STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Hampton County
Honorable Perry M. Buckner, Circuit Court Judge
Appellate Case No. 2013-000399

THE STATE,

Petitioner,

vs.

STEVIE LAMONT AIKEN,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

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

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

Procedural History

In December of 2009, Petitioner Stevie Lamont Aiken was arrested following an investigation into the discovery of an elderly woman suffering from gunshot wounds in the trunk of her abandoned car. In March of 2010, the Hampton County grand jury indicted Aiken for first-degree burglary, kidnapping, and possession of a weapon during the commission of a violent crime. In November of 2010, the Hampton County grand jury additionally indicted Aiken for armed robbery and assault and battery with intent to kill. On March 7, 2011, a jury trial was commenced in the Hampton County court of general sessions with the Honorable Perry M. Buckner, circuit court judge, presiding. At the conclusion of trial, the jury convicted Aiken as indicted. Following the verdict, the trial judge sentenced Aiken to concurrent terms of imprisonment of thirty-five years for first-degree burglary, thirty years for kidnapping, twenty years for armed robbery, twenty years for assault and battery with intent to kill, and five years for possession of a weapon during the commission of a violent crime. Aiken then timely filed and perfected an appeal.

Subsequently, in an unpublished opinion, the Court of Appeals unanimously affirmed Aiken's conviction. State v. Aiken, 2012-UP-632 (S.C. Ct. App. filed Nov. 28, 2012). Aiken petitioned the Court of Appeals for rehearing, and the petition was denied. Aiken then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

Shortly before Thanksgiving Day in November of 2009, Jimmy Roden went to the home of seventy-nine-year-old Margaret Gooding ("Victim") in Miley, South Carolina, to perform landscaping work. (R. p. 134; pp. 229-231). Petitioner Stevie

Lamont Aiken accompanied Roden to Victim's house to assist with the job. (R. p. 231). Upon arriving, Roden knocked on Victim's door and introduced her to Aiken. (R. pp. 231-232). As Roden was speaking with Victim, he noticed some checks scattered around her home. (R. p. 232). He cautioned Victim to be more careful with the checks and commented to Aiken that Victim needed to be more careful. (R. pp. 232-233). The men then completed the landscaping work, and Victim paid them for their services with a check. (R. p. 235).

Subsequently, on December 6, 2009, Jarvis Barnes, Victim's next-door neighbor, was sleeping in his home when he was awakened by the sound of a gunshot around 11:00 p.m. or midnight.[1] (R. p. 125; pp. 127-128). Barnes initially believed the sound came from a deer hunter until he looked towards Victim's home and noticed all of the lights were on inside of the residence. (R. p. 128). Concerned, Barnes called Odis Gooding ("Odis"), Victim's brother-in-law, and reported what he heard at Victim's house. (R. p. 129; p. 141). Odis relayed the information to his wife, Martha Ann Gooding ("Martha Ann"), and she immediately attempted to call Victim. (R. p. 138). However, she received no response from Victim's home. (R. p. 138). Martha Ann then phoned Barnes and learned Victim's car, which had been in the yard when Barnes first called, was missing.[2] (R. pp. 128-129; p. 138). After speaking with Barnes, Martha Ann called 911 and asked for law enforcement to check on Victim at her home. (R. p. 138; p. 141).

In the early morning hours of December 7, 2009, Corporal Michael Bridges of the Hampton County Sheriff's Office responded to Victim's residence and immediately noticed her car was missing. (R. p. 150; pp. 154-156). He then called out for Victim and

[1] Notably, on December 6, 2009, the night of the incident, Aiken contacted Roden earlier in the day and inquired about Victim, asking if she had asked Roden to perform another job for her. (R. pp. 233-234).

[2] Victim owned a white Buick. (R. p. 148).

received no response. (R. pp. 155-156). As he continued investigating, Corporal Bridges discovered Victim's front door was unlocked and Victim's bedroom window was shattered. (R. pp. 159-160). Based on the suspicious circumstances he observed, Corporal Bridges requested back-up before proceeding into Victim's residence, where he discovered a blood trail on the floor as he moved through the house. (R. p. 156; p. 159).

Following Corporal Bridges' request for support, Captain Anthony Russell of the Hampton County Sheriff's Office quickly responded to Victim's residence and immediately observed blood when he entered the home. (R. pp. 163-164). As he investigated the scene, he discovered Victim's phone line had been cut, two bricks had been thrown into Victim's bedroom from outside, and there were bullet holes in Victim's stove and bedroom door. (R. p. 166; pp. 168-169). Based on his observations, he requested assistance with the investigation from S.L.E.D. (R. p. 165).

Shortly thereafter, Karl Henley, a crime scene investigator from S.L.E.D., responded to Victim's residence. (R. pp. 171-172). As he investigated the scene, he discovered several bullet holes inside Victim's home, and he collected shell casings from outside Victim's bedroom window, fired bullets from Victim's stove and bedroom wall, and bullet fragments from Victim's backyard. (R. p. 175; pp. 179-181; pp. 188-189). He then sent the collected evidence to S.L.E.D. for analysis. (R. pp. 185-186).

Later that morning, Harold Groves arrived at his business in Walterboro, South Carolina, around 8:30 a.m.[3] (R. p. 196; p. 198). Upon arriving, he noticed a white Buick parked next to an old, abandoned building near his business. (R. p. 198). Curious as to what the vehicle was doing there, Groves' nephew, who also arrived for work that morning, approached the car and observed a cane inside. (R. pp. 199-200). However, no

[3] The city of Walterboro is approximately thirty miles away from the town of Miley. (R. p. 261).

one was visible inside of the car, so Groves continued on with his day. (R. p. 200). Thereafter, at around 3:00 p.m., Groves was preparing to go home and noticed the white Buick was still parked near the abandoned building. (R. p. 200). Believing something was amiss, Groves checked on the car and noticed the keys were inside. (R. pp. 200-201). Groves then called 911 and waited on the police to arrive. (R. p. 201). While he did so, he could hear someone talking but could not locate the source of the sound. (R. p. 201).

Following Groves' 911 call, Detective Ray Taylor of the Colleton County Sheriff's Office quickly responded to the scene and observed the white Buick partially hidden behind an abandoned building. (R. pp. 213-215). As he approached the car, he heard sounds coming from the trunk. (R. p. 216). Detective Taylor retrieved the keys from inside of the car and opened the trunk. (R. p. 216). Inside, he found Victim, who had blood on her clothing and was suffering from two gunshot wounds to her abdomen. (R. pp. 216-217; p. 221). Victim informed the officer she had been in the trunk since the previous night. (R. p. 217). Shortly thereafter, paramedics responded to the scene, and Victim was transported to the hospital by a helicopter. (R. pp. 220-221).

Later that day, Nathaniel Harris unsuccessfully attempted to cash a check stolen from Victim's residence at a bank in Walterboro. (R. p. 247; p. 250). Shortly after he left the bank, Harris was apprehended by law enforcement officers and transported back to Hampton County. (R. pp. 251-252; p. 330). Once there, Harris fully confessed to the crimes involving Victim and implicated Aiken as his accomplice. (R. p. 252; pp. 289-290).

Following Harris' confession, Lieutenant Allan Inabinett went to Aiken's residence in Walterboro and located Aiken nearby on a bicycle. (R. pp. 247-248; pp.

330-331). Aiken's residence was approximately a mile and half away from the area where Victim and her car were located. (R. p. 336). After finding Aiken, Lieutenant Inabinett made contact with him and followed him back to his house. (R. p. 331). Once there, Aiken placed something inside of the front door of his home before Lieutenant Inabinett arrested him and transported him back to Hampton County. (R. p. 331).

After arriving at the sheriff's department, Aiken was informed of his rights and agreed to speak with the officers. (R. pp. 285-286; pp. 314-315). Initially, Aiken denied any involvement in the crimes. (R. p. 296). However, Aiken eventually confessed to the crimes and made a statement to the officers admitting his guilt. (R. p. 287; pp. 298-299). Detective Leslie Johnson of the Hampton County Sheriff's Office transcribed Aiken's statement as he relayed it to her, and Aiken signed each page of the confession. (R. pp. 297-299). In the statement, Aiken claimed his brother drove him and Harris to Miley, and he and Harris went to Victim's house. (R. p. 301). Aiken claimed he showed Harris where Victim's phone line was and Harris cut the line. (R. p. 301). Aiken stated they then went to Victim's bedroom window and Harris threw two bricks inside. (R. p. 301). Aiken claimed Victim came to the window, fired shots outside, came out of her back door, asked them not to hurt her, and then returned inside and locked the door. (R. p. 301). Aiken stated he heard another shot before Victim came back outside, called for her neighbors, and then attempted to shoot him. (R. p. 301). After Victim's gun would not fire, Aiken claimed he shot at Victim and believed he hit the neighbor's shed. (R. p. 301). Aiken stated Victim went back inside and he heard another shot. (R. p. 302). Aiken claimed Victim then came back outside bleeding, threw her gun down, and asked them not to hurt her any further. (R. p. 302). Aiken stated Harris then got Victim's car and they all drove to Walterboro after Harris took the Victim's keys, wallet, and

checkbook from her home. (R. p. 302). Once in Walterboro, Aiken claimed Harris threw the guns in a dumpster. (R. p. 302). Aiken stated he wanted to take Victim to the hospital and Harris refused. (R. p. 302). Aiken claimed he and Harris then parted ways and he did not see Harris until the next morning when Harris showed him a check he said he was going to cash. (R. pp. 302-303). Aiken stated he spoke to Harris later and learned Harris could not cash the check. (R. p. 303). Aiken claimed Harris was then arrested a few hours later before he met with law enforcement at his house. (R. p. 303).

After Aiken made his statement, officers went to the dumpster where Aiken claimed the guns had been abandoned but could not locate them. (R. pp. 315-316). Detective Johnson questioned Aiken about the fact the guns could not be located where he said they would be, and Aiken admitted he retrieved the guns from the dumpster earlier that morning. (R. pp. 303-305). Aiken then stated he gave one of the guns to his brother and hid the other one in his couch cushions. (R. p. 303). In response, officers went to Aiken's residence and his brother's residence. (R. pp. 317-318; p. 320; p. 331). At Aiken's residence, officers located a revolver that belonged to the Victim hidden underneath the cushions of Aiken's couch right next to the front door. (R. p. 226; pp. 332-333). At Aiken's brother's residence, officers found a nine-millimeter handgun hidden in a plastic bag wrapped with a rag. (R. pp. 320-321; p. 333). Subsequent testing revealed the nine-millimeter handgun was used to fire the bullets recovered from inside Victim's home. (R. pp. 353-355).

Aiken was subsequently indicted for numerous offenses, including first-degree burglary, armed robbery, and kidnapping, and he proceeded to trial. (R. p. 57; pp. 451-465). During trial, in addition to the testimony of Victim's neighbors and family members and the testimony of the officers who investigated Victim's disappearance,

Aiken's accomplice, Harris, testified for the prosecution. (R. p. 238). At the outset of his testimony, Harris admitted he was incarcerated at the time of trial after pleading guilty to crimes related to the kidnapping and robbery of Victim, which he stated he committed with Aiken. (R. p. 238). Harris further stated he received a twenty-year sentence after pleading guilty to the crimes. (R. p. 239).

Regarding the incident, Harris claimed Aiken came up with the idea to rob Victim after Aiken performed yard work for Victim. (R. pp. 239-240). Harris stated Aiken's brother drove them to Victim's house and Aiken had him cut Victim's phone line. (R. pp. 240-241). Harris testified Aiken threw a brick through Victim's window after he refused to do so, and Victim came to the window and fired a shot at them. (R. pp. 242-243). Harris stated Aiken then shot Victim. (R. p. 243). After she was shot, Harris claimed Victim came outside and yelled for her neighbors, Aiken ran to her and ordered her to surrender, and Victim complied. (R. pp. 243-244). Once Victim surrendered, Harris testified Aiken sent him into Victim's home to retrieve her keys, purse, and checkbook, and Aiken forced Victim into the trunk of her car. (R. p. 244; p. 246). Harris claimed they then returned to Walterboro, abandoned Victim's car next to an old building with Victim still in the trunk, and went to Aiken's home, which was nearby. (R. pp. 247-248). Harris testified he then unsuccessfully attempted to cash a stolen check the next day, was arrested shortly thereafter, and confessed. (R. pp. 250-252).

On cross-examination, Harris admitted he was a dishonest thief but asserted he was not "gonna tell no story." (R. pp. 255-256). Subsequently, Harris acknowledged he was originally facing a potential life sentence for first-degree burglary before he pled guilty. (R. p. 268). Then, the following exchange occurred:

[Defense Counsel]: Did you plead guilty in front of Carmen Mullen in this courtroom to burglary first?

[Harris]: (The witness pauses.)

[Defense Counsel]: Yes or no?

[Harris]: No, I didn't plead guilty to burglary first.

[Defense Counsel]: Did you plead guilty to assault and battery with intent to kill Mrs. Margaret Gooding, standing here in this courtroom with Judge Carmen Mullen, the lady judge, seated where that judge is today?

[Harris]: Yes.

[Defense Counsel]: Did you plead guilty to armed robbery?

[Harris]: Yes.

[Defense Counsel]: And for armed robbery, you could get 10 to 30 years by itself; is that not correct, without –

[Trial Judge]: Just a moment. Yes, sir.

[Solicitor]: You Honor, it's always –

[Defense Counsel]: You Honor, could we have a bench conference?

(R. pp. 268-269). Upon defense counsel's request, a bench conference was conducted outside the jury's presence. (R. p. 269). Following the bench conference, defense counsel resumed with his cross-examination of Harris, and Harris admitted he also pled guilty to grand larceny and possession of a weapon during the commission of a violent crime. (R. p. 269). Harris further testified his deal with the solicitor's office was that the first-degree burglary charge was dismissed and he pled guilty. (R. p. 269).

Subsequently, the trial continued, and the jury began its deliberations. (R. p. 426). Defense counsel then noted his objection to the limitations placed on his cross-examination of Harris, stating:

> When I was cross-examining Mr. Harris about the amount of time that he could receive on the offenses, the Solicitor objected. At that point in time, we had a sidebar. And I would have objected under [Mizzell] in the confrontation clause to his objection, or justified my questioning. And I just wanted that clearly on the record, You Honor.

(R. p. 426). In response, the trial judge explained:

> I sustained the objection to your soliciting the penalty for the offenses involved in this case. You entered into it by saying "You have a lawyer. You knew how serious this was. And do you know how much the penalty is for burglary or for armed robbery." I let you get away with one question. When you went to the second offense, there was an objection by the Solicitor. I sustained the objection. I do not believe the jury should be considering what the maximum penalty is for an offense in their deliberations on the guilt or innocence of the defendant. And for that reason, I sustained the objection, and I want to make sure there is a complete and accurate record of our sidebar.

(R. pp. 426-427). Thereafter, the jury convicted Aiken as indicted. (R. p. 430). The trial judge then sentenced Aiken to an aggregate term of imprisonment of thirty-five years. (R. pp. 445-446).

Following the trial, Aiken timely appealed his conviction, and the Court of Appeals unanimously affirmed in an unpublished decision. (App'x. pp. 1-2). In affirming the conviction, the Court of Appeals issued the following opinion:

> Aiken appeals his convictions of burglary, kidnapping, armed robbery, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime. He contends the trial court erred in denying him his right to confront the State's witness, who was his accomplice during the commission of these crimes, about potential sentences. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 318 (2002) ("The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence."); id. at 331-32, 563 S.E.2d at 318 ("However, other constitutional concerns, such as the Confrontation Clause, limit the applicability of this rule in circumstances where the defendant's right to effectively cross-examine a coconspirator witness of possible bias outweighs the need to exclude the evidence."); id. at 331, 563 S.E.2d at 317 ("The trial [court] retains discretion to impose reasonable limits on the scope of cross-examination."); State v. Gillian, 360 S.C. 433, 451, 602

S.E.2d 62, 71-72 (Ct. App. 2004) ("Before a trial [court] may limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate."); Mizzell, 349 S.C. at 331, 563 S.E.2d at 317 ("If the defendant establishes he was unfairly prejudiced by the limitation, it is reversible error."); id. at 333, 563 S.E.2d at 318 ("A violation of the defendant's Sixth Amendment right to confront the witness is not per se reversible error if the error was harmless beyond a reasonable doubt."); State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("Error is harmless when it could not reasonably have affected the result of the trial.").

(App'x p. 2).

ARGUMENT

The Court of Appeals properly affirmed the trial judge's ruling limiting Aiken from fully cross-examining his accomplice about the potential sentencing ranges for each of the offenses Aiken and his accomplice were indicted for because all relevant testimony regarding the accomplice's potential for bias was elicited during trial through the accomplice's testimony that he originally faced a maximum sentence of life imprisonment, he pled guilty in exchange for the dismissal of the first-degree burglary charge, and he was sentenced to a twenty-year term of imprisonment. Furthermore, even if the trial judge somehow erred in limiting Aiken's ability to cross-examine his accomplice, the Court of Appeals correctly determined any error was harmless in light of the overwhelming evidence of Aiken's guilt and the fact Aiken was fully able to expose his accomplice's potential for bias through the cross-examination that was permitted.

Aiken contends the Court of Appeals erred in affirming his conviction. In support of that contention, Aiken maintains his trial was rendered fundamentally unfair because he was allegedly denied the right to fully cross-examine his accomplice in regards to the benefits his accomplice received for agreeing to testify against him. While contending the Court of Appeals allegedly determined the trial judge erred in limiting the cross-examination of his accomplice, Aiken maintains the Court of Appeals erred in finding the error was harmless. Initially, the Court of Appeals did not find the trial judge erred in limiting the cross-examination of Aiken's accomplice and, instead, properly affirmed the trial judge's ruling because, although the trial judge prohibited Aiken from eliciting testimony from his accomplice on all of the potential sentences the accomplice was originally facing for the indicted charges, the trial judge only did so after testimony was elicited from the accomplice during trial establishing the accomplice was originally facing a maximum sentence of life imprisonment, pled guilty for his participation in the crimes, and was serving a twenty-year sentence at the time of Aiken's trial. Thus, because all relevant testimony regarding Aiken's potential bias was elicited during trial and any further testimony on the sentencing ranges for the indicted offenses was

inappropriate, irrelevant, and prejudicial, the trial judge did not abuse his discretion in placing reasonable limitations on the scope of Aiken's cross-examination of his accomplice. Furthermore, even if the trial judge's limitations on cross-examination were somehow unreasonable and prejudicial, the Court of Appeals also correctly found any error was harmless in light of the overwhelming evidence of Aiken's guilt and the fact Aiken was fully able to cross-examine his accomplice in regards to the maximum sentence he was facing and the sentence he received in exchange for pleading guilty. Accordingly, Aiken's petition for a writ of certiorari should be denied.

A. Proper Limitation of the Scope of Cross-Examination

Pursuant to the Sixth Amendment of the United States Constitution, every criminal defendant has a right to "to be confronted with the witnesses against him" during trial. U.S. Const. amend. VI. "Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses." State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). That right guarantees to a criminal defendant the opportunity to cross-examine the witnesses against him concerning bias. State v. Gillian, 360 S.C. 433, 450, 602 S.E.2d 62, 71 (Ct. App. 2004), aff'd as modified, 373 S.C. 601, 646 S.E.2d 872 (2007); see also Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.").

When cross-examining a witness in regards to the potential for bias, considerable latitude must be allowed. Gillian, 360 S.C. at 450, 602 S.E.2d at 71. Any fact may be elicited which tends to show interest, bias, or partiality of the witness. State v. Brewington, 297 S.C. 97, 101, 226 S.E.2d 249, 250 (1976). Limitations placed on a defendant's ability to cross-examine a witness constitute a Confrontation Clause violation

when the defendant 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. Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986) (emphasis added). "The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial." Gillian, 360 S.C. at 150, 602 S.E.2d at 71.

However, although a defendant is entitled to an opportunity for meaningful cross-examination, the scope of that cross-examination still rests in the trial judge's sound discretion. State v. Whitner, 380 S.C. 513, 519, 670 S.E.2d 655, 659 (Ct. App. 2008). A defendant's right to confront the witnesses against him does not deprive the trial judge of his usual discretion in limiting the scope of cross-examination. State v. Turner, 373 S.C. 121, 130, 644 S.E.2d 693, 698 (2007). Trial judges may impose reasonable limitations on cross-examination designed to show bias "based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness's safety, or interrogation that is repetitive or only marginally relevant." State v. Jenkins, 322 S.C. 360, 364, 474 S.E.2d 812, 814 (Ct. App. 1996). A trial judge is permitted to limit a defendant's attempts to demonstrate bias on the part of a witness where there is a clear showing that the cross-examination is somehow inappropriate. Whitner, 380 S.C. at 519-520, 670 S.E.2d at 659. The limitation of cross-examination constitutes reversible error only if the defendant establishes unfair prejudice resulted from the limitation. State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991).

In the case sub judice, Aiken's accomplice, Harris, testified on direct examination that he was indicted for numerous offenses based on his participation with Aiken in the

kidnapping, robbery, and burglary of their seventy-nine-year-old victim. Harris further testified he was incarcerated at the time of trial after pleading guilty to his charges in exchange for a twenty-year sentence. Thereafter, the trial judge permitted Aiken to elicit testimony from Harris on cross-examination that Harris was originally facing a maximum sentence of life imprisonment for his first-degree burglary charge before he pled guilty to the other offenses. After eliciting that testimony, Aiken attempted to question Harris on the maximum potential sentence he had faced on the armed robbery charge, and the trial judge prohibited Aiken from doing so. The trial judge's decision to limit Aiken's cross-examination of Harris on the possible sentencing ranges for the other offenses Harris was originally facing, which included many of the same offenses for which Aiken was on trial, constituted a proper exercise of the trial judge's discretion regarding the scope of cross-examination.[4]

Significantly, the jury is typically not entitled to learn the possible sentence a defendant might receive if convicted because the potential sentencing range for an offense is irrelevant to a finding of guilt or innocence. State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 318 (2002). " 'The purpose of preventing disclosure of the potential sentence facing the defendant is that such evidence is irrelevant to the jury and could possibly prejudice the State's right to a fair trial.' " Id. at 331, 563 S.E.2d at 317 (quoting Illinois v. Brewer, 245 Ill. App. 3d 890, 892, 615 N.E.2d 787, 790 (Ill. App. Ct. 1993)). However, when a defendant's right to **effectively** cross-examine an accomplice about possible bias outweighs the need to exclude evidence on the possible sentence for

[4] Regarding the differences in the offenses each of the participants in the crimes were charged with, Harris pled guilty to grand larceny while Aiken was not indicted for that offense. (R. p. 57; p. 269; pp. 451-465).

the charged offenses, the Confrontation Clause limits the rule precluding the admission of such evidence. Whitner, 380 S.C. at 520, 670 S.E.2d at 659.

In State v. Mizzell, the Mizzells and their co-defendant were charged with first-degree burglary, grand larceny, and possession of a firearm during the commission of a violent crime. Id., 349 S.C. at 329, 563 S.E.2d at 316. During trial, the co-defendant testified against the Mizzells and was permitted to testify he could receive a "long sentence" for the charged offenses. Id. at 334, 563 S.E.2d at 319. However, the trial judge prohibited the Mizzells from asking the co-defendant, who had **not** yet pled guilty and had not agreed to a plea bargain, about the specific potential sentences he was facing for the charges. Id. at 330, 563 S.E.2d at 317. Subsequently, the Mizzells were convicted and appealed based on the limitations placed upon their cross-examination of the co-defendant. Id. at 330, 563 S.E.2d at 317.

On appeal, the Supreme Court reversed, finding the trial judge erred in limiting the Mizzells' ability to cross-examine their co-defendant. Id. at 333, 563 S.E.2d at 318. The Court noted: "Generally, a judge may prevent the introduction of evidence which informs the jury of the possible sentence defendants may receive if convicted because it is either irrelevant or substantially prejudicial." Id. However, under the circumstances of the Mizzells' case, the Court found the trial judge erred in limiting the cross-examination of the co-defendant about the potential sentence he was facing because "[t]he lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain **a future recommendation of leniency**." Id. (emphasis added). Since the Mizzells' co-defendant had not pled guilty or reached a plea agreement, the Court determined testimony regarding his possible sentence for his indicted offenses was critical to the jury's ability to evaluate his potential for bias. Id.

Critically, unlike the situation in Mizzell, the jury in Aiken's case was not left with any ambiguity about the potential sentence Aiken's accomplice was originally facing. The trial judge specifically permitted Aiken to elicit testimony from Harris indicating Harris was originally facing a maximum possible sentence of life imprisonment before he pled guilty. Thus, as the jury was fully aware of the maximum sentence Harris had faced for the crimes before he pled guilty along with the fact his guilty plea allowed him to avoid a potential life sentence for the crimes, no further testimony was needed in regards to the possible sentences Harris faced on his other charges to establish Harris had a motive to plead guilty and cooperate with the State. Therefore, the limitations placed on Aiken's cross-examination of Harris did not deprive the jury of the relevant information they needed to judge Harris' potential for partiality or bias. Cf. Brown, 303 S.C. 169, 399 S.E.2d 593 ("The fact Bethel was permitted to avoid a mandatory prison term of more than three times the duration she would face on her plea to conspiracy is critical evidence of potential bias that appellant should have been permitted to present to the jury."). Accordingly, Aiken's ability to effectively and meaningfully cross-examine Harris was not impaired.

Furthermore, again unlike the situation in Mizzell, Harris pled guilty **before** Aiken's trial **and** received a twenty-year sentence for the crimes prior to testifying in Aiken's case. Therefore, Harris' motive for providing biased testimony was greatly reduced by virtue of the fact his sentence, which had already been imposed and which he was serving at the time of Aiken's trial, was not dependent on any future recommendation from the solicitor for leniency. Cf. State v. Sims, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002) ("There was the substantial possibility Peterson would give biased testimony in an effort to have the solicitor highlight to his future trial judge how

he had cooperated in the instant case."). Harris had already been sentenced for his crimes prior to ever testifying in Aiken's case and had nothing to personally gain in regards to his sentence through testifying against Aiken during Aiken's trial. Accordingly, since Harris directly testified as to the sentence he already received for his crimes, any testimony on the sentence he was facing before pleading guilty was irrelevant to his motivation for testifying and did not have "a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity" of his testimony. See Brewington, 297 S.C. at 101, 226 S.E.2d at 250 (" '[A]s a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony[.]' " (citations omitted)).

In arguing the Court of Appeals erred in affirming his conviction, Aiken primarily relies upon this Court's recent decision in State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012), in which this Court instructed: "The fact that a cooperating witness avoided a *mandatory minimum* sentence is critical information that a defendant must be allowed to present to the jury." (italics in original). However, unlike in Gracely, Harris did **not** avoid any mandatory minimum sentences by pleading guilty prior to Aiken's trial. Instead, before he testified in Aiken's case, Harris pled guilty to armed robbery and other charges and was sentenced to a twenty-year term of imprisonment, which was longer than the mandatory minimum sentences he faced for his original charges. See S.C. Code Ann. § 16-11-311 (mandating a sentence of fifteen years to life for first-degree burglary); S.C. Code Ann. § 16-11-330 (mandating a sentence of ten years to thirty years for armed robbery). Thus, as Harris did **not** avoid the mandatory minimum sentences he was facing based on his original charges, testimony regarding the mandatory minimum

sentences he did **not** avoid by pleading guilty was irrelevant in regards to his potential for bias in Aiken's trial. Cf. Gracely, 399 S.C. at 373, 731 S.E.2d at 885 ("Each of the State's witnesses faced a mandatory minimum sentence significantly longer than the sentence they received in exchange for their cooperation."). To the contrary, the critical testimony related to Harris' potential for bias concerned the fact that Harris avoided the potential life sentence he faced upon conviction for first-degree burglary, and that testimony was unquestionably presented to the jury.[5] Thus, the limitations that the trial judge placed on Aiken's cross-examination of Harris were reasonable under the circumstances and resulted in no prejudice to Harris. See Mizzell, 349 S.C. at 331, 563 S.E.2d at 317 ("The trial judge retains discretion to impose reasonable limits on the scope of cross-examination.").

Critically, in Aiken's case, the trial judge only limited Aiken's ability to cross-examine Harris after permitting Aiken to elicit all of the testimony necessary to establish any possibility of bias on Harris' part. Thereafter, the trial judge properly exercised his discretion to prevent Aiken from eliciting testimony on the other possible sentences Harris had faced because that information was no longer necessary or relevant towards establishing Harris' potential for providing biased or partial testimony. See Gillian, 360 S.C. at 451, 602 S.E.2d at 71 ("[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination

[5] Demonstrating that testimony regarding the full sentencing ranges for each offense Harris was charged with was unnecessary towards demonstrating his potential for bias, Aiken contends in his petition for a writ of certiorari that "trial counsel was not allowed to cross-examine a key state's witness, implicated in the same crimes and charged with the same offenses, who clearly made a deal with the state **to avoid a potential life sentence in exchange for his testimony against [Aiken]**." (Cert. Pet. p. 10) (emphasis added). Critically, testimony regarding the fact that Harris was originally facing a life sentence before pleading guilty and receiving a twenty-year sentence **was** presented the jury. (R. p. 239; p. 268). Furthermore, no testimony was presented during trial suggesting Harris had a deal with the State requiring him to testify against Aiken, with Harris stating that the extent of his deal with the State was that the first-degree burglary charge would be dismissed if he pled guilty to the other charges. (R. p. 269).

based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant."). In light of the testimony the trial judge permitted Aiken to elicit from Harris, the introduction of additional testimony regarding the potential sentences ranges of the offenses Harris was originally charged with was, at best, marginally relevant and only stood to confuse the issues and expose the jury to potentially prejudicial information completely irrelevant to their decision in Aiken's case. Therefore, the testimony was no longer necessary or appropriate, meaning Aiken suffered no prejudice from its exclusion, and the trial judge did not abuse his discretion in reasonably limiting the scope of Aiken's cross-examination of his co-defendant. See State v. Aleksey, 343 S.C. 20, 33-34, 538 S.E.2d 248, 255 (2000) ("The right to meaningful cross-examination of an adverse witness is included in the defendant's Sixth Amendment right to confront his accusers. This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination." (citations omitted)); see also Mizzell, 349 S.C. at 331, 563 S.E.2d at 317 (requiring a defendant to establish he was unfairly prejudiced by a limitation placed upon cross-examination before he is entitled to reversal). Accordingly, the Court of Appeals properly affirmed the trial judge's ruling. Aiken's petition for a writ of certiorari should be denied.

B. Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the

materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Thus, when overwhelming evidence of guilt has been presented, any trial error may be harmless. State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988).

Critically, an error resulting from the placing of improper limitations on a defendant's ability to cross-examine a witness during trial does not automatically warrant reversal and, instead, is subject to a harmless error analysis. State v. Clark, 315 S.C. 478, 481, 445 S.E.2d 633, 634 (1994); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). In determining whether such an error is harmless, the United States Supreme Court has identified the following factors to be considered: (1) the importance of the witness' testimony to the State's case; (2) whether the testimony was cumulative; (3) the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points; (4) the extent of cross-examination otherwise permitted; and (5) the overall strength of the State's case. Van Arsdall, 475 U.S. at 684. However, the harmless error analysis is **not** confined to considerations of only those factors. See Graham, 314 S.C. at 386, 444 S.E.2d at 527 ("The list of factors as set out in Van Arsdall is not exhaustive.").

In the case at bar, even assuming the trial judge erred in limiting Aiken's ability to cross-examine his accomplice, any error was entirely harmless. Initially, irrespective of Harris' testimony, the other evidence presented during trial overwhelmingly established Aiken's guilt for the indicted offenses. Most significantly, testimony was presented establishing Aiken unconditionally confessed to the crimes following his arrest, and his signed confession was presented to the jury. In that signed confession, Aiken openly admitted he was involved in the burglary, armed robbery, and kidnapping of Victim. Additionally, he candidly acknowledged that he, at a minimum, shot at his elderly victim after going to her house in the middle of the night with an accomplice who he claimed cut her phone lines and threw a brick through her window. Standing alone, Aiken's signed confession and admissions overwhelmingly established his guilt for each and every one of the indicted offenses, corroborated his accomplice's testimony, and rendered his accomplice's testimony insignificant and largely cumulative to his own candid admissions.

In addition to Aiken's statement, other significant evidence and testimony was presented conclusively establishing Aiken's guilt. Significantly, the guns involved in the crime were discovered in the exact locations Aiken informed law enforcement they would be, with the gun stolen from Victim being discovered in the cushions of Aiken's couch and the gun that fired the shots into Victim's home being discovered hidden at Aiken's brother's residence. Furthermore, Victim's abandoned car, which contained Victim in the trunk, was discovered in close proximity to Aiken's residence. Coupled with Aiken's confession, that evidence conclusively established Aiken's guilt for the indicted offenses. Cf. Sims, 348 S.C. at 26, 558 S.E.2d at 523-524 (finding any error in the improper limitation of the scope of Sims' cross-examination of a witness to be

harmless in light of the fact that the State's case against Sims was strong independent of the witness' testimony and due to the fact Sims confessed to the crime to law enforcement).

Finally, notwithstanding the overwhelming evidence of Aiken's guilt, Aiken was fully able to expose his accomplice's potential for bias or partiality through the scope of cross-examination that was permitted. Harris testified he was facing a life sentence after he was indicted for the crimes, pled guilty to the offenses prior to Aiken's trial, and was sentenced to a twenty-year term of imprisonment. No further evidence was necessary to establish any potential for bias on Harris' part, and Aiken has failed to offer any meaningful reason as to why or how any additional testimony regarding the potential sentencing ranges for Harris' other indicted offenses would have had any additional impact on his potential for bias or lack of credibility. See Van Arsdall, 475 U.S. at 684 ("The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt.")

Even assuming the trial judge somehow erred in limiting the scope of Aiken's cross-examination of Harris, any error was entirely harmless. Harris fully acknowledged he was facing a life sentence before he pled guilty and received a twenty-year sentence prior to testifying in Aiken's trial. Testimony on the other potential sentences Harris was facing before he entered his guilty plea and was sentenced could not have had any impact of the jury's verdict, rendering any error in the trial judge's decision to prohibit Aiken from eliciting such testimony harmless. Notwithstanding the fact that the trial judge's limitations on the scope of cross-examination were reasonable and proper, those limitations would not have warranted reversal even if they were improper. See Whitner,

380 S.C. at 521, 670 S.E.2d at 659-660 (finding any error in the limitation of the scope of cross-examination to be harmless where the limitation could not have reasonably affected the outcome at trial); State v. Curry, 370 S.C. 674, 682, 636 S.E.2d 649, 653 (Ct. App. 2006) (finding any error in the limitation of the scope of cross-examination of Curry's co-defendants about the sentences they faced was harmless because the co-defendants' testimony was cumulative to other testimony and Curry's guilt or innocence did not solely hinge on their testimony). Accordingly, the Court of Appeals properly affirmed Aiken's conviction. Aiken's petition for a writ of certiorari should be denied.

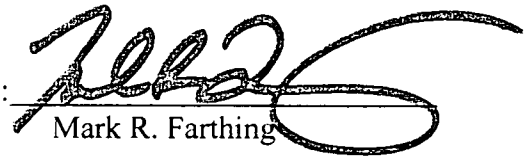
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BY: 
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

April 23, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Hampton County
Honorable Perry M. Buckner, Circuit Court Judge
Appellate Case No. 2013-000399

THE STATE,

Petitioner,

vs.

STEVIE LAMONT AIKEN,

Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 23rd day of April, 2013.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

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