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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

POLO K. SALAZAR,

APPELLANT

APPELLATE CASE NO. 2022-001066

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court reversibly erred by failing to sever Appellant's trial from his non-testifying Codefendant where Appellant was prevented from cross-examining him regarding statements he made to police, and where Appellant was incriminated by these statements through obvious implication when coupled with evidence adduced at trial?

II. Whether the trial court reversibly erred by violating Appellant's Sixth and Fourteenth Amendment rights pursuant to Bruton where Appellant was prevented from cross-examining Codefendant regarding his video statements to police admitted at trial, and where Appellant was incriminated by these statements through obvious implication when coupled with evidence adduced at trial?

III. Whether the trial court reversibly erred in admitting (a) Appellant's clothing into evidence, as well as (b) subsequent expert testimony regarding GSR on Appellant's clothing, where the State neither proffered testimony from nor identified the person who collected the clothing of Appellant, where no testimony was given for the manner of how it was collected or handled, and where the trace evidence expert indicated transfer of GSR is possible if clothing contacts other items with GSR?

STATEMENT OF THE CASE

Appellant Polo Keoki Salazar was arrested in the early morning hours of January 28, 2019, along with three other codefendants in his case. On September 26, 2019, he was indicted by the Dorchester Grand Jury for murder, attempted murder, first degree burglary, possession of a stolen vehicle ($2000 to $10,000), possession of a firearm during the commission of a violent crime, and ill treatment of animals. Tr. * (Indictments).

Appellant's case, along with one of his codefendants, proceeded to a pretrial motions hearing on May 7, 2021, and to trial before the Honorable Diane S. Goodstein and a jury from May 11th through 19th, 2021. Appellant was represented by Ashley B. Cornwell, while the State was represented by David L. Osborne and Chelsea A. Glover. Tr. I 1; Tr. II 1—Tr. II 2.

Appellant was found guilty on all counts. Tr. II 1107, ln. 18—Tr. II 1108, ln. 23. The trial court imposed concurrent sentences of 40 years for murder, 40 years for first degree burglary, 30 years for attempted murder, five (5) years for ill treatment of animals, and five (5) years for possession of a stolen vehicle ($2000 to $10,000); the court further imposed a consecutive sentence of five (5) years for possession of a firearm during the commission of a violent crime. Tr. II 1144, ln. 16—Tr. II 1145, ln. 12; Tr. * (Sentence sheets).

Appellant's hearing on a motion for a new trial and to reconsider his sentence was held on June 24, 2022. Tr. III 1. The trial court denied the motion by written order signed July 21, 2022. Tr. * (Order).

STATEMENT OF THE FACTS

Close to midnight on January 27th to 28th, 2019, the back kitchen door was kicked-in at the home of drug dealer Marcus Porter (Porter) and his roommate David Swibaker (Swibaker), in the Robynwyn neighborhood of Summerville, South Carolina. Joseph Weaver (Weaver), a friend, was also present and about to leave at the time. Tr. II 248, ln. 2—Tr. II ln. 19; Tr. II 256, ll. 4-23; Tr. II 261, ln. 13—Tr. II 262, ln. 11; Tr. II 443, ll. 18-23. Four masked assailants armed with handguns entered—two into the living room, and two in the kitchen area—and shouted for everyone to get on the ground. When Porter's dog attacked, it was shot twice and went down the hall into the master bedroom where it died soon after. Tr. II 262, ln. 12—Tr. II 264, ln. 16; Tr. II 270, ll. 6-8. As Weaver moved closer to the assailants, he was shot once. Tr. II. 267 ln. 1—Tr. II 268, ln. 16. Porter was taken to his master bedroom by two of the home invaders where they demanded Porter give them his marijuana. Rather than giving them what they demanded, Porter handed them a mason jar containing only "crumbs" and claimed it was all he had. Tr. II 270, ll. 1-19; Tr. II 272, ll. 6-8.

Meanwhile, Swibaker had run to the bathroom shower when the door was kicked in and people entered. He had heard gunshots, and yelling, and saw Porter taken to the master bedroom by two men. Swibaker then ran across the hall to his own bedroom and was hit in the back of the head by one of the two remaining men. While he was on the ground, the two men rummaged through his bedroom, threw a mattress on Swibaker, and left the room. Tr. 587, ln. 17—Tr. II 588, ln. 12; Tr. II 591, ll. 1-20; Tr. 592, ll. 9-18; Tr. II 593, ll. 21-25.

While Swibaker was still in his bedroom, Porter was taken back to the living room, and his two captors threatened to kill people if they did not get the drugs. Rather than giving them the drugs he had, Porter responded, "Do what you gotta do." Tr. II 272, ll. 11-24; Tr. II 273, ln. 12-25; Tr. II 594, ll. 17-23. Weaver was shot once again, the men present began ransacking the

apartment, and Porter moved toward the front door. Tr. II 274, ll. 1-18. After tripping over Weaver in the hall, the gunman and another assailant again shot Weaver multiple times.[1] Tr. II 276, ll. 1-19; Tr. II 422, ln. 19—423, ln. 7. As the home invaders left out the back, Porter ran out of the front door and was also shot in the chest. Tr. II 276, ln. 20—Tr. II 277, ln. 12.

Porter ran to his neighbor's home, banged on the door to wake them up, and they called 911. First responders arrived within minutes. Tr. II 214, ln. 12—Tr. II 215, ln. 23; Tr. II 277, ll. 17-19; Tr. II 610, ll. 18-25. As more officers were on the way to the incident, a black Honda CR-V with four occupants was seen leaving the Robynwyn subdivision. Tr. II 429, ln. 14—Tr. II 432, ln. 17. Corporal Jacob Cramer (Cpl. Cramer) and his trainee heard about the Honda over the radio, saw it as they headed toward Robynwyn, and with their blue lights already on they turned to follow it. Tr. II 443, ll. 20-23; Tr. II 445, ll. 2-9. Once Cpl. Cramer caught-up to the Honda on Highway 78, the vehicle slowed as it came toward train tracks; however, it crossed the tracks and sped-off. Tr. II 446, ln. 16—Tr. 447, ln. 12. The high-speed chase lasted for approximately 30 minutes and ended in Colleton County where police deployed spike strips to stop the Honda. Tr. II 447, ll. 13-16; Tr. 449, ll. 21-23; Tr. II 452, ll. 10-20. Occupants of the black Honda CR-V were Appellant in the driver's seat, Muanah Fortune (Codefendant) in the front passenger seat, Devonte Major (Major) sitting in the driver's side rear seat, and Elijah Green (Green) in the passenger side rear seat. Tr. II 452, ln. 21—Tr. II 453, ln. 4.

During the chase, multiple items were seen thrown from the vehicle and later collected, including a wallet with Weaver's license, an orange ski mask, and blue coveralls with a glove and pocketknife in its pockets. Tr. Tr. II 450, ln, 4—Tr. II 452, ln. 9; Tr. 457, ll. 3-4; Tr. II 460,

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[1] Autopsy would later reveal Weaver was a total of shot eight (8) times, more than one of which pierced vital organs. As a result, he died from internal hemorrhaging caused by gunshots to the trunk. Tr. II 987, ln. 13—Tr. 993, ln. 14.

ln. 24—Tr. II 461, ln. 6; Tr. II 719, ll. 18-22; Tr. II 795, ll. 13-25. Cpl. Cramer also checked the roadside in the area where the Honda passed by prior to him catching-up to it. There, he found four handguns: two semiautomatic 9mm pistols; one .380 semiautomatic pistol; and one .38 special revolver. Tr. II 414, ln. 23—Tr. II 415, ln. 18; Tr. II 464, ln. 20—Tr. II 465, ln. 24. Further, when the Honda was later searched several items were also found, including: a glove; a knit hat; a face shield; three watches total; and a brown Gucci bag containing one of the watches, .380 ammunition, and Appellant's identification. Tr. II 734, ln. 2—Tr. II 739, ln. 7.

The home of Porter and Swibaker was also processed for evidence. There, police recovered *inter alia* a jar of marijuana, counterfeit money, seven cell phones, four digital scales, at least two bags of marijuana, sandwich baggies, syringes, 11 pills, and a glass pipe. Further, investigators found fingerprints on the jar and a shoe print on the back door. Tr. 755, ln. 14—Tr.757, ln. 22; Tr. 770, ll. 11-17. Clothing was also collected from the four suspects sometime while at the jail—Green, Major, Appellant, and Codefendant—including their shoes. Tr. II 739, ln. 8—Tr. II 745, ln. 15. None of the shoes collected from any of the four suspects matched the shoeprint on the back door. Moreover, no fingerprints or DNA of Appellant was found inside the home of Porter and Swibaker. Tr. II 657, ll. 15-24; Tr. II 759, ln. 15—Tr. 760, ln. 2.

The State elected to try Appellant together with Codefendant, and the case proceeded to pretrial motions on May 7, 2021, before the Honorable Diane S. Goodstein. Tr. I 1. Appellant moved for severance of the cases for several reasons. First, he wanted to tell the jury that Codefendant refused the second DNA buccal swab that the State sought from him pursuant to a search warrant. Tr. I 26, ll. 17-23; Tr. I 32, ln 12—Tr. I 35, ln. 25; Tr. I 161, ll. 1-4. Second, Appellant argued the video clips from Codefendant's two interrogations that resulted in a confession contained pronouns in both questions and answers which could implicate Appellant

since he was the only person on trial with Codefendant in court. Tr. I 160, ll. 3-25. As a result, Appellant asserted that Bruton was at issue because he had a right to cross examine Codefendant on those matters, yet Codefendant also had a right not to testify. Tr. I 161, ll. 1-24. Accordingly, Appellant argued severance was necessary. Tr. I 162, ln. 21—Tr. I 164, ln. 18. The trial court initially held such concerns during trial would be addressed as follows:

> Once the—there will be a break between direct and cross-examination, and I will simply require you to tell me what it is that you want to put in additionally.
>
> And with regards to that then if there's a Bruton concern, you need to let me know. . . . I think that's a manageable way to allow for you to get in what you need and for you to help me to be sure that your clients' rights are protected.

Tr. I 167, ll. 12-22.

Appellant's case proceeded to jury trial with Codefendant on May 11, 2019, wherein Appellant acknowledged the motion to sever trials was denied. Tr. II 1; Tr. II 21, ln. 20—Tr. II 22, ln. 2. At trial, Porter identified Green and Major as two of the four assailants from the home invasion; however, he could not identify Appellant or Codefendant as the remaining two intruders. Tr. II 296, ln. 2—Tr. II 297, ln. 19; Tr. II 319, ln. 3—Tr. II 320, ln. 15; Tr. II 386, ll. 2-19; Tr. II 657, ll. 15-17; Tr. II 974, ll. 1-4. Detective Phillip Moy (Det. Moy) also testified. Based upon documents from the Department of Motor Vehicles (DMV), he stated that Green, Major, Codefendant, and Appellant were all from the Seabrook/Beaufort area of South Carolina.[2] Tr. II 647, ln. 17—Tr. II 648, ln. 18.

The State sought admission of video clips from Codefendant's two interrogation sessions during trial as well, which the trial court allowed into evidence through Detective Jonathan Davis

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[2] Jaquavious Washington (Washington) was likewise identified as a resident of Seabrook, South Carolina. Tr. II 648, ll. 17-18.

(Det. Davis).[3] Tr. II 885, ln. 5—Tr. II 888, ln. 21. Clip 3a from Codefendant's first interrogation included an audible question from Det. Davis, asking "Were you there when your buddies shot

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[3] Although Appellant did not object at the introduction of State's Exhibit #191 as a whole when initially offered, objection was raised when a particular clip was played, and a bench conference was held. Appellant then stated, "for purposes of the record, we have a continuing objection to all of these under Bruton. Just to preserve the record, your Honor." The trial court responded, "That, I have no problem with. But if it's different, let me know." Tr. II 888, ll. 4-21; Tr. II 898, ll. 3-12. When time permitted, the matter was further placed on the record as follows:

> APPELLANT: Your Honor, just for purposes of the record, again, as far as the clips go, I wanted to put on record my objection to Bruton. Obviously in one of the clips it says, Were you there when your buddy shot somebody? Later on we talk about whenever he said, They are going to kill me if I talk. Obviously he's saying that while my client is not only sitting in the room with him but while they've got him sitting in the booking room with my client and other people. It gives, I think, an unfair prejudicial effect on my client because my client is not allowed to cross-examine Mr. Fortune regarding who he is talking about when he says, They'll kill me, things of that nature. I think that it does bring in the Bruton issues that we discussed pretrial. And I just want to put on record that that is our continuing Bruton objections, based on the pretrial, based on—and I did wait until the clip actually came up that actually said, Your buddy—
>
> COURT: Right.
>
> APPELLANT: Any of those clips that had those pronouns in there, is where our objection on Bruton would come in. And that's a continuing objection.
>
> COURT: Okay. And you had said that the jury has been told that there is more than one other person, four people, it's repeatedly been said, and there's no way that, Your buddy, implicates anyone?
>
> STATE: That's correct, Your Honor. In fact, I've got a feeling we're going to hear the name [Washington] quite a bit in closings by the defense.
>
> COURT: Okay. Great.

[…] this guy?" Tr. * (St. Ex. #191, First Interview, Clip 3a at 3:34:36 am). This was again referenced by Codefendant during his cross examination of Det. Davis. Tr. II 948, ll. 8-12. Det. Davis also testified summarizing Codefendant's story after the first interrogation as follows:

> Q. And what was his story again?
>
> A. That he came back from the Beaufort-Seabrook area by himself—or, excuse me, with his girlfriend to go to see his friend, [Washington]. At that point, he visited [Washington]. He was told that he could not spend the night, so he left, walked, ended up at this Sunoco and miraculously found four other people from Beaufort and got a ride home.
>
> Q. Or three other people?
>
> A. Correct.

Tr. II 894, ll. 5-13.

Approximately three hours after the first interrogation, Det. Davis indicated he saw Codefendant in the booking area and described an exchange with Codefendant as follows:

> He was served with his paperwork, his booking paperwork, which was his charges. He was in the booking area. I looked at him, he looked at me, and we locked eyes. And I approached him and I said, Are you sure you don't want to talk? He put his head down and he said, If I talk, they're going to kill me. At that point, I invited him back for a second interview.

Tr. II 899, ll. 1-7.

The State elicited similar testimony after the trial court heard objections on the matter. Codefendant likewise used the video clips extensively in cross-examination of Det. Davis, and Det. Davis again relayed what Codefendant said in the booking area. Tr. II 906, ln. 18—Tr. II 907, ln. 22; Tr. II 912, ln. 24—Tr. II 913, ln. 5; Tr. II. 947, ll. 17-23.

Tr. II 906, ll. 18—Tr. II 907, ll. 21.

The State also played clips from Codefendant's second interrogation, which included a statement from Det. Davis consoling Codefendant that, "They're going to jail. They're not going to hurt you from there." Tr. II 899, ln. 6—Tr. II 903, ll. 17; Tr. * (St. Ex. #191, Second Interview, Clip 1b at 7:19:53 am). When asked where he found the gun, Codefendant responded, "I found it in the car. They had it." Tr. * (St. Ex. #191, Second Interview, Clip 2b at 7:29:12—7:29:16 am). When questioned about what they were looking for, Codefendant told police, "Stuff they just told me to get." When further pressed about what "they" told him to get, Codefendant stated, "Anything I could find." Tr. * (St. Ex. #191, Second Interview, Clip 3b at 7:36:48—7:36:56 am). Moreover, apparently to address matters regarding Washington's possible involvement as the fourth perpetrator in the offense,[4] the State specifically inquired whether Codefendant told police of Washington's involvement in the incident:

> Q. At any point did [Codefendant] say that [Washington] was with him when he was in the Honda coming from Beaufort?
>
> A. He did not.
>
> Q. At any point did [Codefendant] say that [Washington] was with him when he went to [Porter's] home?
>
> A. He did not.
>
> Q. At any point did [Codefendant] say that [Washington] was with him when he broke into [Porter's] home?
>
> A. He did not.

Tr. II 916, ll. 17-25.

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4 Tr. II 391, ln. 15—Tr. II 393, ln. 8; Tr. II 605, ln. 20—Tr. II 606, ln. 20; Tr. II 636, ln. 2—Tr. II 637, ln. 21; Tr. II 641, ll. 8-15; Tr. II 642, ln. 6—Tr. II 646, ln. 6; Tr. II 964, ln. 14—Tr. II 975, ln. 5.

The State also moved Appellant's clothing into evidence, and Appellant objected on the basis of chain of custody. Tr. II 653, ln. 7—Tr. II 654, ln. 5. When the evidence custodian later testified, he revealed on cross-examination that he was not present when the clothes from any of the four suspects were collected at the jail, and he did not know the circumstances in which they were collected—whether individually, or in a pile, etc.—or how they were transported. I sum, he agreed that all he knew was "that it was brought to [him] in this packaging, did [he] doesn't know how, when, or where it was collected." Tr. II 749, ln. 1—Tr. II 750, ln. 16. After a break in trial, both Codefendant and Appellant again objected to admission of the clothes due to a break in the chain of custody and moved for a mistrial. Specifically, concerns were raised regarding who collected them, and how they were collected or treated at the very beginning of the chain, which was of particular import due to later testing for gunshot primer reside (GSR). Tr. II 810, ll. 2-23; Tr. II 813, ll. 4-9.

Later in trial, Appellant again objected during the testimony of Nicole Hardin (Hardin), a trace evidence expert from the State Law Enforcement Division (SLED). Tr. II 859, ll. 12-17; Tr. II 860, ll. 11-17. Hardin went on to testify that GSR particles were found on Appellant's garment, as well as those of Codefendant, Green, and Major, yet acknowledged that "no information [could] be provided as to the timeframe in which these particles were deposited." Tr. II 859, ln. 18—Tr. II 862, ln. 12. She further stated "that for these inanimate items of clothing, that gunshot primer residue got there either by the item being in the vicinity to the discharge of a firearm or coming into contact with something that had gunshot primer residue on it. I can't tell you which one of those." And on cross-examination, Hardin agreed it was important that the items of clothing she tested not come into contact with each other due to the potential transfer of GSR. Tr. II 864, ll. 3-10; Tr. II 865, ln. 2—Tr. II 866, ln. 12.

During closing arguments, the State indicated that "[c]orroboration is the key." Tr. II 110, ln. 20. It went on to discuss Codefendant's statements to police, and how "he just happened to get into the most unfortunate car he could possibly get into, get into a car with some fellows that were from Seabrook and who had just committed murder." Tr. II 1021, ll. 12-15. The State also played multiple portions of Codefendant's video statements as well. Tr. II 1022, ln. 3—Tr. II 1023, ln. 9. Further, the State relied upon the GSR test results from the clothing of Appellant, Codefendant, Major, and Green, calling it "[s]ome pretty important evidence" when arguing they were all inside the house during the incident. Tr. II 1025, ln. 24—Tr. II 1026, ln. 7.

After deliberations, the jury found Appellant guilty of the charged offenses. Tr. II 1108, ln. 10—Tr. II 1109, ln. 4. The trial court imposed an aggregate sentence of 45 years. Tr. II 1144, ln. 16—Tr. II 1145, ln. 12. This appeal follows.

ARGUMENT

I. The trial court reversibly erred by failing to sever Appellant's trial from his non-testifying Codefendant where Appellant was prevented from cross-examining him regarding statements Codefendant made to police, and where Appellant was incriminated by these statements through obvious implication when coupled with evidence adduced at trial.

"Denial of a severance motion is an abuse of discretion if unsupported by the evidence or controlled by an error of law." State v. Barnes, 421 S.C. 47, 51, 804 S.E.2d 301, 304 (Ct. App. 2017) (citing State v. Spears, 393 S.C. 466, 475, 713 S.E.2d 324, 328 (Ct. App. 2011)). Appellate courts will reverse the denial of severance "when it is reasonably probable the defendant would have received a more favorable outcome had he been tried separately." Id. (citing Hughes v. State, 346 S.C. 554, 559, 552 S.E.2d 315, 317 (2001)).

Criminal defendants who are jointly tried are not entitled to separate trials as a matter of right, and a defendant who alleges he was improperly tried jointly must show prejudice before an appellate court will reverse his conviction. See State v. Dennis, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999). Severance should be granted "when there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence " Zafiro v. United States, 506 U.S. 534, 539, 113 S. Ct. 933, 938, 122 L.Ed.2d 317 (1993); see also Dennis, 337 S.C. at 282, 523 S.E.2d at 176. "The trial judge must act cautiously in allowing a joint trial." State v. Walker, 366 S.C. 643, 657, 623 S.E.2d 122, 129 (Ct. App. 2005) (citing Dennis, 337 S.C. at 281, 523 S.E.2d at 176). In so doing, courts "must carefully consider problems that may arise from a joint trial, such as redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him." Id.

In United States v. Bruton, 391 U.S. 123, 135-37, 88 S.Ct. 1620, 1627-28, 20 L.Ed.2d 476 (1968), the United States Supreme Court held that an example of a specific trial right that may be prejudiced due to a joint trial is the constitutional right to cross-examination when a codefendant's confession expressly implicates another codefendant, but the confessor fails to testify during the trial.

In the present case, the trial court erred in refusing to grant Appellant's motion for severance where being tried jointly compromised his right to confront and cross-examine Codefendant when statements from Codefendant incriminated Appellant by obvious implication, especially seen in the light of other evidence adduced at trial. The State used clips from Codefendant's interrogation to inculpate not only Codefendant, but also Appellant, who was the only other defendant tried with Codefendant.

For example, Clip 3a from Codefendant's first interrogation included an audible question from Det. Davis, asking "Were you there when your buddies shot... this guy?" Tr. * (St. Ex. #191, First Interview, Clip 3a at 3:34:36 am). This was again referenced by Codefendant during his cross-examination of Det. Davis. Tr. II 948, ll. 8-12. Det. Davis also testified summarizing Codefendant's story after the first interrogation as follows:

> Q. And what was his story again?
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> A. That he came back *from the Beaufort-Seabrook area* by himself—or, excuse me, with his girlfriend to go to see his friend, [Washington]. At that point, he visited [Washington]. He was told that he could not spend the night, so he left, walked, ended up at this Sunoco and *miraculously found four other people from Beaufort* and got a ride home.
>
> Q. Or *three* other people?
>
> A. Correct.

Tr. II 894, ll. 5-13. Davis further indicated he saw Codefendant in the booking area and described an exchange with him as follows:

> He was served with his paperwork, his booking paperwork, which was his charges. He was in the booking area. I looked at him, he looked at me, and we locked eyes. And I approached him and I said, Are you sure you don't want to talk? He put his head down and he said, *If I talk, they're going to kill me.*

Tr. II 899, ll. 1-7. The State again elicited similar testimony after the trial court heard objections on the matter.

Moreover, early in the second interrogation video, Det. Davis is heard telling Codefendant, "They're going to jail. Thy can't hurt you from there." Tr. II 899, ln. 6—Tr. II 903, ll. 17; Tr. * (St. Ex. #191, Second Interview, Clip 1b at 7:19:53 am). When asked where he found the gun, Codefendant responded, "I found it in the car. *They* had it." Tr. * (St. Ex. #191, Second Interview, Clip 2b at 7:29:12—7:29:16 am) (emphasis added). When questioned about what they were looking for, Codefendant told police, "Stuff *they* just told me to get." When further pressed about what "they" told him to get, Codefendant stated, "Anything I could find." Tr. * (St. Ex. #191, Second Interview, Clip 3b at 7:36:48—7:36:56 am) (emphasis added). Codefendant also used the video clips extensively in cross-examination of Det. Davis, and Det. Davis again relayed what Codefendant said in the booking area. Tr. II 906, ln. 18—Tr. II 907, ln. 22; Tr. II 912, ln. 24—Tr. II 913, ln. 5.

These statements during interrogation, coupled with DMV evidence the State put before the jury that Green, Major, Codefendant, Washington, and Appellant were all from the Seabrook/Beaufort area, and were all the arrested suspects in the present case severely limited the pool of possible individuals to whom Codefendant referred. Yet Green and Major had already been identified at trial by Porter as two of the four participants in the home invasion, and

Codefendant's statements implicated himself as the third. Therefore, the only remaining question was the identity of the fourth assailant as being part of the "they" implied by Codefendant's statements.

However, in an attempt to nullify the theory of Washington as the fourth perpetrator in the offense, the State specifically addressed whether Codefendant told police of Washington's involvement in the incident:

> Q. At any point did [Codefendant] say that [Washington] was with him when he was in the Honda coming from Beaufort?
>
> A. He did not.
>
> Q. At any point did [Codefendant] say that [Washington] was with him when he went to [Porter's] home?
>
> A. He did not.
>
> Q. At any point did [Codefendant] say that [Washington] was with him when he broke into [Porter's] home?
>
> A. He did not.

Tr. II 916, ll. 17-25. In other words, the State also used Codefendant's statement to eliminate Washington from the pool of possible suspects, thereby leaving Appellant as the only remaining "they" from Seabrook/Beaufort who broke into Porter's home. Tr. * (St. Ex. #191, First Interview, Clip 3a at 3:34:36 am). Coincidentally, Appellant was also the only "buddy" sitting with Codefendant at trial.

Simply stated, Appellant was incriminated by these statements by obvious implication. Under such circumstances, Appellant's trial rights were violated, as he needed to be able to confront Codefendant. See State v. Jackson, 410 S.C. 584, 591-92, 765 S.E.2d 841, 845 (Ct. App. 2014) ("The Confrontation Clause of the Sixth Amendment to the United States

Constitution guarantees a criminal defendant the right to confront and cross-examine the witnesses against him, and the Fourteenth Amendment applies this right to the States. U.S. Const. amends. VI and XIV."). Accordingly, the trial court erred by failing to grant Appellant's motion to sever. See State v. Singleton, 303 S.C. 313, 315, 400 S.E.2d 487, 488 (1991) ("[W]e admonish trial judges to be cautious in allowing joint trials. While joint trials are permissible, trial judges must carefully consider problems which may arise from a joint trial, such as redacted statements, and must assure protection of a defendant's constitutional right to confront witnesses against him.") (quoting State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987) (emphasis added)).

Furthermore, Appellant was prejudiced by the trial court's error. The evidence in the case against Appellant as a principal in the first degree was circumstantial at best. As police admitted, no fingerprints, DNA, or witness identification placed Appellant inside incident location at the time of the offense. Tr. II 296, ln. 2—Tr. II 297, ln. 19; Tr. II 319, ln. 3—Tr. II 320, ln. 15; Tr. II 386, ll. 2-19; Tr. II 657, ll. 15-24; Tr. II 759, ln. 15—Tr. 760, ln. 2; Tr. II 974, ll. 1-4. As for the remaining evidence, it was entirely circumstantial in nature. Although circumstantial evidence can still be considered by the jury, Appellant's defenses of third-party guilt for what occurred inside the house, and mere presence for what happened afterward, were severely weakened by being forced to sit next to Codefendant while Codefendant's statements and interrogations played before the jury without being subjected to the crucible of Appellant's cross-examination. California v. Green, 399 U.S. 149, 158, 90 S. Ct. 1930, 1935, 26 L.Ed.2d 489 (1970) (describing cross-examination of witnesses as the "greatest legal engine ever invented for the discovery of truth.") (internal quotations omitted). Cf. State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011); State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011). Accordingly, Appellant was prejudiced by the trial court's refusal to sever his trial.

II. The trial court reversibly erred by violating Appellant's Sixth and Fourteenth Amendment rights pursuant to Bruton where Appellant was prevented from cross-examining Codefendant regarding his video statements to police admitted at trial, and where Appellant was incriminated by these statements through obvious implication when coupled with evidence adduced at trial.

"The Confrontation Clause of the Sixth Amendment, which was extended to the states by the Fourteenth Amendment, guarantees the right of a criminal defendant to confront witnesses against him, and this includes the right to cross-examine witnesses." State v. Holder, 382 S.C. 278, 283, 676 S.E.2d 690, 693 (2009); see U.S. Const. amends. VI and XIV. "In a joint trial, the admission of a nontestifying codefendant's confession that incriminates another defendant violates the other defendant's right of confrontation." State v. Jackson, 410 S.C. 584, 592, 765 S.E.2d 841, 845 (Ct. App. 2014) (citing United States v. Bruton, 391 U.S. 123, 126, 88 S.Ct. 1620, 1622, 20 L.Ed.2d 476 (1968)).

In Bruton, the Court held that a non-testifying codefendant's confession that inculpates another defendant is inadmissible at their joint trial, even if the jury is instructed that the confession can only be used as evidence against the confessor, because of the substantial risk that the jury would look to the incriminating extrajudicial statements in determining the other's guilt. Id. 391 U.S. 123, 126-137, 88 S.Ct. at 1622-28, 20 L.Ed.2d 476. Additionally, the South Carolina Court of Appeals concisely explained that "[s]uch a confession may be admitted into evidence, with an appropriate limiting instruction, only if it is redacted so that it does not incriminate the other defendant on its face, either explicitly or by obvious and immediate implication." Jackson, 410 S.C. at 592, 765 S.E.2d at 845 (citing Gray v. Maryland, 523 U.S. 185, 192, 118 S. Ct. 1151, 1155, 140 L.Ed.2d 294, 301 (1998)); see also State v. Henson, 407 S.C. 154, 164, 754 S.E.2d 508, 513 (2014).

In the present case, the trial court violated Appellant's Sixth and Fourteenth Amendment rights to confront his accusers as interpreted by Bruton and its progeny. Specifically, the trial court erred in admitting into evidence video statements made by Codefendant without adequately redacting the portions implicating Appellant.

As discussed above, the State used clips from Codefendant's interrogation to inculpate not only Codefendant, but also Appellant, who was the only other defendant tried with Codefendant. For example, Clip 3a from Codefendant's first interrogation included an audible question from Det. Davis, asking "Were you there when your buddies shot… this guy?" Tr. * (St. Ex. #191, First Interview, Clip 3a at 3:34:36 am). This was again referenced by Codefendant during his cross examination of Det. Davis. Tr. II 948, ll. 8-12. Det. Davis also testified summarizing Codefendant's story after the first interrogation as follows:

> Q. And what was his story again?
>
> A. That he came back *from the Beaufort-Seabrook area* by himself—or, excuse me, with his girlfriend to go to see his friend, [Washington]. At that point, he visited [Washington]. He was told that he could not spend the night, so he left, walked, ended up at this Sunoco and *miraculously found four other people from Beaufort* and got a ride home.
>
> Q. Or *three* other people?
>
> A. Correct.

Tr. II 894, ll. 5-13 (emphasis added). Davis further indicated he saw Codefendant in the booking area and described an exchange with him as follows:

> He was served with his paperwork, his booking paperwork, which was his charges. He was in the booking area. I looked at him, he looked at me, and we locked eyes. And I approached him and I said, Are you sure you don't want to talk? He put his head down and he said, *If I talk, they're going to kill me.*

Tr. II 899, ll. 1-7 (emphasis added). The State elicited similar testimony after the trial court heard objections on the matter.

Moreover, early in the second interrogation video, Det. Davis is heard telling Codefendant, "*They're* going to jail. *They* can't hurt you from there." Tr. II 899, ln. 6—Tr. II 903, ll. 17; Tr. * (St. Ex. #191, Second Interview, Clip 1b at 7:19:53 am) (emphasis added). When asked where he found the gun, Codefendant responded, "I found it in the car. *They* had it." Tr. * (St. Ex. #191, Second Interview, Clip 2b at 7:29:12—7:29:16 am) (emphasis added). When questioned about what they were looking for, Codefendant told police, "Stuff *they* just told me to get." When further pressed about what "they" told him to get, Codefendant stated, "Anything I could find." Tr. * (St. Ex. #191, Second Interview, Clip 3b at 7:36:48—7:36:56 am) (emphasis added). Codefendant likewise used the video clips extensively in cross examination of Det. Davis, and Det. Davis again relayed what Codefendant said in the booking area. Tr. II 906, ln. 18—Tr. II 907, ln. 22; Tr. II 912, ln. 24—Tr. II 913, ln. 5.

These statements during interrogation, coupled with DMV evidence the State put before the jury that Green, Major, Codefendant, Washington, and Appellant were all from the Seabrook/Beaufort area, and were all the arrested suspects in the present case severely limited the pool of possible individuals to whom Codefendant referred. Yet Green and Major had already been identified at trial by Porter as two of the four participants in the home invasion, and Codefendant's statements implicated himself as the third. Therefore, the only remaining question was the identity of the fourth assailant as being part of the "they" implied by Codefendant's statements.

However, in an attempt to nullify the theory of Washington as the fourth perpetrator in the offense, the State specifically addressed whether Codefendant told police of Washington's involvement in the incident:

> Q. At any point did [Codefendant] say that [Washington] was with him when he was in the Honda coming from Beaufort?
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> A. He did not.

Tr. II 916, ll. 17-25. In other words, the State also used Codefendant's statement to eliminate Washington from the pool of possible suspects, thereby leaving Appellant as the only remaining "they" from Seabrook/Beaufort who broke into Porter's home. Coincidentally, Appellant was also the only "buddy" sitting with Codefendant at trial. Simply stated, Appellant was incriminated by these statements by obvious implication. Accordingly, the trial court violated Appellant's Sixth and Fourteenth Amendment rights pursuant to Bruton and its prodigy.

Appellant was also prejudiced by this error. As explained above, the State specifically argued to the jury that "[c]orroboration is the key." Tr. II 110, ln. 20. It went on to discuss Codefendant's statements to police, and how "he just happened to get into the most unfortunate car he could possibly get into, get into a car with some fellows that were from Seabrook and who had just committed murder." Tr. II 1021, ll. 12-15. The State also played multiple portions of Codefendant's video statements as well. Tr. II 1022, ln. 3—Tr. II 1023, ln.

9. In so doing, the State was able to take full advantage of the trial court's erroneous ruling in arguing its case to the jury. Moreover, no fingerprints, DNA, or witness identification placed Appellant inside incident location at the time of the offense. Tr. II 296, ln. 2—Tr. II 297, ln. 19; Tr. II 319, ln. 3—Tr. II 320, ln. 15; Tr. II 386, ll. 2-19; Tr. II 657, ll. 15-24; Tr. II 759, ln. 15—Tr. 760, ln. 2; Tr. II 974, ll. 1-4. Appellant's defenses of third-party guilt for the incident inside the home, and mere presence for what occurred afterward, were severely weakened by being forced to sit next to Codefendant while Codefendant's statements and interrogations played before the jury without being subjected to the crucible of Appellant's cross-examination. California v. Green, 399 U.S. 149, 158, 90 S. Ct. 1930, 1935, 26 L.Ed.2d 489 (1970) (describing cross-examination of witnesses as the "greatest legal engine ever invented for the discovery of truth.") (internal quotations omitted). Accordingly, Appellant was prejudiced.

III. The trial court reversibly erred in admitting (a) Appellant's clothing into evidence, as well as (b) subsequent expert testimony regarding GSR on Appellant's clothing, where the State neither proffered testimony from nor identified the person who collected the clothing of Appellant, where no testimony was given for the manner of how it was collected or handled, and where the trace evidence expert indicated transfer of GSR is possible if clothing contacts other items with GSR.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id.

"It is unnecessary ... that the police account for 'every hand-to-hand transfer' of the item; it is sufficient if the evidence demonstrates a reasonable assurance the condition of the item remains the same from the time it was obtained until its introduction at trial." Hatcher, 392 S.C. at 95, 708 S.E.2d at 754 (quoting State v. Price, 731 S.W.2d 287, 290 (Mo. Ct. App.1987)). "The trial judge's exercise of discretion must be reviewed in the light of the following factors: '... the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.'" Id. 392 S.C. at 95-96, 708 S.E.2d at 754-55 (quoting United States v. De Larosa, 450 F.2d 1057, 1068 (3d Cir.1971)). "If upon the consideration of such factors the trial judge is satisfied that in reasonable probability the article has not been changed in important respects, he may permit its introduction in evidence." Id. 392 S.C. at 96, 708 S.E.2d at 755 (quoting Gallego v. United States, 276 F.2d 914, 917 (9th Cir.1960)).

However, "this Court has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable."

State v. Pulley, 423 S.C. 371, 377, 815 S.E.2d 461, 464 (2018) (quoting State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011)). So long as the chain of custody *is complete*, it does not need to "negate all possibility of tampering." Id. (emphasis added) (quoting State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001)). Nonetheless, evidence is inadmissible under this rule "where there is a missing link in the chain of possession *because the identity of those who handled the [substance] was not established at least as far as practicable*." Id. (emphasis in original) (quoting Carter, 344 S.C. at 424, 544 S.E.2d at 837). Critically, "[w]here an analyzed substance [...] has passed through several hands, *the identity of individuals who acquired the evidence* and what was done with the evidence between the taking and the analysis *must not be left to conjecture*." State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007) (emphasis added) (citing Benton v. Pellum, 232 S.C. 26, 33-34, 100 S.E.2d 534, 537 (1957)); see also Pulley, 423 S.C. at 377, 815 S.E.2d at 464.

In the case at bar, the trial court erred by admitting Appellants jacket at trial, as well as testimony regarding the GSR on the jacket. Specifically, the State failed to show who collected Appellant's jacket—and concomitantly the GSR with it—or precisely how, where, and under what circumstances.

(a) The trial court erred by admitting Appellant's clothing at trial.

Appellant's clothing, including his jacket, was presumably collected at some point while Appellant was at the jail. Although it was identified by Cpl. Cramer and Det. Davis as being worn by Appellant prior to and at the jail, neither Cpl. Cramer, nor Det. Davis, nor the evidence custodian Officer Matthew Brooks (Ofc. Brooks) testified that they collected the clothing from Appellant or any of the other suspects in the case; rather, Cpl. Cramer and Det. Davis merely identified the items as being worn by the four suspects, and Ofc. Brooks simply took them after

they were already placed in an evidence locker. Tr. II 453, ln. 8—Tr. II 456, ln. 13; Tr. II 459, ll. 4-22; Tr. II 653, ln. 7—Tr. II 654, ln. 5; Tr. II 749, ln. 1—Tr. II 750, ln. 16; Tr. II 864, ll. 20-24; Tr. II 810, ll. 2-23; Tr. II 813, ll. 4-9. In fact, the individual who collected Appellant's clothes was never identified at trial, nor were the circumstances under which he collected the clothing. As such, the chain of custody was never truly established until the evidence custodian took the clothing, including Appellant's jacket, from the evidence locker into which the unidentified person placed them presumably after leaving the jail and going to the Summerville Police Department evidence locker.

Under these circumstances, it is not possible to determine whether the clothing, including Appellant's jacket, "demonstrates a reasonable assurance the condition of the item remains the same from the time it was obtained until its introduction at trial." Hatcher, 392 S.C. at 95, 708 S.E.2d at 754. Simply put, no one knows the actual condition of the jacket at the time it was obtained, or under what circumstances. For example, it is unknown whether Appellant's clothing was collected by itself, or with other clothes of Appellant, or even with other clothes of other suspects; it is also unknown whether it was placed on the ground in the booking area where countless other clothing items of countless other inmates were placed prior to being picked-up by the unknown officer for collection at an unknown time and taken to the evidence locker.

All of these concerns and more are critical to the "circumstances surrounding the preservation and custody" of Appellant's clothes and whatever was on it—especially his jacket—because it was the evidence, and what was allegedly found on it, was the evidence the State used to place him inside Porter's home at the incident. Given the vast number of unknown variables surrounding the circumstances of the very first rung of the chain of custody—collection of the evidence—there is a reasonable probability the article, and the items on it, had been

changed in important respects from the time the clothing was either purportedly at the scene of the incident, touched by officers' hands during arrest, riding in the back of a police car, loitered for hours in the booking area of a police station, taken off and placed somewhere during booking, and finally collected by the unnamed officer. Id. Because the State failed to prove either the identity of the collecting agent, or the circumstances under which the clothing—and whatever was on it—was collected, it likewise failed to show "the nature of the article, [or] the circumstances surrounding the preservation and custody of it." Id. 392 S.C. at 95-96, 708 S.E.2d at 754-55. Accordingly, the trial court erred in admitting Appellant's clothing, especially his jacket, at trial.

(b) The trial court erred by allowing expert testimony regarding GSR on Appellant's clothing.

Similarly, and perhaps more importantly, the trial court also erred by admitting testimony regarding the presence of GSR on Appellant's clothes. The nature of the article—which necessarily includes the GSR—as well as the circumstances surrounding its preservation prior to and at the time of collection are impugned due to the cloud of uncertainty left by the State shrouding the most critical point of the chain of custody—collection. Because GSR is fungible evidence, the State as the proponent of the evidence "must establish a complete chain of custody as far as practicable." Pulley, 423 S.C. at 377, 815 S.E.2d at 464 (quoting Hatcher, 392 S.C. at 91, 708 S.E.2d at 753). Moreover, because the GSR was an "analyzed substance that has passed through several hands, *the identity of individuals who acquired the evidence* and what was done with the evidence between the taking and the analysis *must not be left to conjecture*." Sweet, 374 S.C. at 6, 647 S.E.2d at 205 (emphasis added) (citing Pellum, 232 S.C. at 33-34, 100 S.E.2d at 537); see also Pulley, 423 S.C. at 377, 815 S.E.2d at 464. Here, the State left to conjecture the identity of the individual who initially acquired the clothing and therefore left to conjecture the

identity of the individual who initially acquired the GSR as well. Tr. II 453, ln. 8—Tr. II 456, ln. 13; Tr. II 459, ll. 4-22; Tr. II 653, ln. 7—Tr. II 654, ln. 5; Tr. II 749, ln. 1—Tr. II 750, ln. 16; Tr. II 864, ll. 20-24; Tr. II 810, ll. 2-23; Tr. II 813, ll. 4-9. "As a result, the chain of custody was not sufficiently established as far as practicable." Pulley, 423 S.C. at 379, 815 S.E.2d at 465.

Furthermore, even when weighed by the factors governing review of the trial court's discretion in such matters, the State failed to demonstrate a reasonable assurance that the condition of the item—GSR—would have remained the same from the time it was obtained until its introduction at trial. First, the characteristic most important about Appellant's jacket was not the jacket itself; rather, it was what was on Appellant's jacket—GSR. In other words, even if clothing is nonfungible evidence by its nature, GSR is fungible evidence by its nature, and it was the analyzed substance to which Hardin testified. Again, because the GSR was an "analyzed substance that has passed through several hands, *the identity of individuals who acquired the evidence* and what was done with the evidence between the taking and the analysis *must not be left to conjecture*." Sweet, 374 S.C. at 6, 647 S.E.2d at 205 (emphasis added) (citing Pellum, 232 S.C. at 33-34, 100 S.E.2d at 537); see also Pulley, 423 S.C. at 377, 815 S.E.2d at 464. Moreover, the nature of GSR is also that it is readily transferable. As the State's trace evidence expert stated, "for these inanimate items of clothing, that gunshot primer residue got there either by the item being in the vicinity to the discharge of a firearm *or coming into contact with something that had gunshot primer residue on it. I can't tell you which one of those*." Tr. II 864, ll. 3-10 (emphasis added). Hardin further acknowledged that GSR is transferrable, and it was important that the items of clothing she tested not come into contact with each other due to the potential transfer of GSR. Tr. II 865, ln. 2—Tr. II 866, ln. 12. Thus, the first factor readily militates in favor of Appellant.

This leads to the second factor: the circumstances surrounding preservation and custody. No witnesses produced by the State testified that they either collected the jacket from Appellant, or saw it being collected. Instead, it was assumed that an officer in booking at the jail collected all of the clothing items from the four suspects in the case. Simply stated, no one could account for how it was collected, specifically where it was collected, or under what circumstances it was collected. Tr. II 453, ln. 8—Tr. II 456, ln. 13; Tr. II 459, ll. 4-22; Tr. II 653, ln. 7—Tr. II 654, ln. 5; Tr. II 749, ln. 1—Tr. II 750, ln. 16; Tr. II 864, ll. 20-24; Tr. II 810, ll. 2-23; Tr. II 813, ll. 4-9. As previously discussed, it is unknown whether Appellant's clothing was collected by itself, or with other clothes of Appellant, or even with other clothes of other suspects; it is also unknown whether it was placed on the ground in the booking area where countless other clothing items of countless other inmates charged with countless other crimes were placed prior to being picked-up by the unknown officer for collection at an unknown time and taken to the evidence locker. It was likewise unknown whether the clothing—and whatever may or may not have been on it—had been changed in important respects from the time when the clothing was either purportedly at the scene of the incident, or when touched by officers' hands during arrest, or when riding in the back of a police car, or when waiting in the booking area of a police station, or when taken off and placed somewhere during booking, or when finally collected by the unnamed officer who may or may not have been wearing gloves. Accordingly, this factor too is in favor of Appellant and against admission.

Finally, it is unknown whether intermeddlers tampered with what was on Appellant's jacket once collected by the unknown collector. This is largely due to the fact that no one knows who collected it, when it was collected, under what circumstances it was collected, what condition it was in when collected, or how it was transported to the evidence locker. It was not

possible for other witnesses, such as Cpl. Cramer, or Det. Davis, or Ofc. Brooks to knowingly testify regarding these matters as they did not witness them. Accordingly, at best this factor weighs in favor of Appellant, and at worst it is neutral. Regardless, when viewed as a whole, the factors governing review of the trial court's discretion in admitting this evidence failed to demonstrate a reasonable assurance that the condition of the item—GSR—remained the same from the time it was obtained until its introduction at trial. Hatcher, 392 S.C. at 95-96, 708 S.E.2d at 754-55. Accordingly, the trial court erred in admitting evidence of GSR on Appellant's clothing, and the matter should be reversed because "the chain of custody was not sufficiently established as far as practicable." Pulley, 423 S.C. at 379, 815 S.E.2d at 465; see also Sweet, 374 S.C. at 9, 647 S.E.2d at 207 ("In other words, the State simply did not present proof of the chain of custody as far as practicable.").

Furthermore, Appellant was prejudiced by admitting both Appellant's jacket into evidence as well as testimony regarding GSR on it. The State relied upon the GSR test results from the clothing of Appellant in its closing argument calling it "[s]ome pretty important evidence" when arguing he was one of the four home invaders inside the house during the incident. Tr. II 1025, ln. 24—Tr. II 1026, ln. 7. In so doing, the State's use of the jacket and GSR on it in Appellant's trial directly subverted his defenses of third-party guilt regarding who was inside the house during the incident, and mere presence as to his involvement for what occurred afterward. Accordingly, Appellant was prejudiced by the trial court's error.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests reversal of his convictions and sentences, and remand for new trial.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of May, 2023.

RECEIVED
May 05 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

POLO K. SALAZAR,

APPELLANT

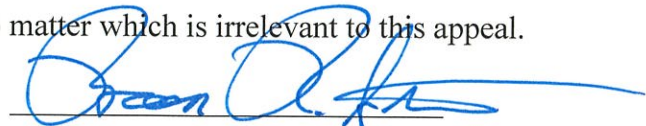
APPELLATE CASE NO. 2022-001066

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1) True Billed Indictments;
2) Sentence Sheets
3) State's Exhibit #191 (First Interview, Clips 1a, 2a, and 3a; Second Interview, Clips 1b, 2b, 3b, 4b, 5b, and 6b);
4) Pre-trial Motions Hearing Transcript (May 7, 2021) (Referred to in IBOA as Tr. I) pp. 1-176;
5) Trial Transcript (May 11, 2021 to May 19, 2021) (Referred to in IBOA as Tr. II) pp. 1-23; pp. 25-165; pp. 172-174; pp. 195-210; pp. 213-304; pp. 308-310; pp. 313-404; pp. 408-468; pp. 470-544; pp. 546-622; pp. 624-658; pp. 661-998; pg. 1004; pp. 1008-1100; pp. 1103-1112; pp. 1116-1123; pp. 1134-1145;
6) Post-trial Motions Hearing Transcript (June 24, 2022) (Referred to in IBOA as Tr. III) pp. 1-24;
7) Order Denying Defendant's Motion for a New Trial (filed July 25, 2022).

I certify that this designation contains no matter which is irrelevant to this appeal.



Breen Richard Stevens

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ATTORNEY FOR APPELLANT

This 5th day of May, 2023.

STATE OF SOUTH CAROLINA

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Honorable Diane Schafer Goodstein, Circuit Court Judge

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APPELLATE CASE NO. 2022-001066

RECEIVED
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SC Court of Appeals

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 5th day of May, 2023.

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ATTORNEY FOR APPELLANT