STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County
Honorable Alison Renee Lee, Circuit Court Judge
Honorable William A. McKinnon, Circuit Court Judge
Appellate Case No. 2018-001139

THE STATE,

Respondent,

vs.

GREGG PICKRELL,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The immunity hearing judge did not abuse her discretion or commit any other error of law by determining Appellant failed to meet her burden of establishing by a preponderance of the evidence she was entitled to immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act because the immunity hearing judge properly weighed and considered the evidence and testimony presented during the pre-trial immunity hearing before reaching a factually-supported conclusion nothing "credible" had been introduced to establish Appellant justifiably killed her unarmed victim when she shot him in the back and, thus, Appellant was not entitled to a grant of immunity pursuant to either Section 16-3-440(C) of the South Carolina Code of Laws or the law of self-defense.

II.

The trial judge did not abuse his broad discretion by admitting testimony from an investigator about the investigator's perceptions during his interview with Appellant because that testimony constituted proper lay opinion testimony since it was rationally based on the investigator's own perceptions, could have been helpful to the jury, and did not require any special knowledge or expertise. However, even assuming the investigator's testimony was somehow improper, any possible error in its admission was entirely harmless because it was wholly cumulative in nature to other unobjected-to testimony presented during trial, including to virtually-identical testimony elicited by defense counsel during his cross-examination of the investigator.

III.

Even assuming the trial judge erred by admitting non-expert opinion testimony from a law enforcement agent regarding the purported significance of the location where a fired cartridge case was found after the shooting, any possible error in the admission of that testimony was entirely harmless because the testimony was refuted by expert testimony that was subsequently presented, was insignificant and unimportant when considered in the context of the case as a whole, and was not significant or relevant to any critical issue in dispute and, therefore, could not have contributed to the outcome of Appellant's case.

STATEMENT OF THE CASE

In September of 2014, Appellant Gregg Pickrell was arrested following an investigation into the death of a man who was fatally shot in the back inside a residence. In August of 2015, the Kershaw County Grand Jury indicted Appellant for one count of murder. In August of 2016, Appellant filed a motion seeking immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. On January 26, 2017, a pre-trial hearing was conducted on the motion in the Kershaw County Court of General Sessions with the Honorable Alison Renee Lee, circuit court judge, presiding. Subsequent to the two-day hearing, the immunity hearing judge denied Appellant's request for immunity from prosecution through an order filed on January 3, 2018. Thereafter, on May 29, 2018, a jury trial was commenced in the Kershaw County Court of General Sessions with the Honorable William A. McKinnon, circuit court judge, presiding. At the conclusion of the six-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of thirty-five years. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

At approximately 10:17 p.m. on the night of September 10, 2014, Rachel Abstance, a cab driver working her first shift on the job, picked up a customer at his residence and began driving him towards his destination, which was a 123-acre horse farm located in Rembert, South Carolina. (R. pp. 57-58; p.79; pp. 245-246; pp. 248-249; p. 386; pp. 388-390; p. 406). Roughly twenty minutes later, they arrived at the farm, and the customer—Robert Lamont Demary ("Victim")—paid the $22 cab fare with money he retrieved from an envelope that had been left in the mailbox at the end of the farm's driveway. (R. p. 57; pp. 59-60; pp. 78-79; pp. 147-148; p. 206; pp. 248-249; p. 252; p. 390; pp. 393-394). Victim, who had seemed "very pleasant" to Abstance, then began walking up the driveway on foot while Abstance drove off in her cab. (R. p. 393; p. 395).

Early the next morning, Victim sent text messages from his phone to Stephanie Owen, who was a friend and former lover, at 8:28 a.m. and 8:46 a.m. seeking a ride away from the farm. (R. p. 217; pp. 222-224; p. 231; pp. 399-402; p. 407; pp. 654-655). Unfortunately, those messages ended up being the last ones Victim ever sent because he was fatally shot in the back by Appellant inside a small residence at the farm within just a few moments of sending them. (R. p. 57; pp. 79-80; p. 83; pp. 98-99; pp. 102-103; p. 108; pp. 113-114; p. 211; p. 269; p. 444; p. 483; p. 579; p. 586; pp. 900-901; p. 903; p. 906; p. 964; p. 966; p. 976; p. 982; p. 1010; p. 1051; pp. 1269-1275).

Only minutes after Victim sent his last text message, Appellant, who managed the farm and lived at the residence where Victim was killed, called 911 to report the shooting. (R. pp. 57-59; p. 189; p. 565; p. 782; pp. 897-898; p. 918; pp. 935-936; p. 1051; pp. 1269-1275). In response, law enforcement officers and medical personnel rapidly responded to the scene. (R. p.

189; p. 256; p. 266; pp. 438-439; pp. 499-500; pp. 560-561; p. 600; p. 714; pp. 897-898; p. 944; pp. 952-953). Once there, the emergency responders encountered Appellant outside the residence, and she repeatedly asserted she did not need any medical treatment while describing her condition as "okay." (R. pp. 501-502; p. 603; p. 901; p. 945; pp. 955-956; p. 960). Meanwhile, inside the residence, they found Victim dead on the floor of a bedroom with a single gunshot entry wound to his back and no weapons nearby. (R. pp. 269-270; p. 444; p. 449; pp. 600-601; pp. 721-722; p. 903; p. 906; p. 964; p. 966; p. 968). Following those discoveries, Appellant was voluntarily transported to the sheriff's office for an interview while Victim's body was taken for an autopsy. (R. p. 189; p. 502; p. 504; p. 945; p. 964).

After arriving at the sheriff's office, Appellant initially spoke with Investigator Richard DeVors from the Kershaw County Sheriff's Office. (R. pp. 255-258; p. 497; p. 505; pp. 509-510; pp. 1066-1069; Trl. St. Ex. # 69 (Recording of Interviews)). During that interview, Appellant, who was sixty-one years old, indicated she knew Victim, who was thirty-three years old, through his past employment at her farm, and she claimed they had been engaged in a sexual relationship for some time. (R. p. 1071; p. 1076; p. 1097). She further reported Appellant was abusive towards her, had been so for years, had threatened her, and had begun to use "gangsta" talk around her.[1] (R. p. 1076; pp. 1079-1080; p. 1086; p. 1090). Regarding the incident itself, Appellant asserted she left money for Victim in her mailbox on the night of September 10, 2014, and he subsequently unexpectedly showed up at her residence's door while intoxicated. (R. pp. 1084-1085; pp. 1102-1103). Appellant alleged she then invited Victim inside, they began drinking vodka together, and Victim suddenly threw her, which caused her to spill her drink. (R. pp. 1102-1103; pp. 1105-1106). After that, Appellant asserted they had dinner together, Victim

[1] In describing the abuse inflicted by Victim, Appellant referenced an incident in Louisiana that had occurred roughly six years before the shooting. (R. pp. 1079-1082).

fell asleep in a chair, and she got into bed around 4:00 a.m. or 4:30 a.m. (R. p. 1101; p. 1103; pp. 1108-1112). Subsequent to that, Appellant indicated Victim got into bed with her while nude, they proceeded to have sex, and they went back to sleep after doing so. (R. pp. 1117-1118). Then, when they awakened a few hours later, Appellant claimed she informed Victim they needed to go because her mother was coming over to vaccinate horses, he began having a "fit" because one of his earrings was missing, he threatened to kill her, and he started angrily searching for his earring in the vicinity of the bed. (R. pp. 1112-1113; pp. 1118-1123; pp. 1136-1138; pp. 1145-1146). As he did so, Appellant indicated she retrieved a gun in order to try to encourage Victim to leave, pointed it at him, and told him to "just come on." (R. p. 1137; p. 1146). At that point, Appellant alleged Victim made a movement, "[she] just shot the gun," Victim "went down," and she then quickly called 911 to report what had occurred.[2] (R. pp. 1138-1140; pp. 1142-1143; p. 1147).

Following that account of the shooting, Appellant's attorney arrived at the sheriff's office, and Investigator DeVors discontinued the interview so Appellant could speak with him. (R. pp. 260-261; p. 511; pp. 1158-1159). Once she had done so, Appellant initiated a conversation with Investigator Rick Bailey, who was a senior investigator with the Kershaw County Sheriff's Office, to provide additional information about the events that had transpired. (R. p. 261; p. 279; p. 512; p. 566; pp. 1163-1164; Trl. St. Ex. # 69). During that second interview, Appellant repeated her claims about being abused and threatened by Appellant for

[2] At the time of the initial interview, Investigator DeVors was unaware Victim had been shot in the back and did not know whether Appellant was a victim or a suspect. (R. pp. 258-259; p. 504; p. 540; p. 553).

years.[3] (R. pp. 1168-1175; p. 1183; p. 1190). Beyond that, Appellant again reported Appellant unexpectedly arrived at her house on the night before the shooting, and she noted she invited him in for drinks and dinner after his surprise appearance.[4] (R. pp. 1191-1192; p. 1197; pp. 1232-1233). Once he came inside, Appellant asserted Victim threw her on a desk, which caused her to spill her drink, and held her down, but they then proceeded to have dinner together before subsequently consensually having rough sex with one another. (R. p. 1192; p. 1194; pp. 1254-1256). Then, on the next morning, Appellant, who expressed embarrassment about being with Victim, indicated Victim began angrily looking for a missing earring despite her telling him she needed him to leave due to the fact her mother was coming over. (R. pp. 1199-1203; p. 1240; pp. 1242-1245). As Victim searched for his earring, Appellant claimed she retrieved her gun, pointed it at Victim for the purpose of getting him to leave, and told him they needed to go. (R. pp. 1208-1210; p. 1243). At that point, Appellant alleged Victim told her she was not going to shoot him before moving or lunging towards her, and she stated the shooting "just happened" after that.[5] (R. p. 578; pp. 1210-1211; p. 1220; p. 1222; p. 1249; Trl. St. Ex. # 69). Furthermore, Appellant insisted she did what she did that morning because she thought it was "the end" for her. (R. p. 1238).

At the conclusion of the second interview, Appellant was transported to the hospital for

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[3] When speaking with Investigator Bailey, Appellant again referenced the incident in Louisiana and asserted Victim slapped her and threw both a Gatorade bottle and money at her during that earlier incident. (R. pp. 1172-1175).

[4] Through subsequent analysis of Appellant's and Victim's phones, investigators were able to determine Appellant was fully aware Victim would be coming to her residence on the night of September 10, 2014. (R. pp. 636-636; p. 641; pp. 757-758).

[5] Unlike Investigator DeVors, Investigator Bailey knew at the time of his interview Victim had been shot in the back, and, as a result, he was obviously skeptical of Appellant's account of the shooting. (R. p. 564; pp. 578-579).

an examination based on the abuse she had reported. (R. p. 263; pp. 522-523; pp. 534-535; pp. 612-613). While there, Appellant, who had some signs of apparent bruising, reported she was thrown into a desk, choked, and thrown into a wall between the hours of midnight and 5:00 a.m. by an abusive lover. (R. pp. 285-286; pp. 463-465; pp. 522-524; p. 614; Im. St. Exs. # 25-43 (Photographs)). Appellant further reported the two had consensual sex that night and had both been drinking.[6] (R. pp. 614-615; p. 617). Ultimately, nothing significant was found during the examination of Appellant aside from a possible nasal fracture of indeterminate age, and Appellant was released from the hospital only two hours after her arrival with a variety of prescriptions, including one for pain medication and one for an antibiotic to treat a urinary tract infection that had been discovered during the hospital visit. (R. pp. 523-524; pp. 617-619; p. 1056).

On the following day, Dr. Janice Ross, an expert forensic pathologist, conducted Victim's autopsy. (R. pp. 206-207; pp. 971-972; p. 975). During that autopsy, Dr. Ross discovered Victim had suffered a single gunshot wound to the middle of his back, and the bullet that caused the wound was fired from a distance of at least two feet away due to the lack of stippling present before travelling through Victim's body in a slightly upward and rightward direction and becoming lodged inside it. (R. pp. 207-208; p. 211; p. 976; pp. 978-979; p. 982; p. 995; p. 1010; Im. St. Ex. # 2 (Autopsy Diagram)). Dr. Ross further discovered the bullet pierced multiple organs, including Victim's heart, and inflicted internal injuries that caused Victim to quickly bleed to death. (R. p. 208; p. 211; p. 978; pp. 980-981; p. 997). Beyond that, Dr. Ross found no signs of any other injuries to Victim's body and no signs of any offensive or defensive wounds,

[6] During trial, the nurse who examined Appellant at the hospital testified Appellant repeatedly and "adamantly" insisted she was not sexually assaulted during the incident. (R. p. 617).

including to his hands and knuckles.[7] (R. p. 209; p. 211; pp. 978-979; p. 984; p. 989; p. 1011). Based on her findings, Dr. Ross concluded Victim's death was a homicide caused by the gunshot wound to his back, which meant Victim was facing away from the gun at the time he was fatally shot. (R. p. 210; pp. 980-982; p. 1010).

Ultimately, as a result of the autopsy findings coupled with the other evidence uncovered in the investigation of the shooting, Appellant was arrested at her home later that day. (R. pp. 740-741; pp. 763-764). Subsequently, Appellant was indicted for Victim's murder, and she proceeded to trial after unsuccessfully seeking immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. (R. p. 8; p. 45; p. 881; pp. 1050-1063). At the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 855). The trial judge then sentenced her to a thirty-five-year term of imprisonment for the killing. (R. p. 864).

[7] Through subsequent analysis of samples collected during the autopsy, Victim's alcohol concentration was determined to be between 0.1 percent and 0.16 percent at the time of his death, and some evidence of marijuana usage was detected in his system. (R. pp. 212-213; pp. 993-994).

STANDARD OF REVIEW

Standard of Review for Issue I

In an appeal from a circuit court judge's pre-trial determination regarding a claim of statutory immunity, an appellate court reviews the circuit court judge's ruling for an abuse of discretion. State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014); see State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("[T]his court reviews [a claim of immunity pursuant to the Protection of Persons and Property Act] under an abuse of discretion standard of review."). Pursuant to the abuse of discretion standard, the appellate court must affirm the circuit court judge's immunity determination if it is supported by any evidence and not controlled by an error of law. Curry, 406 S.C. at 372, 752 S.E.2d at 267; see Douglas, 411 S.C. at 316, 768 S.E.2d at 237 ("[T]he abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the trial court's assessment of witness credibility."); see also Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) ("In appeals of pretrial rulings, this Court is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.' " (citation omitted)).

Standard of Review for Issues II and III

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling on appeal, the appellate court must give great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence

pursuant to an abuse of discretion standard and gives great deference to the trial court."). Significantly, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear *prejudicial* abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); see also State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006) (recognizing the erroneous admission of evidence only warrants reversal if its admission causes prejudice). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's evidentiary ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

I.

The immunity hearing judge did not abuse her discretion or commit any other error of law by determining Appellant failed to meet her burden of establishing by a preponderance of the evidence she was entitled to immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act because the immunity hearing judge properly weighed and considered the evidence and testimony presented during the pre-trial immunity hearing before reaching a factually-supported conclusion nothing "credible" had been introduced to establish Appellant justifiably killed her unarmed victim when she shot him in the back and, thus, Appellant was not entitled to a grant of immunity pursuant to either Section 16-3-440(C) of the South Carolina Code of Laws or the law of self-defense.

Appellant contends the immunity hearing judge reversibly erred by denying her request for immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act ("the Act"). In support of that contention, Appellant maintains the immunity hearing judge erred as a matter of law by purportedly determining she was legally required to deny immunity because the claim was in dispute. Furthermore, Appellant maintains she should have been granted immunity—and should now be granted immunity on appeal—because she allegedly did, in fact, establish by a preponderance of the evidence she justifiably killed her victim when she shot him in the back. Contrary to Appellant's contentions, the immunity hearing judge thoroughly evaluated the testimony and evidence presented during the pre-trial immunity hearing, which included multiple inconsistent statements from Appellant along with evidence establishing Appellant's unarmed victim was fatally shot squarely in the middle of his back, and only denied Appellant's immunity claim after finding Appellant had failed to credibly meet her burden of establishing entitlement to immunity by a preponderance of the evidence under any applicable provision of law, and that ruling was fully supported by the testimony and evidence before the immunity hearing judge. Under such circumstances, there is no proper basis

upon which to disturb the immunity hearing judge's legally-correct and factually-supported ruling on appeal. The immunity hearing judge's order denying immunity should be affirmed.

Relevant Facts

Prior to trial, Appellant sought immunity from prosecution for Victim's murder, arguing she justifiably shot Victim after he forced her to have sex and threatened to kill her and her mother. (R. pp. 1016-1018). In response, the immunity hearing judge conducted a pre-trial hearing on the matter. (R. p. 8).

During the hearing, Appellant, who identified herself as a horse trainer, presented testimony on her own behalf. (R. pp. 57-58). As support for her claim of immunity, Appellant recounted a number of past episodes of alleged physical abuse and threatening behavior involving Victim, including one that occurred in Louisiana in 2008 and another in which she purportedly defecated on herself that occurred at some unspecified point in time. (R. pp. 59-66; pp. 70-71; p. 84; pp. 92-93; p. 117; pp. 121-124; p. 132). Additionally, she discussed the events that led up to the shooting and claimed Victim grabbed her by the hair, slammed her into her residence's door, smashed her into a desk, and raped her "for hours" at different points after he came over to her house on the night of September 10, 2014. (R. pp. 80-71; p. 151; pp. 158-159). Appellant further alleged Victim thrust her face into a trunk, kicked her, yanked her by the ankle, threatened her, struggled with her, and yelled profanities at her after losing one of his earrings the next morning. (R. pp. 93-100; p. 173). After that, Appellant contended Victim began looking for his earring and she pulled herself up, grabbed a gun, and pointed it. (R. pp. 100-102; pp. 174-175). When she did, Appellant claimed Victim told her she would not shoot him and moved, and she then fired a single shot before running away and calling 911. (R. pp. 102-103; p. 109). Furthermore, Appellant claimed she did not know she shot Victim until she was later told

so. (R. p. 186). Beyond that, Appellant conceded she did not tell the investigators about many of the things she testified to during the immunity hearing, including about the specific details of the purported abuse and about the alleged assault that immediately preceded the shooting. (R. pp. 143-145; p. 149; p. 152; pp. 157-158; pp. 160-161; pp. 168-170; pp. 175-176; pp. 181-182). Similarly, she admitted some of her testimony was inconsistent with the statements she had previously provided about the incident, and she acknowledged Victim had been a visitor to her home on a nearly-daily basis leading up to the date she killed him. (R. pp. 160-161; p. 164; p. 204)

In addition to that testimony, Appellant's earlier accounts of the incident were introduced, and the immunity hearing judge requested—and subsequently reviewed—copies of the recordings of Appellant's law enforcement interviews so she could evaluate Appellant's credibility and demeanor during them. (R. pp. 43-45; pp. 47-48; p. 1051). Likewise, Dr. Ross testified about her findings from Victim's autopsy, specifically noted Victim's back was to the shooter when he was fatally shot in the middle of his back, and confirmed Victim had no other wounds to his body, including no defensive wounds. (R. pp. 206-211). Additionally, testimony was presented establishing Victim, who was described as a ladies' man, was not in possession of any weapons at the time of his death and had been actively seeking a ride away from the farm from a former lover just before he was killed by Appellant, who was a current sexual partner. (R. p. 119; p. 204; pp. 223-224; p. 231; p. 235; p. 269). Furthermore, photographs that were taken of Appellant after the incident were introduced to show the limited extent of her injuries at that time. (R. pp. 270-271; Im. St. Exs. # 25-43).

At the conclusion of the hearing, defense counsel argued Appellant's case was not a close one while alleging the evidence in Appellant's favor was "extraordinarily overwhelming." (R. p.

290). In rebuttal, the solicitor argued the physical evidence did not comport with Appellant's self-serving claims and established Victim was shot in the back from at least two feet away, which did not support a conclusion Appellant was actually being attacked at the time she killed her victim. (R. pp. 291-292). After listening to the parties' arguments, the immunity hearing judge took the matter under advisement. (R. pp. 292-294).

Subsequently, the immunity hearing judge issued a detailed fourteen-page order denying Appellant's immunity claim. (R. pp. 1050-1063). In that thorough order, the immunity hearing judge made extensive factual findings before concluding Appellant had failed to prove by a preponderance of the evidence she was entitled to immunity from prosecution under any applicable provision of law. (R. pp. 1051-1056; p. 1059; pp. 1062-1063). Specifically, the immunity hearing judge determined Appellant first was not entitled to immunity pursuant to Section 16-11-440(C) because: (1) the forensic evidence that had been presented contradicted Appellant's testimony from the immunity hearing and established Victim was shot in the back at a time in which he was not using any force against Appellant, which meant Appellant was neither being attacked nor meeting force with force when she fatally shot Victim from behind; and (2) no "credible" evidence was presented to support a conclusion it was reasonable for Appellant, who only had minor physical injuries after the shooting, to believe she needed to use deadly force against her unarmed victim to prevent death, great bodily injury, or the commission of a violent crime. (R. pp. 1057-1059). Beyond that, after specifically finding Appellant "ha[d] not proven by a preponderance of the evidence" entitlement to immunity pursuant to Section 16-11-440(C), the immunity hearing judge next considered whether Appellant was entitled to immunity pursuant to a theory of self-defense. (R. pp. 1059-1063). In considering that particular issue, the immunity hearing judge referenced our Supreme Court's decision in State v.

Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), and explained it meant she "must evaluate whether [Appellant] ha[d] proven by a preponderance of the evidence that she acted in self-defense when she shot the victim." (R. pp. 1059-1060). The immunity hearing judge then proceeded to conduct such an analysis and determined Appellant was not entitled to immunity pursuant to the law of self-defense because: (1) Appellant was not without fault for the difficulty since she produced a loaded firearm at a time in which Victim was not assaulting her or even facing her; (2) no "credible" evidence was presented to establish Appellant was in imminent danger or could have reasonably believed she was in imminent danger at the time she shot Victim in light of the facts Appellant told the investigators she retrieved the gun for the purpose of getting Victim to leave with her, Victim was unarmed and shot in the back from at least two feet away, Victim had no defensive wounds, Appellant's only injuries were bruises that did not necessitate medical attention, and Appellant provided inconsistent statements about whether Victim even saw the gun prior to the shooting; and (3) Appellant provided numerous inconsistent statements subsequent to the shooting, including in regard to when Victim hit her and whether he assaulted her directly before she retrieved her firearm. (R. pp. 1059-1063). Furthermore, the immunity hearing judge concluded—while again referencing the decision in Curry—Appellant could not "prove all of the elements of self-defense (except the duty to retreat) by a preponderance of the evidence" and "her claim of self-defense [was] a question of fact for the jury" as opposed to a question of law.[8] (R. pp. 1062-1063). For all those reasons, the immunity hearing judge ruled

[8] In referencing the decision in Curry, the immunity hearing judge specifically stated: "This case is similar to Curry, in that there is testimony by [Appellant] that is not supported by evidence and other testimony. The Court was clear in Curry that when, as in this case, the defendant is claiming self-defense and the claim is disputed, the case should be submitted to a jury 'with the claim of self-defense being fully presented, and the State having the burden to disprove at least one element of self-defense beyond a reasonable doubt.' . . . Because there is a valid question of fact as to whether [Appellant] was in imminent danger of losing her life or sustaining great

Appellant's "use of deadly force was not justified" and she was "not entitled to immunity" pursuant to the Act.[9] (R. p. 1063).

Analysis

Under the mandates of the Act, any law-abiding person who uses deadly force in a manner permitted by the provisions of the Act is immune from criminal prosecution for the use of deadly force.[10] S.C. Code Ann. § 16-11-450(A); see S.C. Code Ann. § 16-11-420(B) ("[I]t is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others."). The intent of the legislature in implementing the Act was to "codify the common law Castle Doctrine" and "to extend the doctrine to include an occupied vehicle and the person's place of business." S.C. Code Ann. § 16-11-420(A). In carrying out that intention, the legislature instructed:

> A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

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bodily injury or whether her belief was reasonable, immunity cannot be granted. Therefore, because [Appellant] cannot prove all of the elements of self-defense (except the duty to retreat) by a preponderance of the evidence and because her claim of self-defense is a question of fact for the jury and not a question of law, and [Appellant] is not entitled to a grant of immunity under Section 16-11-440(C)." (R. pp. 1062-1063).

[9] Perhaps tellingly, Appellant's five-sentence appellate summary of the immunity hearing judge's fourteen-page order contains no references whatsoever to: (1) the immunity hearing judge's specific determination no *credible* evidence was presented to establish Appellant justifiably killed her victim; and (2) the immunity hearing judge's express findings Appellant failed to establish by a preponderance of the evidence she was entitled to immunity under either Section 16-3-440(C) or the law of self-defense. (App. Br. p. 16).

[10] Specifically, Section 16-11-450(A) reads: "A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force[.]" S.C. Code Ann. § 16-11-450(A).

> (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully or forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A). Additionally, the legislature further instructed:

> A person who is not engaged in an unlawful activity and *who is attacked* in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and *has the right to stand his ground and meet force with force*, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C) (emphasis added).

Pursuant to the Act, the burden is on the defendant to establish his or her entitlement to immunity by a preponderance of the evidence, which—when seeking immunity pursuant to Section 16-11-440(C)—is accomplished by demonstrating the existence of all the elements of self-defense aside from the duty to the retreat. See State v. Jones, 416 S.C. 283, 301, 786 S.E.2d 132, 141 (2016) (recognizing "the defendant must demonstrate the elements of self-defense, save the duty to retreat, by a preponderance of the evidence" in order to establish entitlement to a grant of immunity pursuant to Section 16-11-440(C)). However, if the statutory presumptions of Section 16-11-440(A) are applicable to the case, "there is no requirement that the defendant prove he believed he was in imminent danger of losing his life or sustaining serious bodily

injury[.]"[11] Id. Furthermore, an individual who proves all the required elements of self-defense by a preponderance of the evidence could be entitled to immunity pursuant to the Act in light of the "applicable provision of law" language in Section 16-11-450(A) even if other portions of the Act—such as Section 16-11-440(C)—are not necessarily applicable. See State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120-121 (2018) ("Self-defense is the classic provision of law that justifies the use of deadly force. It was clearly the Legislature's intent that if a person seeking immunity under subsection 16-11-450(A) could prove the elements of self-defense in an immunity proceeding, immunity must be granted.").

Regarding self-defense, the following four elements must be present in order for that particular defense to be established in South Carolina:

> First, the defendant must be without fault in bringing on the difficulty. Second, 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. Third, if his defense is based upon his belief of imminent danger, a reasonably 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. Fourth, 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.

Curry, 406 S.C. at 371, n. 4, 752 S.E.2d at 266 (quoting State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984)); see State v. Osborne, 202 S.C. 473, 478, 25 S.E.2d 561, 563 (1943) ("The defense of self-defense is based upon necessity[.]"); State v. Council, 129 S.C. 116, 120, 123 S.E. 788, 789 (1924) (instructing a defendant can deprive himself of the right of self-defense through either actions or words); State v. Harvey, 110 S.C. 274, 277, 96 S.E. 399, 400 (1918) (instructing

[11] During the immunity hearing, defense counsel expressly affirmed Appellant was not seeking immunity pursuant to Section 16-11-440(A). (R. p. 45).

a person may not employ deadly force in self-defense unless there is a reasonable necessity to kill even if the other elements of self-defense are present). Significantly, "[i]t is an axiomatic principle of law that the defense has not been established if any one element is disproven." State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010).

During proceedings regarding an immunity claim, the question of whether a defendant is entitled to immunity under the Act must be decided prior to trial if either party moves for a determination regarding the Act's applicability to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). In resolving such a claim, "the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id. at 411, 709 S.E.2d at 665. Stated plainly, a preponderance of the evidence means evidence which convinces of its truth and is more convincing than the evidence to the contrary. State v. Scott, 420 S.C. 108, 113, 800 S.E.2d 793, 796 (Ct. App. 2017), aff'd as modified, State v. Scott, 424 S.C. 463, 819 S.E.2d 116 (2018); see BLACK'S LAW DICTIONARY 1301 (9th ed. 2009) (defining "preponderance of the evidence" as "[t]he greater weight of the evidence, not necessarily established by the greatest number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other").

In the case sub judice, the immunity hearing judge correctly recognized and affirmed her duty in evaluating Appellant's request for immunity pursuant to the Act was to determine whether Appellant established she was entitled to immunity by a preponderance of the evidence. The immunity hearing judge then conducted a comprehensive analysis of the evidence and testimony presented to her during the hearing, made appropriate factual findings from that

evidence and testimony, and applied those factual findings to both the law regarding self-defense and the language of Section 16-11-440(C). Upon doing so, the immunity hearing judge expressly found Appellant had not met her burden of proof and had failed to establish several of the required elements of self-defense by a preponderance of the evidence, which meant Appellant was not entitled to immunity pursuant to the Act. Thus, the immunity hearing judge did *exactly* what she was supposed to do in conducting an analysis of an immunity claim, and her ruling was not the product of an abuse of discretion or any errors of law. Cf. State v. Cervantes-Pavon, 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019) (explaining "the court must sit as the fact-finding in [an immunity] hearing, weigh the evidence presented, and reach a conclusion under the Act" and further instructing a case will go to trial "if the circuit court determines the movant has not met his burden of proof as to immunity").

Specifically, in denying Appellant's immunity claim pursuant to Section 16-11-440(C), the circuit court judge properly considered and evaluated the evidence that had been presented and determined it established Victim was shot in the back from a distance of at least two feet away while unarmed while further establishing Appellant had no injuries other than some bruising that did not require medical attention. In light of the immunity hearing judge's factually-supported evidentiary determinations, Appellant could not have been meeting force with force, was not being attacked, and was not at risk of death or serious bodily injury at the time she killed Victim. Instead, she was positioned behind her unarmed victim while personally armed with a gun, and she fired the fatal shot while he was vulnerably facing away from her and posing no conceivable immediate threat. See State v. Manning, 418 S.C. 38, 45, 791 S.E.2d 148, 151 (2016) ("[T]he victim was unarmed at the time she was shot, meaning we cannot say that the trial judge abused his discretion in denying [Manning] immunity under subsection (C)."); cf.

Jackson v. State, 355 S.C. 568, 573, 586 S.E.2d 562, 564 (2003) (finding the physical evidence establishing Jackson shot his victim six times, including once in the back, coupled with Jackson's inconsistent statements overwhelmingly established Jackson was not acting in self-defense when he killed his victim such that any error resulting from the total absence of a jury instruction on self-defense was harmless beyond a reasonable doubt). As a result, the immunity hearing judge correctly determined Appellant had not established entitlement to immunity pursuant to Section 16-11-440(C) by a preponderance of the evidence, and her ruling was fully supported by the immunity hearing record. See S.C. Code Ann. § 16-11-440(C) (permitting a person *who is attacked* in another place she has a right to be to stand her ground and *meet force with force* so long as she reasonably believed the use of deadly force was necessary to prevent death or great bodily injury or to prevent the commission of a violent crime); see also Scott, 420 S.C. at 115, n. 8, 800 S.E.2d at 797 ("The clear language of section 16-11-440(C) . . . requires that the defendant be actually attacked.").

Likewise, in denying Appellant's immunity claim pursuant to a theory of self-defense, the immunity hearing judge, who—at the outset of her self-defense analysis—correctly affirmed she had to assess whether Appellant had established she acted in self-defense by a preponderance of the evidence, again evaluated the evidence that had been presented and determined it did not *credibly* establish all the required elements of self-defense by the requisite burden of proof, which was fundamentally necessary for a grant of immunity to be appropriate under the circumstances. Cf. State v. Andrews, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019) ("[T]he relevant inquiry is not merely whether there is a conflict in the evidence but, rather, whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence."). In reaching that credibility-based determination, the immunity hearing judge again

looked to the fact Victim was shot in the back from a distance of several feet away, which did not support a conclusion he was actively posing a threat to Appellant such that she could have reasonably been in fear of death or great bodily injury at the time she fired the fatal shot. See Curry, 406 S.C. at 372, 752 S.E.2d at 267 (finding a request for immunity from prosecution was properly denied where evidence was presented establishing the unarmed victim was shot in the back); see also State v. Oates, 421 S.C. 1, 23, 803 S.E.2d 911, 923 (Ct. App. 2017) (holding the trial judge properly declined to grant a directed verdict based on a claim of self-defense where the evidence—in part—established the victim was shot in the back); cf. State v. Boozer, 92 S.C. 495, __, 75 S.E. 864, 866 (1912) (Fraser, J., dissenting) ("It seems to me that the defendant would have been very unwise to confine his defense to self-defense, when the deceased was shot in the back of the head[.]"). Additionally, the immunity hearing judge found Appellant's own statements indicating she was the one who introduced a firearm into the incident and did so for the express purpose of encouraging her unarmed victim to leave with her before her mother arrived—as opposed to for the purpose of self-protection—supported a conclusion Appellant was not without fault for the difficulty, which was a proper finding in light of the fact individuals in South Carolina are generally not permitted to force others to do their bidding at gunpoint. See State v. Burton, 356 S.C. 259, 264, 589 S.E.2d 6, 8 (2003) (recognizing it is unlawful in South Carolina to point a loaded firearm at another person); see also Johnson v. State, 743 N.E.2d 755, 756 (Ind. 2001) ("[W]e observe that introducing a handgun into an emotionally charged environment can easily lead to a physical confrontation with tragic consequences."); cf. State v. Slater, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007) (finding the act of approaching an altercation with a visible loaded weapon was an act that "could be reasonably calculated to bring the difficulty that arose" and precluded Slater from asserting self-defense as a matter of law).

Finally, the immunity hearing judge focused heavily on the fact Appellant's testimony from the immunity hearing was inconsistent with both the physical evidence and many aspects of her earlier accounts of the incident in determining Appellant failed to credibly meet her burden of proof, which was an appropriate and reasonable conclusion to reach based on the conflicting evidence before her. See Rutland v. State, 415 S.C. 570, 577-578, 785 S.E.2d 350, 353 (2016) (recognizing the existence of a prior inconsistent statement can discredit a witness and cause his or her credibility to suffer during trial); State v. Suber, 82 S.C. 159, __, 63 S.E. 684, 685 (1909) (explaining the existence of contradictory statements by a witness can constitute important evidence tending to discredit the witness's testimony); see also Curry, 406 S.C. at 371, 752 S.E.2d at 266 (recognizing the legislature did *not* intend for a circuit court judge considering an immunity issue to be limited to accepting the accused's version of the facts); cf. State v. Marshall, 428 S.C. 11, 20, 832 S.E.2d 618, 623 (Ct. App. 2019) (affirming the denial of immunity where the circuit court judge found Marshall's testimony was "unreliable and prevented the court from finding he established the relevant elements of self-defense by a preponderance of the evidence" in light of numerous inconsistencies that called Marshall's credibility into question). As a result, the immunity hearing judge did not err by expressly determining Appellant had not established entitlement to immunity pursuant to self-defense by the applicable preponderance of the evidence standard, and her ruling was again fully supported by the immunity hearing record. See Bixby, 388 S.C. at 554, 698 S.E.2d at 586 (recognizing the absence of even a single element of self-defense is fatal to a self-defense claim); see also Duncan, 392 S.C. at 411, 709 S.E.2d at 665 ("[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence.").

Because the immunity hearing judge properly considered the question of whether Appellant met her burden of establishing entitlement to immunity by a preponderance of the evidence and only denied immunity after weighing the evidence presented and determining Appellant failed to credibly meet her burden of proof, the immunity hearing judge did not abuse her discretion or commit any other errors by denying Appellant's immunity claim.[12] See Cervantes-Pavon, 426 S.C. at 451, 827 S.E.2d at 569 (explaining a circuit court judge confronted with an immunity claim must sit as the fact-finder, weigh the evidence, and reach a conclusion under the Act); cf. Andrews, 427 S.C. at 18, 830 S.E.2d at 14 ("[T]he record is . . . adequate for a reviewing court to determine that the circuit court applied the correct burden of proof and made findings that supported its denial of immunity consistent with a correct application of [the

[12] Although she briefly referenced our Supreme Court's decision in Curry when denying Appellant's immunity claim, the immunity hearing judge correctly explained she was tasked with determining whether Appellant met her burden of proof, carefully weighed and evaluated the evidence, compared Appellant's case to State v. Douglas, 411 S.C. 307, 368 S.E.2d 232 (Ct. App. 2014), and only denied immunity after finding Appellant failed to established she was entitled to immunity by a preponderance of the evidence. (R. pp. 1050-1063). Under such circumstances, the immunity hearing judge's ruling demonstrated she conducted the appropriate analysis and did not deny immunity based on a mistaken belief she could not grant it even if she believed Appellant had met her burden solely because conflicting evidence had been presented. See Andrews, 427 S.C. at 182, 830 S.E.2d at 13-14 (finding no error in the circuit court judge's application of law when ruling on an immunity claim where "there circuit court correctly cited the preponderance of the evidence standard and explicitly relied on Douglas; a case in which the circuit court gave careful consideration to the issue of immunity, making detailed findings of facts and conclusions of law in determining whether the accused had shown an entitlement to immunity by a preponderance of the evidence"); Marshall, 428 S.C. at 20-21, 832 S.E.2d at 623 ("The circuit court judge specifically noted Marshall did not establish by a preponderance of the evidence that he was without fault in bringing about the difficulty. . . . Based upon our review of the record, we find the circuit court properly weighed the evidence presented and did not abuse its discretion in denying immunity under the Act."). However, even assuming the immunity hearing judge's ruling was somehow controlled by an error of law solely due to the presence of the brief references to Curry, the appropriate relief for such an error would be a remand for a new immunity determination and *not* a reversal of Appellant's conviction or an appellate grant of immunity. See Cervantes-Pavon, 426 S.C. at 451, 827 S.E.2d at 569 (reversing and remanding for a new immunity hearing after concluding the circuit court judge's immunity ruling was controlled by multiple errors of law).

Supreme] Court's precedent. Thus, we find no error in the circuit court's application of law."). Accordingly, even though Appellant might have theoretically been able to meet her burden of proving entitlement to immunity in the event the immunity hearing judge had made different credibility determinations or found one of Appellant's various versions of events to be worthy of belief, there is no proper basis upon which to disturb the immunity hearing judge's legally-correct and factually-supported ruling on appeal simply because she did not rule in the manner Appellant would have preferred. See Jones, 416 S.C. at 301, 786 S.E.2d at 142 (explaining the standard of review for immunity rulings is a "deferential" one); Oates, 421 S.C. at 13, 803 S.E.2d at 918 (recognizing the applicable standard of review for reviewing immunity rulings does not permit the appellate court to reweigh the evidence or second-guess the circuit court judge's credibility assessments); cf. Scott, 424 S.C. at 471, 819 S.E.2d at 119 ("Because those findings are supported by the evidence, our standard of review requires that we uphold them."). Appellant's conviction should be affirmed.

II.

The trial judge did not abuse his broad discretion by admitting testimony from an investigator about the investigator's perceptions during his interview with Appellant because that testimony constituted proper lay opinion testimony since it was rationally based on the investigator's own perceptions, could have been helpful to the jury, and did not require any special knowledge or expertise. However, even assuming the investigator's testimony was somehow improper, any possible error in its admission was entirely harmless because it was wholly cumulative in nature to other unobjected-to testimony presented during trial, including to virtually-identical testimony elicited by defense counsel during his cross-examination of the investigator.

Appellant contends the trial judge reversibly erred by refusing to exclude a portion of Investigator Bailey's trial testimony. Specifically, Appellant contends Investigator Bailey should not have been permitted to testify he had trouble understanding during his interview with Appellant how she could have shot Victim while Victim was in the process of lunging at her in light of the fact Victim had been shot in the back. In support of that contention, Appellant maintains the investigator's testimony in that regard constituted improper and inadmissible opinion evidence and was prejudicial to her case because it went "to the heart of" her self-defense claim. Contrary to Appellant's contention, the investigator's testimony did not constitute improper lay opinion testimony because it was rationally based on the investigator's own perceptions, could have been helpful to the jury in understanding such things as why certain investigative actions were undertaken both during and after the interview, and did not require any special knowledge or expertise. As a result, the trial judge did not abuse his broad discretion by admitting that testimony. However, even assuming the testimony's admission was somehow improper, any conceivable error was entirely harmless under the circumstances because the challenged portion of the investigator's testimony was cumulative to other unobjected-to testimony presented during trial, including to virtually-identical testimony from Investigator Bailey that was elicited by defense counsel. Appellant's conviction should be affirmed.

Relevant Facts

During the course of Appellant's trial, evidence and testimony was presented establishing Appellant, who did not have any significant injuries after the incident and personally claimed to be "okay," fatally shot Victim in the back from a distance of at least two feet away while he was near a bed inside her small residence. (R. p. 483; p. 502; p. 579; p. 586; p. 603; pp. 616-617; p. 903; pp. 910-911; pp. 944-945; pp. 955-956; p. 960; p. 966; p. 968; p. 976; pp. 978-979; p. 1010). Additionally, evidence and testimony was presented establishing Victim's body was found on the floor leaning up against the bed with Victim's only injury being a single gunshot wound to the back. (R. p. 449; pp. 721-722; p. 964; p. 966; p. 968; p. 976; p. 979; p. 984; p. 1011). Moreover, evidence and testimony was presented establishing Appellant claimed to have been physically abused by Victim between midnight and 5:00 a.m. while Victim was not fatally shot until hours later at around 9:00 a.m. (R. p. 614; pp. 654-655). Furthermore, Appellant's accounts of the shooting were presented to the jury through the recordings of her two law enforcement interviews. (R. pp. 514-515; p. 567). During the second of those interviews, Appellant claimed Victim was moving like he was coming towards her at the time she fired the fatal shot, and she appeared to physically gesture with her arms outstretched towards her interviewer in order to demonstrate Victim's supposed actions towards her at that time. (Trl. St. Ex. # 69).

Importantly, testimony was also presented from Dr. Ross, who had forty-two years of pathology experience and was a board-certified expert forensic pathologist, in regard to the results of Victim's autopsy. (R. pp. 971-972). During her testimony, Dr. Ross confirmed the shooter's gun was positioned towards Victim's back at the time Victim was shot in that location, which was a fact that sharply contradicted Appellant's accounts of the shooting. (R. p. 979; p.

990; p. 1010; Trl. St. Ex. # 69). Dr. Ross further opined Victim would have been slightly bent over when he was shot from behind if the shooter had been in a standing position while Victim could have been shot from above if he had been lying face down with his shooter standing over him. (R. pp. 979-980). Beyond that, Dr. Ross expressly indicated she could not in any way say if Victim was moving at the time he was shot, but she did indicate his death would have occurred within minutes of him being shot.[13] (R. p. 995; pp. 997-998).

In addition to that evidence and testimony, Investigator DeVors and Investigator Bailey testified about their roles in the investigation of the shooting and their respective interviews with Appellant. (R. pp. 504-506; p. 509; pp. 558-595). During his testimony, Investigator DeVors explained he could never get a direct answer from Appellant as to why she shot Victim despite his efforts to elicit that information, and he confirmed he did not have a clear understanding of what happened even after speaking with her. (R. pp. 541-543). Subsequently, during Investigator Bailey's testimony, Investigator Bailey indicated Appellant also did not provide many specifics about the incident to him, and, as he recounted the details of the interview, the following exchange occurred:

> [Solicitor]: And you asked her several times why she pulled the trigger?
>
> [Investigator Bailey]: Uh-huh.
>
> [Solicitor]: Correct?
>
> [Investigator Bailey]: Uh-huh.
>
> [Solicitor]: Why did you ask her so many times?

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[13] Specifically, defense counsel asked: "So, if someone was moving, we wouldn't know. You wouldn't be able to say that, right?" (R. p. 995). In response, Dr. Ross bluntly replied: "No." (R. p. 995).

> [Investigator Bailey]: I was trying to determine why she pulled the trigger. What would have made her do that. Was she in fear or was there something going on, was he coming after her. I wanted to know why she pulled the trigger.
>
> [Solicitor]: And did she ever at all tell you that she was in the midst of being assaulted when she shot the trigger?
>
> [Investigator Bailey]: One thing that concerned me, and I wasn't there to make a determination on guilt or innocence, was she, in the video, I think you may have seen, she said, He kind of came at me like that. The thing that kind of bothered me about that was I had already been told the point of impact of the bullet, and it didn't match up.
>
> [Solicitor]: What do you mean it didn't match up?
>
> [Investigator Bailey]: I found it hard to believe if he was coming at her --

(R. p. 571; pp. 576-577). At that point, defense counsel objected, arguing—incorrectly—the investigator "was about ready to give a conclusion about based on what he has heard as to why she may have shot him."[14] (R. p. 577). The trial judge then inquired of the solicitor as to what

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[14] On appeal, Appellant is now contending Investigator Bailey's testimony was inadmissible because it constituted an opinion about *how* the shooting occurred. (App. Br. pp. 21-29). However, defense counsel did not raise such an argument during trial and, instead, argued Investigator Bailey's testimony should not be permitted because he was purportedly going to offer a conclusion as to *why* Appellant shot her victim. (R. p. 578). Significantly, because the new argument Appellant is currently raising on appeal was not raised to or ruled upon by the trial judge during trial, Appellant's appellate issue with Investigator Bailey's testimony is not properly preserved for appellate review and cannot appropriately be considered or addressed on appeal. See State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A] party may not argue one ground at trial and an alternate ground on appeal."); State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (recognizing the imposition of issue preservation requirements is "meant to enable the lower court to rule properly after it has considered all relevant facts, law, and *arguments*" (emphasis added); cf. Weston, 367 S.C. at 290, 625 S.E.2d at 647 ("Although Weston now complains Jarvis gave unqualified 'expert' testimony, the only objection below was that Jarvis was giving her opinion. Accordingly, this issue is procedurally barred from review because it differs from the objection raised at trial."); State v. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000) (finding Benton's appellate challenge to the trial judge's refusal to give a requested charge was

she had asked, and she explained she had simply asked the investigator why he was concerned by Appellant's statements during the interview. (R. p. 578). Upon hearing that explanation, the trial judge ruled he would permit the question, and the investigator proceeded to give the following response to it:

> During the interview, I wanted to get as much detail as what happened that led up to the event of actually pulling the trigger. Her response was that he pulled up and he kind of lunged at her. She never said, He came at me, but she motioned that he kind of lunged towards her.
>
> Prior to the interview, I had knowledge that the deceased had been -- actually, the point of the impact of the bullet was in the back. I had trouble understanding how if he was lunging forward how he was shot in the back.

(R. p. 578). After that, defense counsel quickly followed-up on cross-examination by asking Investigator Bailey to give his opinion on whether the victim had to be charging at Appellant in order for her to shoot him, and—without objection—Investigator Bailey responded: "I find it hard to believe that I was told that he was lunging at her, but he was shot in the back. That's where I had the issue." (R. p. 579).

Subsequent to that testimony, Investigator Miles Taylor from the Kershaw County Sheriff's Office also offered testimony about his role in the investigation into Victim's death and confirmed he obtained an arrest warrant for Appellant based on what was uncovered through that investigation. (R. pp. 710-764). Significantly, during his testimony, Investigator Taylor offered testimony highly similar to Investigator Bailey's and noted—without objection—he was concerned by the fact Appellant reported Victim was lunging at her when she shot him, which

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not properly preserved for appellate review where Benton "argued one ground in support of a circumstantial evidence charge at trial (State only presented circumstantial evidence of intent) and argues another ground in support of the charge on appeal (palm print is circumstantial evidence)").

the investigator asserted was "totally" inconsistent with the autopsy results establishing Victim was shot in the back. (R. pp. 763-764).

Following the presentation of that evidence and testimony, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law.[15] (R. pp. 775-822; pp. 824-845). At the conclusion of the trial judge's jury instructions, the case was submitted to the jury, and the jury ultimately convicted Appellant of Victim's murder as indicted. (R. p. 846; p. 849).

Analysis

A. Admissibility of Investigator Bailey's Testimony About His Perceptions During His Interview of Appellant

In South Carolina, a lay witness is permitted to offer opinion testimony when the witness's opinion or inference: (1) is rationally based on the witness's perception; (2) is helpful to a clear understanding of the witness's testimony or to the determination of a fact in issue; and (3) does not require special knowledge, skill, experience, or training. Rule 701, SCRE; see State v. Williams, 321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) ("The opinion or inference of a lay witness is admissible if it is a) rationally based on the perception of the witness, b) helpful to the determination of a fact in issue, and c) does not require special knowledge."). Significantly, "conclusions or opinions of laymen should be rejected only when they are superfluous in the sense that they will be of *no* value to the jury." State v. McClinton, 265 S.C. 171, 176-177, 217 S.E.2d 584, 586 (1975) (emphasis added). Furthermore, "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be

[15] Through his jury instructions, the trial judge thoroughly explained the State's burden of proving Appellant's guilt beyond a reasonable doubt, noted Appellant was presumed to be innocent until her guilt had been established, expressly advised the jurors they were the sole and exclusive judges of the facts, discussed the evaluation of witness credibility, and instructed the jurors on the elements of murder and the defense of self-defense. (R. pp. 825-833; pp. 837-844).

decided by the trier of fact." Rule 704, SCRE.

In the case at bar, Investigator Bailey—in recounting the details of his interview with Appellant and explaining why he repeatedly asked her about her reason for shooting Victim—testified he was concerned by Appellant's responses during the interview because her claim Victim was lunging at her seemed to him to be inconsistent with the physical evidence he knew established Victim had been shot in the back. Significantly, Investigator Bailey's testimony in that regard was based on his personal perceptions of Appellant's statements and gestures during the interview coupled with his personal knowledge of the fact Victim had a gunshot wound to the back and, thus, was clearly rationally based on his own perceptions. See United States v. Parkhurst, 865 F.3d 509, 515 (7th Cir. 2017) (explaining a detective's testimony about the interpretations he drew from a conversation with a defendant was "based on his perceptions of the conversation at the time it occurred" and characterizing such testimony as "classic Rule 701 lay-witness testimony"). Additionally, that perception-based testimony could have been helpful to the jury in better and more fully understanding Appellant's responses during the interview because Investigator Bailey—unlike the jurors—was seated directly across from Appellant in the interview room and, therefore, was in the best possible position to evaluate and interpret her demeanor, statements, and gestures as she spoke with him. See State v. Fripp, 396 S.C. 434, 439-440, 721 S.E.2d 465, 467-468 (Ct. App. 2012) (finding the trial judge properly permitted two witnesses to offer lay witness opinion testimony identifying Fripp from surveillance footage based on their knowledge of him due to the fact the testimony was rationally based on their perceptions and could have aided the jurors by providing a better perspective of the evidence before them); cf. Robinson v. United States, 797 A.2d 698, 707 (D.C. 2002) ("Whalen's 'opinion' testimony was based on his personal observations of Harris' demeanor and on the fact

that he had received contradictory information from another witness that Harris was outside, not inside, when the shooting occurred. The trial judge could, and did, reasonably conclude that Whalen's testimony would be helpful to the jury because it explained why he questioned Harris a second time for information about Frank Blakeney's murder."). Moreover, that testimony was additionally helpful towards aiding the jury in understanding the investigative decisions made during and after the interview, including in regard to why the questioning was conducted in the manner that it was conducted and why Appellant was ultimately arrested as the investigation moved forward.[16] See Davis v. People, 310 P.3d 58, 63 (Colo. 2013) ("[A] detective may testify about his or her assessments of interviewee credibility when that testimony is offered to provide context for the detective's interrogation tactics and investigative decisions."); cf. State v. Houser, 768 S.E.2d 626, 632 (N.C. Ct. App. 2015) (concluding the trial judge did not err by admitting testimony from an investigating officer indicating the defendant's account of the incident was inconsistent with the physical evidence because that testimony was proper in light of the fact it was rationally based on the officer's perceptions and was helpful in providing a clear understanding to the jury of the officer's investigative process and reasons for undertaking certain actions). Finally, that testimony was based solely on—and merely conveyed—the logical and obvious inferences Investigator Bailey drew from the things he personally perceived without relying on any expert, scientific, or specialized knowledge. See United States v. Dempsey, 629 F. App'x 223, 227-228 (3d Cir. 2015) (holding the district court judge did not err by admitting officer testimony indicating Dempsey was not truthful during an interrogation because that

[16] Demonstrating the necessity of the jury receiving accurate—and direct—information about the circumstances and details of Investigator Bailey's interview of Appellant from the investigator himself, defense counsel appeared to imply during her closing argument Appellant had not, in fact, claimed during the interview Victim was lunging at her at the time of the shooting even after Investigator Bailey directly testified to the contrary during trial. (R. pp. 810-811).

testimony was rationally based on the officers' personal perceptions, could have been helpful to the jury, and did not require any special knowledge or expertise).

Under those circumstances, Investigator Bailey's testimony constituted proper lay opinion testimony as it met all the necessary requirements for admission, and it was not completely superfluous or valueless such that it warranted exclusion during trial. See McClinton, 265 S.C. at 176-177, 217 S.E.2d at 586 (explaining the conclusions or opinions of a lay witness should only be rejected when they are superfluous such that they have no value whatsoever for the jury). Accordingly, the trial judge did not abuse his broad discretion by admitting the challenged portion of Investigator Bailey's testimony. See State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) (instructing a trial judge's evidentiary ruling will not be reversed on appeal absent a manifest prejudicial abuse of discretion); see also United States v. Mandujano, 499 F.2d 370, 379 (5th Cir. 1974) ("[A] trial court has some latitude in permitting a witness on direct examination to testify as to his conclusions, based on common knowledge or experience."). Appellant's conviction should be affirmed.

B. Harmlessness of Any Error in the Admission of Investigator Bailey's Testimony Based on the Other Evidence Presented

Even if a trial judge improperly admits inadmissible testimony during the course of a trial, reversal is not automatically warranted as such an error may have been harmless under the circumstances involved. 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."). When conducting a harmless error analysis, an appellate court must ordinarily review the record as a whole to ascertain the impact of an error. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006); see United States v. Hasting, 461 U.S. 499, 509 (1983) ("[I]t is the duty of a reviewing court to consider the trial record *as a whole*

and to ignore errors that are harmless, including most constitutional violations[.]" (emphasis added)). The harmlessness of an error generally depends on its materiality 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."). Significantly, after reviewing the entire record, the appellate court will typically not set aside a judgment based on insubstantial errors not affecting the result, and errors are generally deemed harmless when they do not contribute to the verdict. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991); see State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.").

In Appellant's case, any conceivable error committed by the trial judge through his admission of the challenged portion of Investigator Bailey's testimony was harmless beyond a reasonable doubt in light of the other evidence presented during the course of trial. Demonstrating that fact, the challenged portion of Investigator Bailey's testimony, which merely conveyed to the jury the investigator was skeptical of Appellant's account of the shooting in light of his knowledge of the fact Victim had been shot in the back, was entirely cumulative to virtually-identical testimony defense counsel himself elicited from Investigator Bailey on cross-examination. See State v. Smith, 245 S.C. 59, 62, 138 S.E.2d 705, 706 (1964) ("After the testimony complained of had been admitted in evidence over objection, counsel cross-examined the witness thereabout without reserving the objection previously made. The objection was thereby by lost and if any error had been committed in the admission of the testimony, it was cured."); State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) ("An objection to the

admission of evidence is waived where the same or similar evidence has been elicited by the objector."); cf. State v. McKinney, 258 S.C. 570, 571, 190 S.E.2d 30, 30 (1972) ("During the course of the trial certain testimony was admitted over the objection of [McKinney's] counsel. Thereafter, counsel for [McKinney] cross-examined the witness thereabout without reserving the objection previously made. The objection was thereby lost and if any error had been committed in the admission of the testimony it was cured."). Likewise, Investigator Bailey's testimony was entirely cumulative to unobjected-to testimony from Investigator Taylor conveying the exact same concern caused by the fact Appellant's statements seemed to be inconsistent with the physical evidence. See State v. White, 361 S.C. 407, 415, 605 S.E.2d 540, 544 (2004) ("Even assuming the trial judge erred in admitting the testimony, reversal is not warranted when evidence erroneously admitted is merely cumulative."); State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983) ("It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence."). Furthermore, even without consideration of the investigators' cumulative unobjected-to testimony, Dr. Ross's testimony directly established the shooter was positioned behind Victim when Victim was shot in the back based on the physical characteristics of the gunshot wound, which meant the jury received an expert conclusion that established Victim's injuries were not consistent with Appellant's claimed version of events and fully validated Investigator Bailey's skepticism and concern. See State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence."); cf. State v. Lawrence, 264 S.C. 3, 17, 212 S.E.2d 52, 58 (1974) (finding any error in the admission of testimony that may have been beyond a witness's "competence" was harmless "because the fact stated *was otherwise abundantly clear on the record*" (emphasis added)).

In light of the fact the challenged portion of Investigator Bailey's testimony was entirely cumulative to the other evidence presented during trial, any possible error in the admission of Investigator Bailey's testimony could not have had any impact on the outcome of Appellant's case. See State v. Oglesby, 384 S.C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009) ("[T]he admission of improper evidence is deemed harmless if it is merely cumulative to other evidence."); cf. O'Neal, 210 S.C. at 311-312, 42 S.E.2d at 525-526 ("Error is assigned because the court, over objection, permitted the witness, Bracey, to testify to certain statements made to him . . . . It is not necessary for this court to say whether the admission of this testimony constituted error or prejudicial error. An examination of the record shows that counsel for appellant brought out the same evidence upon their cross-examination of the witness, Bracey."). Accordingly, even if the trial judge somehow erred by admitting Investigator Bailey's testimony, such an error was nonetheless harmless beyond a reasonable doubt. See State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) (recognizing an error must be prejudicial to warrant reversal on appeal); see also Fletcher, 379 S.C. at 25, 664 S.E.2d at 484 (explaining an error is harmless when it did not contribute to the verdict obtained). Appellant's conviction should be affirmed.

III.

Even assuming the trial judge erred by admitting non-expert opinion testimony from a law enforcement agent regarding the purported significance of the location where a fired cartridge case was found after the shooting, any possible error in the admission of that testimony was entirely harmless because the testimony was refuted by expert testimony that was subsequently presented, was insignificant and unimportant when considered in the context of the case as a whole, and was not significant or relevant to any critical issue in dispute and, therefore, could not have contributed to the outcome of Appellant's case.

Appellant contends the trial judge reversibly erred by admitting into evidence a law enforcement agent's non-expert opinion testimony regarding the purported significance of the location where she found a fired cartridge case after the shooting. In support of that contention, Appellant maintains the agent's testimony constituted improper lay opinion testimony and was "very prejudicial." Critically, even assuming the trial judge erred by admitting the agent's testimony, any error in admitting that testimony was harmless beyond a reasonable doubt because the testimony was subsequently refuted by *expert* testimony explaining the positioning of the cartridge case was essentially meaningless based on the specific characteristics of the gun used in the shooting, the testimony was insignificant and unimportant when viewed in the context of the case as a whole, and the testimony was not discussed or even mentioned by the solicitor and defense counsel during their closing arguments due to its insignificance to any critical issue in dispute. Under those circumstances, the admission of the agent's testimony—even if improper—could not have contributed to the outcome of Appellant's case, and, therefore, its admission simply could not justify a reversal of Appellant's conviction on appeal. Appellant's conviction should be affirmed

Relevant Facts

During the course of Appellant's trial, testimony and evidence was presented establishing Victim's body was found on the floor of a tiny bedroom in Appellant's small residence slumped

up against a bed. (R. p. 444; p. 449; p. 483; p. 564; p. 579; p. 586; pp. 721-722; p. 903; pp. 907-908; pp. 910-911; p. 964; p. 968; p. 976; pp. 978-979; pp. 1010-1011). Additionally, testimony was presented establishing the location where Victim's body was found was only roughly ten feet from the compact residence's front door while Victim was shot in the back from a distance of at least two feet away. (R. p. 451; p. 483). Furthermore, recordings of Appellant's interview statements following the killing were played for the jury, and, through those statements, the jury heard Appellant's claim she was standing in the bedroom *doorway* at the time she shot Victim, who—according to Appellant's remarks and gestures during one of the two interviews—was purportedly in the midst of lunging or moving towards her at that time. (R. pp. 514-515; p. 567; p. 578; Trl. St. Ex. # 69).

In addition to that testimony and evidence, Agent Dawn Claycomb, a crime scene investigator from the South Carolina State Law Enforcement Division ("SLED"), testified about her involvement in the investigation into the shooting. (R. pp. 434-436; pp. 438-439). During her testimony, Agent Claycomb explained her role involved photographing, documenting, and collecting evidence at the crime scene, and she indicated she carried out those tasks at the small residence where the shooting occurred on the morning of the incident. (R. pp. 435-436; pp. 438-443; pp. 466-468; p. 483). In carrying out those tasks, Agent Claycomb noted she found Victim's body seated on the floor next to the bed, located a small amount of blood on Victim's shirt, and discovered no other blood or blood trails nearby. (R. pp. 449-451). Likewise, Agent Claycomb stated she discovered a gun on a table that was located just inside the residence's front door, and she explained she found a fired cartridge case in a laundry basket just inside the bedroom where Victim was killed. (R. p. 447; p. 449; p. 457; p. 484).

As Agent Claycomb's testimony continued, the solicitor asked Agent Claycomb if she found anything indicating where the shooter was positioned, and the agent affirmed she did not. (R. p. 452). Agent Claycomb further explained a cartridge case's location after a shooting does *not* necessarily reveal where the shooter was positioned since a cartridge case can be ejected in multiple directions, but, somewhat contradictorily, she followed that explanation by asserting a cartridge case's location could potentially eliminate areas where the shooter was positioned or "give you an idea" of a shooter's position. (R. p. 452). The following exchange then occurred:

> [Solicitor]: In this case, the shell casing was found right by the doorway, I believe you said?
>
> [Agent Claycomb]: Correct. Right when you walk in the bedroom door, there was -- the first small chest in a laundry basket.
>
> [Solicitor]: So what did that eliminate for you as to where the shooting would have occurred?
>
> [Agent Claycomb]: Well, saying --

(R. pp. 452-453). At that point, defense counsel objected, arguing the question went to matter outside the witness's "scope" if it was related to trajectory while further noting an actual expert would be testifying on the subject later during the trial. (R. p. 453). In response, the solicitor indicated she was not asking about trajectory but, instead, was only attempting to ask what places could be eliminated as the location where the shooting "could have come from." (R. p. 453). Upon considering the matter, the trial judge indicated he would allow the question but instructed the solicitor to "limit it to the shell casing." (R. p. 453). The questioning then resumed, and the following exchange occurred:

> [Solicitor]: What areas did it eliminate that the shooting could have happened at?
>
> [Agent Claycomb]: Within the bedroom, saying that if the cartridge case was not moved or tampered with at that point.

> [Solicitor]: And all I meant was, in other words, it didn't happen in the living room?
>
> [Agent Claycomb]: Correct. If you would find the cartridge case in the bedroom, yeah, it would not occur in the living room had it not been touched or moved, anything like that.

(R. pp. 453-454).

Thereafter, as the trial proceeded forward, Agent James Green, a forensic firearm examiner from SLED and an expert in tool mark and firearm identification, offered expert testimony to the jury about his analysis of Appellant's gun, the cartridge case recovered at the scene, and the fired bullet that had been recovered from Victim's body during the autopsy. (R. pp. 687; p. 690-693; p. 707). During the course of his expert testimony, Agent Green explained he determined through his analysis the recovered bullet and cartridge case had been fired from Appellant's pistol. (R. p. 449; p. 469; pp. 690-693; p. 707; p. 982). Furthermore, Agent Green explained there was no possible way to tell where a cartridge case might go when it is ejected from Appellant's gun due to the gun's tip-up barrel and open slide, and he indicated he had personally observed cartridge cases fired from guns like Appellant's go forwards, backwards, to the left, and to the right. (R. p. 706). Thus, based on his analysis of the specific gun used to kill Victim, Agent Green explained to the jury "there [was] really no way of telling which way [the cartridge case] will go once it's fired." (R. p. 706).

Subsequently, at the conclusion of the evidentiary phase of the trial, the parties presented their closing arguments to the jury. (R. pp. 775-822). During the course of those closing arguments, the solicitors' remarks were heavily focused on the inconsistencies in Appellant's statements after the killing along with the fact Appellant's unarmed victim was shot squarely in the back, which was fundamentally inconsistent with Appellant's claim Victim was lunging at

her at the time of the shooting. (R. pp. 775-794; pp. 816-822). Contrastingly, defense counsel focused her remarks on Appellant's claims of past abuse involving Victim, text messages Victim had sent at various times prior to the incident, and Appellant's apparent injuries after the shooting. (R. pp. 794-816). Notably though, neither the solicitor nor defense counsel ever made any references to Agent Claycomb's testimony during the course of their arguments, and no one ever suggested to the jury the specific spot in the small residence where Appellant was positioned was in any way significant—or even relevant—to the outcome of the case. (R. pp. 775-822).

Following the parties' closing arguments, the trial judge thoroughly instructed the jury on the applicable law, including in regard to the law related to self-defense. (R. pp. 824-845). Appellant's case was then submitted to the jury, and, after deliberating on the matter for a few hours, the jury convicted Appellant as indicted. (R. p. 849; p. 855).

Analysis

Pursuant to South Carolina law, a lay witness is permitted to offer opinion testimony that is rationally based on the witness's perception, is helpful to a clear understanding of the witness's testimony or to the determination of a fact in issue, and does *not* require any specialized knowledge or expertise. Rule 701, SCRE. Meanwhile, an expert witness is permitted to offer opinion testimony based on specialized knowledge or expertise if such testimony will assist the fact-finder, the witness is personally qualified as an expert, and the subject matter of the expert's testimony is reliable. Rule 702, SCRE; see State v. Martin, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011) ("Before a witness is qualified as an expert, the trial court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) and the expert's

testimony is reliable."). Accordingly, unlike a lay witness, "an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions." Watson v. Ford Motor Co., 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). However, even if a witness is properly qualified to render an expert opinion on a particular subject, that expert witness must not exceed the scope of his or her expertise when doing so. State v. Ellis, 345 S.C. 175, 177-178, 547 S.E.2d 490, 491 (2001).

If an error occurs during trial in regard to the admission of lay or expert opinion testimony, such an error does not automatically require reversal and, instead, may be harmless. See State v. Santiago, 370 S.C. 153, 165, 634 S.E.2d 23, 29 (Ct. App. 2006) (recognizing an evidentiary ruling regarding expert testimony may be harmless under the circumstances); see also Sherard, 303 S.C. at 176, 399 S.E.2d at 597 (instructing an appellate court in South Carolina "will not set aside a conviction due to insubstantial errors not affecting the result"). The question of whether an error is harmless is necessarily dependent on the particular circumstances of each individual case. State v. Salley, 398 S.C. 160, 172, 727 S.E.2d 740, 746 (2012). Importantly, "[n]o 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." State v. Reeves, 301 S.C. 191, 193-194, 391 S.E.2d 241, 243 (1990); see Haselden, 353 S.C. at 196, 577 S.E.2d at 448 (recognizing an error is harmless "if its impact is minimal in the context of the entire record"). Ultimately, if an error does not contribute to the verdict, that error is harmless beyond a reasonable doubt. Fletcher, 379 S.C. at 25, 664 S.E.2d at 484; see 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."); see also Thomasko v. Poole, 349 S.C. 7, 17, 561 S.E.2d

597, 602 (2002) ("It is well established that an appellant seeking reversal of a decision by the trial court must show both error and prejudice.").

In the case sub judice, Agent Claycomb, who was not offered as an expert witness, primarily testified during trial about the various things she found when she processed the crime scene after the shooting, including about a cartridge case she located just inside the bedroom where Victim's body was discovered. However, in addition to that testimony, Agent Claycomb stated—after initially indicating a cartridge case's location does not necessarily reveal where a shooter was positioned—a cartridge case's location could potentially eliminate areas where a shooter may have been when a shot was fired. Subsequent to that, Agent Claycomb responded over defense counsel's objection to a question asking what areas were eliminated by the fact the cartridge case was found just inside Appellant's bedroom by answering "[w]ithin the bedroom." The solicitor then sought clarification of that confusing response by asking if the fact the cartridge case was not found in the living room meant the shooting did not occur there, and Agent Claycomb affirmed that was correct.[17] Thus, based on her clarifying response, Agent Claycomb appeared to suggest a cartridge case would be expected to be found in the room where a shooting had occurred as opposed to in a room where the shooting had *not* occurred.

Significantly, to the extent Agent Claycomb's testimony in that regard was in any way improper, any error in its admission was entirely harmless when that testimony is evaluated in the context of Appellant's case as a whole. Initially, that is true because Agent Claycomb's testimony was later followed by—and refuted by—*expert* testimony from Agent Green, who—unlike Agent Claycomb—directly analyzed the gun used in the killing. Through his expert testimony, Agent Green explained a cartridge case ejected by Appellant's gun could potentially

[17] On appeal, Appellant readily acknowledges Agent Claycomb's testimony was "very confusing." (App. Br. p. 31).

go in *any* direction based on the specific characteristics of that weapon, and, as a result, he made it clear to the jury the location where the cartridge case was found inside Appellant's residence was essentially meaningless towards determining where the shooter had been positioned, which effectively eliminated any possibility Agent Claycomb's testimony could have had an impact on the outcome of Appellant's case. Cf. State v. Clayton, 570 So. 2d 519, 526 (La. Ct. App. 1990) (concluding an error in the admission of inadmissible lay opinion testimony from a detective regarding the conclusions he drew from a cartridge found at the crime scene was harmless beyond a reasonable doubt due to the fact expert testimony from a forensic scientist was also presented to the jury and "effectively refuted" the improper lay opinion offered by the detective). Moreover, Agent Claycomb's testimony itself was unimportant and insignificant because: (1) it appeared to communicate the obvious conclusion a cartridge case would be expected to be found in the vicinity of where a shooting occurred; and (2) it did not offer any opinions that could have been interpreted as refuting or contradicting the possibility the fatal shot was fired from the bedroom *doorway*—which was not a location "[w]ithin the bedroom" or in the living room—as Appellant had claimed after the incident. See Chapman v. California, 386 U.S. 18, 22 (1967) (recognizing even constitutional errors can be harmless and not warranting of reversal when they are unimportant and insignificant based on the circumstances of a particular case). Finally, demonstrating the insignificance and immateriality of Agent Claycomb's testimony, neither the solicitor nor defense counsel referenced it in any way during their closing arguments and never asked the jury to draw any conclusions from it, which strongly showed it was not relevant to any critical issue actually in dispute. See State v. Kelsey, 331 S.C. 50, 70, 502 S.E.2d 63, 73 (1998) (concluding any prejudice that resulted from the admission of improper testimony was "minimal" and did "not warrant reversal" when that improper testimony did not "directly" relate

to the critical issue the jury needed to decide in the case); cf. Ellis, 345 S.C. at 178-179, 547 S.E.2d at 491 (considering the fact the solicitor repeatedly referred to improperly-admitted testimony during his closing argument in finding the admission of the testimony constituted reversible error).

Under those circumstances, Agent Claycomb's testimony about the significance of the cartridge case's location—even if improperly admitted—could not have had any conceivable impact on the outcome of Appellant's case, which hinged not on where Appellant was specifically standing at the time she fired the fatal shot but on whether her actions were justified when she shot her unarmed victim *in his back*. See Pagan, 369 S.C. at 212, 631 S.E.2d at 267 (recognizing an error is harmless if "it did not contribute to the verdict obtained"); State v. Simpson, 425 S.C. 522, 538, 823 S.E.2d 229, 237 (Ct. App. 2019) ("To show prejudice, the appellant must demonstrate a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." (citation and internal quotation omitted)); see also United States v. Churchwell, 807 F.3d 107, 119 (5th Cir. 2015) ("Merely stating, as Churchwell does, that Churchwell's supervisor's opinion 'was devastating to the defense' is insufficient to show that this testimony contributed to a guilty verdict."). Accordingly, any possible error in its admission was entirely harmless and resulted in no prejudice whatsoever to Appellant. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."); see also State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005) ("Error without prejudice does not warrant reversal."). Appellant's conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

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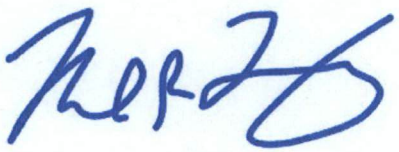

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April 8, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County
Honorable Alison Renee Lee, Circuit Court Judge
Honorable William A. McKinnon, Circuit Court Judge
Appellate Case No. 2018-001139

THE STATE,

Respondent,

vs.

GREGG PICKRELL,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies 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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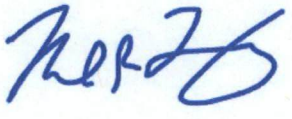

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