

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Colleton County  
Honorable Clifton Newman, Circuit Court Judge  
Honorable Jean H. Toal, Retired Chief Justice  
Appellate Case No. 2023-000392

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THE STATE,

Respondent,

vs.

RICHARD ALEXANDER MURDAUGH,

Appellant.

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**FINAL BRIEF OF RESPONDENT**

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ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

S. CREIGHTON WATERS  
Senior Assistant Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

MARK R. FARTHING  
Senior Assistant Deputy Attorney General

JOSHUA A. EDWARDS  
Assistant Attorney General

P.O. Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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Appellant had given the same false story that he had not been at the kennels, the defense had throughout the trial elicited testimony suggesting that Appellant had fully cooperated with law enforcement, and, in admitting his false statement in his testimony, Appellant asserted that he had been denied the opportunity to correct his statements by the prosecution. As such, Appellant invited the cross-examination. ....113

**VII.** Appellant waived his issue with the State’s rebuttal expert testimony about an out-of-court experiment involving an iPhone by failing to raise a timely contemporaneous objection when the testimony was first admitted and by failing to appeal the trial judge’s finding defense counsel’s objection was late. Furthermore, the trial judge did not abuse his discretion by permitting the State’s rebuttal expert to testify about the results of the out-of-court experiment he conducted in response to an in-court experiment performed by a similarly-qualified defense expert. ....128

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## STATEMENT OF ISSUES ON APPEAL

- I. “Is prejudice to the defendant’s right to a fair trial presumed when a state official secretly advocates for a guilty verdict in the jury room during a criminal trial?” (footnote omitted)
- II. “Is prejudice to a defendant’s right to a fair trial proven when it is found that a state official tampered with the jury and a juror testifies the jury tampering influenced her verdict?”
- III. “Did the trial court err by allowing cumulative and unfairly prejudicial evidence of financial crimes to be presented for over a week, purportedly as evidence of motive?”
- IV. “Did the trial court err in concluding that the Defendant ‘opened the door’ to evidence of financial crimes by questioning a witness about the Defendant’s relationship with his wife and son?”
- V. “Did the Defendant waive his right to object to the introduction of evidence of financial crimes by testifying?”
- VI. “Did the trial court err by allowing the State to impeach the Defendant with his post-Miranda silence?”
- VII. “Did the trial court err by allowing a witness qualified as an expert in extracting data from cell phones to testify about an experiment he conducted during trial in which he sat alone in his office over a weekend throwing a phone on the floor to see if the screen would come on, when he collected no data regarding the results of the experiment, admitted he had no expertise regarding that aspect of the phone’s operation, and admitted the results he reported from memory were not statistically significant?”
- VIII. “Did the trial court err by allowing the State to distract from its failure to recover a murder weapon by allowing a State firearms examiner to offer an expert opinion based on a discredited toolmark methodology and by allowing the admission of multiple firearms into evidence that were not connected to the murders as well as a raincoat coated with gunshot residue that was not connected to the defendant?”
- IX. “Did the trial court’s cumulative evidentiary errors prejudice the Defendant’s right to a fair trial?”

## COUNTER-STATEMENT OF ISSUES ON APPEAL

- I. & II. Should Justice Toal's order denying Appellant's post-trial motion for a new trial be affirmed when the record supports Justice Toal's finding that the verdict was solely the product of the jury's honest deliberations and reflected the overwhelming evidence of Appellant's guilt?
- III. Did Appellant waive his objection to the financial crime evidence by failing to appeal all the grounds upon which the trial judge's ruling admitting it was based? Furthermore, did the trial judge abuse his broad discretion by admitting the financial crime evidence pursuant to Rule 404(b) and Rule 403?
- IV. Is Appellant entitled to any relief considering the trial judge not only did not abuse his discretion by finding that defense counsel had opened the door to redirect questions to test Will Loving's knowledge for assertions during cross-examination regarding Appellant's general character and motive for killing his wife and son, but also finding, as an alternate basis for overruling the objection that defense counsel failed to assert any legal ground for the objection—an alternative ruling Appellant does not challenge on appeal?
- V. Is Appellant's attempt to assert a non-waiver of the financial crime issue in this appeal contesting only the Rule 404(b) ruling of any consequence?
- VI. Did the trial judge did abuse his discretion in overruling Appellant's objection to the State's invited cross-examination of Appellant on his failure to correct what he admitted during his own trial testimony had been multiple false statements to law enforcement, family, and friends, indicating that he had not been at the kennels minutes before the double murder occurred?
- VII. Did Appellant waive his issue with the State's expert testimony about an out-of-court experiment involving an iPhone by failing to raise a timely contemporaneous objection when it was first admitted and by failing to appeal the trial judge's finding defense counsel's objection was late? Furthermore, did the trial judge abuse his discretion by permitting the State's expert to testify about the results of the out-of-court experiment he conducted in response to an in-court experiment performed by a defense expert?
- VIII. Did the trial court abuse its discretion in admitting into evidence: (1) opinion evidence from a qualified firearms expert after application of long-accepted analysis methodology; (2) guns seized from Appellant and/or his home consistent in type and caliber to the weapons used in the murders; and (3) a rain jacket seized from Appellant's parents' home connected to Appellant which also tested positive for GSR?
- IX. Did Appellant abandon his cumulative error issue when he failed to offer any argument on the issue in briefing? Furthermore, was the cumulative error issue procedurally barred since Appellant did not preserve an argument that a specific combination of purported errors otherwise insignificant when viewed alone denied him a fair trial?

## STATEMENT OF THE CASE

In July of 2022, the Colleton County Grand Jury indicted Appellant Richard Alexander Murdaugh, a disgraced former lawyer,<sup>1</sup> for two counts of murder and two counts of possession of a weapon during the commission of a violent crime in connection to the June 2021 slayings of his wife, Margaret “Maggie” Kennedy Branstetter Murdaugh (“Maggie”), and youngest son, Paul Terry Murdaugh (“Paul”). At the time he was indicted, Appellant was already in pre-trial custody as the result of an earlier arrest, and he remained in custody after the indictments were issued. On January 23, 2023, a jury trial was commenced in the Colleton County Court of General Sessions with the Honorable Clifton Newman, circuit court judge, presiding.<sup>2</sup> At the conclusion of the six-week trial, the jury convicted Appellant as indicted. Following the verdict, Judge Newman sentenced Appellant to two consecutive terms of imprisonment of life without parole for the murder convictions.<sup>3</sup> Appellant then timely filed a notice of appeal.

During the pendency of that appeal, Appellant submitted a motion to the Court of Appeals seeking for the appeal to be suspended and for him to be granted permission to file a motion for a new trial based on after-discovered evidence in the circuit court. On October 17, 2023, the Court of Appeals issued an order granting Appellant’s motion, holding the appeal in abeyance, and remanding the matter to the circuit court.

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<sup>1</sup> Shortly before he was formally indicted in connection to the murders, Appellant, who was a licensed attorney, was disbarred from the practice of law in South Carolina. In re Murdaugh, 437 S.C. 15, 875 S.E.2d 625 (2022).

<sup>2</sup> By the time of trial, Appellant had ninety-nine other pending criminal charges. (R. p. 7170).

<sup>3</sup> Because Appellant was sentenced to life for the murders, Judge Newman correctly did not impose sentences for the possession of a weapon during the commission of a violent crime convictions. (R. p. 7177).

Following the issuance of that order, Appellant filed a motion for a new trial in the Colleton County Court of General Sessions. On December 18, 2023, the Supreme Court issued an order assigning exclusive jurisdiction over the matter to the Honorable Jean Hofer Toal, Retired Chief Justice. Following briefing by the parties, Justice Toal conducted an evidentiary hearing in part on January 26, 2024, and in part on January 29, 2024, in the Richland County Court of General Sessions. At the conclusion of the hearing, Justice Toal orally denied Appellant's new trial motion, and she subsequently memorialized her ruling through a written order filed with the Supreme Court on April 4, 2024. Again, Appellant timely filed a notice of appeal.

On August 13, 2024, the Supreme Court issued separate orders certifying both Appellant's pending appeals pursuant to Rule 204(b) of the South Carolina Appellate Court Rules. Thereafter, on September 13, 2024, the Supreme Court consolidated both Appellant's appeals.

## STATEMENT OF FACTS

In the eyes of most, Appellant was a very successful man. He appeared to be a loving husband and loving father with a loving family. (R. pp. 2395-2396; p. 2678; p. 2696; pp. 2736-2737; p. 3414-3415; p. 3599; p. 3785; p. 3819; p. 3987; p. 3997; p. 4302; pp. 4450-4451; p. 4774; p. 4822; p. 4836; p. 5717; p. 5952; pp. 6519-6520). He was a longtime partner at Peters, Murdaugh, Parker, Eltzroth & Detrick (“PMPED”), a law firm that was founded in 1910 by his great-grandfather and bore the name of the prominent family of which Appellant was a scion. (R. p. 3476; p. 3620; p. 3797; pp. 5729-5730). He had a “big reputation” and was trusted, respected, and thought highly of by others. (R. p. 3606; p. 3925; p. 3991; p. 6190; p. 6097). To many, he was an excellent attorney skilled at reading people and building trust and rapport. (R. p. 3623; p. 3991; p. 5735; pp. 6186-6187). For a time, he served as the president of the South Carolina Association for Justice, making him a leading voice for plaintiff’s attorneys in the state. (R. p. 3805; p. 3816; p. 6093; p. 6096; p. 6338). His practice was lucrative, and he sometimes earned over a million dollars in a single year’s December annual bonus. (R. p. 3479; pp. 3481-3482; p. 3621; p. 4143; p. 6092). As expected with such earnings, he also seemed wealthy, and he owned multiple properties—including a beach house in Edisto and a 1700-acre hunting estate called “Moselle”—that were quite valuable. (R. p. 2652; p. 2698; pp. 2705-2706; p. 2723; p. 4156; p. 4812; p. 5717; p. 6096). In addition to that, he was a badge-carrying volunteer assistant solicitor at the same office at which his great-grandfather, grandfather, and father had served in the circuit solicitor role for decades. (R. p. 2159; pp. 5730-5731; pp. 6088-6091; p. 6099; pp. 6112-6113). Appellant was “very privileged,” and his family legacy was of prime importance to him. (R. p. 5731; p. 6339). Unfortunately, the reality of Appellant’s situation was far different

from what it seemed, and this reality was a “gathering storm” that led to the murders of Maggie and Paul on June 7, 2021.

Contrary to appearances, Appellant was not truly doing well financially despite his considerable earnings. His financial troubles began in 2008 or 2009 due to an unsuccessful real estate venture in which he participated. (R. p. 3624; pp. 4100-4101). Although he was involved in some large cases that generated significant income after that, it was not enough to remedy Appellant’s issues, and he wound up in substantial debt. (R. p. 3625). Around 2011, Appellant responded to his financial stressors by stealing from his clients and law firm, and he continued to do so on a routine basis for years, illicitly taking *millions* that did not belong to him on top of continuing to borrow heavily from Palmetto State Bank and other institutions while still making a considerable legitimate income. (R. pp. 3590-3591; pp. 3610-3611; pp. 7578-7580; pp. 7701-7702). But his financial woes nevertheless persisted due to the costs of servicing the large debt load he had accrued coupled with the costs of the lifestyle to which he and his family were accustomed. (R. p. 3571; pp. 4098-4102; p. 4126; pp. 4796-4797; pp. 4804-4805; p. 6150; pp. 7826-7829; State’s Ex. # 415 (Bank Records); State’s Ex. # 416 (Bank Records); State’s Ex. # 417 (Bank Records)).

From there, Appellant’s problems only escalated. In February of 2019, his son Paul was involved in a fatal boat crash that resulted in the tragic death of a young woman named Mallory Beach. (R. pp. 3625-3627; p. 4136). As a result of the wreck, Paul was criminally charged, and an investigation was eventually initiated into Appellant’s conduct on the night of the incident. (R. p. 6130; State’s Ex. # 569 (Photograph)). Furthermore, in March of 2019, Appellant—amongst others—was sued. (R. p. 2717; p. 2723; p. 3739; p. 4145). Through that lawsuit, the Beach family sought \$10,000,000 from Appellant personally, and their counsel, Mark Tinsley,

Esquire, suggested a transfer of ownership of Appellant’s beach house and hunting estate as a potential way to pay a *portion* of the demanded damages. (R. p. 4136; pp. 4155-4156).

Making matters worse, Appellant no longer had a multi-million-dollar umbrella insurance policy to provide him with coverage in the boat wreck case because the insurer cancelled the policy after paying millions for claims made in connection to the February 2018 death of his longtime housekeeper, Gloria Satterfield (“Gloria”), following a fall at his home. (R. pp. 3628-3629; pp. 4046-4047; p. 4057; p. 4068; p. 4142). Appellant had directed the initiation of a civil action for the benefit of Gloria’s surviving children in which he was the defendant after promising to the children to “[t]ake care of you boys.” (R. pp. 4050-4051). Appellant then stole *millions* from the case’s proceeds without paying the surviving children one thin dime. (R. p. 4050; p. 4057; p. 4060; p. 4066; p. 6180). And, Appellant did so despite falsely claiming to Michael “Tony” Satterfield (“Satterfield”), one of Gloria’s sons, he was only insured in the amount of \$505,000 and would be working to get \$100,000 each for Satterfield and his brother from the supposedly-limited insurance coverage available. (R. p. 3050; pp. 4050-4051).

However, by April of 2021, Satterfield was asking Appellant how the case related to his mother’s death was going as he had been doing every few months based on Appellant’s assurances concerning a potential recovery. (R. pp. 4058-4060; p. 4072). Appellant, who had already received *and stolen* the insurance proceeds for himself, responded by falsely claiming the case was going well but there was still “a ways to go.” (R. p. 4060; p. 4064).

Also around that time, the litigation related to the boat wreck remained ongoing, and efforts at mediation had failed to result in a successful settlement. (R. p. 4154). Appellant claimed the most he could “cobble together” to resolve the matter was perhaps \$1,000,000 due to his poor financial situation, while Tinsley—incredulous of that claim—continued to insist

Appellant would need to pay ten times that amount. (R. p. 3247; pp. 4155-4156). Due to the stalemate, Tinsley had filed a motion to compel through which he sought records from all Appellant's financial accounts, including his accounts at Bank of America and Palmetto State Bank. (R. p. 4161; p. 4185). Ultimately, Tinsley's motion for Appellant to have to open his books was set to be heard in court on June 10, 2021. (R. pp. 4174-4179).

Compounding Appellant's problems even more, around May of 2021, Jeannie Seckinger, a certified public accountant serving as the chief financial and operating officer at PMPED, discovered an issue with a disbursement in one of Appellant's cases called Hershberger. (R. pp. 3503-3504). Approximately \$83,000 in earned attorney fees belonging to the firm had seemingly been disbursed with Appellant's approval to "Forge Consulting," a company that—amongst other things—assisted in planning structured annuities for case proceeds and attorney fees. (R. pp. 3508-3509; pp. 3798-3801; pp. 7870-7879). Not yet realizing the money had actually been deposited into a *fake* Forge account Appellant had opened at Bank of America<sup>4</sup> to further his financial crimes, Seckinger went to discuss the matter with Appellant because she believed he was honestly but improperly attempting to set up a structured annuity with the earned fees. (R. pp. 3503-3505; p. 3509; pp. 3530-3531; p. 3539; pp. 3815-3816; p. 4791). Appellant responded by claiming he was simply trying to get money into Maggie's name due to the pending boat wreck lawsuit. (R. p. 3509). However, Appellant had secretly stolen that money, too. (R. pp. 3545-3547).

That same month, Paul—who was called "Little Detective" by Maggie due to his efforts to make sure Appellant was "behaving"—texted Appellant they needed to talk because Maggie

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<sup>4</sup> Again, Bank of America was one of the banks from which Tinsley was seeking Appellant's financial account information in the boat wreck litigation. (R. p. 4156; p. 4185).

had found “several bags of pills” in Appellant’s computer bag. (R. p. 4855; p. 5329; pp. 8030-8031). In the past, Paul had at various points found pills in the home, and both he and Maggie were concerned about Appellant’s drug usage. (R. pp. 4855-4856; pp. 5460-5461). Around the same time, Maggie conducted internet searches in an attempt to identify unknown pills by their markings. (R. pp. 5329-5330; pp. 8097-8098).

Another aspect of the “gathering storm” occurred in May of 2021 when Annette Griswold, Appellant’s paralegal, alerted Seckinger of an issue in the Faris case, another of Appellant’s cases that was being handled along with an attorney outside the firm named Chris Wilson, Esquire.<sup>5</sup> (R. pp. 3511-3513; p. 3630; p. 3736; pp. 3753-3754; pp. 3759-3760; p. 3900). Griswold told Seckinger she had only received the expense checks from Wilson’s firm in Faris even though it was customary for expense checks and fees checks to be distributed at the same time. (R. pp. 3512-3513; 3754-3755). Before speaking with Seckinger, Griswold had spoken with Appellant, and he denied having received the fees, which totalled \$792,000. (R. p. 3631; p. 3757). However, staff at Wilson’s firm insisted Appellant had received them. (R. p. 3755; pp. 3757-3758). Indeed, Appellant had; he stole that money, too, after tricking Wilson into issuing the fees checks in his name instead of in the name of PMPED. (R. pp. 3526-3528; pp. 3914-3921; p. 3975). Appellant deposited the first check of the \$792,000 in early March of 2021, and Appellant had exhausted every bit of the stolen fees just over two months later by May 25, 2021. (R. pp. 4788-4790; pp. 6187-6188).

As of June 2, 2021, the firm remained completely unable to obtain a satisfactory explanation from Appellant about the missing Faris fees, and they had also been unable to obtain

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<sup>5</sup> At least at the time, Wilson was one of Appellant’s closest friends and had been so for years. (R. pp. 3890-3892; p. 3985).

the related disbursement paperwork from Wilson’s firm despite their requests for it. (R. p. 3516; pp. 3631-3632; pp. 3759-3762; pp. 3927-3928; p. 3930; p. 3932). However, shortly after Griswold sent yet another request for the information, Appellant—who had been alerted of that request by Wilson—went to Seckinger and falsely assured her the fees were still in Wilson’s trust account. (R. p. 3518; p. 3932). He further questioned why she needed the disbursement paperwork at all. (R. p. 3518). Uncoincidentally, around that same time, Appellant asked his friend Russell Laffitte, the chief executive officer (“CEO”) at Palmetto State Bank, how quickly one of his lines of credit at the bank could be extended by \$600,000. (R. pp. 5331-5332; pp. 8099-8100).

By Monday, June 7, 2021—the day of the murders, Seckinger and the firm still had not received a satisfactory answer about where the fees in the Faris case actually were, and she went to confront Appellant about the matter that afternoon.<sup>6</sup> (R. pp. 3517-3520; pp. 5742-5743). When she approached, Appellant gave her a “dirty look” and appeared disgusted to see her. (R. pp. 3519-3520). Nevertheless, they met in his office privately, and Seckinger demanded proof he had not personally received the Faris fees as she suspected. (R. p. 3520; pp. 3606-3607). In response, Appellant claimed—falsely—the money was still in Wilson’s trust account and could be obtained by the firm at any time. (R. p. 3520). Appellant further explained he was just temporarily leaving it where it was because he was attempting to decide what to do to get more money into Maggie’s name. (R. p. 3520).

As the confrontation continued, Appellant received a call about his father, Randolph Murdaugh, III (“Randolph”). (R. p. 3582). Randolph, who was suffering from cancer, had been

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<sup>6</sup> The confrontation occurred in the afternoon because Appellant did not arrive for work that day until 12:24 p.m. (R. p. 5240).

taken to the hospital that day, and Appellant alerted Seckinger there was nothing more that could be done for him.<sup>7</sup> (R. pp. 3520-3521; p. 5443). Based on that, Seckinger quickly ceased inquiring about the missing fees and, thinking Appellant was going to head to the hospital to be with his father, left Appellant's office. (R. p. 3521). However, Appellant did not go anywhere. (R. p. 3521). Instead, he remained working on a financial statement for the boat wreck motion hearing concerning his finances that was by that point just days away. (R. p. 3521).

Thus, on June 7, 2021, the gathering storm of Appellant's self-created problems was coming to a head, and the already-immense pressure upon him was continuing to mount. Despite all his stealing, Appellant was still millions of dollars in debt, he had limited funds available to him in his various accounts,<sup>8</sup> and he had nearly completely maxed out \$1,000,000 and \$600,000 lines of credit among other debts. (R. pp. 4081-4082; pp. 4087-4088; pp. 4099-4100; pp. 4105-4108; p. 4800; p. 6184; pp. 7826-7832; pp. 7836-7843). Although he had stolen millions from his clients and firm, he had rapidly burned through the money he was stealing, sometimes in a matter of just weeks. (R. pp. 4789-4790). Meanwhile, the Moselle estate was entirely in Maggie's name and Maggie had a fifty-percent ownership stake in the Edisto beach house, which meant none of the equity those properties possessed could be utilized by Appellant without Maggie's knowledge or involvement *if* she remained alive.<sup>9</sup> (R. p. 4095; pp. 6066-6067;

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<sup>7</sup> Appellant and his father would co-sign large loans, and Randolph also loaned large sums to Appellant. (R. pp. 2829-2830; p. 3034; p. 3079; pp. 7826-7829).

<sup>8</sup> By August 6, 2021, the balance in one of Appellant's checking accounts dipped to *negative* \$347,784.67. (R. p. 4083; pp. 7819-7820).

<sup>9</sup> Around that time, Maggie appeared to have no idea about the true state of the family's financial situation since she was actively shopping for a new house in Hilton Head. (R. pp. 4813-4814). However, she was concerned about the amount of money being requested in the boat wreck lawsuit and was also anxious because she did not believe Appellant was being truthful with her about that matter. (R. pp. 4296-4297).

p. 6186). By that point, Appellant simply did not have the money he needed to pay back<sup>10</sup> what he needed to be able to quickly pay back in order to delay or prevent his misconduct from coming to light, including the Faris fees that he was confronted about—yet again—that very day, the stolen Hershberger funds that were brought up to him only a few weeks earlier, or even the limited proceeds he had been discussing with Satterfield as recently as April. (R. p. 3586; pp. 4105-4108; pp. 4796-4797; pp. 5743-5744). And, Appellant certainly could not afford to have his account information—and true financial situation—exposed in the boat wreck case since his rampant stealing would have been readily apparent if that information was disclosed to anyone, including even just his own counsel, as a result of the upcoming hearing scheduled to take place that week. (R. pp. 3278-3279; p. 4160; p. 4185; p. 4791; pp. 5794-5796). All in all, Appellant was caught in a dangerous “tangled web” of his own making, and he was well aware of it. (R. p. 5982).

Just as it appeared Appellant was running out of options to keep his years and years of criminal financial misconduct hidden from exposure, Maggie and Paul were brutally slain at the kennels situated near the family home at Moselle. (R. p. 1950; p. 4668; p. 4887). That occurred on the night of June 7, 2021. (R. p. 4816; p. 4887). And, significantly, those murders immediately put a stop to the gathering storm at Appellant’s doorstep. (R. p. 3523; pp. 3641-3642; pp. 3768-3770; pp. 4179-4180; p. 5745).

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<sup>10</sup> In an earlier incident from 2018 in which the firm discovered Appellant essentially cashed the same check *twice* for a single loan repayment that was erroneously issued to him instead of his brother, Appellant—once caught—quickly paid back the money he had taken with interest while claiming he simply made an honest mistake. (R. pp. 3491-3493; p. 3586; pp. 5737-5740). Due to the trust his coworkers had in him at the time, that proved to be sufficient to resolve the matter and stop any adverse actions from being taken against him. (R. pp. 3491-3494; p. 3586; pp. 5737-5738).

Paul was shot twice with a 12-gauge shotgun. (R. pp. 2154-2155; p. 4615; State's Ex. # 500 (Diagram)). The first shot—a non-fatal one—resulted in buckshot pellets entering the left side of his chest and travelling through his left arm, which, notably, was down by his side. (R. pp. 4616-4617; pp. 4624-4625; pp. 5063-5064; pp. 5069-5070). Tragically, the second shot—a fatal one—resulted in birdshot pellets striking his left shoulder, entering his neck and face, and causing his brain to eject through the top right side of his skull. (R. p. 2086; pp. 4629-4630; p. 5063; p. 5085; p. 6665). As a result of the second shot, Paul was immediately—and obviously—killed, and his body dropped to the ground facedown right outside the door to the kennels' feed room. (R. pp. 1700-1701; p. 1716; p. 1710; pp. 4630-4631). Notably, Paul had no signs of any defensive wounds,<sup>11</sup> and stippling was present on his first wound, suggesting the shooter was no more than a few feet away when it was inflicted. (R. p. 2286; pp. 4618-4619; p. 4638; p. 4687; p. 5090; pp. 5116-5117).

Meanwhile, Maggie was shot and killed with a rifle loaded with .300 Blackout ammunition. (R. pp. 2154-2155; p. 2169; State's Ex. # 501 (Diagram)). Two of Maggie's gunshot wounds had parallel trajectories, with one entering below her rib cage near the middle of her body and exiting out her back and the other travelling through her left thigh. (R. pp. 4643-4644; p. 5091). Based on the stippling present, both those wounds were inflicted from close

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<sup>11</sup> Based on Paul's arm being down at his side when he was first shot coupled with the total absence of any defense wounds, it appeared Paul was not expecting what happened to occur and was either "real comfortable" with or completely surprised by the shooter. (R. p. 6803). That fact was particularly significant because, with both multiple dogs *and* "guard bird[s]" down at the kennels, it seemed highly unlikely a stranger would have been able to sneak up on Paul without Paul being alerted by at least one of the animals present. (R. pp. 1728-1729; p. 1840; pp. 3408-3409; pp. 4751-4752; p. 5998; pp. 6237-6238). Indeed, in Appellant's own words, the family's guinea fowl "just make a lot of racket any time anything unusual is going on. If anything, if anything disturbs them -- could be a person, it could be somebody driving up, whatever -- they're going to make a lot of racket." (R. p. 5998).

range, and the gunshots that caused them appeared to have come from the direction of the feed room where Paul was killed. (R. p. 2133; p. 2286; p. 4644; p. 4659; p. 4664; p. 5111). Maggie also had a gunshot wound to her wrist, which could have been caused by one of the other shots. (R. p. 4645; p. 4662; p. 5091). Another bullet—likely fired while Maggie was bent over in pain from the abdominal wound—travelled in an upward direction through Maggie’s body, pierced her left breast, and entered her face and head, “basically destroy[ing] the brain.” (R. pp. 4646-4647; pp. 4649-4650; p. 5092). That wound was immediately fatal. (R. p. 4647). In addition to that, Maggie was also shot in the back of the head near the base of her skull, and the bullet travelled through her brainstem with a downward trajectory. (R. p. 4648; p. 4675; p. 5092). Like Paul, Maggie also had no defensive wounds, and her injuries were plainly “incompatible with life.” (R. pp. 1700-1701; p. 1716; p. 1816; p. 4667; pp. 5116-5117).

As would later be discovered, Paul’s iPhone—which was consistently being used up to that point as was typical for Paul—locked that night at 8:49:01 p.m. and remained locked until its battery died a little less than two hours later. (R. pp. 2540-2541; p. 2721; p. 3405; pp. 5297-5298; p. 5300; p. 5327; pp. 7895-7938). Around the same time, Paul suddenly and completely ceased responding to all calls and texts even though he was actively engaged in ongoing communications with others, including his friend Rogan Gibson, right until his phone finally locked. (R. pp. 2147-2150; pp. 2520-2526; pp. 2535-2538; pp. 2659-2660; p. 2668; pp. 5295-5297; pp. 7895-7938).

Thirty seconds after Paul’s phone locked, Maggie’s iPhone did, too, and it remained locked until it was recovered along the side of the road near Moselle the next day.<sup>12</sup> (R. pp.

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<sup>12</sup> On the afternoon of June 8, 2021, Maggie’s phone, which was *not* at the crime scene after the murders, was recovered roughly fifteen to twenty feet away from the roadway at a point roughly one-half mile or so away from the entrance to the Moselle barn area. (R. pp. 2885-2888; p.

2201-2202; p. 2464; p. 2890; pp. 5298-5300; pp. 7895-7938). Like Paul, Maggie also stopped answering calls or responding to texts after her phone locked that final time. (R. p. 2150; p. 2327; pp. 2442-2446; pp. 2452-2453; pp. 2455-2456; p. 2527; pp. 7895-7938).

Just moments before their phones locked for the last times ever during their lifetimes, Paul and Maggie had both been down at the kennels where they were murdered. (R. p. 2542; pp. 2553-2554; p. 2673; p. 5296; p. 5300; pp. 7895-7938; State's Ex. # 297 (Kennel Recording)). And, they were *not* there alone. Contrary to what he would later claim over and over again to investigators, family members, law partners, friends, and anyone else who would listen, Appellant was down at the kennels that night, too, right along with Maggie and Paul—in their final moments alive. (R. p. 1701; p. 1708; p. 1778; pp. 1809-1810; p.1920; pp. 1929-1931; p. 2219; p. 3640; p. 4819; p. 4892; pp. 4926-4927; p. 5164; p. 5300; pp. 5724-5725; p. 5777; State's # 297).

Appellant was known as a prolific and even “obnoxious” user of his phone; however, his iPhone reflected no signs of activity from 8:09 p.m. until approximately 9:02 p.m., when it suddenly sprang to life and began recording a flurry of movement—including an uncharacteristic 283 steps in just four minutes. (R. pp. 2506-2509; p. 2601; pp. 3782-3783; p. 4299; pp. 5301-5302; p. 5305; pp. 5734-5735; pp. 7895-7938). At 9:04 p.m., Appellant called Maggie, who did not answer, and then called his father a little less than a minute after that. (R. pp. 2327-2328; pp. 2442-2444; pp. 7895-7938). Appellant then called—for three seconds—Maggie again at 9:06:14 p.m., and, notably, Maggie's phone's orientation changed just two seconds before that unanswered call came in, suggesting *someone* was holding the phone at that time. (R. pp. 2442-

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2890; pp. 2918-2919; pp. 2929-2930). Investigators were able to track the phone's location by using the “Find My” application on Appellant's surviving son's phone. (R. p. 2886).

2444; p. 2471; pp. 2559-2560; pp. 5372-5373; pp. 7895-7938). After that, Appellant got into his vehicle, and he called Maggie another time at 9:06:52 p.m., again receiving no answer. (R. p. 2445; p. 2582; pp. 7895-7938).

Despite calling Maggie three times in a span of just a few minutes without answer, Appellant began driving toward his parents' house at Alameda *without* making a quick stop by using the driveway to the kennels on the way, which—according to at least one of Paul's friends—Appellant would typically do when he knew a family member was down there. (R. p. 2430; pp. 2442-2445; p. 3321; p. 3410; pp. 5242-5243; p. 5309; p. 5966; pp. 7895-7938). Making that decision even stranger, Appellant—despite later claiming something to the contrary—has specifically asked Maggie to come from Edisto to Moselle that night for the purpose of visiting his parents.<sup>13</sup> (R. pp. 2566-2567; pp. 4814-4815; p. 4819; p. 4830; p. 4837; pp. 4928-4929; State's Ex. # 517 (Interview Recording)).

Not long after he left and approximately sixteen seconds after he passed the spot where Maggie's phone was later found along the side of the road the next day, Appellant sent a text message to Maggie's number indicating he was going to Alameda to check on his mother, who was suffering from Alzheimer's disease. (R. pp. 2201-2202; p. 2455; p. 2474; p. 2502; pp. 2887-2888; p. 2890; p. 4811; p. 5243; pp. 5310-5311; pp. 7895-7938; State's Ex. # 227 (Map)). Following that, Appellant placed calls to his son "Buster" Murdaugh ("Buster"), one of his brothers, and Wilson, and he also received a call from Wilson as he continued on to Alameda. (R. pp. 5311-5313; pp. 7895-7938). All those calls were relatively brief with the longest lasting just over two minutes. (R. pp. 5311-5313; pp. 7895-7938).

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<sup>13</sup> Appellant also asked Paul to come home that day according to Maggie. (R. p. 4206).

At 9:22:49 p.m., Appellant arrived at Almeda, and he parked his vehicle “way” in the back near a wooded area and shed.<sup>14</sup> (R. p. 3867; p. 3933; pp. 7895-7938). A little over a minute later, Appellant called his mother’s number to announce his arrival. (R. pp. 5314-5315; pp. 7895-7938). However, Appellant was still outside for roughly five more minutes after calling, and, during that period, another flurry of steps was recorded on his phone.<sup>15</sup> (R. p. 3327; p. 5314; pp. 7895-7938). Eventually though, Appellant went into the residence, and he remained at Almeda for just a few minutes before returning to his vehicle. (R. p. 3362; p. 5316; pp. 7895-7938). At 9:43:18 p.m., Appellant began driving away and heading back toward Moselle, but, as he was leaving the property, he stopped and parked for nearly a minute. (R. pp. 3868-3870; p. 4986; p. 5249; pp. 7895-7938). After that, he resumed his drive home. (R. pp. 7895-7938).

Along his way, Appellant called Maggie and then Paul, receiving no answers. (R. pp. 2477-2478; p. 5317; pp. 7895-7938). He then quickly sent a text message to Maggie’s number requesting she call him. (R. pp. 2477-2478; p. 5317; pp. 7895-7938). Following that, Appellant sent a message to Wilson asking him to call, and Wilson did so twice, resulting in two brief conversations. (R. p. 5318; pp. 7895-7938).

Appellant arrived at Moselle right around 10:00 p.m., and he headed straight to the house. (R. pp. 3870-3872; p. 5252; pp. 7895-7938). He remained there for roughly five minutes, and,

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<sup>14</sup> On his nighttime drive to Almeda, Appellant reached a peak speed of 74.4 miles per hour. (R. p. 5248). Similarly, later on his return drive, Appellant’s speed peaked at 80.16 miles per hour. (R. p. 5253). Meanwhile, the highest posted speed limit along Appellant’s route was 55 miles per hour. (R. pp. 5254-5255). Notably, the dark rural roads involved were such that one officer testified he would not even “run code” at those speeds at night on that route. (R. pp. 5254-5255; pp. 8032-8091).

<sup>15</sup> Around the time Appellant was supposedly visiting with his mother, several system startups were also logged in Appellant’s vehicle data, which could be triggered by the vehicle’s doors or rear hatch being opened and possibly by someone walking near the vehicle while in possession of the keyless fob. (R. p. 3879; p. 5270; pp. 7895-7938).

while there, he called Maggie's number yet again. (R. p. 5255; p. 5320; pp. 7895-7938). Then, at approximately 10:05 p.m., he began driving toward the kennels. (R. pp. 5255-5256; p. 5321; pp. 7895-7938).

At approximately 10:06:14 p.m. that night, Appellant called 911. (R. pp. 3849-3850; p. 5256; p. 5319; p. 5321; pp. 7895-7938; State's Ex. # 9 (911 Call Recording); State's Ex. # 11 (911 Call Recordings)). Based on Appellant's vehicle's records, that call was placed a little less than twenty seconds after he arrived at the kennels. (R. p. 5321; pp. 7895-7938). Despite the short time between arriving and calling, Appellant reported he saw his wife and child had been shot "badly," neither were breathing, and he had already been over to them and touched their bodies to check on them. (R. p. 1848; State's Ex. # 9; State's Ex. # 11). In addition to that, Appellant told the dispatcher he had last talked to Maggie in person approximately one-and-a-half to two hours earlier, and he quickly brought up the boat wreck as a potential reason for the shootings. (R. p. 4922; State's Ex. # 11). Furthermore, he asserted he was heading back home to get a gun, and his vehicle's data reflected a quick trip to the house was made. (R. pp. 1702-1703; p. 5322; State's Ex. # 11).

Following that, Appellant ended the 911 call at 10:17 p.m., stating he needed to contact his family, and—with his slain wife and child just a few feet away—he began placing call after call, including *multiple* to Paul's friend Gibson. (R. p. 1815; p. 1852; pp. 5323-5326; pp. 7895-7938; State's Ex. # 11). Notably, Gibson had repeatedly called and texted Paul after Paul failed to respond to a text sent at 8:49:35 p.m., and Gibson's last attempted communication that night occurred at 10:08:27 p.m. (R. pp. 2148-2150; pp. 2525-2526; pp. 2659-2660; pp. 2666-2668; pp. 7895-7938). Beginning at 10:21 p.m., Appellant—who picked up Paul's phone after Paul was

killed and, thus, could have seen the missed calls and texts on its screen<sup>16</sup>—repeatedly attempted to contact Gibson, placing four calls and sending one text message in a span of less than ten minutes.<sup>17</sup> (R. p. 2151; pp. 2669-2670; p. 4904; pp. 5027-5028; pp. 5325-5326; pp. 7895-7938).

Meanwhile, as Appellant was placing those calls, law enforcement officers and other first responders were rushing to the scene, and Sergeant Daniel Greene from the Colleton County Sheriff's Office was the first to arrive, getting there at 10:26 p.m. (R. pp. 1693-1698; p. 1727; p. 5326). Upon arriving, he saw the extremely-bloody crime scene and could immediately tell both Maggie and Paul were deceased. (R. pp. 1700-1701; p. 1716; p. 4907; State's Ex. # 1 (Recording)). Notably, near Paul, there was also a large amount of water present on the ground, and it appeared to be more than would have been caused by the night's precipitation alone.<sup>18</sup> (R. pp. 1710-1711). After walking past the bodies, Sergeant Greene approached Appellant, who—despite claiming he had already touched Maggie and Paul—did not have any visible signs of blood anywhere on him or his clothing.<sup>19</sup> (R. p. 1701; p. 1715; p. 1846; p. 1848; pp. 1938-1940; pp. 1975-1976; pp. 2629-2630). Almost immediately, Appellant again brought up the fatal boat wreck as a possible explanation for why Maggie and Paul had been killed. (R. p. 1699; pp. 1701-1702; p. 1712; pp. 1766-1767; p. 4922; State's Ex. # 1). In fact, Appellant claimed he

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<sup>16</sup> At 10:20:08, Paul's phone registered an "auto lock," which could occur when the phone's facial recognition feature failed to recognize the face of the individual viewing the phone's screen. (R. p. 5325; p. 5380; pp. 7895-7938).

<sup>17</sup> Notably, Appellant's first attempt to contact his surviving son, Buster, did not occur until 10:44 p.m., which was well after Appellant had tried to contact Gibson. (R. pp. 7895-7938).

<sup>18</sup> There was also a large hose at the kennels that was used to wash them out. (R. pp. 4748-4749; p. 4754). Notably, based on the manner in which it was found after the murders, that hose was used by someone subsequent to the afternoon of June 7, 2021. (R. pp. 4756-4758).

<sup>19</sup> On June 8, 2021, one of Appellant's law partners got blood on his clothing simply from walking into the feed room at the kennels after the crime scene was released. (R. p. 5758).

knew “that’s what it [wa]s.” (State’s Ex. # 1). Furthermore, Appellant asserted he last saw Maggie and Paul earlier that night, claiming—falsely—he was gone an hour and a half to his mother’s house and he saw them forty-five minutes before that. (State’s Ex. # 1).

From there, more law enforcement officers and emergency personnel arrived at the scene, and the investigation into the killings was led by the South Carolina State Law Enforcement Division (“SLED”).<sup>20</sup> (R. pp. 1771-1772; pp. 1811-1813; pp. 1826-1828; pp. 4886-4889). At around 12:57 a.m. on June 8, 2021, Special Agent David Owen from SLED interviewed Appellant along with Detective Laura Rutland from the Colleton County Sheriff’s Office.<sup>21</sup> (R. p. 1914; p. 1920; p. 4886; p. 4892; p. 4913; State’s Ex. # 153 (Interview Recording)).

During the interview, Appellant provided an account of what supposedly occurred that evening, relating the following details. (R. p. 4894; State’s Ex. # 153). After work, he rode around the property with Paul for “probably” forty-five minutes to an hour. (State’s Ex. # 153). Meanwhile, Maggie, who had a doctor’s appointment that day, arrived home “fairly late.” (State’s Ex. # 153). Following that, he was up “at the house” and took a nap on the couch for twenty-five to thirty minutes. (State’s Ex. # 153). As he napped, he knew Maggie had gone down to the kennels. (State’s Ex. # 153). When he woke up, he called Maggie and did not receive a response, which was “odd.” (State’s Ex. # 153). Nevertheless, he went to his mother’s house for a visit. (State’s Ex. # 153). On his way home, he texted and called again and still did not get Maggie. (State’s Ex. # 153). When he arrived home, he went to the house, and no one was there. (State’s Ex. # 153). He assumed they were still “foolin’ around” at the kennels, so he

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<sup>20</sup> A significant number of Appellant’s family members, law partners, and friends also came to the scene that night, too. (R. p. 4902; p. 5975; p. 6532).

<sup>21</sup> Danny Henderson, Esquire, Appellant’s law partner and personal attorney, was also present for the interview. (R. p. 1920; p. 1928; State’s Ex. # 153).

headed over there. (State's Ex. # 153). When he arrived, he saw Maggie and Paul, knew something "was bad," ran over to them both, and tried to turn Paul over, causing his phone to pop out.<sup>22</sup> (R. pp. 1932-1933; p. 4904; State's Ex. # 153). He then picked up Paul's phone to "do something with it" before quickly putting it back down. (R. p. 4904; State's Ex. # 153). He also called 911 "pretty much right away," and, when he was touching the bodies, he was purposefully trying to do so in a manner "as limited as possible." (State's Ex. # 153).

Beyond offering that account, Appellant indicated there was no one he was "overly suspicious" of that he could identify as a possible suspect. (R. p. 4997; State's Ex. # 153). However, he again brought up the boat wreck and noted Paul had received threats and been assaulted since it occurred. (R. p. 4922; State's Ex. # 153). Furthermore, Appellant alleged C.B. Rowe, who was a farmhand at Moselle, had recently told Paul he had in the past been recruited by the government to serve as an assassin.<sup>23</sup> (R. p. 4906; State's Ex. # 153).

Following that interview, Agent Owen collected the clothing Appellant was wearing *at the time*, which consisted of a t-shirt, a pair of shorts, and a pair of multi-colored tennis shoes.<sup>24</sup> (R. p. 1941; p. 2052; p. 3443; p. 4500; pp. 4898-4899). In addition to Appellant's clothing,

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<sup>22</sup> Despite that claim, there were no visible signs of blood on Appellant's hands or clothing. (R. pp. 1939-1940; p. 5011). In fact, Appellant's clothing was so fresh and clean it looked—and smelled—like it had just come out of the laundry. (R. pp. 1975-1976; pp. 3683-3684).

<sup>23</sup> Rowe had an alibi for the date of the murders, and, pursuant to his phone records, he was not in the vicinity of Moselle that night. (R. p. 4906; pp. 5288-5289; p. 5312; pp. 7895-7938).

<sup>24</sup> Although Agent Owen was not aware of it on the night of the murders, Appellant had been wearing different clothing just hours earlier when he was riding around the property with Paul, and *that* particular clothing was identified as being different from the clothing he had worn to work earlier that day. (R. p. 2743; p. 4209; pp. 4224-4225; p. 4229; pp. 4340-4341). The shoes Appellant wore to Almeda that night were also different from the shoes he was wearing after he reported the murders. (R. p. 3328; p. 4226; p. 4500). Significantly, after the night of the murders, the clothing and shoes Appellant had been wearing earlier that day were never seen again, and they remained unaccounted for by the time of trial. (R. pp. 4224-4225).

numerous other pieces of evidence were collected from various points around Moselle over the course of the next few days, including: (1) six fired Sellier & Bellot (“S&B”) .300 Blackout cartridge cases from underneath and around Maggie’s body; (2) two fired shotshells—one a Federal Premium 3” 12-gauge 00 buckshot shell and the other a Winchester Drylok 3” 12-gauge #2 birdshot shell—from the feed room near Paul’s body; (3) multiple unfired .300 Blackout cartridge cases and shotshells consistent with the brands and types used in the murders from throughout the property; (4) several fired projectiles from different points around the crime scene; (5) some birdshot pellets from the feed room; (6) an empty box of .300 Blackout rounds from the gun room; and (7) several empty boxes of 12-gauge shotshells from the trash.<sup>25</sup> (R. pp. 1779-1780; pp. 2017-2019; pp. 2027-2028; pp. 2059-2068; pp. 2164-2165; p. 2179; pp. 2199-2200; pp. 2211-2213; pp. 2217-2218; pp. 2293-2294; p. 2932; p. 3140; pp. 3151-3153; pp. 3165-3166; pp. 3179-3183; pp. 7525-7526). Notably, five weathered S&B .300 Blackout cartridge cases were also recovered from just outside the exterior entrance to the Moselle residence’s gun room after one of Paul’s friends—Will Loving—reported he and Paul had fired Paul’s replacement .300 Blackout rifle<sup>26</sup> at that location in March or April of 2021 while calibrating a new red dot sight for it. (R. pp. 2181-2185; pp. 2707-2710; p. 2713; p. 2716; pp. 2724-2725; p. 2735).

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<sup>25</sup> Additional shotgun pellets were later collected during Paul’s autopsy, and several bullet fragments were collected during Maggie’s. (R. pp. 3146-3149).

<sup>26</sup> Appellant originally gave Paul and Buster each their own .300 Blackout rifle with a thermal scope for Christmas in 2016. (R. pp. 2372-2373). However, around 2017 or 2018, Paul’s rifle went missing after it was apparently stolen from his vehicle. (R. pp. 2647-2648; p. 2707; p. 4432; p. 4447; pp. 5960-5961). In response, Appellant purchased a replacement .300 Blackout rifle for Paul in April of 2018 that did *not* have a thermal scope, and Maggie picked it up when it was ready. (R. pp. 2379-2380; p. 6713). Thus, in total, the Murdaugh family owned three .300 Blackout rifles, but, after the murders, Appellant could only account for Buster’s. (R. p. 2388).

Beyond that, investigators searched Moselle for any guns capable of firing the types of ammunition used in the murders. (R. pp. 2035-2036; pp. 2154-2155). Through that search, Buster's .300 Blackout rifle, which was equipped with a thermal scope and loaded with S&B .300 Blackout rounds, was recovered along with four shotguns: (1) Paul's camouflage 12-gauge Benelli Super Black Eagle 3 shotgun, which was the one Appellant allegedly retrieved after he called 911; (2) Buster's black 12-gauge Benelli Super Black Eagle 2 shotgun; (3) a 12-gauge Browning shotgun; and (4) a 12-gauge Mossberg pump-action shotgun. (R. p. 1703; p. 1740; pp. 1995-1996; pp. 2035-2036; p. 2067; pp. 2160-2161; p. 2168; pp. 2170-2177; p. 2243; p. 2649; p. 2718; pp. 2932-2933; pp. 3141-3142; pp. 3149-3151; pp. 3166-3167; p. 3643; p. 3652; pp. 4427-4429; pp. 5962-5963). Importantly though, two of the Murdaugh family's guns—Paul's replacement .300 Blackout rifle and a 12-gauge original model Benelli Super Black Eagle shotgun, which was *Appellant's* preferred shotgun—were not found or recovered, and neither was located at any point after that. (R. p. 3644; p. 4431; p. 4950; p. 5963). Thus, two family-owned weapons—including one favored by Appellant—that matched the very same types of guns used by the killer completely vanished after the murders and remained missing.

On June 10, 2021, Agent Owen met with Appellant for a second interview along with Agent Jeff Croft from SLED, and, during that interview, Appellant—with his counsel James M. Griffin, Esquire, present—again recounted what he had allegedly done on the date of the murders in a manner largely consistent with his first account to the investigator. (R. p. 2219; p. 2290; pp. 4912-4914; State's Ex. # 243 (Interview Recording)). That meant Appellant once again insisted—falsely—he had “stayed in the house” and fallen asleep on the couch when Maggie and Paul went to the kennels after dinner, and he reaffirmed the last time he saw Maggie and Paul

alive that night was at dinner.<sup>27</sup> (R. p. 2223; p. 2226; p. 4914; State’s Ex. # 243). Appellant also added for the first time he thought he had heard someone pull up and thought he saw a wildcat run from his car when he went outside to head to his mother’s house. (R. p. 2223; State’s Ex. # 243). Likewise, Appellant again identified the boat wreck as the killer’s possible motive, and he further mentioned he had been working that day to prepare for the upcoming hearing in the boat wreck case. (State’s Ex. # 243).

In addition to that, Appellant claimed he and Paul rode around the property for probably more than an hour while checking their food plots and “looking for hogs.”<sup>28</sup> (R. p. 2222; State’s Ex. # 243). He also indicated the two did some target shooting with a pistol. (State’s Ex. # 243). Furthermore, Appellant acknowledged guns were frequently left down at the kennels, but he insisted—while presumably referring to the one taken from the Moselle gun room after the murders—“that” .300 Blackout rifle was not present at the kennels on June 7, 2021. (R. p. 2226; State’s Ex. # 243). Appellant further indicated he believed Paul had gotten another .300 Blackout rifle to replace the one he had lost, but Appellant insisted that one had been gone “for a substantial while,” too.<sup>29</sup> (State’s Ex. # 243).

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<sup>27</sup> Prior to the second interview, Gibson had told Agent Croft he was 99% certain he heard Appellant’s voice in the background when he had spoken to Paul on the phone around 8:40 p.m. on the night of June 7, 2021, although he would later say he was not sure. (R. p. 2670; p. 2672; p. 4910). Notably, by the time of trial, Gibson’s degree of certainty about what he heard had increased to 100% after viewing the kennel recording. (R. p. 2673).

<sup>28</sup> Notably, Appellant bought Buster’s and Paul’s .300 Blackout rifles specifically for hog hunting. (R. pp. 2372-2373).

<sup>29</sup> At one point in the interview, Appellant also appeared to state either “I did them so bad” or “they did them so bad.” (State’s Ex. # 243). The interview recording was played for the jurors during trial, and several witnesses offered their interpretations of which of those words Appellant had used. (R. p. 2219; pp. 2270-2272; pp. 5485-5486; pp. 5711-5712; p. 6549).

While the second interview was occurring, Investigator Dylan Hightower from the Fourteenth Circuit Solicitor’s Office performed—with Appellant’s consent—an “advanced logical” extraction of Appellant’s phone before returning it to him.<sup>30</sup> (R. pp. 2897-2898; pp. 2904-2905; p. 4915). Notably, a subsequent comparison of the data extracted from Appellant’s iPhone to call data records from his cell phone provided demonstrated numerous calls—including calls Appellant made to Maggie, Paul, and others shortly after the murders—were missing from the call logs on Appellant’s phone. (R. pp. 2904-2905; pp. 5306-5308; p. 5317; pp. 7895-7938). Based on that, it appeared the records of those calls had been manually deleted from Appellant’s phone at some point before the second interview. (R. pp. 2493-2497; p. 2907; pp. 4942-4943).

In the days that followed, everyone quickly rallied around Appellant to provide support in the wake of the murders. (R. pp. 2741-2742; pp. 3522-3523; p. 3641; pp. 3767-3768; p. 3948; p. 5745). As part of that support, Appellant’s firm promptly halted all inquiries into the missing fees in the Faris case, and no one was worried about that money anymore. (R. p. 3523; p. 3601; p. 3612; pp. 3641-3642; p. 3589; p. 5745). In addition to that, the murders swiftly led to the postponement of the upcoming hearing on Tinsley’s motion to compel in the boat wreck case. (R. pp. 4178-4180). And, beyond just the postponement, the murders so greatly altered the circumstances and sympathies in the boat case to the point that—in Tinsley’s view—“the [civil] case would be over against” Appellant.<sup>31</sup> (R. pp. 4181-4182).

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<sup>30</sup> Investigator Hightower did not perform a full extraction at that time due to how long it would have taken and because he felt pressured to get Appellant’s phone back to him as quickly as possible based on Appellant’s father’s ongoing health issues. (R. pp. 2899-2900).

<sup>31</sup> Paul’s murder also ended the criminal case stemming from the boat wreck. (R. p. 4939).

With the focus shifted away from the missing fees in the Faris case and the boat wreck proceedings brought to a halt, Appellant promptly took advantage of the time he now had and used the weeks that followed the murders of his wife and child *to secure funds* to pay back a large portion of the fees he had stolen. (R. p. 3949). On July 15, 2021, he deposited a check for \$250,000 into his account after obtaining a loan from John Parker, Esquire, one of his law partners at the firm. (R. pp. 4793-4795). The next day, he wired that amount to Wilson’s firm. (R. p. 4793). Around the same time, Appellant obtained the assistance of his friend Laffitte to get \$350,000 wired from Palmetto State Bank’s “loans not on system” account to Wilson’s firm.<sup>32</sup> (R. p. 4083; p. 4092; p. 4094; p. 4793). Finally, using deception yet again, Appellant convinced Wilson to temporarily cover the remaining \$192,000 for him, and Wilson did so. (R. pp. 3949-3953; p. 4795). Wilson—at Appellant’s request—then sent a message to Appellant confirming the Faris fees were in his trust account available for disbursement, and Appellant promptly forwarded that message to Seckinger and others at the firm. (R. pp. 3524-3525; pp. 3612-3613; pp. 3950-3954; pp. 7807-7808). Significantly, as had occurred in the past when Appellant had replaced stolen money, the firm believed the Faris fees issue was resolved and the matter was “put . . . to bed.” (R. p. 3586; pp. 5737-5738; pp. 5745-5746).

But securing funds to replace the stolen money was *not* all Appellant did in that timeframe. Randolph had sadly succumbed to his illness on June 10, 2021, and, after his funeral a few days later, Appellant and other family members went to Alameda to visit with one another.

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<sup>32</sup> Although no documentation existed to justify the \$350,000 wire at the time it was sent, Laffitte later created backdated loan paperwork to support both the wire and a \$400,000 deposit made to one of Appellant’s accounts on August 9, 2021. (R. p. 4083; pp. 4090-4091). Notably, the \$400,000 deposit—which erased Appellant’s massive negative balance of nearly \$350,000 at the time—was executed on the very same day one of Palmetto State Bank’s executives requested a complete accounting of Appellant’s relationship with the bank. (R. pp. 4081-4082).

(R. p. 2228; pp. 3333-3334; p. 3984). While there, Appellant approached Mushelle “Shelley” Smith (“Shelley”), who was one of his mother’s caretakers. (R. pp. 3320-3321; p. 3334). Shelley had been at Almeda on June 7, 2021, when Appellant arrived that night and briefly came inside.<sup>33</sup> (R. pp. 3323-3330). During the ensuing conversation, Appellant told Shelley—falsely—he had been at Almeda on the night of the murders for thirty to forty minutes, and he asked her to say the same thing if she was asked about it.<sup>34 35</sup> (R. pp. 3335-3336; p. 3380).

Not long after, Appellant approached Shelley again. (R. p. 3338; p. 3361). In that conversation, he volunteered to provide her with some money to help with the costs of her upcoming wedding. (R. p. 3338). Furthermore, Appellant also offered to help Shelley with her other job at a school, asserting he was friends with the principal. (R. p. 3338).

At some point in the days that followed, Shelley encountered Appellant yet again.<sup>36</sup> (R. p. 3339). That occurred one morning when Appellant showed up unannounced—and uncharacteristically—around 6:30 a.m. (R. pp. 3339-3340). Without calling first, Appellant approached the house, knocked on the wall by a window, and stated he was outside. (R. p.

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<sup>33</sup> At trial, Shelley explained it was highly unusual for Appellant to visit Almeda during her nighttime shift there. (R. p. 3322; p. 3326; p. 3378).

<sup>34</sup> Shelley was “[s]omewhat” upset by Appellant’s remarks because she knew he had only been on the property at Almeda for fifteen to twenty minutes in total, and she later recounted his remarks to her brother due to how unusual they seemed. (R. p. 3330; p. 3336; p. 3362).

<sup>35</sup> A few days after that conversation, Shelley was contacted by an investigator and, at that time, inaccurately claimed Appellant had been at Almeda for thirty to thirty-five minutes on the night of the murders. (R. pp. 3363-3365).

<sup>36</sup> Shelley testified at trial that particular encounter occurred “[t]hree days” after Randolph’s funeral, which was held on Sunday, June 13, 2021. (R. p. 3339; p. 3358; p. 5014). However, she previously told an investigation the encounter occurred just one day after the funeral, and she eventually admitted during trial she could not actually remember exactly when it had occurred because it was “so long” ago. (R. pp. 3358-3359; p. 5007; p. 5014).

3339). Shelley—who had never known Appellant to come to Almeda that early—responded by going to the door and letting him inside. (R. pp. 3340-3341; p. 3378). Appellant entered the residence carrying “a blue something” that was “balled up” and either appeared to be a vinyl tarp or “like” a vinyl tarp, and he promptly went upstairs with the item he was carrying. (R. pp. 3342-3343; pp. 3355-3356; p. 3368; p. 3371; pp. 3384-3386). Following that, Appellant drove off in the white truck that Shelley thought might have been Randolph’s, but he later returned in the same truck about ten or fifteen minutes later and switched to a black one before finally leaving the property. (R. pp. 3347-3349). And, at some point during Appellant’s visit that morning, a four-wheeler was driven up to the house after having previously been parked near one of the outbuildings. (R. p. 3348; p. 3353; p. 3360; State’s Ex. # 410 (Photograph)).

On August 11, 2021, Agent Owen and Agent Croft again interviewed Appellant about the murders. (R. p. 4923; pp. 4926-4927; State’s Ex. # 517 (Interview Recording)). Also present was Cory Fleming,<sup>37</sup> a plaintiff’s and criminal defense attorney who was also a friend of Appellant’s. (R. p. 4926; State’s Ex. # 517).

During the interview, Appellant recounted what he did on the date of the murders, and, once again, he insisted he “stayed on the couch” after dinner when Maggie and Paul headed down to the kennels. (R. pp. 4930-4931; State’s Ex. # 517). Likewise, Appellant again discussed his trip to Almeda, confirmed he did *not* stop by the kennels on the way despite trying

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<sup>37</sup> Although not known at the time, Fleming had aided Appellant in some of his financial misconduct, including by helping him steal the funds in the Satterfield case. (R. p. 4054; p. 4066). Like Appellant, Fleming was later disbarred once his crimes came to light. In re Fleming, 441 S.C. 512, 895 S.E.2d 672 (2023). Fleming ultimately pled guilty to various State Grand Jury charges involving the Satterfield and Pinckney matters, and an appeal related to his convictions currently remains pending. Appellate Records for State v. Cory Howerton Fleming, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=79239>.

to get in touch with Maggie before leaving, and asserted—falsely—he was at his “mom’s” that night for forty-five minutes to an hour. (R. p. 4936; State’s Ex. # 517). Furthermore, Appellant claimed he believed several of the family’s guns were missing, including a Benelli shotgun and—supposedly since around Christmas—Paul’s replacement .300 Blackout rifle. (State’s Ex. # 517).

In addition to that, Agent Owen brought up a Snapchat recording they had been able to obtain from Paul’s account. (R. p. 4929; State’s Ex. # 517). That recording was filmed around 7:39 p.m. on June 7, 2021. (R. pp. 2742-2743; pp. 5281-5282; p. 5285). On it, Appellant could be seen messing with a drooping tree, and, at the time, he was wearing what appeared to be a blue short-sleeved button-down shirt, khaki pants, and brown leather shoes. (State’s Ex. # 306 (Snapchat Recording)). Initially, Appellant claimed he could not remember “playing with a tree.” (State’s Ex. # 517). However, after he was shown the recording, Appellant indicated he did, in fact, remember the event but still could not remember if it occurred on the date of the murders. (State’s Ex. # 517).

Following that, Agent Owen advised Appellant it had been suggested his voice was heard in the background prior to 9:00 p.m. during one of Paul’s calls. (State’s Ex. # 517). In response, Appellant insisted it was not him “if [his] times [we]re right.” (State’s Ex. # 517). Appellant further asserted Gibson had told him something similar, and Appellant expressed surprise at that. (State’s Ex. # 517).

Beyond that, Agent Owen alerted Appellant of the results of some ballistic testing that had been performed. (R. p. 4932; State’s Ex. # 517). That testing, which involved toolmark examination, revealed the fresh cartridge cases found near Maggie’s body, the cartridge cases

found outside the Moselle gun room,<sup>38</sup> and a number of cartridge cases found at the Moselle shooting range all “had been loaded into, extracted, and ejected from” the same .300 Blackout firearm.<sup>39</sup> (R. pp. 3173-3177; pp. 7844-7854). Based on that, a Murdaugh family gun was used in the killings, and Agent Owen advised Appellant of that key fact. (R. p. 4932; State’s Ex. # 517). Appellant’s only response was “okay.” (R. p. 4933; State’s Ex. # 517).

Following that interview, Appellant quickly went to Blanca Turrubiate-Simpson, who had been working as the family’s housekeeper at Moselle since February of 2019, and said he needed to talk to her. (R. pp. 4230-4231; p. 6055). During the ensuing conversation, Appellant told her he had a “bad feeling” and felt “something [wa]s not right.” (R. p. 4231). Referencing the recording he was shown by the investigators, Appellant then brought up the clothing he was wearing earlier on the date of the murders and suggested to Turrubiate-Simpson he had been wearing “that Vinny Vines shirt.” (R. pp. 4231-4232). That remark confused Turrubiate-Simpson because she knew Appellant had been wearing a polo shirt as opposed to the shirt Appellant was now describing, and she had even adjusted the collar of Appellant’s polo shirt that day. (R. pp. 4231-4232). Based on that, Turrubiate-Simpson believed Appellant may have been trying to get her to falsely say he had been wearing the “Vinny Vines shirt” if she “was to be asked.”<sup>40</sup> (R. p. 4232; p. 4285).

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<sup>38</sup> As previously noted, Paul’s replacement .300 Blackout rifle had been sighted in at that location by Paul and his friend in March or April of 2021. (R. pp. 2181-2185; pp. 2707-2710; p. 2713; p. 2716; pp. 2724-2725; p. 2735).

<sup>39</sup> The original ballistics analysis report was issued on July 23, 2021, and a revised report containing some slight amendments was subsequently issued on October 6, 2022. (R. pp. 7844-7854).

<sup>40</sup> Notably, Appellant’s discussion with Turrubiate-Simpson about the clothing he had been wearing on the date of the murders occurred despite Appellant assuring Agent Owen during the

By that point, it was clear Appellant was a suspect in Maggie and Paul’s murders, and he knew it. Nevertheless, in the weeks that followed, Appellant’s vigorous efforts to cover up his vast financial misconduct had so far proved to be successful; he had replaced the stolen Faris fees, and PMPED had been satisfied with Wilson’s confirmation the funds were exactly where they should be. (R. p. 3586; pp. 5737-5738; pp. 5745-5746). However, Appellant had made a critical mistake. Just as it appeared Appellant might be able to evade accountability yet again, Griswold found one of the original checks for the Faris fees in Appellant’s office on September 2, 2021. (R. p. 3771; p. 5747). That check for \$225,000 had been issued in Appellant’s name *in March* instead of in the name of the firm as it should have been, and Appellant had long since already deposited that check into his own account. (R. pp. 3526-3528; p. 3771). Thus, it was unmistakably clear Appellant had stolen from the firm and repeatedly lied about it. (R. pp. 3527-3528; p. 3622; p. 3757; p. 3797).

Griswold swiftly took the check to Seckinger, who had begun reviewing the financial records connected to Hershberger and some of Appellant’s other cases around the same time. (R. pp. 3526-3527; pp. 3772-3773). Seckinger immediately knew her suspicions about Appellant had been confirmed. (R. pp. 3527-3528). On the same day, Seckinger looked into the payments that had been issued to Forge in Appellant’s cases and realized Appellant’s signature was on the back of all the cancelled Forge checks. (R. p. 3528; p. 5749). At that point, Seckinger realized Appellant’s stealing was *not* isolated, and she quickly alerted the partners of all she had discovered. (R. pp. 3528-3529). One of the partners, Lee Cope, Esquire, then verified with Michael Gunn, a principal and settlement consultant at Forge Consulting, that his

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interview earlier that same month he had actively been trying “to not have a lot of conversations with people that . . . y’all need to talk to.” (State’s Ex. # 517).

company had not used Bank of America for years, was not connected to the fake Forge account, and had no records associated with any of the cases in which Appellant had directed funds to Forge.<sup>41</sup> (R. p. 3529; pp. 3798-3799; pp. 3810-3811; pp. 3815-3816; p. 5749).

On the morning of September 3, 2021, several of the PMPED partners confronted Appellant about the thefts that had then been uncovered, and they had irrefutable proof to support their accusations. (R. pp. 3646-3647; p. 5761). With no way out, Appellant finally admitted to his rampant financial misconduct, and he blamed it on a purported addiction to opioids. (R. pp. 3647-3648; p. 3974; p. 5761). That same day, Appellant was forced to resign in disgrace. (R. p. 3773; p. 3794; p. 3797; p. 3968; pp. 5729-5730; p. 5761).

But that was not the only consequence for Appellant. Beyond resigning from the firm, his actions were swiftly reported to law enforcement, which resulted in a “ton” of State Grand Jury criminal charges stemming from his years of thefts. (R. pp. 3535-3536; p. 3570; p. 3590; pp. 3613-3614; pp. 3649-3650; p. 4939). In the firm’s ensuing investigation, staff discovered Appellant’s years of thefts. (R. pp. 3535-3536; p. 3570). More specifically, between 2015 and 2021, Appellant stole a total of \$2,841,512.55 in numerous cases—including Hershberger, Boulware, Martin, Gary, Anderson, Risher, Moore, and others—by routing funds to the fake Forge account he controlled, by taking insurance proceeds before they made it to the firm, by creating phantom fees to pilfer, and by billing his personal expenses as client expenses. (R. pp. 3535-3536; pp. 3539-3568; pp. 5751-5752; p. 6619; pp. 7578-7580). Furthermore, beginning in 2011, Appellant—through a separate scheme involving Palmetto State Bank—stole a total of \$2,079,826.54 in the Pinckney, Thomas, and Badger cases. (R. pp. 3569-3585; pp. 7701-7702).

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<sup>41</sup> Paperwork in his office was also later found directly linking him to his fake Forge account at Bank of America. (R. pp. 3530-3531).

Appellant carried out that scheme with the assistance of Laffitte, who was serving as the clients' personal representative, and the two worked together to convert the client funds for Appellant's personal use, *including* to pay back loans Laffitte issued to Appellant from conservatorships connected to some of Appellant's other clients. (R. pp. 3569-3585).

Appellant's theft in the Satterfield case was also brought to light, resulting in a \$4,305,000 confession of judgment and more criminal charges. (R. pp. 3613-3614; p. 4065; p. 4066). As a direct result of Appellant's actions, the firm that his great-grandfather had founded more than a century ago ceased to exist, and it was reorganized into a new entity that no longer bore the Murdaugh name. (R. pp. 5729-5730). Appellant was reported to the South Carolina Bar, and his law licence was suspended<sup>42</sup> and then stripped from him. (R. p. 3613; pp. 3649-3650; p. 3887). Close friends stopped speaking to him. (R. pp. 3976-3977). His career, reputation, prominence as an attorney, and entire lifestyle were now over, and irreparable damage had been done to the more-than-a-century-old family legacy that was so important to him. (R. p. 5731).

However, just before all those consequences could set in, tragedy *seemingly* struck for Appellant once again just a day after he was forced to resign from the firm. (R. p. 5163; p. 5764). On the afternoon of September 4, 2021,<sup>43</sup> Appellant called 911 and reported he had just been shot in the head by an unknown younger white male with "really, really short hair" after he had pulled over with a flat tire<sup>44</sup> along the side of Old Salkehatchie Road in Hampton County.

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<sup>42</sup> The suspension occurred on September 8, 2021. In re Murdaugh, 434 S.C. 233, 863 S.E.2d 335 (2021).

<sup>43</sup> Earlier on the same date, Appellant asked Turrubiate-Simpson to send him a picture of his medical insurance card. (R. pp. 4285-4286; pp. 5185-5186).

<sup>44</sup> It was later discovered the vehicle Appellant was driving at the time was equipped with run-flat tires. (R. p. 5165). Therefore, even though one of the tires had a small puncture from a

(R. pp. 5166-5167; pp. 5176-5179; p. 5763; State’s Ex. # 543 (911 Call Recording)). First responders quickly went to the scene and rushed Appellant to the hospital, with Appellant repeating his claim along the way. (R. p. 4998; pp. 5169-5172; State’s Ex. # 545 (Recording)). Over the course of the next few days, he continued repeating his account of the shooting, and he even worked with a sketch artist to produce a detailed drawing of the supposed perpetrator. (R. pp. 4998-5000; pp. 8094-8095).

Some believed Maggie and Paul’s killer was back and continuing to target the Murdaugh family; others were immediately skeptical. (R. pp. 4853-4854; p. 4998; p. 5762). The skeptics were correct; Appellant’s claims about a random shooting were utterly false. (R. p. 5201; p. 6334). On September 13, 2021, Appellant—with his counsel by his side—admitted in a phone call with investigators he had lied about what occurred along the side of the road. (R. p. 5186; p. 5201; State’s Ex. # 552 (Interview Recording)). Appellant then provided a new account of the roadside shooting, now claiming he had been shot by Curtis “Eddie” Smith<sup>45</sup> (“Eddie”)—for free, no less—at Appellant’s own request as part of an alleged conspiracy to make it look like he had been murdered so Buster could obtain millions in life insurance benefits. (R. p. 5187; State’s Ex. # 552). Shortly after that, Appellant was arrested for conspiracy and other charges related to that incident. (R. pp. 5201-5202; p. 5213).

Meanwhile, around the same time, Shelley, Appellant’s mother’s caretaker at Almeda, disclosed for the first time to law enforcement the odd encounter involving the “blue something” she had with Appellant back in June of 2021 shortly after Randolph’s funeral. (R. p. 3320; p.

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knife, the punctured tire was *not* flat, and the vehicle remained drivable. (R. pp. 5165-5166; p. 5763).

<sup>45</sup> In the ensuing investigation of Eddie, bank records were discovered demonstrating Appellant had given hundreds of thousands of dollars to him. (R. p. 4802; pp. 5184-5185).

3342; pp. 3365-3366; p. 3382). In response, a search warrant was obtained and executed at Alameda on September 16, 2021. (R. p. 3388; p. 3396). Consistent with what Shelley had observed, investigators found a large balled-up vinyl-like blue raincoat tucked into the back of an upstairs closet during their search of the Alameda residence. (R. pp. 3339-3345; pp. 3355-3356; p. 3384; pp. 3391-3392; p. 3398; pp. 3701-3702; State's Ex. # 225 (Photograph); State's Ex. # 411 (Photograph); State's Ex. # 414 (Photograph)). That raincoat was swiftly collected as evidence, and it was subsequently analyzed for gunshot residue. (R. p. 3392; p. 3394; pp. 3450-3453; p. 3699). During the analysis, the analyst found such a "significant number" of gunshot residue particles on the inside of the raincoat she eventually stopped counting.<sup>46</sup> (R. pp. 3706-3709; p. 3731). Critically, based on those results, it appeared the raincoat had possibly contained a recently-fired gun at some point before it was found. (R. p. 3711).

In addition to that striking discovery, a number of *other* significant facts had by then been uncovered through the lengthy investigation into the murders. Investigators had discovered evidence of Appellant's movements and phone usage on the date of the crimes and had also learned of the suspicious alterations to his phone's call logs within just days of the murders. (R. pp. 2489-2511; p. 2907; pp. 3855-3874; pp. 4399-4411; p. 4418). They knew his extensive financial misconduct was on the cusp of being exposed by June 7, 2021, which provided a potential motive for him to have committed the murders. (R. pp. 3613-3614; p. 4939; pp. 7578-7580; pp. 7701-7702). They knew Appellant's hands and clothing were oddly clean on the night of the murders despite his claims of checking the bodies and attempting to move Paul. (R. p. 1715; p. 1796; pp. 1846-1848; p. 1932; p. 1936; pp. 1939-1940; pp. 1975-1976; pp. 2629-2630;

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<sup>46</sup> In total, fifty-two gunshot residue particles were found on the blue raincoat before the counting ceased. (R. p. 3712; p. 3731).

p. 3443; pp. 3683-3684). They had learned a small number of gunshot residue particles were found on Appellant's clothing and hands after the murders and a single particle was found on his vehicle's seatbelt buckle. (R. pp. 3687-3691; p. 3698). They knew Appellant's, Maggie's, and Paul's DNA appeared to be present at various locations on the clothing Appellant was wearing after he reported the murders. (R. pp. 4531-4568). And, as previously mentioned, they also knew family weapons that were missing had been used in the killings based on the results of the forensic analysis of the collected ballistics evidence. (R. p. 3164; pp. 3172-3177; p. 3221; p. 3644; p. 4431; p. 4950; p. 5963; pp. 7844-7854).

However, one of the most critical pieces of information remained hidden until April 8, 2022. (R. p. 4944). On that date, a recording filmed by Paul on June 7, 2021, was recovered from his phone, which law enforcement had been unable to unlock up to that point. (R. pp. 2351-2352; pp. 2355-2356; pp. 2411-2412; pp. 2516-2517; p. 4854). Significantly, that previously-unknown recording definitively proved Appellant—contrary to what he had claimed time and time again—was, in fact, down at the kennels with Maggie and Paul from at least 8:44:55 p.m. to 8:45:45 p.m. on the night of the murders, leaving no doubt he was with them only minutes before they ceased using their phones for the remainder of their lifetimes. (R. p. 2601; p. 2693; p. 4944; p. 6238; State's Ex. # 297). Thus, from the recording, it was clear Appellant was present at the crime scene around the time the murders were committed, establishing he had the opportunity to carry out the crimes. Furthermore, it demonstrated conclusively he had lied about—and seemingly did not want law enforcement to know the truth about—when he last saw Maggie and Paul alive, which was something he simply would not have had any logical reason to lie about *unless* the truth would have been incriminating.

Based on that key evidence coupled with everything else that had been uncovered in the investigation up to that point, Appellant—who had the means, opportunity, and motive to carry out the murders and who repeatedly engaged in damning guilty conduct beginning just moments after he first reported them—was indicted for two counts of murder and two counts of possession of a weapon during the commission of a violent crime in July of 2022. (R. pp. 61-68; p. 1649). Ultimately, he elected to proceed forward to trial, and, at the end of his six-week trial, a jury of his peers unanimously convicted him as indicted after just over three hours of deliberations. (R. p. 1649; pp. 7154-7155; pp. 7157-7159).

## ARGUMENT

### I. & II.

**The jury convicted Appellant because he was obviously guilty, not because three jurors heard Becky Hill’s “foolish and fleeting” comments about his upcoming testimony.**

Becky Hill’s improper comments did not affect the outcome of this case. Only two jurors heard her unsolicited remarks to “watch [Appellant’s] body language,” and only one juror heard her comment that the day of Appellant’s testimony was an “important” or “epic” day. The record supports Justice Toal’s finding that the verdict was solely the product of the jury’s honest deliberations and reflected the overwhelming evidence of Appellant’s guilt.

In this section, the State will first address the proper test for analyzing claims of outside influence. Appellant argues at length that Justice Toal should have presumed he was prejudiced. The State will respond to that argument, but the discussion is largely academic because Justice Toal found that even if a presumption of prejudice applied, the State rebutted it. The State will also address Appellant’s creative argument that the presumption is “irrebuttable” in his case.

The State will then show that Justice Toal’s findings are supported by the record. Justice Toal’s inquiry may have exceeded the scope of Rule 606(b), SCRE, but this does not affect the validity of her findings. Justice Toal properly applied the factors laid out in State v. Kelly<sup>47</sup> and correctly concluded Hill’s comments did not affect the deliberations. This Court should affirm.

### STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Niles, 412 S.C. 515, 521, 772 S.E.2d 877, 880 (2015). This Court is bound by the trial court’s factual

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<sup>47</sup> State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998).

findings unless the appellant can demonstrate that the trial court's conclusions either lack evidentiary support or are controlled by an error of law. Id.

The appellate court affords substantial deference to the trial court's findings regarding the existence and impact of outside influences. See Blake by Adams v. Spartanburg Gen. Hosp., 307 S.C. 14, 17, 413 S.E.2d 816, 817 (1992) (explaining "a determination of whether any person has a coercive effect on a juror because of any reason is a matter addressed to the sound discretion of the trial judge who is considering the impact of a communication on jury deliberations"); see also State v. Galbreath, 359 S.C. 398, 403, 597 S.E.2d 845, 847 (Ct. App. 2004) (explaining "the determination of whether extraneous information received by a juror during the course of the trial is prejudicial is a matter for determination by the trial judge"); State v. Kelly, 331 S.C. 132, 141-142, 502 S.E.2d 99, 104 (1998) (same); State v. Tucker, 423 S.C. 403, 415, 815 S.E.2d 467, 473 (Ct. App. 2018) (trial court's appraisal of affidavits entitled to deference). This Court explained in 1906:

[T]he reasons for refusing to interfere with the discretion of a circuit judge in matters involving the purity of the jury box and the integrity of verdicts are peculiarly strong. He is in the atmosphere of the trial, and has opportunity to estimate the character and intelligence of the jurors, as well as of the person charged with improper conversation or corrupt dealings with them. He has opportunity also to consider the verdict in the light of the evidence and the sources from which the evidence comes, and determine whether the verdict has so little support as to indicate corrupt or improper influence. These and perhaps other things afford the trial judge such superior means of coming to a just conclusion, that before disturbing his order on such a subject, an appellate court should require very clear evidence of abuse of discretion.

McGill Bros. v. Seaboard Air Line Ry., 75 S.C. 177, \_\_\_, 55 S.E. 216, 217 (1906).

While Justice Toal did not preside over the trial in this case, she presided over the new trial proceedings and was able to assess the "character and intelligence" of the jurors and Hill at the post-trial hearing. Her findings regarding what Hill said, which jurors heard the comments,

and the effect of those comments on the jurors must be affirmed if they are supported by the record. See Rushen v. Spain, 464 U.S. 114, 120 (1983) (explaining trial court’s determination that deliberations “as a whole” were not biased by juror’s ex parte communication with trial judge is a question of “historical fact” entitled to deference); see also Patton v. Yount, 467 U.S. 1025, 1036 (1984) (in context of pretrial publicity, explaining trial court’s determination whether jury is impartial is reviewed for “manifest error” and question of individual juror partiality “is plainly one of historical fact”).

### RELEVANT FACTS

Six months after trial, Appellant moved to suspend his appeal to file a motion for a new trial based on allegations of jury tampering. The court of appeals suspended the appeal and remanded the case. October 27, 2023, Appellant filed his motion alleging Colleton County Clerk of Court Becky Hill tampered with the jury to ensure it would reach a guilty verdict. Appellant claimed Hill desired a guilty verdict because this would help her sell more copies of a book she was planning to write.

Appellant submitted affidavits and other documents in support of his motion. He submitted a typed affidavit signed by Juror # 630 (later referred to at the evidentiary hearing as Juror Z) dated August 14, 2023. Juror Z claimed that toward the end of trial, before Appellant testified, Hill told the jury “‘not to be fooled’ by the evidence presented by Appellant’s attorneys, which [Juror Z] took to mean Appellant would lie when he testified.” (R. pp. 361-362). She also claimed Hill said to “watch him closely,” “look at his actions,” and “look at his movements.” She claimed Hill said at the start of deliberations that “this shouldn’t take us long,” that jurors would not be allowed to take smoke breaks until deliberations were complete, and that if they deliberated past 11:00 p.m. they would be taken directly to a hotel. She claimed that

toward the end of trial, Hill “came into the jury room a lot” and had private conversations with Juror # 826. Finally, Juror Z stated: “I had questions about Mr. Murdaugh’s guilt but voted guilty because I felt pressured by the other jurors.”

Appellant submitted a typed affidavit dated August 13, 2023 and signed by Juror # 785, who had been dismissed during trial for misconduct. The affidavit stated—in language nearly identical to Juror Z’s affidavit—that Hill told the jurors “not to be ‘fooled by’ the evidence presented to the jury by Mr. Murdaugh’s attorneys.” (R. pp. 388-392). She claimed that on March 2, Hill asked about her and the other jurors’ opinions of the case. She claimed Hill said “if the foreperson would just go in and ask for a raise of hands this would be over and done with.”

Much of Juror # 785’s affidavit concerns a Facebook post which Hill brought to the trial court’s attention on the Tuesday before closing arguments. (R. pp. 367-368; pp. 388-392). Hill explained to Judge Newman she brought the post to his attention because she learned he had received an unrelated email stating a juror had spoken with third parties and expressed an opinion about the merits of the case, and Hill “figured the two went together.” (R. pp. 367-368). Judge Newman questioned Juror # 785 in camera about any conversations she had with third parties about the case. She denied having discussed the case. (R. p. 7023). However, Judge Newman investigated the matter and determined Juror # 785 had in fact engaged in discussions about the case with third parties. (R. p. 7023). Judge Newman excused her from the jury, explaining that while the juror had denied to him discussing the case with others, the court had determined the juror “has had contact or discussions concerning the case with at least three individuals.” (R. p. 7022-7023). Defense counsel did not object. (R. p. 7024).

In his motion for a new trial, Appellant claimed Hill intentionally brought up the Facebook story as part of a plot to get Juror # 785 kicked off the jury. In reality, Juror # 785 was removed from the jury because she had premature discussions about the case and was not forthright with the judge about it. Judge Newman specifically stated Juror # 785's dismissal had nothing to do with the Facebook posts or Hill's communications with the juror. (R. p. 7028).

Appellant also submitted affidavits from a member of the defense team, Holli Miller, purporting to contain statements of two other jurors. (R. pp. 364-365; pp. 401-402). Juror # 741, an alternate who did not participate in deliberations, told Appellant's lawyers that Hill said to the jurors: "Y'all are going to hear things that will throw you all off. Don't let this distract you or mislead you"; that Hill had private conversations with Juror # 826 and "told the jurors they could not ask [her] questions"; that Juror # 826 "began walking with" Hill during the jury view of the crime scene; and that Hill spoke with the jurors about media requests for interviews. The affidavit also claimed Juror # 741 said that Judge Newman came into the jury room during deliberations to tell the jury they would have to stay at a hotel if they did not reach a verdict by a certain time. Juror # 326 denied hearing Hill tell the jurors not to let Appellant's attorneys mislead them, but did hear Hill say that some photographic exhibits would be disturbing.

The State filed a response, along with an affidavit from Hill and handwritten statements from the other jurors, except Juror # 578, who declined to discuss the case. Jurors # 630 (Juror Z) and # 785 refused to sit for an interview with the State. (R. p. 438). The State noted the comments some jurors attributed to Hill closely resembled portions of the State's opening statement and closing argument. In its opening statement, the State said of Appellant's recorded statements to police: "Watch those closely. Watch his expressions. Listen to what he's saying. Listen to what he's not saying." (R. p. 1659). In its initial closing argument, the State argued:

“This defendant, on the other hand, has fooled everyone . . . . Don’t let him fool you, too.” (R. p. 6953). In its final closing argument, the State argued: “Body language is so important in life. Body language. Mr. Waters was talking about with the defendant, all of our body language. Did you see Shell[e]y’s?” (R. p. 7113).

In their statements, the jurors denied being pressured by Hill and denied hearing Hill comment about the case, except that Juror # 254 heard someone say to “watch his body language” as the jury waited to go into the courtroom. Juror # 864 stated that Creighton Waters made the “body language” comment, not Hill.<sup>48</sup> In her affidavit, Hill denied making any comments about the case and specifically denied the allegations in Juror # 630’s and Juror # 785’s affidavits. Juror # 544 reported that Juror # 785 is Juror # 630’s landlord. Juror # 326 did not address whether Hill told the jury they could not take smoke breaks during deliberations, but said Hill acted “in a very professional manner.”

This Court appointed Justice Toal to preside over the matter. After considering the new trial motion and response, Justice Toal requested further briefing and scheduled an evidentiary hearing. The hearing took place on January 26 and 29, 2024, at the Richland County Courthouse. Justice Toal conducted the examination of the jurors who participated in the deliberations.

Justice Toal modeled her inquiry after what was reflected in the record on appeal in State v. Green, 427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019), aff’d as modified, 432 S.C. 97, 851 S.E.2d 440 (2020) (Supreme Court affirming and commending the trial court’s “deft handling”

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<sup>48</sup> It was actually prosecutor John Meadors who used the expression “body language” in the State’s reply argument. Thus Juror # 864 remembered the substance of the remark but mistakenly attributed it to Creighton Waters, who made similar arguments but never used the words “body language.”

of an issue concerning an improper comment from a bailiff). Justice Toal first recounted that each juror had rendered a guilty verdict at Appellant’s trial and affirmed the verdict upon polling. She then asked the following questions: (1) Was that an accurate statement about your verdict at that time?; (2) Was your verdict based entirely on the testimony, evidence, and law presented to you in this case?; (3) Did you hear Becky Hill, the Clerk of Court for Colleton County, make any comment about this case before your verdict?; and (4) Was your verdict on March 2, 2023, influenced in any way by any communications by the Clerk of Court, Becky Hill, in this case? (R. pp. 7324-7325; pp. 8320-8322).

Nine jurors testified they did not hear Hill make any comments about the case (and thus comments by Hill could not have influenced their verdict), and that their guilty verdict was based entirely on the testimony, evidence, and law presented in the case. (R. pp. 7323-7353). Juror X<sup>49</sup> also stated her guilty verdict was based entirely on the testimony, evidence, and law presented in the case. She initially testified she did not hear Hill make any comments about the case. However, when questioned specifically about a prior statement she made to her attorney, Juror X testified she heard Hill say something to the effect that the day of Appellant’s testimony was an “epic day” or “important day,” and that it was rare for a defendant to testify. She testified the comment did not influence her verdict. (R. pp. 7279-7284). Juror P also testified his guilty verdict was based entirely on the testimony, evidence, and law presented in the case, and stated Hill “made a comment about watch his body language.” (R. p. 7338). He testified the comment did not influence his verdict.

When Justice Toal asked Juror Z whether she heard Hill comment on the case, Juror Z stated in her own words that Hill said to “watch his actions” and “watch him closely.” (R. p.

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<sup>49</sup> To protect their privacy, Justice Toal assigned each juror a letter of the alphabet.

7305). When asked whether the comment influenced her verdict, Juror Z testified: “Yes ma’am . . . . To me, it felt like she made it seem like he was already guilty.” (R. p. 7306). Justice Toal then examined Juror Z about the contents of her affidavit, going through each point one by one. Juror Z answered “yes ma’am” each time the court asked whether she stood by the statements in her affidavit. (R. pp. 7311-7312). Regarding the last point in her affidavit, that she “had questions about Mr. Murdaugh’s guilt but voted guilty because [she] felt pressured by the other jurors,” Justice Toal reminded Juror Z of her earlier testimony that she felt influenced by Hill’s comments. Justice Toal asked Juror Z whether the statement in her earlier affidavit was “a more accurate statement of how you felt?” Juror Z again responded, “yes ma’am.” (R. pp. 7315-7316).

After the juror testimony, Becky Hill testified. Hill testified she communicated with the jurors about logistical matters, but denied she attempted to influence the jury or made any comments about the merits of the case. (R. pp. 7367-7371). She specifically denied telling the jurors “not to be fooled” by the defense, to “watch” Appellant closely, or that the deliberations “shouldn’t take long.” (R. pp. 7368-7369). When asked whether she told any jurors that the day of Appellant’s testimony was an “important day,” she testified that she informed the bailiff, in the presence of some jurors, that she had learned Appellant would testify. (R. pp. 7369-7370). She stated she often gave the jurors a “little talk” encouraging them to “pay attention,” but denied the comments were in favor of either party, or that she told the jurors to pay attention to Appellant’s testimony specifically. (R. pp. 7370-7371; p. 7400). Defense counsel extensively cross-examined Hill about the book she wrote about the trial, her communications with the media, the Facebook post, and her interactions with the jurors. (R. pp. 7377-7401). Justice Toal

directly examined Hill about her communications with the media and with Juror # 785. Hill testified she did not remember asking the juror about the Facebook post. (R. pp. 7406-7419).

Following Hill's testimony, Appellant called Rhonda McElveen, the Barnwell County Clerk of Court. McElveen assisted Hill during the trial, explaining Hill was newly-elected and McElveen had many years of experience administering criminal trials. (R. p. 7440). McElveen testified Hill told her she was planning to write a book about the trial, and that a guilty verdict would "sell more books." (R. pp. 7441-7442). McElveen testified Hill admitted to her that Hill and a bailiff had given a juror a ride home one night, but that they did not talk about the case. (R. p. 7443). McElveen did not report this to Judge Newman. McElveen did not hear Hill make any comments about the merits of the case to a juror. (R. pp. 7443-7444). However, she testified Hill made comments to McElveen "not to be fooled" by the evidence presented by Appellant's attorneys and to watch Appellant closely. (R. p. 7445). On cross-examination, McElveen clarified these conversations happened privately "behind the scenes" with other court staff, not in front of jurors. (R. pp. 7453-7454).

Finally, Appellant called the alternate juror, Juror # 741, who did not deliberate. She claimed Hill told the jurors before the defense put up its case: "They're going to say things that will try to confuse you. Don't let them confuse you or convince you or throw you off." (R. p. 7463). She testified Hill made this comment in front of all the jurors, where "[e]verybody could hear it." (R. p. 7471). Juror # 741 affirmed the other contents of her affidavit in court. She further testified she "overheard discussions in the jury room that Ms. Hill drove a juror home." (R. p. 7480). On cross-examination, she testified that, after trial, Hill gave cards to all the other jurors to speak with the media, but said to her, "I don't have any cards . . . for you for interview because nobody wants to speak with you." (R. p. 7484).

Justice Toal declined to hear testimony from Juror # 785, who, as noted before, had been excused for misconduct. Justice Toal ruled from the bench Appellant had the burden to show the existence of improper comments and resulting prejudice. She found Hill was “not completely credible as a witness” and that Hill “made comments about Murdaugh’s demeanor” that were heard by “at least one and maybe more jurors.” (R. pp. 7511-7512). Nonetheless, Justice Toal found there had been no effect on the verdict. She noted “Each member of this jury took their involuntary assignment very seriously, ... obeyed the instructions of the court... [and] they obeyed their oath.” She stated eleven jurors “very unconditionally said they either heard no comment or if they heard a comment, it had no effect.” (R. p. 7512). She found Juror Z was “ambivalent in her testimony” and noted Juror Z stated in her affidavit that she felt pressured by the other jurors. (R. p. 7512). Justice Toal concluded by stating she “simply [did] not believe that the authority of our South Carolina Supreme Court requires a new trial in a very lengthy trial such as this on the strength of some fleeting and foolish comments by a publicity influenced clerk of court.” (R. pp. 7512-7515).

Justice Toal more fully explained her ruling in a written order. She found Hill made comments to the effect that the jurors should “watch his body language” when Appellant testified and that the day of his testimony was an “epic” or “important” day. (R. pp. 10-34). Thus, Justice Toal implicitly rejected Juror Z and Juror # 741’s claims that Hill said “not to be fooled by the evidence presented by Murdaugh’s attorneys” and Juror Z’s claim that Hill said deliberations “shouldn’t take long.” Justice Toal applied the factors laid out in Kelly and concluded Hill’s comments did not affect the verdict, noting the extensive evidence, and the repeated instructions from the trial court. She found the eleven jurors credible but did not find Juror Z to be credible. (R. pp. 31-34). Again, the written order concluded:

Given all these factors, this Court simply does not believe and does not conclude that a few foolish comments by a publicity-influenced clerk of court were such that they could in any way undermine the fairness and impartiality of six-week trial with its extensive evidentiary presentations, arguments from counsel, and instructions from the trial court.

(R. p. 33).

## DISCUSSION

### **A. To cause prejudice, improper communications must actually affect the jury's deliberations.**

This case falls under the rubric of “outside influences” on the jury. Many reported cases deal with outside influences, and the cases tend to fall into general categories. One category involves bribes or attempted bribes of jurors. See, e.g., McGill Bros.; Remmer v. United States, 347 U.S. 227 (1954). South Carolina has a statute specifically providing a new trial may be granted where a party gives a juror a “treat or gratuity.” S.C. Code Ann. § 14-7-1360.

Other cases deal with the introduction of extraneous prejudicial information into the jury room, Mattox v. United States, 146 U.S. 140 (1892); pretrial publicity, Patton v. Yount, 467 U.S. 1025 (1984); or an alternate's presence during deliberations, United States v. Olano, 507 U.S. 725 (1993). Most pertinent here are the cases involving improper comments to jurors by a third party or court official. See, e.g., Parker v. Gladden, 385 U.S. 363 (1966); Blake by Adams; State v. Rowell, 75 S.C. 494, 56 S.E.2d 23 (1906). These cases vary in facts and in result, but the cases involving public officials typically involve a bailiff expressing some opinion about the case or improperly instructing the jury on some legal or procedural matter.

Outside influences cause prejudice when they “affect the jury's deliberations, and thereby its verdict.” Olano, 507 U.S. at 739. The test is “whether the verdict was solely the result of honest deliberation on the case as publicly developed at trial, or whether there is reason to suppose outside influences entered into it as a factor.” Blake by Adams, 307 S.C. at 18, 413

S.E.2d at 818 (quoting McGill Bros.). The intrusion must have influenced the deliberations as a whole. See Rushen, 464 U.S. at 120; Rowell, 75 S.C. 494, 56 S.E.2d at 29 (holding “we do not think it would be reasonable to reach the decision that the conclusion of this juror and the whole panel was influenced”).

“Every case of this kind must be decided on its own facts.” Blake by Adams, 307 S.C. at 18, 413 S.E.2d at 818. The most important factor in assessing prejudice is the nature and probable effect of the outside influence. Other relevant factors include: (1) the number of jurors exposed; (2) the weight of the evidence properly before the jury; and (3) the likelihood that curative measures were effective in reducing the prejudice. Kelly, 331 S.C. at 141-142, 502 S.E.2d at 104; see also Blake by Adams, 307 S.C. at 17, 413 S.E.2d at 817 (explaining courts may consider whether: (1) the contact was made in an effort to influence the juror by or on behalf of a party in whose favor the verdict was rendered; (2) the contact was such as would obviously influence the juror; or (3) the trial judge finds the contact either influenced or probably influenced the juror (citing Jones v. Bennett, 290 S.C. 96, 99, 348 S.E.2d 365, 366 (Ct. App. 1986))); United States v. Basham, 561 F.3d 302, 320 (4th Cir. 2009) (in assessing effect of outside influences, courts consider “the extent of the improper communication, the extent to which the communication was discussed and considered by the jury, the type of information communicated, the timing of the exposure, and the strength of the Government’s case”).

**i. Justice Toal properly declined to presume prejudice.**

Appellant argues Justice Toal erred by declining to presume prejudice under Mattox and Remmer. Justice Toal properly declined to presume prejudice in this case, but also found in the alternative that the State rebutted any presumption if one applied. Despite this alternate finding, the State will address Appellant’s argument.

In Mattox v. United States, a bailiff told jurors that Mattox, on trial for murder, had already killed two other men. Making matters worse, eight jurors read a newspaper article reporting the case against Mattox was “very strong” and the prosecutor’s argument so convincing “that the friends of Mattox gave up all hope of any result but conviction.” Mattox, 146 U.S. at 143. The Supreme Court explained: “Private communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear.” Id. at 150. The Court concluded that, under the facts of that case, “[i]t is not open to reasonable doubt that the tendency of that article was injurious to the defendant. . . . Nor can it be legitimately contended that the misconduct of the bailiff could have been otherwise than prejudicial.” Id. at 150-151. The Court held it was reversible error not to accept affidavits establishing the above facts.

Remmer involved an attempted bribe of a juror during trial. Citing Mattox, the Remmer court explained:

In a criminal case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties. The presumption is not conclusive, but the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant.

Remmer, 347 U.S. at 229. The Court remanded the case for an evidentiary hearing, which the trial court had refused. Such hearings have come to be known as “Remmer hearings.” Upon rehearing, the Supreme Court reversed the conviction because, following the attempted bribe, the juror was “a disturbed and troubled man,” and “neither [he] nor anyone else could say that he was not affected in his freedom of action as a juror.” Remmer, 350 U.S. at 381.

However, subsequent Supreme Court cases caution against an overbroad reading of Remmer. In Smith v. Phillips, 455 U.S. 209 (1982), the Court addressed the denial of a new trial where a juror applied for a job with the prosecuting attorney's office during trial. The Court reversed the district court's ruling that the juror's application supported a "conclusive presumption of partiality . . . ." Phillips v. Smith, 485 F. Supp. 1365, 1372 (S.D.N.Y. 1980).

Citing Remmer, the Court explained:

[D]ue process does not require a new trial every time a juror has been placed in a potentially compromising situation. Were that the rule, few trials would be constitutionally acceptable. The safeguards of juror impartiality, such as voir dire and protective instructions from the trial judge, are not infallible; it is virtually impossible to shield jurors from every contact or influence that might theoretically affect their vote. Due process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen. Such determinations may properly be made at a hearing like that ordered in Remmer and held in this case.

Smith v. Phillips, 455 U.S. at 217.

In United States v. Olano, the Court addressed an alternate juror's presence during deliberations. The Court analyzed those facts by surveying its "outside intrusion" case law, including Remmer, Smith, and Parker v. Gladden, 385 U.S. 363 (1967), where a bailiff commented that the defendant was "wicked" and "guilty" and told jurors the supreme court would correct any of their mistakes. The Olano Court declined to presume prejudice, explaining: "There may be cases where an intrusion should be presumed prejudicial . . . but a presumption of prejudice as opposed to a specific analysis does not change the ultimate inquiry: Did the intrusion affect the jury's deliberations and thereby its verdict?" Olano, 507 U.S. at 739.

Lower federal courts take varying approaches to Remmer. In light of Smith, the Sixth Circuit no longer applies a presumption of prejudice to allegations of outside influence. United States v. Pennell, 737 F.2d 521, 532 (6th Cir. 1984) (affirming refusal of mistrial where five

jurors received phone calls urging them to convict). Other circuits selectively apply a presumption when warranted by the facts of the case, such as “when the extraneous information is of a considerably serious nature.” United States v. Lloyd, 269 F.3d 228, 238 (3d Cir. 2001); see also United States v. Sylvester, 143 F.3d 923, 934 (5th Cir. 1998) (holding “only when the court determines that prejudice is likely should the government be required to prove its absence”).

In United States v. Lawson, the Fourth Circuit Court of Appeals recognized that federal circuit courts apply Remmer differently and acknowledged that Smith and Olano reject the use of a presumption in all cases: “[T]he Supreme Court’s discussion, of the ‘ultimate inquiry’ to be performed in cases involving ‘intrusions’ into a jury’s deliberations, suggests that *this inquiry may be framed either as a rebuttable presumption or as a specific analysis of the intrusion’s effect on the verdict.*” United States v. Lawson, 677 F.3d 629, 642 (4th Cir. 2012) (emphasis added). Nonetheless, the court applied a rebuttable presumption of prejudice in that case, which involved a juror’s outside research into the meaning of legal terms. Before applying a Remmer presumption, the Fourth Circuit first asks whether the incident was “more than innocuous” and “of such a character as to reasonably draw into question the integrity of the verdict.” Barnes v. Joyner, 751 F.3d 229, 244 (4th Cir. 2014) (holding Remmer presumption is firmly established federal law “when the defendant presents a credible allegation of communications or contact between a third party and a juror concerning the matter pending before the jury”).

The Court of Appeals for the District of Columbia Circuit rejected a mechanical approach to the Remmer presumption in United States v. Williams-Davis, 90 F.3d 490 (D.C. Cir. 1996). That case dealt with improper comments by a juror’s husband advocating for a guilty verdict. The court explained it historically had “not treated the supposed ‘presumption’ as particularly

forceful, but rather has accepted the necessity of focusing on the specific facts of the alleged contact, and, as a result, has found broad discretion in the trial court to assess the effect of alleged intrusions.” Id. at 496-497. The court summarized the case law as emphasizing “the importance of weighing the likelihood of prejudice rather than as a source of rigid rules.” Id. at 496.

The Williams-Davis court correctly recognized that the Supreme Court’s statements in Mattox and Remmer that improper contacts were “presumptively prejudicial” reflected the egregious facts of those cases, not a rigid rule to be applied in every case. See also Skilling v. United States, 561 U.S. 358, 381 (2010) (in context of pretrial publicity, explaining a “presumption of prejudice, our decisions indicate, attends only the extreme case”). This Court recognized the same principle in State v. Green, where this Court cited Remmer in its analysis of improper comments by a bailiff, but found the bailiff’s comments did not warrant a presumption of prejudice. State v. Green, 432 S.C. 97, 851 S.E.2d 440 (2020).

Appellant alleges Hill’s comments violated his Sixth Amendment right to an impartial jury. The Supreme Court has not explicitly held the Remmer presumption is constitutionally-mandated, and members of the Court have expressed doubt that Remmer establishes any constitutional rule. Shoop v. Cunningham, 143 S. Ct. 37, 42 (2022) (Thomas, J.) (dissenting from the denial of certiorari). The Court spoke of presumptive prejudice in Mattox and Remmer, federal cases. But Parker, an appeal from a state case, makes no mention of a presumption. Federal circuit courts disagree about whether the presumption is a federal procedural rule or one of constitutional law. Compare Crease v. McKune, 189 F.3d 1188, 1193 (10th Cir. 1999) (“We view the Remmer presumption as a rule of federal criminal procedure, rather than a rule of federal constitutional law.”); with Hall v. Zenk, 692 F.3d 793, 802 (7th Cir. 2012) (holding

presumption is a constitutional rule). This Court is not bound by the Fourth Circuit's interpretation of Remmer. See Limehouse v. Hulsey, 404 S.C. 93, 108-109, 744 S.E.2d 566, 575 (2013) ("Although this Court often defers to Fourth Circuit decisions interpreting federal law . . . it is not obligated to do so in view of the lack of uniformity amongst the federal circuits.").

This Court has never applied a Remmer presumption. On the contrary, the Court has "consistently required defendants to demonstrate prejudice due to improper jury influences." State v. Grovenstein, 335 S.C. 347, 351, 517 S.E.2d 216, 218 (1999). Indeed, South Carolina does not have Remmer hearings; we have "Aldret hearing[s]." Ethier v. Fairfield Mem'l Hosp., 429 S.C. 649, 656, 842 S.E.2d 355, 359 (2020). In State v. Aldret, this Court held the defendant has the burden of showing prejudice from premature jury deliberations. State v. Aldret, 333 S.C. 307, 315, 509 S.E.2d 811, 815 (1999). The Aldret court cited Kelly, which in turn cited State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989). Both of those cases upheld the denial of a mistrial motion where extraneous information was introduced into the jury room. In all the above-cited cases, this Court placed the burden of showing prejudice on the moving party. See also State v. Bryant, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003) (in context of improper investigation of jurors by law enforcement, citing Smith v. Phillips holding that defendant must prove actual bias).

These cases are reconcilable with Remmer, as long as Remmer is understood to establish a mere evidentiary presumption. See Pennell, 737 F.2d at 539 (Celebresse, J., dissenting) ("A presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof."); Danny R. Collins, South Carolina Evidence § 7.4 (2d. ed. 2000) (explaining while presumptions require "the party against whom it was directed to produce evidence to rebut the

presumption,” they do not shift the burden of proof in the action); Kilgore v. Fuji Heavy Indus. Ltd., 240 P.3d 648, 656 (N.M. 2010) (“Although our case law has characterized this burden-shifting mechanism as a ‘presumption of prejudice,’ it is clear that, in reality, no presumption actually exists, because the burden remains on the moving party throughout the proceedings[.]”); cf. Batson v. Kentucky, 476 U.S. 79, 98 (1986). Or this Court can join the Sixth Circuit and reject the superfluous Remmer presumption altogether.

Even if this Court accepts the Remmer presumption, Justice Toal properly declined to presume prejudice in this case. Hill’s comments, as determined by Justice Toal, do not approach the egregious facts of Mattox and Remmer and do not warrant a presumption of prejudice. While court officials should never comment about the merits of a case, clerks of court do have legitimate duties which require them to interact with jurors, and it would not have been out of place for Hill to communicate with the jurors in this case as a general matter. Hill testified she regularly told the jurors to “pay attention.” Hill’s duties did not require her to make these comments, but telling jurors to “pay attention” throughout trial does not convey partiality. Depending on the tone and timing of Hill’s “body language” comments, they could have been interpreted in a similar manner.

To be clear, the State is not arguing that Hill’s comments were appropriate. They were not. But the improper comments in this case are materially different from those made by the bailiffs in Mattox and Parker.

Finally, Appellant overstates the importance of this issue. Presumptions are generalizations; they do not replace individualized analysis. See Fryer v. Fryer, 9 S.C. Eq. (Rich. Cas.) 85, 95 (1832) (“It is too much the practice to convert mere matters of evidence into rules of law; and, under the specious names of badges and presumptions, compel courts and juries to

draw inferences, according to artificial rules, against their real belief.”). As this case illustrates, an evidentiary presumption is unlikely to change the result of a new trial motion.

**ii. Hill’s comments do not constitute structural error and any presumption of prejudice is rebuttable.**

Faced with the overwhelming evidence of his guilt, Appellant seeks to avoid his burden of showing prejudice altogether by arguing that Hill’s comments give rise to an “irrebuttable” presumption of prejudice and constitute structural error. Appellant fails to provide any real support for this novel claim.

A defining feature of evidentiary presumptions is that they can be rebutted. See Collins, supra. In Remmer, the Supreme Court explicitly held the presumption was rebuttable. There would have been no need for a hearing to determine “whether the incident complained of was harmful” if the presumption was conclusive.

A structural error “necessarily render[s] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.” Washington v. Recuenco, 548 U.S. 212, 218-219 (2006). Only in rare cases has the Supreme Court deemed trial error structural and thus mandating automatic reversal. Id. Neither this Court nor the United States Supreme Court has applied a structural error analysis to allegations of outside juror influences. See Blake by Adams, 307 S.C. at 18, 413 S.E.2d at 818 (explaining “a bailiff’s remarks to a juror are not per se grounds for setting aside a jury verdict”); Aldret, 333 S.C. at 313, 509 S.E.2d at 814 (explaining “we have not found automatic reversal warranted even in cases of external influences on a jury’s verdict”); Basham, 561 F.3d at 320 n.8 (holding outside influence claim is “not subject to structural error analysis” (citing Sherman v. Smith, 89 F.3d 1134, 1138 (4th Cir. 1996) (en banc))).

Appellant argues his case is special because “a state official has told jurors not to believe the defendant when he testifies” and “argue[d] the merits of the case.” (App. Br. p. 43). He claims this is not a case about improper comments; rather, the issue is “whether an elected state official using the power of her office to enter the jury room during trial to advocate against the defendant to promote her own financial interests is a structural error . . . .” Thus Appellant advances an ad hoc argument—that his case is just different, and likely will “never happen again”—and asks this Court to create a new rule of constitutional law just for him.

The first problem with this argument is that none of those things happened. As will be discussed further below, Appellant ignores Justice Toal’s factual findings when they interfere with his argument.

Further, his case is not unique. The bailiffs in Mattox and Parker were state officials, too, and their comments were much more egregious than those in this case. Yet those cases say nothing about structural error or an “irrebuttable” presumption. See Olano, 507 U.S. at 738 (“We generally have analyzed outside intrusions upon the jury for prejudicial impact.” (citing Remmer and Parker)); see also Smith v. Phillips, 455 U.S. at 217 (reversing district court’s finding that allegations of juror bias justified “conclusive presumption of partiality” and holding defendant must show actual bias to support claim of juror partiality (citing Remmer)).

What *is* unique is Appellant’s interpretation of State v. Cameron, 311 S.C. 204, 428 S.E.2d 10 (Ct. App. 1993), which he claims establishes the correct legal standard. Cameron involved a bailiff’s improper response to a jury question about its sentencing options. According to a juror, the bailiff said, “if you are in a deadlock about it, don’t worry about it the Judge is fair.” Cameron, 311 S.C. at 206-207, 428 S.E.2d at 11.

Appellant isolates the following language as the foundation for his argument:

In this case, ‘[t]here was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained. When there has been such a communication, a new trial must be granted unless it clearly appears that the subject matter of the communication was harmless and could not have affected the verdict.’

Cameron, 311 S.C. at 208, 428 S.E.2d at 12. This language is a quote from Holmes v. United States, 284 F.2d 716, 718 (4th Cir. 1960), where a bailiff commented to the jury about the defendant’s prior conviction. This was what the Holmes court referred to as the “subject matter of the communication.” Id.

Appellant claims the above-quoted language distinguishes between “the communication itself being harmless and the subject matter of the communication being harmless . . . .” (App. Br. p. 44). Appellant’s claim that the “subject matter” of the communication matters, not the content, doesn’t make much sense. By this logic, a bailiff’s comment that the prosecution’s chief witness was a liar, the prosecutor was a crook, and the defendant was clearly innocent would create an irrebuttable presumption of prejudice *to the defendant*. Surely a prejudice analysis would be appropriate in that situation.

Further, the Cameron opinion as a whole does not support Appellant’s literalistic argument. The Cameron court did not identify the subject matter of the communication as touching the merits of the case and stop its analysis. Rather, the court explained the bailiff’s comments were prejudicial because:

[T]he jury was obviously confused as to the length of the respective sentences. The bailiff’s response to the forelady, that they should not worry if they were deadlocked because the judge was fair, was misleading. It tended to lessen the jury’s sense of responsibility by implying that if they rendered a verdict of guilty without mercy, the judge had some discretion in sentencing.

Cameron, 311 S.C. at 208, 428 S.E.2d at 12. Thus, Cameron, like every other case, analyzed the specific comments made, their significance to the jury’s deliberations, and the probable prejudice

therefrom. Further, the Holmes case quoted in Cameron did not hold the comments in that case constituted structural error; it held they were “far from harmless.” Appellant’s tortured reading of isolated language in Cameron and Holmes does not reflect the holdings of those cases.

Absent a showing of actual juror bias, there is no structural error. Smith v. Phillips, 455 U.S. at 217. There has been no allegation that Juror Z was actually biased against Appellant, and her testimony that she felt pressured by the other jurors to convict suggests the opposite. To the extent any “presumption” of prejudice applies, it is rebuttable.

**B. The record supports Justice Toal’s finding that Hill’s misconduct did not affect the verdict.**

Justice Toal found that even if a presumption of prejudice applied, the State rebutted it. The record supports this finding. Regardless of any presumption, the “ultimate question” is whether Hill’s comments affected the jury’s deliberations. Olano, 507 U.S. at 739. As Justice Toal found, they did not.

**i. Justice Toal modeled her inquiry after the trial court’s inquiry in State v. Green, which this Court commended as “deft handling” of an outside influence claim.**

Before addressing the merits of Justice Toal’s findings, it is first necessary to address the scope of her inquiry. Rule 606(b), SCRE provides:

(b) Inquiry Into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, *a juror may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon that or any other juror’s mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror’s mental processes in connection therewith*, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror’s affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

(emphasis added).

Rule 606(b) is identical to the federal rule as it was adopted in 1975.<sup>50</sup> The rule reflects the common law, which strictly limited juror testimony impeaching the verdict. See Mattox, 146 U.S. at 148-151; Tanner v. United States, 483 U.S. 107 (1987). The federal rule does not allow a juror to testify subjectively about the effect of outside influences on the jury's deliberations. See Lawson, 677 F.3d at 646; Williams-Davis, 90 F.3d at 496; United States v. Ianniello, 866 F.2d 540, 544 (2d Cir. 1989); Charles Alan Wright et al., 27 Federal Practice and Procedure § 6075 (2d ed. 2025 update) (surveying case law). Although Rule 606(b) prohibits testimony about a juror's subjective mental process, it follows the common law rule allowing juror testimony about *whether* extraneous information was introduced or external influences were brought to bear upon a juror. Lloyd, 269 F.3d at 237. Thus Justice Toal properly inquired whether Hill made improper comments. Out-of-state authority suggests the phrasing of her question whether Hill's comments influenced the jurors' verdict exceeded the scope of Rule 606(b). However, Justice Toal's inquiry must be viewed in context.

This Court has not had the opportunity to explain how Rule 606(b) impacts the trial court's ability to determine whether outside influences caused prejudice. This Court and the court of appeals most recently addressed outside influences in the criminal context in State v. Green, where a bailiff made improper comments to the jury during deliberations. In that case, the trial court learned of the improper communication just before the verdict was rendered. Green, 427 S.C. at 229, 830 S.E.2d at 713. After the jury announced its verdict, the court immediately conducted an inquiry where it asked the same questions Justice Toal posed of the jurors in this case, including whether the verdict was based entirely on the evidence presented at

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<sup>50</sup> The federal rule was amended in 2006 to allow juror testimony as to whether "a mistake was made in entering the verdict on the verdict form." Fed. R. Evid. 606(b)(2)(c).

trial and whether the improper communication influenced their verdict. (R. p. 422 (citing Green ROA at pp. 554-569, App. Case No. 2017-001332)). Rule 606(b) would not have been implicated at all if the Green court had asked minutes earlier, before the verdict was announced, whether any of the jurors were influenced by the bailiff's comment as they perceived it. But because the court asked whether *the verdict* was influenced, the question seemingly exceeded the scope Rule 606(b). See United States v. Johnson, 2022 WL 17546916 at 4 (4th Cir. 2022) (unpublished decision). The court of appeals in Green noted it was not presented with the question whether the inquiry was proper under Rule 606(b). Green, 427 S.C. at 236, 830 S.E.2d at 717 n.3. But both the court of appeals and this Court commended the Green trial court's "deft handling of this issue." Green, 427 S.C. at 237, 830 S.E.2d at 718; Green, 432 S.C. at 100, 851 S.E.2d at 441.

Recognizing this Court's approval of the trial court's inquiry in Green, the State argued the court should model its inquiry after the trial court's inquiry in that case. Specifically, the State argued the Court should ask whether the jurors responded affirmatively to the court's polling and whether their verdict was "based solely on the testimony, evidence, law, and arguments of counsel as presented at the trial?" (R. p. 548). The State objected to any testimony regarding internal jury deliberations. (R. pp. 549-551). At the January 16, 2024 hearing, Justice Toal stated "If they're asked about improper contact and they talk about improper contact, then the way to pursue it beyond that for the judge is to ask about the impact on the verdict, not on the deliberations themselves. That may be a small slice of difference, but I think it's very important to understand that no one, not myself or anyone else, is going to be asking the jurors about the specifics of their deliberation, and the rule is quite clear about that." (R. p. 7212). The State agreed, arguing "prejudice would be an appropriate subject to inquire into the jurors as whether

or not there was an impact on the verdict.” (R. p. 7213). On January 24, 2024, Justice Toal’s law clerk sent an email to the parties expressing her intent to ask the four questions set forth above which clearly were modeled after the four questions asked by the trial court in Green, as can be found in the record on appeal for Appellate Case No. 2019-001435. (R. pp. 8320-8322).

Ultimately, Justice Toal reasonably relied on Green in formulating her questions to the jurors. Justice Toal scrupulously avoided inquiry into the jury’s internal deliberations, the principal evil Rule 606(b) seeks to avoid. She explained she would inquire about the impact of Hill’s comments, but would not question the jurors about “the deliberations themselves.” (R. p. 7212). Justice Toal correctly recognized that the law allows inquiry into the effect on individual jurors at the time they were exposed to outside influences, as long as the jurors do not testify about what happened in the jury room. See Port Terminal & Warehousing Co. v. John S. James Co., 92 F.R.D. 100, 108 (S.D. Ga. 1981), aff’d, 695 F.2d 1328 (11th Cir. 1983) (explaining “it would be improper for the Court to inquire into how the extraneous influence figured into the verdict, but not improper to hear testimony that the juror was not influenced at all, particularly when the exposure to the possibly prejudicial influence occurred at a time and place remote from jury deliberations”). Phrasing the question differently—asking the jurors whether they were influenced by Hill’s comments when they heard them—would have avoided Rule 606(b) concerns altogether, and would likely have produced the same answers.

The only time Justice Toal inquired into the deliberative process was in response to improper 606(b) material introduced by Appellant. Along with his motion for a new trial, Appellant introduced Juror Z’s affidavit containing her inadmissible statement that she voted to convict because she felt pressured by the other jurors. (R. p. 361-362). Appellant objected when Judge Toal examined Juror Z about her earlier statement, arguing the question violated Rule

606(b). But Appellant put this very statement into the record. Justice Toal, exercising her broad discretion over the conduct of new trial proceedings, reasonably chose to examine Juror Z on the contents of her prior statement when assessing her credibility and impartiality at the post-trial hearing. Appellant cannot complain of an alleged error he induced. Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006).

If this court determines Justice Toal's questions exceeded the scope of Rule 606(b), it must decide whether to accept or disregard any improper testimony. Some appellate courts have disregarded juror testimony elicited below which violated Rule 606(b). See United States v. Blumeyer, 62 F.3d 1013, 1014 n.1 (8th Cir. 1995) (explaining "we will not consider the portions of Juror 9's testimony that describe her mental process or the deliberations of other jurors"); Lloyd, 269 F.3d at 238 ("Inasmuch as a portion of the District Court's questions and the juror's responses were not admissible under Rule 606(b), we limit our inquiry to the portion of the colloquy that was admissible, i.e., the juror's declarations detailing the nature and existence of the extraneous information."). Other courts have considered the entire record, in some cases without addressing the admissibility of the testimony. See Wasson, 299 S.C. at 511, 386 S.E.2d at 257; Green, 427 S.C. at 236, 830 S.E.2d at 717; Parker, 385 U.S. at 365-366; Jorgensen v. York Ice Mach. Corp., 160 F.2d 432, 435 (2d Cir. 1947) (explaining affidavits likely violated no-impeachment rule, but holding "we shall accept what the affidavits said, as did the judge, and like him we shall decide whether it requires the relief asked"). If this Court decides to consider the testimony, it should respect Justice Toal's findings about the credibility of that testimony.

Juror Z's testimony impeaching her own verdict is inherently unreliable. South Carolina courts have always been hostile to this type of post-trial juror testimony:

The mischiefs, the delays, the arts, the scandal likely to ensue, come naturally to our thoughts, when we imagine encouragement given to the pursuit of jurors by

disappointed suitors, for the purpose of obtaining affidavits to invalidate verdicts regularly rendered. Any affidavit made by a juror for this purpose, after separation of the jury, is dangerous and suspicious[.]

Smith v. Culbertson, 43 S.C.L. (9 Rich.) 106, 111 (1855); see also State v. Wells, 249 S.C. 249, 262, 153 S.E.2d 904, 910-911 (1967) (collecting cases).

The law does not allow an individual juror to retroactively invalidate a verdict, which is the collective product of the jury as a whole. See Barsh v. Chrysler Corp., 262 S.C. 129, 135, 203 S.E.2d 107, 109 (1974) (“The verdict of the jury is normally affected by many considerations. Perhaps the thinking of no two jurors is ever exactly the same. The verdict of a jury is the collective thinking of all jurors combined.”); 8 Wigmore, Evidence § 2348 at 680 (McNaughton rev. 1961) (explaining the no-impeachment rule is an iteration of the parole evidence rule: “The verdict as finally agreed upon and pronounced in court by the jurors must be taken as the sole embodiment of the jury’s act”); United States v. Gonzales, 227 F.3d 520, 527 (6th Cir. 2000) (“If . . . courts were to permit a lone juror to attack a verdict through an open-ended narrative concerning the thoughts, views, statements, feelings, and biases of herself and all other jurors sharing in that verdict, the integrity of the American jury system would suffer irreparably.”).

Juror Z’s testimony is particularly suspect because she was a recalcitrant juror. In her affidavit, Juror Z wrote she “had questions” about Murdaugh’s guilt but felt “pressured by the other jurors” to assent to the verdict. She affirmed this sentiment when questioned at the evidentiary hearing. Juror Z was susceptible to efforts by Appellant to induce her to disavow her verdict:

A juror who reluctantly joined a verdict is likely to be sympathetic to overtures by the loser and persuadable to the view that his own consent rested on false or impermissible considerations, and the truth will be hard to know. The triers

themselves would be tried at the behest of the verdict loser, who would have much to gain in the attempt and little to lose.

Cristopher B. Mueller et al., Evidence Practice Under the Rules, § 6.10 (5th Ed. 2018); see also Colyer v. State, 428 S.W.3d 117, 124 (Tex. Crim. App. 2014) (collecting sources discussing the unreliability of recalcitrant juror testimony).

Having reluctantly joined in the verdict, it is not surprising that Juror Z would have struggled with the weight of her decision. See State v. Franklin, 341 S.C. 555, 562, 534 S.E.2d 716, 720 (Ct. App. 2000) (“The nature of the jury process can be intimidating to those who dislike confrontation and debate. It is all the more difficult in a criminal case, where jurors are most likely to feel the weight of their decision.”). But her retrospective feeling that Hill’s comments influenced her verdict is exactly the type of unreliable, post hoc testimony that the no-impeachment rule forbids.

In State v. Hunter, 320 S.C. 85, 463 S.E.2d 314 (1995), this Court affirmed the denial of a new trial despite a juror’s affidavit stating she felt coerced into assenting to the verdict. Noting the juror held out against a guilty verdict longer than the other jurors and told a newspaper she had not wanted to convict, the court emphasized the solemn nature of a jury verdict and looked to the juror’s actions at the time the verdict was rendered to determine the truth. The court concluded, despite the juror’s statements to the contrary, that her actions “do not indicate she felt threatened or coerced.” Id. at 89, 463 S.E.2d at 316; see also State v. Senn, 32 S.C. 392, \_\_\_, 11 S.E. 292, 296 (1890) (“Great care should be taken . . . to guard the jury against all irregular or improper influences . . . . But there may be objections more fanciful than real.”).

The unreliability of self-impeaching juror testimony is magnified in a case such as this one, where the jurors testified nearly a year after the verdict was rendered. Given the publicity of this trial, the jurors were no doubt subjected to numerous opinions and outside information in

the months following the verdict. See Dietz v. Bouldin, 579 U.S. 40, 49 (2016) (“Freed from the crucible of the jury’s group decisionmaking enterprise, discharged jurors may begin to forget key facts, arguments, or instructions from the court. In taking off their juror ‘hats’ and returning to their lives, they may lose sight of the vital collective role they played in the impartial administration of justice. And they are more likely to be exposed to potentially prejudicial sources of information or discuss the case with others, even if they do not realize they have done so or forget when questioned after being recalled by the court.”).

Juror Z had months to reflect on her decision before Appellant’s defense team interviewed her in August 2023 with the purpose of casting doubt on the verdict. The record does not reflect when Appellant’s lawyers spoke with McElveen and gained the knowledge that Hill privately made comments to her “not to be fooled” by the defense case and to “watch [Appellant] closely.” But if the jurors were asked directly whether they heard the same comments, they would have had to search their memories and discern between Hill’s purported comments and other similar comments in the State’s arguments six months earlier. There was great potential for these memories to become blended over time, just as Juror # 326 misremembered which prosecutor used the expression “body language” in his argument. This is especially true of jurors who second-guessed their verdict or had a bone to pick with Hill. In these circumstances, Juror Z could not reliably say whether Hill’s purported comments influenced her verdict. The wisdom of Rule 606(b)’s prohibition of retrospective juror testimony about their “mind, emotions, or mental processes” in reaching a verdict could not be better illustrated than in this case. Juror Z’s verdict at trial—the decisive moment—is the best evidence of her true judgment.

**ii. The record supports Justice Toal's finding that Appellant was not prejudiced.**

Even if this Court finds Justice Toal's inquiry exceeded the bounds of Rule 606(b), this does not affect the validity of her conclusions. The bulk of Justice Toal's order addressed the factors laid out in Kelly. 331 S.C. at 141-142, 502 S.E.2d at 104 (factors include the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice); see also Basham, 561 F.3d at 320 (factors include "the extent of the improper communication, the extent to which the communication was discussed and considered by the jury, the type of information communicated, the timing of the exposure, and the strength of the Government's case"). The record supports Justice Toal's finding that Hill's comments had no effect on the deliberations.

Of the twelve jurors who voted to convict, nine testified they did not hear Hill make any comments about the case. Thus, the question whether Hill's comments influenced their verdict was superfluous and meaningless to nine jurors. Juror X testified Hill said the day of Appellant's testimony was an "epic" or "important" day. Only Jurors Z and P testified they heard Hill say comments to the effect that they should "watch" Appellant or his body language during his testimony. Eleven jurors testified Hill's comments had no effect on their verdict.

Hill's comments were inappropriate, but "due process does not require a new trial every time a juror has been placed in a potentially compromising situation." Smith v. Phillips, 455 U.S. at 217. While Hill should not have made any comments to the jury about the case, her characterization of the day of Appellant's testimony as "epic" shows she could not contain her excitement when she learned Appellant would testify; it does not show a nefarious plot to influence the jurors. Further, it was obvious that Appellant's testimony was important.

Hill's comment to "watch [Appellant's] body language," does not compare to the egregious comments in Mattox and Parker. The comment was not "overt as to opinion," did not introduce prejudicial extraneous evidence into the jury room, and did not misrepresent the law or minimize the importance of the jury's deliberative process.

Only two jurors heard the "body language" comment. Appellant emphasizes the Parker opinion's language that defendants are entitled to be tried by twelve impartial jurors. But this does not mean one juror's exposure to improper comments requires reversal. Rather, it indicates that the Parker court believed the bailiff's comments in that case resulted in actual impartiality by at least one juror. This Court has repeatedly explained that the number of jurors exposed to outside influence is an important factor in analyzing prejudice. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000).

Further, this Court should not read too much into Parker, a two-page per curiam opinion. The main purpose of that opinion was to correct the Oregon Supreme Court's holding that the federal constitution was not implicated by the facts of the case and therefore could not form a ground for relief under the state post-conviction relief act. Parker v. Gladden, 407 P.2d 246, 248 (Or. 1965), rev'd, 385 U.S. 363 (1966). Parker was not intended to be a definitive explanation of the Sixth Amendment as it relates to outside influences. The dissent correctly predicted the opinion would be misinterpreted in exactly the way Appellant does in this case. Parker, 385 U.S. at 368 (Harlan, J., dissenting).

Appellant is correct that the official character of the speaker is a factor in analyzing the potential prejudice of improper comments. Hill's status as an elected official is partly what makes her comments so "astonishingly inappropriate." Green, 427 S.C. at 236, 830 S.E.2d at 717. The State will simply say that it disputes that Hill personally commanded any great sense

of reverence, or that she or her brief comments possessed even a comparable amount of gravitas as Judge Newman, whose instructions the jurors swore to obey.

Hill's comments were not made during the deliberations themselves, but prior to Appellant's testimony, the closing arguments, and the jury charge. This is not a case where a bailiff improperly communicated with a deadlocked jury and the jury immediately thereafter reached a verdict. Cf. Turpin v. Todd, 519 S.E.2d 678, 681 (Ga. 1999) (reversing conviction where bailiff made improper comments amounting to a charge on the law and jury "almost immediately after the communication with the bailiff, returned a verdict of death"). Such a scenario would tend to show an actual effect on the verdict.

Most importantly, the evidence in this case was overwhelming. The jury needed approximately three hours to reach a guilty verdict after a six-week trial. By comparison, the Remmer jury deliberated for multiple days. United States v. Remmer, 122 F. Supp. 673, 675 n.5 (D. Nev. 1954). The Parker jury deliberated for twenty-six hours. Parker, 385 U.S. at 365. The Mattox jury deliberated for two days. Mattox, 146 U.S. at 141. In those cases, the jury apparently struggled with their decision. This jury did not. Given the strength of the State's case, it is not reasonable to conclude Hill's comments had any effect on the deliberations.

The State does not contend, and Justice Toal did not hold—as Appellant repeatedly claims—that the reviewing court should substitute its own judgment for that of the jury because the evidence against Appellant was overwhelming, or that the defendant “must prove what the verdict would have been but for the tampering.” (App. Br. p. 32). This test would produce the same result in most cases, but it is not the test. The test is whether the improper communication “affected the jury’s deliberations, and thereby its verdict.” Olano; Blake by Adams. And part of the analysis is “the weight of the evidence properly before the jury.” Kelly, 331 S.C. at 141-142,

502 S.E.2d at 104; Williams-Davis, 90 F.3d at 497 (“Certainly the weight of the prosecution’s evidence becomes relevant in estimating what effect the error had or reasonably may be taken to have had upon the jury’s decision.” (internal quotations omitted)); United States v. Brumbaugh, 471 F.2d 1128, 1130 (6th Cir. 1973) (considering weight of the evidence in finding bailiff’s improper comments were not prejudicial). This is not a controversial standard “of [the court’s] own invention.” It is black letter law. Appellant’s repeated mischaracterization of Justice Toal’s ruling is another attempt to convince this Court that it is somehow improper for it to consider the overwhelming evidence of his guilt.

Appellant’s confusion about the proper standard is evident in his discussion of this Court’s holding in Green. Appellant claims this Court rejected the argument the communication in that case was not prejudicial because “it did not in fact change the verdict . . . .” But that is exactly what the Court held, and what the precedents require him to prove. The Court’s explanation that the bailiff’s comments in Green “did not touch the merits” was meant to explain *why* the comments did not affect the outcome. Green did not announce a new test.

Finally, the trial court’s thorough instructions cured any prejudice. In Judge Newman’s preliminary remarks, he instructed the jury they were the sole judges of the facts and should only consider evidence from the witness stand. (R. p. 1650). He told the jurors that they must follow his instructions, and that they were not to discuss the case with anyone or consider any outside information. (R. pp. 1650-1651).

In his jury charge, Judge Newman again instructed the jury to “consider only the testimony which has been presented from the witness stand.” (R. p. 7138). He explained the jurors were “the sole judges of the credibility, that is the believability, of the witnesses who have

testified and of the evidence offered.” (R. p. 7138). Judge Newman instructed the jurors to “ignore and avoid uninvited information about this case.” (R. p. 7149). He concluded:

[Y]ou’ve been chosen and sworn to give the parties a fair and impartial trial. When you have done so, you will have completed your oath, and no one will have the right to criticize your verdict. You must not be swayed or influenced by opinions or expression of an opinion you may have heard outside the courtroom, but rather should base your verdict solely on the testimony of the sworn witnesses who took the stand, the exhibits received into evidence, and the law which I have stated. You should not be swayed by caprice, passion, prejudice, or improper sympathy for or against anyone. Remember, you have no friends to reward or enemies to punish, that all parties are entitled to a fair and impartial trial.

(R. pp. 7149-7150). Any prejudice from Hill’s brief, unsolicited commentary was cured by Judge Newman’s solemn instructions, which all the jurors swore to obey.

In State v. Rowell, a juror stated in a post-trial affidavit that “a bailiff of the court talked about the case in his presence, and said that the defendant should be punished[.]” Rowell, 75 S.C. at \_\_\_, 56 S.E.2d at 29. This Court affirmed, explaining:

[W]e do not think there was any such interference with the jury as to require a new trial. Objections to verdicts on the ground that one or more of the jurors has been subjected to outside influences must be looked at in a practical way and every case decided on its own facts. Those cases are strongest in which the juror has lent himself to such influence as signified a willingness to receive advice or favors. Those, however, who are selected to serve as jurors must be considered to have personal firmness and conviction, and *not be presumed to bend to every wind of opinion that blows around their ears*. Where, without any misconduct on the part of the juror or the constable who had him in charge,<sup>51</sup> an opinion was imprudently volunteered in the presence of the juror by another constable, we do not think it would be reasonable to reach the decision that the conclusion of this juror and the whole panel was influenced by it.

Id. (emphasis added). There was no testimony in this case that any juror “lent himself to such influence as signified a willingness to receive advice or favors.” Instead, Justice Toal found the jurors took their responsibilities seriously and stood by their oaths to be impartial. Justice Toal,

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<sup>51</sup> Hill did not have the jury “in charge.” The bailiff, Bill Polk, was in custody of the jury.

like the Rowell court, recognized that reversal is not mandated every time a juror is exposed to the “foolish and fleeting” comments of an outsider.

Because the record supports Justice Toal’s finding that Hill’s comments did not affect the verdict, Appellant attacks the historical findings of fact underlying her conclusion. Appellant does not even attempt to argue he proved prejudice from the facts as determined by Justice Toal. He refuses to accept Justice Toal’s most basic finding: what Hill said. Brushing aside Justice Toal’s findings, Appellant continues to push his fantastic version of events by claiming Hill “advocated for a guilty verdict in the jury room” and “argued the merits of the case[.]” He disputes that Hill’s comments were not “overt as to opinion.” Justice Toal found none of these things in her role as the finder of fact.

Appellant points to Juror Z’s testimony claiming Hill said “not to be fooled” by the evidence presented by Murdaugh’s attorneys, and the alternate juror’s similar testimony. But Justice Toal found this comment never happened. Justice Toal’s opinion of Juror Z’s testimony was based on her personal observations of Juror Z’s and the other witnesses’ demeanors. She was free to believe or disbelieve any part of their testimony, especially Juror Z’s inherently “dangerous and suspicious” testimony impeaching her own verdict. Smith v. Culbertson, 43 S.C.L. (9 Rich.) 106, 111 (1855).

When asked open-endedly by Justice Toal, Juror Z stated in her own words that Hill said to “watch his actions” and “watch him closely.” Juror Z’s subsequent testimony about the other claims in her affidavit consisted of her repeatedly answering “yes ma’am” to the court’s questions whether she stood by her affidavit. (R. pp. 7311-7312). Justice Toal reasonably credited Juror Z’s original answers to her questions, which were corroborated by Juror P, but not her subsequent answers parroting the contents of her pre-typed affidavit.

The alternate juror claimed that Hill, in the presence of the entire jury where “everybody could hear,” said “not to be fooled” by the defense’s evidence. Yet somehow eleven of the twelve jurors who participated in the deliberations did not hear these comments. Justice Toal did not specifically address the alternate’s testimony in her order, but the record supports her implicit finding that it was not reliable. As the State noted in its response to Appellant’s motion for a new trial, the purported statements to “not be fooled” by Appellant’s evidence closely resemble the State’s closing argument.

Deference to Justice Toal as fact-finder is especially important in this case because of the long delay between trial and the evidentiary hearing. Given the delay, the great publicity surrounding this trial, the “fleeting” nature of Hill’s comments, and Appellant’s motivation to procure favorable affidavits, there is objective reason to question the accuracy of the juror affidavits and testimony.

Appellant goes so far as to ask this Court to “disregard” Justice Toal’s findings. (App. Br. p. 57; p. 60). Of course, this Court does not disregard the factual findings of the trial court because the appellant disagrees with them. State v. Blackwell, 420 S.C. 127, 140, 801 S.E.2d 713, 720 (2017); see also United States v. O’Keefe, 722 F.2d 1175, 1179 (5th Cir. 1983) (explaining the appellate court defers to the trial court’s findings regarding the circumstances and effect of extraneous information). Justice Toal was able to assess the “character and intelligence” of the jurors. Her credibility determinations are final.

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The verdict in this case was the product of six intense weeks of trial. There was superb advocacy on both sides. An eminent trial judge presided over the proceedings. No rational juror could have received the evidence in this case and concluded Appellant was not guilty. Against

this there are Hill's "fleeting and foolish" comments, some version of which reached three of twelve jurors. As this Court concluded in State v. Rowell, 75 S.C. 494, 56 S.E. 23, 29 (1906), jurors should "not be presumed to bend to every wind of opinion that blows around their ears." To show prejudice, Appellant was required to prove Hill's comments actually affected the jury's deliberations. For the foregoing reasons, the record supports Justice Toal's findings that they did not. This Court should affirm.

FITSNEWS

### III.

**By failing to appeal all the grounds upon which the trial judge’s ruling admitting the financial crime evidence was based, Appellant waived his objection to that evidence. Furthermore, the trial judge did not abuse his broad discretion by admitting the financial crime evidence pursuant to Rule 404(b) and Rule 403.**

Appellant contends the trial judge reversibly erred by failing to exclude evidence of his financial crimes pursuant to Rule 404(b) and Rule 403 of the South Carolina Rules of Evidence. (App. Br. pp. 73-85). Although recognizing that evidence was admitted for the purpose of establishing his motive, Appellant nevertheless maintains the State’s “fabricated” motive theory was “illogical, implausible, and unsupported by the evidence.” Therefore, he asserts the financial crime evidence should have been found inadmissible pursuant to Rule 404(b). Furthermore, Appellant maintains the unfair prejudicial effect of the evidence substantially outweighed any probative value it may have had and, thus, it also should have been excluded pursuant to Rule 403.

There are multiple problems with Appellant’s arguments on appeal. First, the trial judge *additionally* admitted the challenged evidence as res gestae evidence, but Appellant failed to challenge that basis for admission on appeal. As a result, he waived his challenge to the evidence. Second, notwithstanding Appellant’s failure to appeal all the grounds upon which the trial judge’s ruling was based, the trial judge did not abuse his discretion by admitting the financial crime evidence as evidence of motive because he correctly followed all the steps of the applicable analysis and took appropriate steps to ensure Appellant would not be unfairly prejudiced by the evidence’s admission. The trial judge’s ruling should be affirmed.

#### RELEVANT FACTS

Appellant was brought to trial for brutally murdering his own wife and son, which was and is something that would be unimaginable for a husband and father to do in the minds of most

ordinary people. (R. p. 1649). As expected under such circumstances, motive—or lack thereof—was one of the most critical issues in dispute during Appellant’s trial from the opening statements onward. (R. p. 1672).

The defense’s motive theory was Appellant—who was seemingly distraught after the killings—was a family-oriented and loving father and husband who had such a great relationship with the victims, it was simply inconceivable he could have committed the murders. (R. pp. 2695-2696; pp. 2736-2737; p. 2740; pp. 3414-3415; p. 3418; p. 3599; p. 3663; p. 3785; p. 3791-3792; p. 3819; p. 3982; p. 3987; p. 3997; p. 4302; pp. 4450-4451; p. 4774; p. 4822; p. 4829; p. 5470; p. 5717; p. 5772; p. 5952; pp. 5956-5957; p. 6065; pp. 6519-6520; p. 6533). That theory was pursued throughout the entire trial, and, to support it, defense counsel elicited testimony from—in his own words—“[p]ractically every witness” about the loving relationship Appellant had with Maggie and Paul.<sup>52</sup> (R. p. 1672; p. 7055; p. 7099).

Along with suggesting Appellant had “[n]o reason whatsoever” to kill “the people he loved most in the world[,]” the defense’s theory also focused heavily on the fatal boat wreck from February of 2019 as the supposed source of the motive of a killer *other* than Appellant. (R. p. 7057; pp. 7060-7061). Indeed, “right out of the gate[,]” Appellant had been suggesting the boat wreck was the cause of the murders, and that continued throughout trial, with defense

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<sup>52</sup> The testimony elicited by the defense included accounts about how Appellant would walk out of meetings or depositions if he received a call from a member of his immediate family and how he was not—as defense counsel characterized it—“the type of guy” to go on a “guy’s trip” without his family. (R. pp. 3661-3662; pp. 3787-3789; p. 3819; pp. 3989-3990; pp. 3993-3997). At one point, defense counsel also elicited anecdotal testimony suggesting Appellant was so gentle-natured when it came to a part of his own household, he had not even been able to pull the trigger himself when a gravely-wounded family dog needed to be euthanized. (R. p. 4775). Furthermore, to suggest there was no financial motive for the killings, the defense elicited testimony establishing Appellant “never” had any life insurance policies on Maggie or Paul. (R. p. 4183; p. 4990; p. 6080).

counsel eliciting testimony from multiple witnesses about Paul receiving threats, bullying, and other backlash following the boat wreck. (R. p. 1702; p. 1712; p. 1748; p. 1767; p. 1770; p. 2681; p. 4335; p. 4451; p. 4922; p. 5462; p. 5976; pp. 6024-6025; pp. 6552-6553). All that evidence was used by the defense to suggest “[t]he wrong person”—perhaps a petite one—had seen all the media coverage about the boat wreck and then killed Maggie and Paul in a calculated act of vigilante violence. (R. pp. 5551-5552; p. 5555; p. 5659; p. 6311).

In addition to that, the defense advanced other motive theories for the killer. Amongst them, defense counsel conducted questioning to suggest maybe the killings had been perpetrated by someone from the “Sandhill drug gang” or the “the Cowboys drug ring.” (R. pp. 4988-4989). Furthermore, in closing argument, defense counsel opined to the jury maybe Paul confronted Appellant’s drug source, which was “a dangerous drug gang.”<sup>53</sup> (R. p. 7067).

As might be expected, the State had a different motive theory for the killings. In the State’s view, Appellant had accrued substantial debts, and, to both cover those debts and maintain his preferred lifestyle, he engaged in years of illicit financial crimes involving the theft and misappropriation of vast sums of money from different sources, including his own clients. (R. p. 3571; pp. 3590-3591; p. 3625; pp. 4796-4797; pp. 4804-4805). If even a *portion* of that financial misconduct was ever exposed to others, it would have resulted in personal, legal, and financial ruin for Appellant since any one of Appellant’s criminal acts—such as his theft of \$792,000 in the Faris case—was the proverbial tip of an iceberg for a decade of interconnected misconduct much, much larger in scope that was hidden just below the surface. (R. p. 3590; pp.

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<sup>53</sup> Since no evidence whatsoever was presented to support such a theory of third-party guilt, the prosecutor immediately objected, and the trial judge swiftly sustained the objection. (R. p. 7067). Ironically, defense counsel followed that by arguing to the jurors “you have to decide the evidence based on the facts that the State puts before you. Not theories, not inferences, not speculation, but cold, hard facts.” (R. p. 7067).

7578-7580; pp. 7701-7702). It would severely damage if not destroy the legacy of family prominence that was of paramount importance to Appellant.

By the date of the killings, Appellant was facing such exposure and did not have any legitimate means to avoid it.<sup>54</sup> In the weeks leading up to June 7, 2021, Satterfield sought an update from Appellant concerning significant insurance proceeds Appellant had already stolen, and Appellant had also been confronted by personnel at his firm about both Hershberger and Faris, two cases in which he had stolen substantial sums. (R. pp. 3503-3519; pp. 3527-3528; pp. 3545-3547; pp. 4058-4060). Plus, just hours before the murders were committed on June 7, 2021, Seckinger directly confronted Appellant again about the missing Faris fees, demanding proof *that day* he had not personally received the fees as she suspected, and Appellant was only able to halt that confrontation by advising Seckinger his father was being taken to the hospital in grave condition. (R. pp. 3519-3521). The loss of his father in and of itself would affect Appellant's ability to keep his head above water. (R. pp. 2829-2830, 3034, 3079; pp. 7826-7827). At the same time, a motion hearing in the boat wreck litigation was then just days away, and that hearing could have led to the disclosure of Appellant's financial account information, which would have resulted in—amongst other things—the discovery of the fake Forge account he created to further his illegal acts. (R. p. 3522).

Thus, on the date of the murders, Appellant was under unimaginable pressure that had been building for years, and he was desperate to save himself from the dire consequences he was facing, including decades of potential imprisonment, disbarment from the practice of law, the

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<sup>54</sup> Significantly, showing the dire nature of his true financial condition, Appellant only had just over \$2,000 in his primary checking account on June 7, 2021, and, within two months, that already-low balance dipped to negative \$347,784.67. (R. pp. 4082-4083; pp. 4102-4106; pp. 7819-7820; pp. 7833-7835). He was practically out of money for his circumstances and out of immediate options.

loss of his job and reputation, profound humiliation and disgrace, true financial annihilation, and the destruction of his firm and family legacy. Ultimately, the murders served as Appellant's means to shift the focus away and gain himself some additional time to try and prevent his financial crimes from being uncovered, and that was his motive to commit them. And it worked. Once the murders occurred, everyone rallied to Appellant's side in the wake of the tragedy, the investigation into the Faris fees was quickly dropped, and the upcoming hearing in the boat wreck case was postponed. (R. pp. 3522-3523; p. 3601; p. 3641). Drawing a direct and obvious link between the financial crimes and the killings, Appellant then used the time he now had from the shift of focus to—during a time when, according to the defense theory, he was deeply grieving—borrow enough money to cover his tracks in the Faris case, convince everyone nothing improper had occurred, and avoid the numerous consequences he knew would ensue—and, indeed, did ensue—if his misdeeds came to light, which only later occurred due to a mistake on Appellant's part. (R. pp. 3526-3527; p. 3586; pp. 3612-3613; p. 3771; pp. 3949-3953; p. 4083; pp. 4092-4094; pp. 4793-4795).

About six weeks prior to trial, the State filed a motion that set forth a narrative in great detail of the expected facts showing this compelling evidence of motive. (R. pp. 185-191). During trial, testimony and other evidence from multiple witnesses was presented in camera detailing Appellant's financial misconduct, his substantial debt, the looming hearing he was facing in the boat wreck case, and the confrontation about the missing Faris fees that occurred on the very date of the murders. (R. pp. 2777-2836; pp. 2949-2954; pp. 2970-2980; pp. 3016-3038; pp. 3055-3061; pp. 3067-3080; pp. 3239-3240; p. 3288). In addition to that, testimony and other evidence was presented to demonstrate the steps Appellant took shortly *after* the murders to cover up the Faris thefts when everyone else was rallying to his side in the wake of Maggie's and

Paul's tragic deaths. (R. pp. 2794-2797; p. 2835; p. 2860; pp. 2981-2985; pp. 3024-3029; p. 3260).

After that testimony and evidence was proffered, the prosecutor—while referencing the State's motive theory that was established by what was presented—argued the financial crime evidence should be ruled admissible pursuant to Rule 404(b) as evidence of motive. (R. pp. 2996). The prosecutor further contended the “full picture” was necessary for the jury to be able to understand the gravity of Appellant's situation at the time of the murders, meaning the financial crime evidence was also part of the res gestae of the charged crimes. (R. p. 2998). Likewise, the prosecutor contended Appellant directly established the logical connection between his financial crimes and the murders by—amongst other things—borrowing money to hide his financial crimes shortly after Maggie and Paul were killed. (R. p. 2998). Furthermore, the prosecutor noted the defense had already repeatedly placed Appellant's character into issue by that point, which made the financial crime evidence critical for the jurors to be able to understand Appellant's true circumstances and the extreme pressures he was facing at the time the murders were committed.<sup>55</sup> (R. p. 3000). Finally, to minimize the evidence's potential for unfair prejudice, the prosecutor explained the State intended to “streamline the presentation” as much as possible. (R. pp. 2865-2866). However, the prosecutor noted the evidence's breadth was primarily due to the vast scope and interconnected nature of Appellant's crimes, which was “a stellar series of events like nothing ever seen . . . [and] certainly relevant for the jury to consider a perfect storm that was arriving for this man on June the 7<sup>th</sup>.” (R. pp. 2865-2866).

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<sup>55</sup> As defense counsel later argued to the jury, “practically every witness who took the stand who actually knew [Appellant] and Maggie and Paul and Buster testified under oath how much [Appellant] adored Maggie, how she was his all. Some people described Paul as [Appellant]'s best friend, his relationship awesome, and that was unanimous. Unanimous.” (R. p. 7055).

Conversely, defense counsel argued the financial crime evidence was not admissible pursuant to Rule 404(b) as there was purportedly “no logical connection” between Appellant’s financial crimes and the murders. (R. p. 2865; p. 2870). Furthermore, defense counsel argued the evidence’s admission would violate Rule 403 because it would supposedly result in unfair prejudice, undue delay, and confusion of the issues. (R. p. 2865). However, defense counsel candidly acknowledged at least some of the evidence may “come close” to being admissible as res gestae evidence. (R. pp. 2870-2871).

After considering everything presented, the trial judge—over defense counsel’s objection—granted the State’s motion and ruled the financial misconduct evidence could be admitted. (R. pp. 1-6; pp. 3303-3304; p. 3312; p. 5942). In so ruling, the trial judge relied upon two different grounds. (R. pp. 1-6; pp. 3303-3310).

As to one, the trial judge found the evidence of Appellant’s “dire financial situation” coupled with the looming threat of his financial crimes being exposed was clearly and convincingly established, reflected his desperation at the time of the murders, and constituted relevant evidence of his potential motive, which was something Appellant had personally placed at issue from his earliest statements to law enforcement. (R. p. 4; p. 3307). Further, the trial judge found the looming exposure of Appellant’s financial crimes along with the fact Appellant himself sought to tie the killer’s motive to the boat wreck provided the necessary “logical nexus” between the other bad act evidence and the murders. (R. p. 4). Additionally, the trial judge found the evidence’s probative value was greater than and *not* substantially outweighed by any potential improper prejudicial value it may have possessed. This was in light of the importance motive evidence could have in Appellant’s case toward the issues of malice and identity of the perpetrator, coupled with the fact the challenged evidence could not be misconstrued as

propensity evidence since financial misconduct would not suggest any tendency on Appellant's part to commit the violent offense of murder. (R. pp. 4-5; pp. 3307-3308). Therefore, the trial judge found the financial misconduct evidence was admissible pursuant to Rule 404(b) and Rule 403. (R. pp. 4-5; p. 3308).

Meanwhile, as to the other ground, the trial judge found the evidence related to Appellant's activities and conduct "on or about" the date of the murders constituted proper res gestae evidence as it furnished part of the context of the crimes and "was essential to complete the story."<sup>56</sup> (R. pp. 5-6; pp. 3308-3309). Furthermore, the trial judge found "where the full presentation of the evidence [wa]s admissible, there [wa]s no reason to fragmentize the event under inquiry by suppressing parts of the res gestae." (R. p. 6) (citation and internal quotations omitted). Therefore, he found the evidence was also admissible as res gestae evidence independent from its admissibility pursuant to Rule 404(b) and Rule 403. (R. pp. 5-6; p. 3309; p. 3312).

Following that, the trial proceeded forward, and, before any evidence of Appellant's financial crimes was introduced in front of the jury, the trial judge presented the jurors with a thorough limiting instruction about that evidence. (R. pp. 3426-3427). Specifically, the trial judge instructed:

Ladies and gentlemen, evidence, or testimony, is about to be offered that the defendant may have been involved in other criminal activities, and that evidence is not evidence or proof that he committed the offenses charged in the indictments. This testimony has been allowed and is being allowed for the limited purpose of assisting the State in proving motive.

You may not consider this evidence for purposes of character of [Appellant], nor may you consider this evidence as evidence of his propensity to commit other crimes, or that it is more likely that he committed the crimes with which he is

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<sup>56</sup> Notably, by that point, defense counsel appeared to now *agree* a portion of the financial misconduct evidence was admissible as res gestae evidence. (R. p. 3312).

currently on trial. It is being allowed based on the State's representation that it helps explain the defendant's motive to commit the crimes for which he is accused.

(R. pp. 3426-3427).

Thereafter, to establish Appellant's financial crimes, the circumstances surrounding them, and the circumstances directly linking them to the murders, the State offered testimony from the following individuals: (1) Natasha Moodie, who served as a conduit for some Bank of America records; (2) Seckinger; (3) Ronnie Crosby, Esquire,<sup>57</sup> one of Appellant's former law partners at PMPED; (4) Griswold; (5) Gunn; (6) Wilson; (7) Satterfield; (8) Jan Malinowski, the current CEO at Palmetto State Bank;<sup>58</sup> (9) Tinsley; and (10) Carson Burney, a forensic accountant who was able to trace some of the funds Appellant stole. (R. pp. 3425-3429; pp. 3475-3615; pp. 3617-3663; pp. 3735-3820; pp. 3889-4032; pp. 4045-4187; pp. 4782-4805). Through that testimony and accompanying evidence, the State demonstrated how Appellant stole more than \$9,200,000 over the course of roughly a decade through a variety of different schemes, how his criminal conduct was on the cusp of being exposed by the date of the murders, and how he was able to avoid—until he was sunk by his own mistake—that exposure and the dire consequences for him that would have resulted by using the stunning distraction the murders provided to him to try to cover up his extensive misconduct and, thus, save himself. (R. pp. 7578-7580; pp. 7701-7702; pp. 7811-7818).

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<sup>57</sup> As he did with many others, Appellant *explicitly* told Crosby he had not gone to the kennels with Maggie and Paul on the night of the murders, and Crosby discussed those false statements as part of his testimony. (R. pp. 3639-3640).

<sup>58</sup> Laffitte, the preceding CEO, was fired from the bank after his role in assisting Appellant's financial crimes came to light. (R. pp. 4097-4098). He was indicted by the State Grand Jury and later by the federal government.

Along with that testimony and evidence, the trial judge presented two additional limiting instructions during the evidentiary phase of trial. (R. pp. 3588-3589; pp. 4044-4045). Then, toward the end of trial, the trial judge presented one final limiting instruction as part of his jury charge.<sup>59</sup> (R. pp. 7140-7141). Thus, in total, the jury was instructed *four* separate times about how the financial crime evidence could only be considered for the limited purpose of motive and could *not* be considered as character evidence, propensity evidence, or evidence it was more likely Appellant had committed the charged crimes.

#### STANDARD OF REVIEW

In criminal cases, appellate courts sit only to review *preserved* errors of law. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). Trial judges have considerable latitude in ruling on the admissibility of evidence; thus, on appeal, an evidentiary ruling—including one admitting evidence pursuant to Rule 404(b)—will not be reversed “absent prejudicial abuse of discretion.” State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). Meanwhile, because trial judges have particularly wide discretion when ruling on the comparative probative

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<sup>59</sup> In his jury charge, the trial judge instructed:

In regard to evidence of other crimes and evidence of alleged acts on other occasions, this evidence is limited to consideration by you as it relates to the motive of the defendant for the offenses charged in this case. This evidence cannot be used for any other purpose. This type of evidence must not be considered in any other fashion. In particular, the South Carolina Rules of Evidence provide that evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show actions in conformity therewith. To put another way, evidence of other crimes or bad acts cannot be show -- cannot be used to show that the defendant is a bad person and, therefore, is more likely to have [com]mitted the crime for which he is accused. You may not consider evidence of other crimes and bad acts for this purpose, or for any other purpose other than as it relates to motive of the defendant.

(R. pp. 7140-7141).

value and potential prejudicial effect of evidence, a trial judge’s ruling on such a matter must be afforded great deference on appeal and will only be reversed in exceptional circumstances. State v. Lyles, 379 S.C. 328, 339-340, 665 S.E.2d 201, 207 (Ct. App. 2008). “If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.” State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

## DISCUSSION

### **A. Appellant’s argument the trial judge erred by admitting the financial crime evidence must be rejected because he failed to appeal all the grounds upon which the trial judge’s ruling was based.**

Pursuant to the law-of-the-case doctrine, a trial judge’s ruling—right or wrong—becomes the law of the case if not appealed. State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012). Significantly, “should the appealing party fail to raise all of the grounds upon which a [trial judge]’s decision was based, those unappealed findings—whether correct or not—become the law of the case.” Dreher v. S.C. Dep’t of Health & Env’t Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015).

Here, in challenging the admission of the financial crime evidence on appeal, Appellant *solely* contends the trial judge reversibly erred by admitting that evidence pursuant to Rule 404(b) and Rule 403. (App. Br. pp. 73-85). But the financial crime evidence was *not* admitted by the trial judge solely pursuant to Rule 404(b) and Rule 403. Instead, the trial judge also found the evidence—or at least some of it—was *independently* admissible as part of the res gestae of the charged crimes.<sup>60</sup> Critically, Appellant has elected not to appeal the trial judge’s ruling

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<sup>60</sup> Significantly, as the trial judge aptly pointed out, *Appellant’s* knowledge of the full scope of what was subject to exposure if any one of his financial crimes, including the Faris thefts he was confronted about on the day of the murders, ever came to light was what was critical in the case,

admitting Appellant’s financial crimes as res gestae evidence, which means that unappealed ruling—regardless of whether it was right or wrong—has become the law of the case. Smith v. State, 413 S.C. 194, 196, 775 S.E.2d 696, 697 (2015); Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012). Therefore, to the extent the trial judge found the financial crime evidence was admissible pursuant to the res gestae theory, Appellant has now waived any objection he had to that evidence. Cf. Sheppard v. State, 357 S.C. 646, 662, 594 S.E.2d 462, 471 (2004) (“[T]he trial court ruled the statement was admissible under Rule 803(3), SCRE. Because [Sheppard] does not appeal the trial court’s ruling that the statement is a Rule 803(3) exception to the hearsay rule, that ruling is the law of the case. Accordingly, the trial court did not err by admitting Lynch’s testimony.” (citation and footnote omitted)).

**B. Notwithstanding Appellant’s failure to appeal all the grounds upon which the trial judge’s ruling was based, the trial judge properly exercised his discretion when admitting the financial crime evidence pursuant to Rule 404(b) and Rule 403 as evidence of Appellant’s motive, and his numerous limiting instructions ensured Appellant could not have been improperly prejudiced by that evidence’s admission under the circumstances involved.**

Generally, evidence of other bad acts is not admissible in South Carolina to prove a defendant’s guilt for a charged crime. State v. Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006). However, evidence of other crimes, wrongs, or acts is one type of circumstantial evidence that—while “not admissible to prove the character of a person in order to show action in conformity therewith”—may be admissible for the purpose of showing “motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” Rule 404(b), SCRE; State v. Lyle, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923).

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which demonstrated the trial judge clearly recognized the inextricably-intertwined nature of all Appellant’s financial crimes. (R. p. 2871).

One well-established exception to the general prohibition against evidence of other bad acts is for evidence that tends to prove motive. State v. Blackburn, 271 S.C. 324, 329-330, 247 S.E.2d 334, 337 (1978). Motive is an individual's reason for taking some action. State v. Thomas, 264 S.C. 159, 167, 213 S.E.2d 452, 456 (1975). Although motive is not a required element of murder, it can shed light on the identity on the perpetrator, and the presence or absence of motive is a circumstance that can properly be argued to and considered by a jury. State v. Braxton, 343 S.C. 629, 636, 541 S.E.2d 833, 837 (2001). Accordingly, motive frequently is critical to a case's resolution, and courts generally broadly allow the admission of other bad act evidence when it may shed light on motive. State v. Bell, 302 S.C. 18, 29, 393 S.E.2d 364, 370 (1990); see also State v. Rogers, 116 A.2d 37, 42 (N.J. 1955) ("In criminal prosecutions, whenever the motive or the intent of the accused is important and material, a somewhat wider range of evidence is permitted in showing such motive or intent than is allowed in the support of other issues. . . . All evidentiary circumstances which are relevant to or tend to shed light on the motive or intent of the defendant or which tend fairly to explain his actions are admissible in evidence against him although they may have occurred previous to the commission of the offense." (citations omitted)).

In determining whether to admit evidence of other bad acts, a trial judge must first determine if the evidence is relevant. State v. Perry, 430 S.C. 24, 29, 842 S.E.2d 654, 656 (2020). Ordinarily, when a piece of evidence could assist the jury in arriving at the truth of an issue, it is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986); see Rule 401, SCORE (" 'Relevant evidence' means evidence having *any* tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." (emphasis added)).

Second, the trial judge must determine if the prior bad act evidence falls within one of the permissible exceptions of Rule 404(b). Perry, 430 S.C. at 30-31, 842 S.E.2d at 657. In doing so, the trial judge should consider whether there is “a logical relevancy or connection between the other crime and some disputed fact or element of the crime charged.” Id. at 31, 842 S.E.2d at 658; see State v. Bell, 302 S.C. 18, 27, 393 S.E.2d 364, 369 (1990) (“The evidence must be logically relevant to the particular purpose or purposes for which it is sought to be introduced.”).

Third, when the defendant has not been convicted of the other bad acts, the trial judge must determine whether the evidence of those other bad acts is clear and convincing.<sup>61</sup> State v. Fletcher, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008). “Clear and convincing evidence is more than a mere preponderance, but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal.” State v. Simmons, 384 S.C. 145, 159 n. 2, 682 S.E.2d 19, 26 n. 2 (Ct. App. 2009).

Fourth and finally, the trial judge must weigh the probative value of the evidence against its potential prejudicial effect. State v. Mathis, 359 S.C. 450, 463, 597 S.E.2d 872, 879 (Ct. App. 2004). “Although relevant, evidence may be excluded if its probative value is *substantially* outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE (emphasis added). Significantly though, “evidence which is logically relevant to establish a material element of the offense charged is not to be excluded merely because it incidentally reveals the accused’s guilt of another crime.” State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citation and internal quotations omitted).

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<sup>61</sup> Appellant has not disputed on appeal his financial crimes were established by clear and convincing evidence. (App. Br. pp. 73-85).

With those principles in mind, the trial judge in Appellant's case correctly followed each and every step of the applicable analysis when evaluating whether the evidence of Appellant's vast financial crimes could properly be admitted as evidence of motive. After doing so, the trial judge ruled that evidence was indeed admissible for such a purpose, and, when the controlling standard of review is correctly applied to that thoughtful and well-reasoned ruling, there are no legitimate grounds upon which to disturb it on appeal.

Demonstrating that fact, the issue of motive was unquestionably relevant and of obvious importance in Appellant's case. Appellant was charged with murdering his wife and son, which is seemingly inexplicable conduct when standing alone. Cf. Commonwealth v. Hairston, 84 A.3d 657, 670 (Pa. 2014) ("The prior bad acts admitted by the Commonwealth explained what would have otherwise appeared to be inexplicable conduct toward his wife and son."). Likewise, based on his own repeated statements after reporting the murders, Appellant placed motive into issue from the outset, and he directly tried to tie that motive to the fatal boat wreck that had occurred more than two years earlier. Therefore, any evidence bearing on Appellant's motive for the killings had heightened probative value, and the issue of motive was obviously relevant in Appellant's case. See State v. Edwards, 127 S.C. 116, \_\_\_, 120 S.E. 490, 491 (1923) (recognizing motive and the absence of motive are circumstances that can be considered by the jury).

Additionally, the financial crime evidence uncovered in Appellant's case fell within one of Rule 404(b)'s exceptions because it constituted evidence of Appellant's motive for the killings. Rule 404(b), SCRE. As the trial judge recognized, proof an individual committed murder to prevent the exposure of financial crimes has previously been recognized throughout the country to constitute classic other bad act evidence admissible for the purpose of proving motive in a murder case. See, e.g., United States v. Siegel, 536 F.3d 306, 317-318 (4th Cir.

2008) (concluding evidence of Siegel’s “extensive history of fraud” extending back decades was relevant and explained Siegel’s motive for killing one of her financial crime victims was to prevent her past crimes from being uncovered); People v. Thompson, 384 P.3d 693, 747 (Cal. 2016) (finding evidence of the defendant’s desperation to prevent a “financial house of cards” from collapsing and her earlier financial frauds from being uncovered to be admissible evidence of motive in a murder case); Commonwealth v. Rizzuto, 777 A.2d 1069, 1080 (Pa. 2001) (“[T]he sequence of events from November 1993 through January 1994 show that Appellant engaged in a premeditated course of conduct to forge checks and cover up his forgeries. A logical inference can be drawn that Appellant murdered Mrs. Laurenzi to cover up his theft of her funds. As the evidence was relevant to Appellant’s motive to kill Mrs. Laurenzi, we find Appellant’s argument unavailing.”), abrogated on other grounds by Commonwealth v. Freeman, 827 A.2d 385 (Pa. 2003); see also Felder v. State, 810 P.2d 755, 757 (Nev. 1991) (concluding evidence of the defendant’s significant debt and commission of financial crimes showed his potential “desperation” and, thus, was admissible as evidence of motive in a murder case). And, such evidence of motive only becomes more important in a case in which a defendant attempts to—like Appellant did—rely on the nature of his familiar relationship to his victims to establish a defense. Cf. Thompson, 384 P.3d at 747 (“[T]o the extent defendant offered evidence of her good character (or lack of motive) in the form of her alleged loving relationship with her husband and her apparent distress at his murder, this evidence opened the door to allow the prosecution to present evidence of her bad character (and motive to kill him).”).

Here, the evidence of Appellant’s financial crimes demonstrated just such a motive. As previously discussed, Appellant’s vast financial misconduct was on the cusp of exposure on the date of the murders as, in the preceding weeks up to the date of the killings, he was facing

pressures in the Satterfield,<sup>62</sup> Hershberger, Faris, and boat wreck cases that he had no available lawful way to alleviate. If even one of Appellant's acts of financial misconduct was exposed, it would—as it eventually did—lead to the discovery of the full scope of his interconnected misdeeds, which Appellant knew would have resulted in disastrous consequences to him. Ultimately, Appellant's motive was self-preservation above all else, and the murders served as his means to shift the focus away from himself and buy himself some additional time to try and prevent his financial crimes from being uncovered. Therefore, the financial crime evidence constituted powerful and extremely probative evidence of Appellant's motive to commit the murders, which would have otherwise seemed inexplicable. Cf. Rogers, 116 A.2d at 42 (“The fact the last loan transaction had occurred more than 3 ½ years before the murders did not make the evidence remote in establishing the defendant's motive. The debt itself still existed on the date the Hummels were murdered and the incentive to erase it was not diminished by the fact that the debt had been contracted earlier.”); State v. Britt, 718 S.E.2d 725, 730 (N.C. Ct. App. 2011) (“Although seemingly unrelated, when viewed in conjunction with other evidence of the Britts' financial hardships, defendant's fraudulent conduct in altering his tax returns supported

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<sup>62</sup> During trial, defense counsel specifically objected to Satterfield being permitted to testify while offering to stipulate “that this amount of money disappeared, the rightful heirs of it, receipt of it, didn't get it.” (R. p. 4040). But, as the prosecutor noted, the specific sum Appellant stole from Satterfield and his brother was not the only important aspect of Satterfield's testimony. (R. pp. 4038-4041). Instead, Satterfield's testimony about his regular communications with Appellant about the status of his case prior to the murders, including in April of 2021, demonstrated another source of immense pressure Appellant was facing at the time of the murders since he had already stolen the insurance proceeds and had no viable means of replacing them at that time. (R. pp. 4050-4052; p. 4054; pp. 4060-4061). Therefore, the prosecutor prudently elected to present the evidence through Satterfield instead of accepting the highly-limited stipulation offered, and the trial judge committed no error by allowing Satterfield's important and non-cumulative testimony. See Old Chief v. United States, 519 U.S. 172, 189 (1997) (“[T]he accepted rule that the prosecution is entitled to prove its case free from any defendant's option to stipulate the evidence away rests on good sense.”).

the State’s theory that defendant had a financial motive to murder his wife which grew over a period of several years.”). Without that evidence, the jury would have been left with no way to truly understand Appellant’s state of mind and dire circumstances at the time of the crimes. See State v. Castagna, 946 A.2d 602, 611 (N.J. Super. Ct. App. Div. 2008) (“We agree that in this case the preclusion of evidence of motive would hinder the State’s case. It would be the equivalent of a production of MacBeth without the witches.”).<sup>63</sup>

Beyond fitting into the motive exception, the financial crime evidence also possessed an unmistakable nexus to the murders that was clearly established by Appellant’s own actions subsequent to the killings. As previously discussed, Appellant—whom the defense claimed was supposedly deeply grieving after Maggie and Paul were slain—used the relief from scrutiny he obtained in the weeks following the killings to, amongst other things, secure money he previously did not have *to cover up his financial crimes*. After doing so, Appellant was then able to get Wilson to help him convince his firm there had never truly been an issue in the Faris case at all. Thus, Appellant’s actions following the murders demonstrated the soundness of the State’s motive theory, and Appellant himself drew a direct link between the murders and his financial crimes, which, again, were all inextricably interconnected based on what the exposure

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<sup>63</sup> The jury would not be able to understand the full weight of the pressures on Appellant, and thus the true nature of the motive, without understanding the entire criminal and financial history that led Appellant to June 7, 2021. One cannot truly understand the significance of the confrontation over the Faris fees without understanding why he reached that financial desperation point. Similarly, one cannot fully understand the significance of the boat case hearing without understanding the entire truth of what Appellant could not have been exposed—but also why he was underinsured and could not settle the case, due to the scheme in Satterfield. Or, why he could not just sell Moselle or Edisto, because he had put them partially or fully in the name of Maggie, who was unaware of all of this. One cannot fully understand the necessity for Satterfield without understanding Appellant’s need to keep his head above water which led him to start stealing in the first place. The boiling point cannot be fully understood without understanding the slow burn leading up to it.

of one would mean for all the others.<sup>64</sup> Cf. State v. Adams, 322 S.C. 114, 121, 470 S.E.2d 366, 370 (1996) (recognizing Adams’s actions after the robbery demonstrated the motive for the robbery and established a relationship between his drug use and the charged crimes), overruled on other grounds by State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014).

Moreover, further confirming the existence of a clear logical connection between the financial crimes and murders, Appellant has not even challenged on appeal the trial judge’s ruling the financial crime evidence—or at least some of it—was admissible as part of the res gestae of the murders. See Black, 400 S.C. at 28, 732 S.E.2d at 890 (instructing an unappealed ruling is the law of the case). Critically, if even some of the interconnected financial crime evidence was part of the res gestae of the murders, that evidence necessarily had to have a nexus to the murders, and Appellant’s failure to appeal the trial judge’s res gestae ruling undermines any claim to the contrary. See Adams, 322 S.C. at 122, 470 S.E.2d at 370-371 (instructing evidence is admissible as res gestae evidence when it furnishes part of the context of the crime, is necessary for a full presentation of the case, is intimately connected with and explanatory of the charged crime, or it completes the story of the crime). Thus, just as the trial judge found, there was a clear logical connection between Appellant’s financial crimes and the murders such that the other bad act evidence could properly be admitted for the purpose of proving motive.

Finally, for several reasons, the immense probative value the financial crime evidence possessed toward answering one of the most critical questions in dispute in Appellant’s case—

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<sup>64</sup> Critically, that fact makes the financial crime evidence in Appellant’s case very different than evidence found to be inadmissible in other cases. See, e.g., State v. McGinnis, 455 S.E.2d 516, 530 (W. Va. 1994) (“After carefully reviewing the record, we can find no logical nexus between the massive 404(b) evidence and the material issues in this murder case. Certainly, neither the prosecution nor the trial court manifested in any distinctive manner how most of the evidence could be relevant under Rules 401 and 402.”).

*why* the murders were committed—was not substantially outweighed by any danger of unfair prejudice it posed. Initially, as previously explained, the financial crime evidence’s legitimate probative force was exceedingly high as it both explained the unexplainable and ensured the jury was fully equipped to understand Appellant’s true circumstances, the pressure he was facing, and the significance of the boat wreck, which was *the defense’s* primary claimed source of the killer’s motive. See Commonwealth v. Mendes, 806 N.E.2d 393, 401 (Mass. 2004) (“Evidence of motive is generally admissible. Without the challenged evidence the murder could have appeared to the jury as an essentially inexplicable act of violence.” (citations, internal quotations, and brackets omitted)). Likewise, although its admission added to the length of the trial, the financial crime evidence was critical for the jury to be able to properly evaluate the core contested issue of motive, meaning the time required to present that evidence—which was only extensive due to the extensiveness of Appellant’s own illicit actions—could not legitimately be considered undue, wasteful, or needless. See, e.g., Whitfield v. Schimpf, 444 S.C. 633, 651, 911 S.E.2d 310, 319 (2025) (“Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.” (citations and internal quotations omitted)).

Meanwhile, the evidence carried a low potential to be used or misconstrued as propensity evidence due to the fact Appellant’s white-collar financial crimes were strikingly dissimilar to the charged crimes of murder, which greatly minimized the other bad act evidence’s potential to result in unfair prejudice. See Perry, 430 S.C. at 30, 842 S.E.2d at 657 (recognizing the inherent risk created by evidence of other *similar* criminal acts perpetrated by a defendant is the jury will view it as propensity evidence); cf. State v. Galloway, 443 S.C. 229, 245, 904 S.E.2d 866, 875 (2024) (concluding the danger of unfair prejudice posed by other bad act evidence was low

because “though Galloway’s propensity to commit domestic violence against women does show he is a bad person in general, it does not arise from a character trait that directly demonstrates he is likely to commit acts of sexual violence toward children”); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding evidence Haselden tended to golf, fish, or go to his mother’s house presented during a murder trial was not evidence tending to prove Haselden had a tendency toward abusing and murdering his son); State v. Pulley, 636 S.E.2d 231, 241 (N.C. Ct. App. 2006) (instructing evidence Pulley had engaged in financial misconduct “was not offered to show, nor does it suggest, a propensity or disposition on the part of the defendant to commit murder” of his wife). Furthermore, to ensure the evidence would only be considered in a permissible manner, the trial judge presented *four* powerful limiting instructions to the jury at various points throughout the trial, and nothing appearing in the record suggests any of the jurors failed to faithfully adhere to those straightforward instructions. See State v. Atieh, 397 S.C. 641, 649, 725 S.E.2d 730, 734 (Ct. App. 2012) (finding the trial judge took all precautions to reduce any prejudice potentially caused by the introduction of prior bad act evidence by presenting a limiting instruction); see also Foye v. State, 335 S.C. 586, 590 n.1, 518 S.E.2d 265, 267 n.1 (1999) (“A jury is presumed to follow instructions. Therefore, without some showing the jurors disregarded these instructions, this Court declines to presume prejudice.” (citations omitted)). Under such circumstances, the trial judge properly found the financial crime evidence’s high probative value was not substantially outweighed by any potential for unfair prejudice.

Accordingly, for all those reasons, the trial judge did not abuse his broad discretion by admitting the financial crime evidence as evidence of motive, and, when affording the trial judge’s carefully-considered ruling the deference it is due, there are no proper grounds upon which it can be disturbed on appeal. See State v. Robinson, 426 S.C. 579, 607, 828 S.E.2d 203,

217 (2019) (recognizing it is conceivable the discretionary rulings of two different trial judges who reached opposite conclusions from the same set of circumstances will both be affirmed on appeal due to the deferential nature of the abuse of discretion standard of review); see also Holmes v. Goldsmith, 147 U.S. 150, 164 (1893) (“[G]reat latitude is allowed in the reception of circumstantial evidence, the aid of which is constantly required; and therefore, where direct evidence of the fact is wanting, the more the jury can see of the surrounding facts and circumstances the more correct their judgment is likely to be.”). The trial judge’s ruling should be affirmed.

#### IV.

**Appellant is not entitled to any relief considering the trial judge not only did not abuse his discretion by finding that defense counsel had opened the door to redirect questions to test Will Loving’s knowledge for assertions during cross-examination regarding Appellant’s general character and motive for killing his wife and son, but also finding, as an alternate basis for overruling the objection that defense counsel failed to assert any legal ground for the objection—an alternative ruling Appellant does not challenge on appeal.**

Appellant contends the trial judge erred in ruling that he “opened the door” to evidence of financial crimes by asking witness Will Loving to describe Appellant’s relationships with wife Maggie and son Paul. (App. Br. pp. 86-88). He asserts the trial judge wrongly considered the responses elicited as character evidence that would allow the State to draw out testimony on Appellant’s financial crimes. (App. Br. pp. 86-87). Appellant is wrong on both prongs of his arguments; however, at trial, Appellant’s only attempted objection was to the State’s question on redirect referencing *knowledge* of the June 7, 2021 confrontation at Appellant’s law firm, and that general objection was found insufficient. (R. p. 2745; pp. 2747-2748). The issue (though wrongly drawn) is not available for appellate review.

First, Appellant does not contest the alternative ground that the objection was insufficient; it is now the law of the case. Further, that general objection in turn renders the issue procedurally barred here. The procedural deficiencies alone are sufficient to affirm. Even so, no *evidence* was admitted; rather, the trial judge allowed the State limited questioning to underscore the witness’s lack of knowledge. Appellant cannot show prejudice. Further, the question was proper as it was Appellant who attempted to show no motive for Appellant to kill his wife and son. The trial judge did not abuse his discretion in finding the defense opened the door to the State’s limited questions regarding the witness’s knowledge (or lack thereof) as it related to an area that Appellant introduced. Consequently, this issue cannot afford any relief.

## RELEVANT FACTS

Though Appellant bases his argument on appeal on the questions posed to Loving, Appellant began eliciting good character evidence before that. The testimony from Rogan Gibson serves as a good example. After devastating testimony by Gibson that Appellant, who had claimed to be elsewhere at the time of the murders, could be heard on the kennel recording along with Maggie and Paul, the defense primarily asked Gibson—a longtime friend to Paul—about interaction with the family. Specifically, defense counsel asked Gibson his perception of the relationships between Appellant and Maggie, and Appellant and Paul, and also asked about Paul being harassed as a result of the 2019 boat wreck. (R. pp. 2678-2681). Rounding out the cross-examination was this notable exchange:

**[Defense Counsel]:** And would you see Alex openly show his display of affection and love to Maggie?

**[Gibson]:** Yes, sir.

**[Defense Counsel]:** And from your observation, did they have a close, good relationship?

**[Gibson]:** That's correct.

**[Defense Counsel]:** And they were loving to each other, and to Paul, and Buster, and their friends, correct?

**[Gibson]:** That's correct.

**[Defense Counsel]:** Can you think of any circumstance that you can envision, knowing them as you do, where Alex would brutally murder Paul and Maggie?

**[Gibson]:** Not that I can think of.

(R. p. 2696).

After completion of Gibson redirect testimony,<sup>65</sup> and outside the presence of the jury, the State noted that the defense’s question went to motive, and the court had not yet ruled on the admissibility of the financial evidence. (R. pp. 2699-2701). The State advised that its next witness, Will Loving, would testify “about firearms and shell casings and things like that. But he also will talk about the -- a little bit about the boat case, about the pressures on the family, about selling the house in Hampton, and the fact that, you know, that there were financial pressures because of that boat case that they were having to deal with.” (R. p. 2701). Defense counsel expressed a concern that the witness lacked personal knowledge, and argued “aside from the overall 404B evidentiary rule,” such evidence would be inadmissible. (R. p. 2702). The trial judge advised that he would “rule based on any objections” made. (R. p. 2702).

Loving—another longtime friend to Paul—testified, among other things, about guns that Paul had previously used, and the events that he was aware of on June 7, 2021 (discussing a new house in Columbia to use during the school year, and that Paul had sent a video with Paul and Appellant looking at trees). (R. p. 2689). He testified that he was aware of the boat case, that Paul had been charged and Appellant had been sued, but he testified that he would not have discussed it as he “didn’t want to bring up something like that.” (R. pp. 2722-2723). Loving also testified that he was aware that the family had multiple houses and that the Hampton house had been sold. (R. pp. 2722-2723). When asked his “understanding as to why they sold that property,” the defense objected for insufficient foundation and hearsay. (R. p. 2723). That objection was sustained. (R. p. 2724). Loving testified he heard “through the grapevine” that the house was sold “to help pay for some of the lawsuits that they were under,” but clarified, while

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<sup>65</sup> On redirect, the State asked if Rogan perceived Appellant to be “a fairly wealthy man,” and Rogan responded that he did. (R. p. 2698). There was no objection to that concept being explored.

he spoke to Paul about selling the home, Loving “d[id]n’t believe [Paul] ever told [him] that that’s what it was for.” (R. p. 2724). After other points about a weapon and Paul’s dependence on Appellant for money, in ending up his direct, Loving also confirmed the voices on the kennel recording were those of Paul, Maggie, and Appellant. (R. pp. 2726-2727).

On cross-examination, defense counsel posed questions about what appeared to be loving, “awesome” relationships Appellant shared with Paul and Maggie, with Paul described as “the apple of [Appellant’s] eye.” (R. p. 2736). Defense counsel also introduced a birthday party recording showing the family celebrating Appellant happily. (R. pp. 2738-2739; p. 4000).<sup>66</sup>

On redirect, the State confirmed with Loving that in his perception, Paul and Maggie enjoyed “very good relationship[s]” with Appellant. (R. p. 2744). The State then followed with limited, quick questions that revealed Loving knew little beyond the façade: that he did not know about Appellant’s finances, his law practice, how he obtained his money or where he spent it, his bank balances or debt, or, specifically, what was happening in the boat case litigation the week of the murders, or how “civil discovery . . . can expose financial information.” (R. pp. 2744-2745). None of these questions drew an objection. When the State similarly asked whether Loving had knowledge “about [Appellant] being confronted on June 7, 2021, about \$792,000 of missing fees from his law firm,” defense counsel objected as, “Totally improper.” (R. p. 2745). The trial judge overruled the objection, and Loving answered that he had no knowledge of such confrontation. (R. p. 2745).

In later explanation of the ruling the following day, Judge Newman explained that Appellant had questioned the witnesses about “his being a loving father, great provider,

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<sup>66</sup> The defense’s happy family theme ran throughout the trial. (R. p. 4451; p. 4774; pp. 4822-4824; p. 4836).

financially secure, things of that nature, all indicating an opinion by that witness as to the good character of the defendant, either through direct statements or circumstantially,” which led the trial judge to conclude that Appellant “opened the door for the State to respond by asking questions as the State did” and summarily overruled the objection. (R. p. 2747). Further, the trial judge additionally found defense counsel failed to state a legal basis for his objection. (R. pp. 2747-2748). He reminded counsel that “the Court laid out and reviewed with the parties early in the trial, that objection should be made and the legal basis stated.” (R. pp. 2747-2748). The trial judge found defense counsel’s assertion of “totally inappropriate” was equivalent to a failure to object. (R. p. 2748). The trial judge clarified on the record that those two reasons “summarize[d] the basis for the Court’s ruling on that issue as to those questions yesterday.” (R. p. 2748). From that point, the trial court also underscored the defense presentation not just in cross-examination of Gibson and Loving, but throughout the trial: “The defense in the case has primarily been the defendant has such a great character that he could not possibly have committed these offenses; that’s been a general thread from opening statement throughout.” (R. p. 2748).<sup>67</sup> The trial judge found “the State had a right to respond under Rule 403.” (R. p. 2749).

#### STANDARD OF REVIEW

“[T]he admission of evidence is addressed to the sound discretion of the trial court, and its ruling will not be disturbed in the absence of an abuse of discretion accompanied by prejudice.” State v. Nelson, 440 S.C. 413, 420, 891 S.E.2d 508, 511 (2023) (citing State v. Wise,

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<sup>67</sup> In opening statements, the defense asserted Appellant “was the loving father of Paul and the loving husband of Maggie. . . . You’re to hear about their relationship” and that “Paul, the apple of his eye” was with Appellant, “laughing . . . having a good time . . . about an hour before the Attorney General says [Appellant] slaughtered them.” (R. pp. 1670-1671).

359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)). Similarly, “[w]hether a person opens the door to the admission of otherwise inadmissible evidence during the course of a trial is addressed to the sound discretion of the trial judge.” State v. Page, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008). Appellate courts afford “great deference to the trial court’s judgment” in comparative rulings under Rule 403, SCRE. State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014) (quoting State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)).

### DISCUSSION

To be clear, Appellant could never show prejudice from error in the ruling challenged here as no evidence of financial crimes was admitted through Loving. A lawyer’s question is not evidence, *see, e.g.*, State v. Washington, 431 S.C. 394, 408, 848 S.E.2d 779, 786 (2020) (“the fact remains that counsel’s questions and accusations were not evidence”), and Loving confirmed that he did not know anything about the confrontation. (R. p. 2745). But an immediate procedural bar is evident—Appellant fails to challenge all bases for the ruling and failed to make any specific objection at the time the evidence was received.

#### *Procedural Bar*

In placing his basis for the ruling on the record, the trial judge not only found the objection, i.e., an objection phrased only as “totally improper,” stated no legal basis, the trial judge noted he had specifically warned the parties that counsel should do so. See Rule 103(a)(1), SCRE (on ruling “admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context”); *see also* State v. Jennings, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) (“An objection must be made on a specific ground.”). Relatedly, a “general objection” made “without giving the specific ground” is insufficient to preserve an issue for appellate review. State v. Nichols, 325

S.C. 111, 120, 481 S.E.2d 118, 123 (1997). Thus, this issue is barred not only under the two-issue rule, but also as counsel necessarily concomitantly failed to preserve the issue for this Court’s review. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010), abrogated on other grounds by Repko v. Cnty. of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018) (“Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.”); Nichols, 325 S.C. at 120, 481 S.E.2d at 123. Even so, the record shows the trial judge did not abuse his discretion in ruling the defense opened the door to the limited and precise question, particularly on the events of June 7, 2021.<sup>68</sup>

Defense counsel argued below that the evidence about the relationships between Appellant and wife and son was a “factual issue relating” to the parties, not evidence of good character. (R. p. 2753).<sup>69</sup> Yet, the “fact” the defense elicited was that of a trait: Appellant’s non-confrontational nature with his wife and son. Further, the defense tied that non-confrontational trait to motive. The defense even questioned Loving about the boat crash and harassment from that. Thus, the State’s probing *albeit* limited questions to consider the limitations of the witness’s knowledge on this offered trait were permissible.

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<sup>68</sup> The State is aware of precedent from this Court that it is “mindful that issue preservation rules should not be applied in a technical matter as if this is some sort of game of ‘gotcha’ elevating form over substance to trap lawyers so as to prevent the appeal of a legitimate issue.” State v. Morales, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). Though the trial court ruling and prior admonishment would tend to cut against excusing procedural insufficiencies here, not to mention that defense counsel argued 404(b) when the issue the trial court saw was 404(a) and 403, SCRE, (R. pp. 2753-2756), the State, nevertheless, argues in the alternative that whether procedurally barred or not, this issue does not support relief.

<sup>69</sup> Appellant concedes the questions defense counsel posed were intended to elicit the information; he simply says that it was not character evidence. See State v. Williams, 430 S.C. 136, 148, 844 S.E.2d 57, 64 (2020) (“[B]efore the State may rebut evidence of a character trait of the accused, the accused must first offer evidence of that character trait into the trial”).

*No Abuse of Discretion*

Again, no evidence of financial crimes was received. While Appellant argues the only evidence that could be “offer[ed] to rebut this character trait” could be “incidents of domestic violence,” and not “evidence that [Appellant] stole money from his law firm,” (App. Br. p. 88), this underscores the lack of any prejudice. The evidence received was that the witness had no knowledge of critical aspects of Appellant’s life, which was brought to a head on the day of the murders. Loving could not have testified to the specifics of the financial crimes. See Rule 602, SCRE (“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”); Rule 611(b), SCRE (“A witness may be cross-examined on any matter relevant to any issue in the case[.]”).

At base, the State had the responsibility to show malice aforethought, express or implied. S.C. Code § 16-3-10. The questions simply explored that other elements of Appellant’s life were unseen by the witness. The logic? These elements could be a driving force, ripe to explore, just as defense counsel drew attention to the lack of security at Moselle generally and the boat crash harassment. See generally Wiles, 383 S.C. at 158, 679 S.E.2d at 176 (“Evidence is relevant and admissible if it tends to establish or make more or less probable the matter in controversy.”); id. (“evidence which is ‘logically relevant to establish a material element of the offense charged is not to be excluded merely because it incidentally reveals the accused’s guilt of another crime.’ ” (citing State v. Green, 261 S.C. 366, 371, 200 S.E.2d 74, 77 (1973))); State v. Sweat, 362 S.C. 117, 124, 606 S.E.2d 508, 512 (Ct. App. 2004) (“ ‘Generally, motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence . . . of the intent to commit the crime when intent or state of mind is in issue.’ ” (quoting Danny R. Collins, South Carolina Evidence 319 (2d ed. 2000))). A myopic

presentation would leave a false impression with the jury, created by Appellant’s own questions. Therefore, “[t]he trial court was correct in allowing the State to clarify this false impression on redirect examination.” State v. Simmons, 430 S.C. 1, 20, 841 S.E.2d 845, 855 (2020) (citing State v. Northcutt, 372 S.C. 207, 221, 641 S.E.2d 873, 880 (2007)).

Lastly, the trial court considered the probative value against the potential for any unfair prejudice. Rule 403, SCRE. Given that it was the defense’s own questions that necessitated the State’s questions, the trial judge did not abuse his discretion in allowing those limited questions. (R. p. 2749; p. 2755, “the State [wa]s entitled to confront the evidence in the manner in which the Court ruled”).<sup>70</sup>

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Appellant shows no abuse of discretion in the trial court’s ruling. Whether procedurally barred or addressed under the abuse of discretion standard, Appellant is due no relief.

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<sup>70</sup> The State maintains that the record shows no evidence of the financial crimes was received through Loving. Even so, since *actual* evidence of Appellant’s many financial crimes—including his crimes related to the Faris case—was subsequently admitted during trial, Loving’s response necessarily could only be harmlessly cumulative even assuming it could somehow be construed as financial crime evidence. See Blackburn, 271 S.C. at 329, 247 S.E.2d at 337 (“Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence.”).

The trial judge admitted evidence of Appellant’s financial crimes under res gestae and alternatively under Rule 404(b) during the State’s case in chief after a detailed in camera review and consideration of the parties’ arguments. Appellant’s later testimony admitting the financial crimes merely confirmed the already evident and uncontested clear and convincing finding under the alternative Rule 404(b) analysis and is harmlessly cumulative to the similar admissions presented through witnesses Crosby and Wilson, and a confession of judgment. Appellant’s attempt to assert a non-waiver of the financial crime issue in this appeal contesting only the Rule 404(b) ruling is of no consequence.

#### RELEVANT FACTS

In the State’s case in chief, the prosecution offered evidence of Appellant’s complex web of financial deceit—heavy from its links fashioned over the course of years, on the backs of some nineteen clients, and resulting in millions of stolen dollars. That pressure was a direct motive for the killings.<sup>71</sup> The defense did not contest the *fact* of the financial crimes but argued the *extent* of the financial crimes testimony to be offered would veer into prohibited undue delay, citing Rule 403. (R. p. 2865). The defense also argued such evidence did not “meet the elements of 404B,” thus, the trial judge did not need to be concerned with a showing of clear and convincing proof. (R. p. 2870). As to res gestae,<sup>72</sup> the defense argued “the only thing that comes close to that is . . . the encounter on June the 7th” when the law firm (Seckinger) began to focus

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<sup>71</sup> This is so whether carefully planned or an act occasioned by more immediate anger. As the State correctly argued in closing, the State was not required to prove motive, but the evidence here could support a long-planned crime or that Appellant otherwise acted on his anger toward Paul because Paul brought the boat case into Appellant’s life. (R. p. 7109). Either way, the inescapable tie to the financial crimes and fear of discovery is woven into the events.

<sup>72</sup> The trial judge recognized the defense’s general avoidance of the res gestae theory, stating: “I know you each have your arguments on -- regarding 404 issues, and I haven’t heard much argument on the res gestae issue, which is equally important, or perhaps more important.” (R. p. 2869). Again, in this appeal, Appellant does not challenge the trial judge’s res gestae ruling allowing admission. That matter is now the law of the case. See, e.g., State v. Williams, 427 S.C. 148, 158, 829 S.E.2d 702, 707 (2019) (an “unappealed ruling has become the law of the case”).

on the tip of the iceberg that would soon be upended—a fact, at that point, only known to and feared by Appellant, i.e., “what *the defendant knew* . . . that was subject to exposure.” (R. p. 2871) (emphasis added). As to the facts at the proffer point, the trial judge observed: “I’m not seeking any waiver on the question of whether or not this should be admitted or not admitted.” (R. p. 2869).

The financial crimes were presented through several key witnesses, but additionally, the State presented evidence supporting Appellant’s various admissions of the financial crimes to others, and through a confession of judgment. Crosby, one of Appellant’s former law partners, testified when representatives of the law firm confronted Appellant about the stealing that Appellant “admitted to them that he did it.” (R. pp. 3647-3648). Wilson, Appellant’s long-time close friend since law school, testified that Appellant “broke down crying” in front of Wilson on September 4, 2021, and confessed “a drug problem” and “that he’d been stealing money . . . [f]rom his law firm and from his clients.” (R. pp. 3974-3975; p. 4031). Wilson also testified that one of Appellant’s law partners, Cope, had the previous day told him that Appellant “had been stealing from his firm and from clients, and had a drug problem and was going into rehab[.]” (R. p. 4032).<sup>73</sup>

After Wilson’s testimony, Appellant objected to calling Satterfield to testify about Appellant’s crimes stemming from taking money from Satterfield’s mother’s estate. Appellant objected, and argued, given the Court’s ruling on admissibility of the financial crimes, that the defense should be allowed *to merely stipulate* to specific amounts stolen rather than have

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<sup>73</sup> In cross-examination, the defense elicited that, though Appellant claimed addiction as the discovery of his financial crimes unfolded, Wilson never detected any change in behavior and never saw evidence of a drug problem. (R. pp. 3986-3987; p. 3992; p. 4029).

Satterfield testify. (R. p. 4033; p. 4040).<sup>74</sup> Appellant also had no objection to admission of the separate confession of judgment in the amount of \$4,305,000 in the Satterfield matter. (R. pp. 4066-4067; see also R. p. 3008, the defense acknowledging, “there’s the order disbaring him for that conduct, and . . . the Supreme Court concluded that it was an admission, so for purposes of disbarment I would be hard pressed to argue against that satisfying clear and convincing standard”).

Later, in the defense case, Appellant “testified that he stole money from the law firm and clients to support [a] severe opioid addiction,” and asserted he “had been struggling with an opioid addition for over 20 years,” being hooked after pain medication following a surgery. (App. Br. p. 119; see also R. pp. 6071-6076).

In this appeal, Appellant does not contest the testimony from either of those witnesses, Crosby or Wilson, testifying to Appellant’s admissions to his financial crimes, or to the Satterfield confession of judgment, or, for that matter, the fact and extent of his financial crimes.

#### **DISCUSSION**

On appeal, Appellant asserts that he “did not waive his objections to the financial crime evidence” when he chose to testify in his defense. (App. Br. pp. 85-86). Appellant argues that, rather than showing waiver, his testimony admitting to the “financial crimes . . . to support a

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<sup>74</sup> The defense cited Rule 403 and argued that the State was putting too much into evidence. (R. p. 4033). Acknowledging “the records . . . of millions of dollars of theft,” the defense offered to stipulate. (R. p. 4033). The trial court denied the defense’s motion to exclude the witness’s testimony and found the specific testimony to be offered was “consistent with the State’s theory . . . of the defendant being in a frantic state, seeking to avoid disclosure of these financial crimes and thefts[.]” (R. p. 4041). The trial court particularly noted the pressure was becoming acute in June 2021—the very month of the murder. (R. p. 4041-4043). Further, Satterfield would testify to texts from Appellant in April 2021 assuring him that nothing was wrong, though the theft had already occurred. (R. pp. 4059-4060). This speaks not simply to the fact of the financial crime but Appellant’s specific attempts to divert attention close in time to the murders.

severe opioid addiction” allowed him to “rebut[] the State’s motive theory” which he had a right to do by presenting a defense. (App. Br. p. 85). Appellant’s argument fails.

As an initial matter, his non-waiver argument is unclear. The record shows that the trial court did not find waiver as a basis of admissibility, and Appellant did not contest the clear and convincing aspect of the financial crime evidence. Moreover, as previously noted, Appellant does not contest on appeal each basis for admissibility of the financial crime evidence leaving admission of those crimes under res gestae as law the case; and further, of particular relevance to this precise issue, Appellant fails to mention the other evidence in the trial record regarding his multiple admissions to the financial crimes. Appellant has failed to clearly argue the precise non-waiver he seeks and how that would have any effect on appellate review in these circumstances. Appellant’s reliance on out-of-state cases, Rogers v. State, 853 S.W.2d 29 (Tex. Crim. App. 1993), and State v. Logan, 906 A.2d 374 (Md. 2006), to show some type of general non-waiver of appellate review is misplaced.

In Rogers, the defendant stood trial for two burglaries and a charge for possession of methamphetamine. The trial court admitted testimony on the marijuana and methamphetamine found in the defendant’s home when the defendant was arrested; however, there was no criminal charge based on the marijuana. The Court of Appeals found waiver of the issue contesting admission of the marijuana evidence because Rogers had elicited additional evidence in his defense. However, the higher appellate court, the Court of Criminal Appeals, disagreed that Rogers waived the right to claim error because he elicited information on the amounts of marijuana and methamphetamine in an attempt “to rebut the State’s evidence that the methamphetamine seized was packaged for sale[.]” Id. at 34-35. The court then addressed the contest to admissibility in the State’s case and concluded the trial court reversibly erred.

In contrast, here, Appellant, in his defense, essentially agreed with the clear and convincing nature of the evidence by his admission of guilt of the financial crimes (which had been consistently admitted during the State’s case in chief). Further, while Appellant did use the financial crimes testimony in his defense by broad reference, he merely offered a different motive for the *stealing*, not the murders for which he was tried. Additionally, here Appellant has not contested the *res gestae* basis for admissibility. The Rogers opinion does not note any such alternative basis supporting admissibility of criminal acts that was not challenged in the appeal.<sup>75</sup> Should this Court find a non-waiver of Appellant’s 404(b) argument in these circumstances, unlike Rogers, Appellant cannot show any relief could be warranted.

Further, the Court of Criminal Appeals in Rogers only addressed whether the lower appellate court was wrong to apply waiver and whether there was error in the admission of testimony. It did not determine prejudice. Rather, the Court of Criminal Appeals, after finding error, remanded to the Court of Appeals “to conduct a harm analysis with respect to the admissibility of the extraneous offense evidence.” Id. at 35. On remand, the Court of Appeals found “beyond a reasonable doubt that the erroneously admitted evidence did not contribute to Rogers’ guilty verdicts,” but did find a new punishment hearing was warranted. Rogers v. State, 862 S.W.2d 47, 52 (Tex. App. 1993). Thus, the finding of non-waiver for the *general issue* on appeal does not prevent consideration of the impact of the contested evidence in context of the case, not even in Rogers. Accord State v. Johnson, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989) (“The admission of improper evidence is harmless where it is merely cumulative to other evidence.” (citing Blackburn, 271 S.C. at 329, 247 S.E.2d at 337)).

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<sup>75</sup> The Rogers case lacks little relevance at all since the Texas court applied its own state law test to determine admissibility that incorporates elements of context and application of Rule 404(b)—a distinct state law structure that our state does not share. Rogers, 853 S.W.2d at 32-33.

Further still, and also distinguishing from Rogers, is that Appellant is not challenging additional details of other crimes revealed in his testimony; rather, he rests the argument here on his *admission* of the *financial crimes*, not the murders. That Appellant admitted the financial crimes before trial in various ways was competently shown in other testimony. And, very distinct from Rogers, Appellant did not admit to, or offer additional evidence on a specific, unindicted crime that would indicate action in conformity with that admission. Notable, though, is the fact that Appellant's testimony *invited* the jury to look at his *character*, maintaining it was flawed due in large measure by addiction. However, the evidence on the financial crimes was neither admitted nor used by the State for the purpose of demonstrating flawed character. In fact, the jury was instructed several times that it *could not* use the evidence as character or criminal propensity evidence; rather, the only allowable use was to show motive for the murders. (R. pp. 4044-4045). Again, the precise issue in Rogers is not demonstrated here.

Moreover, State v. Logan, which bases its logic on Rogers, fares no better for basically the same reason. Logan, 906 A.2d at 381. The narrow logic shared by both Rogers and Logan is that when a defendant uses or attempts to explain the already admitted evidence for his defense, there is no waiver from the defense's use. Id. Simply, that is not what Appellant did here. Again, Appellant offered a reason for the financial crimes that he consistently admitted; that did not show any motive or lack of motive for the murders for which he was tried, nor attempt to undermine the fact of the financial crimes.

And, lastly, if a harmless error analysis could be conducted (and the State maintains none is warranted), there is little doubt that Appellant's other admissions as related through witness testimony and by the confession of judgment in the Satterfield matter show Appellant's

testimony that once again admitted his financial crimes could only be harmlessly cumulative.

Johnson, 298 S.C. at 499, 381 S.E.2d at 733. Appellant is due no relief.

FITSNNEWS

## VI.

**The trial judge did not abuse his discretion in overruling Appellant’s objection to the State’s cross-examination of Appellant on his failure to correct what he admitted during his own trial testimony had been multiple false statements to law enforcement, family, and friends, indicating that he had not been at the kennels minutes before the double murder occurred. Not only had various witnesses already testified that Appellant had given the same false story that he had not been at the kennels, the defense had throughout the trial elicited testimony suggesting that Appellant had fully cooperated with law enforcement, and, in admitting his false statement in his testimony, Appellant asserted that he had been denied the opportunity to correct his statements by the prosecution. As such, Appellant invited the cross-examination.**

To be clear, Appellant was not silent; rather, Appellant actively and repeatedly denied his presence at the murder scene. From the beginning of the investigation, Appellant gave, then continued to give, false statements about his presence at the kennels accompanied by a veneer of cooperation. When Appellant took the stand at trial, he revealed for the first time that he had lied, and that once he lied, “he had to keep lying.”<sup>76</sup> The trial judge correctly found that Appellant, by his own choices, had lost the protections of Doyle,<sup>77</sup> and the cross-examination was proper.

### RELEVANT FACTS

The State produced in its case in chief devastating evidence that, contrary to Appellant’s assertions to investigators, family, and friends, Appellant was at the kennels with Maggie and Paul; the very place they were murdered, and only minutes before the murders occurred.

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<sup>76</sup> This references back to Appellant’s own words. When asked if he lied to SLED agents in his June statements that he was not at the kennels and had not seen Maggie and Paul after dinner that evening, Appellant stated, “I did lie to them.” (R. p. 5981). Appellant also admitted that he continued to lie. (R. p. 5981, referencing August 11th interview; p. 5982, Appellant in his direct testimony asserted: “Once I lied, I continued to lie, yes, sir. . . . You know, oh what a tangled web we weave. But once I told the lie and I told my family, I, I had to keep lying.”).

<sup>77</sup> Doyle v. Ohio, 426 U.S. 610 (1976).

Paul's phone, that he had been actively using, showed it was last used at 8:49:01 p.m., and never used again. (R. pp. 2521-2526). Similarly, Maggie's phone was last used to view a text at 8:49:27 p.m. but was not used just eight seconds later when another text was received at 8:49:35 p.m., or ever again. (R. p. 2527). That information pointed to a time of death just after 8:49 p.m., with 911 being informed of the deaths at 10:06 p.m. (R. p. 1932). Appellant, however, previously told investigators, family, and friends he was not at the kennels with Maggie and Paul, but had remained in the home and napped. (R. pp. 3638-3639 (Crosby); p. 4819 (Proctor)). Therefore, with multiple people confirming his voice on the kennel video recorded on Paul's phone from 8:44:49 p.m. to 8:45:47 p.m. (R. pp. 2521-2522), the evidence supported that Appellant was, in fact, at the murder scene, with the victims, just before the two were mercilessly gunned down. Further, a reading of Appellant's phone showed steps/activity at 9:02 p.m. after having shown nothing for approximately an hour. (R. pp. 2508-2509).

During cross-examination of witnesses in the State's case, the defense elicited testimony that it appeared to those witnesses that Appellant was cooperating fully with the investigation. (R. p. 1854 (Chapman); p. 2266 (Croft); p. 2632 (Varnadoe)). At the close of the State's case, the defense attempted to convince the trial judge that use of the phone evidence was not sufficient to establish the actual time of death, and moved for a directed verdict on that ground, asserting that "Alex Murdaugh was not at the scene of the crime at the time his wife and son were murdered[.]" (R. p. 5387). The copious evidence in the record defeated that motion.

In condensed summary, the State opposed the motion for a directed verdict with reference to the motive evidence; evidence that the family weapons were used; evidence of Appellant taking a rain coat to Alameda that tested positive for gunshot residue particles and that he moved vehicles at Alameda in unexplained activity; evidence showing Appellant's statements to law

enforcement and others were inconsistent with the evidence; evidence that clothing Appellant had worn on June 7, 2021 was inexplicably missing; and evidence that contrary to Appellant's assertions he was not aware that Maggie would be going to Moselle, that he had asked Maggie to come to Moselle; evidence that Appellant was found on the scene with a shotgun that could not be excluded as one of the murder weapons and that gun had Maggie's blood on it; evidence from phone records and other record evidence that produced a timeline showing the time of death near 8:49 p.m.; evidence that Appellant repeatedly claimed he was not present at the kennels in the minutes before they were murdered while the kennels recording was evidence he was there just minutes before the murders, "contrary to what he told everyone who would listen"; and evidence of Appellant's conduct after the murders that would be consistent with guilt. (R. pp. 5387-5390). Finding there was evidence, if determined to be credible, that would support a verdict of guilt, the trial judge denied the defense's motion. (R. p. 5391). After the denial of the directed verdict motion, the defense then attempted to address the timeline and also the lies Appellant gave to investigators, family, and friends, along with attempting to rebut the other evidence of guilt.

The defense called the coroner, who estimated the time of death at or around 9:00 p.m., the potential range being approximately 8:30 p.m. to 10:00 p.m. (R. p. 5396; p. 5399).

Appellant presented expert testimony on "shooting incident reconstruction, acoustics engineering, and in motor vehicle reconstruction" and a number of other experts to attempt to explain or rebut the forensic evidence. (R. pp. 5508-5509; p. 5848; p. 6379, pp. 6457-6458).

The defense also called an information officer from the Colleton County Sheriff's Department to testify that department issued a statement after the brutal murders that indicated, "At this time there is no danger to the public," (R. p. 5408), and also, one of Paul's friends who testified to the good family life, and his normal interactions with Paul on the day of the murders and his

observations of Appellant being “distraught” the night of the murders. (R. p. 5956). Appellant called one of his attorneys in the boat case to show the June hearing, though important on venue and application of admiralty law, was not expected to have an impactful ruling on financial revelations, (R. pp. 5787-5788), and called his parent’s domestic employee to testify there was no “blue tarp” at the Alameda residence. (R. p. 5888). Appellant called his surviving son, Buster, who testified about his interactions with family the day of the murder, and with his father immediately after.

Of particular relevance here, the defense questioned Buster about his communications with his father around the time of the murder, and appeared to present evidence of Appellant’s false alibi. Buster testified that he received a message from Appellant at 9:08:58 p.m. on July 7 that read, “[g]oing to check on M, be right back,” with “M” being Appellant’s mother. (R. p. 5457). A few minutes later, at 9:10:47 p.m., Buster received a call from Appellant, and he and Appellant briefly spoke, with Appellant reiterating he was going to visit. Buster testified that he detected nothing out of the ordinary in the call. (R. pp. 5456-5457). Buster then continued and testified that after the murders, Appellant called him. In that call, Appellant “sounded odd, and then he told [. . . Buster . . .] that [. . . his . . .] mom and brother had been shot.” (R. p. 5469). Further, Buster described the days after the murders including the time he spent with his father, family, and Buster’s girlfriend, and, as he later planned to return to the Rock Hill area, that he had discussions with Appellant about security. (R. pp. 5472-5478). Buster testified that he and his father later offered a reward “for information leading to the arrest and convictions of the person or persons who brutally murdered Paul and Maggie on June 7, 2021.” (R. pp. 5479-5480). Buster testified that he heard his father say “they did him so bad,” on the night of the murders and in the June 10th interview. (R. pp. 5485-5486).

Appellant also called former law partner and friend, Ball, who testified that Appellant had denied being at the kennels, telling him “that he ate dinner, laid down on the couch, took a nap, and then left to check on M.” (R. p. 5724). Ball testified that Appellant told him that lie “at least three times,” and also to his “other law partners[.]” (R. pp. 5724-5725; p. 5777). Ball like, others before him, identified Appellant’s voice on the 8:44 p.m., June 7, 2021, kennel recording. (R. p. 5722). Appellant also elicited from Ball that in the aftermath of the murders, Ball was passing on information that could potentially aid in investigation, and “as far as [. . . Ball . . .] knew,” Appellant was aiding in the investigation, as well. (R. p. 5768). Ball testified that he was aware that Appellant and his surviving son, Buster, had posted a reward for information on the murders. (R. p. 5768).

Appellant chose to testify.<sup>78</sup> Appellant admitted that he had made multiple statements to law enforcement, family, and friends, that he had not accompanied Maggie and Paul to the kennels that night; admitted that was an important fact; and also admitted that he had repeatedly claimed that he wished to aid in the investigation in whatever way he could, but had instead intentionally lied and misdirected the investigation. Essentially, Appellant claimed that his addiction made him paranoid (sometimes)<sup>79</sup>; his law partners fueled the paranoia by advising

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<sup>78</sup> Defense counsel moved to insulate Appellant from questions concerning his vast financial crimes schemes and even moved to strike the financial crime evidence admitted in the State’s case in chief. Defense counsel argued that his advice to Appellant “would have been different” concerning his right to testify. The trial judge declined to revisit his prior rulings on admissibility and declined to provide insulation from cross-examination especially in an anticipatory, advisory fashion. (R. pp. 5941-5946). Appellant, after the trial court advised him of his rights regarding the decision to testify, advised the trial court that he wished to testify. (R. pp. 5947-5949).

<sup>79</sup> In cross-examination, Appellant asserted his paranoia was “always related to the pills” and he would become paranoid about the police, but also testified contrarily that “ if a judge confronted me in the courtroom about a piece of evidence or if Jeannie (when confronting him at the law

him to have counsel present before speaking; he was treated as a suspect; distrusted SLED; was not thinking clearly at the time of the initial lie, then perpetuated the initial lie up until trial. (R. pp. 5980-5981). He was asked by his counsel, without qualification, “[y]et you continued to lie after that night, did you not?”, and he answered, again without qualification: “You know, oh what a tangled web we weave. But once I told the lie and I told my family, I, I had to keep lying.” (R. 5981).

During cross-examination, the State questioned Appellant about his testimony that both Maggie and Paul had talked to him about his addiction after finding his pills and asked Appellant to confirm that he was only just then—during his trial testimony—describing that interaction. (R. pp. 6207-6208). Appellant accused the prosecutor of “making the issue about the first . . . hearing these things,” and asserted:

*When, when I got arrested and I went to jail, we began reaching out to you to talk to you about all of these things, to try to tell you everything that I had done, to give you all these details, to help y’all go through these financial things. And up until the time that y’all charged me with murdering my wife and child, you would never give Jim Griffin a response to our invitations to sit down and meet with you.*

(R. pp. 6208-6209) (emphasis added).

The State followed-up and this exchange occurred:

**[Prosecutor]:** Are you saying that you ever before yesterday reached out to anyone through yourself or through your attorneys and reached out to anyone in law enforcement or the prosecution and told them the story about the kennels? Are you telling me that?

**[Appellant]:** I’m -- what I’m telling you, Mr. Waters --

**[Prosecutor]:** Would you answer my question first, please, sir? Answer my question first. Did you ever reach out to anyone in law enforcement or the

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firm) asked me about [. . . financials . . .] those are not things that gave me paranoid thinking.” (R. p. 6219).

prosecution and tell that story that you told this jury yesterday about the kennels before yesterday?

**[Appellant]:** Did I ever reach out to law enforcement --

**[Prosecutor]:** Did you --

**[Appellant]:** -- to say I want to tell you about the kennels? No, sir, I did not.

(R. p. 6209).

At that point, defense counsel objected, and argued the “question[s] about his volunteering information on these charges violates his Fifth Amendment rights, and we strongly object. Any more and we would have to make a motion.” (R. pp. 6209-6210).<sup>80</sup> In response, the State correctly noted, “He brought it up, Your Honor.” (R. p. 6210). The trial judge quickly overruled the objection, but counsel persisted. Defense counsel asserted “for the record, he did not bring it -- he was talking about financial --” but the trial judge apparently asked for the objection and hearing nothing else, the trial judge directed counsel to “[s]it down[.]” (R. p. 6210).<sup>81</sup>

Appellant, directly contrary to what his defense counsel had just suggested, clarified that he was not limiting the response to the financials within the following exchange with the State:

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<sup>80</sup> Subsequent to trial, this Court issued State v. Green, 440 S.C. 292, 890 S.E.2d 761 (2023), which set out the preferred method to follow when the State wishes to impeach on such matters, i.e., to request a hearing outside the presence of the jury to determine the relevant facts and admissibility, but, here, the matter was addressed in the ordinary course of trial.

<sup>81</sup> The cited portion of the record reads:

**[Defense Counsel]:** Your Honor, for the record, he did not bring it -- he was talking about financial --

**[Trial Judge]:** Objection, sir. Sit down, Mr. Griffin.

(R. p. 6210).

**[Prosecutor]:** Yes or no question. Before yesterday, did you ever bring up what you told this jury about that kennels to anybody in the prosecution or anybody in law enforcement?

**[Appellant]:** No. I, I didn't have the opportunity to, Mr. Waters, because you would not respond to my invitations to reach out and tell you about all the things that I'd done wrong and to talk about bringing this to a head, to talk about bringing this to a conclusion.

I understand how many people I hurt. I understand how angry my partners are and how hurt they are, and I understand how hurt these people that I stole money from are. I understand how hurt they are, and one of the things that I believe is getting past this may help them get some closure. And so since at least January, I've been trying to sit down with y'all to talk to y'all.

**[Prosecutor]:** Okay.

**[Appellant]:** And never, never, ever got a response to the multiple requests.

**[Prosecutor]:** Multiple requests?

**[Appellant]:** Yes, sir, multiple requests. I, I, I would ask about this --

**[Prosecutor]:** All right, Mr. Murdaugh, let's --

**[Appellant]:** -- every few weeks.

(R. pp. 6210-6211).

The State then asked Appellant additional questions specifically about lying to his law partners and Appellant's brother, Randy, and not correcting the lie at any time. (R. pp. 6211-6212). Appellant also reiterated that he had been "begging for a meeting with" the prosecution "to try to bring this to a close, to talk to y'all about *everything* up until the time that y'all charged me with hurting Maggie and Paul[.]" (R. pp. 6212-6213) (emphasis added). The State confronted Appellant with the likely reason that he then admitted the lie was "because you had to sit in this courtroom and hear your family and your friends, one after the other, come in and testify that you were on that kennel video. So you, like you've done so many times over the course of your life, had to back up and make a new story that kind of fit with the facts that can't

be denied.” (R. p. 6214). The State emphasized again, and Appellant agreed, “That law enforcement and my partners and my friends heard me say that for the first time [in his trial testimony], yes, I agree with that.” (R. p. 6214). Further, the State asked if Appellant was aware of a “national television interview” given by his defense counsel that again asserted, “as late as November ’22,” Appellant’s statement that he was not at the kennels, but in his home, asleep. (R. pp. 6214-6217). Appellant responded only that he had limited access to media in jail. (R. p. 6215).<sup>82</sup>

In reviewing his new story, the State underscored that it was presented “for the first time” in Appellant’s trial testimony. (R. p. 6230). The defense again objected based on the Fifth Amendment, and the trial court again overruled the objection. (R. p. 6230). In being questioned specifically as to his purported cooperation, Appellant answered: “Other than lying to them about going to the kennel, I was cooperative in every aspect of this investigation.” (R. p. 6251).

Defense counsel, during a short break in examination, asked to place his position on the record, (R. p. 6252), and the judge later afforded that opportunity. Defense counsel repeated his claim that Appellant had been referencing only the financial crimes; therefore, according to the defense, the prosecutor’s questions about failing to provide information on going to the kennels was a “direct violation” of Doyle. (R. pp. 6300-6301). The State responded that Appellant had

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<sup>82</sup> The HBO production is available with appropriate streaming service access. <https://www.hbomax.com/shows/low-country-the-murdaugh-dynasty/b59c35e0-27c0-4ab0-b40b-ebe88f7b25ec>. In the Internet Movie Database, Mr. Griffin is listed as a star in the miniseries and is featured in three episodes, and the miniseries is identified as airing in November of 2022. <https://www.imdb.com/title/tt22852656/>. Defense counsel would later, in closing, confirm he was on the special, but denied he was talking about the murder charges. (R. p. 7074). Even so, the fact that Appellant’s counsel utilized the media to reflect the defense’s position could hardly be contested. Defense counsel availed themselves of media *during the trial*. Defense counsel admitted to a “re-tweet” of an article during trial. Judge Newman directed counsel “not post or repost anything,” and defense counsel asserted his intention to comply going forward: “I will not re-tweet anything until the trial is over.” (R. pp. 5420-5421).

not remained silent; he and counsel both had given multiple statements. (R. pp. 6301- 6302).

Notably, the State argued that the questions were invited by Appellant when he ventured, on his own, into suggesting unsuccessful attempts to speak with law enforcement after arrest. (R. pp. 6301-6302). The trial judge concluded there was no Doyle violation:

Doyle primarily addresses the issue of post-arrest silence. If an accused is silent following an arrest, then it's improper to comment on a post-arrest silence. It does not allow a person, an accused, or a person who's suspected to give contradictory information or to voluntarily give a statement or to voluntarily give a misstatement, as has been acknowledged here. I do not find any Doyle violation[.]

(R. p. 6302).

Even after his trial testimony concluded, Appellant called his brother, John Marvin, to testify about Appellant's cooperation with the investigation. John Marvin detailed his own cooperation and aid in the investigation, particularly in finding Maggie's phone through Buster's app, and testified Appellant shared the password. (R. pp. 6540-6542). John Marvin testified it was "baffling" to him that law enforcement issued a news release that there was no danger to the public. (R. p. 6543). He also testified that he was in the house and saw a SLED agent conduct a search with consent and his assistance, and that he believed there was cooperation between investigators and the family, including Appellant. (R. pp. 6543-6547). In review of the June 10th recorded interview, John Marvin heard Appellant tell law enforcement, "they did him so bad," and he had heard Appellant say that on the night of the murders or the day following the murders, but "ha[d] also heard [. . . Appellant . . .] say it many times after." (R. pp. 6549-6550). On cross-examination, John Marvin admitted that he believed the family, including Appellant, had been cooperative, but he did not find out his brother lied about not being at the kennels until SLED played the video for him in August of 2022. (R. p. 6575).

## STANDARD OF REVIEW

“[T]he proper scope of cross-examination is left to the sound of discretion of the trial court,” thus, the trial court’s ruling will only be reversed if the appellant demonstrates the ruling “lack[s] evidentiary support or [was] controlled by an error of law.” Green, 440 S.C. at 300, 890 S.E.2d at 765 (citing State v. Mitchell, 330 S.C. 189, 196, 498 S.E.2d 642, 645 (1998), and Pagan, 369 S.C. at 208, 631 S.E.2d at 265).

## DISCUSSION

Again, Appellant has alleged here that the trial court erred in allowing the cross-examination as the State’s questions violated Doyle. Appellant is wrong as a matter of law and fact, mostly because he fails to consider the facts of how he invited the proper questions posed.

The Supreme Court of the United States in Doyle v. Ohio, 426 U.S. 610, 619 (1976), held that it violates due process to use a defendant’s “silence, at the time of arrest and after receiving Miranda warnings” for impeachment at trial. “The point of the Doyle holding is that it is fundamentally unfair to promise an arrested person that his silence will not be used against him and thereafter to breach that promise by using the silence to impeach his trial testimony.” Wainwright v. Greenfield, 474 U.S. 284, 292 (1986). However, “[t]he Constitution does not prohibit the use for impeachment purposes of a defendant’s silence prior to arrest,” Brecht v. Abrahamson, 507 U.S. 619, 628 (1993), or his failure to correct statements to non-law enforcement, see Jenkins v. Anderson, 447 U.S. 231, 239-240 (1980) (referencing “governmental action” as a necessary predicate).

“Although evidence of a defendant’s post-Miranda silence is generally not admissible, the defendant may open the door to its admission.” Vitek v. State, 750 N.E.2d 346, 350 (Ind. 2001); accord State v. Holliday, 333 S.C. 332, 343, 509 S.E.2d 280, 286 (Ct. App. 1998) (noting

error in allowing questions on silence where “[n]either Aaron nor his defense counsel broached the subject of Aaron’s silence or any previous lack of opportunity to tell his story before the solicitor began questioning him concerning his silence”). The door may be opened by the defense’s presentation of evidence that a defendant cooperated with the investigation. United States v. Fairchild, 505 F.2d 1378 (5th Cir. 1975), is instructive.

The Fifth Circuit Court of Appeals in Fairchild considered that the defendant had “raised the question of his cooperation with the law enforcement authorities” and concluded that defense choice had “opened the door to a full and not just a selective development of that subject.” Id. at 1378 (citing United States v. Paquet, 484 F.2d 208 (5th Cir. 1973)). Fairchild was then unable to use Doyle to show error because at trial “he discarded the shield which the law had created to protect him.” Id. Thus, “the evidence of Fairchild’s Miranda silence was admissible for the purpose of rebutting the impression which he attempted to create: that he cooperated fully with the law enforcement authorities.” Id. The Fairchild decision does not stand alone.

In Vitek v. State, the Indiana Supreme Court similarly concluded that given the “Defendant elicited evidence to suggest that he had cooperated, it was appropriate for the prosecution to introduce” evidence that defendant had refused to be taped “for the limited purpose of rebuttal.” 750 N.E.2d at 351.

Similar also is Stephens v. State, 720 S.W.2d 301 (Ark. 1986). In Stephens, the defendant’s counsel, on direct examination of an officer, “suggested the appellant had a drug problem, was confused about the events at the time of the crime and interrogation, and was cooperative and helpful when being examined by the police.” Id. at 304. The Arkansas Supreme Court found no error in allowing the prosecution to cross-examine the officer on the cooperation even when the officer testified in response that the defendant “had declined to make a formal

statement and had also asked to talk to a lawyer before going any further.” Id. Rather, the state court determined that “defense questions and the answers received on the topic of the interrogation invited the state to make the limited inquiry it did.” Id.

The Supreme Court has long recognized limitations on the protections afforded under Doyle. When a defendant has “voluntarily taken the stand,” he, like any other witness, is “under an obligation to speak truthfully and accurately[.]” Harris v. New York, 401 U.S. 222, 225 (1971). “The shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense[.]” Id. at 226.

Appellant’s argument fails to consider the trial judge’s ruling and the discrete basis for that ruling. Appellant merely argues that there was no “question raised as to whether [. . . Appellant . . .] received Miranda warnings after his arrest,” and he did not give a statement after arrest that that the State identified. (App. Br. pp. 90-92).<sup>83</sup> But the fact that he did not give a correcting statement is precisely the point, but far from the only controlling point. As the trial judge correctly indicated, Appellant—a former lawyer who had prosecuted criminal cases before—chose not only to take the stand, but to falsely claim full cooperation in his defense and falsely claim no opportunity was provided to him to correct the prior false statements. He was asked by his lawyer on direct without qualification, and he stated without qualification, that once he lied he continued lying—as part of his attempt to sway the jury with his supposed newfound

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<sup>83</sup> Further, Appellant is incorrect. The State specifically referenced defense counsel’s statements to the media regarding Appellant’s statements. (R. p. 6216). Those count as his statements, too. Koutsogiannis v. BB&T, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005) (“In the attorney-client relationship, clients are generally bound by their attorneys’ acts or omissions during the course of the legal representation that fall within the apparent scope of their attorneys’ authority.”). Appellant did not disavow the statements to the media, he merely attempted to challenge the timing. (R. p. 6216). Moreover, the concept of agency was not new to the defense. Defense counsel used the agency theory in arguing for admissibility of a statement made during an interview with SLED to fall under the party opponent hearsay exception. (R. pp. 6565-6569).

honesty. Appellant was the one who claimed he had repeatedly tried to reach out to law enforcement *after his arrest* before the exchange to which there was an objection. The State was entitled to a fair opportunity to explore these issues. Considering these circumstances, Doyle affords him no protection.

The State maintains that the trial court did not abuse its discretion in these circumstances; however, if error should be found, it could only be harmless beyond a reasonable doubt.

This Court has applied a harmless error analysis to Doyle violations. See, e.g., State v. Pickens, 320 S.C. 528, 530-531, 466 S.E.2d 364, 366 (1996). To determine possible impact of an error, a reviewing court will review the record in its entirety to determine whether “the error is harmless beyond a reasonable doubt, the conviction should not be reversed.” Id. at 531, 466 S.E.2d at 366. To show harmless error, this Court has found “the record must establish the reference to the defendant’s right to silence was a single reference, which was not repeated or alluded to; the solicitor did not tie the defendant’s silence directly to his exculpatory story; the exculpatory story was totally implausible; and the evidence of guilt was overwhelming.” Id. Where multiple statements are at issue, the Eleventh Circuit has reasoned that the evaluation should consider the impact of the cross-examination and resulting argument acknowledging the errors and non-errors reflected in the case. See United States v. Rivera, 944 F.2d 1563, 1569-1570 (11th Cir. 1991) (concluding “government’s comment on [co-defendant] Vila’s silence was harmless error beyond a reasonable doubt” considering that the prosecutor asked questions and presented argument on various comments, but only some of the silence at issue could be error, and prosecutor “was clearly entitled to comment on” and argue the defense was inconsistent).

Here, the statements made before arrest were clearly areas to question about and comment on, as were the statements to friends and family thus unaffected by Doyle. The only

potential error would be the invited question after Appellant attempted to falsely suggest he had been fully cooperative. That singular comment was unlikely to impact the fairness of the trial, much less undermine it. Further, the new story was simply wholly inconsistent with the forensic evidence. When viewed in total, the heavy evidence of guilt renders harmless any potential error in this regard.

Even so, for all the reasons stated above, this Court should find that Appellant has failed to demonstrate an abuse of discretion. Appellant invited this line of questioning, and the State appropriately responded in proper cross-examination. Appellant's argument to the contrary must be rejected.

## VII.

**Appellant waived his issue with the State’s rebuttal expert testimony about an out-of-court experiment involving an iPhone by failing to raise a timely contemporaneous objection when the testimony was first admitted and by failing to appeal the trial judge’s finding defense counsel’s objection was late. Furthermore, the trial judge did not abuse his discretion by permitting the State’s rebuttal expert to testify about the results of the out-of-court experiment he conducted in response to an in-court experiment performed by a similarly-qualified defense expert.**

Appellant contends the trial judge abused his discretion by permitting the State to introduce evidence concerning an “unscientific” experiment conducted by an “unqualified” witness—Sergeant Paul McManigal of the Charleston County Sheriff’s Office—as part of its rebuttal case. (App. Br. pp. 92-106). As support for that contention, Appellant argues the trial judge erred “for two reasons.” First, Appellant maintains Sergeant McManigal allegedly admitted he was not an expert and, as a result, his testimony should have been excluded. Second, Appellant maintains the subject matter of Sergeant McManigal’s testimony was supposedly unreliable because the experiment upon which he based his rebuttal testimony failed to satisfy any of the factors articulated in Jones<sup>84</sup> and discussed in Council.<sup>85</sup>

Yet again, there are multiple problems with Appellant’s arguments. Initially, Appellant’s appellate challenge to Sergeant McManigal’s testimony was not properly preserved for appellate review because defense counsel failed to raise a timely contemporaneous objection when the evidence was first introduced and because Appellant failed to appeal the trial judge’s finding of untimeliness. Furthermore, notwithstanding any procedural concerns, the trial judge did not abuse his discretion by permitting Sergeant McManigal to offer expert testimony about the results of his out-of-court experiment, which was conducted through a means the defense—by

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<sup>84</sup> State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979).

<sup>85</sup> State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999).

virtue of the testimony it elicited from its own expert—agreed was a reliable method by which an expert could determine what movement would cause an iPhone’s screen to activate. Beyond that, Sergeant McManigal’s testimony met all the requirements for admissibility, including the requirement it be reliable. Appellant’s convictions should be affirmed.

### RELEVANT FACTS

As part of the defense’s case, Micah Sturgis was offered as an expert witness. (R. p. 5895). Sturgis previously worked at the Cleveland County Sheriff’s Office in North Carolina, including as a digital forensic examiner. (R. p. 5891). By the time of trial, he was the director of digital forensics for a private company, and he had received training related to digital evidence, including training on Cellebrite<sup>86</sup> and Apple devices. (R. pp. 5890-5894). At the defense’s request, Sturgis was qualified as an expert in “cell phone forensics.” (R. p. 5895).

During his testimony, Sturgis asserted—repeatedly—that “[v]ery little motion” could turn on the screen of an Apple iPhone. (R. p. 5905; p. 5907; p. 5917; p. 5933; p. 5936). To bolster that assertion, Sturgis used an iPhone of unidentified and unknown model to conduct an in-court experiment and demonstrate for the jury how a “slight raising” of the phone would—consistent with exactly how the phone’s “Raise to Wake”<sup>87</sup> feature was designed to work—cause its screen to activate. (R. p. 5905; p. 5919; pp. 5931-5932). After doing so, Sturgis indicated he knew where Maggie’s iPhone<sup>88</sup> had been found after the murders and had also reviewed the location

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<sup>86</sup> Cellebrite was described as software used to extract and analyze digital evidence from a device like a phone. (R. pp. 2408-2409).

<sup>87</sup> Sturgis indicated that feature “was supposed to come on with *slight* movement[.]” (R. p. 5932) (emphasis added).

<sup>88</sup> Notably, during his testimony, Sturgis appeared uncertain about the model and software version details of Maggie’s iPhone, and he confirmed he had done no testing with a phone

data from Appellant's vehicle, which established Appellant drove past the spot where the phone was eventually located at 9:08 p.m. and 9:59 p.m. (R. p. 5906). Defense counsel then asked if Sturgis could "offer any expert opinion on how a phone would tumble or bounce or move when thrown from a car going 40 plus miles an hour into the brush on the side of a country road[.]" and Sturgis confirmed he could not. (R. p. 5906). Nevertheless, Sturgis again explained "[v]ery little" motion was required for the phone's screen to come on, and he noted "just reaching and picking" up a phone like he had done in the courtroom was all it would take to make the phone's screen activate.<sup>89</sup> (R. p. 5907). Following that, Sturgis confirmed Maggie's phone's screen last went off at 9:07 p.m., which was a point in time when Appellant was still in the driveway at Moselle, and remained off until 9:31 p.m. (R. p. 5916). Sturgis then again asserted "[v]ery little" motion could activate the phone's screen, opining even "[j]ust the slightest lift" would be sufficient. (R. p. 5917).

In rebuttal to Sturgis's testimony, the State offered expert testimony from Sergeant McManigal.<sup>90</sup> (R. p. 6680). Much like Sturgis, Sergeant McManigal had a law enforcement background, and, at the time of trial, he was a member of the United States Secret Service Cyber Fraud Task Force. (R. pp. 6680-6681). Similarly, like Sturgis, Sergeant McManigal had

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similar to hers to determine what movement could cause its screen to activate. (R. p. 5920; p. 5931).

<sup>89</sup> In his closing argument, defense counsel later suggested Sturgis's testimony meant an iPhone's screen would always come on not if just picked up but if thrown. (R. pp. 7072-7073).

<sup>90</sup> On appeal, Appellant appears to bizarrely and incorrectly suggest the State offered Sergeant McManigal's expert testimony to rebut the testimony of its own witnesses from its case in chief. (App. Br. pp. 93-96). Tellingly, at the same time, Appellant fails to mention Sturgis at all. (App. Br. pp. 92-106). Obviously, as defense counsel clearly recognized at trial based on his closing argument remarks, Sergeant McManigal's testimony was presented to rebut Sturgis's testimony, which the defense tried to use to convince the jury Appellant could not have been the one who tried to dispose of Maggie's phone after the murders. (R. pp. 7072-7073).

received training and experience related to digital evidence, which included specific training on—amongst other things—Cellebrite and Apple devices. (R. pp. 6681-6682). *Without* objection, Sergeant McManigal was—just like Sturgis—qualified as an expert in “cell phone forensics.” (R. p. 6682).

After he was qualified, Sergeant McManigal confirmed he was present in the courtroom for Sturgis’s testimony and had observed him demonstrate an iPhone’s screen would turn on “when the phone is picked up *gently*[.]” (R. pp. 6683-6684) (emphasis added). Importantly though, Sergeant McManigal, without objection, explained:

When the phone is picked up more aggressively, or moved more aggressively, the device will not turn on the screen. . . . So if the [i]Phone registers a slight amount of motion, it thinks it’s being picked up, so it will turn on the screen. But if it’s being picked up more aggressively it won’t, and that’s a battery protection feature. If you have the [i]Phone in your pocket and you were jogging, you don’t want the screen to stay on the whole time. So when the phone is moving more aggressively, the screen is not turned on.

(R. 6684-6685).

Following that, Sergeant McManigal indicated he obtained an iPhone 11 Pro Max, which was the same model as Maggie’s phone, and the operating system installed on that test phone was only slightly different from the one installed on Maggie’s. (R. p. 6685). The prosecutor then asked whether he had performed a series of tests using the phone to develop an opinion on when its screen did and did not come on. (R. p. 6685). Before he could answer, defense counsel objected, arguing: “Rule 5. This is an experiment performed on the evidence, and we have not been provided this.” (R. p. 6685). However, because Rule 5 did not apply to rebuttal evidence, the trial judge overruled that objection. (R. p. 6686).

As the officer’s testimony continued, Sergeant McManigal confirmed he performed a series of “many, many, many” practical tests over the preceding weekend by picking up and

shaking the test phone, picking up and throwing it, knocking it off his desk, flipping it end over end, and throwing it like a frisbee, with each of those tests being performed “at least” ten to twenty times. (R. p. 6686; p. 6699). Based on his personal observations during those tests, Sergeant McManigal concluded the phone’s screen did not “always” turn on when the phone was thrown, did not come on nine out of ten times when the phone was thrown like a frisbee, and “most often” came on when he simply picked it up and shook it. (R. pp. 6686-6689).

Thereafter, defense counsel elicited testimony from the officer establishing he did not record his testing in any manner and had not conducted any statistical reliability calculations. (R. pp. 6687-6688; pp. 6690-6691; p. 6700). Sergeant McManigal, who readily acknowledged he—like Sturgis—was not an engineer, further confirmed he was merely recounting his own observations from his experiments, which led to results different from—in defense counsel’s words—“what we’ve seen it do right here in this courtroom.” (R. pp. 6692-6693; p. 6699). Defense counsel then asked: “And when it comes to tossing it around and seeing how it moves, you don’t know anything more than anyone else, do you?” (R. p. 6693). Sergeant McManigal responded: “No, sir.” (R. p. 6693).

At that point, defense counsel moved to strike “based on the previous answer[,]” which he contended established the witness’s opinion was “outside of his expertise” and “inadmissible[.]” (R. pp. 6693-6694). Defense counsel further maintained it would purportedly be necessary for the officer—but apparently not Sturgis—to be an expert in electrical engineering to present the testimony he presented. (R. p. 6694). Conversely, the prosecutor argued the witness’s testimony was proper since it was based on testing the witness personally conducted. (R. p. 6694). The trial judge, after noting defense counsel had stipulated to Sergeant McManigal’s expertise, overruled the objection. (R. p. 6694).

Following that, Sergeant McManigal affirmed he, despite not being an engineer, understood how an iPhone worked better than most ordinary people. (R. pp. 6694-6696). He further explained his opinion was based on his own direct observations of when the phone's screen did and did not turn on during his testing, which was designed to evaluate what happened when the phone was handled in a more aggressive manner than the "gentle pick up" conducted in the courtroom by Sturgis. (R. pp. 6697-6699). Ultimately, McManigal explained he was not opining a phone's screen would not come on "if somebody was driving down the road, picked up a phone that was either on the seat or pulled . . . out of a pocket or something like that, and while continuing to drive threw it out the window"; he was merely stating it *might* not come on based on the observed results of his tests. (R. pp. 6696-6697).

Subsequently, after both Sergeant McManigal and the witness that followed him finished testifying before the jury, defense counsel raised a *new* objection to Sergeant McManigal's testimony. (R. p. 6719). "[N]ow," defense counsel stated he was objecting pursuant to Council. (R. p. 6719). As support for that objection, defense counsel maintained nothing established the technique described had been peer reviewed, the witness testified he had never done it before, and no data was recorded. (R. p. 6720). Defense counsel further maintained he had no notice Sergeant McManigal had done an "engineering analysis," his testimony was not scientific, and it should be stricken from the record as unreliable. (R. pp. 6720-6721).

Upon considering the matter, the trial judge declined to strike the testimony. (R. p. 6721). In doing so, the trial judge first found defense counsel's objection was "late." (R. p. 6720). He also again noted defense counsel stipulated to Sergeant McManigal's expertise and had been given an opportunity to conduct questioning before the witness was qualified. (R. pp. 6720-6721). Beyond that, the trial judge rejected defense counsel's suggestion the officer had

performed an “engineering analysis” since he simply “conducted an experiment and told the jury about it.” (R. pp. 6720-6721). Accordingly, the trial judge found the testimony was properly admitted and “sp[oke] for itself.” (R. p. 6721).

#### STANDARD OF REVIEW

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). 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).

#### DISCUSSION

**A. Just as the trial judge found, Appellant’s objections, including his Council-based objection, to Sergeant McManigal’s testimony about the results of his out-of-court testing was not contemporaneously raised and, thus, came too late to be properly preserved for further review. Appellant also waived any issue concerning the untimeliness of his Council-based objection by failing to appeal the trial judge’s ruling it was untimely.**

Pursuant to South Carolina’s issue preservation requirements, a defendant must make a timely contemporaneous objection to a perceived error during trial to properly preserve the issue for further review. State v. Hoffman, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994). Thus, when a perceived error arises, the defendant must object at the *first opportunity* to do so or the issue is waived. State v. Sullivan, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993).

Here, defense counsel did not object when Sergeant McManigal was qualified as an expert in “cell phone forensics,” which, uncoincidentally, was the exact same field in which Sturgis had been qualified as an expert. Likewise, defense counsel did not object when Sergeant McManigal—while directly referencing Sturgis’s in-court experiment and before getting to his

own experiment—testified a more aggressive movement than the gentle lift Sturgis had performed would *not* turn on an iPhone’s screen. Following that, the only objections defense counsel raised to the officer’s direct examination testimony about the results of his out-of-court testing were leading<sup>91</sup> and Rule 5, which did not apply under the circumstances involved. See Rule 5(a)(1)(D), SCRCrimP (not requiring disclosure by the State of test results unless they are material to the preparation of the defense or the State intends to use them “as evidence in chief at the trial”). Therefore, since much of Sergeant McManigal’s testimony was admitted without objection and defense counsel failed to contemporaneously object to it at his first opportunity to do so, any issue Appellant had with that testimony was waived due to the lack of a proper timely objection. See State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996) (“Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review.”); cf. State v. Franks, 432 S.C. 58, 76-77, 849 S.E.2d 580, 590 (Ct. App. 2020) (concluding Franks waived his objection to the reliability of evidence by failing to raise that objection when the evidence was first introduced); Macsenti v. Becker, 237 F.3d 1223, 1231 (10th Cir. 2001) (“We are convinced that Defendant forfeited the opportunity to subject the expert testimony of Dr. Sullivan and plaintiff’s other experts to a Daubert challenge by failure to make a timely objection before that testimony was admitted.”).

Likewise, although defense counsel *eventually* raised a Council-based objection to Sergeant McManigal’s testimony, he waited to first do so until after the witness’s testimony had already fully concluded, which was—just as the trial judge found—far too late to properly preserve the objection. See State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004)

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<sup>91</sup> Both defense counsel’s objections to leading were sustained, and the prosecutor rephrased his questions. (R. p. 6684; p. 6686).

(finding “counsel’s objection came too late” because counsel did not object “until several pages of testimony concerning the [evidence] had been taken”); State v. Norris, 253 S.C. 31, 40, 168 S.E.2d 564, 568 (1969) (“[T]he objection of the appellant upon the stated ground came too late because it was made after the objectionable evidence had been admitted.”). And, since Appellant has not appealed the trial judge’s determination the Council-based objection was untimely, that ruling has become the law of the case. Black, 400 S.C. at 28, 732 S.E.2d at 890. Accordingly, Appellant’s challenge to Sergeant McManigal’s expert testimony should be rejected as procedurally barred.

**B. The trial judge did not abuse his discretion by qualifying Sergeant McManigal as an expert and permitting him to provide expert testimony to rebut the testimony of the defense’s highly-similar expert.**

As has long been recognized in South Carolina, results from an out-of-court experiment may be admissible during trial where the experiment is made under conditions and circumstances similar to those prevailing at the time of the occurrence involved in the controversy. State v. Frazier, 357 S.C. 161, 166, 592 S.E.2d 621, 623 (2004). Such results constitute substantive evidence, and, for them to be admissible, the conditions of the experiment are not required to be identical to the conditions at the time of the occurrence at issue. Hamrick v. State, 426 S.C. 638, 651, 828 S.E.2d 596, 603 (2019); Weeks v. S.C. State Hwy. Dep’t, 250 S.C. 535, 542, 159 S.E.2d 234, 237 (1968). Instead, it is sufficient if there is a *substantial* similarity. State v. Kahan, 268 S.C. 240, 246, 233 S.E.2d 293, 294 (1977). The question of the similarity of circumstances of the experiment and the occurrence rests within the discretion of the trial judge. Gasque v. Heublein, Inc., 281 S.C. 278, 286-287, 315 S.E.2d 556, 561 (Ct. App. 1984) (citing Beasley v. Ford Motor Co., 237 S.C. 506, 117 S.E.2d 863 (1961)). And, significantly, that particular question “should be judged in light of the fundamental principle that any fact should

be admissible which logically tends to aid the trier [of fact] in determination of the issue.” State v. Shore, 344 S.W.3d 292, 296 (Mo. Ct. App. 2011) (citations and internal quotations omitted).

Here, Sergeant McManigal’s testimony was offered to respond to and rebut the testimony of Sturgis, the defense’s “cell phone forensics” expert. During his testimony, Sturgis gently lifted an iPhone of some unspecified type in the courtroom to trigger the phone’s “Raise to Wake” feature and activate its screen. Relying upon the results of that in-court experiment as supporting proof, Sturgis opined “[v]ery little” motion would activate an iPhone’s screen. The defense then used Sturgis’s expert testimony to suggest via extrapolation if very little motion would activate an iPhone’s screen, more substantial motion—such as a throw from a moving vehicle—necessarily would activate the phone’s screen, too. Thus, in Appellant’s case, the defense adopted the position and argued to the jury a *reliable* expert determination as to what movement would cause an iPhone’s screen to activate could be reached solely by moving an iPhone and observing what happened with its screen in response, which is exactly what Sturgis’s in-court experiment involved.

With Sergeant McManigal, the State put the defense’s expert theory to the test by employing the same means the defense had itself already presented to the court and the jury as a reliable method for doing so. Sergeant McManigal possessed virtually identical qualifications to Sturgis and was qualified in the same field as Sturgis. The officer also employed the exact same tools Sturgis relied upon to arrive at his opinion—he obtained an iPhone, moved it, and observed what happened in response. Therefore, even assuming for argument’s sake there was some flaw in Sergeant McManigal’s qualifications or methodology, Appellant was not in a position to and could not validly complain about the scope or subject matter of Sergeant McManigal’s expert testimony since the defense had already presented highly-similar expert testimony through an

equivalent witness who relied on precisely the same type of testing tools—movement and observation—to render his expert opinion about what motion would cause an iPhone’s screen to come on. See State v. Stroman, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984) (“Where one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though the latter evidence would be incompetent or irrelevant had it been offered initially.” (citations, internal quotations, and brackets omitted)), overruled on other grounds by State v. Davis-Kocsis, 443 S.C. 127, 903 S.E.2d 491 (2024); State v. Bailey, 266 P. 163, 165 (Wash. 1928) (instructing when the defense introduces expert evidence on a particular subject, the State is “permitted to meet it by like expert testimony”); cf. Galindo v. Riddell, Inc., 437 N.E.2d 376, 381 (Ill. App. Ct. 1982) (“The defendant having persuaded the court to admit its expert testimony on this basis is not in the position to object to similar testimony on the part of the plaintiff.”); State v. Faulkner, 638 S.E.2d 18, 26 (N.C. Ct. App. 2006) (instructing “[t]he law wisely permits evidence not otherwise admissible to be offered to explain or rebut evidence elicited by the defendant himself” and concluding the defense opened the door for the State to present expert testimony that may not otherwise have been admissible for the purpose of rebutting testimony presented by defense experts (citation and internal quotations omitted)). However, there was no flaw with Sergeant McManigal’s methodology, and his testimony met all the necessary requirements, including the reliability requirement, to warrant admission in Appellant’s case. Rule 702, SCRE; Council, 335 S.C. at 20, 515 S.E.2d at 518.

First, Sergeant McManigal’s testimony about his out-of-court experiment could unquestionably assist the jury in understanding the evidence and properly resolving the case. As previously noted, Sergeant McManigal’s experiment followed the in-court experiment conducted

by Sturgis, and, through his experiment, Sergeant McManigal was able to provide an empirically-based answer for the jury about whether the results of Sturgis's in-court experiment could reliably be extrapolated—as the defense suggested they could be—to the actual facts involved in Appellant's case. Therefore, it was relevant to an issue in dispute.

Second, notwithstanding the fact he was qualified without objection, Sergeant McManigal possessed sufficient qualifications to present the expert testimony he was permitted to present. As demonstrated by his testimony, Sergeant McManigal had experience with, was familiar with, and had received specialized training related to Apple devices, including iPhones. However, most significantly, he personally conducted an out-of-court experiment relevant to an issue raised by the defense expert, which provided him with experience-based knowledge as to what occurred when an iPhone similar to Maggie's was, amongst other things, thrown. Based on the substantive knowledge he obtained as a direct result of the experiment and his personal observations during it, Sergeant McManigal possessed specialized knowledge outside the ken of the average juror and, thus, could be and was properly qualified as an expert.<sup>92</sup> See State v. Moorer, 439 S.C. 525, 547, 888 S.E.2d 725, 736 (Ct. App. 2023) (recognizing expertise can be based on experience and observations).

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<sup>92</sup> In arguing to the contrary, Appellant has heavily focused on Sergeant McManigal's response indicating he did not know "anything more than anyone else" when it came to "tossing [an iPhone] around and seeing how it moves," suggesting that response was an admission from the officer he was not qualified. (R. pp. 6693-6694; App. Br. pp. 102-103). To the contrary, all Sergeant McManigal was acknowledging was his experiment was not one calling for any special qualifications, which was a fact that hurt rather than helped the defense's attack on his expert testimony since the fact his experiment was easily replicable by anyone capable of moving an iPhone and observing what happens in response strongly demonstrated the reliability of his substantive test results. See Hamrick, 426 S.C. at 652, 828 S.E.2d at 603 (recognizing the results of an experiment constitute substantive evidence and cannot properly be excluded "except in reliance upon a specific, applicable rule or other provision of law").

Third and finally, Sergeant McManigal’s experiment was sufficiently reliable as it could—just like Sturgis’s earlier in-court experiment—be accomplished with just movement and observation of an iPhone. Cf. State v. McDowell, 266 S.C. 508, 514, 224 S.E.2d 889, 892 (1976) (concluding the trial judge properly admitted testimony concerning an experiment performed by a jeweler to determine how long before a watch would stop when immersed in water despite the fact the jeweler “had never before made a similar test or experiment” because “the actual test required no unusual skill and might have been performed without the aid of the jeweler”). Indeed, during Appellant’s trial, the defense’s expert had *already* relied upon and applied the same method Sergeant McManigal employed to develop his expert opinion on when an iPhone’s screen would activate. See Council, 335 S.C. at 19, 515 S.E.2d at 518 (1999) (recognizing one consideration when determining whether to admit scientific testimony is “prior application of the method to the type of evidence involved in the case”). Additionally, Sergeant McManigal conducted his experiment, which was presented to respond to Sturgis’s in-court experiment and not to definitively prove whether the screen of a phone tossed from a vehicle would or would not always come on, in a manner that had a high degree of similarity to the issues relevant in Appellant’s case since—unlike the defense’s expert—he obtained an iPhone nearly identical to Maggie’s and then moved that test phone by, amongst other things, throwing it instead of just gently lifting it. See Frazier, 357 S.C. at 166, 592 S.E.2d at 623 (instructing the results of an out-of-court experiment are admissible when its conditions are substantially similar to conditions of the event at issue). Furthermore, Sergeant McManigal repeated each test he did ten to twenty times, which provided him with reliable empirical data about when the iPhone’s screen did and did not activate. See State v. Warner, 430 S.C. 76, 86-87, 842 S.E.2d 361, 366 (Ct. App. 2020) (“As long as the trial court is satisfied the expert’s testimony consists of a

reliable method faithfully and reliably applied, the gate of admissibility should be opened. The correctness of the conclusion reached by an expert's faithful application of a reliable method (and the credibility of the expert who reached it) is for the jury, for the trial judge must remain at the gatepost and not tread on the advocate's or the jury's turf."), aff'd in part and remanded on other grounds, 436 S.C. 395, 872 S.E.2d 638 (2022). In light of that, both his experiment and his testimony relaying its results were sufficiently reliable to warrant the admission of that expert evidence. Cf. United States v. Norris, 217 F.3d 262, 270 (5th Cir. 2000) (concluding a determination an experiment was substantially similar to the occurrence at issue can satisfy Daubert's reliability requirement since Daubert's factors are not a definitive checklist and holding the district court judge properly admitted expert testimony from an officer about the results of an out-of-court experiment involving the burning of currency in a trash barrel).

Accordingly, since it met all the prerequisites for admission and stemmed from a testing method the defense had—by virtue of its own expert—already agreed was a reliable means for drawing an expert conclusion, the trial judge did not abuse his discretion by permitting Sergeant McManigal's rebuttal expert testimony and leaving it to the jury to determine its weight and worth. See Beasley, 237 S.C. at 510, 117 S.E.2d at 865 ("The admission of evidence of experiments or permitting them to be performed in court is a matter peculiarly within the discretion of the trial court, and this discretion will not be interfered with unless it is apparent that it has been abused." (citation and internal quotations omitted)); see also Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 596 (1993) ("Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence."). Appellant's convictions should be affirmed.

## VIII.

**The trial court did not abuse its discretion in admitting into evidence: (1) opinion evidence from a qualified firearms expert after application of long-accepted analysis methodology; (2) guns seized from Appellant and/or his home consistent in type and caliber to the weapons used in the murders; and (3) a rain jacket seized from Appellant's parents' home connected to Appellant which also tested positive for GSR. The trial court applied the appropriate tests for admissibility and its findings of fact for the purpose of admissibility are well-supported in the record. Appellant's argument to the contrary fails.**

Appellant blends three issues into one but his argument shares one distinct trait; Appellant is essentially asking this Court to review an ordinary application of established tests to proffered facts and evaluate anew the trial court's decision on admissibility. (App. Br. pp. 106-119). On this record, and given the careful of relevant facts and the application of the relevant tests by the trial judge, Appellant fails to show an abuse of discretion in any of the contested evidence rulings. Thus, Appellant's argument fails.

### RELEVANT FACTS

The investigation determined that Paul had been shot with a 12-gauge shotgun and Maggie had been shot with a rifle loaded with .300 Blackout ammunition. (R. pp. 2154-2155). Firing debris that included two 12-gauge shotgun shells and pellets, were found at the site where Paul was murdered. (R. pp. 2003-2005). Multiple .300 Blackout shell casings were found under and around Maggie's body. (R. pp. 2017-2019). Appellant had a shotgun near him when the first officer arrived at the kennels. (R. pp. 1702-1703). That shotgun was secured by the officer. (R. p. 1703). Further, "three shotguns, a rifle, fired and unfired ammunition, and boxes of -- empty boxes of ammunition" were collected from the home or vehicles. (R. pp. 2034-2036; pp. 2065-2066; pp. 2160-2162). .300 caliber cases from the side of the home, on the outside, were retrieved, as well as .300 cases and 12-gauge shells near a shooting area on the property. (R. p. 2217; p. 2289; p. 3176). The evidence was submitted to SLED for analysis. Essentially, the

SLED analyst, Agent Paul Green, determined “that the markings on those [cartridges] found at the crime scene match markings of fired shell cartridges at a shooting range on the property and around the residence,” and indicated both “were fired from the same gun.” (R. p. 1532; p. 1535).

On January 23, 2023, Appellant filed a motion to “preclude or limit firearm ballistic opinion,” or for a pretrial hearing to determine admissibility under State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 517 (2001). (R. pp. 233-254). The State filed a response opposing the motion on January 24, 2023. (R. pp. 255-269).

At pre-trial proceedings, defense counsel suggested that their challenge to the opinion could be addressed during trial. (R. pp. 1532-1533). The State, however, argued for a pre-trial motion to be held and the matter ruled upon given the significant nature of the expected testimony. (R. p. 1536). The trial court held a pre-trial hearing on the motion. (R. p. 1536; p. 1545).

The State called Agent Greer to testify as to his training, qualifications, and certifications. Notably, he testified:

Part of our quality control at SLED, SLED, the laboratory, is accredited by ANAB, which is the ANSI National Accreditation Board. That follows the standards set forth ISO 170 -- 17025, which is an international accrediting set of standards, and we follow that. And within that we have a SLED quality control manual that requires before we are able to participate, or be authorized to perform work, we are competency tested and deemed competent to do that. Also in addition, each year we are proficiency tested to make sure that we are maintaining our competency.

(R. 1549).

As to methodology, the agent testified:

Firearms identification has been around for years, and during that time there’s been many studies that have proven the reliability of firearms identification. Those studies are published in articles through AFTE, such as the AFTE Journal. Those studies, using a scientific method, are published in the AFTE Journal, or Journal of Forensic Sciences would be another one that could be included, and

those are peer reviewed. Those are looked at by members of the academia, or firearms identification, other examiners, those are reviewed and those are published in those two journals for sure.

(R. 1550). He added that the “AFTE was founded in 1969,” and information in the field is “published in journals” and “subject to peer review[.]” (R. pp. 1550-1551).

Further, the agent testified that SLED has specific “quality control” measures, qualifies for and received accreditation through a national accreditation board, and has procedures to ensure compliance with those standards. (R. p. 1549; pp. 1551-1553). The agent testified that SLED requires that each analysis be “verified” by “another qualified examiner” and that examiner must independently agree in order for the results to be reported. (R. p. 1552; p. 1589). Further, the cases are subject to “a technical administrative review process as part of the quality control and peer review procedures.” (R. p. 1552).

Agent Greer also testified briefly as to the sound history of the firearms identification analysis field in that it “has been around for years,” going back to the “early 1900s,” agreeing that it has been widely accepted “in court cases across the world.” (R. p. 1553). The agent personally, at that time, had been qualified to give testimony in state and federal courts “approximately twenty-five times,” without any limitation on the scope and extent of his testimony. (R. p. 1554; p. 1556).

In argument supporting admissibility, the State argued that not only had each factor under Council been met, and the defense’s allegations that reports from the National Academy of Sciences (NAS) and the President’s Council of Advisors on Science and Technology (PCAST), could be offered in cross-examination, but did not undermine the admissibility; a conclusion that multiple courts had made. (R. pp. 1598-1603).

The defense argued the expert failed to phrase his opinion in terms of a “reasonable degree of certainty” and posited that the agent was unable to do so. (R. p. 1603). The defense argued that because the markings evaluated were not on items “that went through a rifle or handgun bore,” but were markings made when ejected, “that is a bridge too far.” (R. p. 1604).

Considering the proffer and the arguments from the parties, the trial court ruled that the opinion testimony was admissible:

I find that the State has met the requirement of admissibility under Rule 702 and 703 of the South Carolina Rules of Evidence, as well as under State v. Council. I find that the evidence proposed will assist the jury in understanding an issue in the case. The witness is well qualified, and that the underlying science is reliable. The matters at issue involving this witness will be matters for cross-examination and for the jury to determine its weight.

Although the witness did not state that specifically he holds this opinion to a reasonable degree of scientific certainty, our courts have thoroughly held in numerous cases that there are no magic words that are necessary for an understanding as to the opinion and the level of certainty that a witness has in offering an opinion. So, the witness was firm in his opinion based on his years of experience and training, and I find that the findings indicated in State’s -- Court’s Exhibit Number 1 is admissible.

(R. p. 1604).

#### **STANDARDS OF REVIEW**

##### *Admission of Expert Testimony*

“A trial court’s decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion.” State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). The trial court abuses its discretion when “the ruling is unsupported by the evidence or controlled by an error of law.” State v. Jones, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018).

##### *Admission of Evidence*

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” Gaster, 349 S.C. at 557, 564 S.E.2d at 93) (citing State

v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000); Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 504 S.E.2d 117 (1998)). “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. Anderson, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009) (quoting Pagan, 369 S.C. at 208, 631 S.E.2d at 265).

## DISCUSSION

### *A. Challenge to Reliability of the Methodology*

Appellant argues that “the field of tool mark analysis is inherently subjective and not scientifically valid,” and the trial court erred in finding the opinion admissible because the analyst’s “opinions were confusing, unreliable and were more likely to confuse the jury than assist them.” (App. Br. p. 110). Appellant has failed to show any abuse of discretion in the trial court’s ruling.

Prior to admitting expert testimony under Rule 702, the trial court must determine whether the substance of the testimony is reliable. Jones, 423 S.C. at 637, 817 S.E.2d at 270. When “scientific” evidence is offered, the court considers the four Council factors: (1) whether the expert’s methodology has been published and subjected to peer review, (2) has previously been applied in similar situations, (3) includes quality control procedures, and (4) is consistent with recognized scientific laws and procedures. Council, 335 S.C. at 20, 515 S.E.2d at 517. In contrast, the same “formulaic approach” does not apply when a party offers nonscientific, or experience-based testimony. Jones, 423 S.C. at 638-39, 817 S.E.2d at 272.

Regardless of the type of expert testimony, the trial court must act as a “gatekeeper” to ensure reliability of the evidence. White, 382 S.C. at 270, 676 S.E.2d at 686. But the “gatekeeping” role does not mean the trial court decides if the expert is “correct.” Jones, 423

S.C. at 640-641, 817 S.E.2d at 272. In fact, the trial court must be careful to avoid doing so. Id. Only the jury gets to accept or reject the expert's opinion. Id. Instead, "[t]rial courts are tasked only with determining whether the basis for the expert's opinion is sufficiently reliable such that it be may offered into evidence." Id. Stated differently, "the trial judge must remain at the gatepost and not tread on the advocate's or the jury's turf." Warner, 430 S.C. at 87, 842 S.E.2d at 366. Once a party demonstrates that "the expert's testimony consists of a reliable method faithfully and reliably applied, the gate of admissibility should be opened." Id.

Here, the trial court dutifully satisfied its gatekeeping role in this case and assessed the offered evidence, guided by the Council factors. The record shows ample support for his conclusion to admit the expert testimony.

First, the testimony supports that the methodology is standardized and has been published and subjected to peer review. (R. pp. 1550-1551). Agent Greer expressly noted published studies on the standard methods in the AFTE Journal and the Journal of Forensic Sciences. (R. p. 1550).

Second, the testimony supports such analysis has been utilized similarly. Agent Greer testified that law enforcement agencies routinely use the methodology to determine whether a specific weapon fired a bullet or cartridge case. Indeed, Agent Greer testified that firearms identifications have been around since the early 1900s. (R. p. 1550). This is consistent with our own case law long recognizing and accepting the analysis. This 1949 case is particularly illustrative of the history of acceptance:

*It is now common knowledge* that by means of the science of ballistics, it may often be determined that a bullet was fired from a certain pistol, and it is the modern tendency of our courts to allow the introduction of expert testimony to show that the bullet which killed the deceased was fired from a particular pistol or rifle, where it is first definitely shown that the witness by whom such testimony is offered is, by experience and training, qualified to give an expert opinion in the field of ballistics. 22 C.J.S. Criminal Law, § 565, page 876; 26 Am.Jur., § 440, page 460. The weight of such testimony is for the determination of the jury.

State v. Hackett, 215 S.C. 434, 445, 55 S.E.2d 696, 701 (1949) (emphasis added).

Third, the testimony shows quality control procedures. Agent Cromer discussed the quality control procedures adopted at SLED. For example, a second agent conducts an independent comparison for verification. Only if both agents reach the same conclusion will SLED issue a report. (R. pp. 1551-1552). Additionally, the SLED lab is accredited by a national accreditation board ensuring compliance with uniform standards. (R. p. 1549; pp. 1551-1553).

Finally, the methodology is used by law enforcement agencies “across the globe,” and routinely accepted in courts. (R. p. 1553). Further, Agent Greer’s testimony had been accepted in firearms identification some twenty-five times by the time of the trial in this case. (R. pp. 1553-1554).

In other words, the testimony fully supports the determination that SLED’s methodology application is consistent with recognized scientific law and procedures. See Council, 335 S.C. at 19, 515 S.E.2d at 517. The trial court’s ruling aligns with other jurisdictions considering this field. See, e.g., United States v. Brown, 973 F.3d 667, 704 (7th Cir. 2020) (noting that firearms identification has been “almost uniformly accepted by federal courts”); United States v. Hicks, 389 F.3d 514, 526 (5th Cir. 2004) (“[T]he matching of spent shell casings to the weapon that fired them has been a recognized method of ballistics testing in this circuit for decades.”); Amaro v. State, 272 So. 3d 853, 855 (Fla. Dist. Ct. App. 2019) (“Forensic firearm and tool-mark identification evidence is not a new or novel methodology, and its admissibility in criminal cases is well-documented in Florida’s jurisprudence.”); Al Amin v. State, 597 S.E.2d 332, 344 (Ga. 2004) (noting that firearms identification evidence “is not novel, and has been widely accepted in Georgia courts.”), overruled on other grounds by State v. Lane, 838 S.E.2d 808, 819 (Ga. 2020);

Britt, 718 S.E.2d at 729 (“Courts in North Carolina have upheld the admission of expert testimony on firearm toolmark identification for decades.”).

Appellant’s apparent disagreement with firearms identification using identifying marks from cycling and ejecting as compared to barrel mark identification, (App. Br. p. 108), lacks any support in the record at all. Appellant did not offer any expert to indicate any issue with the marking comparison. Even so, courts have routinely considered that part and parcel of the well-established firearm identification analysis area, since that type of comparison is found referenced in many cases. See, e.g., State v. Carter, 405 So. 3d 952, 959 (La. Ct. App. 2024) (referencing a firearms analysis conclusion indicating “casings, bullets, and the copper bullet jacket were ejected or fired”); Porras v. State, 684 S.W.3d 236, 242 (Ark. Ct. App. 2024) (noting “casings found at the crime scene were ejected from the AR-15, and all of the recovered 76.2 x 39mm shell casings were ejected from the AK-47”); Commonwealth v. Troche, 221 N.E.3d 752, 758 (Mass. 2023) (observing in review of the record that “Ballistics analysis following the shooting determined that the bullets that killed Leonard and injured Mair, as well as a spent bullet, a bullet fragment, and several casings at the crime scene, had all been ejected from a single .40 caliber Smith and Wesson firearm.”).

Further, Agent Greer also explained that his analysis was based on matching mechanism marks. (R. p. 1579). Again, Appellant offered nothing in the record to challenge or undermine that testimony.

Further still, while Appellant attempts to argue that such marks, rather than barrel marks, would be based on presumed unique qualities rather than actual ones, (App. Br. p. 108), Agent Greer returned inconclusive results when comparing the casing with those ejected from the seized rifle, detailing only consistency with the casings from the murder and those from an

outside area of the house and the shooting area of Moselle. (R. p. 1579). If his analysis requirements were overly broad or inherently unreliable, it would be unlikely to produce the distinctive results here.

And, contrary to Appellant's assertion that the analysis is too subjective, Agent Greer testified a peer review process ensures "the repeatability of th[e] scientific procedure[.]" (R. p. 1555; p. 1561). As a general matter, "[a] number of courts have ... conclude[d] that firearm toolmark identification can be tested and reproduced." United States v. Harris, 502 F. Supp. 3d 28, 37 (D.D.C. 2020). In this case, that concept was referenced not just in theory but also shown to be required in practice, as well. Agent Greer testified that SLED requires a blind study review by another examiner, and if the analysis is not in agreement, then the first result is not accepted. (R. p. 1552).

Further, Agent Greer testified to widely accepted guidelines for consistency and SLED's enforcement of compliance. (R. p. 1558-1559). At any rate, Appellant failed to present *any* evidence that this particular *type* of toolmark analysis has been rejected as unreliable by any accredited lab, or association, or for that matter, any court. See State v. DeJesus, 436 P.3d 834, 842 (Wash. Ct. App. 2019) (rejecting challenge to based on NAC and P-CAST reports, finding "Courts from around the country have universally held that toolmark analysis is generally accepted. DeJesus has not cited to judicial authority holding that the toolmark analysis is not generally accepted."). It is additionally notable that studies have shown 'a very low error rate for the AFTE method.' " Harris, 502 F. Supp. 3d at 39 (citing United States v. Romero-Lobato, 379 F. Supp. 3d 1111, 1119 (D. Nev. 2019)).

Appellant's assertion that two studies have reported "a consensus in the scientific community" that undermines reliability, (App. Br. p. 112), overlooks that those studies, (NAR

and P-CAST) have been largely rejected as undermining admissibility. See DeJesus, 436 P.3d at 864-865 (challenges to ballistics evidence would go to weight not admissibility); Brown, 973 F.3d at 703-704 (“defendants brought the PCAST report to the district court’s attention, but the district court chose not to give it dispositive effect, and that choice was within its set of options.”). And critically, in addition to those reports being criticized and not accepted according to the testimony presented, particularly that the NAR report was based on critiques of “ballistic imaging software” rather than human review, (R. p. 1564-1565), “the NAS report does not label the discipline ‘junk science’” and its purpose is “not to recommend against admission of evidence.” State v. McGuire, 16 A.3d 411, 436 (N.J. Super. Ct. App. Div. 2011). (R. p. 1566). Also, as to the P-CAST report specifically, Agent Greer also noted the criticism of the report, specifically that “none of the researchers had any firearms identification experience,” which undermines any reliance on that report regarding reliability. (R. p. 1574). Moreover, the agent also testified that several agencies including AFTE (Association of Firearm and Tool Mark Examiners, an international organization), have not just generally questioned the report but had issued responses criticizing that report. (R. pp. 1574-1575). Again, on this record, the trial court was well within its discretion to find Appellant’s position overstated or otherwise reject his argument against reliability based on those two reported studies.

Because the “testimony consists of a reliable method faithfully and reliably applied,” the trial court acted within its discretion in admitting it. Warner, 430 S.C. at 87, 842 S.E.2d at 366. Appellant fails to show an abuse of discretion in the trial court’s ruling.

As to Appellant’s final assertion that the expert was required to state his opinion in certain terms, (App. Br. pp. 112-113), that is simply incorrect. See United States v. Cyphers, 553 F.2d 1064, 1072 (7th Cir. 1977) (finding “no requirement” in law that “an expert’s opinion

testimony must be expressed in terms of a reasonable scientific certainty in order to be admissible”); see also State v. Stendrup, 983 N.W.2d 231, 239 (Iowa 2022) (same and noting the level of certainty may be probed on cross-examination). The trial correctly applied the law in rejecting Appellant’s position to the contrary.

*B. The Guns Consistent with the Murder Weapons*

Appellant next argues that, according to the State’s ballistic testing (which he inconsistently challenges in the prior issue but apparently relies upon here), none of the three 12-gauge shotguns seized and tested were found to be the one shotgun used to fire the shots at Paul. (App. Br. pp. 113-114). Appellant similarly argues, based on that same ballistic testing, the Blackout rifle seized was tested, but the test results were not a conclusive to link the gun used to Maggie’s murder. (App. Br. p. 114). Appellant then reasons that without the connection, the guns should not have been admitted into evidence. (App. Br. p. 114). Appellant then concedes the very point that undermines this argument—the guns were not admitted as possible murder weapons. (App. Br. p. 114).

At trial, Appellant objected to admission of the guns based on lack of relevancy, (R. pp. 2168-2169), and argued that because photographs would be adequate admitting the actual guns would be “unfairly prejudicial.” (R. p. 2192). The trial judge, however, did not admit the guns as possible murder weapons but because of the relevance in presenting the investigation:

All right. Relevant evidence means any evidence tending to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. This evidence of these guns were part of the crime scene, in and around the crime scene at or around the time of the murders, issues have been raised regarding multiple guns, multiple shooters, multiple spent rounds, and the Court in its discretion admitted the evidence as being relevant. And there’s no dispute that the defendant had multiple guns in and around his place, and I find that it’s relevant and more probative than prejudicial, and that’s the basis for the Court’s order with regard to admitting that evidence.

(R. pp. 2193-2194).

As an initial point, it is inconsistent for Appellant to argue *per se* unfair prejudice for certain guns to be admitted when Appellant *concedes and acknowledges* that he did not object to the admission of the gun that he had when officers arrived. (App. Br. p. 114 n. 18). If the mere presence of a gun in evidence when the gun has not been identified as the murder weapon is *per se* unfairly prejudicial, his position fails for its inconsistency on appeal and/or the additional admissions are harmless based on the un-objected to gun.

But as another point, Appellant does not (and could not on this record) dispute that he repeatedly challenged the thoroughness of the SLED investigation. Appellant not only presented counter experts to address forensics opinions to generally challenge the evidence, but specifically, offered opinions that the investigation was sloppy, (R. pp. 5821-5822), or that they seem uninterested in following leads, (R. p. 6039; pp. 6540-6542). As the trial judge correctly noted, these were weapons consistent with the two calibers of the murder weapons. That is the very point of why they would have been seized and why they were tested. Further, and also implicit in the ruling, is that of the multiple guns capable of firing the deadly shots that would have been owned by the family, two guns—one 12-gauge, one 300 Blackout—were missing. The State eliminated the ones that could be found that could potentially match; Paul's replacement Blackout rifle and Appellant's own preferred 12-gauge remained missing. (R. pp. 2154-2155; p. 3644; p. 4431; p. 4950; p. 5963). In light of the context of this case, Appellant has failed to show an abuse of discretion.

Even so, should this Court find the weapons should not have been admitted, their admission could only have harmless for multiple reasons. First, that guns were part of this case is an understatement. The murders occurred at Moselle—a 1700-acre *hunting* estate with a well-

stocked gun room. Testimony was abundant that guns were used on the property by multiple people. Guns were part of the culture and part of the context in this case. It would hardly be considered shocking to see the gun, and unreasonable to assign an inference of general criminal character and propensity to admission of the guns. Second, there was no indication that the guns were admitted to suggest they were actually used in the murders; to the contrary, evidence was plainly presented that though consistent with potential murder weapons, were tested and not directly connected (the one exception being State's Exhibit 4). (App. Br. p. 114 n. 18)). Third, the guns were not wholly irrelevant given their caliber, essentially sufficing as potential demonstrative aids to visualize the murder weapons.<sup>93</sup> Fourth, Appellant offers no precedent for finding per se prejudice; simply seeing a gun is not the type of unfair prejudice contemplated for error. Appellant cites State v. McConnell, 290 S.C. 278, 350 S.E.2d 179 (1986), (App. Br. p. 115), but that shows neither the evidence at issue here is irrelevant nor unfairly prejudicial as the facts are vastly different.

In McConnell, the victim was shot once just outside McConnell's apartment. The victim was shot once with a .357 caliber bullet. McConnell gave law enforcement the .357 Magnum that fired the one shot inflicted. However, approximately six weeks later, officers located other bullets in the apartment of different calibers, a .22, and damage to the window at the front of the

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<sup>93</sup> The Court of Appeals may have considered this possibility in State v. Elders, 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010), when evaluating potential error of certain knives not linked to the knife used in armed robbery, ABHAN, and kidnapping at trial admitted into evidence. The knives were later taken from defendant at arrest. The Court of Appeals noted "none of the witnesses specifically testified that the knives were similar to the knife used to commit the crimes," and being found days later at arrest, the knives worked only to suggest bad character. Id. at 486, 688 S.E.2d at 864. At the very least, here, there is a reduction in any type of prejudice in McConnell and Elders and the presence of guns could not, in this context, merely suggest bad character and likely criminal propensity simply because the guns were recovered from Appellant or in his home.

apartment. This Court reversed finding those additional “items should not have been admitted because they were not properly connected with the incident, irrelevant, incompetent, and raised spurious inferences of prior bad acts.” Id., 290 S.C. at 280, 350 S.E.2d at 180. In contrast here, the murders were committed with two types of weapons (again on a hunting estate) and only weapons consistent with that type were seized and tested. Further, there is no inference that the weapons could support prior bad acts. The guns were testified to as being part of the hunting and/or country culture. Moreover, the guns were seized precisely because they were potentially consistent.

Appellant also cites to Holman v. State, 381 S.C. 491, 674 S.E.2d 171 (2009). (App. Br. p. 115). That is not support of his position in context of this case either. The defendant in Holman was charged in a shooting incident, and when his home was searched, officers found a handgun that ultimately was found not be connected to the shooting incident in question. 381 S.C. at 492, 674 S.E.2d at 172. This Court, reviewing in collateral proceedings, reversed the conviction finding admission undermined confidence in the result. Id. at 493, 674 S.E.2d at 172. Again, these guns did not suggest guilt by an unconnected weapon admitted into the trial. It was proper and necessary to seize and test the weapons that could have fired the fatal shots. Further, once again, the danger of unfair prejudice—evidence of bad character and propensity for crime—would be an unreasonable jump in context of this case.

Even so, given the wide latitude afforded the trial judge, Appellant has failed to show an abuse of discretion, or certainly, failed to show an abuse of discretion with resulting prejudice. Gaster, 349 S.C. at 557, 564 S.E.2d at 93; State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (“Error is harmless when it ‘could not reasonably have affected the result of the trial.’”) (quoting State v. Key, 256 S.C. 90, 93-94, 180 S.E.2d 888, 890 (1971)); Key, 256 S.C. at 93,

180 S.E.2d at 890 (whether an error creates reversible prejudice is assessed not only in context of the record as a whole, but the nature of the evidence received in error). Appellant is not due relief.

### *C. The Blue Rain Jacket*

Appellant argues the raincoat recovered from Almeda was not “linked” to him and was, therefore, not relevant and not admissible. (App. Br. pp. 116-119). He objected on the same grounds at trial and made a motion to exclude “evidence of the blue rain jacket unless” the State identified a witness or witnesses “who connect[] the blue rain jacket” to Appellant. (R. p. 3375). The defense later expanded the argument on the jacket and the gunshot residue testing on the jacket to include a Rule 403, SCRE objection—more prejudicial than probative. (R. pp. 3420-3421; pp. 3462-3464; p. 3700 (renewing objection)). Appellant maintained that his mother’s caretaker, Shelley, only vaguely testified and did not tie the jacket (sometimes referenced as the rain coat) to him. (R. p. 3421).

In his brief to this Court, Appellant maintains that Shelley’s testimony was not just insufficient to tie the jacket to Appellant, but definitive of a lack of connection. (App. Br. p. 117). Appellant reads the testimony too narrowly. Appellant either asks this Court to ignore evidence presented or usurp the jury’s role in determining what a witness’ testimony means. Neither is acceptable under the law.

As an initial point, Appellant does not contest that the blue rain jacket was located in an upstairs closet at his parents’ home; nor does he contest that the rain jacket was blue or that there was gunshot residue on that jacket. Appellant does not even argue that Shelley did not see him carrying a blue vinyl “something” upstairs. (App. Br. p. 117). Instead Appellant seizes on part of Shelley’s testimony describing the item as a tarp, but in doing so, he disregards other

testimony offered by Shelley that the item was “[a] blue tarp, a blue something in his hand, something blue,” “it was balled up like a blue tarp,” (R. p. 3342; p. 3368); that Appellant “walked upstairs with” the blue thing, (R. p. 3343); that the vinyl rain jacket “looks” like what she saw that morning, (R. p. 3345; p. 3355); that it was different than the tarp she was shown at trial as it had no silver on it, (R. pp. 3371-3372); and, that Appellant was carrying “something . . . bundled up” in that blue item.<sup>94</sup> The trial judge, however, viewed the evidence “as a whole,” (R. p. 3470), in determining admissibility.<sup>95</sup>

The trial judge overruled defense counsel’s objection, finding the evidence related to the raincoat constituted proper circumstantial evidence and was a factual matter to be weighed and considered by the jury. (R. p. 3423-3424; pp. 3472-3473). He further found that the evidence’s probative value outweighed any potential for undue prejudice. (R. p. 3424; pp. 3472-3473). The trial judge correctly followed the law.

“[T]he function of the jury [is] to determine the credibility of witnesses and the weight to be given their testimony[.]” State v. Brewington, 267 S.C. 97, 100, 226 S.E.2d 249, 250 (1976). The venerable, established, and constitutionally protected process of cross-examination is the

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<sup>94</sup> Appellant also spoke to her after his father’s funeral and turned the conversation to the night of the murders; he stated to Shelley that he had been in his parents’ home for 30 to 40 minutes that night, but Shelley testified that was not true; that he had not been in the home for 30 to 40 minutes that night. (R. pp. 3334-3336). The following day he offered to help financially with her upcoming wedding. (R. pp. 3337-3338). He also offered to help with her other employment. (R. p. 3338). Shelley, obviously not hostile to the family, was tearful in her testimony, and expressed how it was difficult for her to testify as she liked the family and had enjoyed working for them. (R. p. 3336). She even testified she had perceived Appellant to be “a good person.” (R. p. 3338). But he had not been at the house for 30 to 40 minutes at the time of the murders. (R. p. 3336). Appellant had been there “[a]bout fifteen or 20 minutes,” and was “fidgety.” (R. pp. 3329-3330).

<sup>95</sup> There is no question raised here on relevance, most likely because the relevance is obvious—if the jacket is connected to Appellant, as Shelley’s testimony does—the jacket with its gunshot residue is powerful evidence of guilt.

method for “throw[ing] light on the accuracy, truthfulness, and sincerity of a witness . . . in determining the credit to be accorded” the testimony at issue. Id.; see also State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) (“When there is reason to discredit a witness because of interest or otherwise the judge is not required to take the case from the jury as a matter of law but may and should submit the issues, including credibility of the witnesses, to the jury.”). The jury is tasked with making the “determin[ation as to] what each piece of evidence mean[s], how the pieces fit together, and whether the sum of the evidence [is] sufficient to convict[.]” State v. Tillman, 433 S.C. 58, 64-65, 856 S.E.2d 168, 172 (Ct. App. 2021).

At most, Appellant has pointed out cross-examination questions, and he, in fact, conducted such cross-examination. However, as ample precedent shows, the inconsistencies are for the jury to resolve. Appellant has failed to show an abuse of discretion in admitting the evidence.

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For all these reasons, the record and relevant precedent and rule well-demonstrate that the trial court did not abuse its discretion in admitting the testimony. Its ruling should be affirmed.

## IX.

**Appellant has abandoned his cumulative error issue as he failed to offer any argument on the issue in briefing. Even so, such an issue would be procedurally barred as Appellant did not preserve an argument that a specific combination of purported errors otherwise insignificant when viewed alone denied him a fair trial.**

### RELEVANT FACTS

Appellant submitted the following issue in his statement of issues on appeal: “Did the trial court’s cumulative evidentiary errors prejudice the Defendant’s right to a fair trial?” (App. Br. p. 2).

In the discussion section that followed, Appellant split his brief into two sections; however, he included neither a section nor subsection in the discussion that presented argument to support his assertion that a cumulative error analysis should be applied.

### DISCUSSION

An appellant is tasked with presenting the appellate court with distinct issues on appeal. Rule 208(b)(1)(B), SCACR (requiring issues to be set out in a separate statement). Further, an appellant must provide briefing on the issues presented; specifically, his brief must address each of his issues, and the arguments in support “shall be set forth in distinctive type, followed by discussion and citations of authority.” Rule 208(b)(1)(E), SCACR. “An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.” Fields v. Melrose Ltd. P’ship, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) (citing Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992)). Likewise, mere conclusory statements without citations are insufficient and constitute abandonment of the issue on appeal. State v. Jones, 344 S.C. 48, 58-59, 543 S.E.2d 541, 546 (2001) (finding issue abandoned on appeal if it is argued in a short, conclusory statement without supporting authority (citing Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999))); State v. Colf,

332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998) (“An issue that is not argued in the brief is deemed abandoned and precludes consideration on appeal.” (citing First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994))), aff’d as modified and remanded, 337 S.C. 622, 525 S.E.2d 246 (2000).

Appellant’s cumulative error issue is set out in his statement of issues on appeal, but Appellant presents no discussion of the issue in his brief other than an introduction to his argument on evidentiary rulings (App. Br. pp. 71-72) and a glancing conclusion that “the improperly admitted evidence deprived” Appellant “of a fair trial.” (App. Br. p. 120). At most, Appellant appears to argue that *the reversible errors* show a denial of due process as those errors undercut the defense. (App. Br. p. 73). However, that is arguing *each* error was reversible, which renders any cumulative error analysis unnecessary. That does not support application of the cumulative error doctrine.

Appellant’s reliance on Chambers v. Mississippi, 410 U.S. 284 (1973), is unhelpful to his general point as its reading demonstrates two distinctions from Appellant’s case. First, Chambers is based on the multiple denials of a defendant’s attempt to present a defense. Id. at 302-303. Appellant does not claim a limitation on the ability to present evidence in his defense. Second, Appellant summarily and broadly asserts that the trial court’s rulings admitting evidence in the State’s case in turn made his defense *less believable*. (App. Br. p. 73). That is true, though not through any error, but by the persuasive weight of the properly admitted evidence in the State’s case. See Whitfield, 444 S.C. at 651, 911 S.E.2d at 319 (recognizing all evidence is meant to be prejudicial and only unfair prejudice warrants scrutiny). However, unlike Chambers, the rulings at issue did not limit defense case presentation, only, according to Appellant, its

believability. Thus, Chambers does not support Appellant's general argument for relief due to multiple errors allowing presentation of certain evidence in the State's case.

Appellant's further citation to State v. Plumer, 433 S.C. 300, 313, 857 S.E.2d 796, 802 (Ct. App. 2021), aff'd as modified, 439 S.C. 346, 887 S.E.2d 134 (2023), is simply off base. Appellant contends Plumer held "evidentiary errors that result in prejudice to the defendant [are] reversible errors[.]" (App. Br. p. 73). The actual reference to prejudice in Plumer is this: "For *an error* to warrant reversal, however, *the error* must result in prejudice to the appellant." Id. at 313, 857 S.E.2d at 802 (quoting State v. Santiago, 370 S.C. 153, 162, 634 S.E.2d 23, 28 (Ct. App. 2006)) (emphasis added). There was no reference to cumulative error. Thus, Appellant has presented no argument and proper citation on actual cumulative error doctrine. The issue should be deemed abandoned. Jones, 344 S.C. at 58-59, 543 S.E.2d at 546.

Further, if sufficiently raised in the broad references included in the brief, the issue itself must be deemed procedurally barred as there is no indication Appellant raised the issue below to show a denial of his right to a fair trial. See State v. Durant, 430 S.C. 98, 111 n. 3, 844 S.E.2d 49, 55 n. 3 (2020) (finding cumulative error argument not preserved for review on appeal where the defendant "never argued this ground to the trial court"); State v. Eubanks, 437 S.C. 458, 489, 878 S.E.2d 335, 352 (Ct. App. 2022) ("Eubanks did not raise the cumulative error doctrine before the circuit court or in his motion for a new trial. Therefore, this argument is not preserved for our review.").

Further still, Appellant is unable to show any error in the trial court's evidentiary rulings as contested in his appeal. "[B]ecause the trial court did not commit any reversible errors[.]" this Court must "reject [the] contention that a new trial is warranted." Durant, 430 S.C. at 111 n. 3, 844 S.E.2d at 55 n. 3 (citing State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999))

(“Respondent must demonstrate more than error in order to qualify for reversal [pursuant to the cumulative error doctrine]. Instead, the errors must adversely affect his right to a fair trial.”).<sup>96</sup>

Johnson is instructive here.

In Johnson, this Court found that “the facts of th[e] case d[id] not support a finding cumulative errors warranted reversal” and looked in detail at each of the evidentiary issues: one in which the court found “prejudicial error,” one that “was not prejudicial,” and another that “was not error.” Given a review of the individual issues, this Court decided that Johnson had failed to show a combination of errors that “adversely affect his right to a fair trial.” Johnson, 334 S.C. at 93, 512 S.E.2d at 803 (citing Tennant v. Marion Health Care Found., Inc., 459 S.E.2d 374 (W. Va. 1995)). In essence, the appealing party “ ‘must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground.’ ” State v. Gleaton, 444 S.C. 394, 429, 906 S.E.2d 630, 648 (Ct. App. 2024) (quoting State v. Beekman, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013), aff’d, 415 S.C. 632, 785 S.E.2d 202 (2016)). Even multiple errors do not automatically necessitate a finding of deprivation of a fair trial. Gleaton, 444 S.C. at 430, 906 S.E.2d at 649.

Notable, though, is the Johnson court’s parenthetical from the cited West Virginia case: “[C]umulative error doctrine provides relief to a party when a combination of errors that are *insignificant by themselves* have the effect of preventing a party from receiving a fair trial and it requires the cumulative effect of the errors to affect the outcome of the trial[.]” Johnson, 334 S.C. at 93, 512 S.E.2d at 803 (citing Tennant, 459 S.E.2d at 374) (emphasis added); see Gleaton,

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<sup>96</sup> This Court has referenced the cumulative error doctrine in direct appeal cases; however, this Court’s precedent shows that whether the doctrine applies in context of ineffective assistance is still unsettled. Green v. State, 351 S.C. 184, 197, 569 S.E.2d 318, 324 (2002).

at 429, 906 S.E.2d at 648 (same). At most, Appellant here suggests that the purported evidentiary errors at issue here were all reversible error. (App. Br. p. 73). That presents no argument on how otherwise insignificant errors have combined to deny him a fair trial. Procedural bars apart, Appellant has failed to raise an argument that could support relief under the cumulative error doctrine.

Thus, whether abandoned, procedurally barred, or evaluated on the general assertions that multiple reversible errors exist, Appellant's issue fails. Further, if this Court should decline to find the lack of proper argument abandoned the issue, and should this Court additionally excuse the procedural bar arising from the failure to raise the issue below, and also excuse the unsupportive argument for cumulative error, Appellant can show no abuse of discretion in the contested evidentiary rulings; thus, there is no error to accumulate for a finding of relief. Durant, 430 S.C. at 111 n. 3, 844 S.E.2d at 55 n. 3; Johnson, 334 S.C. at 93, 512 S.E.2d at 803; see State v. Kornahrens, 290 S.C. 281, 290, 350 S.E.2d 180, 186 (1986) (recognizing an argument based on the cumulative error doctrine necessarily must fail if the defendant cannot meet his burden of establishing any errors actually occurred). Appellant is due no relief.

**CONCLUSION**

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

Respectfully submitted,

ALAN WILSON  
Attorney General


DONALD J. ZELENKA  
Deputy Attorney General

S. CREIGHTON WATERS  
Senior Assistant Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

MARK R. FARTHING  
Senior Assistant Deputy Attorney General

JOSHUA A. EDWARDS  
Assistant Attorney General

BY:   
Donald J. Zelenka  
S.C. Bar Number 5758

BY:   
S. Creighton Waters  
S.C. Bar Number 12155

ATTORNEYS FOR RESPONDENT

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