STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF BARNWELL) SECOND JUDICIAL CIRCUIT

Indictment 2013-GS-06-274

State of South Carolina)
)
v.)
)
Sammie Lee Gerrick,)
)
Defendant.)

ORDER DENYING MOTION FOR RECONSIDERATION OF SENTENCE

Defendant, Sammie Lee Gerrick, was convicted on November 21, 2013 by a jury of murder, and this Court sentenced him to life in prison. He has filed a motion for reconsideration of sentence. A hearing was held on this motion on December 16, 2013.

Of course, a judge is allowed broad discretion in sentencing, and a sentence is not excessive if it is within statutory limits. See Brooks v. State, 325 S.C. 269, 481 S.E.2d 712 (1997). Having carefully considered all the factors in the case, including the facts of the crime and the Defendant's prior record, this Court declines to change the sentence of life in prison without parole.

Accordingly, the Motion to Reconsider Sentence is denied.

IT IS SO ORDERED.

The Honorable Doyet A. Early, III
Presiding Judge, Second Judicial Circuit

Jan 9, 2014,
Aiken, South Carolina.

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
) SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL)

Indictment 2013-GS-06-274

State of South Carolina)
) **ORDER DENYING MOTION**
v.) **FOR A NEW TRIAL**
)
Sammie Lee Gerrick,)
)
Defendant.)

Defendant, Sammie Lee Gerrick, was convicted on November 21, 2013 by a jury of murder, and this Court sentenced him to life in prison. He has filed a motion for a new trial based on the following grounds. A hearing was held on this motion on December 16, 2013. For the following reasons, the motion is denied.

I. THE CAPSULE AND ACCOMPANYING LETTER WERE ADMISSIBLE TO SHOW CONSCIOUSNESS OF GUILT UNDER LONGSTANDING SOUTH CAROLINA CASELAW.

Defendant first contends that the court improperly admitted the capsule containing the letter found in Defendant's console. He argues that the note was not written by him and was portrayed as a confession, and that the prejudicial effect outweighed any probative value.

This evidence was the subject of a pretrial motion and the State presented a memorandum as to admissibility. This Court considered the arguments by both sides, and during the course of the trial ruled the evidence admissible. Having further considered the arguments of the State and the Defendant before, during, and after the trial, this Court affirms its previous ruling that the evidence was properly admitted.

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As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (quoted in State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (2013)). Further, in order for certain acts to be evidence of guilty consciousness, there must be some connection between the crime charged, the act, and the defendant. See Martin, 403 S.C. at 29, 742 S.E.2d at 47.

Here, the letter provides the specific nexus to this case, as it expressly refers to four relevant things: (1) the murder, (2) the bond revocation, (3) the trial court, and (4) the request to be "set free". There was evidence at trial from which it could be reasonably inferred that Defendant's inability to pay back the money Tyrone Donaldson loaned him to get out on bond was the motive for this murder, and it was this Court which set that very bond on the escape charge. If Defendant were to get arrested for murder that could potentially result in a revocation of the bond on the escape charge. Further, the evidence showed Defendant had been repeatedly questioned at least twice by the police about involvement in Donaldson's disappearance prior to the capsule and accompanying letter being discovered. Defendant also had already denied involvement to mutual friends, noting that he hoped a supposed text from the victim would take "heat" off Defendant. Thus, Defendant was aware he was a target of the investigation into Donaldson's disappearance prior to the time the letter was found in his truck.

Given these facts, the letter is clearly susceptible of the inference that because of his consciousness of guilt, Defendant procured the letter for whatever help it might bring in warding off a murder charge and related legal problems – indeed, it expressly hoped

that Defendant would be "set free". Again, "*any* guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt". Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (emphasis added).

Moreover, the caselaw is clear that alternate explanations that could be offered are a matter for weight, not admissibility. See Beckham, 334 S.C. at 314-15, 513 S.E.2d 612-13. See People v. Hernandez, 2012 W.L. 1652551 (Cal Dist. Ct. App. 2012) (unpublished) (voodoo dolls discovered in defendant's possession with names of prosecutors, judges, and investigators in the case was "highly probative of his consciousness of guilt").

Additionally, this Court finds the probative value was not substantially outweighed by any prejudicial effect. The attorneys for the State did not play up or even use the words "voodoo" or "witchcraft", and typically referred to the item as a "capsule". Admittedly, one testifying agent in reviewing her report used the word "witchcraft root" before the jury, but was quickly stopped by both the State and the Court and there was no further discussion of voodoo or related subjects. This Court in considering the case as a whole, finds no prejudice was suffered. The State did not claim that Defendant wrote the letter, but only that it was clearly an important personal item he kept close to him in the console of his truck, at a time when he knew he was a target in this murder case and was out on bond, and which specifically hoped he would be protected from murder and bond revocation and would be "set free." Since the evidence was admissible and only argued by the State for the limited purposes; this Court finds any

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prejudicial effect was minimal and more than outweighed by the probative value as to guilty consciousness. Accordingly, this Court finds the evidence was properly admitted.

II. THERE WAS NO PREJUDICIAL ERROR FROM THE BRIEF UNREDACTED DISPLAY OF THE POLYGRAPHER'S COMPUTER EQUIPMENT.

Defendant next moves for a new trial because the video on which the polygrapher's computer equipment was visible was inadvertently and briefly shown to the jury.

The decision to grant or deny a mistrial is within the sound discretion of the trial court." State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010). "The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." Id. "The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." Id. "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." Id. "The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." Id. at 495–96, 692 S.E.2d at 563. See State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013).

At trial, the defense moved to exclude the video statement taken by the polygrapher because his computer equipment was visible on the table. The State argued that since the video quality was so poor, and the polygrapher used computer equipment, it was not apparent from the video that the items on the table were anything more than a computer and some note pads. As trial progressed, the State and the

defense compromised and agreed that the State would take a Wordpad document sized appropriately and overlay it on the video so that the table in the bottom corner could not be seen. All the videos were played on a computer, through a projector, and on to a movie screen visible to the jury.

In adjusting the sound as the video began to play, the State inadvertently caused the overlay not to be on top anymore. This Court noticed this and sent the jury out. The defense moved for a mistrial. This Court found the error inadvertent and unintentional, and also found no prejudice; thus, it denied the mistrial motion. The jury was brought in and the video continued with the overlay in place.

Having considered the events at trial and the arguments in the post-trial motion, this Court's decision affirms its denial of a mistrial and its conclusion that no prejudice was suffered. This Court finds that even if the video had been shown in its entirety, it is of such poor quality that it cannot be made out that the things on the table are anything but a laptop and some notepads. Nothing was hooked up to the defendant or visibly obvious as polygraph equipment.

Further, this Court finds that the quality of the video was even worse and less discernable when it was magnified on the movie screen, and the video without the overlay was only up for seconds at the very beginning before the error was realized, the video turned off, and the jury sent out. Therefore, this Court finds there was simply insufficient time for any juror to make out what was on the table beyond just normal office items like pads and a computer. At no time during the video or the trial was the word polygraph mentioned before the jury.

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Given these facts and circumstances, this Court finds there was no prejudicial error from the inadvertent and brief showing of the video without the overlay. See State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013) (trial court properly denied mistrial where, in part, trial court noted that it did not believe any juror could even tell that the small heart-shaped object the witness brought with her to the stand was an urn, and the jury was quickly excused and the problem corrected).

As such, this Court concludes a mistrial was properly denied.

III. THE AUGUST 17, 2011 STATEMENT WAS PROPERLY ADMITTED, AS THE DEFENDANT DID NOT UNAMBIGUOUSLY REQUEST COUNSEL AND THE WAIVER WAS KNOWING AND VOLUNTARY.

Defendant next contends this Court erred in allowing the Defendant's August 17, 2011 statement, which he claims violated his rights inasmuch as he asked to meet with his attorney.

This also was the subject of a pretrial hearing at which the State provided a memorandum in support of admission. Briefly, at the beginning of this particular interview, Defendant stated he was willing to talk to police, but his lawyer (on other charges) told him not to talk and he felt he should call his lawyer and let him know he was being interviewed. Police responded that unlike their prior interviews, when Defendant was not in custody and he came down voluntarily, since Petitioner was currently in custody on the Bamberg charges, they were required to read him his rights before they could talk with him. The officer then asked Petitioner if he could proceed reading him his rights and Defendant agreed. During the reading of rights, the officer went over the right of Defendant to have counsel present before and during questioning,

and the right to stop the questioning at any time. Following this, Defendant again indicated he wished to proceed with questioning, just as he had done at the beginning of the interaction.

An invocation of right to counsel must be unambiguous, as police are not "required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong'". State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010) (citing Berghuis v. Thompkins, 560 U.S. 370 (2010)). Here, Defendant started out by clearly stating he wanted to talk to police. He then only added that his lawyer told him not to talk, and he felt like he should let his lawyer know he was there – *not* that he wanted his lawyer actually present before he continued with questioning. This is the definition of an ambiguous statement. In the face of this ambiguous statement, officers proceeded to do a full and fair waiver, after which Defendant agreed to talk. Thus, there was no violation. See Davis v. United States, 512 U.S. 452 (1994) (United States Supreme Court held that the statement "maybe I need a lawyer" was NOT an unambiguous request for counsel).

Moreover, the validity of the ultimate waiver precludes any suppression. After it has been determined that the waiver was valid, the analysis is over:

> [o]nce it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the state's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law."

State v. Binney, 362 S.C. 353, 358-361, 608 S.E.2d 418, 421 - 422 (2005).

Here, a review of the video shows Defendant, an intelligent person with experience in the criminal justice system, was agreeable to talk from the start and was not badgered into waiving his rights by coercive police conduct. The decision was clearly knowing and voluntary after an explanation of the rights. Indeed, he did not even "confess" to anything, but continued to deny any involvement in the victim's disappearance. As such there is no call for suppression.

Accordingly, this Court finds the statement was admissible, and the motion for a new trial on this basis is denied.

IV. THERE CLEARLY WAS SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO SUBMIT THE CASE TO THE JURY.

Defendant next contends he should get a new trial because the evidence was circumstantial and did not prove him guilty beyond a reasonable doubt.

In reviewing a motion for a directed verdict, the trial court is concerned with the existence of the evidence, not with its weight. State v. Brannon, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010). The Court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001).

If there is any direct evidence, or if there is substantial circumstantial evidence, which reasonably tends to prove the defendant's guilt, the trial court properly submitted the case to the jury. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the defendant is guilty. Odems, 395 S.C. at 586, 720 S.E.2d at 50.

Defendant contended at trial and contends in his motion that the evidence does not prove guilt to the exclusion of any reasonable hypothesis. This is incorrect. Not only is that not the law, as it "comes perilously close to shifting the burden of proof, see State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), the caselaw is clear that "a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." State v. Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (2004). See also State v. Hepburn, --- S.E.2d ----, 2013 WL 6492390 (December 11, 2013).

Given these principles, it is clear that the State did more than raise a mere suspicion and in fact presented, as this Court stated at trial, overwhelming circumstantial evidence. The State set out all of this evidence in its responsive

document to this motion which this Court adopts. The evidence in this case is substantial circumstantial evidence, and whether by motive, opportunity, or acts of guilt, they all point to Defendant. In short, Defendant owed the victim money and needed more money, Defendant and the victim said they were going off together for Defendant to get the money, Defendant was last seen with the victim around the time the victim disappeared as corroborated by witness testimony and the cell phone records, Defendant took the victim's car from the crime scene late at night and hid it, he used the victim's ATM card the next day, he ultimately placed himself at the scene in his own statements, and he had defensive wound scratches. Together, all of this evidence is very strong. See, e.g. State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013) ("circumstantial evidence, however, gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury," and finding substantial circumstantial evidence reasonably proved the defendant's guilt).

The motion for a new trial is denied.

V. THE MOTION FOR A NEW TRIAL BASED ON THE SECOND WILLIAMSON LETTER RECEIVED AFTER TRIAL SHOULD BE DENIED AS THE EVIDENCE IS NOT "NEW" UNDER THE LAW, AND REGARDLESS IS PLAINLY WITHOUT ANY CREDIBILITY SUFFICIENT TO MEET THE STANDARD FOR AFTER-DISCOVERED EVIDENCE.

Gerrick finally contended in his motion that he should be granted a new trial based on the second letter given by Dustin Williamson after the guilty verdict, in which Williamson again states he committed the crime and states that he does want to testify. However, at the hearing the defense indicated that given what the State had discovered about the circumstances in which the second letter was procured, it was withdrawing the motion. In lieu of testimony, the parties agreed to submit into evidence State's Exhibit 1 through 8, which included: (1) a DVD of the interview by SLED agent Jeff Croft of Dustin Williamson, (2) a DVD of the interview by Agent Croft of Brandon Morrell, (3) a DVD of the interview by Agent Croft of Houston Bryant, (4) and (5) DVDs of the security cameras in Defendant's cell for the time period after he was returned to the cell following the guilty verdict; (6) Memorandum of Interviews ("MOI") and other documents from Agent Croft and other officers regarding their investigation into the second letter, (7) a list of times when Gerrick is visible engaging in relevant activities on the security cameras, as prepared by Agent Croft, and (8) the letter from Early Glover which Glover refuted at trial and testified that Defendant promised him $1000 to write it.

So that the record is clear, however, this Court sets out the following recitation that led to the defense's decision.

A. Facts before trial

A few weeks prior to trial, Defendant reported to correctional officers that he had found a letter on the floor of his cell. This letter (the "first letter") was signed by 18-year-old inmate Dustin Williamson. The text of the letter claimed generally that Defendant was innocent and was not present when the victim was killed. The letter further stated the victim was killed in Santee and brought to the burial site, and that Williamson and four other people were involved. At one point, the letter states that the writer does not know Defendant, but at another point claims that Williamson and his friends were supposed to kill Defendant too. The letter also contained idiosyncrasies seen in Defendant's own writing, such as "no" for "know", "rat" for "right", and "knot" for "not".

At a pre-trial hearing the Wednesday before trial, Williamson's counsel Jason Price, Esquire informed the Court that he just realized he had a conflict and would need to withdraw from representation. The State asked the Court to appoint counsel for Williamson for purposes of the letter and the upcoming trial, and this Court that day appointed Adam Ness, Esquire, for that purpose.

At trial, Dustin Williamson was called to the stand outside of the presence of the jury. He indicated he would not testify and wished to claim his Fifth Amendment privilege against self-incrimination.

The State then offered evidence outside of the presence of the jury about the manner in which the letter was found. Lt. Shaune Harley from SLED testified. He noted he received statements from the jail guards, who stated they got the first letter from Defendant who claimed he found it on the floor of his locked cell.

Lt. Harley interviewed Williamson twice prior to trial. At the first interview, Williamson admitted writing the letter but could not provide any specific details about what allegedly happened, responding only "whatever is in the letter, that's what happened".

At the second interview, Williamson requested that he be taken out of Barnwell Detention Center, so he was taken to Bamberg. At that interview, Williamson again admitted writing the letter, but he again only would say "whatever is in the letter" when asked about specifics of the crime. When he was asked if he had been threatened or put up to writing the letter, Williamson stated that "someone was going to die in six days." When asked if his family had been threatened, Williamson asked the officers to make sure his mother was safe. Williamson also stated he needed to get out of the Barnwell Detention Center because he would be killed.

At one point in the interview, Williamson said that he never claimed that he personally killed the victim. When Lt. Harley and Attorney Ness explained to Williamson the concept of accomplice liability through the "hand of one is the hand of all," Williamson dropped his head and kept repeating "they played me, they played me."

The parties then discussed admissibility of the letter. The State argued, among other things, that the letter was inadmissible as a statement against penal interest pursuant to Rule 804(b)(3), SCRE, because the circumstances of the letter show that when the statement was made, Williamson did not believe he was actually admitting to guilt because he did not understand the concept of accomplice liability. The State noted that the whole rationale for the statement against interest rule is that the statement

could be trusted because a person would not make an admission against interest without believing it to be true, and in this case, the circumstances show Williamson clearly did not believe he was admitting anything against his interest. This Court agreed with the State's arguments and excluded the letter.[1]

The next morning, the parties again discussed the Williamson issue. The State withdrew its objection to the admissibility, and made the argument that the circumstances surrounding the making of the first letter, and Williamson's statements about the letter to law enforcement described above, should be admissible as impeachment pursuant to Rule 806, SCRE, which allows impeachment of a hearsay declarant if the hearsay statement is admitted, without the necessity of any opportunity to deny or explain. The State noted caselaw holding that introduction of impeachment evidence under Rule 806 does not violate Crawford v. Washington, 541 U.S. 36 (2004),

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[1] See State v. Kiser, 284 S.W.3d 227, 266 (Tenn. 2009) ("As commentators have noted, statements should not be admitted under Rule 804(b)(3) 'if the declarant actually believed that he or she was saying something that would be helpful.' Cohen, supra § 8.36(5). In that event, 'reliability is questionable and the statement should not be admitted under this hearsay exception.' Id."). See also Weinstein's Federal Evidence § 804.06[1] ("Statements against interest are admissible because it is presumed that one will not make a statement damaging to one's self unless it is true."); § 804.06[4][c] (concluding that because liars may confess to acts they did not commit, such declarations should be "excluded if counsel opposing admission can persuade the court that the declarant is probably lying," and the trial court should make that determination outside of the presence of the jury); § 804.06[d][I] ("At the moment the statement is made the declarant must believe that the statement is against the declarant's interest. . . . **The court may exclude statements it finds inherently unreliable because the declarant was, for example, currying favor or was ignorant. The court must ascertain whether a particular declarant would know enough to perceive the statement's detrimental character.**") (emphasis added and citing various cases)).

because it is offered for impeachment and not the truth of the matter asserted.[2] Similarly, the State argued the statements about the first letter were admissible as evidence of Williamson's state of mind – again, not for the truth of the matter asserted in violation of the hearsay rule and Crawford.[2] The State argued that the circumstances of the statement needed to be admitted in the interests of justice, to preclude the jury from being misled about Williamson's true actions.

This Court agreed with the State's Rule 806 argument and ruled that Williamson's statement to law enforcement about the first letter would be admissible. At this point, the defense then withdrew its offer of the first letter, expressly noting the withdrawal was done for strategic reasons. For context, another State's witness, Early Glover, already testified that when he and Defendant were in SCDC, Gerrick promised him money if Glover would write a statement that Defendant had nothing to do with the crime. Defendant provided Glover with a statement which Glover then copied in his

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[2] See Hernandez v. State, 273 S.W.2d 685 (Tex. Ct. App. 2008) (evidence admitted under Rule 806 to impeach hearsay declarant was offered for impeachment, not the truth of the matter asserted, and thus did not violate Crawford). See generally Michigan v. Bryant, 131 S.Ct. 1143, 1161 n. 11 (2011) (that the Confrontation Clause is not implicated when statements are offered "for purposes other than establishing the truth of the matter asserted." Crawford, 541 U.S., at 60, n. 9).

[2] See State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007) (victim's statement was not offered to show defendant hit her mother but to show her state of mind and why she behaved as she did); State v. Ruben T., 936 A.2d 270, 278-79 & n.5 (Conn. 2007) (statements of victim not hearsay as they were not admitted to show the truth of the matter asserted, but as circumstantial evidence of the victim's state of mind – that she was afraid of defendant; thus, Crawford was not implicated); State v. Williams, 1999 W.L. 783971 (Ohio Ct. App. 1999) (statements that declarant had been threatened in jail were no offered for truth but state of mind). See generally United States v. York, 572 F.3d 415, 427 (7th Cir. 2009) (statements offered for context of defendant's statements and not truth are not hearsay and Crawford is not implicated).

own hand. Glover testified he did not know Defendant prior to meeting him at SCDC, and that he knew nothing about the crime.

B. Facts after the verdict

The day after Defendant was found guilty of murder, this Court received another letter from Williamson (the "second letter"). In this letter, Williamson again stated Defendant was innocent, and threatened to kill ten officers. Williamson stated he killed the victim, and wanted to speak to police within two hours. Williamson also stated he could tell about a man who was killed in Blackville in May. The letter threatened this Court and his lawyer, and then went on to state he buried the victim face down, that the victim was 250 pounds, that he was buried on a dirt road in Blackville, that the victim had a bald head, that the victim died on Thursday night at 9:30pm, and that "Aundrey Hightower" made Williamson do it.[3] The letter stated that Williamson no longer wanted to take the Fifth, and demanded that the murder charge be taken off of Defendant.

SLED Special Agent Jeff Croft interviewed Williamson after receipt of this letter, and his Memorandum of Interview ("MOI") is attached. Williamson admitted he wrote the letter. When asked if what was written was true, Williamson responded "it could be its in the letter aint it." Williamson threatened Agent Croft, but would not acknowledge the letter was his idea.

Subsequently, Agent Croft interviewed Houston Bryant and Brandon Morrell, who were in the cell adjacent to Defendant on the night after he received his guilty verdict. MOIs, videos, and a statement from these interviews are attached. Morrell told Agent Croft that after his verdict, Defendant and Williamson began "fishing" – or

[3] "Aundrey" is another idiosyncrasy also found in the Early Glover letter.

communicating in writing with the assistance of Bryant and Morrell who were in the cell between them. Bryant and Morrell read the letters as they assisted in passing them back and forth. In the letters, Defendant again asked Williamson to take Defendant's murder charge, and Defendant promised to help Williamson get an insanity plea if Williamson took Defendant's charge. Morrell stated he knew that Williamson and Defendant also passed letters prior to trial.

Similarly, Houston Bryant also admitted helping Defendant and Williamson pass letters between cells after Defendant received his guilty verdict. Bryant stated Defendant would pass the letter underneath a crack between his and Defendant's cell. In the letters, Williamson apologized and stated he had tried to take the charge for Defendant, and asked if Defendant was "still going to do that for me". The two continued to pass letters, with Defendant promising that if Williamson took Defendant's murder charge, Defendant could help Williamson get an insanity plea and not do much time in prison. Williamson wrote the second letter confessing to the murder and threatening the judge and others, and Defendant would rewrite it correcting Williamson's errors as the letters were passed back and forth.

Special Agent Croft also retrieved surveillance video of the jail. In it, he has been able to document times where Defendant made actions corroborative of the statements of Bryant and Morrell that Defendant passed letters back and forth during the evening.

C. Withdrawal

Given the information discovered by the State about the procurement by Defendant and the falsity of Williamson's second letter, the defense at the hearing

withdrew its motion on this ground for relief. Indeed, the defense strategically withdrew the first Williamson letter during trial when it became clear that the circumstances under which it was obtained would only serve to help convict Defendant, not exculpate him, particularly given the evidence from Early Glover. The second letter and the circumstances under which it was obtained have only made the Dustin Williamson evidence even stronger evidence of guilt in favor of the prosecution.

Accordingly, this basis for relief has been withdrawn.

CONCLUSION

Therefore, since the first four grounds for relief have been rejected by this Court, and the fifth ground has been withdrawn, the Defendant's motion for a new trial is denied.

IT IS SO ORDERED.

The Honorable Doyet A. Early, III
Presiding Judge, Second Judicial Circuit

Feb 4, 2014,
Aiken, South Carolina.