THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213596

THE STATE,

RESPONDENT,

v.

CLEOPHUS N. EDWARDS, Jr.,

APPELLANT

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3601
S.C. Bar #5758

DAVID M. PASCOE
Solicitor, First Judicial Circuit
P. O. Box 836
Orangeburg, S.C. 29116
(803) 533-6252

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213596

THE STATE,

RESPONDENT,

v.

CLEOPHUS N. EDWARDS, Jr.,

APPELLANT

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3601
S.C. Bar #5758

DAVID M. PASCOE
Solicitor, First Judicial Circuit
P. O. Box 836
Orangeburg, S.C. 29116
(803) 533-6252

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213596

THE STATE,

RESPONDENT,

v.

CLEOPHUS N. EDWARDS, Jr.,

APPELLANT

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3601
S.C. Bar #5758

DAVID M. PASCOE
Solicitor, First Judicial Circuit
P. O. Box 836
Orangeburg, S.C. 29116
(803) 533-6252

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in admitting a Red Acer laptop computer in evidence when the red laptop computer was searched without probable cause during a warrantless search of the defendant's house?

II. Did the trial court err in admitting in evidence clothing and shoes that was contained in a suitcase that was searched by law enforcement outside of the defendant's house when law enforcement did not have reasonable suspicion that the suitcase contained evidence of or fruits of a crime?

III. Did the trial court err in admitting in evidence the results of the DNA analysis of samples from the clothes and shoes taken from the suitcase and the results of the shoe imprint comparison of the shoes taken from the suitcase under the "Fruit of the Poisonous Tree" Doctrine?

RESPONDENT'S COUNTER STATEMENT OF THE ISSUES

I. Whether the trial judge properly denied a motion to suppress the admission of the stolen red Acer Aspire laptop computer where

- **a. it was recovered from the Appellant when he was being arrested for a probation violation pursuant to a probation arrest warrant,**
- **b. as a probationer he had agreed to consent to searches of his person and residence without a warrant and under the unique facts of the case,**
- **c. the officer had reasonable suspicion that the computer was stolen evidence of the February 2, 2011 Hanton crimes because he had prior information that a red Acer laptop computer with a wide screen had been stolen and had personally reported the serial number found on the empty box at the Hanton scene.**
- **d. The viewing of the serial number at the arrest scene on February 16, 2011 did not violate the Fourth Amendment.**

II. Whether the trial judge properly denied suppression concerning the suitcase of Appellant provided to law enforcement by a third party

where law enforcement at the time had a "reasonable suspicion" that it contained evidence of a crime where evidence existed at that time that the Appellant had confessed to the murder, had described shoes worn at the crime, had attempted to assist law enforcement in locating his shoes at his residence, and other evidence, including the information about the seized red computer where the Appellant was a probationer subject to the statute and agreement to have his possessions searched with a reasonable suspicion. Further, prior to an inventory of the items, law enforcement received a specific search warrant addressing the suitcase separate from the earlier warrant for the home.

III. **The trial court did not err in admitting the evidence recovered from the suitcase provide by the third party which was not in violation of the Fourth Amendment or an illegal search. However, even if the particular items should have been suppressed, any error was harmless error in light of the plethora of evidence tying Appellant to the crime.**

STATEMENT OF THE CASE

This matter comes before this Court involving the February 3, 2011, stabbing death of Carolyn Hanton.[1] On May 23, 2011, the Appellant, Cleophus Edwards, Jr. was indicted by the Court of Generals Sessions for Orangeburg County for Murder (2011-GS-38-0566), burglary in the first degree (2011-GS-38-0565), and possession of a weapon during the commission of a violent crime (2011-GS-38-0564). On December 11, 2012, the Appellant entered a not guilty plea and he was tried before a jury and the Honorable Doyet A. Early, III., Presiding Judge. The Appellant was present and represented by Mark Wise and Peggy Hinds of the Office of the Public Defender for the First Judicial Circuit. The prosecution was represented by Assistant Solicitor Donald Sorenson and Harrison Bell of the First Circuit Solicitor's Office. On December 13, 2012, the jury convicted the Appellant of all charges. He was sentenced to life (without parole) on murder and life without parole on burglary. R. p. 476.

The Appellant timely appealed the conviction and sentence. The service of a notice of appeal was on December 13, 2012.

STATEMENT OF THE STATE'S VERSION OF THE FACTS

Cleophas Edwards ("Appellant") needed some money to make bills that month. He was currently on probation for his third burglary, and apparently saw nothing wrong with committing a fourth. On February 3, 2011, he walked one block from his house at 1347 Campus Drive to a residence on Goff Avenue, where he saw Aaron Hanton leave his wife, Carolyn Hanton, to go to work for the day. Appellant in a statement described to police what he claimed happened next:

[1] References to the record in the Initial Brief of Respondent are to the December 10, 2012 Pretrial Motion Transcript styled a "Motion Tr." which was Volume One of the record received from Appellant. The transcripts from December 11-13, 2012 are daily transcript volumes of the trial and are styled within this brief as "Tr.p."

> Everybody expecting me to be so much. I got up that morning, and I knew I had to make something happen. I needed to get some money. I walked through the neighborhood, and I saw that house. A car was leaving out of the driveway, and I walked up to it. I walked up to that door. It was open, and I went in. I saw the lady sitting down. She looked up, saw me, and asked who was I? She then started yelling, telling me to get out of her house....She was yelling at me, telling her to-telling me to get out of her house. She was right up on me. Hitting him... And she was screaming. He stated that he pulled out a knife that he had brought with him and began to stab her repeatedly. He stated that he could not get her to stop screaming, and he blacked out. He stated that he may have passed out for a moment, because when he woke up, he remembered slipping in some blood and seeing kids in the room. He said he started to get scared, and he was trying to find a way out of the house, and he grabbed a computer, and he ran out.

R. p. 169, line 23-p. 171, line 14.[2]

The victim was stabbed at least forty-three **(43)** times. The wounds were located around the head, the left side of her neck, her chest, her back, her abdomen and her upper arms. One stab wound perforated her heart, and several other wounds to the back perforated her lungs. She bled out on her floor while the children she was babysitting at the time watched. She was 44 years old when she died, and she had been married to her husband for 25 years. [R. p. 107, line 21-p. 108, line 25; R. p. 152, line 18 - p. 154, line 3].

Afterwards, Appellant ran back to his house via Mingo Street. He stopped at an abandoned house to throw up, and threw away his hoodie and t-shirt in the back yard of that house, along with the knife he used to stab Carolyn. [R. p. 169, line 23-p. 171, line 14]

Aaron Hanton returned home around 1:00 PM. He went through the front door and saw his wife lying on the floor. While he initially thought she had just fallen and bumped her head, she never responded to him calling out to her. As he touched her body, he noticed that she was cold and that she had injuries to her shoulder blade, and there was some blood on the floor around her. Aaron Hanton immediately called 911. [R. p. 115, line 17-p. 116, line 17].

[2] The confession, described by Officer Johnny Thrower at trial, was in both first and third person voice.

The police responded quickly. Officer Ryan Harter, who had twenty years' experience building computers, noted that there was an empty laptop box in a nearby room. The laptop was a red Acer Aspire model with a wide screen, making it an uncommon brand. He confirmed with Aaron Hanton that the laptop had been stolen, and entered its manufacturing number, displayed on the side of the box, in the National Crime Information Center ("NCIC") database[3] to report it as stolen. [R. p. 133, line 14-p. 136, line 16]. The police completed the crime scene investigation, and then left, without a suspect.

Almost two weeks later on February 16, 2011, Officer Harter became a part of a team of six officers serving a Probation, Pardon and Parole warrant on Appellant at his house. Harter knocked on the door. Melvin Simmons, Appellant's roommate answered. Harter asked if Appellant was home. Simmons said that he was. Harter then asked if he could come in. Simmons said he could. The officers entered, and Harter spotted Appellant sitting in the living room, with a red Acer Aspire laptop on his lap and smoking a marijuana cigarette. Appellant was arrested. Harter took possession of the laptop and turned it over and examined the serial number. He called the dispatcher to enter the serial number into the NCIC database and learned it matched the stolen one he had entered on February 3, 2011. [R. p. 139, line 23-p. 144, line 14].

Officer Johnny Thrower, who had been a part of the team to serve a warrant on Appellant, took Edwards back to the Orangeburg Criminal Investigation Division. There, after several hours, Edwards asked to speak with Officer Thrower and confessed to the crime that had occurred two weeks ago. In the confession, Appellant told police where he had left the two items on Mingo Street. He also told police where to find the bloody shoes he wore, although he was found to be mistaken about the exact location. [R. p. 158, line 17-p. 174, line 13].

---

[3] For more information on National Crime Information Center, see generally http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm.

Police immediately set back out to Campus Street to investigate the residence. While there, they asked for a statement from Melvin Simmons, Appellant's roommate, about the laptop. Simmons called his girlfriend, Britney Davis, who was also a friend of Appellant. They went to the police to give statements. Afterwards, the pair went to their mutual friend's apartment at Corona Apartments to see if the friend would give Simmons a place to stay while the police searched the location. The friend agreed, and said that Simmons could stay in the room Appellant was going to move into. The two then discovered Appellant's suitcase in the room. Wanting to make sure that the police knew about it, they returned to Campus Drive with the suitcase. The suitcase had Appellant's name on an American Airlines tag attached to it. [R. p. 318, line 10-p. 322, line 25].

When Simmons and Davis arrived at the Campus Street house, they flagged down an officer, who took the suitcase, shined a flashlight in it, and determined that the shoes matched those that had left bloody footprints at the Goff Avenue address of the victim. He zipped up the suitcase, went and got a search warrant, and then searched the suitcase more fully the following day. In it, police discovered a pair of bloody shoes, a pair of bloody jeans, and a T-shirt. They were sent to SLED labs for testing. [R. p. 309, line 17-p. 314, line 12].

Additionally, officers retrieved the black hoodie and knife from the abandoned house on Mingo Street. They were sent to SLED labs for testing as well. The knife found was similar to three others found at Campus Drive. [R. p. 279, line 11-p. 286, line 14].

The labs determined that Carolyn's DNA was on at least three items: the top of the black hoodie found on Mingo Street, the shoes in the suitcase, and the jeans in the suitcase.[R. p. 376, line 4-p. 383, line 24]. The bloody footprints matched the shoes found in the suitcase. [R. p. 329, line 1-p. 348, line 1].

The State indicted Appellant for three crimes: Murder, First-Degree Burglary, and possession of a weapon during a violent crime. (2010-GS-38-564, 2010-GS-38-565, 2010-GS-38-566]. The jury found him guilty, and the Honorable Doyet Early, III sentenced him to life in prison.

More specific facts will be set out below within the arguments.

ARGUMENT

ISSUE I: Officer Harter's Search of the Laptop

III. The trial judge properly denied a motion to suppress the admission of the stolen red Acer Aspire laptop computer where

- **a. it was recovered from the Appellant when he was being arrested for a probation violation pursuant to a probation arrest warrant,**
- **b. as a probationer he had agreed to consent to searches of his person and residence without a warrant and under the unique facts of the case,**
- **c. the officer had reasonable suspicion that the computer was stolen evidence of the February 2, 2011 Hanton crimes because he had prior information that a red Acer laptop computer with a wide screen had been stolen and had personally reported the serial number found on the empty box at the Hanton scene.**
- **d. The viewing of the serial number at the arrest scene on February 16, 2011 did not violate the Fourth Amendment.**

In the first argument, the Appellant asserts the trial judge should have suppressed the admission of the stolen red Acer Aspire laptop computer as a violation of the Fourth Amendment because it was the subject of a warrantless search in determining the serial number. The Appellant claims under the precedent of Arizona v. Hicks, 480 U.S. 321 (1987) that it was improper for Deputy Harter, after picking up the laptop from the Appellant who was being arrested, to flip it over to view and then record the serial numbers. ROA p. 19-22. Appellant contends that the turning over to view the serial number was a search and required probable cause. He claims a lack of probable cause existed for such action.

The trial judge properly rejected the claim consistent with precedent addressing Fourth Amendment issues and probationers. Judge Early concluded that the Appellant was a probationer who was being arrested at the time for an independent probation violation pursuant to a probation arrest warrant. As a probationer, he had signed an agreement to consent to searches of

his home and provide a waiver, and, under the circumstances of Deputy Harter's prior knowledge about the theft of a red Acer Aspire laptop at the murder, there was reasonable suspicion for the search. ROA p. 10-11, 26, 94. Respondent submits that the admission of the stolen unique red Acer Aspire laptop computer was not the product of an unreasonable search under the Fourth Amendment.

STANDARD OF REVIEW

A trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence, and an appellate court may reverse only when there is clear error. State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013); State v. Groome, 378 S.C. 615, 618, 664 S.E.2d 460, 461 (2008).

FACTS PERTINENT TO THIS ISSUE:

A. TRIAL TESTIMONY

Aaron Hanton, the victim's husband, was 47 years old. The two had been married for 25-26 years. When the Sheriff's Office came out that day, Hanton discovered that the red Acer Aspire laptop was missing. At trial, he identified State's Exhibit No. 5 as the empty Acer Aspire laptop box that had held the stolen red laptop. [R. p. 107, line 21-p. 121, line 19].

Officer Ryan Harter responded to the murder scene on February 3, 2011. He was an officer who had 20 years of experience building computers. Through investigation, he learned that a laptop computer had been taken; he found packaging and a box to indicate the laptop was at the residence that afternoon. He took pictures of the box and the manufacturer's label that was attached to the exterior of the box. The label contained the serial number of the laptop. He also reported the serial number of the laptop to NCIC as stolen. The laptop box, State's Exhibit Five, depicted the laptop as a red widescreen Acer Aspire. The label on the box was designated as

State's Exhibit 6 at trial. Neither the box nor the label were objected to at trial. [R. p. 134, line 24-p. 137, line 15].

Nadia Weldon, a 22 year old, full time student who was earning her business management degree at the time, had dated Edwards previously. They had met at a party in September of 2010.

From September 2010 until February 2011, Edwards rented a house on Campus Drive and lived with Melvin Simmons, Isaiah Smith & Britney Davis. Britney Davis was Simmons' girlfriend. Davis stayed on campus in a dorm but would occasionally spend the night at her boyfriend's house. By February 2011, Smith had moved to Corona Apartments. [R. p. 243, line 10-p. 246, line 16].

In the early part of February 2011, Weldon saw Appellant with a red laptop. Edwards told her he had bought it from "some white dude off the street." Appellant asked Weldon to pawn it for him because he had no identification to pawn it. Edwards apparently needed to pawn the laptop to pay rent, so Weldon went to Woody's Pawn shop on Russell Street in Orangeburg and got $150 for the red Acer Aspire laptop on February 10. The State introduced the receipt at trial as State's Exhibit No. 41 without objection. [R. p. 247, line 3-249, line 5].

Weldon and Appellant went back to Woody's on February 15 to retrieve the laptop. Appellant handed Weldon the money to get the laptop out, she handed the money to the clerk, got the laptop and handed it to Appellant. Weldon testified at trial that she remembered the laptop was red, and paid $180 to get it out. At trial, she identified State's Exhibit No. 42 as a screen shot from February 15 showing the laptop was returned back to her. The second receipt was also admitted into evidence without objection. [R. p. 250, line 7-p. 251, line 11].

Officer Harter also went to Campus Drive on February 16, 2011, to assist in serving a warrant on Appellant for an unrelated Department of Pardon, Probation and Parole violation.[4] When the team approached the door, Officer Harter knocked on the door and spoke with Melvin Simmons, who confirmed that Appellant lived there with him. Harter asked if they could enter, and Simmons granted permission. When he entered the residence, he observed Appellant seated on the floor of the living room actively using a red Acer Aspire laptop. Officer Harter was able to see not only the color of the laptop, but also that it was an Acer brand because the laptop was open with the brand on the top lid with a wide screen. This laptop was the same type, make, and color of laptop that he entered into NCIC two weeks earlier. [R. p. 44, line 18 – p.45, line 17; R. p. 139, line 23-p. 141, line 24].

As Appellant was being taken into custody by other officers for the probation violation, Officer Harter flipped the laptop upside down and located the manufacturer-applied label on the bottom of the laptop. He contacted dispatch with the serial number, and it matched the one entered into the NCIC database from - - - - Goff Avenue. [R. p. 142, line 13-p. 144, line 14].

Officer Johnny Thrower took Appellant to an interview room at the Criminal Investigation Division in Orangeburg, where he confessed to the murder. [This part of the facts will be covered fully in Section II of the brief.]

HOW THE ISSUE WAS RAISED PRIOR TO THE TRIAL

Appellant made a pretrial motion to suppress the laptop on December 10, 2012. He argued that he had a right to privacy, even though on probation, he has a right to be free from unreasonable searches and seizures, and thinks that officers would need a "reasonable suspicion"

[4] At sentencing it was developed that Appellant was on probation for his third burglary conviction at the time of the arrest. [R. p. 464-465].

to compare the serial numbers from the computers. [ROA p. 8-9]. The Appellant asserted that there was nothing special about the computer, it just happened to be the same color and same brand. Counsel urged that for reasonable suspicion the state would need some fact to show that there had been criminal activity whereas here they only had "an innocent object." [ROA p. 9-10].

The trial court expressed some skepticism, pointing out that it was a "suspicious innocent object." He noted that there was a murder and that in the household contents a red Acer computer was missing which perhaps would give the officer reasonable suspicion that the probationer was engaged in criminal activity. The judge initially referred to U.S. v. Knights, 534 U.S. 112, 122 S.Ct. 587 (2001). Particularly, he cited the portion where it stated: "we hold that the balance of these considerations requires no more than reasonable suspicion to conduct the search of this probationer's house. The degree of individualized suspicion required of a search is a determination of when there is sufficient high probability that the criminal conduct is occurring to make the intrusion on the individual's privacy interest reasonable." ROA p. 10-11. The court described it was a balancing. [ROA p. 11, l. 3-8]. Counsel for the Appellant agreed with the assessment. He urged the phrase "high probability" and claimed that looking at the object – the computer – would not be enough to satisfy high probability.

The trial court stated that what was significant was that it was red and an Acer, as opposed to a generic iPad. The court inquired where the serial number was located. At that point the prosecutor showed photographs of the Acer Aspire box at the crime scene with the serial number on the empty box. [ROA p. 12-13]. He pointed out its location on the computer that the number was readily available on the back, and the trial judge described it as readily available. [ROA p. 13, l. 1-4]. The judge stated that the state had already processed the crime scene of the murder and obtained the serial number and then later, "lo and behold, there is a red Acer laptop

computer with the same number." [ROA p. 13]. The trial judge inquired of the Appellant as to why that would not give reasonable suspicion. [ROA p. 13].

Counsel for the Appellant contended that it did not because the Court would have to make a determination about the officer's knowledge before he looked at the serial numbers. Appellant claimed that his knowledge before he looked at the computer was just that it was a computer which did not meet the "high probability" that the Court needed to find a reasonable suspicion that the computer taken at the homicide and that there was any criminal activity associated with the red Acer computer at the arrest. [ROA p. 13].

In response, Deputy Solicitor Sorenson stated that it rises at least to reasonable suspicion, if not more than that. [ROA p.14, line 3-12]. He claimed that it would almost be derelict for the officer with what he already knew. He claimed the officer would testify that he was actually involved in entering the serial number off the computer box into NCIC so he knew it was a red Acer laptop that was stolen. [ROA p. 5-9]. The state noted that the victim's home and the Appellant's residence were in the same vicinity of Orangeburg, that this computer was not a run of the mill grey laptop computer describing his office's computer as either grey or black. Solicitor Sorenson stated that his was the only red laptop he had ever come across. [ROA p. 18]. He re-asserted that it would rise to a reasonable suspicion and that it would have been derelict with the officer's knowledge to not do anything about it.

In the motion hearing on this issue, Deputy Ryan Harter testified. He declared that he had worked with Orangeburg County Sherriff's Department since 2007. He described arriving at the murder scene on February 3, 2011. [ROA p. 16-17]. He stated there were other officers present, but his duty involved, once the victim's family arrived to determine what was stolen and he determined from them that a laptop was missing. Deputy Harter stated that he located the laptop

box in the home and determined it was the missing laptop and he entered the serial number from the box into NCIC. [ROA p. 17-18]. He stated that the missing computer was an Acer Aspire red laptop.

Deputy Harter then described the events of February 16. [ROA p. 18]. He stated that he and other members of the investigative or special operations division of the Sherriff's Department were asked to assist Probation, Pardon and Parole with locating some of their probationers that they had warrants for and they went to a number of locations seeking probationers. [R.p. 18-19]. He arrived with others at the Goff street address seeking Appellant. Deputy Harter stated that he entered the residence and saw a number of people in the place. "I observed a gentleman sitting on the floor in the middle room of the house, legs outstretched, straight in front of him. He was sitting with a red Acer laptop. It was on his lap. It was open and he was currently using it, pretty much as if we weren't present." [ROA p. 19, lines 15-23].

Deputy Harter declared that he was familiar with computers and had built them. He stated that this computer that he saw was "extremely consistent" with the laptop that he had entered into NCIC. He stated that the red Acer was not a big brand of computers. He noted that he was aware that "Acer is not a real popular brand" and "the fact that it is a red laptop really sets it apart; we knew it was a widescreen laptop, and so it met a lot of criteria just from - - able to view it." [R.p. 20, lines 12-19]. Deputy Harter stated he then checked the serial number with the number he had placed in NCIC. [ROA p. 20-21]. He revealed to the court where the serial number was. He described that he basically flipped the laptop over and he called into dispatch on the telephone and they confirmed the number and that it was the stolen laptop. [ROA p. 21-22]. He noted that there was initially a problem with the numbers in the manner they were entered into NCIC before it was confirmed. [ROA p. 22].

On cross-examination, Deputy Harter confirmed that the make, the color and the width of the screen made the particular computer distinctive. [ROA p. 23, lines 7-8]. He stated that he believed it was a high probability of being the same computer that they were seeking. [ROA p. 23, lines 11-12. He stated that they were able to enter the home lawfully. Once inside looking for the Appellant, they saw him with the computer. Once he was being taken into custody by the probation officers, he flipped the laptop over after picking it up off the floor and read the serial number. [ROA p. 23-24]. Deputy Harter stated that he did not have a (search) warrant to pick up the computer and flip it over, that he did not ask Edwards if he could pick it up and flip it over and look at the serial numbers and that he did not have any prior knowledge that the computer would be in that house. [ROA p. 25].

THE TRIAL COURT'S RULINGS

The Court delayed ruling on it until later in the pretrial process. He stated that he would normally rule at this point because under State v. Taylor, supra. the court talked about an additional factor in determining whether a reasonable suspicion exists is the officer's experience and intuition. [ROA p. 26]. However, the Court stated:

> . . .by way of chance or whatever, it happened to be the same officer that investigated the homicide, that just happens to be with the probation officers going in this man's house, who had simply violated probation for failing to report. And obviously he had more than intuition; he had firsthand knowledge because he had just, 13 days earlier, had investigated the homicide and had found a red Acer was missing with the serial number, and he simply – all he had to do was turn it over and look at it...

[ROA p. 26, l. 11-20]. He stated that he was inclined to rule it was not suppressible, but Judge Early stated he wanted to defer ruling until he reviewed a case his law clerk had found concerning a stereo. [Arizona v. Hicks, 480 U.S. 321 (1987)]. [R.p. 26, lines 21-25]. Judge Early, at the conclusion of the hearing opined that the computer evidence motion was denied, based

upon the probation statute, the waiver signed by the Appellant and reasonable suspicion set forth in his earlier reasoning. [ROA p. 94, lines 18-25].

At trial, Appellant objected to the introduction of Officer Harter's testimony regarding "that piece of evidence." The court denied the motion, noting that he was protected on appeal. [ROA p. 14, lines 3-7].[5]

LEGAL ANALYSIS

A. APPELLANT HAD ALREADY CONSENTED TO A SEARCH OF HIS POSSESSIONS BY SIGNING COURT'S EXHIBIT NO. 1, AND OFFICER HARTER HAD THE REASONABLE SUSPICION REQUIRED BY S.C. CODE ANN. § 24-21-430 AND THE FOURTH AMENDMENT TO TURN THE LAPTOP OVER AND LOCATE ITS SERIAL NUMBER.

The trial court found that the motion to suppress the stolen computer was denied because the serial number was viewed after the probationer had signed a probation agreement allowing for warrantless searches, the probation statute allowed for searches with a reasonable suspicion the law enforcement officers were on the scene to arrest Edwards for a probation violation, and the deputy had reasonable suspicion that the red Acer Aspire computer was a stolen computer based upon its distinctiveness and his prior knowledge before he confirmed it by turning it over and getting the serial number. While asserting a Fourth Amendment right to his laptop and complaining for the first time that a search warrant or "probable cause" was necessary, Appellant fails to explain why S.C. Code Ann. § 24-21-430 does not apply to the minimally intrusive search of his laptop, as well as Appellant's agreement to allow similar searches. At the time of arrest, Appellant was on probation for burglary. [R. p. 38, line 17-p. 40, line 25]. He had signed

[5] Appellant did not object to the following: State's exhibit 5 (the laptop box), [R. p. 120, lines 13-17]; State's Exhibit 6 (the serial number from the laptop box), [R. p. 136, lines 1-6]; State's Exhibit 41 (Woody's pawn shop receipt), [R. p. 248 line 15-p. 249 line 5]; State's Exhibit 42 (screenshot showing the laptop being returned to Weldon), [R. p. 250, line 23-p. 251, line 7]; and Nadia Weldon's testimony concerning the pawn shop or Appellant's ownership of the stolen laptop; nor Officer Harter's testimony discovering the laptop on Appellant's lap (viewing the laptop on Appellant's lap would clearly be plain view); nor Appellant's confession that he had stolen the laptop.

a form stating that he was advised of the statute [ROA p. 478 (Probation, Pardon and Parole Services Form 1407) Court Exhibit 1; ROA p. 37, line 24- p. 38, line 13].

1. THE PROBABLE CAUSE ISSUE IS BARRED

At the outset, Respondent submits that the issue raised within the Petitioner's brief concerning an alleged lack of probable cause to "search" the back of the computer and see the serial number is different than the issue presented at trial. At trial, recognizing the impact of the probation statute and conditions, as well as U.S. v. Knight, the issue was whether the viewing officer had reasonable suspicion. The claim presented is a different claim than the issue presented below. Clearly, the lesser requirement of "reasonable suspicion" is different than whether there was "probable cause." Since this is not the same claim presented at trial, this issue is procedurally barred. As a general rule, an issue may not be raised for the first time on appeal, but must have been raised to the trial judge to be preserved for appellate review. Issues not raised in the trial court will not be considered on appeal. State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388 (1995) (an issue is not preserved if party argues one ground for objection at trial and another ground on appeal); State v. Crowley, 226 S.C. 472, 85 S.E.2d 714 (1955) (objection must be on specific ground); State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989) (a party cannot argue one ground below and then argue another ground on appeal).

The touchstone of the Fourth Amendment is reasonableness, and the reasonableness of a search is determined "by assessing, on one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." United States v. Knights, 534 U.S. 112 (2001) (quoting Wyoming v. Houghton, 526 U.S. 295, 300 (1999)).

The South Carolina legislature passed The Reduction of Recidivism Act of 2010 in response to a series of United States Supreme Court cases involving probationers and parolees. 2010 Acts and Joint Resolutions, Act 151 (S.B. 191) (2010). In the Act, the General Assembly stated that "the conditions imposed [upon the probationer] must include the requirement that the probationer must permit the search or seizure, without a warrant, *based on reasonable suspicions*, of the probationer's person, any vehicle the probation owns or is driving, and any of the probationer's possessions..." S.C. Code Ann. § 24-21-430 (Supp. 2013). The act took effect April 29, 2010. (emphasis added). S.C. Code Ann. § 24-21-430 states that:

> The court may impose by order duly entered and may at any time modify the conditions of probation and may include among them any of the following or any other condition not prohibited in this section; however, the conditions imposed must include the requirement that the probationer must permit the search or seizure, without a search warrant, **based on reasonable suspicions**, of the probationer's person, any vehicle the probationer owns or is driving, and any of the probationer's possessions by:
>
> (1) Any probation agent employed by the Department of Probation, Parole and Pardon Services; or
>
> (2) **any other law enforcement officer,** but the conditions imposed upon a probationer who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the probationer agree to be subject to search or seizure, without a search warrant, with or without cause, of the probationer's person, any vehicle the probationer owns or is driving, or any of the probationer's possessions.

S. C. Code Ann. § 24-21-430 (emphasis added).

Appellant signed a specific agreement form prior to his probation indicating he understood and consented to this provision of his probation involving searches of his person and property upon reasonable suspicion. [ROA, p.478, Court's exhibit No. 1]; [R. p. 37, line 21-p. 38, line 14].

In this appeal, Appellant does not reference this probation statute nor Appellant's consent to the search in issue one of his brief. However, this statute and agreement was the partial basis the trial court held that the search did not violate the Fourth Amendment because of this form. [R. p. 94, lines 5-25]. As shown by the Knights case, it is a constitutional statute that permits officers to search possessions upon reasonable suspicion and does not require probable cause.

S.C. Code Ann. § 24-21-430 requires officers to have reasonable suspicion, and that they must search only "the probationer's person, any vehicle the probationer owns or is driving, and any of the probationer's possessions." "The degree of individualized suspicion required of a search is a determination of when there is a sufficiently high probability that criminal conduct is occurring to make the intrusion on the individual's privacy interest reasonable." United States v. Knights, 534 U.S. 112, 121 (2001). "When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable." Id. at 593.[6] Because of this, when a court is asked to evaluate the constitutionality of a warrantless search of a probationer, the analysis is not always straightforward. A court must balance "on the one hand, the degree to which [a search] intrudes upon an individual's privacy and, on the other, the degree to which it is needed to promote legitimate government interests." Id. at 113. Since "[t]he touchstone of the Fourth Amendment is

[6] • While S.C. Code Ann. § 24-21-430 does not provide a definition for "reasonable suspicions," the standard they wish applied is clear. At the top of the Parole and Pardon Act, the General Assembly specifically references U.S. v. Knights: "Whereas, as held by the United States Supreme Court in United States v. Knights, 534 U.S. 112 (2001), warrantless searches of probationers are allowed if based on reasonable suspicions..." 2010 South Carolina Laws Act 151. The State therefore uses the reasonable suspicion standard from Knights as the General Assembly's intended standard.

reasonableness," id. at 112, this balancing test must consider whether "an intrusion on the probationer's significantly diminished privacy interests is reasonable," id. at 121.

Since both requirements of S.C. Code Ann. § 24-21-430 were met, Appellant, as a probationer at the time of his arrest, previously consented to this type of search.

2. DEPUTY HARTER HAD REASONABLE SUSPICION TO VIEW THE BACK OF THE COMPUTER.

The trial court found that the probation statute and his waiver were applicable to allow a search with reasonable suspicion. The Appellant does not assert that Appellant was not a probationer nor does he contest the agreement. Respondent submits that "reasonable suspicion" was correctly found to exist supports the viewing of the laptop and its subsequent introduction at trial.

"Reasonable suspicion:..is formed by specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity." U.S. v. Burkett, 612 F.3d 1103, 1107 (9th Cir.2010). When determining whether reasonable suspicion exists, courts must review the "totality of the circumstances" to ascertain whether the officer had "some minimal level of objective justification" to suspect legal wrongdoing. Id. This review "must be based on commonsense judgments and inferences about human behavior." Illinois v. Wardlow, 528 U.S. 119, 125, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). While requiring more than a "hunch," Terry v. Ohio, 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), it requires "considerably less than proof of wrongdoing by a preponderance of the evidence," and falls below the probable cause standard of "a fair probability that contraband or evidence of a crime will be found." U.S. v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989).

In U.S. v. Knights, because the officers knew Knights was on probation, that fact, as the Supreme Court said, was relevant to both sides of the balance—the degree of intrusion into the individual's privacy and the degree to which the intrusion is needed to protect legitimate governmental interests. The entire premise of Knights and the cases that have followed Knights is that probationers have given up the expectation of privacy enjoyed by those who are not on probation. Moreover, the Knights balancing test appropriately accounts for an officer's knowledge (or lack therefore in some settings) of the probationer's status.

Because he was on probation, he did " 'not enjoy the absolute liberty to which every citizen is entitled.' " United States v. Carter, 566 F.3d 970, 974 (2009) (quoting United States v. Yuknavich, 419 F.3d 1302, 1308 (11th Cir.2005)). Further, Edwards had a probation condition requiring him to submit to the search of his person, property, residence, or vehicle at any time of the day or night with or without consent or search warrant. Because Edwards' terms of probation broadly allowed warrantless searches, his expectation of privacy is further lowered. Id., 566 F.3d at 974–75 (search of probationer's home only required "reasonable suspicion"[7] despite his "higher" expectation of privacy because his probation condition only required home visits by his probation officer). [8]

---

[7] Some courts have held that reasonable suspicion is required for searches of probationers and parolees. See, e.g., U.S. v. Baker, 221 F.3d 438, 444 (3d Cir. 2000) (search of parolee's car invalid because no specific facts found to justify search of trunk and glove compartment); U.S. v. Henry, 429 F.3d 603, 609, 614 (6th Cir. 2005) (search of probationer's residence invalid because no reasonable suspicion of probation violation as required by authorizing state statute).

However, other courts have upheld statutes authorizing searches where there is no suspicion of parole or probation violation. See, e.g., U.S. v. Reyes, 283 F.3d 446, 462 (2d Cir. 2002) (no reasonable suspicion or probable cause required for home visits by probation officers to defendants on supervised release); U.S. v. Midgette, 478 F.3d 616, 624 (4th Cir. 2007) (no individualized suspicion of probation violation required for searches for purposes "reasonably related" to probation).

[8] A special needs search in the probation or parole context is often determined to be reasonable because it is conducted pursuant to reasonable state regulations governing probation or parole. See Griffin, 483 U.S. at 880 (warrantless search of probationer's home valid because "conducted pursuant to a valid [state] regulation governing probationers"); see, e.g., U.S. v. Barner, 666 F.3d 79, 84-86 (2d Cir. 2012) (warrantless search of parolee's ""storage room" valid because conducted in accordance with reasonable state parole policies and

On the Government's side of the balance, the officers had an arrest warrant establishing probable cause to arrest Appellant for a probation violation. Clearly, arresting a probation violator served compelling government interests. The entry into Appellant's residence to search for and arrest was proper. The Third Circuit has concluded that officers may have "reasonable suspicion" to search a property to determine if a probationer violated the terms and conditions of his probation by failing to obtain approval before changing his residence. United States v. Manuel, 342 Fed. Appx. 844, 847–48 (3d Cir.2009); relying on Griffin v. Wisconsin, 483 U.S. 868, 875–76, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987). In Manuel, the conditions of Manuel's release expressly provided that he could not change his residence without the permission of his probation/parole officer. The Third Circuit affirmed a finding by the District Court that the

---

regulations); U.S. v. Jones, 152 F.3d 680, 685-86 (7th Cir. 1998) (warrantless search of parolee's residence valid because conducted in accordance with reasonable state parole policies and regulations); U.S. v. Vincent, 167 F.3d 428, 430 (8th Cir. 1999) (warrantless search of probationer's home valid because conducted in accordance with reasonable state probation scheme under which court could impose requirement that probationer submit to warrantless searches); U.S. v. Conway, 122 F.3d 841, 842 (9th Cir. 1997) (warrantless search of probationer's home valid because conducted according to reasonable state statute); U.S. v. Warren, 566 F.3d 1211, 1217-18 (10th Cir. 2009) (warrantless search of parolee's home valid because it complied with Colorado probation regulations). But see, e.g., U.S. v. Robinson, 857 F.2d 1006, 1008 (5th Cir. 1988) (refusing to extend Griffin and special needs analysis to federal probation officers not acting pursuant to regulations). Warrantless searches of probationers and parolees are also analyzed and upheld under a separate, distinct "totality of the circumstances test." See Samson v. Cal., 547 U.S. 843, 851 (2006) (suspicionless search of parolee justified based on totality of circumstances, state's "overwhelming interest" in supervising parolees, and state parole condition requiring parolees to submit to search or seizure at any time); see also U.S. v. Knights, 534 U.S. 112, 118 (2001) (same); see, e.g., U.S. v. Graham, 553 F.3d 6, 15, 18 (1st Cir. 2009) (totality of the circumstances justified warrantless search of probationer's house due to state's interest in monitoring probationers); U.S. v. Williams, 417 F.3d 373, 376-78 (3d Cir. 2005) (totality of circumstances justified officer's search of parolee's residence because officer had reasonable suspicion to believe that parolee illegally possessed gun); Banks v. U.S., 490 F.3d 1178, 1193 (10th Cir. 2007) (totality of the circumstances justified warrantless, suspicionless requirement for DNA sample because government interests advanced by DNA collection outweighed probationers' diminished expectation of privacy); U.S. v. Yuknavich, 419 F.3d 1302, 1311 (11th Cir. 2005) (totality of circumstances justified officers' search of probationer's computer because officers had reasonable suspicion to believe probationer was violating terms of probation). However, some courts have held that a regulatory framework governing the searches is unnecessary. See, e.g., U.S. v. Giannetta, 909 F.2d 571, 575-76 (1st Cir. 1990) (warrantless search reasonable where sentencing judge "narrowly tailor[ed]" probation search conditions and search based on reasonable suspicion); U.S. v. Lifshitz, 369 F.3d 173, 177, 189-93 (2d Cir. 2004) (warrantless monitoring of personal computer valid where imposed as a probation condition by sentencing judge and reasonable under special needs balancing of state interest and privacy interest); Shea v. Smith, 966 F.2d 127, 134 (3d Cir. 1992) (warrantless search of probationer's home valid in absence of governing state regulation because based on reasonable suspicion of parole violation); U.S. v. Payne, 181 F.3d 781, 787-88 (6th Cir. 1999) (warrantless search of parolee's home based on reasonable suspicion of parole violation valid even in absence of regulatory scheme).

totality of the circumstances - including the two telephone calls from an anonymous informant reporting that Manuel was living at the Washington Street Address, and the fact that Officer Dowling corroborated this information by observing the name "T. Manuel" written on the mailbox outside of the residence, together with Manuel's having the keys in his possession—gave the officers probable cause to believe that Manuel resided at the Washington Street address. See Motley v. Parks, 432 F.3d 1072, 1080 (9th Cir.2005) (en banc) ("before conducting a warrantless search pursuant to a parolee's parole condition, law enforcement officers must have probable cause to believe that the parolee is a resident of the house to be searched"). United States v. Manuel, 342 Fed. Appx. at 847. As such, it appears that an officer must have probable cause to believe that a parolee is a resident of the house to be searched, but only needs reasonable suspicion to search a property to determine if a probationer violated the terms and conditions of his probation by failing to obtain approval before changing his residence. Id. Simply put, by accepting the probationary status and terms of probation he had consented to the search.

Appellant claims that Arizona v. Hicks, 480 U.S. 321 (1987) holds that "the slight movement of stereo equipment to reveal serial numbers during a warrantless search of an apartment constituted a search under the Fourth Amendment." Brief of Appellant p. 3. This is not the entire story as related to Edwards' situation because he was a probationer, unlike Hicks. Without moving the stereo equipment in Hicks, the police only had "reasonable suspicion" in Hicks, not probable cause. That search led to the incriminating evidence. In this case, because the Appellant was a probationer, "reasonable suspicion" was all that was required. Like the situation in Hicks, reasonable suspicion existed. However, because Hicks was not a probationer, the higher standard of "probable cause" applied. Here, due to Edwards' status and agreement,

reasonable suspicion was the standard. His sole reliance upon Hicks is misplaced because it actually supports that reasonable suspicion was present.

Here, Deputy Harter was aware from the December 3, 2011 crime scene that a red Acer Aspire was stolen, was aware of the fact that he had recovered and reported the stolen computer's serial number, and that it was a widescreen model. Deputy Harter was also aware that the Petitioner was a probationer being subject to arrest at the time he entered the dwelling and viewed the red Acer computer in the Appellant's lap. In addition, Deputy Harter was aware that Acer computers were not the more available computers compared with IBM and Dell based upon his personal knowledge of computers and that the red model with a widescreen that he viewed made it distinctive. Plainly, as the trial court correctly determined, this provided "reasonable suspicion" to view the back where the probationer's expectation of privacy was minimized by his status. Further, the intrusion upon the property by viewing the serial number from the computer that was on the arrestee's lap by picking it off the ground and flipping it to view the serial number was reasonable and minimal. His claim must be dismissed.

3. PLAIN VIEW.

"What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." Katz at 351. Consistently with Katz, the Supreme Court has uniformly held that the application of the Fourth Amendment depends on whether the person invoking its protection can claim a 'justifiable' or 'reasonable,' or a 'legitimate expectation of privacy' that has been invaded by government action. U.S. v. Knotts, 460 U.S. 276 (1983) (citing Smith v. Maryland, 442 U.S. 735 (1979)). It is well established that under certain circumstances the police may seize evidence in plain view without a warrant." Horton v. California, 496 U.S. 128 (1990). "Warrantless searches and seizures are unreasonable absent a

recognized exception to the warrant requirement." State v. Wright, 391 S.C. at 442, 706 S.E.2d at 327.

A recognized exception to the warrant requirement is plain view. Id. "Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence." Id. at 443, 706 S.E.2d at 327. The two elements needed to satisfy the plain view exception are: that the initial intrusion which afforded the plain view was lawful; and that the incriminating nature of the evidence is immediately apparent to the seizing authority. Id.

Here, Officer Harter was there lawfully, let in along with other police officers by Simmons, a resident of 1347 Campus Drive due to the probation arrest warrant for Appellant. Also, the potential incriminating nature of the evidence was immediately apparent. Red wide screen Acer Aspire laptops were not common in 2011, as Officer Harter testified. [ROA p. 20, lines 11-19]. Accord, Hicks, supra. Plainly Officer Harter's initial viewing and viewing of the red laptop was in plain view. This viewing led to the reasonable suspicion.

Respondent submits the trial judge reasonably applied the precedent of the United States Supreme Court in rejecting the suppression. His claim must be dismissed.

ISSUE II: The Search of Appellant's Suitcase

II. The trial judge properly denied suppression concerning the suitcase of Appellant provided to law enforcement by a third party where law enforcement at the time had a "reasonable suspicion" that it contained evidence of a crime where evidence existed at that time that the Appellant had confessed to the murder, had described shoes worn at the crime, had attempted to assist law enforcement in locating his shoes at his residence, and other evidence, including the information about the seized red computer where the Appellant was a probationer subject to the statute and agreement to have his possessions searched with a reasonable suspicion. Further, prior to an inventory of the items, law enforcement received a specific search warrant addressing the suitcase separate from the earlier warrant for the home.

In his second argument, Edwards contends that under the totality of the circumstances, law enforcement did not have "reasonable suspicion" to search and seize a suitcase which had been provided by a third party to law enforcement which they claimed to have belonged to Appellant. The Appellant contends that law enforcement had no articulated basis to open and search for evidence of a crime when the suitcase had a serendipitous appearance outside Edwards' house. He claims a general hunch was not enough. The trial judge reasonably concluded that, because the Appellant was on probation and agreed to warrantless searches of his possessions and property upon reasonable suspicion, suppression of the suitcase and its contents must be denied.

STANDARD OF REVIEW

"When reviewing a Fourth Amendment search and seizure case, we do not review the trial court's ultimate determination de novo, rather we apply a deferential standard." State v. Brown, 389 S.C. 473, 479, 698 S.E.2d 811, 814 (Ct.App.2010) (citing State v. Kingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 459–60 (2002))); id. ("This court reviews the trial court's ruling

like any other factual finding, and we will reverse only if there is clear error."); id. ("[W]e will affirm if any evidence exists to support the trial court's ruling.").

RELEVANT FACTS

On February 16, 2011, Orangeburg County Narcotics Officer Johnny Thrower went to 1347 Campus drive along with the Probation Parole and Pardon team to serve a probation violation arrest warrant on Appellant. Upon entering the residence, he saw Appellant in the residence smoking a marijuana cigarette and holding a red laptop in his lap. Deputy Harter was among the others with him at this time. Appellant was taken into custody by Thrower and another agent, and taken to the Criminal Investigation Division of the Orangeburg Sherriff's Department on Chestnut Street in Orangeburg, initially pursuant to the probation arrest warrant. They brought Appellant to the interview room and met up with head detective Lt. James Shumpert of the Orangeburg County Sheriff's Office. [R. p. 159, line 18-p. 161, line 15].

Between 8 and 9 PM that night, Appellant asked for Officer Thrower specifically to join him in the interview room. This is what Officer Thrower testified occurred:

> I observed Edwards. He was leaning forward in his chair. He placed his hand in the palm of-placed his head in the palm of his hands, and he said: I messed up, Thrower. I messed up. I said to him to tell me what you did. Edwards stated: I killed that lady. I messed up. And I said to him: take me through what happened. He started off by saying: life just got to be too much. Bills. Everybody expecting me to be so much. I got up that morning, and I knew I had to make something happen. I needed to get some money. I walked through the neighborhood, and I saw that house. A car was leaving out of the driveway, and I walked up to it. I walked up to that door. It was open, and I went in. I saw the lady sitting down. She looked up, saw me, and asked who was I? She then started yelling, telling me to get out of her house. He stated: She was yelling at me, telling her to-telling me to get out of her house. She was right up on me. Hitting him, he said. And she was screaming. He stated that he pulled out a knife that he had brought with him and began to stab her repeatedly. He stated that he could not get her to stop screaming, and he blacked out. He stated that he may have passed out for a moment, because when he woke up, he remembered slipping in some blood and seeing kids in the room. He said he started to get scared, and he was trying to find a way out of the house, and he grabbed a computer, and he ran out.

> I asked what he did after that, and he said he left the house and ran around the corner to an abandoned house on [Mingo] Street, and he threw up. He said he took off the black hood he was wearing and placed it near the house somewhere in the rear. He stated that he threw the knife he had used near a tree in the backyard. And he told me he would show me where the house was. I told him that I needed to know the place and where the shoes were as well. On that date, he stated that they were in the storage at a room at his residence at the 1347 Campus Drive address. He agreed that he would show me where they were. And I informed him at that time that he needed to let Lieutenant Shumpert know what he had told me, and that he needed to give a formal statement, and he said he would cooperate.

[R. p. 169, line 23-p. 171, line 14]. Thrower testified that he went outside and told Lt. Shumpert what had occurred. Lt. Shumpert entered the room with Officer Thrower, and told Appellant that he would need to give a formal, written statement. Appellant said he was too upset and asked if it could be recorded instead. His statement was recorded using the interrogation room's recording system. [R. p. 171, line 15-p. 173, line 4]; [State's Exhibit No. 2].

In the meantime, Britney Davis, who was dating one of Appellant's current roommates, went down to the sheriff's department. Davis was not present when Appellant was arrested, but she received a phone call from her boyfriend, Melvin, about the incident. She joined him at the sheriff's department off Chestnut, where police asked them to write a statement about if they had ever seen Appellant with a laptop. After Davis gave her statement, the two left the station and went back to Campus Drive to retrieve some of her boyfriend's things. They then drove to Corona Apartments to find a place for Melvin to stay. Isaiah Smith (Davis refers to him as Simba), who had previously lived at ---- Campus Drive, had moved out a couple of weeks before to Corona Apartments. Davis and Melvin went to Smith's apartment, and asked to stay. Smith said Melvin could stay in Appellant's future room, but they found a suitcase in there that they knew contained Appellant's belongings. They packed the suitcase in the truck and took it back to

----- Campus Drive. [R. p. 319, line 24-p. 322, line 25]. [Note: Appellant was also in the process of moving out of ---- Campus Drive. Id.]

The suitcase was a big green (or described as black or dark) suitcase with an American Airlines tag on the side displaying Appellant's name.

Britney Davis knew it was his suitcase because of the tag and because Davis, Melvin, and Appellant were friends before the incident. Davis took it back to Campus Drive residence, where the police were still searching. When they pulled up, they got the attention of forensic investigator Lt. Gerald Carter. He opened the suitcase up in front of them and shined a light into the suitcase. [R.p. 311-312]. Lt. Carter observed a black shoe and some clothing in the suitcase, and noted that the patterns on the sole looked to be similar to the ones seen at the scene of the crime. [R.p. 312-313]. Lt. Carter apparently said "we have what we need" and zipped the suitcase back up, taking possession of it. [R. p. 312, line 12-p. 314, line 12; R. 323, line 3-p. 325, line 3]. Lt. Carter stated that he placed it in his truck and turned it over to Lt. Ketcherside. He stated obtained a search warrant for the suitcase to be searched. [R.p. 313, line 15-17]. Lt. Carter stated he did not remove anything from the suitcase.

Appellant's friends Britney Davis and Melvin Simmons brought the suitcase back to the police on their own initiative. Davis testified that "We thought it was a serious issue. We thought that anything that belonged to [Appellant], we didn't need to have possession of it." [R. p. 325, lines 15-17].

Investigator William Ketcherside stated that he became aware that third parties had brought a suitcase to the residence that night. [R.p. 280]. He stated that he did not search it that night. Id. He testified that he obtained a search warrant the following day (February 17) and fully searched the suitcase. [R.p. 286, lines 18-22]. In it, the police found a jacket, shoes, and

jeans that contained both the victim's DNA and Appellant's DNA. [The contents of the suitcase and the subsequent DNA tests will be addressed fully in issue III].

HOW THE ISSUE WAS RAISED BEFORE TRIAL

Before trial, Appellant moved to suppress the suitcase and its contents because it was an "innocent" object. Solicitor Sorenson set forth the background for the trial court. He stated that after the laptop was found and the Appellant taken into custody for the probation violation warrant he was transported to the sheriff's office and they got a search warrant for the entire house to look for weapons and any other items of evidence. The search is being executed and Appellant is being interviewed and makes an oral statement admitting to the homicide. This information is conveyed back to them getting the warrant. Appellant agrees to return to the house because he tells them that shoes he was wearing are in the closet. (At the crime scene there are bloody footprints with a distinctive bottom sole pattern). They are not found at the scene. While this is occurring, his roommate and the roommate's girlfriend come back to the residence with a suitcase, indicating that he had left it at another apartment that they were potentially moving into. The large green suitcase had a USAirways tag with the Appellant's name on it. They turn it over to the Sheriff's Department. [R.p. 29]. An investigator initially opens it in their presence and sees a pair of shoes and clothing. [R.p. 30]. He then zips it back up. He states that they ultimately get (another) search warrant, take it back to the sheriff's department and search it the next day. Within the suitcase are shoes, a pair of jeans, a tee shirt which all have blood consistent with the victim's DNA and paperwork concerning the Appellant as a part-time student at South Carolina State. [R.p. 30].

Appellant's counsel stated that the suitcase was an "innocent" object and that the police had no reason to believe anything was in the suitcase, and that the search warrant that they had at

the time was only for the home. [R.p. 31, lines 3-10]. He stated that the suitcase was opened somewhere outside before being brought into the house. He also argued that, while Edwards had made a statement about there being shoes, he never said they were in the suitcase, and he was not asked for consent. He further stated that the State could have secured a warrant for the suitcase (before they initially opened it) since Edwards was in custody and could not access the suitcase. Further, apparently in the alternative, that the State didn't have reasonable suspicion to search the suitcase because all the information the State had was that somebody had come and said it belonged to Appellant, and that Appellant's name was on the side of the suitcase. [R. p. 31, line 1-32, line 17].

The State responded that the suitcase was admissible under various reasons. First, the probation statute S.C. Code Ann. § 24-21-430, which allows law enforcement to search a probationer's person, vehicle, or any of the probationer's possessions based on reasonable suspicion. He felt at this time, it was beyond a reasonable suspicion. [R.p. 33, lines 1-4]. Further, at the time the suitcase was brought by Britney to the residence, Appellant had already confessed to killing the victim and had brought the officers back to the area to look for various items. Therefore, the State had "reasonable suspicions" that a crime had been committed to search his property, vehicle and person under the probation statute [for a most serious probation violation, the commission of a crime while on probation]. [R.p. 33-34]. He notes that if it was inside the residence at that time when it was brought, it would have been covered by the search warrant that they had as a result of the computer. [R.p. 34]. The State also argued in the alternative that the suitcase had been abandoned somewhere else and a third party brought it back to Defendant's residence, so it would fall under the scope of the search warrant. [R.p. 34].

In an abundance of caution, the State obtained a search warrant the following day to search suitcase. [R. p. 32, line 18-p. 33, line 6].

Appellant responded that law enforcement or probation officers needed reasonable suspicions under the statute; they must have reasonable suspicion that evidence of a crime is going to be found in a specific place. He stated that, at the time the suitcase was opened after it was brought to the scene by Britney, the State did not have "reasonable suspicion," and he claimed that Appellant had not abandoned the suitcase. He also stated that the search warrant was only for the house, and that the suitcase was not in initially the house. [R. p. 35 line 7-p. 37 line 14].

The trial court inquired of the Appellant why wouldn't the probation statute (and agreement) not give law enforcement the right to search the suitcase and any of Appellant's possessions. The trial court stated that even if he had abandoned it, they were bringing it back. As to reasonable suspicion, the trial court noted that by that time, they had found a computer, the Appellant had given a statement (inculpatory), and the Appellant had agreed to come back to the residence to show them where the shoes are. [R.p. 35, lines 8-20]. The Appellant urged that reasonable suspicion was similar to probable cause and that they had to have a reasonable suspicion that evidence was going to be found in a specific place. [R.p. 35, lines 21-25]. The trial court responded that it was "in that suitcase." Although Appellant argued that when they initially opened it, they did not have reasonable suspicion. He denied that they could have gone anyplace that might have things inside at that time, including opening suitcases, opening cars and looking in drawers. However, Judge Early stated, but he left the suitcase at another place, and the people where he left it – not law enforcement – brought it over to them while they were searching the house. [R.p. 36, lines 11-16].

Appellant claimed that he had not abandoned the suitcase because it was at a place that he intended to be living. However, when questioned why they had brought the suitcase over, the Appellant acknowledged that they did not want to have anything to do with the Appellant or that suitcase. [R.p. 36-37].[9] The court acknowledged that with: "absolutely." [R.p. 37, line 2].

Appellant also contended that the search warrant was limited because the suitcase was not in the house when the warrant was written because he claimed it was not in the house but somewhere else at that time. [R.p. 37]. He claims that the third parties brought it over there afterward. Id.

The trial court deferred ruling on the motion until after the Jackson v. Denno hearing. [R. p. 37 lines 4-20]. After the hearing, the court ultimately ruled that the motion to suppress the suitcase was denied based on the probation statute, the waiver signed by defendant (Court's exhibit no. 1, R. p. 478), and that the officers had reasonable suspicions that a crime had been committed to search the suitcase. [R. p. 94, lines 5-25].

OBJECTION AT TRIAL

At trial, Appellant timely objected to the introduction of a photograph of the suitcase and its contents as per pretrial objections. The Court again denied the motion. [R. p. 287 lines 4-8].

A. APPELLANT HAD ALREADY CONSENTED TO A SEARCH OF HIS POSSESSIONS BY SIGNING COURT'S EXHIBIT NO. 1, AND OFFICER KITTREL HAD THE REASONABLE SUSPICIONS REQUIRED BY S.C. CODE

[9] At trial Britney Davis testified that that day when they returned to Corona Apartments, Isiah said that Melvin could stay in Cleo's (intended) room and they went up and saw Cleo's belongings. Britney stated that they packed up Cleo's suitcase and took it back to Campus Drive (the scene of the arrest). She stated that when they got there, Britney got out and got the attention of one of the officers and showed him the suitcase. [R. p. 323]. She stated at that time he opened it up in front of them, shined a light in it and then took possession of it. Id. She said she brought it to the law enforcement because "we thought it was a serious issue. We thought that anything that belonged to Cleo, we didn't need to have possession of it" so she brought it back and turned it over to one of the officers. [R. p. 325, lines 12-21]. She denied that she had been asked by the police to bring anything back to the police. [R. p. 325, lines 12-15]. She also stated that she did not actually see Edwards bring the suitcase to Corona Apartments. [R. p. 325, lines 7-11]. She stated that neither she nor Melvin had opened up the suitcase before they brought it to the police. She stated it was their idea to do it. [R. p. 326, lines 19-24].

ANN. § 24-21-430 TO UNZIP THE SUITCASE AND SHINE A FLASHLIGHT INTO THE SUITCASE.

Appellant argues that the trial court erred in finding that the officers had "reasonable suspicion" to search the suitcase when it was delivered to them that night. Essentially, he claims that when a third party brings any item directly to law enforcement which may belong to Appellant, they would not be able to view it without a search warrant or, under this circumstance of a probationer, the existence of reasonable suspicion. However, at the moment the suitcase was brought to Campus Drive by Britney Davis and her boyfriend, reasonable suspicion was abundantly present. Since law enforcement was aware of his confession, the savage nature of the knife attacks, and the bloody crime scene; the officer had reasonable suspicion that Appellant might have incriminating evidence in the suitcase, particularly since the shoes he claimed to be wearing during the crime were not within the house.

The officers had reasonable suspicion to open the suitcase as allowed under S.C. Code Ann. § 24-21-430. S.C. Code Ann. § 24-21-430 allows a warrantless search where officers have reasonable suspicion, and that they must search only "the probationer's person, any vehicle the probationer owns or is driving, and any of the probationer's possessions." Based upon the luggage tag, this was one of Appellant's possessions, even though not present in the house where it was identified as Edwards by Britney Davis and Melvin.

"The degree of individualized suspicion required of a search is a determination of when there is a sufficiently high probability that criminal conduct is occurring to make the intrusion on the individual's privacy interest reasonable." U. S. v. Knights, 534 U.S. 112, 121 (2001). "When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an

intrusion on the probationer's significantly diminished privacy interests is reasonable." Id. At 593.

At the time of the search, the crime scene at ---- Goff Ave. had been processed, and police were aware of how bloody the crime had been. Also, Appellant had confessed to the crime and had offered to show police where the shoes he had worn were located. Finally, officers had found Appellant's bloody hoody and bloody knife at Mingo St.

Based on knowledge of these facts, it is clear that officers knew that criminal conduct occurred that made the intrusion on the individual's privacy worthwhile. Viewing it from the officer's perspective, that suitcase could have contained bloody clothes, more stolen goods, another weapon, or other evidence from ----- Goff Ave. The brief opening of the suitcase in the presence of the third parties who brought it to law enforcement on their own does not violate the Fourth Amendment where the probationer had reduced his expectation of privacy over the suitcase when the item was left by Edwards at another location. Because it was one of his possessions it was subject to the statute and his probation agreement. The trial court was correct in concluding this was a basis for denying the suppression. A third party turned it over to law enforcement because they did not want to have possession of it under the circumstances.

Respondent would also note that prior to the actual inventory of the items, Lt. Carter had a new search warrant by a magistrate to search the suitcase on February 17. [See R.p. 293-294, p. 313, lines 15-17; p. 328]. [State's Exhibit 34 (R. p. 483-487)]. There has not been a showing that the initial brief look by Lt. Carter affected the probable cause for the warrant.

The evidence of reasonable suspicion available to officers at the time Davis and Melvin brought the suitcase to them was significantly greater than what Appellant argues in his brief. The trial court based his ruling on this information, which supports an inference of reasonable

suspicion. This evidence amply supports the trial court's findings, therefore this Court should affirm.

B. APPELLANT'S SUITCASE WAS SEIZED BY THIRD PARTY ACTORS BRITNEY DAVIS AND MELVIN SIMMONS AND PROVIDED TO LAW ENFORCEMENT DIRECTLY AND APPELLANT CANNOT HOLD THE STATE RESPONSIBLE FOR THEIR ACTIONS.

The State submits as an alternative sustaining ground that the seizure of Appellant's briefcase was by a third-party action, not attributable to the State. The opening of the suitcase provided to the government by third parties not acting as state agent removed any coverage from the Fourth Amendment. "[A]n analysis of whether a private citizen's search and seizure is attributable to the State requires an inquiry into the totality of the circumstances." State v. Cohen, 305 S.C. 432, 436, 409 S.E.2d 383, 386 (1991), cert. denied, Cohen v. South Carolina, 503 U.S. 942, 112 S.Ct. 1490, 117 L.Ed.2d 630 (1992). "Factors to be considered include: the citizen's motivation for the search or seizure; the degree of governmental involvement, such as advice, encouragement, knowledge about the nature of the citizen's activities, and the legality of the conduct encouraged by the police." Id. "The Fourth Amendment does not bar a search and seizure, even an arbitrary one, effected by a private party on his own initiative." State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000), cert. denied, Brockman v. South Carolina, 530 U.S. 1281, 120 S.Ct. 2757, 147 L.Ed.2d 1018 (2000). "It does, however, bar evidence arising from such intrusions if the private party acted as an instrument or agent of the government." Id. "The party challenging admission of evidence has the burden to show sufficient government involvement in the private citizen's conduct to warrant fourth amendment scrutiny." Cohen, 305 S.C. at 434, 409 S.E.2d at 385.[10]

[10]State v. Cohen, 305 S.C. 432, 434, 409 S.E.2d 383, 384 (1991) ("The Fourth Amendment does not bar a search and seizure, even an arbitrary one, effected by a private party on his own initiative."); id. at 434, 409 S.E.2d at 385

Appellant has never claimed that Britney Davis acted as an agent of the government in seizing the suitcase. Although Davis and Melvin returned to the Corona Apartment only after being questioned, the record is uncontradicted that no one asked them to bring the suitcase (or any item) to the police. Davis testified that they brought the suitcase back on their own, because they were worried about keeping it given what was happening to Appellant. It cannot be ignored that at the time of the transfer, it was Britney Davis who possessed the item – not Appellant. Further, it was proper for the law enforcement officer under those circumstances to look inside the item that he was being independently provided by Britney Davis as being Appellant's property from another location for their own safety, although Davis claimed to not have opened the suitcase before providing it to Lt. Carter.[11] There may be an issue as to whether by bringing the property from their residence, i.e., exerting complete control over the item Davis may have

---

("The party challenging admission of evidence has the burden to show sufficient government involvement in the private citizen's conduct to warrant [F]ourth [A]mendment scrutiny."); id. at 435, 409 S.E.2d at 385 ("Even where the government encouragement was rather strong and specific, yet short of an explicit request for a search, courts have been inclined to declare the search private nonetheless if there was in addition a legitimate private purpose behind the search."); id . at 436, 409 S.E.2d at 386 ("[A]n analysis of whether a private citizen's search and seizure is attributable to the State requires an inquiry into the totality of the circumstances. Factors to be considered include: the citizen's motivation for the search or seizure; the degree of governmental involvement, such as advice, encouragement, knowledge about the nature of the citizen's activities, and the legality of the conduct encouraged by the police .").

[11] See U.S. v. Jacobsen, 466 U.S. 109, 115-21 (1984) (police search of items already searched by private party is justified, but police must obtain warrant before conducting more extensive search); see, e.g., U.S. v. Williams, 41 F.3d 192, 196 (4th Cir. 1994) (police search of suitcase valid because airport baggage handler privately searched suitcase for identification and saw 5 opaque cellophane packages); U.S. v. Oliver, 630 F.3d 397, 407 (5th Cir. 2011) (police search of cardboard box valid because box left unsecured by defendant in girlfriend's dining room, where she searched it prior to giving it to police). But see, e.g., U.S. v. Williams, 354 F.3d 497, 510 (6th Cir. 2003) (police search of residence invalid because extended to places landlord's prior search did not include); U.S. v. Rouse, 148 F.3d 1040, 1041-42 (8th Cir. 1998) (police seizure of contraband items uncovered during private search of suitcase by airline employee valid but search of other contents in suitcase required warrant); U.S. v. Young, 573 F.3d 711, 720-21 (9th Cir. 2009) (police search of closed backpack found in defendant's hotel room invalid because hotel staff who had previously searched it could not have been "virtually certain" that firearm contained therein was contraband); U.S. v. Donnes, 947 F.2d 1430, 1435 (10th Cir. 1991) (police search of camera case invalid because private search revealed case but not contents).

had the ability to consent to Lt. Carter's brief opening of the suitcase.[12] However, it does not appear that the suitcase would fit the definition of abandoned property for 4th Amendment purposes. See Abel v. U.S., 362 U.S. 217, 241 (1960) (warrantless seizure of items abandoned in hotel wastepaper basket did not violate 4th Amendment because defendant had already checked out and because "[t]here can be nothing unlawful in the Government's appropriation of ... abandoned property"). [13]

SUMMARY

The state trial judge correctly denied the motion to suppress the items recovered from the suitcase brought to law enforcement by Britney Davis. The government had reasonable suspicion (and probable cause) to search the items within the suitcase where the Appellant had confessed to the murder, evidence of the computer tied Appellant to the crime, a search warrant was already received concerning the Campus residence and there was an ongoing search for clothes and shoes that would have blood from the crime scene and matching distinctive patterns.

Further, the fact that a search warrant was acquired the next day before the inventory of the suitcase of the particular items, reveals that the matter was subject to harmless error and

---

[12] See State v. Laux, 344 S.C. 374, 376, 544 S.E.2d 276, 277 (2001) ("The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched."); id. ("Common authority is defined as mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable for officers to believe the person granting consent has the authority to do so."). But see, United States v. Jaras, 86 F.3d 383, 389–90 (5th Cir.1996) (concluding that there was no apparent consent when the third party clearly informed the officers that the suitcases searched belonged to someone else).

[13] See U.S. v. Wilson, 36 F.3d 1298, 1303 (5th Cir. 1994) (reasonable expectation of privacy not relinquished because property not abandoned when defendant left checkbook in wastebasket of hotel room in which friend was living and defendant was friend's overnight guest there), overruled on other grounds by U.S. v. Gould, 364 F.3d 578, 586 (5th Cir. 2004) (en banc); U.S. v. Basinski, 226 F.3d 829, 838 (7th Cir. 2000) (reasonable expectation of privacy not relinquished because defendant ordered friend to hide and burn briefcase); U.S. v. Ramos, 12 F.3d 1019, 1026 (11th Cir. 1994) (reasonable expectation of privacy not relinquished because property not abandoned when defendant left locked briefcase with his other belongings in leased room that he did not vacate for 4 hours past termination of rental period); U.S. v. Most, 876 F.2d 191, 197 (D.C. Cir. 1989) (reasonable expectation of privacy not relinquished because no abandonment when defendant left bag in care of store clerk).

inevitable discovery. See State v. Jenkins, 398 S.C. 215, 717 S.E.2d 761 (Ct. App. 2012) ("As the Fourth Circuit has stated: "The inevitable discovery doctrine cannot rescue evidence obtained via an unlawful search simply because probable cause existed to obtain a warrant when the government presents no evidence that the police would have obtained a warrant. Any other rule would emasculate the Fourth Amendment", citing United States v. Allen, 159 F.3d 832, 842 (4th Cir.1998)). Here, the warrant was sought and received. The fact that a third party provided the suitcase and asserted that it belonged to the probationer provided a reasonable basis to satisfy the demands of the Fourth Amendment under these circumstances under the totality of the circumstances. Suppression of the suitcase and its items was not warranted.

Issue III: Fruits of the Suitcase Search

III. The trial court did not err in admitting the evidence recovered from the suitcase provide by the third party which was not in violation of the Fourth Amendment or an illegal search. However, even if the particular items should have been suppressed, any error was harmless error in lights of the plethora of evidence tying Appellant to the crime.

Respondent adopts and incorporates by reference the correctness and admissibility of the items based upon the lawful search set forth in Argument two. In this third argument the Appellant contends that if those items were the fruit of an illegal search, particularly the clothes and shoes within the suitcase, he would not have the DNA evidence from those items tying him to the crime. He basis his argument on Wong Sun v. U.S., 371 U.S. 471 (1963) and the "fruit of the poisonous tree" doctrine. Respondent concurs that if the search (or searches) of the suitcase was improper these items would not be admissible unless the State was able to show that it would be inevitably discovered. As noted above, the actual search that ultimately inventoried the items was done pursuant to a search warrant for the suitcase. Whether the initial view by Lt. Carter was in violation of the Fourth Amendment to satisfy reasonable suspicion was trumped by the later search warrant based upon probable cause. His argument, as noted above must fail.

Nevertheless, a sound argument can be made that if the suitcase items should have been suppressed, any error was harmless error in light of the overwhelming strength of the evidence including the Appellant's confession as noted previously.

FACTS

Starting again where Issue II left off, Appellant had just confessed to the crime. After the interview was over, around 8:00 or 9:00 PM, the officers went to the place Edwards said he placed the knife and other items he described in the interview. They first went to the abandoned house on Mingo Street. Officer Thrower and other law enforcement officers attempted to locate

the items Edwards described, but it was dark so couldn't. They went back to 1347 Campus Street to find the shoes, but they were not there either. The officers went back to the Mingo Street house on February 17 and located several items. Officer Thrower found a black hooded sweatshirt at the rear of the residence near some shrubbery & a fence, which also contained a T-shirt. Officer Michelle Rice found a knife stuck in the ground. [R. p. 174, line 14-p. 177, line 21]; [R. p. 233, line 20-p. 235 line 16]. The clothes on the ground became State's Evidence No. 35, and the knife became State's Evidence No. 38.

Nadia Weldon, who was still dating defendant up until his arrest, testified that she saw Edwards wear a black kind of hoodie in February 2011, and he typically wore a pair of black shoes. She recognized State's Exhibit No. 40 as Cleo's shoes. [R. p. 251, line 12-p. 252, line 16]

William Ketcherside, a forensic investigator, found multiple footwear impressions around the ----Goff Ave, including many bloody footprints, and sent them to SLED for analysis. [R. p. 255, line 6-p. 275, line 3]. He also collected a vial of the victim's blood from the autopsy to use for SLED DNA analysis. [R. p. 276, line 3-p. 277 line 24]; State's Exhibit 34 (R. p. 483-487).

Karl Kenley, an expert in footwear identification with SLED, took several swabs from Appellant's shoes, and labelled them as SLED numbers 17.1-17.5.[14] He also took shoe print impressions of Appellant's shoes, and compared them to the prints left at the scene. They were made by the same type of shoe (Greedy brand tennis shoes). [R. p. 329, line 4-347, line 22].

Verona Gibson, a SLED agent who processes crime scene evidence, also took two additional samples swabs, one from the interior of each foot to determine ownership of the shoes.

[14] Item 17.1: taken from the sole near edge of left toe of the right shoe. Item 17.2: taken from toe area of the rubber sole on the right shoe. Item 17.3: taken from the big toe side of the left shoe near the front fabric portion. 17.4: taken from the top of the left shoe near the fabric. Item 17.5: taken from little toe side near the crack, near the outsole of the left shoe. [R. p. 333, lines 4-11]. Two additional swabs were taken of the interiors of the shoe.

[R. p. 357, line 13-p. 358, line 18.] These were labelled SLED numbers 17.6 and 17.7, respectively the left and right interiors. Gibson also took several other samples.

State's Exhibit No. 35, the black hoodie and t-shirt recovered from Mingo Street, were designated as 15.1 and 15.2, respectively. The top of the hoodie, which had tested positive for blood, was designated SLED 15.1.1. The neck, collar, cuffs and underarms of the hoodie were scraped for owner identification, and the resulting sample was labelled SLED 15.1.2. The neck and underarms of the t-shirt were scraped similarly for ownership and designated SLED 15.2.1. Several hairs were designated as 15.1.2, but were not tested. [R. p. 350, line 11-353, line 21].

State's Exhibit 38, the knife found at Mingo Street, became SLED 18. Item 18.1 was a sample taken from the blade, and 18.2 was a sample taken from the handle. Neither tested presumptively positive for blood. [R. p. 354, line 23-p. 355, line 20].

State's Exhibit 36, the jeans in the suitcase, were also sampled and became SLED 19. An area near the zipper tested presumptively positive for blood, was cut out, and designated SLED 19.1. The waistband was scraped for ownership and became SLED 19.2. [R. p. 355, line 21-p. 356, line 18].

State's Exhibit 37, the t-shirt in the suitcase, was also sampled and became SLED 16. An area that was tested for blood (it is not clear from the record where) became SLED 16.1. The underarms and neck were scraped for ownership and became SLED 16.2. [R. p. 354, line 23-p. 355, line 20].

Catherine Leisy, an expert in DNA serology, tested all of the samples (except for 17.2 and 17.4). Her findings are indicated in the chart on the next page:

Chart of DNA Results **Exhibit Number** • SLED Numbers	Sample DNA Matches Appellant	Sample DNA Matches Victim	Sample is a Mixture	Victim DNA Excluded from Sample	Appellant DNA Excluded from Sample
State's Exhibit 35: Clothes at Mingo St.[15]					
• 15.1.1: Top of hoodie	—	Yes	—	—	—
• 15.1.2: Cuff and neck of hoodie	—	—	Yes	No	No
• 15.2.1: T-Shirt	—	—	Yes	Yes	No
State's Exhibit 36: Jeans in suitcase[16]					
• 19.1: Area near zipper	—	Yes	—	—	—
• 19.2: Waistband	—	—	Yes	Yes	No
State's Exhibit 37: T-Shirt in suitcase[17]					
• 16.1: Cutting from shirt	Yes	—	—	—	—
• 16.2: Underarms and neck	—	Contributor	Yes	Yes	—
State's Exhibit 38: Knife at Mingo St.[18]					
• 18.1: Blade	—	Contributor	Yes	No	Unclear
• 18.2: Handle	—	—	Yes	Yes	No
State's Exhibit 40: Shoes in suitcase[19]					
• 17.1: Left edge of left shoe	—	Yes	—	—	—

[15] 15.1.1: [R. p. 376, lines 4-24]. 15.1.2: [R. p. 378, lines16-25]. 15.2.1: [R. p. 454, line 18-p. 379, line 2].
[16] 19.1: [R. p. 387 lines 13-21]. 19.2: [R. p. 387, line 25-p. 388 line 10].
[17] 16.1: [R. p. 370, lines 8-20]. 16.1: [R. p. 370, lines 21-p. 381, lines 18].
[18] 18.1: [R. p. 385, lines 2-17]. 18.2: [R. p. 386, lines 17-23].
[19] 17.1: [R. p. 382, lines 3-13]. 17.3: [R. p. 382, lines 3-13]. 17.5: [R. p. 382, lines 15-19]. 17.6: [R. p. 383, lines 7-15]. 17.7: [R. p. 383, lines 16-24].

• 17.3: top area of shoe	—	Yes	—	—	—
• 17.5: Little toe of right shoe	—	Contributor	Yes	—	Unclear
• 17.6: interior of left shoe	—	—	Yes	Yes	No
• 17.7: interior of right shoe	—	—	Yes	Yes	No

Leisy estimated that the chances of an unrelated individual having a DNA profile matching the victim's was one in 510 trillion. Leisy further declared that the blood found on the hoodie from Mingo Street, the jeans from the suitcase, and the shoes from the suitcase matched the victim's DNA profile with a reasonable degree of scientific certainty. [R. p. 390, lines 2-20].

LEGAL ANALYSIS

A. EXCLUSION IS INAPPROPRIATE BECAUSE THE FRUITS OF THE SUITCASE ARE CUMULATIVE WITH OTHER DNA EVIDENCE, AND ANY ERROR WOULD BE HARMLESS IN THE FACE OF THE OVERWHELMING EVIDENCE OF THIS CASE.

The victim's blood was positively identified on three separate items. Two of these were from the suitcase Appellant complains of, yet one was not. Appellant does not on appeal challenge the validity of his confession wherein Appellant made inculpatory statements. If this Court were to find that the search of his suitcase violated the Fourth Amendment, then only the following items would be excluded:

1. Suitcase and all photographs of it.
2. Clothing found within the suitcase: State's Exhibit 36, 37, and 40, and all photographs of it.
4. Swabs taken from State's Exhibits 36, 37, and 40:
    a. SLED 16.1-16.2; SLED 17.1-17.7; SLED 19.1-19.2.
5. Leisy's testimony and DNA results of the SLED items in 4.

The following case would still be presented and considered by the jury:

1. Appellant's confession and all related testimony.
2. The black hoodie and testimony relating to it, as well as the knife and related testimony to it.
3. Appellant's possession of the stolen laptop and all related testimony.
4. All autopsy results
5. The clothes found at Mingo Street because of Appellant's confession, State's Exhibit 35;
6. The DNA samples taken from State's 35, including 15.1.1, which tested positive for the Victim's DNA;
7. The knife, State's Exhibit 38 and all testimony related to it.
8. The DNA samples taken from State's 38, including 18.1, of which the Victim was a contributor.

Before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt. Chapman v. California, 366 U.S. 18, 24 (1967). Stated another way, "Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006):

> A harmless error analysis is contextual and specific to the circumstances of the case: "No definite rule of law governs [a finding of harmless error]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial."

State v. Byers, 392 S.C. 438, 447–48, 710 S.E.2d 55, 60 (2011) (quoting State v. Reeves, 301 S.C. 191, 193–94, 391 S.E.2d 241, 243 (1990)). Further, "[i]t is well settled that the admission of

improper evidence is harmless where it is merely cumulative to other evidence." State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983). "To deem an error harmless, this court must determine 'beyond a reasonable doubt the error complained of did not contribute to the verdict obtained.' " State v. Fonseca, 383 S.C. 640, 650, 681 S.E.2d 1, 6 (Ct.App.2009) (quoting Taylor v. State, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993)), aff'd, 393 S.C. 229, 711 S.E.2d 906 (2011); see also State v. Baccus, 367 S.C. 41,at 55, 625 S.E.2d 216,at 223 (2006) ("When guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached, this Court will not set aside a conviction for insubstantial errors not affecting the result."). In Baccus, the Supreme Court found the trial court's error in admitting the DNA to be harmless. 367 S.C. at 56, 625 S.E.2d at 224. As the court indicated, however, the other evidence in the case conclusively proved the defendant guilty.

> The State presented the testimony of [the victim's friend] who overheard Appellant tell the victim he was going to kill her and who overheard a pop and clicking sound. Additionally, the State presented evidence that Appellant's fingerprints matched fingerprints on the window sill of the broken window in the victim's bedroom. Also, [a DNA analyst] testified the blood sample collected from Appellant on the night of his arrest matched the blood found on the swabs and cuttings from the door, blind, and sheet in the victim's house. Therefore, the blood evidence drawn pursuant to the court order which should have been excluded was cumulative.

367 S.C. at 55, 625 S.E.2d at 223–24.

In Baccus, the DNA match to the defendant would have been in evidence regardless of the trial court's ruling on the motion to suppress. The admissible DNA evidence, combined with the friend's testimony she heard a gunshot immediately after she heard the defendant tell the victim he was going to kill her, "conclusively" proved the defendant guilty and left no rational conclusion but that he was guilty of murder. 367 S.C. at 55–56, 625 S.E.2d at 224. Cf., State v. Jenkins, 398 S.C. 215, 717 S.E.2d 761 (Ct. App. 2012) (error in admitting DNA evidence that

was collected pursuant to an invalid search warrant was not harmless in trial for first-degree criminal sexual conduct, where, without the DNA evidence, only the victim's testimony was proof that defendant was the person who assaulted her and raped her).

Here, Respondent submits an error was harmless. Unlike Jenkins, the loss of the suitcase evidence samples that matched the victim's DNA does not change the fact that his hoodie, one of the items Appellant told officers about during his confession, still has the victim's blood on it, or that her blood appears as a major contributor to the DNA from the knife he left behind. He is guilty beyond a reasonable doubt by his own admission, and the additional DNA evidence Appellant would have excluded is merely cumulative. The State asks this Court to affirm.

CONCLUSION

For the aforementioned reasons, the State respectfully asks this Court to affirm the judgment and conviction and sentences.

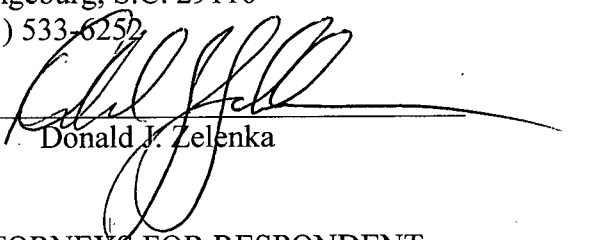
Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3601
S.C. Bar #5758

DAVID M. PASCOE
Solicitor, First Judicial Circuit
P. O. Box 836
Orangeburg, S.C. 29116
(803) 533-6252

By: 
Donald J. Zelenka

ATTORNEYS FOR RESPONDENT

January 8, 2015

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213596

THE STATE,

RESPONDENT,

v.

CLEOPHUS N. EDWARDS, Jr.,

APPELLANT

PROOF OF SERVICE

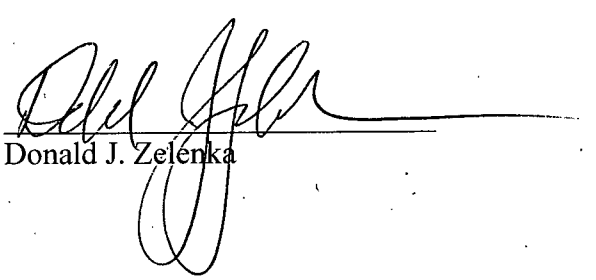
I, Donald J. Zelenka, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney(s) of record:

Arthur K. Aiken, Esq.
2231 Devine Street, Suite 201
Columbia, South Carolina 29205

Robert M. Dudek, Esq.
South Carolina Division of Appellate Defense
P.O. Box 11589
Columbia, S.C. 29211

I further certify that all parties required by Rule to be served have been served.

This eighth day of January 2015.



Donald J. Zelenka

Senior Assistant Deputy Attorney General
Bar No. 5758
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-3601
ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213596

THE STATE,

RESPONDENT,

v.

CLEOPHUS N. EDWARDS, Jr.,

APPELLANT

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled " Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

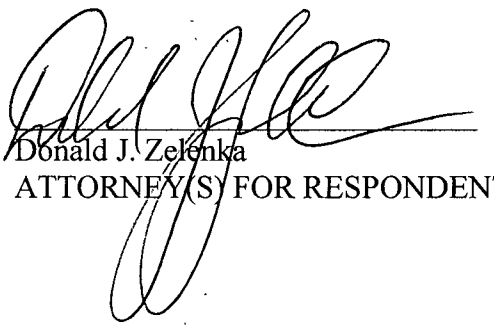
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
S.C. Bar Number 5758

South Carolina Office of Attorney General
Capital and Collateral Litigation Unit
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3601

DAVID M. PASCOE
Solicitor, First Judicial Circuit
P. O. Box 836
Orangeburg, S.C. 29116
(803) 533-6252



Donald J. Zelenka
ATTORNEY(S) FOR RESPONDENTS

January 8, 2015.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213596

THE STATE,

RESPONDENT,

v.

CLEOPHUS N. EDWARDS, Jr.,

APPELLANT

PROOF OF SERVICE

I, Donald J. Zelenka, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney(s) of record:

Arthur K. Aiken, Esq.
2231 Devine Street, Suite 201
Columbia, South Carolina 29205

Robert M. Dudek, Esq.
South Carolina Division of Appellate Defense
P.O. Box 11589
Columbia, S.C. 29211

I further certify that all parties required by Rule to be served have been served.

This eighth day of January 2015.

Donald J. Zelenka

Senior Assistant Deputy Attorney General
Bar No. 5758
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-3601
ATTORNEY FOR RESPONDENT

ALAN WILSON
ATTORNEY GENERAL

January 8, 2015

Honorable Jenny A. Kitching
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State v. Cleophus Edwards, Jr.
Appellate Case No. 2012-213596

Dear Ms. Kitchings:

Enclosed please find the original and nine (9) copies of the **Final Brief of Respondent** and **Certificate of Compliance** in the above-captioned matter for filing in your office. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/mv
Enclosure

cc: Arthur K. Aiken, Esquire
Robert M. Dudek, Esquire
David M. Pascoe, Jr., First Circuit Solicitor
Trisha Allen, Victims Assistance