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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
The Honorable D. Craig Brown, Circuit Court Judge
Appellate Case No. 2022-000949

THE STATE, RESPONDENT

v.

LARRY JA JUAN SCIPIO APPELLANT

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the court erred by allowing Officer Manley to testify about Appellant being detained as a result of a burglary call from his grandmother's house and that a contemporaneous check of NCIC revealed Appellant had a warrant for murder out against him in Florence County since this testimony was unduly prejudicial under Rule 403, SCRE, and could it reasonably have been interpreted as evidence of prejudicial prior bad acts under Rule 404(b) SCRE?

2. Whether the court erred by excluding the transaction sheet from appellant's credit or debit card, Court's exhibit 3, which showed transactions at the Shell Food Mart at 10:32 and 10:33 on July 6, 2019, which were very close in time to the shooting occurring at another location, since this was relevant evidence of the lack of a serious police investigation in this case once Appellant became a suspect?

3. Whether the court erred by allowing Investigator Odom to testify that Orlando Mendez told him Appellant entered the residence and began shooting since this was highly prejudicial hearsay testimony?

RESPONDENT'S COUNTER-STATEMENT OF ISSUE ON APPEAL

1. Did the trial court err in allowing Officer Manley testimony about Appellant being detained as a result of a burglary call by his grandmother since there was never any arrest so there exists no prior bad act, nor was this evidence unduly prejudicial; therefore, no violation of 403 nor 404(b) SCRE? Did this information reveal an attempt of the Appellant to elude law enforcement which is relevant as a sign of guilt?

2. Did the trial court err in not allowing the transaction sheet from the Appellant's credit or debit card into evidence to reveal that law enforcement failed to follow up on certain evidence when the trial court did allow Appellant to get into law enforcement's failure to investigate; therefore, not making this decision prejudicial?

3. Did the trial court err in allowing Sergeant Odom to testify about Orlando Mendez informing him that the Appellant was the shooter, this information being about identity is not hearsay?

4. Should any of these issues brought before this Court be in error they should be considered harmless, since there was more than sufficient evidence presented by the State to prove Appellant committed this crime beyond a reasonable doubt, and none of these issues changed the outcome of this trial?

STATEMENT OF THE CASE

On June 6, 2019, Rico Johnson (victim), Orlando Mendez, and Khalid Belin, were riding around during the Fourth of July holiday weekend. *(T. p. 229 l. 21-25; p. 256 l. 17-20).* They decided to go to a house where a dice game was being played. *(T. p. 230 l. 7-9).* Later the three men got into the victim's Camaro to leave, and Larry Ja Juan Scipio (Appellant) stood in front of the car and would not move. *(T. p. 232 l. 4-5; p. 259 l. 6-7).* Although each person in the vehicle asked Appellant to move, he still refused. *(T. p. 259 l. 16-17, l. 19-20; p. 259 l. 21-25).* Appellant would not move, so the victim nudged the car into the Appellant so he would move. *(T. p. 232 l. 4-5; p. 260 l. 2-5).* At that time the Appellant told the victim, "all right n-word now it's war." *(T. p. 233 l. 11).*

After they left the dice game, these three individuals went to a nearby gas station to buy beer. They then traveled to the home of Mr. Mendez. *(T. p. 233 l. 12-16; p. 233 l. 19-21).* Once they arrived at Mr. Mendez's home, Mr. Mendez and the victim went inside, Mr. Belin sat on the porch to smoke a cigarette. *(T. p. 234 l. 13-15; p. 234 l. 17-19; p. 261 l. 16-23).* A few minutes later Appellant walked up to the house asking Mr. Belin if Mr. Mendez and the victim were inside the house. *(T. p. 235 l. 3-5; p. 235 l. 17-20).* Mr. Belin told him they were, but he should knock before entering since it was not his house. Inside was Mr. Mendez, the victim, Mr. Mendez's fiancée Stephanie Lucas, Mr. Mendez's two children, Amya and Stephanie, and Ms. Lucas's grandmother and uncle. *(T. p. 89 l. 6-11).*

When the Appellant knocked on the door, Mr. Mendez, Amya, and Ms. Lucas were in the master bedroom. Stephanie was in the dining room feeding her one-year-old nephew and the victim's one year old son. *(T. p. 93 l. 21-22; p. 519 l. 13-18; p. 537 l. 21-p. 538 l. 3).* Ms. Lucas's grandmother and uncle were in the back bedrooms. Ms. Lucas answered the door allowing the

Appellant into the house. *(T. p. 99 l. 7-11; p. 265 l. 20-22).* She walked past him back into the bedroom. *(T. p. 99 l. 13).* The Appellant entered the living room where the victim was sitting, Appellant asked the victim to go outside, the victim answered no. *(T. p. 539 l. 8-12).* Appellant then shot the victim numerous times. *(T. p. 539 l. 16-22; p. 540 l. 19-23).*

When the shots rang out Stephanie grabbed the children and ran into the bedroom. Mr. Mendez then ran out into the living room. *(T. p. 266 l. 17-20).* By the time he got there the Appellant was running out of the house. *(T. p. 267 l. 4).* Mr. Mendez ran outside and got into a struggle with the Appellant. Appellant then pointed the gun at Mr. Mendez and told him, "I don't want to shoot you too." *(T. p. 269 l. 1-8).* Mr. Mendez then allowed the Appellant to leave.

After the scuffle Mr. Mendez ran back into the house where the victim was shot numerous times in the back. *(T. p. 269 l. 20-21; p. 270 l. 3-9).* Amya called 911, and two neighbors came from next door. *(T. p. 270 l. 10-12; p. 103 l. 4-7).* They were nurses so they attempted to administer first aid.

Sergeant William Odom of the Florence County Sheriff's Department was the first law enforcement officer to arrive at the scene. When he arrived, he walked into the house and witnessed the victim on his knees leaning over the couch. *(T. p. 127 l. 24-25).* The neighbors were administering first aid and since they were nurses he allowed them to continue until Emergency Medical Services (EMS) arrived. *(T. p. 128 l. 1-2).* Sergeant Odom then walked outside, Mr. Mendez approached him, and said that the Appellant shot the victim. *(T. p. 132 l. 2-3).* Deputy Amber Flowers was the next law enforcement officer to arrive at the scene. She also spoke with Mr. Mendez who told her that he was in the back bedroom when he heard shots. *(T. p. 165 l. 2-3).* Mr. Mendez told Officer Flowers that he ran to the living room where he saw the victim on the couch, and the Appellant leaving the house. *(T. p. 165 l. 3-5).* Mr. Mendez told her that he tried to

get the gun away from the Appellant, but Appellant pointed the gun at him. *(T. p. 165 l. 21-23).* Deputy Flowers also spoke to Ms. Lucas who told her that she allowed the Appellant in the house and then went to the bedroom. *(T. p. 167 l. 16-20).* Ms. Lucas told Deputy Flowers that she then heard the Appellant say "yo" then gunshots. *(T. p. 167 l. 21-23).*

When EMS arrived, they examined the victim and he had no pulse nor was he breathing. *(T. p. 154 l. 13-15).* They took him to the hospital and, while in route, continued working on him; however, they were never able to get any signs of life. *(T. p. 156 l. 25 – p. 157 l. 3).* The Victim was later pronounced dead at the hospital. *(T. p. 158 l. 11-13).*

During their investigation law enforcement was told by each eyewitness that the shooter was the Appellant. Mr. Mendez gave law enforcement a physical description of the Appellant and his home address. *(T. p. 372 l. 16-18; p. 373 l. 20-22).* They went to the Appellant's residence, however, he was not there. *(T. p. 374 l. 10-11).* Law enforcement also made attempts to find the Appellant at other locations in Florence County but was still unable to find him. *(T. p. 374 l. 12-16).*

Two days later, on July 8, 2019, there was a 911 call of an attempted burglary in the city of Florence. Patrol officer Leigh Manley responded to the home. *(T. p. 311 l. 17-20).* When officer Manley arrived, Appellant was found sitting on the back porch. *(T. p. 311 l. 24-25).* It was then determined that the home belonged to the Appellant's grandmother, so no charges were ever made pertaining to this call. *(T. p. 312 l. 6-9; p. 312 l. 10-12).* While the Appellant was being detained, Officer Manley requested dispatch to check the National Crime Information Center (NCIC) for any outstanding warrants. It came back that the Appellant had a warrant for murder from Florence County. *(T. p. 312 l. 13-19).* Officer Manley placed Appellant under arrest and the Florence County Sheriff's Department was notified. *(T. p. 312 l. 20-22).*

Crime scene investigators reported to the house were the incident occurred. They found six shell casings each belonging to a .380 caliber gun. *(T. p. 331 l. 12-15).* During trial Agent Paul Greer of the South Carolina Law Enforcement (SLED) testified. Agent Greer was accepted as an expert in the field of firearms examination. *(T. p. 478 l. 11-12).* During his testimony Agent Greer stated that the six shell casings came from the same gun. *(T. p. 485 l. 23-25).* Agent Greer also discovered that the bullets retrieved out of the victim also came from the same gun. *(T. p. 483 l. 19-23).* However, law enforcement was never able to find the murder weapon.

During trial Dr. Thomas Beaver also testified. Dr. Beaver was accepted as an expert in the field of forensic pathology. *(T. p. 412 l. 11-18).* Dr. Beaver was the individual who performed the autopsy on the victim. During his testimony Dr. Beaver stated that he noticed the victim suffered from multiple gunshot wounds. *(T. p. 499 l. 8).* The first wound was to the side of the left shoulder. The bullet went through the shoulder, exited out of the armpit, reentered at the chest, then went through the left right lung, and was recovered in the pleural cavity on the right side. *(T. p. 501 l. 6-10).* The second bullet passed through the left lung and spleen. *(T. p. 503 l. 4-8).* The third bullet entered the back, went through the spine, and was recovered in the thoracic spine. *(T. p. 503 l. 22-25).* The fourth bullet entered the back and lodged in the lumbar spine. The fifth bullet entered the right scapula area. *(T. p. 505 l. 1-4).* The sixth shot was in the lower back. *(T. p. 505 l. 5-8).* And the last one went into the victim's right hand. *(T. p. 505 l. 9-12).* Dr. Beaver determined that the location of the bullets revealed that the first shot in the shoulder was made as the victim was turning away while the other shots entered this back. Dr. Beaver determined victim's cause of death was due to multiple gunshot wounds, the manner of death was homicide. *(T. p. 507 l. 17-18).*

After five days of testimony a jury of his peers found the Appellant guilty of murder. *(T. p. 615 l. 4-7).* Upon the reading of the verdict the Appellant appeared before the trial judge for

sentencing. The trial judge sentenced the Appellant to a term of incarceration for the remainder of his natural life. The trial court ordered that the Appellant would get credit for all pre-trial detention. *(T. p. 628 l. 19-22).*

ARGUMENTS

1. **The trial court did not err in allowing Officer Manley to testify about Appellant being detained as a result of a burglary call at his grandmother's residence since there was never an arrest no prior bad acts exist, nor was it unduly prejudicial; therefore, not a violation of either Rule 403 or 404(b) of the South Carolina Rules of Evidence. This evidence revealed an attempt by the Appellant to elude law enforcement, which can be considered a sign of guilt, thereby relevant.**

Relevant Facts

There was a 911 call to the Florence City Police Department regarding an attempted burglary. Office Leigh Manley of the Florence City Police Department responded. *(T. p. 311 l. 17-20).* As the officer arrived, Appellant was witnessed sitting on the back porch. *(T. p. 311 l. 24-25).* It was determined that the home belonged to the Appellant's grandmother so no arrest was made regarding this call. *(T. p. 312 l. 6-9; p. 312 l. 10-12).* While detained Officer Manley requested dispatch check NCIC to see if Appellant had any outstanding warrants. On NCIC it was discovered Appellant did have an outstanding warrant for murder from the Florence County Sheriff's Department. *(T. p. 312 l. 13-19).* Officer Manley arrested Appellant, and Florence Sheriff Department was later notified as to the Appellant's arrest. *(T. p. 312 l. 20-22).*

During trial Appellant's trial counsel made a motion for their be no mentioning of the burglary call. Appellant's trial counsel argued that any mentioning of this call would reveal a prior bad act which would be prejudicial. Trial counsel also argued that there was no logical connection between any of the material elements to murder that the evidence was designed to prove. *(T. p. 50 l. 4-8).* The State argued that there was evidence of flight, since Appellant was not home, or other places within Florence County when law enforcement was searching for him. *(T. p. 50 l. 9-14).*

The trial court ruled that for the purposes of illustrating or showing how they came into contact with Appellant the trial court did not believe that the probative value is outweighed by the prejudicial effect. *(T. p. 51 l. 16-20).* The trial court allowed the evidence before the jury.

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545, S.E.2d 827, 829 (2001). The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose discretion will not be reversed on appeal absent an abuse of discretion. *State v. Tucker,* 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995). An abuse of discretion occurs when the trial court's ruling is based on an error of law, or when grounded in factual conclusions without evidentiary support. *State v. Oates,* 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017).

Discussion

Appellant argues that allowing this call to law enforcement by Appellant's grandmother into evidence violates Rules 403 and 404(b) of the South Carolina Rules of Evidence. Rule 403 specifically State:

> 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 to the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 403 SCRE.

Appellant also argues that the inclusion of this evidence violated Rule 404(B) of the South Carolina Rules of Evidence which state:

> Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident or intent.

Rule 404(b) SCRE.

The Appellant takes the position that the introduction of this evidence violates the Rules of Evidence against the introduction of prior bad acts in order to reveal character against the Appellant. This cannot be in violation of Rule 403 because this evidence does not prejudice him. It cannot be in violation of Rule 404(b) because the Appellant was never arrested nor charged with anything stemming from this report; therefore, no prior bad act exists. There was never any attempt to include any act made by the Appellant regarding this call revealing his character or that he was a "bad person." Evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad person. *State v. Lawson,* 424 S.C. 51, 57, 817 S.E.2d 509, 514 (2018). The evidence was relevant to reveal that the Appellant made efforts to elude arrest from the crime he just committed two days earlier. Flight from prosecution is admissible as guilt. *State v. Pagan,* 369 S.C. 201, 208, 631 S.E.2d 262, 266 (2006). The Appellant had just committed murder and he did not return home. Law enforcement went to other locations in order to find him. *(T. p. 374 l. 12-16).* He showed up unannounced to his grandmothers residence. This reveals that he was eluding law enforcement due to the crime he committed, which was relevant. The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities. *Id.* It was obvious that that he was evading police arrest because he was found not at his residence or other locations law enforcement checked. He was located at the residence of his grandmother as he attempted to enter unannounced. This makes this information relevant to show evidence of guilt. Flight or evasion of arrest is a circumstance to go to the jury. *Id.,* at 369 S.C. 209.

As revealed to the trial court there was never any attempt to admit a prior bad act in order to reveal the character of the Appellant. In the inclusion of this evidence his character was never

mentioned as he never committed any bad act. He just showed up at his grandmother's residence unannounced, thereby, scaring her to the point that she notified law enforcement. Once it was determined by her and the officer that he was her grandson, no charges were ever filed; therefore, no bad act occurred. This information was also probative to reveal that the Appellant was actively eluding law enforcement. The probative value was not overridden by any prejudice that might have occurred against the Appellant. This was evidence of flight which reveals that the Appellant was evading law enforcement which should be allowed to be presented to the jury to reveal the Appellant's guilt.[1]

There exists no prior bad act from this evidence so allowing it did not prejudice the Appellant. It just revealed that he made attempts to evade law enforcement by going to his grandmother's house unannounced. Once it was discovered that he was the owner's grandson there were no charges nor arrest made, so this evidence was not revealed to judge the character of the Appellant. There is no violation of Rule 404(b). This probative value of this evidence also was not overridden by any prejudice, so this evidence did not violate Rule 403.

2. **The trial court did not err in not allowing the transaction sheet from the Appellant's credit or debit card into evidence, the Court did allow Appellant to present evidence as to law enforcement's failure to investigate certain evidence; therefore, not allowing the transaction sheet was not prejudicial.**

<u>*Relevant Facts*</u>

At the time of his arrest the Appellant had on his person a debit or credit card. *(T. p. 389 l. 22-23).* The clothing of the Appellant was taken by law enforcement in order to be tested by SLED,

[1] As for evidence being prejudicial, the idea seems to be that it was truly prejudicial because it made Abraham look so guilty. Of course it did. People including jurors, realize that while "[t]he wicked flee when no man pursueth," Proverbs 28:1 (KJV), they really flee when law enforcement is looking for them. That is why evidence of flight is admissible and probative. Probative force is not the same as legal prejudice. If it were, the stronger the evidence of flight the less admissible it would be. *U.S. v. Kennard,* 472 F.3d 851, 855 (2006).

but the card remained with his other personal belongings. During trial the Appellant wanted to raise to the jury the transactions around the time of the offense were not investigated by law enforcement.

There were three transactions made by the person with that card on the night of July 6 at a Shell Food Mart in Florence. These transactions occurred at 10:52, 10:53, and 10:54 pm. *(T. p. 399 l. 10-11).* The State objected in allowing this evidence due to the fact there was no notice of alibi given by the Appellant. The Appellant argued that an alibi defense notice was not given due to the fact they did not consider this to be an alibi. The Appellant argued that this should have been investigated by law enforcement, but since they had him as a suspect from the beginning they did not bother to do a sufficient investigation.

The Appellant made attempts to convince the trial court these transactions were admissible but should not be considered as evidence of an alibi. In its conclusion, the trial court determined that the Appellant could ask the Investigator if there was a credit card found within the Appellant's person property located at the Detention Center, and if he ran any transaction history to determine if there were any transactions in close proximity to the time of the offense. However, based upon the trial court's review of the document, and based upon there not being any identifying information as to the credit card number or the credit card owner, it would be improper to go into specifics on this document as it relates to these transactions. *(T. p. 402 l. 5-10).*

Standard of Review

The trial court has considerable discretion in ruling on the admissibility of evidence. *State v. Sheldon,* 344 S.C. 340, 342, 543 S.E.2d 585 (Ct. App. 2001). On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law. *State v. Smicklevich,* 268 S.C. 411, 415, 234 S.E.230, 232 (1977). An abuse of discretion occurs when the

circuit court's ruling is based on an error of law or, when grounded in factual conclusions, without evidentiary support. *State v. Jones,* 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016).

Discussion

The Appellant makes that argument that the transactions from the credit card were relevant and should have been allowed to be entered into evidence. After their argument as to the relevance of this transaction report, on the record the trial court read Rule 5 of the South Carolina Rules of Criminal Procedure. Rule 5(b)(1)(A) specifically state:

> If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the prosecution, the defendant, on request of the prosecution shall permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

Rule 5(b)(1)(A) SCRCrimP.

The Appellant had a report in his possession that was not available to law enforcement without a subpoena due to the fact this card was in the personal belongings of the Appellant at the County Detention Center. They were going to introduce it within their case to reveal that law enforcement did not do their due diligence in their investigation. It is under this Court's discretion not to allow into evidence any document that was not provided to the State prior to trial. Rule 5(d)(2) of the South Carolina Rules if Criminal Procedure states:

> If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

Rule 5(d)(2) SCRCrimP.

This evidence was not made privy to the State until trial. The trial court also expressed some concerns as to this report being authenticated. The trial court expressed that there was no

identifying information relating to the credit card that was in custody. That card was never presented to the Court or the State for any verification. All that was presented was Exhibit 3, which was a transaction report regarding the three transactions made at a Shell Food Mart in Florence some twenty minutes after the event occurred. As the State argued during trial, there is no evidence of where this Shell station was located or how close it is to the scene of the crime.

The only reason Appellant wished to introduce this evidence was to reveal certain information law enforcement failed to check during their investigation. The Court allowed this argument. They just did not allow for the Appellant to go into detail regarding that transaction report. During cross-examination trial counsel asked Investigator Ben Price about their failure to confiscate Mr. Mendez phone to extract information. *(T. p. 408 l. 4-9).* The Appellant also inquired into Law enforcement's failure to confiscate Mr. Mendez's clothes for gunshot residue testing or a search for DNA evidence. *(T. p. 408 l. 10-17).* Mr. Mendez stated to them there was a struggle between him and the Appellant but there were no fingernail scrapings taken from Mr. Mendez in order to verify this story. *(T. p. 408 l. 18-22).* Trial counsel also asked about the credit card in the Appellant's belongings that they did not investigate transactions taken from that card. They could have investigated the transactions to find out if a transaction was made anywhere else that was in close proximity of the incident location where they could have viewed surveillance video proving Appellant was at that location. *(T. p. 412 l. 18-21; p. 414 l. 1-10).*

Appellant's entire defense was that he was not there, and that this crime was committed by Mr. Mendez. Although the trial court did not allow the transaction report into evidence the Appellant's trial counsel was allowed to present an argument that law enforcement failed to thoroughly investigate Mr. Mendez as the person who committed this crime. Appellant was not prejudiced by not being allowed to introduce this evidence, there also was no abuse of discretion

due to the fact Appellant failed to provide a copy of this transaction report to the State prior to trial. This violated Rule 5 which allows the Court to exclude this evidence from being submitted to the jury. No error exists by the trial court not allowing this evidence before the jury.

3. **The court did not err in allowing Investigator Odom to testify about Orlando Mendez informing him that the Appellant was the shooter. This information goes to identification; therefore, not hearsay per the South Carolina Rules of Evidence.**

<u>*Relevant Facts*</u>

When Sergeant William Odom first arrived at the crime scene Mr. Mendez walked up to him and informed him that the Appellant committed this murder. *(T. p. 132 l. 2-3).* Sergeant Odom testified to this identification and the Appellant objected stating that this statement was hearsay. The trial judge overruled this objection.

<u>*Standard of Review*</u>

In criminal cases an appellate court sits to review errors of law only. *State v. Baccus,* 367 S.C. 41, 48, 626 S.E.2d 216, 220 (2006). Evidentiary rulings are within the sound discretion of the trial court, and such rulings will not be reversed absent an abuse of discretion or the commission of legal error that prejudices the defendant. *State v. Rice,* 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct. App. 2007). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. King,* 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017). Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c) SCRE.

<u>*Discussion*</u>

Appellant argues that the statement that was given to Sergeant Odom by Mr. Mendez was hearsay and should not have been allowed by the trial court. Although the testimony given by Sergeant Odom was an out of court statement, made in court to prove the truth of the matter

asserted, according to the Rules of Evidence this testimony is not hearsay, because it was made for identification. According to Rule 801 of the South Carolina Rules of Evidence:

> A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is one of identification of a person made after perceiving the person.

Rule 801(d)(1)(C) SCRE.

Mr. Mendez walked up to Sergeant Odom and informed him that the shooter was the Appellant. That was a statement concerning the identification, of Appellant made to Sergeant Odom. His testimony was made under oath, and he was subject to cross-examination.[2] So the testimony made by Sergeant Odoom regarding Mr. Mendez's identification of the Appellant cannot be considered hearsay. The trial court was proper in allowing this statement into evidence.

The State also argues that there was no prejudice in allowing this testimony into evidence because Mr. Mendez ultimately testified identifying the Appellant as the person who shot and killed the victim. To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both error of the ruling and the resulting prejudice. *State v. Douglas,* 367 S.C. 498, 508, 626 S.E.2d 59, 64 (Ct. App. 2006), *rev'd on other grounds, State v. Douglas,* 380 S.C. 499, 671 S.E.2d 606 (2009).

[2] A witness is "subject to cross-examination" when, as here, he is placed on the stand, under oath, and responds willingly to questions. *U.S. v. Owens,* 484 U.S. 554, 555, 108 S.Ct. 838, 840 (1988).

4. **If this court finds that the trial court erred regarding any of the issues raised by the Appellant it should be considered harmless error, since ample evidence was presented revealing that the Appellant was guilty beyond a reasonable doubt, so none of these issues would have changed the outcome of the trial.**

Relevant Facts

Within his brief the Appellant raised several issues, such as him being detained at his grandmother's but not arrested. This should not be considered raising a prior bad act which is prejudicial thereby a violation of Rules 403 and 404. The trial court did not err in not allowing into evidence the transaction sheet from the credit card of the Appellant. Nor did the trial court err in allowing Sergeant Odom to testify concerning the identification by Mr. Mendez who identified the Appellant as the person who committed this murder. The State argues that if this court determines that any of these decisions were made in error they should be considered harmless. If any or all of these issues were not decided Appellant would have been found guilty. None of these issues had a bearing on the final outcome; therefore, any error should be considered harmless.

Standard of Review

The harmless error doctrine recognizes the principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promote public respect for the criminal process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error. *State v. Young,* 420 S.C. 608, 628, 803 S.E.2d 888, 899 (2017), *quoting, Delaware v. VanArsdall,* 475 U.S. 673, 681, 106 S.Ct. 1431 (1986). The principle that an otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt. *VanArsdall,* 475 U.S. at 681, 106 S.Ct. at 1436. There are five factors when considering harmless error: 1) the importance of the witnesses testimony in the prosecution's case; 2) whether the testimony was cumulative; 3) the presence of evidence corroborating or

contradicting the testimony of the witness on material points; 4) the extent of cross-examination otherwise permitted; 5) the overall strength of the prosecution's case. *State v. Gracely,* 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012).

Discussion

The State is not conceding any of their arguments regarding the lawful decisions of the trial court; however, if this Court finds any error in the trial court's decisions the State believe these errors should be considered harmless. There was so much evidence presented proving that the Appellant had committed this crime, the issues raised by the Appellant would not have affected the final outcome of this trial.

Within his brief the Appellant argues that Mr. Mendez informing law enforcement that Appellant committed this murder was hearsay. Mr. Mendez testified during trial in which he explained that he did not actually see the Appellant fire the shot, but he heard the gunshot, then immediately ran into the living room, and saw the Appellant running out of the house armed. Mr. Mendez identified Appellant in court as the individual that he saw that night armed, and who pulled a gun on him after a scuffle. The testimony of Sergeant Odom was cumulative to that of Mr. Mendez. Whether such an error is harmless in a particular case depends upon a number of factors one of which is whether the testimony was cumulative. *State v. Johnson,* 334 S.C. 78, 88, 512 S.E.2d 795, 800 (1999).

Appellant also argues that the trial court erred in not allowing the transaction report into evidence in order to reveal that law enforcement focused on the Appellant and failed to investigate anyone else for this murder. The transactions on the report occurred at 10:52, 10:53 and 10:54 pm

about twenty minutes after the incident occurred.[3] There was sufficient time for the Appellant to commit this murder and get to a store to make these transactions. This evidence would not have changed the outcome of trial since there were four eyewitnesses who each knew the Appellant and identified him as the person who fired the shots inside that house. One person, Stephanie Mendez testified that she actually saw the Appellant shoot the victim. These transactions would not have changed the fact that these four witnesses identified Appellant as the shooter.

Appellant also argued that the trial court erred in allowing evidence of the Appellant's grandmother calling law enforcement of a suspected burglary, which should be considered allowing prior bad acts into evidence. There was no arrest for burglary; therefore, no prior bad act occurred. If the court finds allowing this into evidence was an error it should be considered harmless because the Appellant was never arrested for an offense relating to the call. This information did not lead to any judgment on the Appellant's character, and this evidence did not change the outcome of this case. Evidence regarding the Appellant shooting the victim where four individuals identified Appellant as the shooter would not change, so it did not affect the final outcome. Even if the evidence was not relevant and thus wrongly admitted by the trial judge, its admission may constitute harmless error if the irrelevant evidence did not affect the outcome of the trial. *State v. Langley,* 334 S.C. 643, 647-648, 515 S.E.2d 98, 100 (1999).

The above argument reveals that there was plenty of evidence brought by the State proving the Appellant committed this murder. The exclusion or inclusion of the evidence that is raised by the Appellant in this appeal, would not change the fact that numerous individuals testified that they either actually saw him shoot the victim, or he was present in the home just seconds prior to hearing

[3] Stephanie Lucas testified that the Appellant came to their house between 10:15 and 10:20 pm. *(T. p. 98 l. 1-6).* Five to six seconds later she heard gunshots. *(T. p. 99 l. 13-17).*

the gunfire and witnessed him armed with a handgun. In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having *changed the result* of the trial and the court must be able to declare such belief beyond a reasonable doubt. *State v. Watts,* 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996). All reason points to the Appellant as the murderer. Error is harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. *State v. Bryant,* 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006). Although the State does not concede that any error occurred, any error that could have occurred must be considered harmless.

CONCLUSION

The trial court made the proper decisions regarding this matter, the State respectfully requests this Court affirming the decisions of the trial court.

Respectfully submitted,

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