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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Pickens County
Court of General Sessions
Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2020-001399

THE STATE,

Respondent,

v.

JARON LAMONT GIBBS,

Appellant.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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PETITIONER'S QUESTIONS PRESENTED

I. Did the Court of Appeals err in affirming the trial court's decision to allow a witness who was not qualified as an expert to testify as to how certain firearms function?

II. Did the Court of Appeals err in affirming the trial court's decision to overrule a defense objection to improper closing and a related demonstration that were not based on evidence presented at trial?

III. Was the cumulative effect of the trial court's errors, in combination, so prejudicial as to deny appellant a fair trial?

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

I. Whether the Court of Appeals correctly concluded that a detective with the Clemson City Police Department could testify that he was personally familiar with revolvers and that a revolver would fire either with one trigger pull or by cocking the hammer and then pulling the trigger?

II. Whether the Court of Appeals correctly concluded that the State permissibly argued at closing that guns do not accidentally discharge, and permissibly briefly demonstrated the types of trigger pulls that the detective with the Clemson City Police Department testified would discharge a revolver, where both statements were supported by properly admitted evidence?

III. Whether Petitioner argued or invoked the cumulative error doctrine at any time before the trial court, and whether that doctrine may apply where no errors exist to combine for review?

STATEMENT OF THE CASE

The Pickens County Grand Jury indicted Petitioner Jaron Lamont Gibbs for the August 1, 2015 murder of Robby Porter and for possession of a weapon during the commission of a violent crime. (App. 6-9). The Honorable Letitia H. Verdin presided over Petitioner's trial which began with jury selection on September 18, 2017. (App. 12-13). Druanne White, Esquire, and Ashlea White, Esquire, represented Petitioner on the charges. Assistant Thirteenth Circuit Solicitors Brandi Hinton and Britni McCall prosecuted the case. (App. 12).

At trial, the State established that a fatal shooting occurred in at a four-way stop in broad daylight after three friends contacted Petitioner to buy marijuana. (App. 33, line 9 – p. 46, line 7; App. 47, lines 8-13). Believing they had been shorted in the sale, the three friends returned to look for Petitioner, finding him in a Chrysler. (App. 35, line 1 – App. 38, line 20). They contacted Petitioner on the phone and began following him. (App. 38, line 21 – App. 40, line 11; App. 90, line 22 – App. 94, line 4). The parties arrived at a stop sign at a four-way stop at Issaqueena Trail and Cambridge Road in Clemson. (App. 146, line 19 – App. 149, line 17). Petitioner exited the front passenger seat of the Chrysler and walked up to the buyer's driver's side window, where he pulled a gun. (App. 40, line 12 – App. 41, line 12). Petitioner put the gun inside the driver's side window, "yelling and telling" the driver he had messed up and "was really close to losing [his] life over it." (App. 40, lines 2-13).

The driver, Hunter Raby, recalled Petitioner held the gun, a silver revolver of average length, in his right hand along the left side of Raby's face. (App. 91, lines 16-22; App. 118, lines 18-20). Nobody else had a gun. (App. 41, lines 22-23). Raby testified that he used both of his hands to push Petitioner's gun up as Petitioner threatened him, but did not put his fingers on the

trigger. (App. 98, lines 3-16). The female in the backseat testified that she assumed that Raby swiped the gun away. (App. 57, lines 7-20). "The gun [went] off." (App. 100, line 7). The fired bullet grazed the top of Raby's head and struck Robby Porter, the front seat passenger, in the left side of his temple just above the ear. (App. 198, line 24 – App. 199, line 7; App. 392, lines 2-25). Petitioner retreated to the Chrysler, which left the scene. (App. 45, lines 11-19). After the shooting, the driver of the Chrysler 300, Autumn Gilstrap, voluntarily went to the Clemson Police Department to provide a statement. (App. 300, line 14 – App. 313 line 8).

Passengers in other cars stopped at the same four-way stop witnessed the encounter in its entirety. One driver, who happened to be an EMT, "noticed [Petitioner] had a gun in his right hand" that looked like a silver revolver. (App. 165, lines 5-20). He testified that the driver of the SUV and the passenger of the Chrysler 300 had "an argument" and "a heated discussion. [It] went on for somewhere between five and ten seconds." (App. 165, lines 23-25). Then, "then man who was standing outside the vehicle . . . thrust his right arm inside the vehicle with the gun" and the EMT heard the gunshot. (App. 166, lines 1-6).

At trial, Petitioner testified that Raby kept calling him asking for money, and Petitioner got out of the car at the four-way stop "to try to give" Raby this gun as repayment for his debt. (App. 410, lines 1 – App. 419, line 22). Petitioner testified he believed the gun was unloaded and that they would take it and leave him alone. (App. 419, lines 17-22). Petitioner testified that he held the gun by the grip without his finger on the trigger. He also testified he held the gun in his left-hand, which was his non-dominant hand. (App. 419, line 24 – App. 421, line 6). Petitioner testified he pushed the gun inside the car in front of Raby's face and Raby pushed the gun back out. This process repeated itself and, on the second push inside the car, the gun went off. (App. 421, lines 9-25). Petitioner testified he had no idea anyone had been hit with a bullet and he

returned to Gilstrap's car and told her the bullet hit the roof and no one was hurt. (App. 422, lines 1-24). He never mentioned there being any sale of drugs. (App. 410, line 1 – App. 435, line 24).

After the four-day trial, a jury convicted Petitioner of murder and the weapons charge. Judge Verdin sentenced Petitioner to 35 years for murder and to five years for the weapons charge, each with credit for 780 days' time served. (App. 10-11). Petitioner served a timely notice of appeal. (App. 5). After briefing, and without oral argument due to the onset of the COVID-19 pandemic, the Court of Appeals affirmed Petitioner's convictions and sentence in an opinion filed August 19, 2020. (App. 596-604). Petitioner filed for rehearing, which was denied on September 22, 2020. (App. 605-15).

Petitioner timely petitioned for a writ of certiorari, to which Respondent makes the instant return.

ARGUMENT

I. The State's investigator permissibly testified in a limited fashion that he was personally familiar with revolvers and that a revolver would fire either with one trigger pull or by cocking the hammer and then pulling the trigger.

The State's investigator, Detective Michael Arflin, testified at trial that he was personally and professionally familiar with firearms, including revolvers. (App. 347, lines 8-9). Later, over Gibbs's objection, Arflin testified that a single-action revolver has a hammer that must be cocked in order to pull the trigger and fire the gun. (App. 365, lines 5-19). He then testified that a double-action revolver only requires "a long, heavy trigger pull" to fire the gun. (App. 365, line 20 – App. 366, line 1). The court allowed the testimony in limited fashion based upon Arflin's testimony that he understood revolvers. (App. 365, lines 5-11).

The Court of Appeals affirmed Arflin's general testimony about revolvers which was based on his personal knowledge. (App. 602-03). "The key feature of lay testimony is the witness's personal knowledge, not whether the subject of the testimony is beyond the jury's ordinary experience. *See* Rule 602, SCRE. The detective directly stated this testimony was based on his own knowledge." (App. 603). The Court of Appeals further noted "Detective Arflin never offered anything resembling an opinion as to who may have pulled the revolver's trigger or what caused the revolver to fire. For that reason, this case differs from cases in which emergency responders made statements that went beyond their direct observations." (App. 603 (citing *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 410, 764 S.E.2d 249, 252 (Ct. App. 2014); *State v. Kelly*, 285 S.C. 373, 374, 329 S.E.2d 442, 443 (1985)). The Court of Appeals found the Detective's testimony offered "nothing more than the most rudimentary explanation of how someone discharges a revolver. Detective Arflin's limited testimony about single and double action revolvers was thus admissible as proper lay testimony." (App. 603).

The Court of Appeals reached the proper conclusion. Lay witnesses may testify to subjects within their personal knowledge. Rule 602, SCRE. Lay testimony need not always be devoid of reference to prior skill or training in order to be admissible. A law enforcement agent is permitted to testify "about his knowledge as a law enforcement officer based on his previous observations." *S.C. Dept. of Rev. v. Meenaxi, Inc.*, 417 S.C. 639, 658, 790 S.E.2d 792, 801 (Ct. App. 2016) (permitting agent testimony about the commonality of video gaming players discarding coupons of no value of them, but finding the agent's specific interpretation of verbiage on a beverage license outside the bounds of permissible lay opinion testimony). A layperson can testify about his own "special knowledge and experience in the daily operation" of a technical item such as a machine absent any expert qualification. *Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 468-69, 494 S.E.2d 835, 845 (Ct. App. 1997) (finding a lay witness could offer his opinion as to what caused a machine to malfunction because his opinion was based "upon his observations and perceptions as the [daily] operator" of the machine). This Court has also found it "unnecessary" for a forensic interviewer to be qualified as an expert witness, ruling admissible lay testimony concerning the established method utilized to build rapport with a child victim. *State v. Douglas*, 380 S.C. 499, 502-03, 671 S.E.2d 606, 608 (2009) (the interviewer "testified only as to her personal observations and experiences, and her interview with the Victim in [that] case").

Lay witness testimony oversteps the boundaries of Rules 602 and 701, SCRE, where the lay witness delves into the reason for its determination or otherwise provides a technical basis for the testimony. *See State v. Kelly*, 285 S.C. at 374-75, 329 S.E.2d at 443 (a police officer may not testify, as a lay witness, as to the cause of an accident). For example, a fire chief's lay testimony concerning the origin and intentionality of a fire has been found to impermissibly reach beyond

"his direct observations" and instead require expert qualification due to the opinion needing "'special knowledge, skill, experience or training' to be properly made." *Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. at 409, 764 S.E.2d at 252 (quoting Rule 701, SCRE), *reh'g denied* (Oct. 24, 2014); *State v. Westmoreland*, 421 S.C. 410, 420, 807 S.E.2d 701, 706-07 (Ct. App. 2017) (coroner offered improper lay opinion under Rule 701(a), SCRE, where opinion rendered "was based upon review of the perceptions of others"), *reh'g denied* (Dec. 14, 2017). In *Hamrick v. State*, this Court similarly held that an officer who was not duly qualified as an expert on accident reconstruction and who did not personally observe the accident was not permitted to opine "that the impact did not occur in the designated lane of travel, but occurred behind the cones in the construction zone." 436 S.C. 638, 647-49, 828 S.E.2d 596, 601-02 (2019).

In this case, the trial court did not abuse its discretion when it allowed the Detective's limited lay testimony because Arflin testified that he was familiar with firearms, and with revolvers, both personally and professionally. (App. 347; lines 8-16; App. 364, lines 4-6). Arflin had earlier demonstrated familiarity with revolvers when he testified, without objection, that he would not expect to find shell casings when dealing with a revolver—he did not offer technical testimony as to why that was the case. (App. 347, lines 17-19). On this record, Arflin's experience with revolvers did not derive from anything other than his personal observation and experience. App. 365, line 4 – App. 366, line 7). The State did not question Arflin in terms of training received, but rather in terms of general familiarity with a type of firearm. (App. 364, lines 4-22). Arflin never testified that he received any particular type of training, in firearms or otherwise, in order to be employed as a detective with the Clemson City Police Department. (App. 339, line 17 – App. 340, line 5). Arflin ultimately offered testimony that he fires weapons, that he was familiar with both single-action and double-action revolvers, and that he employs a

different trigger pull for each type. (App. 364, line 4 – App. 366, line 3).

With Detective Arflin's testimony failing to address any technical bases, explanation, inference, opinion, or even an identification of the type of gun that may have been used in the shooting in this case, his limited testimony concerning how he fired single action and double action revolvers was permissible lay testimony relating to personal, not specialized, experience in the manner affirmed by the Court of Appeals.

II. At closing, the State permissibly argued that guns do not accidentally discharge and likewise permissibly demonstrated the types of trigger pulls that could discharge a revolver, because both arguments were responsive to the Gibbs's theory of the case and were supported by properly admitted evidence.

Disputing the defense's theory that the driver of the victim's car, Hunter Raby, pulled the trigger, the State argued in a brief demonstration at closing that "if this was a single action, this is what would have had to have happened for this gun to go off because guns do not accidentally go off. Guns go off when the trigger is pulled. . . ." (App. 454, line 22 – App. 456, line 3). Gibbs objected, arguing the facts in evidence did not support the State's statement concerning accident. (App. 455, lines 7-15). The trial court allowed the statement "in a limited fashion." (App. 455, lines 16-18). Gibbs re-raised this objection in its post-trial motions, qualifying it by stating that "the demonstration in the closing argument [was not based upon] reliable facts in the evidence." (App. 521, lines 12-15). The trial court ruled that "the demonstration, which lasted all three, maybe, seconds, three to five seconds, did not go beyond the scope of what would just be argument by counsel." (App. 522, lines 2-7). The trial court also noted that it "had previously instructed the jurors that what the attorneys said was not evidence in the case." (App. 521, lines 22-24; *see* App. 22, lines 14-20).

The Court of Appeals found "the comments here qualify as permissible advocacy based

on the evidence." (App. 603). "The statement 'guns do not accidentally go off' is certainly imprecise when viewed through the clear lens of hindsight because a firearm's trigger can obviously be depressed by accident. However, a reasonable juror would have no issue understanding the State's point." (App. 604). The Court of Appeals described "the thrust of this argument" and its connection to the record:

> First, if the revolver had been a double action, the State believed it was unlikely Raby wrapped his finger around the trigger and applied enough force to fire the weapon when pushing the gun away from his face. Second, if the revolver was instead a single action, the only way it could have fired was if Gibbs cocked the pistol first; demonstrating malice.
>
> . . .
>
> One other thing bears mentioning. Gibbs's story was that he held the gun in his non-dominant hand, held it by the grip alone, and his finger was not on the trigger. One theory of his defense was that his finger had not depressed the trigger and that Raby had inadvertently done so.

(App. 603-04). The Court of Appeals mentioned this defense theory of the case "to say that it was equally fair for the State to point out that *someone* had to pull the trigger for the gun to fire, and maybe even cock the gun first, and it was unlikely for Raby to have done either." (App. 604).

On this record, the Court of Appeals reached the correct conclusion. "Solicitors are bound to rules of fairness in their closing arguments." *State v. Northcutt*, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007). "A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony," though the closing's "content should stay with the record and reasonable inferences to it." *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). This includes demonstrations supported by the evidence at trial. *State v. Brisbon*, 323 S.C. 324, 332, 474 S.E.2d 433, 438 (1996) (solicitor conducted permissible

demonstration with an axe during closing). The State's closing also "must not appeal to the personal biases of the jurors," nor should it "be calculated to arouse the jurors' passions or prejudices." *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). But even a prosecutor's closing argument which appears "aggressive" on the face of the record before the appellate court should be upheld when its assertions lie in direct response to the defense presented at trial. *State v. Navy*, 370 S.C. 398, 414, 635 S.E.2d 549, 557 (Ct. App. 2006), *rev'd on other grnds*, 386 S.C. 294, 688 S.E.2d 838 (2010).

Furthermore, once the defendant opens the door to some evidence or theory, "the solicitor's invited response is appropriate so long as it does not unfairly prejudice the defendant." *State v. Collier*, 421 S.C. 426, 436, 807 S.E.2d 206, 212 (Ct. App. 2017) (quoting *Ellenburg v. State*, 367 S.C. 66, 69, 625 S.E.2d 224, 226 (2006)); *Vaughn v. State*, 362 S.C. 163, 169-70, 607 S.E.2d 72, 75 (2004) ("Once a defendant opens the door, the relevant question in determining if a defendant's rights were violated is whether the solicitor's comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 642, 94 S.Ct. 1868 (1974))). Even if a solicitor's closing argument is determined inappropriate, it should not be found to deny the defendant due process so long as "it was responsive to statements or arguments made by the defense." *Tappeiner v. State*, 416 S.C. 239, 251, 785 S.E.2d 471, 477 (2016).

Here, the prosecutor's closing argument that "guns do not accidentally go off" derived directly from properly admitted evidence, as did the argument about the trigger pull. (App. 438, line 10 – App. 462, line 2). The evidence at trial indicated that the gun discharged during the exchanges testified to in conflicting manners by Hunter Raby and Gibbs, and corroborated by eyewitnesses at the four-way stop. (App. 96, line 5 – App. 98, line 16; App. 166, lines 1-5; App.

183, lines 18-24; App. 306, line 3 – App. 307, line 13; App. 420, line 16 – App. 421, line 25). Gibbs maintained that the gun involuntarily discharged as he held it by the grip and offered it to the driver of the Ford Explorer as payment for a debt. (App. 420, line 16 – App. 421, line 25; App. 450, lines 14-25; App. 474, line 18 – App. 478, line 16). Given this testimony, the State's closing permissibly focused on the premise that Gibbs's exit from his vehicle and his repetitious pushing of the barrel of the gun into the driver's side window of the Explorer, along with his actions following the discharge of the gun, indicated an intent to kill, an absence of accident, and a series of unlawful acts. (App. 439, line 6 – App. 442, line 19; App. 446, line 15 – App. 462, line 2).[1] This was particularly clear from the State's rebuttal closing. (App. 499, lines 11-24). It is reasonable to infer, and thus permissible to argue, that the discharge of the gun included the pulling of the trigger. *Humphries v. State*, 351 S.C. at 373, 570 S.E.2d at 166.

The record additionally reflects that Gibbs opened the door to the testimony regarding how the gun was fired. Gibbs's counsel initially examined a State's witness, the EMT, concerning his experience with firearms, inviting the response that he was recreationally trained in firearms and could shoot from both his dominant and non-dominant hand. (App. 174, lines 3-15; *see also* App. 178, lines 17-23). Gibbs testified he held the gun by the grip in his non-

[1] ". . . Even if you believe his story that he was trying to give him payment for a gun, you do not pay somebody with a gun by pointing it in their face. So the law of accident does not apply." (App. 440, lines 17-21). ". . . Jaron Gibbs had no just cause to get out of that car and put a gun in Hunter Raby's face. He certainly did it with the intent of inflicting injury." (App. 442, lines 3-6). ". . . The defendant didn't say I tried to put it in his hand. The defendant said I pushed it in his face. . . ." (App. 447, lines 5-7). ". . . They are yelling at each other. He says he's holding it by the grip. Again, he pushed it in Hunter's face. . . . twice . . . That is the intent to kill. That's not an accident. That's not a misunderstanding. This is the intent to kill. The gun goes off. There's been absolutely no testimony that there was a struggle [or] that anybody else's finger was on that trigger. . . ." (App. 450, line 14 – App. 451, line 17). ". . . And he drives off. And he goes to Atlanta to hang out with a stripper. Even after he received a phone call, he did not deny this, that, I think you shot someone." (App. 452, lines 13-16).

dominant hand. (App. 419, line 23 – App. 420, line 25). These testimonies made the manner in which the gun could have fired ripe for the State's closing, permitting the demonstration at issue. *Vaughn v. State*, 362 S.C. at 169, 607 S.E.2d at 75. Moreover, the argument pertained directly to the properly admitted testimony of Detective Arflin, who had earlier offered limited testimony about revolvers. (App. 365, line 13 – App. 366, line 1). The use of a revolver during the shooting was not in dispute at trial. Even though Gibbs identified the gun merely as a "piece of junk," other witnesses presented unchallenged testimony the gun was a silver revolver. (App. 62, lines 17-25; App. 96, lines 21-22; App. 165, lines 10-12; App. 435, line 19). To this end, the prosecution's closing contained no improper speculation nor extrapolation from facts in evidence. *See State v. Copeland*, 321 S.C. at 325, 468 S.E.2d at 625.

In the context of the entire record, the State's closing argument was wholly appropriate within the confines of the evidence presented and inferences allowable therefrom. *Donnelly v. DeChristoforo*, 416 U.S. at 645, 94 S.Ct. at 1872 (any excerpt of the State's closing exists as "one moment in an extended trial" and the court must conduct an "examination of the entire proceedings" in context). The prosecutor's statement that "guns do not accidentally go off" and the following demonstration directly addressed the alternative theories presented at trial, was supported by or reasonably inferred from the evidence, and was therefore not prejudicially presented in closing argument.

III. Gibbs's cumulative error argument is not preserved and need not apply.

"The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *State v. Beekman*, 405 S.C.

225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013). However, the issue of cumulative error is not preserved for review when the doctrine is "never specifically raised" before the trial court, or when counsel argues "for a new trial solely on the basis that the evidence did not substantiate the verdict." *Id.* at 236, 746 S.E.2d at 489. "[A]n objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge." *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001). "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *State v. Dunb*ar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003).

Before the Court of Appeals, Petitioner for the first time posited that the cumulative effect of the trial court's errors deprived him of a fair trial. The Court of Appeals did not address this issue as it found no error by the trial court in regards to the other issues raised on appeal. (App. 597-98). Additionally, Petitioner did not argue for the invocation of the cumulative error doctrine before the trial court. *State v. Beekman*, 405 S.C. at 236, 746 S.E.2d at 489. Petitioner's post-trial motion for a new trial lacked the specificity required to preserve any objection regarding the cumulative error doctrine. (App. 520-21). The trial court addressed the errors cited by Petitioner in its post-trial motion as individual bases raised in support of a motion for new trial, and did not address cumulative error. (App. 521-22). Petitioner did not request a finding as to any alleged accumulation of prejudice. (App. 522). Thus, this issue was not ruled upon by the trial court as required by our issue preservation rules. *See State v. Beekman*, 405 S.C. at 236-37, 746 S.E.2d at 489 (citing *State v. Price*, 368 S.C. 494, 500, 629 S.E.2d 363, 366 (2006) (recognizing axiomatic rule that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review)).

Petitioner further appears to have asked the court to ignore longstanding preservation and waiver rules and address this issue as plain error. South Carolina has rejected the plain error doctrine and this Court should not entertain it under the guise of the cumulative error doctrine. *See, e.g., State v. Torrence*, 305 S.C. 45, 66, 406 S.E.2d 315, 327 (1991) (eliminating *in favorem vitae* review in death penalty cases and holding: "A contemporaneous objection requirement enables trial judges to make reasoned decisions by appropriately developing issues by way of argument, both for or against any particular legal proposition. This, in turn, allows potential errors to be prevented or cured.").

Respondent further submits that, for the reasons discussed herein, the Court of Appeals properly affirmed Gibbs's convictions such that the cumulative error doctrine, were it preserved, need not apply. "An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." *State v. Beekman*, 405 S.C. at 237, 746 S.E.2d at 490; *State v. Daise*, 421 S.C. 442, 466-67, 807 S.E.2d 710, 722–23 (Ct. App. 2017) ("any errors by the circuit court were not prejudicial and did not combine to affect Daise's right to a fair trial"). When a court finds no error by counsel on any claim raised, there can be no sum of either error or prejudice upon which this Court may grant relief. *See United States v. Basham*, 561 F.3d 302, 330 (4th Cir. 2009) ("When 'none of [the] individual rulings work[ ] any cognizable harm, . . . [i]t necessarily follows that the cumulative error doctrine finds no foothold.'" (quoting *United States v. Sampson*, 486 F.3d 13, 51 (1st Cir. 2007))).

CONCLUSION

For the foregoing reasons, the State requests that this Court deny Gibbs's petition for a

writit of certiorari.

Respectfully submitted,

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Columbia, South Carolina

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
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Appellate Case No. 2020-001399

THE STATE,

Respondent,

v.

JARON LAMONT GIBBS,

Appellant.

PROOF OF SERVICE

I, Caroline Scrantom, certify that I have served the *Return to Petition for Writ of Certiorari* on Petitioner's counsel of record by email as provided for in the Supreme Court's Order of March 20, 2020 to Jack Swerling, jacklaw@aol.com; and Katherine Goode, kcg@carruthgoode.net and by depositing two copies of the same in the United States mail to Law Offices of Jack B. Swerling, 1720 Main Street, Suite 301, Columbia, SC 29201.

This 18th day of November, 2020.

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Brandy Rankin

To: jacklaw@aol.com; kcg@carruthgoode.net
Cc: Caroline Scrantom; Melody Brown
Subject: Jaron Lamont Gibbs - Appellate Case Number 2020-001399
Attachments: Return to Petition for Writ of Certiorari and Cert of Service, 11-18-20, Jaron Lamont Gibbs (02431101xD2C78).pdf

Dear Mr. Swirling and Ms. Goode,

Attached is a scanned copy of the Return to Petition for Writ of Certiorari, and Proof of Service regarding the above matter. The Return and Proof of Service are being submitted to the Supreme Court of South Carolina through e-filing, along with a copy of this email. Two hard copies will also be sent to your office.

Hope you are well, and thank you.

Brandy Rankin

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