THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Edward B. Cottingham, *Circuit Judge*

Appellate Case No. 2012-213461

STATE OF SOUTH CAROLINA,

RESPONDENT,

vs.

TYRONE J. KING,

APPELLANT

Initial Brief of Appellant

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STATEMENT OF THE ISSUES ON APPEAL

1. In this murder case involving the defense of accident, did the circuit court err in excluding some but not all references to Defendant-Appellant's prior charges of murder, kidnapping, and armed robbery?

2. Did the circuit court—which had admitted the bad-conduct references above on the belief that the State could not redact them—err in denying Mr. King's motion for new trial once it became clear that the State could redact precise portions of the videotaped interrogations?

3. Did the circuit court err in denying a mistrial after a witness referenced the Defendant-Appellant's charge for armed robbery only few transcript pages after the circuit court had told the solicitor in self-described "strong" terms that any questioning about the armed robbery would result in a mistrial?

STATEMENT OF THE CASE

This direct criminal appeal arises from the Marlboro County Circuit Court of General Sessions. On January 31, 2012, a grand jury returned three indictments against Defendant-Appellant Tyrone J. King arising out of the events of November 11, 2011: (a) one for murder of James Galloway, in violation of S.C. Code §§ 16-03-10 and -0020; (b) one for possession of a weapon during the commission of a violent crime (murder) in violation of S.C. Code § 16-23-490; and (c) one for assault and battery of a high and aggravated nature against Karen Galloway, in violation of S.C. Code § 16-3-600(B). [Indictments].[1]

The circuit court held a jury trial on all the indictments on September 10-13, 2012 at which Mr. King raised the defense of accident. [Trial Tr. Cover Page; Trial Tr. 501:2-17]. The jury convicted Mr. King of murder, possession of a weapon during the commission of a violent crime, and assault and battery in the third degree, and the circuit court sentenced Mr. King that same day pursuant to those verdicts. [Sentencing Sheets]. Mr. King was sentenced to life for the murder, a consecutive five years for the possession charge, and to time served for the assault and battery in the third degree. [*Id.*].

On Monday, September 24, 2012, Mr. King made a motion for a new trial. [Certificate of Service and Filing for Defendant's Motion for New Trial].

Mr. King received the order denying the motion on November 15, 2012 and served his notice of appeal the same day. [Notice of Appeal].

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[1] Although Mr. King was also indicted and tried on a pointing-and-presenting charge arising from the same transaction, he did not include that conviction in his notice of appeal. [Notice of Appeal]. References to it in this appeal are by way of background only.

STATEMENT OF FACTS

I. The Circuit Court Denied Mr. King's Motion to Continue.

On August 6, 2012, the circuit court (Judge Cottingham, presiding) held a hearing on Mr. King's motion for continuance from the September 10 term of court. [8/26/12 Tr. 4:2-6]. Although the indictments were only approximately seven months old, the circuit court denied the continuance. [8/26/12 Tr. 8:6-9]. To ensure that defense counsel would be ready for trial within thirty days, the circuit court announced that it would have this Court reschedule two appellate arguments involving defense counsel. [8/26/12 Tr. 5:2-5].

II. The Circuit Court Granted in Part but Denied in Part Mr. King's *Motion in Limine* to Exclude Evidence of Prior Alleged Bad Acts.

After jury selection, the circuit court held a hearing to decide which portions of Mr. King's two videotaped police interrogations to play into evidence at trial.

In his first interrogation, which took place a few hours after the incidents giving rise to his indictments, Mr. King said that he had gone across the street to Mr. Galloway's house with a man named Aloysius McLaughlin. [State's Ex. 5 at 05:01-13-27].[2] At that time, Mr. King was facing charges of kidnapping and armed robbery against Mr. McLaughlin in the Town of McColl from a few weeks beforehand. In response to law enforcement's disbelief that they would have been together given that prior conduct, Mr. King advised that the two had made up. [*Id.* at 05:01:15-17]. Mr. King also claimed to

[2] Pursuant to guidelines from State Court Administration, the court reporter did not prepare a transcript of the audio of the exhibits. The time references here for Exhibit 4 and 5 refer to the timestamp appearing at the bottom left of the video.

law enforcement that Mr. McLaughlin suddenly and unexpectedly killed Mr. Galloway and that Mr. King then ran away out of fear. [*Id.* at 04:59:30-40; 05:00:45-01:07].

In his second interrogation, held a few days later, Mr. King admitted that he went over to Mr. Galloway's house alone to buy some liquor from him. [State's Ex. 4 at 08:37:50]. Mr. King showed Mr. Galloway a gun, which Mr. King wanted to sell to Mr. Galloway. [*Id.* at 08:38:30-45]. Mr. King said the gun accidentally went off as Mr. Galloway was examining it. [*Id.* at 08:41:30-40].

During the hearing, the circuit court believed that the State could not redact individual sentences or words from the videos. [Trial Tr. 84:16-20 ("THE COURT: Cannot [redact a word] because we don't have the capability. If you redact that word you've got to redact whatever he said. Isn't that true? MS. JOHNSON LEE: Yes, Your Honor. THE COURT: I'm not going to do that. Go ahead.")]. Thus the circuit court believed that the only way to avoid playing certain portions was a manual "fast forward" past them, thereby preventing precise redaction. *See* [Trial Tr. 85:11-24; 93:11-16 ("THE COURT: ... So that you will understand I ruled that anything about his prior conduct that we can redact sufficiently we're going to redact. But there is no way for them to redact efficiently one sentence or one word out of a sentence. They just don't have that capability in Marlboro County.")].

Given the circuit court's belief that the State could not perform precise redactions, it made disparate rulings on references to prior alleged criminal conduct in the videos.

A. References to a Prior Murder Charge That Did Not Result in a Conviction.

In his first interrogation, Mr. King referenced a murder charge against him from 2004. *E.g.* [State Ex. 5 at 04:32:33-36]. The circuit court ruled that three portions of the video referencing that murder charge could not be shown to the jury and had to be fast-forwarded. [Court's Ex. 1]. Indeed the circuit court was emphatic about the importance of keeping out the references to the prior murder charge:

> MR. SHAFFER: At this point he's talking about his previous murder charge. It's 4:28 on the video. 4:28:58.
>
> THE COURT: I want that redacted; that part. Can you do that without destroying the whole video?
>
> ...
>
> MS. WHITE: We will have to fast forward through it, your Honor.
>
> THE COURT: Well, make sure you do it in the right place, but back up a little bit and then fast forward. I don't want to hear anything about that. To the extent possible get to where he talks about allegedly this incident. Go ahead. Let's see where we're going. Go ahead. You be sure that's redacted.

[Trial Tr. 85:9-24]

> MR. SHAFFER: Objection, Your Honor. He's talking about the previous murder. This investigator just asked him what were you charged with in that murder.
>
> ...
>
> THE COURT: I want to redact any reference to any prior conduct.

[Trial Tr. 87:14-22]

Despite having ruled that three prior references to Mr. King's murder charge could not be admitted, the circuit court decided to permit the State to play the following portion of the video admitted as State's Exhibit 5:

> INVESTIGATOR: Well, that's what I am saying. I mean if you didn't do it, I mean why didn't you just go out in the front yard,

> give the gun to the police and say hey, man, Aloysius just ran out the back door?
>
> MR. KING: They didn't give me a [expletive] chance. Man she steady screaming about my god damn – I already got – I already got – I already got a murder kidnapping charge on my record. She didn't see [expletive] – she was in a room.

[State's Ex. 5 at 5:08:08-27].[3] The circuit court offered no specific explanation for why this particular reference was admissible when the prior references were not:

> MR. SHAFFER: Your Honor, at approximately 4:08 – I mean 5:08:25 he said he already had murders on his record, and I move to redact that, 404(B).
>
> THE COURT: What was the specific remark?
>
> MR. SHAFFER: He said, "I've already got murders on my record."
>
> MS. DAVID: Your Honor, he does not have a conviction for murder on his record.
>
> MR. SHAFFER: And he's been charged with murder, Your Honor.
>
> THE COURT: He said – I'm going to leave it where it is. Go ahead.

[Trial Tr. 96:13-24].

B. References to the "McColl" Pending Kidnapping and Robbery Charges

As with the murder references, the circuit court made conflicting rulings regarding references to the McColl kidnapping and robbery charges contained in the video admitted as State's Exhibit 5. On one hand, it excluded two references to the charges. [Court's Ex. 1; Trial Tr. 88:1-3 ("MR. SHAFFER: Objection, Your Honor. He's getting into the McColl charges that are pending? THE COURT: Yes. I want that redacted."); Trial Tr.

[3] Because the court reporter has not prepared an official transcript of the video, the quotation above represents defense counsel's own transcription of it.

92:10-13 ("THE COURT: Can't we redact that part [about the McColl charges]? MS. DAVID: We can try it. We can fast forward past that moment. THE COURT: Do that...")]. Likewise, with respect to the video admitted as State's Exhibit 4, the circuit court ruled inadmissible references to the McColl charges. [Trial Tr. 110:2-3 ("THE COURT: Let's strike any mention of the McColl charge."); Trial Tr. 110:12 ("THE COURT: End it right before he says, 'McColl.'")].

The circuit court did, however, permit two references to the McColl robbery and kidnapping charges in the video admitted as State's Exhibit 5. One reference, at 5:08:08-27, was already quoted in the previous subsection. The other reference was as follows:

> INVESTIGATOR: Who is that?
>
> MR. KING: Aloysius, Same dude that I robbed, me and him got back on good terms.
>
> INVESTIGATOR: Aloysius
>
> MR. KING: From McColl, that one – same dude that signed a warrant on me back in February. Me and him back on good terms.

[State's Ex. 5 at 5:01:12 – 5:01:26].[4] The circuit court offered only a cursory explanation for its decision to permit this particular reference to the McColl charges: "I think it's appropriate based on the totality of what he's saying. Go ahead." [Trial Tr. 96:9-10].

III. The Circuit Court Made Its Evidentiary Rulings Final.

On the morning of trial, the circuit court expressed some discomfort with its decision to permit the reference to the murder and kidnapping charges in State's Exhibit 5, though not sufficient discomfort to revisit the issue again:

[4] Counsel has prepared this quotation because no official transcript exists.

MR. SHAFFER: I made an objection to a prior murder and kidnapping charge at 15:08 –

THE COURT: That's been redacted.

MR. SHAFFER: Your Honor, excuse me. It's actually 5:08:09 through 5:08:10.

THE COURT: Prior burglaries [sic] have not been redacted?

MR. SHAFFER: That hasn't been redacted, Your Honor.

THE COURT: Why?

MR. SHAFFER: He mentioned that – I believe he stated on the record that he couldn't – that Marlboro County was unable to go through line by line and redact every word or every reference to anything in the statement. I believe that was when you had said that yesterday.

THE COURT: Well, this equipment is not the best in the world. They have made every effort to do it. It's not as sophisticated as it should be, but you couldn't redact that part?

MR. REDMOND: Beg the Court's indulgence. That was one that at the time, and I recall that section where the Court ruled that that part could stay in. I can't recall exactly –

THE COURT: If I ruled that I'm not going to beat a dead horse to death. If I ruled – did I rule it stays?

MS. JOHNSON LEE: You did.

[Trial Tr. 125:4-126:4]. Although Mr. King noted that other law enforcement agencies did have the capability to make more precise redactions than rudimentary fast-forwarding, the circuit court wanted the trial to proceed right away regardless. [Trial Tr. 129:17-20 ("THE COURT: Well, we don't have that other agency here. We are in the second day of the trial. We spent most [of] the time with your objections. I'm ready for the jury.")]. To avoid any other delays associated with Mr. King's evidentiary objections to State's Exhibit 5, the circuit court made its rulings on the *motion in limine* final for the purposes of appellate review. [Trial Tr. 130:19-21 ("I don't want you to make your objec-

tions again as to those items [in Court's Exhibit 1]. You've made them and are protected for the record.... We don't want to waste another day with objections.")].

IV. The Court Conducted a Jury Trial.

The circuit court held a three-day jury trial on the indictments. A summary of the proceedings follows, presented in the light most favorable to the verdicts:

A. The State Offered No Motive for the Murder of Mr. King's Longtime Neighbor Only Yards Away from the Sheriff's Office.

1. Ms. Galloway's Testimony

Ms. Karen Galloway, the wife of the decedent, testified that in the early morning hours of November 11, 2011, her husband got up to answer a knock on the door. [Trial Tr. 158:7-159:6]. Perhaps because Mr. Galloway sold liquor from his home after hours, [Trial Tr. 166:5-6], no one appeared surprised at the knocking on the door at that hour. Mr. Galloway came back to the bedroom shortly after answering the door, told his wife that "Tyrone" was there, and went back out of the bedroom after putting on some shorts. [*Id.*]. Later, she heard her husband say "Naw, man I don't have" and then heard a "pop." [Trial Tr. 158:24-25].

Ms. Galloway jumped out of bed, and Mr. King then came into her room. [Trial Tr. 159:1-2]. Mr. King asked her who was in the house with her, to which she responded her cousin Reggie Cousar, and then Mr. King hit her on the top of the head with a gun handle before running out of the room. [Trial Tr. 160:10-16]. The gun accidentally discharged when she was hit on the head, firing a shot into the wall. [Trial Tr. 160:15-16].

While Mr. King was out of the room, Ms. Galloway called 911 after finding her husband dead. [Trial Tr. 161:11-13]. When Mr. King returned, he took the phone from her hand and hung it up. [Trial Tr. 162:1-2]. When the 911 operator called back, Mr. King

answered it and said that he and "someone" had come there to buy some liquor and that that person had shot the victim. [State's Ex. 40].[5] Eventually Mr. King ran out the back door. [Trial Tr. 162:23-25].

Ms. Galloway was able to identify Mr. King because he had been her neighbor for "12 or 13 years" and had come into her home on other occasions. [Trial Tr. 163:22-164:2]. Ms. Galloway testified that she had no idea why Mr. King would have wanted to kill her husband. [Trial Tr. 167:4-5 ("Yeah. I don't know why he shot him. That's what I want to know.")].

2. Devonte Moore's Testimony

Devonte Moore, a minor, testified that he had spent the night with his grandfather the night of November 10th. [Trial Tr. 176:14-15; 177:2-12; 179:2-3]. Mr. Moore had been sleeping in a chair when he heard Mr. King come in and ask his grandfather for alcohol. [Trial Tr. 177:5-178:23]. Mr. Moore testified that he saw Mr. King pull a pistol out of his pants and point it toward Mr. Galloway's stomach. [Trial Tr. 179:23-24]. At some point after Mr. Moore had looked away, he heard the gun go off. [Trial Tr. 188:7-9 ("Q. You heard the noise. Were you looking at him when you heard the noise? A. No.")].

For a witness to an alleged murder, Mr. Moore's testimony is notable for what it omitted. He made no claim that Mr. King appeared angry, that Mr. King and Mr. Galloway had had any sort of argument, that they struggled, or that Mr. Galloway even appeared frightened. Mr. Moore likewise offered no testimony about whether Mr. King did or did not discuss Mr. Galloway purchasing the pistol. He was not asked, and did not of-

[5] As with the video interrogation, no official transcript exists.

fer, any explanation as to how Mr. Galloway came to be shot in the face, [State's Ex. 8 at 1], even though Mr. Moore had last seen the gun pointed at Mr. Galloway's stomach.

Although Mr. Moore said that Mr. King was a frequent visitor at the Galloway home, Mr. Moore was unable to locate Mr. King in the courtroom. [Trial Tr. 177:17-178:7].

3. Reggie Cousar

The Galloways' cousin Reggie Cousar also testified at trial. [Trial Tr. 169:7-9]. He had been living at their home for several months before November 11th. [Trial Tr. 169:4-6]. He woke up when Ms. Galloway cried out for her, walked to the front room, and saw Mr. King pointing a gun at her before Mr. King turned to point it at him. [Trial Tr. 169:22-170:7]. Within five minutes of him having woken up, he saw Mr. King run away. [Trial Tr. 171:25-172:1]. According to him, no one else had been there that night but him, the Galloways, three children, and Mr. King. [Trial Tr. 172:23-173:1]. He also testified that the Galloway's home was only "a block" away from the Marlboro County Sherriff's Office. [Trial Tr. 173:6].

4. Deputy Timothy Shaw

About a minute after the 911 call, Deputy Timothy Shaw arrived at the Galloway home, from the Sheriff's Station about 200 yards away. [Trial Tr. 190:5-191:10]. When he approached the home, he saw someone running out the back. Deputy Shaw then chased and apprehended that person, who was Mr. King. [Trial Tr. 191:24-194:6]. At the time of his arrest, Mr. King had a bottle of alcohol in his pocket. [Trial Tr. 194:15-16].

B. The Jury Heard the References to Murder, Kidnaping, and Robbery Charges Through State's Exhibit 5.

The jury heard the videotaped interrogation from November 11, admitted into evidence as State's Exhibit 5. At trial, the jury watched the videotaped interrogation admitted as State's Exhibit 5, including the references to Mr. King's prior murder, kidnapping, and armed robbery charges at 5:01:12-26 and 5:08:08-27, quoted earlier. [Trial Tr. 291:13-14].[6]

C. The Circuit Court Instructed the State that any Reference to the Armed Robbery Charge Would Result in a Mistrial.

None of the first nine witnesses who testified believed that anyone other than Mr. King had come into the house the morning of November 11th. *See, e.g.*, [Tr. 172:23-173:1]. Nonetheless, to rebut the suggestion that Mr. King made in his videotaped interrogation that Mr. McLaughlin had been present and shot Mr. Galloway, the State called Mr. McLaughlin to testify. He said that he had not been with Mr. King at all on the night in question. [Tr. 301:22-302:21; 303:9-12]. Indeed, Mr. McLaughlin said that he would not have been with Mr. King at all that night because they had not been "cool" at that time. [Tr. 303:13-16].

The questioning about why Mr. McLaughlin would not have been with Mr. King on November 11 was elliptical due to the circuit court's specific admonition to the solicitor and witness just before Mr. McLaughlin's testimony. The circuit court emphatically indi-

[6] The State later played State's Exhibit 4, in which Mr. King had told the police that the gun had accidentally discharged. [Trial Tr. 343:9].

cated that any reference to Mr. King having allegedly robbed Mr. McLaughlin—one of the McColl charges—would result in an immediate mistrial:

> THE COURT: We're not – you didn't call [Mr. McLaughlin] for any pending charges?
>
> MS. DAVID: No, Your Honor, but he might reply based on a pending charge. I am going to ask him was he with the defendant on this night, and I am going to ask him, you know, were they friends.
>
> THE COURT: You can do that, but don't go into anything further, you understand? About any pending charges. Don't you understand that?
>
> MS. DAVID: Yes, Your Honor.
>
> THE COURT: Let there be no question about it, now. If you do that you're getting into trouble that we don't need in as much as that video referenced this individual I'm going to let him testify as to whether he was there or not. That's going to end it. Do you understand that?
>
> MS. DAVID: Yes, Your Honor. So he is not to mention that he would not have been with the defendant the night before because the defendant had robbed him two weeks prior.
>
> THE COURT: We went through that. That's got knowledge [sic – probably "nothing"] to do with this case, all right.
>
> MS. DAVID: Yes, Your Honor.
>
> THE COURT: If you do that I'm going to declare a mistrial, now, I tell you one more time. How strong can I be with you, Mia, on this issue? ... You tell me what you're going to elicit from him.
>
> MS. DAVID: I am only going to ask him if he was at the scene with Mr. Tyrone King....
>
> THE COURT: I'm warning you both, now... And I tell this witness respond to her question and hers only. No reference to anything that occurred about an alleged robbery the night before that. You[] understand that?
>
> THE WITNESS: Yes, sir.

MR. REDMOND: Now, Your Honor, just to be clear, and I know it might be necessary to do a proffer just to be sure, but I do think it is proper, without getting into reasons why that, because that was a reference on the table. Well, actually, there was a reference about this incident. We are not getting into that, but he made a comment that we are all good now or we are cool now referring to the defendant and –

THE COURT: I'll permit that as long as you don't talk about a robbery the night before.

MR. REDMOND: Absolutely, and that's what we're not getting into.

...

THE COURT: Whatever his answer. He can answer that.

MR. REDMOND: I just want to be clear.

THE COURT: I understand that. I understood that he said they were cool. He may not say they were cool. But we'll see. Bring the jury in. Just leave that question of robbery alone, you understand that, Mr. Witness?

THE WITNESS: Yes, sir.

THE COURT: All right.

[Trial Tr. 296:14-300:15].

D. The Circuit Court Denied Mr. King a Mistrial After Melissa Graham Referenced the Armed Robbery Charge.

Immediately following Mr. McLaughlin, the State called his then-girlfriend to confirm that Mr. McLaughlin had been with her and thus could not have been at Mr. Galloway's house with Mr. King. [Trial Tr. 309:4-9]. She testified that when the Sheriff's Department came by that morning to talk to them in connection with the murder investigation, she was surprised because "how we going to help this man murder somebody [when] he just robbed us?" [Trial Tr. 310:14-15].

The circuit court instructed the jury that the reference to the robbery as "totally irrelevant to any issue in this case" and was thus "not to be considered." [Trial Tr. 311:3-9]. Although Mr. King moved for a mistrial on the grounds that the curative instruction was insufficient to overcome the prejudice from the statement, [Trial Tr. 313:14-17], the circuit court refused to order a mistrial because the reference had been nonresponsive to the solicitor's question. [Trial Tr. at 314:12-14 ("I respectfully decline to mistrial on something that she said that was not asked for by the Solicitor.")]. After the circuit court had already denied the motion, trial counsel later said that he would withdraw the motion for mistrial on the grounds that the witness's remarks duplicated what had already been played in State's Exhibit 5. [Trial Tr. 315]

E. The Jury Received Their Final Instructions.

The circuit court provided the jury with their final instructions. It included instructions for murder, the lesser-included offense of involuntary manslaughter, and the defense of accident. [Trial Tr. 494:11-498:2; 501:2-17]. It also included instructions for assault and battery of a high and aggravated nature; together with the lesser-included offenses of assault and battery first, second, and third degrees. [Trial Tr. 498:10-500:5]. And the circuit court instructed the jury on the charge of possessing a firearm during the possession of a violent crime. [Trial Tr. 500:10-501:1]. Although the circuit court had admitted bad-acts evidence, it did not provide the jury with a bad-acts instruction to limit their use of the evidence.

F. The Jury Returned Its Verdicts After Asking to Be Recharged on the Lesser-Included Offenses of Murder and of Assault of a High and Aggravated Nature.

After about an hour-and-a-half of deliberations, the jury requested to be re-charged on the different degrees of assault. [Court's Ex. 3]. The circuit court did so. [Trial Tr. 552:11-15]. Approximately thirty minutes later, they asked to be recharged on the difference between murder and involuntary manslaughter [Court's Ex. 4]. The circuit court likewise obliged. [Trial Tr. 552:20-22].

The jury returned mixed verdicts. It convicted Mr. King on the charge of murder; assault and battery only in the third degree; and possession of a weapon during the commission of a violent crime.[7] [Trial Tr. 554:7-555:3].

G. The Circuit Court Sentenced Mr. King.

The circuit court accepted the jury verdicts and sentenced Mr. King to life imprisonment for the murder, to a consecutive five years for the pointing and presenting, and to time served for the assault and battery in the third degree. [Sentencing Sheets].

V. The Circuit Court Denied Mr. King's Motion for New Trial.

Mr. King filed a post-trial motion that, as is relevant to this appeal, argued that he should be retried because—contrary to the parties' understanding at the *motion-in-limine* hearing—the Marlboro County Sheriff's Office actually had the capability to redact videotaped interrogations in one-second intervals. [Mot. For New Trial at 3-5 & Ex. A-B]. Thus the circuit court could have excluded the references to Mr. King's prior murder, kidnapping, and armed robbery charges, without impacting the other portions it found admissible. [*Id.*].

[7] The jury also convicted him on the charge of pointing a firearm. Mr. King did not include that conviction in his notice of appeal.

At the motion hearing, the State did not dispute that the software's instruction manuals showed that one-second redactions were possible. *See* [10/10/12 Tr. at 16:24-23:16].

The circuit court nonetheless orally indicated that it was going to deny the motion for the following reasons:

- Accomplishing the redactions "would've delayed the case to at least the following week." [10/10/12 Tr. 21:1-5].
- Mr. King voluntarily made the references while trying to explain away his actions [10/10/12 Tr. at 22:19-23].
- The evidence was harmless. [*Id.*]

The circuit court's written ruling, however, made no reference to those previously offered reasons. Instead the circuit court ruled that the motion should be denied for the following reason: "Both parties were given an opportunity to redact the videos and/or agree to the redacted times when played before the court, following pre-trial motions on August 27, 2012. The Court then ruled upon the admissibility of the video statements on September 10th, before the trial began." [Order Denying Motion for New Trial].

ARGUMENT

I. The Trial Court Erred in Admitting Highly Prejudicial Bad Acts Evidence.

South Carolina has long required trial courts to subject bad-acts evidence to "rigid scrutiny" and to give the defendant "the benefit of the doubt" as to its inadmissibility, *State v. Lyle*, 125 S.C. 406, 417 (1923) (citation omitted). To obtain a retrial over an evidentiary issue, Mr. King need only show a prejudicial abuse of discretion. "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Whitner*, 399 S.C. 547, 557 (2012) (quotation omitted). An error is prejudicial unless this Court can conclude, "beyond a reasonable doubt," that it did not contribute to the verdict below. *State v. Black*, 400 S.C. 10, 27 (2012).

The circuit court below failed to undertake the required bad-acts analysis before permitting the State to play Exhibit 5's unredacted references to Mr. King's prior murder, kidnapping, and armed robbery charges. Its decision to admit the evidence rested on the erroneous assumption that the Sheriff's Department lacked the ability to redact the videotape. That highly prejudicial bad-acts evidence cannot qualify as harmless error. And the post-hoc reasons that the circuit court gave in denying the motion for new trial likewise cannot avoid the need for a retrial.

A. The Circuit Court Did Not Undertake the Required Lyle *Analysis.*

Before a circuit court can possibly admit any bad acts evidence, it must make several findings: (1) that the bad act, if true, is relevant to the case; (2) that either a conviction or "clear and convincing proof" establishes that the defendant committed the act; (3) that the

bad act has non-propensity value; and (4) the danger of unfair prejudice from the evidence does not substantially outweigh the non-propensity purpose of the bad act. *State v. Clasby*, 385 S.C. 148, 154-56 (2009) (citations omitted); *State v. Fletcher*, 379 S.C. 17, 23 (2008) (citations omitted); *State v. Pagan*, 369 S.C. 201 (2006) (citations omitted). The circuit court here erred at each step.

1. The Bad Acts Had No Relevance to This Case.

The bad-acts evidence below was not relevant to the charges here. "To be admissible, the bad act must logically relate to the crime with which the defendant has been charged." *Pagan*, 369 S.C. at 211. The reference to Mr. King's prior charges for murder, kidnapping, and/or robbery, however, had no relevance in establishing that Mr. King killed Mr. Galloway with malice. First, Mr. King is constitutionally presumed innocent of any crime unless and until he is convicted. *State v. Gilchrist*, 342 S.C. 369, 372 (2000) ("[A]n indictment is not evidence of the crime charged." (citation omitted)). Accordingly his previous criminal charges had absolutely no bearing on Mr. King's state of mind on November 11. Second, even had he committed the crimes alleged, those crimes would still have no logical relevance to this case. Indeed the circuit court specifically recognized as much when it struck as "totally irrelevant to any issue in this case" Ms. Graham's testimonial reference to the armed robbery charge. [Trial Tr. 311:6-7].[8]

[8] The State cannot argue that the fact that Mr. King had been charged with robbing Mr. McLaughlin made it less likely that the two of them would have gone together to Mr. Galloway's house. At trial, Mr. King's defense was one of accident—not identity. The jury only heard about Mr. King's original version of events, in which Mr. McLaughlin was the alleged shooter, because the State chose to place that version in front of the jury.

The circuit court should have found that the reference to the armed robbery in State's Exhibit 5, as well as the reference to the prior murder and kidnapping charges, failed the threshold bad-acts inquiry.

2. The Circuit Court Made No Findings that the Bad Acts Ever Occurred.

Whether or not any of the bad acts were relevant, the circuit court still erred in admitting them because "clear and convincing evidence" did not establish their occurrence. *Clasby*, 385 S.C. at 155. As for the murder charge, Mr. King was never tried much less convicted of murder, except in this case. [Trial Tr. 555-57]. Indeed, during the *Lyle* hearing, the State specifically advised the circuit court of that fact. [Trial Tr. 96]. And while he had been charged with kidnapping and robbery, he had not been convicted for it. [Trial Tr. 555-57]. Even though well-settled law, therefore, required the circuit court to obtain clear and convincing evidence of those prior acts as a precondition to admitting them into evidence, the circuit court failed to do so.

3. The Bad Acts Had No Non-Propensity Purpose.

"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." Rule 404(b), SCRE. Thus the State may not introduce allegations of prior criminality to show that the defendant is a bad person or has committed violent crimes in the past and is thus a violent person. *See State v. Benton*, 338 S.C. 151, 156 (2000) (improper to admit bad-acts evidence "to show the accused is a bad person or he acted in conformity with his prior convictions"). Here, where Mr. King was on trial for crimes of violence, the jury was implicitly invited to convict Mr. King for his criminal past. Indeed because the circuit court did not give the jury a limiting instruction as to non-propensity uses for the bad acts evidence, the jury

could have made that forbidden inference while remaining faithful to the jury instructions. *Cf. Green v. State*, 338 S.C. 428, 434 (2000) ("The jury, despite limiting instructions, can hardly avoid drawing the inference that the past conviction suggests some probability that defendant committed the similar offense for which he is currently charged. Limiting instructions alone do not make an erroneous admission of prior conviction evidence harmless." (quotation omitted)).

4. The Bad Acts Were Too Prejudicial to Be Admitted.

All bad acts pose a risk of unfair prejudice to a defendant, as a matter of law. *Lyle*, 125 S.C. at 416. But references to a prior murder and other violent crimes were especially prejudicial where, as here, Mr. King was on trial for murder. When a defendant is on trial for the same type of erroneously admitted bad act, "the danger of prejudice is enhanced." *State v. Gore*, 283 S.C. 118, 121 (1984). The Supreme Court has gone so far as to hold that similar bad-acts to the charge on trial can "strip [the defendant] of the presumption of innocence." *Lyle*, 125 S.C. at 416 ("Proof that a defendant has been guilty of another crime equally heinous prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty of the crime charged. Its effect is to predispose the mind of the juror to believe the prisoner guilty...."). *See also State v. Colf*, 337 S.C. 622, 628 (2000) (holding that circuit court erred under Rule 609(b), SCRE, in permitting prosecution to impeach the defendant with similar convictions to the charge, explaining that "evidence of any similar offense should be admitted only rarely" because the more similar the

crimes to the charge on trial, the more the prejudicial effect to the defendant (quotation omitted)).[9]

The circuit court recognized the inherently prejudicial nature of Mr. King's alleged prior criminal conduct. On multiple occasions, the circuit court emphatically ruled that portions of Exhibit 5 that referenced those bad acts had to be redacted. *E.g.* [Trial Tr. 85:9-23 ("THE COURT: I want that redacted; that part [at 4:28 regarding the prior murder].... You be sure that's redacted.").[10] Indeed the morning of trial, the circuit court seemed surprised to find out that it had not ordered redacted every reference to the prior murder and kidnapping. *See* [Trial Tr. 125:4-126:2 ("MR. SHAFFER: I made an objection to a prior murder and kidnapping charge at 15:08 -- THE COURT: That's been redacted.... Prior burglaries [sic] have not been redacted?... Why?"). Further the circuit court warned the solicitor right before the testimony of Mr. McLaughlin—the alleged victim of the prior robbery—that the witness was "not to mention that ... the defendant had robbed him two weeks prior....If you do that, I'm going to declare a mistrial...." [Trial Tr. 297:5-12].

Despite recognizing the prejudicial nature of the two portions of Exhibit 5 at issue, the circuit court reluctantly felt compelled to admit them because it believed that the

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[9] The rule that similar crimes ought not be admitted is an ancient one in the common law. *See Hampden's Trial*, 9 How. St. Tr. 1053, 1103 (K.B. 1684) ("[A] person was indicted of forgery, [but] we would not let them give evidence of any other forgeries, but that for which he was indicted.").

[10] *See also* [Trial Tr. 87:14-22 ("MR. SHAFFER: Objection, Your Honor. He's talking about the previous murder.... THE COURT: I want to redact any reference to any prior conduct."); 88:1-3 ("MR. SHAFFER: Objection, Your Honor. He's getting into the McColl charges that are pending[.] THE COURT: Yes. I want that redacted."); 92:1-13 ("MR. SHAFFER: Your Honor, at this point, again, he goes into... [t]he McColl Charge. The pending armed robbery.... THE COURT: Can't we redact that part? MS. DAVID: We can try it.... THE COURT: Do that....")].

Marlboro County Sheriff's Department lacked the technical capabilities to redact small portions of the video. *See, e.g.*, [Trial Tr. 125:18-21 ("THE COURT: Well, this equipment is not the best in the world. They have made every effort to do it. It's not as sophisticated as it should be, but you couldn't redact that part [about the prior murder and kidnapping]?")]. The circuit court was, however, misinformed about the redaction capabilities that the Marlboro County Sheriff's Office had; the court could have kept out the prejudicial evidence on a word-by-word or line-by-line basis. [Motion for New Trial, p. 5]. Given the numerous other references to the prior murder, kidnapping, and armed robbery charges that the circuit court ruled did have to be excised, *see* [Court's Ex. 1], it is obvious that the circuit court would have excised the references at 5:01:12 – 5:01:26 and 5:08:08-27 of State's Exhibit 5 if it had known that the State had had the ability to do so.

Even the circuit court recognized the unfair prejudice of the bad-acts evidence. Yet it admitted the evidence anyway. This Court should find that it abused its discretion.

B. The Bad Acts Evidence Cannot Qualify as Harmless Error.

Where, as here, a defendant has shown that the circuit court erred in admitting evidence against him at trial, a reversal is required unless the State can prove that the error is harmless beyond a reasonable doubt. *Black*, 400 S.C. at 27. An error can only qualify as harmless if his guilt was "conclusively proven by competent evidence, such that no other rational conclusion could be reached." *State v. Brooks*, 341 S.C. 57, 63 (2000) (quotation omitted). The State cannot sustain its heavy burden here.

First, as shown above in Argument Section I(A)(4), the fact that the jury in this murder case heard that Mr. King already had a murder on his record makes this case especially inappropriate to invoke harmless error; the similarity of the bad acts to the charge

under consideration is inherently prejudicial. *See Gore*, 283 S.C. at 121 (declining to find harmless error for erroneous admission of similar bad act); *Brooks*, 341 S.C. 62-63 (same).

Second, the violent nature of the erroneously admitted bad acts prejudiced Mr. King in his ability to defend against the *mens rea* of his murder charge. The jury obviously struggled with the issue of malice; they asked to be re-charged on the difference between murder and involuntary manslaughter. [Court's Ex. 4]. Their struggle is understandable. The State offered absolutely no motive as to why Mr. King would have wanted to kill his neighbor of "12 or 13 years," [Trial Tr. 163:24], a mere "200-yards away" from the Sheriff's Department, [Trial Tr. 191:9], with multiple other people in the home who could identify Mr. King, *see* [Trial Tr. 163:16-21; 169:2-170:5; 178:19-20]. While proof of motive may not be a legal requirement, a lack of motive can suggest a lack of malice. *See State v. Powell*, 202 S.C. 432, 436 (1943) (ordering judgment of acquittal, in part, because the defendant and victim "were friends and no motive for murder appears in the record"). Further, by acquitting Mr. King of assault and battery of a high and aggravated nature toward Ms. Galloway and convicting him instead of only assault and battery in the third degree, the jury necessarily accepted that the pistol was subject to accidental discharge. *See* S.C. Code § 16-3-600(B)(1)(b) (requiring for assault and battery of a high and aggravated nature that "the act [be] accomplished by means likely to produce death or great bodily injury."). Had the jury not heard about the bad-acts evidence, the jury may have decided to find the shot that resulted in death an accident, too. *Cf.* [Trial Tr. 463:13 ("THE COURT: ... Anybody in their right mind I think would understand that if you

took a loaded nine millimeter and struck a woman in the skull with it to the extent that the gun was discharged it's very likely to cause serious bodily harm.")].

Third, with respect to the robbery charge in particular and as already mentioned above, the circuit court warned the solicitor that any reference to it during Mr. McLaughlin's testimony would result in a mistrial. [Trial Tr. 297:5-12]. Inadmissible evidence that even the circuit court believed would unfairly prejudice the jury's verdict should not constitute harmless error.

Fourth, because Mr. King suffered prejudice to his ability to defend against the charge of murder, he necessarily suffered prejudice to his ability to defend against the charge of possessing a weapon during the commission of a violent crime. An acquittal on the murder charge would necessitate an acquittal of the possession charge. *See* S.C. Code § 16-23-10(3); *State v. Taylor*, 356 S.C. 227, 235 (2003) (vacating conviction for possession of a weapon during a violent crime after vacating conviction for murder).

II. The Circuit Court Should Have Granted Mr. King's Motion for New Trial.

This Court should reverse the circuit court's denial of Mr. King's motion for new trial as an abuse of discretion, *State v. Simmons*, 279 S.C. 165, 166 (1983). Neither the circuit court's written reasoning nor its oral reasoning authorized the denial of the motion.

As for the circuit court's written reasoning—that the circuit court previously ruled on portions of State's Exhibit 5 that were disputed at a pre-trial hearing, [Order Denying Motion for New Trial]—it cannot justify the denial as a matter of law. The circuit court below expressed no desire to revisit any prior ruling, even when later dissatisfied with it or when circumstances had changed. *See, e.g.*, [Trial Tr. 125:9-126:2 ("THE COURT:

Prior burglaries [sic] have not been redacted....? Why? ... [Y]ou couldn't redact that part? MR. REDMOND: ... [T]he Court ruled that that part could stay in.... THE COURT: If I ruled that I'm not going to beat a dead horse to death...."); 130:19-21 (ordering defense counsel not to renew pretrial objections to State's Exhibit 5 at trial, when the circuit court would have heard the other testimony in the case)]. To the extent that the written rationale adheres to that view that whatever was decided previously cannot be revisited, the circuit court committed an error of law; motions for new trial exist precisely so courts can correct incorrect rulings and thereby avoid injustice.

As for the circuit court's oral reasoning, it does not justify affirmance, either. As a preliminary matter, by providing specific direction to counsel as to the content of the written order but signing an order that included different reasons, the circuit court apparently rejected its own oral reasoning. *Compare* [10/10/12 Tr. 23:1-11 (directing contents of order)], *with* [Order Denying Motion for New Trial]. The written ruling should control. *See Rhoad v. State*, 372 S.C. 100, 108 n.3 (Ct. App. 2007) ("Judges are not bound by oral rulings and are free to issue written orders in conflict with prior oral rulings. Until an order is written and entered, the judge is free to change his mind and amend prior rulings." (citations omitted)).

Even if the oral reasons were relevant here on appeal, they are not persuasive. Insofar as the circuit court said that a one-week continuance would have been required for the Sheriff's Department to make the redactions, [10/10/12 at 21:1-5], no evidence supports that finding. The redaction capabilities are built into the recording software that the Sheriff's Department had, as shown by the software instruction manual. [Motion for New Trial Ex. A & B]. Furthermore because Mr. King had previously asked for a continuance

but was denied it; he obviously would not have objected to a one-week continuance if necessary to keep out unfairly prejudicial bad-acts evidence—especially given that the case was only ten-months old at the time of trial.

Next, the fact that Mr. King made the references himself during his interrogation was also no basis to deny a new trial. The prohibition against bad-acts can exclude admissions of a party opponent. *See State v. Tuffour*, 364 S.C. 497, 504 (Ct. App. 2005) (Kittredge, J., joined by Hearn, C.J. and Williams, J.) ("The appellate courts of this state have unwaveringly adhered to the rule of exclusion of prior bad act evidence to show criminal propensity or that the defendant is a bad person unworthy of the presumption of innocence. It bears reminder that *Lyle* and Rule 404(b) set forth a rule of exclusion, not inclusion."), *vacated as moot by* 371 S.C. 511 (2007). Indeed at the *motion-in-limine* hearing, the circuit court invoked the rule of exclusion to keep out multiple references to Mr. King's prior charges of murder, kidnapping, and armed robbery. [Court's Ex. 1].

Finally, insofar as the circuit court once thought the evidence harmless, Mr. King has shown otherwise, in Section I(B), above.

III. The Trial Court Should Have Granted Mr. King's Motion for a Mistrial.

The circuit court abused its discretion in finding that a curative instruction obviated the need for a mistrial after Ms. Graham referenced Mr. King's pending armed robbery charge. Although the State may argue that the issue has not been sufficiently preserved for appeal, this Court should reject that argument.

A. The Court Was Wrong to Have Denied the Motion.

The Supreme Court has long recognized that it is "impossible" to know "[w]hat effect incompetent testimony may have on the minds of jurors, even after instructions to disregard [the] same." *State v. Singleton*, 167 S.C. 543, 549 (1932). Accordingly, in exercising their discretion on motions for a mistrial, circuit courts must consider "[t]he character of the testimony, the circumstances under which offered, the nature of the case, other testimony in the case, and perhaps other matters, should be considered." *Id.* (*quoted with approval in State v. Thompson*, 276 S.C. 616, 621 (1981) (quotation omitted))

Here the circuit court failed to conduct the required analysis regarding Ms. Graham's reference to Mr. King's robbery charge. The circuit court considered only the second factor, the circumstances giving rise to the testimony. The circuit court found the testimony nonresponsive to the solicitor's question. [Trial Tr. at 314:12-14 ("I respectfully decline to mistrial on something that she said that was not asked for by the Solicitor.")]. Insofar as the circuit court thought that a witness injecting nonresponsive and inadmissible evidence into a trial cannot justify a mistrial, the circuit court erred as a matter of law. *See Haynes v. Graham*, 192 S.C. 382, 387 (1939) (finding error in denying motion for mistrial after a plaintiff's witness made an unsolicited reference to the defendant's insurance policy). The circuit court also failed to consider, however, the solicitor's apparent failure to instruct Ms. Graham to avoid reference to the armed robbery charge that had been subject to a ruling *in limine*.

Had the circuit court considered the other *Singleton* factors, it would have found that they uniformly and strongly weigh in favor of a mistrial.

As for the character of the testimony (factor one), the circuit court had just spent four pages of transcript before the testimony of the previous witness, Mr. McLaughlin, stress-

ing the importance of any reference to the McColl robbery from either the solicitor or from him. *E.g.* [Trial Tr. 296:14-300:15]. Indeed the circuit court warned that the mention of the robbery would be so prejudicial as to require a mistrial. [Trial Tr. 297:4-13 ("MS. DAVID: Yes, Your Honor. So he is not to mention that he would not have been with the defendant the night before because the defendant had robbed him two weeks prior....THE COURT: If you do that I'm going to declare a mistrial, now, I tell you one more time. How strong can I be with you, Mia, on this issue?")].

As for the nature of the case (factor three), Mr. King faced potential—and ultimately received—life imprisonment. While a mistrial would have subjected the State to additional time and expense, that inconvenience pales in comparison to the burden on Mr. King if the jury's verdict potentially rested in any way upon the unquestionably inadmissible evidence.

As for the other testimony in the case (factor four), Ms. Graham's reference to the armed robbery reinforced the reference in State's Exhibit 5 at 5:01:12 – 5:01:26. As shown previously, that prior reference was itself inadmissible and was erroneously admitted on the assumption that the State could not redact it away.

Finally, as for the catch-all factor, the circuit court should have considered that the State should not have called Ms. Graham as a witness in the first place. Because Mr. King's trial defense did not even suggest that Mr. McLaughlin had been the shooter, the State had no need to try to establish that fact via Ms. Graham. Any doubts as to the need for a mistrial over this unneeded witness' testimony should be resolved against the State.

B. The Motion Remains Preserved for Appellate Review.

While the State will likely argue that trial counsel's eventual decision to withdraw the motion for mistrial means that the issue is not preserved for appeal, *see* [Trial Tr. 315], this Court should not accept that argument.

First, trial counsel below stated that he was withdrawing the motion only after the circuit court had already denied it on the grounds that the improper testimony was "not sufficient to cause a mistrial in this case." [Trial Tr. 314:8-14].[11] Error preservation only requires an objection and an actual ruling below. *See Eubank v. Eubank*, 347 S.C. 367, 374 n.2 (Ct. App. 2001) ("The 'raised to and ruled on' rule of error preservation requires only a ruling, not necessarily a favorable one." (citation omitted)). An erroneous ruling, therefore, actually exists in this record for appellate review.

Second, insisting upon any better error preservation would not advance any of the policies underlying the objection-and-ruling requirement. The circuit court was alerted to the insufficiency of the curative instruction, so it had the chance to avoid error. *Cf. Roche v. S.C. Alcoholic Beverage Control Comm.*, 263 S.C. 451, 455 (1975) ("[T]he purpose of appeal under our procedure is to determine if the lower court did something that it should not have done, or omitted doing something it should have done. Accordingly, a trial judge will not be reversed for failing to act on a matter that was not submitted to him." (quotation omitted)). Relatedly, because the circuit court below provided its reasons for why it was exercising its discretion to decline to order a mistrial, no concern exists about this Court deciding questions in the first instance, rather than reviewing reasoning of the lower courts. And because defense counsel actually raised the issue to the circuit court

[11] Trial counsel apparently misunderstood that further references to the robbery could merit a mistrial, despite Mr. King's earlier (and overruled) objection to the reference in State's Exhibit 5.

below, no gamesmanship considerations exist. *Cf. State v. Ballew*, 83 S.C. 82, 87 (1909) ("The defendants, with full knowledge of the misconduct of the jury, having chosen not to complain to the Court, but rather to take the risk of a verdict in their favor, could not afterwards, because the verdict was against them, have a new trial on this ground.").

Third, because Ms. Graham referenced evidence that the judge had already ordered never shared with the jury and because that evidence, as shown above, was so prejudicial as to prevent Mr. King from receiving a fair trial, the judge should have granted the mistrial even without the need for a formal motion. Our Supreme Court requires trial judges to ensure the fairness of the proceedings before them. *Gore*, 257 S.C. at 334 ("On the shoulders of the judge rests the responsibility to see that both defendants and the State have a fair trial."); *Shearer v. De Shon*, 240 S.C. 472, 484 (1962) ("One of the highest duties of a trial Judge is to see that a fair and impartial trial is had....").[12] Thus South Carolina's error-preservation rules give way in the face of "clear prejudice" resulting from a trial judge refusing to act on his or her own, resulting in a "flagrant" abuse of discretion. *Toyota of Florence v. Lunch*, 314 S.C. 257, 263 (1994) (citation omitted). That exception encompasses the failure of the circuit court here to grant the mistrial that it has "strong[ly]" cautioned would result if there was any reference to the robbery—as there ultimately was. [Trial Tr. 297:12-13].

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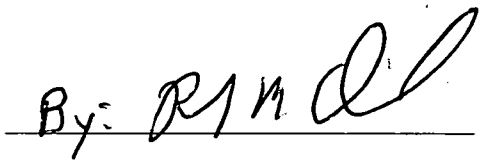
[12] *See also State v. Shelton*, 270 S.C. 577, 580 (1978) ("A trial judge has the inherent power to preserve order in his court and to see that justice is not obstructed by any person or persons."); *State v. Holland*, 261 S.C. 488, 495 (1973) ("It is the duty of the trial judge to assure himself that each and every prospective juror is unbiased, fair, and impartial."); *State v. Tillman*, 255 S.C. 528, 533 (1971) ("If there is a reasonable likelihood that prejudicial publicity prior to trial will prevent a fair trial, it becomes the duty of the judge to continue the case until the threat abates."); *Elletson v. Dixie Home Stores*, 231 S.C. 565, 576 (1957) ("The Court may of its own motion call a witness and examine same even out of order.").

CONCLUSION

In light of the circuit court's erroneous admission of evidence and its failure to grant the required mistrial, Mr. King respectfully requests that this Court vacate his convictions for murder and for possession of a weapon during a violent crime and remand for retrial on those indictments.[13]

Respectfully submitted,



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This 31st day of December, 2013.

[13] After conferring with counsel and reviewing a copy of this brief, Mr. King has directed his counsel to abandon any direct appeal for his conviction of assault in the third degree.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYRONE J. KING,

APPELLANT

APPELLATE CASE NO. 2012-213461

DESIGNATION OF MATTER TO BE

INCLUDED IN RECORD ON APPEAL

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

(1) True–billed indictment(s);
(2) Notice of appeal

(3) Indictments (2012-GS-34-0024, -0026, and -0028)

(4) Sentencing sheets (2012-GS-34-0024, -0026, and -0028)

(5) Defendant's Motion for New Trial (with Exhibits A and B) (filed 9/26/12)

(6) Certificate of Service and Filing for Defendant's Motion for New Trial (filed 9/26/12)

(7) Order Denying Defendant's Motion for New Trial (filed 11/21/12)

(8) Portions of transcript of proceedings for August 6, 2012:

(9) Pages 4-5 (colloquy)

(10) Portions of the transcript of proceedings for September 10-13, 2013, Vol. I:

(11) Pages 83-99 (hearing on *motion in limine* regarding State's Ex. 5)

(12) Pages 109-110 (hearing on *motion in limine* regarding State's Ex. 4)

(13) Portions of the transcript of proceedings for September 10-13, 2013, Vol. II:

(14) Pages 121-31 (colloquy)

(15) Pages 158-67 (testimony of Karen Galloway)

(16) Pages 168-175 (testimony of Reggie Cousar)

(17) Pages 176-81 and 185-89 (testimony of Devonte Moore)

(18) Pages 190-195 (portion of direct examination of Timothy Shaw)

(19) Page 291 (portion of direct examination of Shawn Feldner)

(20) Pages 296-299 (colloquy)

(21) Pages 300-304 (testimony of Aloysius McLaughlin)

(22) Pages 307-312 (testimony of Melissa Graham)

(23) Pages 313-15 (colloquy)

(24) Portions of the transcript of proceedings for September 10-13, 2013, Vol. III:

(25) Page 343 (portion of direct examination of Jamie Seales)

(26) Pages 460-467 (portion of hearing on motion for directed verdict)

(27) Portions of the transcript of proceedings for September 10-13, 2013, Vol. IV:

(28) Pages 482-502 (jury charges)

(29) Page 552 (jury questions)

(30) Pages 553-58 (jury verdict)

(31) Trial Exhibits:

(32) Ex. 4 (DVD – 11/16/11)

(33) Ex. 5 (DVD – 11/11/11)

(34) Ex. 8 (Autopsy Report)

(35) Ex. 40 (DVD – 911 call)

(36) Court's Exhibits:

(37) Court's Ex. 1 (email from Tristan Shaffer)

(38) Court's Ex. 3 (jury note)

(39) Court's Ex. 4 (jury note)

(40) Portions of the transcript of proceedings for October 10, 2012:

(41) Pages 16-23 (colloquy)

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

December 31st, 2013

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Appeal from Marlboro County
Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYRONE J. KING,

APPELLANT

APPELLATE CASE NO. 2012-213461

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Mr. Tyrone J. King, #293101Lieber Correctional Institution, this 31st day of December, 2013.

By: [signature]

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SUBSCRIBED AND SWORN TO before me
this 31st day of December, 2013.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.