STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

v.

SAMMIE LEE GERRICK,

Appellant

Appellate Case No. 2014-000385.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL

1. Whether the court erred by admitting into evidence a "root" associated with witchcraft and a can of "Law Stay Away" that were seized from the center console of Appellant's truck pursuant to a search warrant because this evidence was not relevant and any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to Appellant?

2. Whether the court erred by denying Appellant's motion for a mistrial after a law enforcement officer characterized the "brown piece of paper bag" that was "taped up" to form some sort of "capsule" with weeds, twigs, and a penny inside and the words "Set me Sammie Gerrick free from murder and revoked bonds" written on the outside as "witchcraft root" in front of the jury since this testimony was highly prejudicial and the court's curative instruction failed to cure the prejudice suffered by Appellant?

3. Whether the court erred by refusing to grant a mistrial after the state showed a videotape of Appellant's interview with law enforcement before his arrest with a polygraph machine clearly visible on the table since this was unduly prejudicial and denied Appellant a fair trial?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Did the trial court err by allowing into evidence photographs of a novelty item labeled "Law Stay Away" and a deconstructed "root" found in the center console of the Appellant's truck, where the general rule in South Carolina finds admissible any guilty act, conduct, or statements on the part of the accused as evidence of consciousness of guilt, and where there exists a strong nexus between the admitted evidence and the charge against the Appellant?

2. Did the trial court err by denying the Appellant a mistrial where a single law enforcement officer characterized a photograph of the deconstructed paper capsule as a "witchcraft root," where the trial court immediately issued a curative instruction and where the jury was previously exposed to the item during earlier trial testimony?

3. Did the trial court err in denying the Appellant a mistrial where due to a technical error in the handling of projection equipment, a glimpse of wires and a black polygraph box among other items on an interview table were projected, but where the trial judge took immediate action to remove the jury, and where the polygraph could not be discerned by the naked eye?

4. Did any error in the admission of the "root" evidence or in the polygraph machine's accidental projection prove harmless given the remainder of the State's case?

STATEMENT OF THE CASE

Appellant Sammie Lee Gerrick was indicted by the Barnwell County Grand Jury for the charge of murder. (R. p. 638-639). Daniel W. Williams, Esq. represented Gerrick at a jury trial which began November 18, 2013, before the Honorable Doyet A. Early, III in Barnwell County. (R. p. 1). Assistant Deputy Attorney General S. Creighton Waters and Assistant Attorney General Jason Anders prosecuted the case which lasted four days. (R. p. 1). Gerrick was convicted of murder by a jury, and Judge Early sentenced Gerrick to a term of life imprisonment. (R. p. 555, ll. 17-21). This appeal follows. (R. p. 635-637).

STATEMENT OF FACTS

According to family and friends, they last saw Tyrone Donaldson on July 21, 2011. At that time, Donaldson lived with his sister-in-law, Kelsea Hallingquest. She saw him when she woke up on the morning of July 21, "just like any other day," when he made sure she would look after his daughters while he was out during the day, changed his shoes, and left their house. (R. p. 142, ll. 8-22).

John Rice, a friend of Appellant Sammie Lee Gerrick's who works at the Bamberg County Detention Center, called Donaldson sometime that morning on Gerrick's behalf to tell Donaldson that Appellant Gerrick needed bail money. (R. p. 101, ll. 8-25). Donaldson's friend Maurice Williams also received a phone call from Appellant Gerrick, again asking to be bailed for bail money. (R. p. 66, ll. 4-9). Williams and Donaldson discussed bailing Gerrick out of jail for a total of $6600 in exchange for a promise by Gerrick that he would pay them back on the same day. (R. p. 66, l. 19 – p. 68, l. 4). Donaldson and Williams met at the bank the morning of July 21, 2011. Williams withdrew $3300 in bail money, sat in Donaldson's car to chat, gave Donaldson his half of the bail contribution, and then went back to work. (R. p. 69, l. 11 – p. 71, l. 17).

After that, Donaldson bailed Gerrick out of jail, and they called Williams to let him know. (R. p. 71, l. 20 – p. 72, l. 11). Gerrick expressed appreciation, stating he would "bless" them. (R. p. 72, ll. 7-15). The bailout occurred between 11:00 AM and noon that day. (R. p. 102, ll. 22-25). According to county jail employees, Gerrick was free of scratches or bruising upon his release, although a ceiling lightbulb did bust and fall into his cell at some point during Gerrick's detention. (R. p. 103, l. 1 – p. 105, l. 20; p. 346, l. 3 – p. 347, l. 25).

Early that afternoon, Williams and Donaldson touched base again. During that conversation, Donaldson spoke of his intention to drop Gerrick off, go home, pick Gerrick back up, and then Gerrick was going to reimburse the $6600 as promised. (R. p. 72, l. 19 – p. 73, l. 14). Between 1:00 and 2:00 that afternoon, Donaldson did return home, picked up a shotgun, asked Hallingquest once more to watch his girls as usual, and left. (R. p. 143, ll. 4-25). Donaldson was also seen by Gerrick's girlfriend's son dropping Gerrick off at his girlfriend's home. Donaldson returned to pick Gerrick up less than an hour later. (R. p. 117, ll. 12-24). Before leaving that home in separate vehicles, Gerrick placed two shovels from the barn behind his house into the bed of his own pickup truck. (R. p. 117, l. 24 – p. 118, l. 9). They both left the house, Tyrone following behind Gerrick's truck. (R. p. 118, ll. 9-11).

Donaldson and Gerrick were next seen at 2:54 pm, according to the timestamp from ATM security camera footage at the Enterprise Bank on Main Street in Blackville. (R. p. 396, ll. 17-34). Security footage shows a Honda Accord following a Burgundy pickup truck out of the bank parking lot. (R. p. 401, l. 1 – p. 402, l. 16). At a local gas station and Subway restaurant around 3:15 pm, Shaneka DeLoach, a relative of Donaldson's and someone who knows Gerrick from the community, witnessed Gerrick standing outside of Donaldson's driver's side window speaking to Donaldson and "moving his hands." (R. p. 121, l. 11 – p. 123, l. 17). "He could have been looking mean." (R. p. 123, l. 23). From her position across the street in the gas station parking lot, DeLoach could identify Donaldson's white Honda and Gerrick in a burgundy Dodge truck. (R. p. 123, ll. 1-7). They were parked with the noses of their vehicles headed in opposite directions. (R. p. 123, ll. 8-17). Sometime between 3:00 and 4:00 that same

afternoon, Gerrick's friend Joe Thomas saw Gerrick speed past his house in a gray and burgundy truck; there was another car behind him. (R. p. 433, l. 4 – p. 434, l. 11). Thomas called Gerrick's cell phone, who replied he was busy. (R. p. 433, l. 5 – p. 434, l. 18). Gerrick was headed north; a rural area demarcated by Sunshine Road sits about a mile north of Thomas' house. (R. p. 435, ll. 4-16).

Missing Person

After that, nobody heard from Donaldson. Donaldson's girlfriend, Kim Smith, received a final text from him around 1:30 that afternoon, but when she called his cell later that evening she received no answer. (R. p. 52, ll. 2-21; p. 54, l. 2 – p. 55, l. 3). Williams, who was looking to be reimbursed for his bail contribution when he finished with work for the day, had no success in getting Donaldson to answer his phone. (R. p. 73, ll. 15-22). Some text messages sent to Donaldson expressing worry were not received; phone records would later show that his cell phone was turned off or was outside of a service area for at least 72 hours. (R. p. 340, l. 18 – p. 342, l. 19).

No one saw Donaldson later that evening and into the night, but mutual friends did see and speak with Appellant Gerrick. Williams lived next door to Gerrick. (R. p. 75, ll. 12-14). After work that day, he met Gerrick in the side-yard where Gerrick explained to him that he and Donaldson dug up a safe containing $90,000 to $100,000, "loaded that little Honda down with money," and Donaldson drove off with all of it. (R. p. 76, l. 2 – p. 77, l. 20). Williams began to feel nervous, and made plans to visit with another friend of him and Donaldson's, Jamaal Berry, about an hour later. (R. p. 79, l. 16 – p. 180, l. 14). Williams and Berry sat outside, Williams' gun in his lap, while Williams relayed the day's events regarding Donaldson and Gerrick and the bail money. (R. p. 132, ll. 14-25).

Williams was scared. (R. p. 133, ll. 1-6).

For a period of time that night, Gerrick was at his girlfriend's house. A visitor at that house saw Gerrick enter around 7:30 the evening that Donaldson went missing. Gerrick came in carrying some clothes, went to the laundry room, left some clothes there, went into a bedroom, and emerged wearing a different outfit. (R. p. 109, l. 5 – p. 110, l. 17). Gerrick's girlfriend's son also saw Gerrick later the same night. (R. p. 118, ll. 12-13). Gerrick "looked like he was facing – like he had a lot on his mind" as he sat on the steps outside for hours sometime between ten and midnight. (R. p. 118, ll. 14-24; R. p. 120, ll. 1-3).

The next day, Williams saw Gerrick again and noticed "scratch marks on his chest." (R. p. 87, ll. 19-25). Donaldson's mother contacted the police department because her son did not return home the night before, and because despite efforts to contact him, no one had heard from Donaldson since he was last seen with Gerrick. (R. p. 141, ll. 17-25). Blackville Police Department Chief John Holston began a missing person's case on Donaldson. (R. p. 152, ll. 5-13).

That night, Williams, Berry, and Donaldson's sister-in-law Hallingquest each received a text message from an unknown phone number, 347-8647. (R. p. 83, ll. 9-13; R. p. 134, ll. 9-16). Williams' and Berry's read "help me this Tyrone am hurt Kim ex got me help please." (R. p. 82, ll. 4-17; R. p. 133, l. 18 – p. 134, l. 1). Hallingquest's text stated "help me sister-in-law Kim ex-husband got me am hurt." (R. p. 145, l. 10). Each recipient noticed oddities about the text message, in addition to its receipt from an unknown number. The sender incorrectly spelled "I'm" in this manner: "am." (R. p. 84, ll. 18-19). Additionally, Donaldson never called Hallingquest his "sister-in-law," he referred to her

as either Kelsea or simply as his sister. (R. p. 145, ll. 11-20).

Williams knew Gerrick to spell "I'm" as "am" on a regular basis, and had many comparisons from past messages in his own phone. (R. p. 84, l. 20 – p. 85, l. 21). For example, Gerrick once texted Williams "man am worried . . . ." (R. p. 86, ll. 17-23). Another time it was "since they are playing game with me am meeting with my lawyer . . . ." (R. p. 87, ll. 3-12). When Berry called Gerrick to ask if he sent the text message, Gerrick's response was along the lines of "it wasn't me, maybe this will take some heat off me." (R. p. 135, l. 22 – p. 136, l. 14). When Gerrick provided law enforcement with a handwritten statement, he spelled "I'm" as "am."[1] (R. p. 189, ll. 2-9). The texts came from a trac phone. (State's Exhibit 73; R. p. 468, ll. 3-18).

Discovering Donaldson's Car

One day after the disappearance, Lana Joyner, a friend of Donaldson and Hallingquest, took a detour home from work, spotted Donaldson's white Honda parked at the China Express in Orangeburg, and called Hallingquest to tell her. (R. p. 357, l. 23 – p. 359, l. 10). The Honda was identified by Orangeburg Public Safety as belonging to Gerrick. (R. p. 152, l. 14 – p. 153, l. 9). Meanwhile, Gerrick had been asking others if they had heard from Donaldson, or what they might have heard about Donaldson's disappearance. (R. p. 81, ll. 3-15; R. p. 424, l. 18 – p. 425, l. 25).

Gerrick's wife Charlene later testified as to how the Honda appeared at the Orangeburg China Express. Between nine and ten on the night Donaldson went missing, Gerrick asked Charlene to drive him to retrieve a white Honda Civic "off a paved road,

[1] Gerrick utilized other phonetic spellings, such as spelling "right" r-a-t ("rat") and using "no" where "know" was the appropriate form in context. (R. p. 189, line 10 –R. p. 190, line 11).

back up in the woods," and Charlene obliged. (R. p. 174, l. 10 – p. 175, l. 24). Gerrick had the key to the Honda Civic and drove it over to Orangeburg, parking it at the China Express. (R. p. 176, l. 8 – p. 177, l. 25). Charlene followed behind and then drove Gerrick home. (R. p. 178, ll. 4-21). According to Charlene, they arrived home late that night, and recalled that Gerrick did not stay with her for long. (R. p. 179, l. 23 – p. 180, l. 4).

Several days later on August 3, Charlene took law enforcement to the place in the woods where Gerrick recovered Donaldson's car. (R. p. 181, ll. 2-9). The spot was located off of Sunshine Road, where there is another "little dirt Road called One Way." (R. p. 198, ll. 8-16). They made a left onto One Way, driving past where "there's an open field. And then it goes into a heavy wooded area." (R. p. 198, ll. 14-19). Based upon this information, law enforcement assembled a search in that area beginning August 4. (R. p. 199, ll. 3-10). One officer eventually came across a disturbance underfoot, "and when he poked his [search] stick into the ground . . . an odor came up." (R. p. 200, ll. 7-13). SLED was contacted and a crime scene technician later recovered the body of a black male later identified by a right forearm tattoo as Tyrone Donaldson. (R. p. 200, l. 23 – p. 202, l. 25; R. p. 307, ll. 12-20).

Homicide Investigation

Upon recovery, Donaldson's body "was face down and the knees were bent as if put into the ground on the stomach with the legs bent up." (R. p. 279, ll. 15-17). Donaldson had been buried in a two-foot grave. (R. p. 281, ll. 1-4). Also apparent were bindings which had once bound Donaldson's knees and ankles; "his arms were underneath his chest." (R. p. 279, ll. 14-22). "There was a piece of root that actually went through his arms. And it was connected on both ends so his arm had gone through and

around the root." (R. p. 280, ll. 2-5). SLED agents also found burned charcoal in the soil, a fired shotgun shell, an unfired shotgun shell, a logging chain, a cigar butt, gloves, and "a white appliance top that looked like it had burned charcoal around in it." (R. p. 280, ll. 9-10; R. p. 284, l. 25 – p. 285, l. 8).

At the gravesite, investigators found green netting, which they initially believed to be trash. (R. p. 275, ll. 15-18). Investigators also collected green netting and fishing lures at Gerrick's Blackville residence, "similar to what [they] had seen at the body." (R. p. 291, ll. 16-20;R. p. 293, l. 25 – p. 294, l. 2). Trial testimony from Gerrick's girlfriend's son showed that green netting was also present approximately a year prior to Donaldson's disappearance as part of some sod laid at Gerrick's girlfriend's home. (R. p. 118, l. 25 – p. 119, l. 10).

Forensic Pathologist Dr. Janice Ross conducted an autopsy on Donaldson's body the day after its discovery. (R. p. 302, ll. 6-25). The body, "very much covered with dirt," had decomposed in a moderate-to-severe, or "fairly advanced" fashion due to it being buried for ten to twelve days in a South Carolina July. (R. p. 303, ll. 5-21). Dr. Ross discovered neither fractures nor bullets, and could not clearly identify any bruising or other soft-tissue injury due to the extent of the body's decomposition. (R. p. 304, ll. 2-20). Ross found no visible particles of dirt in the throat or nostrils. (R. p. 315, ll. 13-17). In addition to the ligatures or bindings, Dr. Ross did identify "some defects in the back of the left forearm. They were splits in the skin consistent with a laceration." (R. p. 305, ll. 1-7). Dr. Ross identified these forearm lacerations as defensive wounds, such as the scratches that may be obtained by shielding oneself from harm with his or her arms. (R. p. 311, l. 22 – p. 312, l. 22).

In conclusion, Dr. Ross determined based upon "[t]he fact that he was buried underneath dirt, and without evidence of shooting or fractured skill, for instance from a beating, it is most likely that there was some kind of asphyxiation," strangulation, and a homicide. (R. p. 309, ll. 1-11). Such a homicide, given the circumstances and burial scenario, could result "either from being strangled with some sort of soft item" or "result from somebody being incapacitated and then buried." (R. p. 309, ll. 9-18).

On August 5, law enforcement executed search warrants for Appellant Gerrick's Dodge pickup truck as well as for places he was known to reside. (R. p. 203, ll. 10-14; p. 210, l. 23 – p. 211, l. 1). Gerrick was in custody at that time. (R. p. 256, l. 19 – p. 257, l. 5). Law enforcement found in the center console of Gerrick's truck a "brown package, like a brown piece of paper bag . . . . It was just taped up. Once you open it, it had some dust, weed, twigs, and a penny in it." (R. p. 211, ll. 2-10; State's Exhibits 43 through 46). It was taped up like a capsule. (R. p. 211, ll. 18-20). Law enforcement opened the capsule to find the handwritten words:

> Set me Sammie Gerrick free from murder and revoke bond.
> Jack Early set me free now.
> Jack Early set me free now.
> Jack Early set me free now.
> Sammie Gerrick, Sr.
> Sammie Gerrick, Sr.
> Sammie Gerrick, Sr.
> So shall it be.
> So shall it be.
> So shall it be.
>
> Amen.
> Amen.
> Amen.

(R. p. 213, ll. 4-18; State's Exhibit 29). On the other side a selection resembling Psalm 130:

> Out of the depths[sic], have I cried unto thee, O Lord. Lord hear my viouce[sic]: ut[sic] think ears, be attentive to the voice of my supplications, if that Lord shouldest mark iniquities O Lord, who shall stand? But there is forgiveness with thee that there inaqest[sic] be feared. I wait for the Lord, my sould doth wait, and in his word do I hope my soul waiteth for the Lord more than they that watch for the morning I saw, more than they that watch for the morning. Let Israel hope in the Lord. For with the Lord there is mercy. And with him is plenteous[sic] redemptions. And he shall redeem Israel from all his inguities[sic].

(R. p. 214, ll. 7-15; State's Exhibit 30). Also found in the center console was a small canister labeled "Law Stay Away." (R. p. 289, l. 16 – p. 290, l. 13; State's Exhibit 43).

Law enforcement did not process Gerrick's vehicle for prints because it had been washed and because Donaldson and Gerrick "had knowledge of each other" such that law enforcement characterized it "not a big deal" if Donaldson's fingerprints were found in Gerrick's vehicle. (R. p. 291, ll. 2-12). But Lieutenant Schultz with the Orangeburg Department of Public Safety recovered five of Gerrick's fingerprints from the front right passenger door of Donaldson's white Honda Civic. (R. p. 384, ll. 1-10; R. p. 391, ll. 1-8). Further DNA testing inside the Honda Civic showed no contributions from either Sammie Lee or Charlene Gerrick. (R. p. 366, l. 17 – p. 369, l. 3).

Sammie's Stories

Gerrick made a series of voluntary statements to law enforcement, which were introduced in segments at trial. (Court's Exhibit 2). He made his first statement on July 22, the day after commencement of the missing persons investigation. (R. p. 153, l. 16). Blackville Police Chief John Holston first spoke with Gerrick because Donaldson was last seen in his company. (R. p. 153, ll. 18-21). Gerrick told Chief Holston that Donaldson bailed him out of jail on July 21, they went to Enterprise Bank together

sometime afterwards so that Gerrick could cash a check, and then they went to the BP station in Blackville. Gerrick said they remained at the BP and Junior Food Mart convenience store for a while talking and were not together any time thereafter. (R. p. 153, l. 25 – p. 154, l. 9).

After law enforcement got the tip about Donaldson's Honda Civic from the China Express in Orangeburg, Chief Holston again spoke with Gerrick. (R.. p. 154, ll. 10-20). Chief Holston wanted to know whether Gerrick knew about Donaldson's ATM card. (R. p. 155, ll. 1-2). Chief Holston included SLED Lieutenant Shaun Harley in this second interview, which began late into the night on July 22 and bled into early the next morning. (R. p. 185, ll. 13-24). Gerrick went into the details of his initial arrest,[2] his attempts to contact Donaldson for bail money, and Donaldson ultimately bailing him out. (R. p. 156, l. 1 – p. 157, l. 20). Gerrick's statement included more minutia about his July 21 contact with Donaldson: Donaldson drove him home from jail, Gerrick went inside and cleaned up, then Donaldson and Gerrick went to Enterprise Bank so Gerrick could cash a check for $104, then Gerrick "went to JRs Mart driving [his] 1998 Dodge pickup to put $30 worth of gas in [his] truck while Tyrone was still driving the white Honda Civic." (R. p. 157, l. 21 – p. 158 l. 6). Gerrick referenced his use of Donaldson's ATM card. (R. p. 158, ll. 22-24). Then, according to Gerrick, each told the other they were going home. (R. p. 158, ll. 7-9). During this interview, Chief Holston "did notice that there w[ere] some scratches across . . . Gerrick's arms and across his chest." (R. p. 159, ll. 13-15). Holston photographed the marks. (R. p. 160, ll. 2-13).

[2] The chain of events arose from Gerrick's Bamberg County incarceration following a wholly separate child support issue. Once Gerrick received that sentence, he attempted to escape the courthouse and was apprehended at a Piggly Wiggly. (R. p. 156, ll. 1-11).

Gerrick provided a third statement to Lieutenant Harley at the Barnwell County Sheriff's Office during an interview with Harley and SLED agent John Burnett. (R. p. 191, l. 3 – p. 192, l. 18). In this statement, Gerrick went into details on how Gerrick got in touch with Williams about needing bail money, and then went on to explain how he and Donaldson jointly received $18,000 from a backhoe. Gerrick did not want to tell Williams about that money because "he didn't think that [he] need to bring that up." (R. p. 193, p. 14 – p. 194, l. 3). Gerrick expounded upon financial calculations he made with Donaldson regarding repayment for bail and admits in that statement: "So I received the [ATM] card from there and went to the bank." (R. p. 194, ll. 4-16; Court's Exhibit 2). Gerrick stated he was given Donaldson's ATM card because they shared joint ownership of the backhoe funds. (R. p. 194, l. 20 – p. 194, l. 23).

On July 25, SLED agent John Burnett conducted another interview with Gerrick. (R. p. 258, ll. 19-23). Gerrick stated he had the economic means to get out of jail but was not allowed to make the requisite calls to arrange his bond, and eventually the bail arrangement with Donaldson worked out ten days after Gerrick's initial incarceration. (R. p. 264, l. 20 – p. 265, l. 1). Gerrick also divulged that he had tardy bills totaling somewhere between $1500 and $1800, that Gerrick fronted Donaldson some money at an earlier time, and had no reason for meeting Donaldson post-bailout at Enterprise Bank. (R. p. 265, l. 2 – p. 266, l. 9; R. p. 267, ll. 10-17). Agent Burnett also noticed scratches "visible to the eye" on Gerrick's arms and chest "consistent with having been exposed to the outdoors." (R. p. 266, ll. 10-17).

One week after Donaldson's disappearance, Gerrick called Chief Holston's cell phone. (R. p. 161, ll. 8-12). When Holston picked up the phone, Gerrick said "Tyrone's

not dead. . . . Black's got Tyrone and they want $25,000 in cash for him . . . ." (R. p. 161, ll. 13-19). Gerrick requested "backup" to get Donaldson back, explained that Donaldson must be "over around Springfield" where "Black was from." (R. p. 161, ll. 20-23). Chief Holston told Gerrick that if Gerrick could send him more information and proof of life, they would "go from there." (R. p. 162, ll. 1-7). Gerrick sent no additional information. (R. p. 166, ll. 12-18).

After law enforcement recovered Donaldson's body, they had Gerrick transported from the Charleston County Detention Center[3] to Barnwell County for a fifth interview. (R. p. 204, ll. 1-21). As law enforcement gathered information upon which to question Gerrick, Gerrick provided answers. Gerrick said he went to the BP station to visit with Donaldson, then visited his father's house in Bamberg County, and then walked from there to his wife's house. (R. p. 217, ll. 16-24). Gerrick did state for the first time that he went to Orangeburg, but did not mention the Honda Civic. (R. p. 217, l. 25 – p. 218, l. 3). Gerrick was arrested for Donaldson's murder. (R. p. 223, ll. 21-25).

A few hours after arrest, Gerrick requested to speak with law enforcement again. (R. p. 224, ll. 8-18). Gerrick imparted upon the officers that he wanted to tell the whole story truthfully, opening with "I'm going to put it all out there." (R. p. 226, l. 24 – p. 227, l. 3). Gerrick then told the events in a different light, stating that he and Donaldson planned a drug transaction while riding back from jail. Donaldson was supposed to purchase a kilo of cocaine from Andrew Hightower, O'Shane Dixon and "Big Joe." (R. p. 227, ll. 4-12). Gerrick previously mentioned a Big Joe to Lieutenant Harley, (p. 223, ll. 5-

[3] Gerrick's Charleston County incarceration stemmed from a bond violation. (R. p. 216, ll. 11-14).

11), but Big Joe was identified slightly differently this time. (R. p. 227, l. 21 – p. 228, l. 3; R. p. 457, ll. 14-21). All Gerrick knew about Big Joe was that he was from Georgia and drove a Denali. (R. p. 227, l. 13 – p. 228, l. 3). Gerrick talked about a drug deal set to occur after Gerrick and Donaldson departed from the BP and Junior Food mart, wherein Donaldson was supposed to give Gerrick some of the proceeds, even though Gerrick owed Donaldson $3300 in bail money. (R. p. 228, ll. 7-23). Andre Hightower then instructed Gerrick to move Donaldson's car in exchange for $400, and Gerrick admitted to driving the Honda to Orangeburg. (R. p. 229, l. 2 – p. 233, l. 24).

During the same interview, Gerrick first maintained that he never traveled to the "wooded areas on that one-way dirt road where the car was located and the body was discovered," but after Lieutenant Harley told him homeowners on the road saw his truck, Gerrick changed his story. (R. p. 234, l. 14 – p. 236, l. 8). In a follow-up August 18 interview with SLED agent Jeff Croft, Gerrick "began to explain how his truck could have possibly been found or seen in the area." (R. p. 456, ll. 9-21). Now placing himself at the crime scene, Gerrick declared that the drug deal involving a kilo of cocaine became fumbled and Gerrick looked on while Big Joe, Andre Hightower and O'Shane Dixon began to beat Donaldson. (R. p. 456, l. 22 – p. 458, l. 24). The weapon was a pipe or a gun. (R. p. 461, ll. 10-13).

On yet another occasion in October 2011, Gerrick sent a letter to SLED requesting a further interview during which "he stated that he had somebody that could vouch for his innocence." (R. p. 237, l. 5 – p. 238, l. 25). Another inmate at Lieber, Early Glover, wrote a statement on Gerrick's behalf because Gerrick told him he "was in a bind." (R. p. 239, ll. 3-12; R. p. 442, ll. 1-25). Gerrick promised Glover he would pay

him $1000 to copy a statement Gerrick scripted and passed through the jail cells, and Glover practiced writing the statement to Gerrick's satisfaction, signing Glover's name at the bottom. (R. p. 443, l. 3 – p. 446, l. 5). The statement dealt with Donaldson, who "was supposed to be the main man," meeting two other men in the woods, when an argument ensued involving Gerrick, and whereupon Gerrick was told to stay in the car. (R. p. 446, ll. 6-24). "None of it never[sic] happened" in reality. (R. p. 447, l. 1).

Corroboration

Upon further investigation, zero evidence corroborated other individuals in Donaldson's disappearance. (R. p. 241, l. 2 – p. 242, l. 2). Donaldson had no community reputation for or connection with drugs. (R. p. 241, ll. 11-22). In regards to Gerrick's drug deal narrative, Andre Hightower testified at trial that he hardly knew Gerrick and had never heard about a Big Joe. (R. p. 417, l. 12 – p. 418, l. 16). He also did not know O'Shane Dixon. (R. p. 420, l. 25 – p. 421, l. 1). Hightower was in Greenville with his girlfriend and her son on July 21, (R. p. 417, l. 21 – p. 418, l. 9), and he stayed in Greenville for about two days. (R. p. 423, ll. 2-9). O'Shane Dixon, fishing buddies with Gerrick, also testified. (R. p. 423, ll. 13-21). Dixon was at home watching his children all day on July 21, heard about Donaldson's disappearance that evening, and began receiving phone calls from Gerrick that night onward asking about what Dixon may have heard. (R. p. 424, l. 18 – p. 425, l. 25). Gerrick called off their fishing trip on July 22 without reason. (R. p. 426, ll. 1-21).

Also, just as Gerrick and Donaldson went to the Enterprise Bank ATM on the day of Donaldson's disappearance, Gerrick returned to that same ATM alone at 8:00 that same night in his burgundy Dodge Ram and used Donaldson's ATM card. (R. p. 404, l. 6

– p. 405, l. 25; R. p. 414, ll. 15 – 20). Donaldson's card was also used on July 22 at 7:50 PM at Bamberg Auto Parts, at 8:00 PM at the Palm Pantry in Bamberg, twice more at the in-store ATM at the Palm Pantry, and that morning at the Bank and Trust on North Main Street in Bamberg. (R. p. 411, l. 1 – p. 413, l. 23). Donaldson's same account was used to pay bills for SCANA Energy around midnight on July 22. (R. p. 414, ll. 2-14).

Finally, cell phone records evidence that Donaldson's cell phone permanently left the grid at the same time as the Appellant's, but Donaldson's phone never regained service. (R. p. 325, l. 4 – p. 334; R. p. 340, l. 18 – p. 342, l. 19; R. p. 499, l. 24 – p. 500, l. 9; State's Exhibits 71 and 72). The last four phone calls the victim ever makes are to the Appellant. (State's Exhibits 71 and 72; R. p. 333, l. 15 – p. 334, l. 1; R. p. 469, l. 24 - p. 471, l. 21; R. p. 499, ll. 3-11). After that last phone call, made from the Blackville area, the Appellant's phone escaped from the phone grid for two hours. (R. p. 325, l. 4 – p. 334; R. p. 499, ll. 12-25; State's Exhibits 71 and 72). Other records show that the mysterious "help me am hurt" text messages derived from a trac phone pinging from the same location as the Appellant's phone at the time the texts were sent. (State's Exhibit 73; R. p. 468, ll. 3-18; R. p. 513, l. 13 – p. 514, l. 11).

ARGUMENT

I. Items found in the center console of the Appellant's truck which patently reference the Appellant's desire to free himself of a murder charge and of the law constitute admissible evidence of consciousness of guilt.

The ruling at issue stems from the State's introduction of six photographs which document two uncommon items recovered during the execution of a search warrant on the Appellant's truck. Notably, the items themselves were not introduced at trial. Lieutenant Shaun Harley with SLED first testified as to examining "like a brown piece of paper bag, looked like." "It was just taped up . . . with dust, weed, twigs and a penny inside." (R. p. 211, ll. 7-10; *See* State's Exhibits 45 and 46). Harley testified as to the handwriting on each side of the brown paper, which on one side exhibited the contents of Psalms 130, and on the other appeared as a prayer, which Harley referred to as a letter: "Set me Sammie Gerrick free from murder and revoke bond. Jack Early set me free now . . . Amen." (R. p. 213, l. 4 – p. 214, l. 15; State's Exhibits 29 and 30). SLED crime scene investigator Melissa Skipper Wallace found the items in the center console of the Appellant's truck. Through Wallace, the State introduced photographs of the undisturbed contents of the open center console, the novelty canister of incense powder labeled "Law Stay Away," and close-ups of the brown paper parcel both opened and unopened (R. p. 289, l. 4 – p. 290, l. 24; State's Exhibits 43-46).

Subsequent to a pre-trial motion to suppress, the trial court found photographs of both items admissible because: "it is or could be construed by the jury as to some type of evidence of consciousness of guilt." As a result, "the jury can give it any weight, whatever weight, or no weight, that it decides it should give it, if any." The trial court also conducted a Rule 403, SCRE, analysis, deeming "that the probative value outweighs

any prejudicial effect or prejudicial value or effect on the Defendant." (R. p. 208, ll. 18-25). The court upheld its ruling on the parcel and its written contents post-trial,[4] finding in its February 19, 2014, Order Denying Motion for a New Trial that "[g]iven these facts, the letter is clearly susceptible of the inference that because of his consciousness of guilt, Defendant procured the letter of whatever help it might bring in warding off a murder charge and related legal problems – indeed, it expressly hoped that Defendant would be 'set free.'" (R. p. 618-619). The trial court "in considering the case as a whole, [also found] no prejudice was suffered." (R. p. 619).

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Saltz,* 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). "An abuse of discretion occurs when the trial court's ruling is based on an error law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jennings,* 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011). "To warrant reversal, an error must result in prejudice to the appealing party." *State v. Commander,* 396 S.C. 254, 721 S.E.2d 413 (2011).

A) Bold-faced evidence of consciousness of guilt is admissible where, as here, a clearly defined nexus can be established between the existence of the items and the charges against the Appellant.

As is consistently applied throughout the record and "as a general rule, any guilty act, conduct or statements on the part of the accused are admissible as some evidence of

[4] Defense counsel did not include the trial court ruling regarding the novelty canister of "Law Stay Away" incense as part of its post-trial motion, but the trial court's initial ruling includes both the canister and the brown paper parcel.

consciousness of guilt." *State v. McDowell,* 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (rule consistently applied thereafter); *State v. Martin,* 403 S.C. 19, 26, 742 S.E.2d 42, 46 (Ct. App. 2013), *rehearing denied* (June 20, 2013); *State v. Orozco,* 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011); *State v. Edwards,* 383 S.C. 66, 72, 678 S.E.2d 405, 408 (2009), *State v. Walker,* 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005) (holding "[u]nexplained flight is admissible as indicating consciousness of guilt, for it is not as likely that one who is blameless and conscious of that fact would flee"); *State v. Robinson,* 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004); *State v. Winter,* 83 S.C. 251, 65 S.E. 243 (1909).

While the majority of published applications primarily address a defendant's flight, "the admissibility of flight evidence is equally useful in determining the admissibility of evidence of other types of evasive conduct." *State v. Martin, supra* at 28-30, S.E.2d at 46-47 ("we find the test for determining the admissibility of evidence concerning flight also applies to evidence of evasive conduct"). Just as "'false and conflicting statements and attempts to run away have always been regarded as some evidence of guilty knowledge and intent,'" *McDowell, supra* (quoting *Town of Hartsville v. Munger,* 93 S.C. 527, 77 S.E. 219 (1913), personal items found in an area over which an accused harbors a possessory interest constitute evidence of guilty knowledge and intent when those items facially demonstrate a desire to escape conflict with the law. The required showing is that of a causal chain to support inferences that (1) possession of the items in question results from the Appellant's consciousness of guilt; and (2) his consciousness of guilt relates to the crime with which he was ultimately charged and upon which the evidence at issue is offered. *See State v. Martin, supra* at 29, 742 S.E.2d

at 47 (quoting *United States v. Obi,* 239 F.3d 662, 665 (4th Cir. 2001)).

The items in the instant case are "easily analogized to other types of circumstantial evidence of guilt based on the accused's behavior after the crime." *Orozco,* at 218, 708 S.E.2d at 230. "The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by authorities." *State v. Pagan,* 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) (citing *State v. Beckham, infra*) (cited by *State v. Martin, supra*)). Regardless of other legal troubles incurred by the Appellant prior to his arrest on the murder charge,[5] the contents when taken together specifically create an inference that the Appellant's obtaining each item was motivated by his belief that law enforcement sought him as responsible for the victim's murder. The canister of "Law Stay Away" is patent corroboration of guilt. Consider that the Appellant warehoused the canister alongside the parcel in the center console of his truck, which is a place traditionally used to store away or conceal personal items considered necessary to carry place to place. The items themselves represent tokens of guilt: the brown paper parcel, once untaped, unfurled and otherwise deconstructed, squarely provides insight into a guilty conscience. It reads "set me Sammie Gerrick free from murder and revoked bonds. Jack Early set me free . . . ." Therefore, the note can be causally linked to the murder charge, the

[5] Appellant first induced the assistance of the victim to bond him out of the Bamberg County Detention Center due to nonpayment of child support as well as a related escape attempt. (R. p. 156, ll. 1-11). Also, between the time of the victim's disappearance and later interviews with the Appellant, he had incurred a bond violation and was remanded to the custody of the Charleston County Detention Center. (R. p. 218, ll. 11-14). The Appellant was then transferred to the custody of the Barnwell County Detention Center when charged with the present murder. (R. p. 225, ll. 21-25).

Appellant's bond from another charge which would be revoked if arrested for murder, the local trial court, and a request to be "set free" from the aforementioned legal peril. The context of the notes on the brown paper parcel as well as the mere possession of the parcel and the canister are "clearly susceptible of the inference that because of his consciousness of guilt, [the Appellant] procured the root for whatever help it might bring in warding off a murder charge and related legal problems." (R. p. 618). The items, when taken both separate and apart, distinctly evidence the desire to be "set free" from a guilty act or conduct on the part of the accused, and thus are admissible as evidence of consciousness of guilt. The items' introduction shows that the Appellant sought to flee from any tie to the murder charge, albeit through the collection of specific items and not in the physical sense.

Additionally, from where the Appellant derived the tokens of guilt is immaterial to the inferences induced from their discovery. "It is sufficient that circumstances justify an inference that the defendant's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. Flight or evasion of arrest is a circumstance to go to the jury." *State v. Pagan,* at 209, 631 S.E.2d at 266 (citing *State v. Beckham, infra* at 315, 513 S.E.2d at 612-13). The Appellant's collecting and storing these items cannot be construed in any manner except as that of conduct indicating a willingness to evade the law: he gathered them with hopes that they would keep him out of trouble for murder, and he carried them around with him in his truck for that purpose. The items were aptly discovered after law enforcement questioned the Appellant three times regarding the murder, as well as after the Appellant contacted Chief Holston volunteering information that somebody named Black had the

victim as a hostage. A jury is entitled to weigh those tokens as seen fit in their deliberations. *State v. Beckham,* 334 S.C. 302, 315, 513 S.E.2d 606, 613 (1999).

Appellant maintains, as in *Orozco,* that "because the State failed to present the critical proof that [the Appellant] was aware of the charges at the time" he conceivably gathered the canister and the parcel,[6] that the evidence was irrelevant, prejudicial, and should have been excluded. *Orozco, supra,* at 217-21, 708 S.E.2d at 231-32. The Appellant also contends that because the handwriting on the brown paper parcel is not his own, and because no direct evidence shows how those items ended up in his center console, that the connection between the items and the Appellant is not significant enough to justify its admissibility. These contentions simply do not reflect the standard. Instead, the totality of the contents introduced creates "an inference that that the defendant had knowledge that he was being sought by the authorities" and, thus, constitutes properly admitted evidence of consciousness of guilt. *State v. Pagan,* 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) (citing *State v. Beckham, supra* at 315, 513 S.E.2d at 612-13); *State v. Martin, supra* at 26-27, 742 S.E.2d at 46; *State v. Orozco, supra* (holding that the totality of the evidence created an inference that the defendant's suicide attempt was motivated as a result of his belief that criminal allegations had been made against him).[7] Even the apropos timing of the items' discovery in relation to the Appellant having been questioned about the murder is not a necessary link to the item's

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[6] Gerrick was incarcerated at the time of the items' discovery, and his truck was impounded at the time of the search. (R. p. 256, l. 19 – p. 257, l. 5).

[7] In *Orozco,* the court further found the accompanying Rule 403, SCRE, argument without merit due to counsel's failure to articulate how or why the suicide attempt disproportionately prejudiced that appellant so as to preclude otherwise admissible evidence of consciousness of guilt. 392 S.C. at 221, 708 S.E.2d at 232.

introduction at trial because the items' are self-evident of consciousness of guilt. *See* Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.").

Because the items at issue cogently fall within our State's category of admissible evidence of consciousness of guilt, the items also fall within the umbrella of relevant evidence otherwise defined in Rule 401, SCRE, and the trial court properly admitted photographs of those items without exception.

B) The root evidence in this case cannot be classified as unduly prejudicial, as it is patently probative and was not presented in a manner invoking emotion.

The trial court found the evidence at issue "admissible and only argued by the State for the limited purposes," thus the "prejudicial effect was minimal and more than outweighed by the probative value as to guilty consciousness." (R. p. 208-209, 619-620); *See* Rule 403, SCRE ("although relevant, evidence may be excluded if its probative value is *substantially* outweighed by the danger of unfair prejudice") (emphasis added). Just as the trial court has wide discretion in determine relevancy, the trial court has particularly wide discretion in ruling on objections regarding the comparative probative value and prejudicial effect of evidence. *State v. Myers,* 359 S.C. 40, 48, 596 S.E.2d 488, 492 (2004); *State v. Lee,* 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). Evidence is unfairly prejudicial only where it has an undue tendency to suggest decision on an improper basis such as emotion. *State v. Martucci,* 380 S.C. 232, 251, 669 S.E.2d 598, 608 (Ct. App. 2008). However, "the determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case." *Id.* (citing *State*

v. Brooks, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000)); *State v. Collins,* 409 S.C. 524, 534, 763 S.E.2d 22, 27-28 (2014).

i. Probative Value

Here, the evidence weighs more heavily on the probative side, both in its content and in the manner of its introduction. With a case largely comprised of circumstantial evidence, the State's presentation necessarily affords great importance to the photographs' tendency to prove or disprove the victim's consciousness of guilt. *See State v. Gray,* 408 S.C. 601, 609-10, 759 S.E.2d 160, 165 (Ct. App. 2014) ("'[p]robative' means '[t]ending to prove or disprove'" and '[p]robative value] is the measure of the importance of that tendency to the outcome of the case") (quoting *Black's Law Dictionary* 1323 (9th ed. 2009)). "The evaluation of probative value cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case." *Id.* at 610, 619, 759 S.E.2d at 165, 170 ("Focusing on the facts of this case and putting them in the practical context of the issues at stake in this trial, we hold the trial court acted within its discretion to admit the autopsy photos.") (reaffirming *State v. Collins, supra* at 202, 208, 727 S.E.2d at 754, 757). "'The more essential the evidence, the greater its probative value.'" *Id.* (quoting *United States v. Stout,* 509 F.3d 796, 804 (6th Cir. 2007).

The canister labeled "Law Stay Away" and the brown paper package, with its "set me free from murder" plea and Psalm 130, serves to corroborate the variety of the Appellant's statements regarding the victim's disappearance and murder. The consciousness of guilt evidenced by those items' introduction combines with and attaches

additional importance to the fact that the Appellant spoke with law enforcement eight times either by letter, phone call, or interview. Each time the Appellant offered a different explanation of what might have happened to the victim.

The tokens of guilt also add importance to friend Jamaal Berry's testimony about the Appellant's answering Berry's question about who sent the mysterious text message after the victim's disappearance. The Appellant's answering Berry that the text message's existence "will take the heat off me" gains additional weight regarding that testimony's evidence of consciousness of guilt. In the same vein, O'Shane Dixon's testimony that the Appellant continued calling Dixon from the night of Donaldson's disappearance onward to ask what Dixon may have heard about the investigation becomes more condemning of the Appellant's guilt. Even more, the items' existence bolsters Early Glover's testimony that he recreated a letter scripted by the Appellant stating that Glover watched the victim's demise in which the Appellant took no part. The photographs' introduction ineludibly and appropriately corroborates other evidence of consciousness of guilt.

ii. Minimally Prejudicial

Next, contrast the probative value of the evidence's consciousness of guilt to the lack of prejudice invoked in its introduction. *See State v. Gray, supra.* "Photos pose a danger of unfair prejudice when they have 'an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *State v. Gray* at 616, 759 S.E.2d at 168 (quoting *State v. Holder,* 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009). In this case, the focus on the evidence at issue cannot be said to have attached any abstract or emotional importance to the items other than consciousness of

guilt. In fact, the State attached no moral, religious, cabalistic or other miscellaneous context to the introduction of the photographs at issue. Instead, their introduction was purely indicative of the straight-laced investigation into Donaldson's death.

First, the prosecution did not introduce the physical items themselves, only photographs. Further, the prosecution asked law enforcement to describe their findings in a technical manner:

> Q: You talked about finding the body on the 4th, correct?
>
> A: Yes, sir.
>
> Q: August 4th. And then in the next couple of days you all had someone do a search warrant on the Defendant's truck, is that correct?
>
> A: Correct.
>
> Q: And was there discovered in the console of the Defendant's truck a little brown piece of paper, capsule sort of thing?
>
> A: Yes, sir; there was . . .

(R. p. 210, l. 20 – p. 214, l. 15). The prosecutor continues by leading law enforcement's description of the paper parcel and novelty canister so as not to invoke extraneous monikers regarding its potential use or purpose.

Questioning continued to evade the elicitation of any reference to the item which may draw out emotion or attach any type of mystic significance to its function.[8] During SLED Agent Wallace's testimony, the prosecution first had Wallace explain the detailed process by which an investigator processes a vehicle search. (R. p. 287, l. 16 – p. 288, l. 11). Then, counsel asked if Wallace collected any items from the Appellant's truck, and

[8] With the exception of Wallace's sole answer "it was told to me it was a witchcraft root," which was immediately redacted by the trial judge and which is the subject of the second issue on appeal.

had her identify photographs of the center console and each item recovered. (R. p. 288, l. 12 – p. 290, l. 20). The prosecutor's focus with Wallace was on characterizing "what it looked like, all put together" for the jury. (R. p. 290, ll. 4-24). The parties left each item largely undefined throughout the course of the trial. As a result, nothing in the manner of introduction takes the items outside the realm of inventory found during a legal search of the Appellant's possessions. Explanatory testimony regarding the items occurred succinctly without follow-up inquiry. Nothing about the manner of introduction can be interpreted to provoke emotional response. Even in the State's summation, the items' significance strictly links the Appellant to consciousness of guilt. As stated by the prosecutor during closing argument, his possession of those items indicates that he knew he was "in the frying pan." (R. p. 527, l. 2). "He knew he was the target of this investigation. He was engaging in all sorts of things to try to throw people off the track, whether it was the story about the ATM, or whether it was the track phone, or the lies, or the claim about the $25,000 to Chief Holston." (R. p. 526, l. 21 – p. 527, l. 1). "Here, nothing about the questioned evidence invited a decision on an improper basis. Indeed, the probative value of the evidence outweighed its prejudicial effect because the evidence tended to show [the Appellant's] guilty knowledge and intent." *State v. Pace,* 337 S.C. 407, 415-16, 523 S.E.2d 466, 470 (Ct. App. 1999).

iii. Voodoo evidence found relevant and admissible even where its substance has a greater potential to invoke emotion

Our courts have equated a root doctor to an apothecary, *Prince v. Prince,* 18 S.C. Eq. 282, 286 (S.C. App. Eq. 1845), or otherwise have recognized the existence of root doctors and a related following. *State v. Bateman,* 296 S.C. 367, 367-68, 373 S.E.2d 470,

470 (1988) ("Appellants are self-proclaimed members of the United Hebrew Kingdom Reservation of the Dr. Buzzard Cabalistic Order, commonly called root doctors."). Our appellate courts have upheld the introduction of *expert* testimony "as to the general effect of the fear of witchcraft or 'roots'" solely related to a defendant's fear that "his wife was attempting to work 'roots' on him." *State v. Mattison,* 276 S.C. 235, 238-39, 277 S.E.2d 598, 600 (1981) (*overruled on other grounds* by *State v. Belcher,* 385 S.C. 597, 685 S.E.2d 802 (2009)) (recognizing rootwork as "the use of evil spirits and witchcraft to cause great harm to the victim").

The introduction of voodoo evidence has been upheld even with the attachment of mystic significance. In a Rule 403[9] challenge, dolls and bats covered with the names of individuals, prosecutors, judges and investigators were determined admissible as "highly probative of [that defendant's] consciousness of guilt." *People v. Hernandez,* 2012 WL 1652551, at *12-14 (Cal. Ct. App. May 11, 2012). This is because "prejudicial is not synonymous with damaging." Rather, Rule 403 uses the etymological "prejudice." "Unduly prejudicial" evidence is that enveloped by a sense of "prejudging a person or cause on the basis of extraneous factors." *Id.* (internal citations omitted).

A voodoo doll smeared with blood upon which someone inscribed "death to [the victim]" was ruled admissible without exception where, as in the present case, "the doll tended to make more likely that the defendant premeditated and deliberated the victim's murder, a fact of consequence to the determination of the instant action." *People v. Floyd,* WL 33406917, at *2-3 (Mich. Ct. App. Sept. 26, 2000). In another Rule 403 analysis

[9] California Evidence Code § 352 reads: "the court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . (b) create substantial danger of undue prejudice . . . ."

where the appellant argued that "the doll injected unfair emotionalism (negative reaction toward voodoo) into the trial," its probative value prevailed because "it appear[ed] unlikely that the jury placed in the doll any undue significance, especially in light of other trial testimony." *Id.*

While not necessarily characterized as "evidence of consciousness of guilt," courts consistently find references to rootwork, voodoo or hoodoo relevant as to guilt and admissible. In one Pennsylvania case, a folded piece of paper wrapped in cellophane and covered in blue tape found in the defendant's left shoe during a consented-to search bore notations including the names of the victims, local law enforcement and the county district attorney. *Com. v. Reid,* 571 Pa. 1, 23-24, 811 A.2d 530, 543 (Pa. 2002). Not only was that parcel found admissible, but the Commonwealth presented testimony from a law enforcement consultant for crimes involving Afro Caribbean religions, who testified that the "notations on the paper were associated with the Voodoo religion . . . and they invoked assistance from a number of Voodoo deities or gods . . . ." *Id.* That witness concluded that "the person who owned the paper considered the persons named on the paper as enemies and wanted them destroyed or dead." *Id.* The defense team rebutted with a competing expert, "a professor of Caribbean studies." *Id.* at n.23. *See also United States v. Reme,* 738 F.2d 1156, 1164 (11th Cir. 1984) (evidence concerning searches for black magic strongly probative of evidence required to prove an element of the crime charged); *United States v. Afolabi,* 508 Fed. Appx. 111, 117-18 (3rd Cir. 2013) (same); *Trepal v. State,* 621 So.2d 1361, 1364-65 (Fla. 1993) (pamphlet admissible in which defendant wrote about voodoo for a Mensa murder weekend where themes within the pamphlet and a note containing a death threat showed similar); *Whitener v. State,* 261 Ga.

567, 407 S.E.2d 735 (Ga. 1991) (defendant's notebook containing references to the occult admissible as relevant to possible motive); *State v. Waterhouse,* 513 A.2d 862 (Me. 1986) (same); *Skinner v. State,* 784 S.W.2d 873 (Mo. App. 1990) (defendant's devil worship admissible as relevant to identity).

Appellant cites *Mitchell v. State,* 298 S.C. 186, 379 S.E.2d 123 (1989), in support of its proposition that the photographs' admission was unduly prejudicial; however, in *Mitchell,* the court granted post-conviction relief on the basis that trial counsel failed to object to the introduction of impermissible *character* evidence of "devil worship." The evidence in *Mitchell* proved far more excessive in its nature: law enforcement testified at that trial that the defendant's living room was a "ceremony room" with an "altar" in the fireplace and "wax candles with little devils" and "devil figurines" and a "closet with a one-way mirror for viewing." *Mitchell* at 188, 379 S.E.2d 124-25. Another State's witness testified as to her knowledge of the defendant's "work[ing] the candles" which were named for certain acquaintances. *Id.* Any probative value of that evidence remains undisclosed. *Mitchell's* evidence parallels that of *State v. Naylor,* 474 N.W.2d 314 (Minn. 1991), where a dozen seized books and other photographs of book covers related to the practice of witchcraft and satanism were introduced at trial as evidence. *Id.* The titles bolstered testimony regarding the defendants' involvement in witchcraft and the ritualistic aspects of the victim's murder. *Id.* That court determined that each book's contents and cover art were "innocuous" enough so as not to cause substantial prejudice. *Id.* at 318-20.

Here, by the manner in which the canister and parcel were introduced at trial, one cannot say that "the minute peg of relevancy is . . . obscured by the dirty linen hung upon

it." *State v. Turner,* 29 Wash. App. 282, 289, 627 P.2d 1324 (Wa. App. 1981). The trial court did not abuse its discretion in the photographs' admittance, as such evidence is clearly of consequence to the jury's determination of an accused's guilt.

II. No mistrial warranted because no error or prejudice flows from the sole mention of a "witchcraft root."

During SLED agent Wallace's testimony regarding her executing a search warrant on the Appellant's truck, counsel asked what the "little brown thing" found in the Appellant's center console was. Wallace answered "it was a taped-up package that we opened up and it was later determined to be a – it was told to me it was a witchcraft root." (R. p. 289 p. 7-12). The trial judge immediately instructed the jury to "disregard that," and testimony moved along without another mention of witchcraft or roots. (R. p. 289, ll. 13-15). At no time prior had the trial court issued a ruling against any mention of "root" or "witchcraft." (R. p. 613, ll. 3-8).

At the conclusion of agent Wallace's direct examination, the jury exited and defense counsel moved for a mistrial: "I realized it was inadvertent but the mention of witchcraft creates a problem. I realize [the court] gave a curative instruction, but sometimes that just draws more attention to it." (R. p. 292, ll. 3-12). The court acknowledged that Wallace was "not qualified to give that opinion," and she "just sort of blurted it out," but that the trial judge also "gave a curative instruction." (R. p. 292, ll. 13-15). The State added that it would not allude to "witchcraft" at any point in its presentation. (R. p. 292, ll. 16-17). The trial judge replied that "the cat's out of the bag," but because it immediately issued the instruction for the jury to disregard the statement, the motion for mistrial was denied. (R. p. 292, ll. 18-20).

Standard of Review

The decision to grant or deny a mistrial rests within the sound discretion of the trial judge and will not be overturned absent an abuse of discretion. *State v. Thompson,*

352 S.C. 552, 560, 757 S.E.2d 77, 82 (Ct. App. 2003). Granting a motion for mistrial "is an extreme measure which should be taken only where an incident is so grievous that its prejudicial effect can be removed in no other way." *State v. Beckham, supra* at 309, 513 S.E.2d at 610. A mistrial is warranted only when absolutely necessary, and where a defendant shows both error and resulting prejudice. *Thompson* at 560, 757 S.E.2d at 82.

A) The trial court immediately issued the required curative instruction and the jury had already been exposed to the evidence at issue.

"An instruction to disregard incompetent evidence or the withdrawal of such evidence usually is deemed to have cured the error in its admission unless on the facts of the particular case it is probable that notwithstanding such instruction or withdrawal the accused was prejudiced." *State v. Craig,* 267 S.C. 262, 268-69, 227 S.E.2d 306, 309 (1976). Here, the trial court immediately interjected and issued an instruction for the jury to "disregard that, ladies and gentlemen." (R. p. 289, ll. 13-14). While not an extensive measure to cure, instructions to "disregard" improper testimony indicate a suitable exercise in discretion given the circumstances. *See State v. Ferguson,* 376 S.C. 615, 620-21, 658 S.E.2d 101, 104 (Ct. App. 2008); *State v. White,* 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006). The curative words acted to move the witness along quickly and refocus the courtroom on permissible testimony. It would have been more damaging to stop the examination, usher out the jury, and take up the utterance with counsel. In that circumstance, "witchcraft" would resonate in the jury as a reason to halt proceedings and thus lend way to contemplation of impermissible testimony. Instead, the trial court did not draw extraneous attention to the improper verbiage or distract the jury from the flow of information. "'The power of a court to declare a mistrial ought to be used with the

greatest caution under urgent circumstances, and for very plain and obvious causes' stated into the record by the trial judge." *Thompson* at 560, 757 S.E.2d at 82 (quoting *State v. Kirby,* 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977)). The instant mention of "witchcraft" provided neither an urgent circumstance nor a plain and obvious cause for the declaration of a mistrial. In making such a determination, one looks to the character of the testimony, the circumstances under which it was offered, the nature of the case, other testimony in the case, "and perhaps other matters." *Craig* at 268-69, 277 S.E.2d at 309-10.

No prejudice can flow from the testimony at issue when it was not the first of the jury's exposure to the items found in the Appellant's truck. In earlier testimony, Lieutenant Harley described what the paper parcel looked like both when it was initially found in its intact form, and also as to what was contained inside. (R. p. 211, ll. 7-10). Harley also read aloud the prayer, or letter, and the inclusion of Psalms 130 found on either side of the brown paper. (R. p. 213, l. 3- p. 214, l. 15). As a result, any juror who was inclined to draw the inference of rootwork or witchcraft already had the opportunity to do so upon the parcel's initial mention.

Also, agent Wallace's statement that the item "was told to [her] to be a witchcraft root" in no way implies that the Appellant himself practiced witchcraft or held himself out to be a root doctor. It is undisputed that the Appellant did not write the prayer or letter on the brown paper parcel. At the most, the items evidence that because the Appellant acquired the parcel and kept it the center console of his truck, he desired to be "set free" of an impending murder charge. Because no testimony suggested that the Appellant practiced witchcraft, its sole mention cannot warrant a mistrial. *State v. Beckham* at 310,

334 S.E.2d at 610 (witness testimony that murder victim was at a women's shelter did not necessarily imply that the defendant abused the victim); *State v. Robinson,* 305 S.C. 469, 409 S.E.2d 404 (1991) (no error in trial judge's denying mistrial when witness' testimony did not imply appellant was involved in drug dealing merely because the witness knew appellant during time witness was dealing drugs); *State v. Robinson,* 238 S.C. 140, 119 S.E.2d 671 (1961) (witness statement that appellant told him that he was on way to probation office did not tend to create inference that accused had committed another crime); *State v. Bullock,* 235 S.C. 356, 111 S.E.2d 657 (1959) (no inference that the accused raped the murder victim where the examining physician's testimony stated that the victim's body was without undergarments and showed some vaginal discharge). In a similar scenario, an Arkansas court found no error in a trial court's refusal to grant a mistrial where an investigator testified that the appellant informed him that a victim was involved in witchcraft or voodoo. *Webb v. State,* 327 Ark. 51, 63, 938 S.W.2d 806, 813 (Ark. 1997). The testimony occurred in contravention of an *in limine* order not to mention the occult. *Id.* The trial court allowed the testimony because it was not offered "to show that [the victim] was in fact involved in such activity, but rather to demonstrate the way in which Appellant was defaming the victim, the woman he was supposed to have loved enough to marry, only days after she had been murdered." *Id.* at 63-64, 938 S.W.2d at 813-14. The appellate court upheld that ruling, finding that the appellant failed to demonstrate "any reason why the admission of such testimony was prejudicial to him" so as to warrant a mistrial. *Id.*

Additionally, Respondent reiterates that the totality of the brown parcel's introduction was conducted in an explanatory manner not meant to invoke emotional bias

in the jury. Rather, the probative importance of the evidence regarding consciousness of guilt supersedes its accidental characterization as a "witchcraft root." It says "set me free of murder and revoked bonds." Also illustrative are other jurisdictions' allowance of similar testimony, which exemplifies that similar and often more deleterious testimony has found its way into the courtroom as evidence of guilt. *State v. Mattison, supra,* 276 S.C. 235, 277 S.E.2d 598 (1981) (recognizing rootwork as "the use of evil spirits and witchcraft to cause great harm to the victim); *Com. v. Reid, supra,* 571 Pa. 1, 811 A.2d 530 (2002) (testimony from both parties explaining voodoo religion admissible to explain folded piece of paper wrapped in cellophane, covered in tape, and bearing names of victims and local law enforcement); *People v. Hernandez, supra,* 2012 WL 1652551 (Cal. Ct. App. May 11, 2012) (voodoo dolls bearing names of prosecutors, et al. highly probative of guilt); *People v. Floyd, supra,* WL 33406917 (Mich. Ct. App. Sept. 26, 2000) (blood-smeared voodoo doll bearing victim's name admissible as evidence of guilt).

In sum, no prejudice resulted from the statement so as to warrant a mistrial. "A mistrial should not be ordered in every case where incompetent evidence is received and later stricken out." *Craig* at 268-69, 277 S.E.2d at 309. Here, where the brown paper parcel constitutes evidence of consciousness of guilt, testimony regarding the discovery of that evidence should not be overridden by a minute misstep in its delivery, especially where the trial court took the prescribed curative measure.

III. No mistrial warranted where there exists no actual mention of a polygraph.

Subject to a pre-trial ruling, the Appellant's trial was to contain "absolutely no mention of a polygraph." (R. p. 19, ll. 8-9). The cause for such a pre-trial motion stems from one in a series of video clips from the Appellant's interviews with law enforcement. On the interview table in one particular clip laid a laptop computer, its charger and plug, other rolled up wires, a black box, a mouse and mouse pad, a clipboard, files, and paperwork. (Court's Exhibit No. 2). Some of the wires and the black box constituted a polygraph when combined with the laptop, but "not like the old-school polygraph where you've got the big machine and the graphs and everything like that." (R. p. 17, l. 24 – p. 18, l. 2).

The plan for the image's introduction at trial was for "something . . . to be put on the screen to block the computer," but "it inadvertently got shown." (R. p. 613, ll. 15-18). The jury entered, the CD was projected on the screen, the State asked one question of its witness: "who is this this person right here?" (R. p. 260, l. 6). The witness answered, "That's Mr. Gerrick. That's me," identifying each individual in the clip. (R. p. 260, l. 7). Then, the trial judge stated "ladies and gentlemen, y'all step out a second please. Jury, please step out." (R. p. 260, ll. 8-9). In addressing his cause for ushering the jury out of the courtroom, the trial judge explained:

> THE COURT: The pretrial ruling was that during the interview conducted by Mr. Burnett the machine to his right, to Mr. Gerrick's left, would be covered to avoid any appearance that this machine might be a polygraph machine. I'm looking at it right now. I can't tell what it is. If anything, it looks like a computer.
>
> WITNESS: If I can help, Your Honor. It is a laptop computer

THE COURT: All right. It's a lap top computer.

. . .

THE COURT:[addressing defense counsel] Tell me what, what's prejudicial about that.

THE DEFENSE: And perhaps it shows up better on my computer than it does here on this big screen. But it seems to me that this is a box here, there are wires here that possibly run off to them. And I'm scared it's going to – somebody on there is going to identify it as a polygraph. . . . It's not connected. I'm not saying that. I'm just saying the wires are there. . . . With the lights on it's hard to see it. *I got to admit*. I can see it on my computer.

THE COURT: Well, your computer is not being shown to the jury. All right. I cannot see, as the Judge in this case, how that photograph or that video with that, those instruments, i.e., a laptop computer – and you say a black box. I can't discern a black box. – papers, I don't see how that's prejudicial at all either, how it could be deemed to be a machine of any type.

(R. p. 260, l. 21 – p. 262, l. 23 (emphasis added)). The State maintained, and the trial court agreed, that the polygraph did not appear recognizable. "It just looks like a computer and some papers on a table just like people would have in an office." (R. p. 18, ll. 3-10). The trial court denied the motion for mistrial. (R. p. 263, l. 7).

Standard of Review

Again, the decision to grant or deny a mistrial rests within the sound discretion of the trial judge and will not be overturned absent an abuse of discretion. *Thompson* at 560, 757 S.E.2d at 82. A mistrial "is an extreme measure which should be taken only where an incident is so grievous that its prejudicial effect can be removed in no other way." *Beckham* at 309, 513 S.E.2d at 610. It is warranted only when absolutely necessary, and where a defendant shows both error and resulting prejudice. *Thompson* at 560, 757

S.E.2d at 82.

A) The trial court meticulously ensured compliance with its *in limine* ruling against any mention of a polygraph.

"A trial judge should be meticulous in ensuring that the jury makes no improper inference from any reference to a polygraph. *State v. Pressley,* 290 S.C. 251, 252, 349 S.E.2d 403, 404 (1986) (evidence regarding polygraph tests or the defendant's willingness or refusal to submit to a polygraph test inadmissible) (citing *State v. McGuire,* 272 S.C. 547, 253 S.E.2d 103 (1979)). Here, the trial judge acted meticulously in controlling his courtroom. Indeed, the word "polygraph" never reached the ears of any juror. From all accounts, neither did any cognizable projection reach any juror's eyes. The record proves illustrative that the polygraph truly could not be discerned. Even defense counsel's renewal of the issue during post-trial motions illustrates that regardless of his concern "with all the equipment" on the interview table at issue, he only "*thought*" he saw "leads on the thing that could have run to [the Appellant]. *No one else saw that, but I thought I saw it on there.*" (R. p. 614, ll. 6-12 (emphasis added)). At the post-trial hearing, the trial court pointed out that in addition to the deficient quality of the video, no one ever alluded to any "polygraph":

> THE COURT: Let me stop you right there . . . At no time during the trial of the case was the word "polygraph" ever mentioned.
>
> THE STATE: Absolutely not.
>
> THE COURT: Never.
>
> THE STATE: No, sir.

(R. p. 615, ll. 11-17). The court denied that motion for new trial, finding that "even had

the video been shown in its entirety, it is of such poor quality that it cannot be made out that the things on the table are anything but a laptop and some notepads. Nothing was hooked up to the defendant or visibly obvious as polygraph equipment." (R. p. 620-622).

This Court has analogously upheld the denial of a motion for mistrial where a witness began to approach the stand carrying a three by two-and-a-half-inch urn containing the victim's ashes, but where "the trial court immediately prevented her from advancing any further and asked the jury to leave the courtroom." *State v. Dial,* 405 S.C. 247, 257, 746 S.E.2d 495, 500 (Ct. App. 2013). Regardless of the urn's heart shape, "[t]he trial court denied Dial's motion given the small size of the item, the manner in which Richards approached the witness stand, and the fact that the trial court had the best view of the item and still did not know it was an urn." *Id.* at 257-58, 746 S.E.2d at 500. Defense counsel in *Dial* failed to establish that any juror did see the urn, and it was not presented in an attention-grabbing manner. *Id.* Although the trial court issued a curative instruction in *Dial* at the request of defense counsel, counsel in the present case did not wish to draw additional attention to the unintentional projection and so no curative words were issued.

Notwithstanding the lack of curative words and even in light of the court's ruling, "there was no need to redact it at all because the video is so grainy and because all that you can make out on the table is just a computer and some notepads. There's obviously nothing hooked up to the defendant. He actually gets up and moves around during the course of the video." (R. p. 614, l. 24 – p. 615, l. 4). At least one item rests on the table in every interview clip. In fact, no curative words were needed in this case because the jury never garnered the opportunity to draw any inference of a polygraph. The post-trial Order

reflected the same, making a finding similar to that in *Dial*:

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

(R. p. 621). It is also undisputed that the misstep occurred inadvertently. (R. p. 263, ll. 5-6; R. p. 613, l. 18; R. p. 614, l. 12); *See State v. Parker,* 391 S.C. 606, 612, 707 S.E.2d 799, 802 (2011) (mistrial appropriate where prosecutor's conduct rises to the level of goading the defendant into so moving).

The record evidences that no mention of a polygraph transpired before the jury. Without the mention of a polygraph, there can be no error in the trial court's denying a mistrial. The record also evidences that regardless of any projection of a polygraph, no prejudice can flow from that projection because the polygraph was not discernible. Thus, no error or prejudice results as a mistrial was not warranted under the circumstances.

IV. Any error is harmless given the totality of the evidence lending to the Appellant's conviction.

Improperly admitted evidence and the denial of a mistrial only constitute reversible error when the admissions cause prejudice. *State v. Thompson, supra,* 352 S.C. 552, 562, 757 S.E.2d 77, 83 (Ct. App. 2003). "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v. Mitchell,* 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, meaning that the error could not reasonably have affected the result of the trial, the conviction should not be reversed. *Thompson, supra.*

Evidence of the Appellant's guilt proves overwhelming even absent the brown paper parcel, canister, and projection of the video at issue.[10] The remainder of the evidence is circumstantial, not unlike the parcel and novelty canister. But, the totality of the remaining evidence allows for the connection of collateral facts which paints a narrative of guilt. *See State v. Logan,* 405 S.C. 83, 97-98, 747 S.E.2d 444, 451-52 (2013); *State v. Rogers,* 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013). Here, there is no other reasonable explanation. First, the Appellant's incarceration and his need for bail and bill money establishes motive. Because the Appellant could not pay his bills, he also could not refund the victim and his friend Maurice Williams for their bonding the Appellant out of jail.

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[10] Respondent asserts that even if the trial court sustained the Appellant's objection to projecting the video clip at issue, the audio contents of the video remained admissible evidence for the jury's consideration.

The victim followed behind the Appellant after the bailout with the expectation that the Appellant was collecting money for repayment. The two were spotted in tandem the remainder of that afternoon. First they left the Appellant's house, but not before the Appellant put two shovels in the bed of his truck (the victim was recovered from a shallow grave). (R. p. 117, l. 24 – p. 118, l. 9). Then they were seen at the Enterprise Bank ATM and at the Junior Food Mart, both in Blackville. (R. p. 123, ll. 1-23; R. p. 396, ll. 17-34). Joe Thomas saw the Appellant drive past Thomas' house with another car close behind around 3:00 that afternoon, which is corroborated by a call from that friend to the Appellant. (R. p. 433, l. 4 – p. 434, l. 18). The Appellant said during an interview with law enforcement that he went by Thomas' house to get sand, but according to Thomas, that never happened. (R. p. 434, l. 19 – p. 435, l. 3). Thomas' house lies within a mile or so of the crime scene. (R. p. 435, ll. 4-16).

No one heard from the victim after, and then the victim's cell phone permanently goes off the grid, as evidenced by undelivered text messages. (R. p. 340, l. 18 – p. 342, l. 19; State's Exhibit 72). Cell phone records show that the last four phone calls the victim ever makes are to the Appellant. (R. p. 469 l. 24 – p. 471, l. 21; R. p. 499, ll. 3-11; State's Exhibits 71 and 72). After that last phone call, made from the Blackville area, the Appellant's phone escaped from the grid for two hours during the same time period as when the victim's phone forever lost service. (R. p. 325, l. 4 – p. 334, l. 1; R. p. 499, l. 12 – p. 501, l. 1; State's Exhibits 71 and 72).

The Appellant resurfaced that evening, telling Maurice Williams that he and the victim dug up a safe full of money to reimburse him for the bailout, but that the victim drove off with it. (R. p. 76, l. 2 – p. 77, l. 20). Also that night, a visitor at the Appellant's

residence saw him change clothes around 7:30 and place his other clothes in the laundry room. (R. p. 109, l. 5 – p. 110, l. 17). This was after the Appellant came home to shower after being bailed out of jail.

The next day, an ATM camera catches the Appellant using the victim's debit card to withdraw money. The victim's card was also used several times the day the victim disappeared, including paying energy bills around midnight. (R. p. 404, l. 6 – p. 405, l. 25; R. p. 411, l. 1 – p. 413, l. 23; R. p. 414, ll. 2-14). The victim went missing long before midnight. The victim's sister-in-law, with whom he lived, testified that the victim would never lend his debit card or PIN number to anyone. (R. p. 148, ll. 19-23).

Maurice Williams also sees the Appellant the next day and notices scratches on his chest. (R. p. 87, ll. 19-25). When questioned about those scratches by law enforcement, who also noticed them, the Appellant stated that a lightbulb burst overhead in his jail cell days prior, causing injury. Jailhouse employees testified that the Appellant did not report any injury during his incarceration, nor did it appear that he had any scratches. (R. p. 103, l. 1 – p. 105, l. 20; R. p. 159, ll. 13-15;R. p. 206, ll. 10-17; R. p. 346, l. 3 – p. 347, l. 25).

The victim's friends also received a mysterious text message purporting to be from the victim, but from an unknown number, claiming that the victim was hurt and asking for help. (R. p. 82, ll. 4-17; R. p. 133, l. 18 – p. 134, l. 1). When one recipient asked the Appellant about the text, the Appellant replied that it might take the heat off of him. (R. p. 135, l. 22 – p. 136 l. 14). The texts incorrectly used "am" as a substitute for "I'm," just like the Appellant consistently did as well. (R. pp. 84-87). Those texts came from a trac phone pinging from the same location as the Appellant's phone at the time the

texts were sent. (State's Exhibit 73; R. p. 468, ll. 3-18; R. p. 513, l. 13 – p. 514, l. 11).

Of import, the Appellant's wife testified that late during the night of the victim's disappearance, the Appellant asked her to follow him out to the woods near Sunshine Road so that the Appellant could collect the victim's car, drive it to Orangeburg, and park it at the China Express. (R. pp. 174-180). The Appellant's wife actually took law enforcement to the woods where the Appellant initially retrieved the victim's car; those woods proved to be the crime scene. (R. pp. 198-99). The victim was found in a shallow grave, face-down, with asphyxiation the probable cause of death. (R. p. 281, ll. 1-4;R. p. 309, ll. 1-18). Autopsy results showed defensive lacerations on the victim's left arm. (R. p. 305, ll. 1-7).

Investigators found full set of the Appellant's fingerprints on the victim's car. (R. p. 384, ll. 1-10; R. p. 391, ll. 1-8). Also apparent at the crime scene was some green netting. (R. p. 275, ll. 15-18). That same type of netting was present in the Appellant's yard from sod which was laid about a year prior, and more green netting was collected from the Appellant's other Blackville residence. (R. p. 118, l. 25 – p. 119, l. 10; R. p. 291, ll. 16-20;R. p. 293, l. 25 – p. 294, l. 2).

Adding insult to injury, the Appellant provides a series of voluntary, yet incongruent statements to law enforcement. Each time law enforcement received a new tip in their investigation, Gerrick came forward with "a new story which would explain the new information." (R. p. 462, ll. 13-20). The Appellant first explained that the victim bailed him out of jail and took him home, where the Appellant took a shower. The Appellant said that went to Enterprise Bank and the Junior Food Mart with the victim, but then went home. (R. pp. 153-54). Then the Appellant said he has access to the victim's

bank account because they had joint ownership of $18,000 from a backhoe. (R. p. 193-95). Days later, the Appellant contacted Chief Holston to say that "Black" held the victim for $25,000 ransom, but did not re-contact the Chief with proof of life or contact information as requested. (R. p. 161-66).

Having discovered the victim's body, law enforcement brought in the Appellant for another interview, confronting him with the information about the victim's car. (R. p. 204). The victim admitted to being in Orangeburg, but did not come forward with information that he was at the crime scene. (R. p. 217). It was not until the Appellant was served with the murder warrant that he began to claim that he remained with the victim after their stop at the Junior Food Mart. (R. pp. 226-27). After Lieutenant Harley told him homeowners on the R.d saw his truck, Gerrick changed his initial story about never being present at the crime scene. (R. p. 234, l. 14 – p. 236, l. 8).

The Appellant next divulged a drug deal which allegedly also involved Andre Hightower and O'Shane Dixon. (R. pp. 368-461). Both Hightower and Dixon testified that they had no knowledge or involvement with a drug deal; they had an alibi for the day the victim disappeared. (R. pp. 417-25). Dixon added that the Appellant kept calling him after the victim disappeared to see if Dixon knew anything about the investigation. (R. p. 424, l. 18 – p. 425, l. 25). The Appellant instead stated that he was instructed by Hightower to move the victim's car to Orangeburg in exchange for $400. (R. pp. 229-233).

The morning after his arrest, the Appellant asked to speak with law enforcement again, now claiming he looked on as the others involved in the drug deal beat the victim. (R. pp. 456-461). The victim allegedly arranged the drug deal with "Big Joe" from

Georgia, and the Appellant stated that he went along on the deal because he was supposed to receive some of the funds. (R. p. 228). However, the victim had no connection to drugs, nor did he test positive for any drugs during autopsy. (R. p. 241, ll. 11-22; R. p. 317, ll. 5-17).

Then, Early Glover testified that months after the crime, the Appellant promised him $1000 in exchange for copying a statement that said Glover and the Appellant were present when the victim was beaten, but that neither of them had anything to do with it. The Appellant wrote the statement and Glover copied and signed it. The Appellant never mentioned Early Glover in any prior statement, but did send a letter to SLED stating that somebody could vouch for his innocence. (R. pp. 237-39;R. pp. 442-47).

The evidence in this case constitutes substantial circumstantial evidence. Whether by motive, opportunity or acts of guilt, when one strings it together, all evidence points to the Appellant. Thus, any erroneous admission of the paper parcel and its "set me free" contents, novelty canister labeled "Law Stay Away," and the nondescript black polygraph box seen on the video projection are harmless beyond a reasonable doubt.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should affirm the appellant's conviction.

Respectfully submitted,

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IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

v.

SAMMIE LEE GERRICK,

Appellant

Appellate Case No. 2013-000385.

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, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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SAMMIE LEE GERRICK,

Appellant

Appellate Case No. 2014-000385.

PROOF OF SERVICE

I, Caroline M. Scrantom, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance by depositing two (2) copies of the same in the United States mail, addressed to his attorney of record at:

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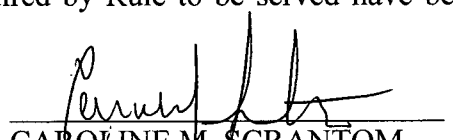
I further certify that all parties required by Rule to be served have been served. This 20th Day of May, 2015.



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