STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Steven H. John, Circuit Court Judge

THE STATE,

Respondent,

v.

CARNAIL MARCHINDLA GRAHAM,

Appellant

Appellate Case No. 2014-002336.

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUE ON APPEAL

I. Whether the court erred by refusing to conduct a pretrial hearing to ascertain the reliability of the testimony of Keir Johnson, Sedieka McClam, and Kachief Spain, who were all jailhouse informants, and by failing to determine that the testimony of each of these witnesses was reliable and corroborated before the witness was allowed to testify before the jury?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

I. Did the trial court err by denying Petitioner's motion for a preliminary hearing for the purpose of determining the reliability of three State's witnesses where Appellant was afforded a full and fair opportunity to address these witnesses' reliability through cross-examination?

STATEMENT OF THE CASE

Appellant Carnail Graham was indicted by the Horry County Grand Jury for the November 8, 2011, murder of victim Shaquille Shontay (Keia) Pertelle. (R. p. *Indictment Number 2012-GS-26-03071). David J. Canty, Esq., represented Graham at a jury trial beginning with jury selection on October 13, 2014, and continuing for four days. (R. p. *1). Graham was jointly tried with co-defendant Thomas Booker James, who was represented by Bobby G. Frederick, Esq. The Honorable Steven H. John presided, and Nancy Livesay of the Fifteenth Circuit Solicitors Office prosecuted the case. (R. p. *1).

A jury convicted Graham of the murder charge, and Judge John sentenced Graham to thirty-two years' imprisonment with credit for time served. (Tr. p. 1065, lines 6-11). This appeal follows. (R. p. *Notice of Appeal).

STATEMENT OF FACTS

Keia Pertelle died of a gunshot wound to the chest sustained when intruders invaded her mobile home located outside of Conway. (Tr. p. 155, line 3 – p. 157, line 24; Tr. p. 173, lines 1-24). The shooter was standing over two feet away. (Tr. p. 178, lines 8-14). The first officer who responded to the scene located Pertelle in her residence's front bedroom, deceased on the bed. (Tr. p. 157, lines 16-24). In the living room, investigators found a comforter half thrown from the couch to the floor, indicating that someone leapt from the couch in a hurry. (Tr. p. 304, lines 10-21). The bullet was retrieved from Pertelle's back during autopsy and collected as evidence. (Tr. p. 286, lines 9-25).

Prior to the invasion, Pertelle's roommate Carlton Watts last saw her watching television on the couch. (Tr. p. 68, lines 1-17). Watts testified at trial that he was asleep at the time of the invasion. He initially heard a few gunshots, causing him to roll to the floor and hide underneath his bed. (Tr. p. 61, line 16 – p. 64, line 17). Watts could not identify the intruders, but heard them screaming "where it's at, we're not playing, where it's at," and saw two pairs of sneakers pass by his bed. (Tr. p. 72, line 24 – p. 73, line 15). The third resident and the victim's boyfriend, known by the nickname Splurge, shared the victim's bedroom. (Tr. p. 61, lines 21-23; Tr. p. 108, lines 16-18). Splurge was also at the house that night, and remained inside until law enforcement arrived on scene and demanded he exit. (Tr. p. 63, lines 15-20; Tr. p. 66, lines 7-22). At the time of the invasion, the victim screamed out to Splurge, who was in their bedroom at the time of the break-in. (Tr. p. 71, line 19 – p. 72, line 3). Splurge did not testify at trial.

A neighbor, David Grissett, heard the gunfire and commotion occurring in Pertelle and Watts' mobile home, then witnessed two people run from the residence and

leave in a van. (Tr. p. 124, line 19 – p. 125, line 10). Grissett called 911. (Tr. p. 125, lines 11-14). Grissett actually noticed the getaway van slightly earlier, finding its presence suspicious. He had never seen it before, but watched it circle his street, park at the end, then drive two streets over and return again to park at the end of the road. This occurred around two in the morning. (Tr. p. 122, line 17 – p. 124, line 17). The road on which Grissett and Pertelle lived dead-ended and had no street lights. (Tr. p. 129, lines 14-25).

On scene, law enforcement documented entry marks from a fired bullet in the front door jamb. (Tr. p. 277, lines 1-16). The front door frame showed additional signs of forced entry. (Tr. p. 282, line 12 – p. 283, line 9). They found a disheveled bedroom and collected fired bullets from the kitchen cabinets, the doorway from the kitchen to the living room, and from under the living room couch. (Tr. p. 279, lines 2-24). Another bullet hole punctured the television, and yet another punctured the hallway floor. (Tr. p. 279, line 25 – p. 280, line 20). Various bullet jackets and fragments were collected from the scene as well. (Tr. p. 298, line 18 – p. 299, line 25). In addition to the absence of any shell casings on scene, the types of jackets and bullet fragments recovered signaled to law enforcement that a revolver was most likely used in the home. (Tr. p. 300, lines 1-25). Investigators also collected two handguns, a .357 Taurus revolver and a .44 Redhawk Ruger, and one SK 7.62 assault rifle from the mobile home. (Tr. p. 290, lines 10-25).

In regards to the projectiles taken from the crime scene, SLED's firearm and toolmark examiner determined that three projectile fragments, State's exhibits 68, 69 and 71, and a complete fired bullet, State's exhibit 67, derived from a revolver recovered

from the crime scene.[1] (Tr. p. 386, line 13 – p. 391, line 7). But, the examiner determined that the bullet recovered from the victim's body during autopsy did not derive from any firearm recovered from the crime scene, and that the fatal bullet was a .357 caliber shot from an unrecovered revolver. (Tr. p. 391, line 8 – p. 393, line 7). A match was never made between the victim's bullet and any gun. (Tr. p. 410, line 6 – p. 411, line 10).

Between six and seven the morning following the murder, Tiffany Oliver noticed a champagne colored van with tinted windows parked near a tree line behind her mobile home. (Tr. p. 191, line 16 – p. 193, line 4). Oliver called the police in response to the van's discovery because she did not know who it belonged to and she wanted it removed. (Tr. p. 190, lines 3-11). She did not live on the same street as the victim.[2] (Tr. p. 189, lines 10-12). When law enforcement fingerprinted the van in the course of their homicide investigation, they identified the creators of thirteen total fingerprints, but none matched Appellant. And, no prints taken from the driver's side of the van contained sufficient ridge detail to be matched to any individual. The matches obtained where to Thomas Booker James, Keir Lamont Johnson, Letitia Tasha Freshley, and Markel Hasheem Rush. (Tr. p. 240, line 5 – p. 241, line 25; Tr. p. 253, lines 1-6). It was also determined during the course of investigation that the van belonged to Kier Lamont Johnson's ex-girlfriend, Tiara Brown. (Tr. p. 554, lines 3-7). Johnson was locally known as "Bootsie." (Tr. p. 431, lines 5-13).

Howard Parker, a lifelong friend of both Appellant and the victim, testified at trial

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[1] It can be inferred that the bullets matching the revolver recovered from the crime scene were fired by Splurge in defense of the home invasion.

[2] Oliver testified at trial that she knew both Appellant and the victim through Appellant's girlfriend, to whom Oliver was related. (Tr. p. 202, line 6 – p. 203, line 15).

that he recognized that Bootise drove that van around town. (Tr. p. 430, line 17 – p. 432, line 5). Parker saw Bootsie in the van twice the night of the murder. (Tr. p. 432, lines 6-8). The first was at a gas station around 11:00 PM. (Tr. p. 432, lines 9-25). The second time Parker saw the van, it was after midnight, and the van arrived at a house where Parker was with friends. (Tr. p. 433, line 1 – p. 434, line 6). Two more people exited the house and got inside the van before it left. (Tr. p. 464, lines 1-24). On both occasions, Parker noticed, but could no identify, other individuals already inside the van. (Tr. p. 432, lines 9-22; Tr. p. 434, lines 7-23). Parker did identify Appellant's co-defendant at trial as one of the other occupants. (Tr. p. 434, line 24 – p. 435, line 6).

Bootsie implicated Appellant Carnail Graham, also known as "Dubba." (Tr. p. 40, line 7). At trial, Bootsie explained how Appellant called him from co-defendant Thomas Booker James, "Cutty's" phone and asked for a ride to buy some drugs on the night of the murder. (Tr. p. 531, lines 18-19; Tr. p. 534, line 16 – p. 535, line 7). Bootsie picked up Appellant and Cutty, and they parked on a back road by Splurge and the victim's mobile home. Bootsie testified that the spoke to a neighbor in the trailer park while Appellant and Cutty went inside Splurge's trailer. Then they got back in Bootsie's van and Bootsie drove away at his passengers' direction. (Tr. p. 531, line 18 – p. 532, line 8). As they left the scene, a Horry County police officer "swerved around" to follow them, and Appellant urged Bootsie to make a getaway. At that point, Bootsie parked the van in "somebody's backyard" and all three men took off into the woods. (Tr. p. 532, lines 9-15). It was during their getaway that Appellant expressed to his cohorts that he thought he "just killed that mother------." (Tr. p. 542, lines 17-24). Bootsie recalled Appellant and Cutty wearing blue latex gloves that they discarded in the woods; they did not wear masks. (Tr.

p. 631, lines 1-21). Bootsie also testified that Appellant threw two guns out of the van window. (Tr. p. 543, lines 1-5; Tr. p. 585, lines 1-25).

Bootsie later asked his girlfriend to call the police and report the van stolen—he falsely explained to law enforcement that he was robbed of the van while at a gas station. (Tr. p. 543, line 22 – p. 544, line 6; Tr. p. 599, line 23 – p. 602, line 4). The instruction to report the van stolen appeared to be one of Johnson's initial strategies in speaking to law enforcement about his involvement in the victim's murder. (Tr. p. Tr. p. 543, line 22 – p. 544, line 15). Bootsie incurred a charge for driving without permission with intention to deprive, and made bond the following day. (Tr. p. 544, lines 7-12). Bootsie later incurred a murder charge for his involvement in Pertelle's death. In addition to other charges, the murder charge remained pending at the time of Appellant's trial. (Tr. p. 544, lines 13-21; Tr. p. 575, line 21 – p. 577, line 21). Bootsie also admitted that he previously gave false statements to law enforcement out of fear, but that he also provided them a truthful version of events after hiring a lawyer. (Tr. p. 544, line 22 – p. 547, line 23; Tr. p. 553, lines 3-12). Additionally, Bootsie testified that Appellant had Bootsie's and Cutty's names tattooed on his body. (Tr. p. 529, line 21 – p. 530, line 14).

The State called a former assistant solicitor to testify about the extent and disposition of Bootsie's past charges: he acquired a charge for burglary first and assault and battery first in April 2013, which the State dismissed for reasons unrelated to the present victim's murder. (Tr. p. 661, line 2 – p. 662, line 24).

A federal inmate, Sedieka McClam, corroborated Bootsie's testimony as to the murder. McClam testified that he met Appellant at a female acquaintance's home in Conway. (Tr. p. 727, lines 3-23). Appellant had a phone conversation in front of McClam

in which Appellant apologized "for what had happened to Keia" and "[t]hat he panicked when he went through the door and just started shooting." (Tr. p. 728, lines 4-17). This occurred in January 2011. McClam subsequently wrote this information in a letter to the solicitor's office. (Tr. p. 728, lines 18-25). More information from the letter was divulged during McClaim's cross-examination. McClam recalled Appellant stating "they went to rob Keia's boyfriend, Splurge," and that "he didn't mean to shoot his gun six or seven times[.]"(Tr. p. 743, lines 4-25). The letter also referenced Appellant stating that after the shooting, he got in the side door of a van driven away by Bootsie. (Tr. p. 744, lines 1-17).

McClam was arrested for his federal charges shortly after overhearing the phone conversation, and testified at trial that he "wrote the letter because in federal prison if you cooperate with the government," they may reduce your time served, but that he had no contact with Appellant since the night he overheard him on the phone. (Tr. p. 731, lines 1-25). At the time of trial, McClam had yet to receive any downward sentencing departure. (Tr. p. 738, lines 1-5).

Additional corroboration came from another federal inmate, Kachief Spain, who testified that when he was housed one pod over from Appellant in the Horry County detention center. (Tr. p. 761, lines 1-18). Spain met Appellant in the early 1990's. (Tr. p. 762, lines 21-25). Spain testified that he witnessed Appellant come to the recreation field and call one of Spain's podmates, Ace Graham, to a door situated "maybe five feet" from where Spain was standing at the time. (Tr. p. 761, lines 19-25). Spain witnessed Appellant slide the discovery in Appellant's case through the door to Graham and explain to Graham that "they [the State]" did not have any evidence on him. (Tr. p. 762, lines 1-8; Tr. p. 765, lines 1-5). According to Spain, Appellant told Graham what happened:

> We got to the house, kicked the door in, we kicked the door in, the alarm went on. Keia was on the couch, she jumped up, started running, screaming for Splurge. Everything happened so fast, he just started shooting. She seen his face. He started shooting, you know, he didn't have a choice because she seen him.

(Tr. p. 762, lines 9-17). Spain's cross-examination expounded upon additional details that he initially divulged to the State's investigator: that Appellant stated he went in the front door, that there were eight people in the van, and that Appellant and co-defendant Cutty "put a gun to Lil Bootsie's head and told him not to tell[.]"[3] (Tr. p. 772, lines 4-16).

In his own case-in-chief, Appellant presented the mother of his children, Nakeema Crooms, who testified that she lived with Appellant at the time of the murder. According to Crooms, Appellant was at home that night, asleep with their three-year-old daughter. (Tr. p. 912, line 8 – p. 913, line 23).

Through expert testimony on cell-phone tracking and electronic communications, Appellant also established that his cell phone remained silent during the time in which the home invasion and murder occurred, with the exception of two calls at 2:16 and 2:18 AM, and two more at 6:24 and 6:28 AM. The calls that were made registered from the same central Conway cell site. (Tr. p. 851, line 15 – p. 854, line 24). The same expert witness also testified that Bootsie's phone made and received a total of 28 calls in an area northwest of Conway, the direction of the crime scene, around the time of the home invasion and murder. (Tr. p. 843, line 1 – p. 847, line 14; Tr. p. 862, lines 18-22).

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[3] A discrepancy arises through both McClam and Spain's testimony as to the color of the van. These inmates testify that the van connected to Bootsie and Appellant was blue. (Tr. p. 743, lines 19-23; Tr. p. 772, lines 1-3). But direct evidence, and Bootsie's testimony, establishes that the van was tan or brown. (Tr. p. 269, line 3 – p. 270, line 5). Spain later testifies that he does not recall the color of the van, that it was either blue or brown. (Tr. p. 752, lines 19-21).

ARGUMENT

I. The trial court did not err in denying Appellant's motion for a preliminary reliability hearing regarding jailhouse informant testimony because the witnesses were available for cross-examination.

How the Issue Arose

Anticipating the State to present jailhouse informant testimony, Appellant's trial counsel, Mr. Canty, moved for an *in limine* reliability hearing with relaxed rules of evidence "for the purpose of producing evidence against [Appellant], the motive [the witnesses] may have to lie, the difficulty of disproving [the witnesses'] testimony, [the witnesses'] relationship to [Appellant] and for the State to provide any corroboration that they may have to his account." (Tr. p. 124, line 2 – p. 125, line 10). Mr. Canty sought for the trial court to itself adduce the viability of informant testimony. (Tr. p. 127, lines 2-6).

The trial court denied the motion. (Tr. p. 127, lines 7-11). In so denying, the trial court pointed out that any statements made by the jailhouse witnesses, and related inconsistencies, are ripe for cross-examination and that counsel would "have [a] full and complete opportunity to cross-examine all the witnesses" including any admissible excerpts from the witnesses' criminal records. (Tr. p. 125, line 17 – p. 126, line 8). The trial court gave counsel leeway to ask the informants in a limited fashion about whether they had been charged with any crimes, or received a bond on any pending charge, between the time of Appellant's arrest and trial. (Tr. p. 126, lines 9-21). The trial court so ruled in order for the jury "to be able to judge the credibility and believability and anything that might tend to give them an insight as to the purposes of [the informants'] testimony." (Tr. p. 126, line 22 – p. 127, line 1). The trial court did not foreclose the possibility of conducting an *in limine* hearing prior to an informant's testimony on

matters related to his or her criminal history. (Tr. p. 127, lines 12-19).

Standard of Review

"A trial judge has broad discretion in supervising cross-examination with regard to bias or prejudice," *Norris v. Ferre*, 315 S.C. 179, 182, 432 S.E.2d 491, 493 (Ct. App. 1993), and "in ruling on the admissibility of the testimony." *State v. Langley*, 334 S.C. 643, 647, 515 S.E.2d 98, 100 (1999). "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion," which "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) (internal quotations omitted).

Cross-examination provides the appropriate trial vehicle for exploring and impugning jailhouse informant, and co-defendant, testimony

The trial court committed no error in denying Appellant's motion because South Carolina does not follow the rule adopted by the jurisdictions cited by Appellant. A trial court is not required to find corroborating evidence before allowing a jailhouse informant to testify on the State's behalf.[4] (*See* Br. of Appellant, p. 23-25). The proper method of impugning a jailhouse informant's credibility, as with any other witness, is through cross-examination. "[T]he Confrontation Clause 'guarantees only an **opportunity** for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" *State v. Stokes*, 381 S.C. 390, 401-02, 673

[4] In contrast, a preliminary finding of corroboration would be required regarding the admissibility of an exculpatory, out-of-court statement made by an unavailable declarant. *State v. Cope,* 405 S.C. 317, 342-43, 748 S.E.2d 914, 207 (2013).

S.E.2d 434, 439-40 (2009) (quoting *United States v. Owens,* 484 U.S. 554, 559, 108 S.Ct. 838, 842 (1988) (internal quotation marks and citations omitted) (emphasis in original)). "Indeed, the opponent's opportunity for cross-examination has been deemed the 'main and essential purpose of confrontation.'" *Id.* at 402, 673 S.E.2d at 440 (quoting *Delaware v. Fensterer,* 474 U.S. 15, 19–20, 106 S.Ct. 292, 294 (1985) (internal quotation marks and citation omitted)).

Where there exists a "substantial possibility [a jailhouse informant] would give biased testimony in an effort to have the solicitor highlight to his future trial judge how he had cooperated in the instant case," that witness' pending charges are probative on the issue of bias and therefore admissible on cross-examination. *State v. Sims*, 348 S.C. 16, 25-26, 558 S.E.2d 518, 523 (2002) (citing Rule 608(c), SCRE ("bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced")). "'Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony.'" *State v. Pipkin,* 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004) (quoting *United States v. Abel,* 469 U.S. 45, 52, 105 S.Ct. 465, 469 (1984)). This rule of evidence "preserves South Carolina precedent holding that generally, 'anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony.'" *State v. Jones,* 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2001) (quoting *State v. Brewington,* 267 S.C. 97, 226 S.E.2d 249 (1976)). *Jones,* akin to *State v. Sims*, *supra*, held that a murder defendant should be allowed to cross-examine his alleged accomplice,

whose credibility was found to be "the central issue" in the case, about past dealings between the accomplice and the office prosecuting the defendant for the purpose of exposing any bias. *Jones* at 570-71, 541 S.E.2d at 817-18.

Considering the tools available for Appellant to point out the informants' potential prejudices, the trial court correctly denied Appellant's request for a preliminary reliability hearing with "relaxed rules of evidence for the purpose of producing evidence against [him]." (Tr. p. 125, lines 2-6). The rules of evidence and procedure do not work to prevent either (1) the State from calling jailhouse informants to testify without first conducting a preliminary hearing as to the reliability of their proposed testimony, (2) Appellant's thorough cross-examination of those witnesses in reply, (3) Appellant's ability to call his own witnesses to further discredit the informants' testimony, or (4) to argue against those witnesses' credibility in closing argument. The toolbox of rules with which Appellant must work before the jury does not afford a windfall to question these witnesses *in limine* under oath and under "relaxed rules of evidence" to garner information otherwise gleaned from discovery and pre-trial witness interviews. Trial counsel has other means available to acquaint himself with potential trial testimony prior to the calling of the case for trial.

This case is not unlike *Jones* and *Sims* in the manner and method in which defense counsel acted to impugn the State's witnesses. The record establishes that Appellant had a full and complete opportunity to confront the jailhouse witnesses regarding potential bias. Pre-trial, Appellant's counsel moved for the State to compel NCIC reports on the three jailhouse witnesses—Keir "Bootsie" Johnson, Sedieka McClam, and Kachief Spain. (Tr. p. 114, line 22 – p. 116, line 7). The trial court granted

the request, ensuring that Appellant's counsel had these witnesses' NCIC reports the morning prior to their testimony. (Tr. p. 258, line 15 – p. 260, line 4). The trial court also conducted *in limine* hearing prior to jailhouse witness testimony to review and discuss the admissibility of each witness' criminal history pursuant to Rule 609, SCRE.

First, the trial court conducted an *in limine* hearing regarding defense counsel's proposed questioning of jailhouse witness and co-defendant Keir "Bootsie" Johnson. It became clear during this hearing that in order to highlight Bootsie's potential bias and prejudice to testify against Appellant, defense counsel would attempt to establish that it was not until six months after Bootsie was charged with the victim's murder that he made a statement implicating the Appellant and his co-defendant. (Tr. p. 493, line 2 – p. 502, line 21). Thereafter, Bootsie received a bond on his murder charge and had a pre-existing charges for burglary and possession of a firearm dismissed. The trial court also noted the admissibility of Bootsie's prior petit larceny conviction, excluded any magistrate court convictions, and reviewed the extent of questioning allowed on these topics. (Tr. p. 502, line 22 – p. 519, line 22). Bootsie was duly cross-examined on these points, as well as the total number of statements made to law enforcement, his admitted falsehoods in the first of those statements, and other marked details and inconsistencies divulged to law enforcement over the course of the investigation. (Tr. p. 551, line 15 – p. 642, line 9).

Second, the trial court took up the extent of jailhouse informant Sedieka McClaim's criminal history and whether he was subject to any pending federal proffer for a downward departure in sentencing at the time of Appellant's trial. (Tr. p. 710, line 2 – p. 715, line 5). In regards to any dismissed charges, counsel established that McClam did have charges dismissed, but the dismissal months prior to providing law enforcement

information on the present case. (Tr. p. 715, lines 6-25). Those charges were ruled inadmissible unless McClam interjected their existence through his own testimony. (Tr. p. 717, lines 18-22). As with Bootsie, the trial court allowed cross-examination regarding whether McClam "entered into any kind of arrangement, has some kind of understanding," or "hopes [for] some kind of leniency or reward from his testimony." (Tr. p. 717, line 3 – p. 718, line 7). As for admissible, impeachable convictions, the court green-lighted McClam's possession with intent to distribute of crack cocaine, failure to stop for a blue light, and possession of cocaine convictions which he incurred within ten years of Appellant's trial. (Tr. p. 719, line 1 – p. 720, line 20). Defense counsel also highlighted McClam's pending charge for possession with intent to distribute prescription drugs, along with two pending charges for possession of a stolen weapon. (Tr. p. 720, line 21 – p. 721, line 12). During his cross-examination, defense counsel additionally succeeded in discrediting McClam by exemplifying that although McClam testified as to witnessing Bootsie pick up Appellant from the location where McClam overheard the exculpatory phone conversation, Bootsie was actually incarcerated at that time.[5] (Tr. p. 742, line 10 – p. 746, line 18).

Lastly, Appellant's counsel was also able to cross-examine the final jailhouse witness, Kachief Spain, regarding the length of his current sentence and his potential to garner a sentence reduction in exchange for the information regarding Appellant's case. (Tr. p. 776, lines 16-25; Tr. p. 779, line 10 – p. 780, line 7). The State established at the

[5] The phone conversation was between Appellant and co-defendant Cutty. (Tr. p. 742, lines 10-14). McClam testified that as part of that phone conversation, Appellant asked Cutty to have "Lil Bootsie" pick him up from Appellant and McClam's location. (Tr. p. 743, lines 13-15).

outset of Spain's testimony that he was in the custody of the Edgefield Federal Corrections Institute on a possession of a firearm charge, and that he previously incurred charges for second degree burglary, strong arm robbery, and armed robbery. (Tr. p. 760, line 22 – p. 761, line 9). It appears that the trial court did not afford Spain's testimony an independent *in limine* hearing, but did review Spain's interactions with federal prosecutors in tandem with the *in limine* hearing on McClam's criminal history. (Tr. p. 711, line 15 – p. 714, line 20).

Appellant enjoyed leeway in cross-examining Bootsie, McClam, and Spain regarding inconsistencies in their prior statements to law enforcement and prior criminal records, including specific arrests and dispositions of bond incurred between Appellant's arrest and trial. A preliminary hearing to fetter out the witnesses' reliability, or a judicial determination of the same, is not necessary, because it is the jury's role to assign weight to the jailhouse informants' testimony. The jury must determine the effect, value, weight, and truth of the evidence presented at trial, including how the jailhouse informants came to know the facts about which they testified, an informant's motive for testifying, the presence or absence of corroborating evidence, and any other fact the jury may find relevant on the credibility issue. That role does not rest within the trial court. Appellant's motion was properly denied.[6]

[6] Respondent asserts that this issue does not lend itself to a traditional harmless error analysis. Regardless of whether the trial court granted the motion for a preliminary reliability hearing, the motion requested an improper judicial determination on the weight to be assigned to witness testimony, not whether their testimony was allowed. Respondent also notes that each jailhouse witness' testimony finds corroboration in the other jailhouse witnesses.

CONCLUSION

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

Respectfully submitted,

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January 15, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
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THE STATE,

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v.

CARNAIL MARCHINDLA GRAHAM,

Appellant

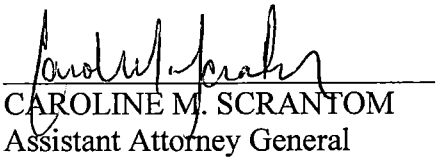
Appellate Case No. 2014-002336.

PROOF OF SERVICE

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

Lara M. Caudy
SCCID/Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served. This 15th day of January, 2016.



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January 15, 2016

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
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Re: The State v. Carnail Marchindla Graham
Appeal from Horry County
Appellate Case No. 2014-002336

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of the ***Initial Brief of Respondent and Designation of Matter***, dated January 15, 2016, along with proof of service, in the above-referenced case.

By copy of this letter, I am serving opposing counsel with same. Thank you for your consideration in this matter.

Sincerely,

Caroline M. Scrantom
Assistant Attorney General

CMS/pcm
Enclosure

cc: Lara M. Caudy, Esquire, Appellate Defender
The Honorable Jimmy A. Richardson, Solicitor, 15th Judicial Circuit
Trisha Allen, Victim Services