances demonstrated the charge was not warranted. Self-defense is comprised of four elements:

(1) The defendant was without fault in bringing on the difficulty;

> (2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
>
> (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and
>
> (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

Appellant's own version of the events does not support a charge for self-defense. He indicated he exited where he was living and saw a "suspicious tall guy in all black in a vacant yard" across the street. (T.579; R.530). His response to seeing this individual was to waive at him. (T.579; R.530). He then asked the "suspicious" individual: "Yo, are you all right?" Appellant took a few steps down toward the man and again waived. Appellant specifically testified there was no prior interaction between him and Washington. He stated he was not aggressive, Washington did not respond in any way, and that he had never had any problems before with Washington or anyone at the addresses across the street. (T.579; 592-593; R.530; 543-544). He further admitted neither Washington nor anyone else across the street had made threats to Appellant at any time prior to his seeing Washington. (T.593; R.544).

After Appellant waived a second time, Washington dropped his cigarette. (T.579-580; R.530-531). Appellant testified the person "pull[ed] up his pants from the back and that's when he reached in his waistband." (T.580; R.531). At that point, Appellant fired the shot hitting Washington in his leg. Significantly, Appellant never testified he saw a gun, saw a shiny object,

or saw anything in Washington's hands. Instead he saw him pull up his pants and reach to his waistband. (T.580; R.531).

Under Appellant's own version of events, he saw Washington across the street and waived at him. In other words, Appellant invited the victim to come over, a natural reaction to seeing someone waive. Further, without any type of provocation at all, Appellant fired at Washington. His testimony indicated Washington pulled up his pants in the back and then reached for his waistband. It is much more plausible he was going to finish pulling up his pants instead of Appellant's unreasonable belief he was reaching for a gun to use against Appellant, a person Washington did not have any prior difficulties with and did not know.

Based on his own testimony, Appellant's actions brought on the difficulty to the extent any difficulty existed. He waived at a stranger across the street, thereby inviting that stranger to come over. It was the stranger's movement toward Appellant's house that was the "difficulty" which resulted in Appellant shooting Washington in the leg.

As to the second prong, Appellant indicated he was scared but his own testimony belies his belief he was in imminent danger from Washington. After waiving to get Washington's attention, he sees Washington come in his direction. He allegedly is so scared now he has to get his gun out and when he sees Washington reach to his waistband, he alleges he was in imminent danger even though he did not see a gun or other object that could cause him harm. After shooting Washington, Appellant is so scared for his life that he takes his gun inside, puts it on the dresser, and then goes back outside to where Washington is laying—the person he was so scared was armed with a gun he was going to use to kill Appellant—and apologizes for shooting him. (T.581-582; R.532-533).

Additionally, Appellant clearly failed to establish the third prong of self-defense. Under the circumstances presented by Appellant "a reasonable prudent man of ordinary firmness and courage" would not have entertained the same belief regarding imminent danger. No reasonable person would believe that when a stranger reached toward their waistband the stranger was going to grab a gun and shoot them completely unprovoked, especially after the person waived thereby inviting the stranger over and seeing the stranger pull up their pants from the back. Appellant is essentially asking this Court to conclude anytime a stranger is coming towards you with his or her hands in their pockets or near their waistband that it is reasonable to shoot at them. No reasonable prudent man of ordinary firmness and courage would believe shooting under these facts and circumstances was justified. As a result, this Court should conclude, as a matter of law, Appellant was not entitled to a self-defense charge and, therefore, any charges given or not given by the trial court could not have been in error.

Act on Appearances Charge

Appellant contends the trial court erred in failing to give an "act on appearances" charge. First, this Court should find the "act on appearances" charge is covered by the trial court's instruction that the jury can find Appellant "actually believed he was in imminent danger of death or serious bodily injury." This is the essence of any "act on appearances" charge—it allows the jury to consider the defendant's state of mind and his beliefs and not just whether he was actually in imminent danger. No additional charge was warranted.[1]

The facts do not warrant a separate "act on appearances" jury charge because no reasonable man would have believed it necessary to act based on the appearances described by

[1] To the extent some case law seems to require a separate additional charge regarding the ability of the defendant to "act on appearances" the State would move to argue against precedent asking the Court to conclude the only charge necessary is the charge given by the trial court.

Appellant. In Fuller, the Court explained the charge regarding the right of the defendant to act on appearances:

> A defendant must show that he believed he was in imminent danger, not that he was actually in such danger, because he had the right to act on appearances, and under the circumstances as they appeared to him, he believed he was in such danger **and a reasonable prudent man of ordinary firmness and courage would have entertained the same belief.**

Fuller, 297 S.C. at 443–44, 377 S.E.2d at 331. The "act on appearances" language came from the Court's discussion in State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955). In Fuller, the defendant had significant difficulties with the victims leading up to the need to fire in self-defense. He was grabbed by the throat by one of the victims, who stated: "that is why we have got to take care of n****** like you." Id. at 441, 377 S.E.2d at 330. After the victims rammed Fuller's incapacitated vehicle, they shouted: "we're going to take care of you." Id. at 442, 377 S.E.2d at 330. Fuller saw the men open the trunk to their vehicle and testified he saw something shiny in one of the victim's hands. Id. The Supreme Court found, as a result, the trial court should have given an act on appearances charge.

In State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955), the case from which the Court in Fuller pulled its language for the act on appearances charge, the Court explained the relevant facts testified to by the defendant:

> [Defendant] was awakened by Williams who told him there was 'somebody out there'; that the front door was locked but could be pushed open if enough force was used and that the 'somebody' was trying to enter the house through this door; that he got up and proceeded towards the front door when he heard his mother say, 'Whoever that is don't try to tear my door down'; that he took the gun from over the door between the two bedrooms and had proceeded approximately two steps into his mother's bedroom when he was blinded by a flashlight which was shone in his face, he fired immediately, and heard the body fall to the floor. Upon picking up the flashlight, which was still burning, and directing its

> beam upon the body, he learned for the first time that he had shot a policeman.

Jackson, 227 S.C. at 276, 87 S.E.2d at 683.

In State v. Nichols, 325 S.C.111, 481 S.E.2d 118 (1997), the defendant was also entitled to a charge regarding his right to act on appearances. In Nichols, the victim has previously pointed a rifle at Nichols and the two had prior difficulties before the incident in which the victim was shot. Further, Nichols testified he saw a shiny object or a gun in the victim's hand before killing him. Id. at 117, 481 S.E.2d at 121.

The key to the charge is that it is whether a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. In this case, Appellant asks this Court to apply the right to act on appearances to a person who was, even under Appellant's version of events, at most crossing the street and reaching toward his waist. (T.580; R.531). There is no indication of a shiny object, much less a weapon of any kind, being seen in the victim's hand. Further, there is no justification to believe his reaching toward his waist was a hostile act by Washington.

Based on the facts and circumstances described by Appellant no reasonable person would have believed the need to act on what he saw by firing a gun at the individual. Under his own testimony, Appellant waived and the person and when the person noticed he started coming over—a perfectly normal response to being waived at by someone. Appellant's testimony indicated Washington threw down his cigarette and then had to pull up his pants upon walking to where Appellant had just waived. No reasonable person would believe Washington was going for a gun, unprovoked in any way by Appellant, when he reached for his waistband immediately after pulling up his pants in the back. The facts and circumstances justifying the giving of the charge in cases such as Nichols, Jackson and Fuller are vastly different from the circumstances

of the instant case. Accordingly, the trial court did not commit an abuse of discretion in refusing to give an act on appearances charge when Appellant's own testimony belies the need for such a charge because there were no facts or circumstances upon which a reasonable person could act by firing a gun at Washington.

No Duty to Retreat

Appellant contends the trial court erred in refusing to instruct the jury that he had no duty to retreat. The facts and circumstances do not warrant the jury charge. Even if the charge should have been given, any error is entirely harmless as Appellant's claim of self-defense failed not on his need to retreat but upon the reasonableness of his actions.

The South Carolina Supreme Court explained the rationale behind the "no duty to retreat" charge as it relates to someone being on their own property. The Court stated:

> A person need not retreat or seek to escape, even though he can do so without increasing his danger, but may lawfully **resist** even to the extent of taking life if necessary, where, being without fault in bringing on the difficulty, he **is assaulted** while in his own dwelling house, in his office or place of business, or on his premises at or near his dwelling house or, as sometimes said, within the curtilage, or the dooryard, or such space as is customarily occupied by the dwelling house and outbuildings appurtenant thereto. However, the rule is predicated on the absence of aggression or fault on his part in bringing on the difficulty; **the doctrine is for defensive, and not offensive, purposes.**

State v. Grantham, 224 S.C. 41, 43–44, 77 S.E.2d 291, 292 (1953). Further, "an individual had no duty to retreat if by doing so he would increase his danger of being killed or suffering serious bodily injury." Fuller, 297 S.C. at 444, 377 S.E.2d at 331. Neither situation applies in the instant case.

Appellant failed to demonstrate how he would increase his danger of being killed or suffering serious bodily injury if he simply turned and entered the home from the porch. There is

no indication a firing of a gun by Washington was imminent or even could happen in the time it would take Appellant to have entered the dwelling. He saw him reach in his waistband when he fired, not when he saw a gun pointed ready to shoot.

Additionally, as Grantham clearly notes, the right not to retreat at one's own domicile is based on the right to defend that castle. In the instant case, the need to defend the castle was not readily apparent. Appellant waived and invited Washington to come over. There was no indication of an "attack" or a need to resist in the testimony by Appellant. He was attempting to use his "no duty to retreat" in an offensive and not defensive posture. As a result, he should not have received the jury charge on having no duty to retreat.

Even if the failure to give the charge was error, it was harmless error. An erroneous jury instruction is subject to harmless error analysis. See State v. Belcher, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) (citing Lowry v. State, 376 S.C. 499, 510–11, 657 S.E.2d 760, 766 (2008)). The South Carolina Supreme Court explained the analysis used in determining whether an error in a given jury instruction is harmless:

> When considering whether an error with respect to a jury instruction was harmless, we must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict. In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered. Thus, whether or not the error was harmless is a fact-intensive inquiry.

State v. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (internal citations and quotation marks omitted).

A review of the facts of this case makes it clear any error in failing to give the "no duty to retreat" charge had no impact on the jury's ultimate verdict. As discussed above, it was entirely unreasonable for Appellant to shoot Washington. Appellant's testimony provided no indication

Washington sought to attack Appellant or provided any reason for his belief Washington was reaching for a weapon. Appellant waived at Washington, which would be a sign of invitation or at minimum hospitality. After, assuming Washington approached Appellant or his home, he was on the other side of the street pulling up his pants and then reaching to his waistband when Appellant fired. Appellant fired without ever seeing a weapon of any kind in Washington's hands. The failure to give the "no duty to retreat" charge had no impact on the jury's verdict beyond a reasonable doubt.

Burden Shifting Charge

Finally, the court did not err in charging the jury "if [self-defense] is established then you must find the defendant not guilty" because it did not impermissibly shift the burden to Appellant in light of the entirety of the court's instructions. Further, the language used by the court came directly from the request to charge submitted by Appellant and so he could not complain when the court gave the charge he requested.

In charging the jury regarding self-defense, the court stated:

> Now, ladies and gentlemen, the defendant has raised the defense of self defense and self defense is a complete defense; and if it is established you must find the defendant not guilty.
>
> The State has the burden of disproving self defense by proof beyond a reasonable doubt and if you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self defense, then you must find the defendant not guilty.

(T.725; R.676). First, the charge given never places the burden on Appellant. It merely indicates self-defense must be supported by the evidence and, if so, then it is a complete defense and the defendant must be found not guilty. It does not require Appellant to establish it and does not require Appellant to put forth any evidence or testimony to establish it. The charge just indicates

that if the jury finds the four elements of self-defense exist within the evidence presented then the defendant is to be found not guilty.

Most significant is the portion of the jury charge immediately following the allegedly improper charge. The court makes it abundantly clear the burden is on the State. He tells the jury the "State has the burden of disproving self defense beyond a reasonable doubt . . . ." This is an unambiguous statement regarding the burden of proof and the jury would not have assigned the burden to Appellant based on the instructions given. As a result, the charge given by the trial court was entirely proper when viewed as a whole and correctly established the burden of proof on the State with regard to self-defense and not on Appellant.

Additionally, the charge was requested by Appellant so he cannot now complain because the court used the wording he specifically provided to the court to charge the jury. Appellant submitted Defendant's Jury Charge Number 8 to the judge. The language which begins the jury charge submitted by Appellant states: "Self-Defense is a complete Defense. **If established, you must find the Defendant not guilty.**" (Defendant's Jury Charge Number 8; R.719) (emphasis added). Appellant now complains that the trial court instructed: "Now, ladies and gentlemen, the defendant has raised the defense of self defense and self defense is a complete defense, and **if it is established you must find the defendant not guilty.**" (T.725; R.676) (emphasis added). The bolded portion complained of by Appellant is nearly identical to the charge specifically requested by Appellant. State v. Sawyer, 409 S.C. 475, 479 n. 2, 763 S.E.2d 183, 185 n. 2 (2014) ("It is well-settled that a party cannot complain of an error it induced."); State v. Stroman, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984) ("[A] party cannot complain of an error which his own conduct has induced.").

First, this Court should find Appellant received a windfall by having a self-defense jury instruction given because under the facts and circumstances as testified to by Appellant he was not entitled to self-defense. Further, the trial court had no need to give the "act on appearances" or "no duty to retreat" charges. The trial court's jury instructions as a whole were entirely proper, correctly defined the requirements of self-defense based on the facts and circumstances of this case, and did not improperly shift the burden to Appellant. Accordingly, this Court should affirm Appellant's convictions and sentences.

II. **The trial court did not err in limiting Appellant's ability to go into testimony regarding the type of neighborhood in which he lived because it was not relevant to why the victim was shot and would likely serve to either confuse or prejudice the jury. Additionally, the trial court did not err in limiting Appellant's closing argument and in preventing discussion of the characteristics of the neighborhood in front of the jury. Further, any error is entirely harmless in light of the information provided to the jury. (Appellant's Issues II and III).**

Appellant maintains the trial court erred by limiting his right to present testimony Appellant lived in a high crime neighborhood or to argue regarding the nature of the neighborhood in closing argument. The character of the neighborhood is irrelevant when considering the particular facts and circumstances of this case for self-defense. Additionally, any error in failing to allow the testimony is entirely harmless in light of the facts and circumstances presented by Appellant's testimony and the fact no reasonable person could conclude Appellant's actions in shooting an unarmed, and unprovoked individual were reasonable. Finally, there was no error in restricting the "inference" Appellant's counsel could draw during closing argument because the inference was not a valid inference from the testimony he relied upon.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). "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.

Pursuant to Rule 401, SCRE: "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more

probable or less probable than it would be without the evidence." Additionally: "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. **Evidence which is not relevant is not admissible.**" Rule 402, SCRE (emphasis added).

In the instant case, the trial court correctly concluded the nature of the community, including other past crimes in the community, was not relevant to a determination of whether Appellant shot Washington in self-defense. While a defendant may certainly bring forth the victim's reputation in a community to demonstrate why he was afraid of that victim, this is entirely different than assigning a generic danger level to any person within a neighborhood simply because of the neighborhood. As the trial court pontificated, the requirements for acting in self-defense do not change based on the neighborhood one lives in. (T.338; R.289).

In State v. Nystrom, the Supreme Court of Minnesota considered whether it was error for the trial court to exclude the testimony of an expert regarding the community crime statistics and criminal activity in the area where the shooting occurred when the defendant sought to admit that testimony to establish his state of mind and to show it was reasonable to shoot the victim. State v. Nystrom, 596 N.W.2d 256, 259 (Minn. 1999). The Court specifically concluded: "Appellant's proffered expert testimony would not have been helpful to the jury. Appellant offered no evidence that he believed crime in general was so rampant in north Minneapolis that a preemptive strike against anyone causing him fear was necessary." Id. at 260. The Court also found exclusion on the general theory of a high crime neighborhood was appropriate, and articulated: "The appellant's theory is very general, applying to a community rather than to appellant in particular, and is non-circumstantial, based on a generalized fear of crime in that

community. The trial court acted well within its discretion when it excluded the expert's proffered testimony on grounds of relevancy." Id.; see also, Dowe v. State, 39 So. 3d 407, 410 (Fla. 4th Dist. Ct. App. 2010) (finding "neighborhood's alleged dangerousness was not relevant to the defendant's self-defense claim when his testimony indicated it was actions of the defendant which caused his response in self-defense) (quashed on other grounds by Dowe v. State, 139 So.3d 885 (Fla. 2014)); cf., State v. Nolle, 638 N.W.2d 280 (Wis. 2002) (finding the need to carry a concealed weapon for self-defense not established based on four men grouped together at night on a street corner in a high crime neighborhood near where the defendant was changing his tire).

Self-defense has to be specific, directed at a specific victim, and based on specific set of facts related to that victim; it is not, not just a general all-encompassing threat from any person within a community. The testimony presented in proffer regarding the neighborhood indicated crimes such as drive-by shootings, car vandalism, random gunshots being heard in the distance, drug activity occurred in the neighborhood, but provided no specifics and provided no information on how those crimes related to the actions of Washington and why Appellant felt it necessary to shoot him. (T.438-439; 449; 452; R.389-390; 400). Appellant's argument is that anyone in a high crime area is vulnerable for being shot at any time in that neighborhood simply by walking down the street with their hands in their pockets or at their waist. Accepting this argument would open up high crime neighborhoods to the rules of the Wild West.[2]

[2] Further, the jury was aware of the nature of the neighborhood through testimony by various witnesses including Washington who testified he knew someone killed in the area (T.90-91; R.51-52), North Charleston Police Officer Christian Rothhaus' testimony that he has investigated more than one shooting in the area (T.244; R. 200), and Cynthia Sanders testified the neighborhood was called a high crime area by her neighbors (T.494; R.445). As a result, even if exclusion was error, it was harmless because it would have merely been cumulative to other testimony in the record. See State v. Blackwell, 420 S.C. 127, 160, 801 S.E.2d 713, 730 (2017) ("[E]ven if the trial court erred in excluding the chaplains' notes, we find the error harmless as the evidence was cumulative to other evidence in the record of Blackwell's remorse."); State v. Northcutt, 372 S.C. 207, 221, 641 S.E.2d 873, 881 (2007) (error in failing to admit testimony found harmless when similar evidence already in the record so outcome of trial not affected).

The trial court properly limited the ability of Appellant's counsel to go into the characteristics of the neighborhood during closing argument because it previously and correctly found the testimony irrelevant, so argument on the issue would have been improper. Further, addressing it before the jury in closing argument would have only served to confuse the jury. Finally, Appellant indicates he sought to address characteristics of the neighborhood by drawing inferences from Washington's testimony about having a friend killed in the area. See Hoeffner v. The Citadel, 311 S.C. 361, 429 S.E.2d 190 (1993) (noting that arguments which invite the jury to base its verdict on considerations not relevant to the merits of the case are improper); State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997) (trial judge is allowed discretion in dealing with the range and propriety of closing argument to the jury, and rulings on such matters will not be disturbed absent an abuse of discretion).

The trial court properly prevented Appellant's counsel from arguing irrelevant and potentially confusing information to the jury. The jury was to make their decision based on the facts and circumstances surrounding the incident between Washington and Appellant. The type of neighborhood would not have aided them in making their determination regarding whether self-defense occurred. Further, Washington testified to a single incident of a person being killed in the neighborhood. It is improper to infer a high crime area or extrapolate anything related to this case from the testimony regarding this single incident at some unknown time in the past. Many perfectly safe neighborhoods have a murder or other crime which has taken place, and it would certainly be incorrect to refer to them as high crime areas as a result. Accordingly, the trial court properly limited the closing arguments of Appellant's counsel to prohibit irrelevant, confusing, and potentially prejudicial arguments from being made.

III. The trial court did not err in allowing the solicitor to question whether items seen in a picture were marijuana. First the issue is not properly preserved for review on appeal. Additionally, Appellant denied it was marijuana and no evidence of any prior bad act was admitted. Accordingly, Appellant could not have been prejudiced where the only evidence in the record was his denial and the prosecution's acceptance of that denial. (Appellant's Issue VI).

Appellant contends the trial court erred in allowing the solicitor to cross-examine Appellant regarding whether marijuana was visible in the picture showing Appellant's gun and extended magazine on the dresser. The issue is not preserved because the nature of the objection is not on the record. Further, Appellant argues that it was evidence of a prior bad act, and even if this was the basis asserted at trial and could be considered preserved, the testimony did not provide any evidence of a prior bad act.

During cross-examination of the Appellant, the following colloquy occurs.

Q. Right, and that's your gun, that's your dresser, that's your extended magazine, right?

A. Yes, ma'am.

Q. That's your weed, too, right?

A. What weed?

Counsel: Objection, Your Honor. May we approach?

Court: Yeah

(WHEREUPON, a bench conference was had.)

Court: Overruled. Proceed.

Q. Mr. Sanders, is that your weed?

A. What weed?

Q. Mr. Sanders, this is your dresser, right?

A. Yes, ma'am.

Q. Is that weed?

A. That's not weed.

(T.607; R.558) (emphasis added).

First, the objection made was a general objection without any specifics presented to the trial court. "[A] general objection which does not specify the particular ground on which the objection is based is insufficient to preserve a question for review." State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997) (citations and internal quotation marks omitted); see also, State v. Jennings, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) ("An objection must be made on a specific ground."); State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007) (finding a broad generic objection not sufficient to preserve issue for review on appeal); State v. Varvil, 338 S.C. 335, 340, 526 S.E.2d 248, 251 (Ct. App. 2000) (finding [a] general objection is ordinarily insufficient to preserve an issue for appeal). Presumably, the specific arguments of counsel were raised during the off-the-record bench conference referenced, but they were not made a part of the record. "An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review." York v. Conway Ford, Inc., 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) (citing Benton v. Davis, 248 S.C. 402, 150 S.E.2d 235 (1966)). As a result, the issue is not properly preserved for review on appeal.

Even if preserved for review, Appellant's argument that the testimony constituted admission of a prior bad act is without merit. Appellant was asked whether it was weed (marijuana) seen in the photograph. He responded it was not. Questioning ended at that point. The State did not bring evidence related to prior drug purchases, or drug use, or drug possession by Appellant. The solicitor asked the nature of something seen in a photo and Appellant denied

it was the illegal substance questioned by the State. Accordingly, no prior bad act was placed into evidence. Further, Appellant cannot demonstrate how he was prejudiced by the question when he flatly denied the existence of marijuana and the State ceased further questioning on the issue.

Had the State been able to establish it was marijuana and Appellant had smoked some of the marijuana on the night of the incident, it would have been probative of the reasonableness of Appellant's actions in shooting Washington and could have been considered by the jury. Once Appellant denied the existence of marijuana, the State stopped pursuing the topic and so no prior bad act or prejudice was introduced. Accordingly, the trial court did not err in allowing the testimony, and even if in error, any error was entirely harmless in light of the lack of prejudice.

IV. The trial court did not err in refusing to admit the statement as a prior inconsistent statement when the victim admitted he was on the phone, admitted walking around and near the trash can while on the phone, and admitted everything in the statement was the truth. Further, it is questionable whether the issue is properly preserved for review on appeal because Appellant never explained the inconsistencies he planned to expose through the statement. (Appellant's Issue VII).

Appellant contends the trial court erred in not allowing him to impeach the victim's testimony with his prior out of court statement. First, the issue is not preserved for review on appeal. Next, Appellant cannot demonstrate how he was prejudiced by the inability to impeach Washington with his statement because he failed to identify any inconsistencies at trial and does not identify any inconsistencies on appeal. Finally, any extrinsic evidence of the statement is inadmissible because Washington admitted making the statement, and it would have otherwise been hearsay.

Initially, the issue raised on appeal is not properly preserved for review and consideration on appeal. The State initially objected on the grounds that a proper foundation for admitting the statement had not been presented by Appellant. Appellant's counsel responded that he laid a proper foundation through the testimony of Washington. (T.140-141; R.101-102). The trial court agreed with this argument, indicating: "How has there not been a foundation laid when he has not acknowledged that it is his words, that it is correct, and that he signed it after reviewing it?" (T.141; R.102). In response, the State made a new argument and asserted the statement was being improperly admitted for impeachment as a prior inconsistent statement after Washington specifically admitted the contents were truthful. (T.141-142; R.102-103). Appellant never challenged this basis for exclusion at trial. The trial judge, after hearing the State's new argument then ruled: "All right. Sustained." (T.142; R.103). As a result, no issue is preserved for review on appeal because Appellant acquiesced in the trial court's basis for excluding the statement. State

v. Bryant, 372 S.C. 305, 315–16, 642 S.E.2d 582, 588 (2007) (explaining an issue conceded at trial cannot be argued on appeal); State v. Mitchell, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998) (holding appellant waived an issue for appellate review because he acquiesced to the trial court's ruling); State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) ("[A] party cannot acquiesce to an issue at trial and then complain on appeal.").

Additionally, the trial court's ruling sustaining the State's objection was on the basis that the statement was being improperly admitted for impeachment as a prior inconsistent statement. Appellant, in his brief, does not challenge this ruling; instead, he solely maintains the judge improperly refused to admit the statement based on a lack of foundation. This was not the ruling at trial, and so, Appellant has failed to appeal the trial court's ruling. The ruling is the law of the case. See Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance."); State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (holding that an unchallenged ruling, right or wrong, is the law of the case).

Further, even if the ruling by the trial judge considered both arguments of the State, contending it was inadmissible based on a lack of foundation and because it was improperly being admitted as impeachment evidence, Appellant has failed to raise both issues on appeal. See Dreher v. S.C. Dep't of Health & Envtl. Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015) ("[S]hould the appealing party fail to raise all of the grounds upon which a court's decision was based, those unappealed findings—whether correct or not—become the law of the case."); Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case."); State v.

Branham, 392 S.C. 225, 231, 708 S.E.2d 806, 809 (Ct. App. 2011) (finding unappealed alternate ruling the law of the case).

Additionally, Appellant never proffered the statement, so the issue is not preserved for review on appeal.[3] See State v. Jackson, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009) ("Generally, the failure to make a proffer of excluded evidence will preclude review on appeal."); State v. Jenkins, 322 S.C. 360, 367, 474 S.E.2d 812, 816 (Ct. App. 1996) ("The reason for the rule requiring a proffer of excluded evidence is to enable the reviewing court to discern prejudice."); see also Greenville Mem'l Auditorium v. Martin, 301 S.C. 242, 244, 391 S.E.2d 546, 547 (1990) ("An alleged erroneous exclusion of evidence is not a basis for establishing prejudice on appeal in absence of an adequate proffer of evidence in the court below." (citations omitted)).

Washington specifically admitted the prior statement being made and indicated the contents of the statement were truthful. Therefore, the written statement would not be admissible as extrinsic evidence under Rule 613(b), SCRE. Further, the only reason to subsequently admit the statement would be for the truth of the matter asserted, thereby constituting hearsay. See Rule 801(c), SCRE. It would not be excluded from the definition of hearsay under Rule 801(d)(1)(A), SCRE, because Appellant has failed to establish it was inconsistent with Washington's trial testimony. As a result, it was clearly inadmissible.

Further, Appellant has failed to identify any inconsistencies between Washington's statement and his trial testimony. He cannot demonstrate how he was prejudiced by the trial court's ruling that he could not admit the statement as a prior inconsistent statement for impeachment purposes when he has failed to actually establish any inconsistencies existed. As a

[3] The statement is not listed as an exhibit, nor has Appellant even designated it for inclusion in the Record on Appeal. (T.1-10; R.1-10).

result, Appellant is not entitled to reversal on this ground and this Court should affirm the decision of the trial court. See State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) ("The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained."); State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); State v. McWee, 322 S.C. 387, 393, 472 S.E.2d 235, 239 (1996) ("Error without prejudice does not warrant reversal."); State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 385, 388 (1947) ("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.").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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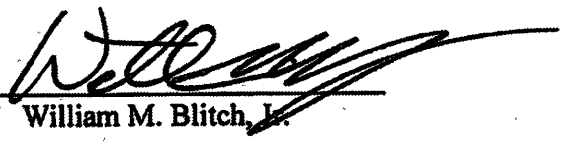
BY: 
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April 5, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable William Jeffrey Young, Circuit Court Judge
Appellate Case Tracking No. 2016-001785

The State, Respondent,

vs.

Rhajon Akeem Reshae Sanders, Appellant.

CERTIFICATE OF COUNSEL

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

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PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 5th day of April, 2018.

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