STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
The Honorable J. Derham Cole, Circuit Court Judge

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Appellate Case No. 2023-001995

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THE STATE, Respondent,

v.

FRANCISCO MALDANADO-MOLINA, Appellant.

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# FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

I. The trial court properly admitted testimony of evidence found on Appellant at the time he was arrested because it was relevant as evidence of flight and consciousness of guilt.

## STATEMENT OF THE CASE

Appellant was indicted by a Spartanburg County Grand Jury for attempted murder, murder, possession of a weapon during the commission of a violent crime, and first-degree burglary. Appellant proceeded to a jury trial on December 18, 2023, in the Spartanburg County Court of General Sessions before the Honorable J. Derham Cole. The jury found Appellant guilty on all charges. Appellant was sentenced to thirty years for attempted murder, life for murder, and fifteen years for first-degree burglary. This appeal follows.

## STATEMENT OF FACTS

Francisco Maldanado-Molina (Appellant) and Mary Martin had three children together and had known each other for twenty-six years. (R. 136). Appellant and Martin divorced in 2014. (R. 136). On June 18, 2016, Appellant and Martin argued because Appellant wanted Martin at home with her kids and not at her boyfriend's house in Duncan. (R. 140). Appellant threated Martin over the phone stating that if she did not go to her home he would kill everyone in the house. (R. 141). Approximately two to three minutes later, Martin heard a knock at the door, the door opening, and then two gunshots. (R. 141-142). In the house was Martin, her boyfriend and two other men sitting at the table in another room. (R. 142-144). Martin told her boyfriend to get out because Appellant was there to kill him. (R. 142). Martin testified that she heard two more gunshots, so she went into the hallway and saw him coming through the hallway. (R. 142). Martin testified that she was screaming at Appellant to stop. (R. 143). Appellant then looked at Martin, pointed the gun at one of the men's head, told Martin it was her fault, and then pulled the trigger. (R. 143). Appellant then approached the other man, but Martin testified she ran over to him and laid on top of him to shield him. (R. 143). Appellant then grabbed Martin, threw her up against the wall and threated to "take away everything [she] ever loved in life." (R. 143-144). Appellant let her go and began picking up the bullet shells off of the floor. (R. 144). Martin was able to call 911 and when Appellant heard the operator answer he left the house quickly. (R. 145). One of the men, Edgar Ruben Cojen-Lopez, survived, but the other man, Edilberto Flores-Palacio, did not. (R. 142-144). Appellant was arrested over four years later in Peoria, Illinois. (R. 206-210).

Prior to trial, Appellant moved to suppress testimony about a handgun and a large sum of money found in a backpack when Appellant was arrested four years later. (R. 14-18). Appellant argued that the testimony about both the handgun and the money was irrelevant and highly prejudicial because the handgun was not used in the initial crime. (R. 14-15). The State argued that

it was evidence of flight and consciousness of guilt. (R. 15). The State argued that because there were also counterfeit identification documents, it showed he was about to take off again. (R. 15). The trial judge asked if the State was going to be able to establish the fact that Appellant was aware that he was being looked for. (R. 18). The State responded with "the facts are that when the eyewitness to the events was at the house calling 911 Mr. Molina was still there, and when the call connected, he fled. So, he certainly knew at that point in time that the authorities had been notified of his criminal activities." (R. 18). The trial judge ruled that he would permit the testimony if that was established and reserved the right for Appellant to object at that time if he did not believe it was properly established. (R. 18).

Deputy John Lindman, an agent with the Fugitive Task Force of the U.S. Marshall Service, testified that he received information that Appellant was working for a roofing company. (R. 204). Lindman contacted the roofing company and eventually spoke with a person whom he believed was Appellant but was going by the name Marco. (R. 204-205). The owner of the roofing company let Appellant know that people were looking for him. (R. 205). Lindman spoke on the phone with Appellant, and they agreed to meet, but when it was time a different person showed up from the person than who was on the phone. (R. 205).

It's unclear from the record how long Appellant was in the wind, but sometime later Lindman received information that he was located in Peoria, Illinois. (R. 206). Lindman set up surveillance in that area and Appellant was observed coming out of a residence with a backpack and backpack in his truck then returning into his residence. (R. 206-207). The residence was surrounded, and Appellant was ultimately apprehended. (R. 207-208). Appellant was very adamant that he wanted his backpack and Lindman testified that because he was in custody, they would not give him his backpack until it was checked to see if anything inside was dangerous. (R. 208).

Appellant renewed his objection to the introduction of this testimony and the objection was overruled. (R. 208). Lindman testified that a large amount of cash and a firearm were found in the backpack.

## STANDARD OF REVIEW

"In criminal cases, the Appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "A trial judge has considerable latitude in ruling on admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." Id. "To warrant reversal based on the admission or exclusion of evidence, the Appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof." State v. Singleton, 395 S.C. 6, 13, 716 S.E.2d 332, 336 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

## ARGUMENT

**The trial court properly admitted testimony of evidence found on Appellant at the time he was arrested because it was relevant as evidence of flight and consciousness of guilt.**

Appellant contends the trial judge erred in allowing an agent to testify that when Appellant was arrested, over four years after the shooting, agents found a handgun and a large sum of cash in a backpack. Appellant further argues that it was not evidence of flight and there was no nexus between the shooting and the items found in the backpack rendering the testimony irrelevant.

"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 or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence which is not relevant is not admissible." Rule 402, SCRE. "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.

"Flight from prosecution is admissible as guilt." State v. Pagan, 369 S.C. 201, 208, 631 S.E2d 262, 266 (2006). "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 is sufficient that circumstances justify an inference that the defendant's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. Id. at 209, 631 S.E.2d 262, 266. See State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (finding evidence of flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension). Flight evidence is relevant when there is a nexus between the flight and the offense charged. State v. Robinson, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004). Evidence of flight is inadmissible where a defendant

flees after commencement of an investigation unrelated to the crime charged, or of which the defendant was unaware. United States v. Beahm, 664 F.2d 414, 419-20 (4th Cir. 1981). "The rationale underlying the admissibility of flight evidence, that 'it is not to be supposed that one who is innocent and conscious of that fact would flee' applies to other forms of evasive conduct as well." State v. Middleton, 441 S.C. 55, 61, 893 S.E.2d 279, 282 (2023).

Here, there was testimony that Appellant immediately disappeared after hearing Martin call 911 and Martin assisted that night in attempting to find Appellant. (R. 158). Further, Martin testified that she had a phone conversation with Appellant that the authorities were closing in on him. (R. 161). There was testimony from Lindman that when Appellant was working for the roofing company he reached out to the owner and let him know that they were looking for Appellant and wanted to speak with him. (R. 205). Appellant also spoke with Lindman on the phone and was aware that he wanted to meet. (R. 205). Lindman also testified that the roofing company owner told Appellant that they were looking for him. (R. 205). Appellant then disappeared again for a time after that incident relocating to Peoria, Illinois. All of this evidence establishes that Appellant knew he was being looked for and was actively avoiding police. The backpack that contained a large sum of money and a handgun indicated that he was going to pick up and leave again.

**Harmless error**

The admission of any testimony regarding the handgun and large sum of money was entirely harmless because it was vague and did not result in prejudice. "To warrant the reversal based on the admission or exclusion of evidence, the Appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof." State v. Singleton, 395 S.C. 6, 13, 716

S.E.2d 332, 336 (Ct. App 2011). Appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011). In State v. Martin[1], in an armed robbery and conspiracy to commit armed robbery case, Martin wanted to suppress evidence of his arrest for giving false information to an officer because there was no nexus between that arrest and the current charge he was being tried for. This Court found that while the trial court did err in admitting that evidence due to an absence of nexus between the false information and the bank robbery, the admission of that evidence was harmless because the State presented ample evidence of Martin's guilt. Similarly, the jury was presented with extremely vague evidence that Appellant was arrested with a bag that contained a large sum of money and a gun. There was no attempt to say that there was a connection between the handgun and attempted murder, but it was introduced to show that he was preparing to flee again showing a consciousness of guilt. However, there were two eyewitness testimony that Appellant was the shooter as well as phone gps testimony placing Appellant at the crime scene. Therefore, the admission of testimony of the money and gun was harmless error. Appellant's conviction should be affirmed.

[1] State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. 2013).

## CONCLUSION

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

Respectfully submitted,

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May 7, 2025

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**PROOF OF SERVICE**

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I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Kathrine H. Hudgins, counsel of record for Appellant, by sending one copy by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 7th day of May, 2025.

Grace Sommer

Grace Sommer
Legal Assistant

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