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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

APPELLANT,

Appellate Case No. 2014-002548

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

The trial judge did not abuse his discretion in admitting a nontestimonial inculpatory statement of a co-defendant when the statement was an exception to the hearsay rule pursuant to 804(b)(3) and was independently corroborated by other evidence. Because the letter was admissible against both defendants, the judge's limiting instruction caused no prejudice to Appellant.

RESPONDENT'S STATEMENT OF THE CASE

A Richland County grand jury indicted Appellant, Lorenzo Young, in February 2014, for murder, kidnapping, second degree burglary, and attempted armed robbery. (Indictments.) The grand jury also indicted Trenton Barnes (Barnes) and Troy Stevenson (Stevenson). (R. p. 1.)

On November 10, 2014, Appellant's case was called to trial before the Honorable Robert Hood. (R. p. 1) Appellant and Trenton Barnes were tried jointly. (R. p. 1). Steven Krzyston, Esquire, represented Appellant during the trial. (R. p. 1). Mark Schnee, Esquire, represented Barnes. (R. p. 1) Assistant Solicitors Dolly Garfield, Kathryn Campbell, and Nicole Simpson represented the State. (R. p. 1.) The jury returned verdicts of guilty as to all charges. (R. p. 1593, line 8 - p. 1594, line 8.) Judge Hood sentenced Appellant to life imprisonment without the possibility of parole for murder, and consecutive terms of fifteen years' imprisonment for burglary and twenty years' imprisonment for attempted armed robbery. (R. p. 1612, line 13 – p. 1613, line 4.)

Appellant filed a timely notice of appeal. This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

In the early morning hours of July 1, 2013, Theresa Baskin heard screams of terror from thirty-three year old Kelly Hunnewell, who worked the early morning shift in the off-site bakery for the Carolina Café. (R. p. 259, line 13 – p. 260, line 20.) Baskin, who lived across the street from the bakery on Tommy Circle, heard the dying words of the mother of four after she was shot by Lorenzo Young (Appellant) and his co-defendant Trenton Barnes (Barnes) in a robbery (R. p. 258, lines 21-23; p. 260, lines 15-20.)

Hunnewell arrived every morning at 3:00 am to make the bagels and sandwiches for the popular downtown deli. (R. p. 364, line 2 - p. 365, line 6.) She would typically work until 11:00 am so she could go home and care for her four young children. (R. p. 365, lines 1-18.) On the morning of the murder, Appellant and Barnes intended to rob the nearby Original Ale House. (R. p. 255, lines 2-16.) However, when they realized the bar was closed, Appellant and Barnes chose the next most convenient victim. Hunnewell was in the bakery next door with the lights on and the door propped open. (R. p. 260, lines 3-6.) The men approached Hunnewell, who was working at the stove and had her back to the door. (R. p. 1401, line 20 – p. 1402, line 2.) The suspect in the red hoodie pointed his gun at her head. (R. p. 1402, line 19 – p. 1403, line 19.) After a struggle in which Hunnewell tried to defend herself, the men shot her multiple times. (R. p. 1403, line 17 – p. 1404, line 24.) Kelly Hunnewell collapsed on the floor with a bullet lodged in her back, drowning in her own blood. (R. p. 1009, line 16; p. 1016, lines 2-21.)

Hunnewell's neighbor heard her screams and called the police. (R. p. 261, lines 1-8.) The police arrived within minutes and found Hunnewll dead on the floor. (R. p. 261, lines 9-10; p. 248, line 14 - p. 250, line 11; p. 266, lines 15-20.) The police processed the

scene, collecting four .45 Glock Automatic Pistol (G.A.P.) shell casings, two .40 caliber Smith and Wesson casings, projectiles and video surveillance footage. (R. p. 252, line 5 - p. 253, line 9; p. 281, lines 3-11; p. 305, lines 10-14; p. 307, lines 20-25; p. 326, line 16- p. 327, line 11; p. 1281, line 22 – p. 1283, line 10.) The bakery's security cameras recorded the murder from several different points of view. (R. p. 388, line 6 – p. 389, line 4.) In the video, Hunnewell is seen working at the stove when two suspects, one in a red hoodie and one in a grey hoodie, enter the bakery. (R. p. 446, line 9 – p. 447, line 3.) The suspects point guns at her and shoot her. A third suspect comes to the door as the shooting begins, and the three suspects flee.

Investigators canvased the area around the bakery to look for witnesses. (R. p. 418, line 11 – p. 419, line 24.) The police released the video to the media in an effort to gain more information about the perpetrators. (R. p. 1100, line 21 – p. 1101, line 9.) Police received tips identifying Appellant and brothers Trenton Barnes and Troy Stevenson as the men who committed the crime. (R. p. 409, line 14 – p. 410, line 14; p. 420, line 4 – p. 422, line 4; p. 1103, line 21 – p. 1104, line 21; p. 1108, lines 6-18.) All three suspects lived near the bakery. (R. p. 611, lines 12-17; p. 1093, lines 15-24; p. 1149, line 11 – p. 1150, line 20.)

Donald Moore, a friend of Trenton Barnes and Troy Stevenson, testified under subpoena for the State. (R. p. 568, line 1 – p. 569, line 22; p. 587, lines 11-14.) Though he recanted his story later, he testified he contacted the police after he saw the story about the murder on television. (R. p. 570, line 10 – p. 571, line 15.) Moore told police Young and Stevenson talked about robbing the Ale House before the murder. (R. p. 572, lines 9 - 15.) Moore also told police he saw Young showing off a Glock gun prior to the murder,

and told Young to put the gun away because of the nearby children. (R. p. 573, line 17 – p. 575, line 17.) Moore also identified Young in the video as the man wearing the red hoodie. (R. p. 576, line 19 – p. 577, line 23.)

Based upon Moore's information, the police obtained and executed a search warrant for Appellant and his girlfriend Rolanda Coleman's home, in which they found ammunition of the same caliber as those found near the body of Hunnewell. The search produced live rounds from a .40 caliber Smith and Wesson, a 9 mm Luger, and a .45 G.A.P. (R. p. 736-739.) Crime scene analysists also found a Glock magazine in Coleman's purse and several pairs of black gloves. (R. p. 734-735.) Furthermore, the police confiscated a pair of black, Nike shoes and a scan disc, camcorder, laptop, and two cell phones. (R. p. 746-749.) Testing later revealed gunshot residue on the black gloves. (R. p. 772, lines 7-14.)

Rolanda Coleman, told police Appellant spent the evening before the murder with Troy Stevenson, and he called his mother the morning after to pick him up from Stevenson's home. (R. p. 477, line 18 – p. 480, line 25.) She stated Appellant returned home the morning of the murder with his firearm, wrapped it in his shirt, and hid it in a crib. (R. p. 471, lines 17-24; p. 481, line 21 – p. 482, line 24.) Shortly after seeing a news video about the murder, Coleman overheard a conversation between Appellant and his mother in which his mother told Appellant to get rid of the gun. (R. p. 488, lines 1-9.) Coleman also testified she recognized the man wearing the grey hoodie in the video as Trenton Barnes. (R. p. 488, line 10 – p. 489, line 15.)

Barnes' mother testified her sons were at her house with Appellant the night of the murder. (R. p. 603, lines 1-24.) She testified Barnes and Appellant left the house

around midnight. (R. p. 604, lines 5-14.) She stated around three in the morning, she received a phone call from Appellant, asking to talk to another man staying at her house. (R. p. 605, line 14 – p. 606, line 8.) Cell phone records confirmed these calls. (R. p. 1047, line 8 – p. 1048, line 3.) The second time Appellant called, Ms. Barnes told Appellant to send her son, Barnes, home. (R. p. 606, line 21 – p. 607, line 7.) She testified after a few minutes, she sent her other son, Troy Stevenson, to locate the men to bring his brother home. (R. p. 608, lines 2-20.) Ms. Barnes testified Appellant was wearing a red hoodie when he left the house and Barnes was wearing a grey hoodie, which she could identify from a tear in the fabric. (R. p. 610, lines 3-19.) When Stevenson left to look for his brother, he was wearing a dark jacket. (R. p. 610, line 23 – p. 611, line 8.) After Barnes was arrested he wrote a letter to his mother implicating himself and Appellant in the crime. (R. p. 617, lines 1-22.)

Mary Brown, a neighbor and acquaintance of Appellant, Barnes and Stevenson, also saw the men wearing the red and grey hoodies the night of the robbery. (R. p. 846-849.) Brown saw the video released to the news media and recognized Appellant and his codefendant, but did not know their names. (R. p. 851, line 6 – p. 854, line 18.)

Following his arrest, Appellant approached inmate Dominique Wright to assist him in the defense of his case. (R. p. 698, line 17 – p. 699, line 10.) Wright was helping another inmate with some legal work when Appellant overhead the men discussing the "stand your ground law." (R. p. 701, lines 7-10.) Appellant told Wright he and two other men intended to rob a club, but because the club was closed, they went next door to a bakery. (R. p. 700, lines 5-13.) Appellant told Wright when the woman in the bakery resisted, he shot her twice. (R. p. 700, lines 10-13.) Wright testified Appellant sought his

advice to discuss how he could use the victim's efforts to defend herself as an advantage in reducing his charge. (R. p. 701, lines 13-15.) Wright documented what Appellant told him and sent the information to an investigator, who passed it on to the solicitor's office. (R. p. 702, line 19 – p. 703, line 5.)

Another inmate, Michael Peterson, testified Appellant discussed the murder with him while they were in the law library together. (R. p. 787, line 11 – p. 788, line 8.) After Appellant heard Peterson was familiar with the law, he asked for help. (R. p. 788, lines 7-10.) Appellant explained to Peterson he "went on this lick." (R. p. 788, lines 18-19.) When Peterson asked Appellant if he meant the bakery job on Beltline, Appellant confirmed, saying, "yeah, it was all over the news." (R. p. 788, lines 18-20.) Appellant told Peterson he shot the victim when she acted like she was about to use her phone to call the police. (R. p. 789, lines 1-4.) Appellant told Peterson, "The police don't have nothing. We had on masks and gloves." (R. p. 789, lines 10-13.) Appellant told Peterson he was not concerned because the police only found shell casings and identified him from the clothing he wore that night. (R. p. 790, line 7 – p. 791, line 1.) Peterson testified he later overheard Troy Stevenson and Appellant discussing the robbery in the prison showers. (R. p. 797, lines 1-11.) Peterson said Appellant was nervous, though he reassured Stevenson the police only had shell casings. (R. p. 797, lines 1-25.)

Michael Schaefer, another inmate at Alvin Glenn Detention Center, testified he had several opportunities to speak with Appellant while they were housed together in the same dorm. (R. p. 872, line 13 – p. 873, line 19.) Schaefer and Appellant discussed their respective cases, and Schaefer testified to the following:

> Okay, he said him and two other people by the name of Trap [Stevenson] and Trigg [Barnes] went out to rob a nightclub in the area, but

> it was closed. They saw the bakery was opened. They took that as an opportunity to go in.
>
> The woman was in there. He said she went for a knife she was struggling so he shot her twice. He fled the scene. He said he was wearing a red hoodie and jeans.

(R. p. 874, lines 10-17; 875, lines 7-15.) Schaefer told his lawyer about the exchange, and his lawyer advised him to turn the information over to the solicitor's office. (R. p. 877, lines 11-24.) Schaefer also testified he spoke to Appellant around the holidays, expressing remorse for his own crime of robbing a bank. Schaefer testified Appellant responded, "Well, I shouldn't have shot that bitch." (R. p. 878, lines 1-7.)

Investigator VanHouten, of the Columbia office of the Secret Service, performed the data analysis of the cell phone associated with Appellant. (R. p. 1234, line 13 – p. 1237, line 4.) VanHouten was able to recover video and photos of Appellant wearing a red hoodie and jeans. (R. p. 1239, line 1 – p. 1240, line 7.) VanHouten was also able to recover web searches from Google Chrome in which Appellant searched for the media released videos of the murder of Kelly Hunnewell. (R. p. 1242, lines 3-11.) Vanhouten found cached images from the video released to the media of the suspect in the red hoodie and blue jeans, as well as the kitchen crime scene. (R. p. 1244, line 11 – p. 1245, line 25.)

Samples taken from the crime scene and the victim's body did not produce a large enough DNA sample suitable for comparison to a full DNA profile. (R. p. 914 – 941.) However, a small portion of DNA found on the front of the large metal spoon Hunnewell used to defend herself could not exclude the DNA of Appellant and Barnes. (R. p. 333, lines 12-17; p. 928, lines 8-18.)

ARGUMENT

The trial judge did not abuse his discretion in admitting a nontestimonial inculpatory statement of a co-defendant when the statement was an exception to the hearsay rule pursuant to 804(b)(3) and was independently corroborated by other evidence. Because the letter was admissible against both defendants, the judge's limiting instruction caused no prejudice to Appellant.

Introduction

Co-defendant Barnes' nontestimonial letter to his mother qualifies as a statement against interest under 804(b)(3) because Barnes sufficiently inculpates himself in the same criminal activity as Appellant. Viewed in context, as opposed to a testimonial confession or statement to police, Barnes had no reason believe he would incur favor or leniency by writing the letter to his mother. Though the letter incriminated Appellant as well as Barnes, other independent evidence corroborated the statement and implicated both men as the perpetrators of the crime. S.C.R.E. 804(b)(3) does not limit a statement to use only against the party making the statement. Thus, the letter is an exception to the hearsay rule as a statement against interest, and may be offered against the declarant and his co-defendant.

How the Issue Was Raised at Trial

The State sought to introduce the letter written by co-defendant Barnes to his mother while Ms. Barnes was on the stand. (R. p. 617.) Counsel for Appellant objected to the introduction of the letter, and the court excused the jury. (R. p. 618, lines 2-4.) Counsel for the State and defense submitted case law to the judge supporting their arguments for and against the admissibility of the letter. (R. p. 619, line 15 – p. 620, line 12.) Defense counsel objected to the letter on the basis of hearsay not falling within the the S.C.R.E. 804 (b) (3) exception as it applied to his client. (R. p. 623, line 22 – p. 624,

line 10.) Contrarily, the State argued the letter was non-testimonial, and as such, should be admitted as an exception under the Rule 804 (b)(3) against Barnes. The following is an excerpt of the pertinent portions of the arguments:

> MS. PINNOCK: May it please the Court, Your Honor. The item that the solicitor is attempting to introduce is a letter written by Trenton Barnes to his mother that includes Lorenzo Young in the body of the letter. This was brought to Your Honor's attention earlier this week in chambers. There was mention of them trying or suggesting it be redacted to remove any mention of Mr. Young, but it is a statement written by Mr. Barnes. We are not going to be cross-examining about Mr. Young and think that he did or alleged to have done, and it's a – it's a due process violation at this point.
>
> It's not a statement was taken by law-enforcement, but it is still a statement against our client offered by a witness that we do not have the opportunity to cross-examine, so it is a due process issue at this point and a fundamental fairness violation with our right to a fair trial. They're introducing the statement written by a non-testifying witness. So as far as Mr. Young's case, that letter in its entirety is hearsay.
>
> I understand it's admissible against Mr. Barnes, but is not admissible against Mr. Young. The only solution I can come up with is either excluded from evidence because we are being tried jointly, it is a violation of his constitutional rights to have that introduced into evidence. I don't believe that any curative instruction would be able to only get a jury to consider that only against Mr. Barnes and not Mr. Young, so our right to a fair trial at this point is going to be violated when that letter is introduced.
>
> THE COURT: Ms. Campbell.
>
> MS. CAMPBELL: May it please the Court. This was nontestimonial. This was not taken by police officers. This was mentioned in court the other day. Quite frankly, I thought they might make a motion on this, but there was no pretrial motion to exclude this. We did hand of case law. We handed up United States Supreme Court, I believe, in the Garvin case.
>
> THE COURT: 4th Circuit Court of Appeals.
>
> MS. CAMPBELL: I'm sorry, yes, 4th Circuit.
>
> MS. PINNOCK: Your Honor, can I see your copy so I can –
>
> MS. CAMPBELL: I gave it to you.
>
> THE COURT: US vs. Garvin 738 – – –
>
> MS. PINNOCK: That was a few days ago.
>
> MS. CAMPBELL: I believe, pursuant to that case, Your Honor, the letter would comment in its entirety.
>
> MS. PINNOCK: And, Your Honor, I would cite *Williamson v. United States*. It's a US Supreme Court case 512 U.S. 594, as well as *State v. Fuller*. The Supreme Court of South Carolina 1999. Its 337 S.C. 236 and

Lilly v. Virginia. I do apologize. I don't have the cite for that one, but I could get the site. I can't seem to find it.
THE COURT: Do any of those deal with – – – are those all statements to law enforcement?
MS. PINNOCK: no, sir, these are statements made – – – they are inculpatory as to one person's involvement, but still references the codefendant. They are not any statements given to law enforcement. That's not a situation these cases deal with.

There are situations where just because a statement may be considered a statement against interests with the person who is making the statement, it does not necessarily mean it's admissible against the other people who were involved. This was brought up Wednesday morning, I believe.

Your Honor did say that you would address these issues because they came up during the course of the testimony from the witnesses.

I believe Mr. Schnee actually submitted a written motion on this, but this is a situation that we all predicted was going to come up.

Your Honor, this letter – – – again, I admit that yes, everybody can agree that this letter is admissible against Mr. Barnes, but the body of the letter, I would ask Your Honor to review it.

It fully implicates our client. We would not have an opportunity to cross-examine Mr. Barnes, so it is inadmissible against Mr. Young. If there are being tried separately, this letter would not be introduced in evidence.

The only reason it's got the possibility of being introduced as because Mr. Barnes is here with us.
MS. CAMPBELL: Can I get a copy of the cases you just mentioned?
MS. PINNOCK: I only have one.
MS. CAMPBELL: You don't have them?
MS. PINNOCK: I only have one.
MS. CAMPBELL: Your Honor, could I just make copies real quick of their cases?
THE COURT: Sure.
MS. PINNOCK: You can have those.
THE COURT: I need copies of those cases
MS. PINNOCK: I want you to have these.
Your Honor, we can – – – we are going to print copies for you.
THE COURT: My question is – – – the Garvin case wasn't a joint trial.
MS. CAMPBELL: But I believe it addresses even if it is a joint trial in the body. I guess I'm a little bit at a loss as to why this wasn't brought up in pretrial matters.
MS. PINNOCK: Your Honor, I did actually bring this up about evidence that would be introduced that was admissible against Mr. Barnes that was not introducible against Mr. Young in our motion to sever.
THE COURT: So how is the statement testimonial?

MS. PINNOCK: Your Honor, I'm not saying the statement itself is testimonial. The only reason – – –

THE COURT: It has to be testimonial for the confrontation clause to apply.

MS. PINNOCK: Your Honor, the only reason that the statement is admissible against Mr. Barnes is because of the interviews and the statement against interest.

The interest that – – – the interest that is at issue is Mr. Barnes's interest. The exceptions to hearsay do not apply to Mr. Young when they are using the exceptions to the hearsay rule against Mr. Barnes and that's the situation we have. It is not admissible against Mr. Young. It fully implicates him, but they're going about it through any exception to the evidence rules that allows them to get it in against Mr. Barnes.

THE COURT: So how is the statement testimonial or is it your position that it's not?

MS. PINNOCK: I'm not arguing that its testimonial.

THE COURT: Your position is that it's not testimonial.

MS. PINNOCK: No. I'm not arguing that the statement itself is testimonial. I'm acknowledging that it's not given to law enforcement. It's a letter that was written by Mr. Barnes and sent to his mother. The letter is admissible with Mr. Barnes's case under the hearsay exceptions. The statement against interest for Mr. Barnes does not apply to Mr. Young.

In those cases, Judge – – – and again, I apologize. I don't have extra copies, but *Lilly vs. Virginia* was—*Lilly vs. Virginia*, Judge, was reversed.

All of these cases that were going to be providing you in just a moment all deal with the 804 (3) exception to the hearsay rule in dealing with statements against interest with multiple parties, so I for guess for clarity purposes my objection is hearsay for Mr. Young.

THE COURT: So your objection is hearsay?

MS. PINNOCK: Yes, sir, the objection to that letter for Mr. Young is hearsay, and for his situation it does not fall under any of the exceptions to the hearsay rule.

THE COURT: Is somebody going to get those copies?

MS. PINNOCK: Yes, sir, Mr. Krzyston just ran downstairs to speed things up a bit.

THE COURT: What's your response to the hearsay argument?

MS. CAMPBELL: Your Honor, it's not hearsay because it's an issue against interest against Mr. Barnes. It is non—testimonial. She's admitted that. Therefore it comes in its entirety the same way a jail phone call would, Your Honor. It's been offered against Mr. Barnes. If she wants a limiting instruction, I have no problem with that.

MS. PINNOCK: Your Honor, to cite Lilly, the court said that when dealing with the admission against penal interest we have taken great care to – – –

THE COURT: That's not the rule she cited.

> MS. PINNOCK: I'm sorry?
> THE COURT: That's not the rule she is saying. She is saying is not hearsay because its admission by a party opponent. She is not even making it to 804.
> MS. CAMPBELL: You're right.
> MS. PINNOCK: It has to fall under some exception.
> THE COURT: Well, it can be just not hearsay.
> MS. PINNOCK: For Mr. Barnes, yes, but not for Mr. Young. This is one of the reasons we were asking for a severance because there is evidence they are trying to introduce this. It's not admissible against Mr. Young. Being admitted as presented in its entirety denies us the right to a fair trial. He has been implicated by a letter – – –
> THE COURT: You can't just say a fair trial. Courts have held over and over again that you have to point to a specific constitutional right. You can't just say fair trial. Specific constitutional right is the confrontation clause, which is not implicated because the statement is not testimonial according your own admission and the law is very clear that non— testimonial statements do not invoke the confrontation clause. Therefore, there is no *Bruton* issue.
> MS. PINNOCK: He is being denied due process, Judge.
> THE COURT: You can't just say due process.
> MS. PINNOCK: It's a fundamental fairness.
> THE COURT You can't just say due process. The law says you have to point to a specific constitutional right. You just can't say due process, fair trial. It's like answering fundamental fairness on the bar exam. It doesn't work. There has to be some than concrete. See argument is that it falls under – – – or doesn't fall under 804(d)(3). Is that it?
> MS. PINNOCK: Your Honor, the objection is hearsay. As applied to Mr. Young, it is hearsay.

(R. p. 618, line 7 – p. 626, line 17.)

The Trial Court's Finding of Admissibility

Following a lengthy discussion concerning whether the statement was testimonial, inculpatory or exculpatory, or a statement by a co-conspirator in furtherance of a conspiracy, the trial judge admitted the statement, subject to a limiting instruction, stating:

> All right. The letter is in. I find – – – I'm going to overrule the hearsay objection. It's non – testimonial, thus there is no confrontation clause issue. Thus there is no *Bruton* issue. I don't even know that they're arguing that, but I'm ruling that anyway, and I find that it falls under a

> hearsay exception, that being 804(b)(3). It has an inherent level of trustworthiness and based on the corroborating circumstances, the States 404 is in over Defendant Young's objection.

(R. p. 637, lines 13-22.)

Standard of Review

The admission or exclusion of evidence rests on the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). An abuse of discretion occurs when the conclusions of the trial court are based on an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice. *State v. Kelley*, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995). The standard of review is limited to determining whether the trial court's ruling is supported by **any evidence**. *State v. Breeze*, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008) (emphasis added).

Confrontation Clause Applies to Testimonial Statements

Though the trial judge ruled the letter from co-defendant Barnes was not a violation of *Bruton v. United States*, 391 U.S. 123 (1968), a review of that holding provides clarification of the State's position the letter was admissible against both Barnes and Appellant, which supports the proposition the limiting instruction to the jury was unnecessary.

In *Bruton*, the Supreme Court found the admission of a codefendant's confession implicating a defendant at a joint trial constituted prejudicial error, even though the trial judge gave a limiting instruction stating the confession could only be used against the

codefendant and must be disregarded with respect to defendant. *Id.* at 131. ("In joint trials, however, when the admissible confession of one defendant inculpates another defendant, the confession is never deleted from the case and the jury is expected to perform the overwhelming task of considering it in determining the guilt or innocence of the declarant and then of ignoring it in determining the guilt or innocence of any codefendants of the declarant. A jury cannot 'segregate evidence into separate intellectual boxes.") The *Bruton* court made it clear that the admission of testimonial statements of a codefendant in a joint trial infringed on the non-confessor's right of confrontation. *Id.* at 133-134.

The Court later recognized *Bruton's* narrow exception to the invariable assumption that jurors follow their instructions in the situation when the incriminating confession of a non-testifying codefendant is introduced at a joint trial, and the jury is instructed to consider the confession only against the co-defendant. *See Richardson v. Marsh*, 481 U.S. 200 (1987). In *Richardson*, the Court distinguished the redacted, admissible statement from the "narrow exception *Bruton* created" because the statement was not incriminating on its face and required linkage of other evidence. *Id.* at 200. The Court refused to extend the reach of *Bruton* to confessions incriminating by connection, citing the impossibility to predict the admissibility of those confessions prior to trial. *Id.* at 209. The narrow application of *Bruton* to facially incriminating statements recognized the significance of the judicial economy of joint trials, noting:

> One might say, of course, that a certain way of assuring compliance would be to try defendants separately whenever an incriminating statement of one of them is sought to be used. That is not as facile or as just a remedy as might seem. Joint trials play a vital role in the criminal justice system, ... It would impair both the efficiency and the fairness of the criminal justice system to require, in all these cases of joint crimes where

> incriminating statements exist, that prosecutors bring separate proceedings, presenting the same evidence again and again, requiring victims and witnesses to repeat the inconvenience (and sometimes trauma) of testifying, and randomly favoring the last-tried defendants who have the advantage of knowing the prosecution's case beforehand. Joint trials generally serve the interests of justice by avoiding inconsistent verdicts and enabling more accurate assessment of relative culpability—advantages which sometimes operate to the defendant's benefit. Even apart from these tactical considerations, joint trials generally serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts. The other way of assuring compliance with an expansive Bruton rule would be to forgo use of codefendant confessions. That price also is too high, since confessions "are more than merely 'desirable'; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law." *Moran v. Burbine*, 475 U.S. 412, 426, 106 S.Ct. 1135, 1143, 89 L.Ed.2d 410 (1986) (citation omitted).

Richardson v. Marsh, 481 U.S. 200, 210 (1987). The *Richardson* court suggested the deference to the co-defendant's rights pursuant to the Confrontation Clause in *Bruton* be limited to the precise facts of that case.

Later, the Court examined the nature of out of court statements offered against a defendant in *Crawford v. Washington*, 541 U.S. 36, 50, (2004). In *Crawford*, the Court examined whether the statements made by a suspect's wife to law enforcement violated the Confrontation Clause, when the wife was precluded from testifying because of marital privilege. The Supreme Court examined the historical evolution of the Confrontation Clause, and concluded these inferences:

> First, the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of ex parte examinations as evidence against the accused.
>
> . . .
>
> The historical record also supports a second proposition: that the Framers would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.

Crawford at 53-54. The Court stated the Confrontation Clause focused primarily on testimonial statements, and noted the distinction between statements made to law enforcement and those made to an associate. *Crawford* at 51 ("An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not. The constitutional text, like the history underlying the common-law right of confrontation, thus reflects an especially acute concern with a specific type of out-of-court statement."). The Court further offered this definition of a testimonial statement:

> Various formulations of this core class of "testimonial" statements exist: "*ex parte* in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially," Brief for Petitioner 23; "extrajudicial statements ... contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions," *White v. Illinois,* 502 U.S. 346, 365, 112 S.Ct. 736, 116 L.Ed.2d 848 (1992) (THOMAS, J., joined by SCALIA, J., concurring in part and concurring in judgment); "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial," Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 3.

Id. at 51-52. The *Crawford* Court clarified that certain kinds of statements made to others would not invoke the Confrontation Clause and would thus be controlled by the Rules of Evidence regarding hearsay. *Id.* at 68. ("Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law… and as would an approach that exempted such statements from Confrontation Clause scrutiny altogether.") Thus, the *Bruton* rule does not apply when the codefendant's statement is nontestimonial. *See, e.g., Smith v. Chavez*, 2014 WL 1229918, at *1 (9th Cir. March 4, 2014) (holding because the out-of-court

statement by the non-testifying codefendant—an account of the crime given to his girlfriend in a motel—"was clearly not testimonial," it was reasonable for the state court to reject a *Bruton* claim, "given that *Bruton's* core holding relies on the Confrontation Clause" and *Crawford* teaches that the Confrontation Clause bars only testimonial out-of-court statements); *United States v. Vasquez*, 766 F.3d 373, 378–79 (5th Cir. 2014) (observing that "[m]any circuit courts have held that *Bruton* applies only to statements by co-defendants that are testimonial under Crawford," including the First, Second, Third, Fourth, Sixth, Eighth, Ninth, and Tenth Circuits); *United States v. Figueroa*, 729 F.3d 267, 276 n. 14 (3d Cir. 2013) ("The protections of the Confrontation Clause and *Bruton* apply only to testimonial statements."); *United States v. Figueroa–Cartagena*, 612 F.3d 69, 85 (1st Cir. 2010) ("[I]t is thus necessary to view *Bruton* through the eyes of *Crawford* and *Davis*. The threshold question in every case is whether the challenged statement is testimonial. If it is not, the Confrontation Clause has 'no application.'" (internal citation omitted)); *United States v. Smalls*, 605 F.3d 765, 768 n. 2 (10th Cir. 2010) ("the *Bruton* rule, like the Confrontation Clause upon which it is premised, does not apply to nontestimonial hearsay statements"); *United States v. Dale*, 614 F.3d 942, 958 (8th Cir.2010) ("Reading *Bruton* in light of *Crawford*, we conclude that a *Bruton* violation must be predicated on a testimonial out-of-court statement implicating a co-defendant."); *United States v. Johnson*, 581 F.3d 320, 326 (6th Cir. 2009) ("Because it is premised on the Confrontation Clause, the *Bruton* rule, like the Confrontation Clause itself, does not apply to nontestimonial statements."); *United States v. Taylor*, 509 F.3d 839, 850 (7th Cir. 2007) (finding no *Bruton* error, because the challenged remarks were nontestimonial under Crawford).

Co-defendant's Letter is Nontestimonial

Turning to the facts of the case at hand, co-defendant Barnes' letter to his mother clearly falls outside the scope of testimonial statements contemplated by *Crawford*, thus falling short of Confrontation Clause protections. The Supreme Court has recognized this distinction between testimonial and non-testimonial statements, finding non-testimonial statements admissible as long as the statements fall within a recognized hearsay exception or statutory allowance. In *Davis v. Washington*, 547 U.S. 813 (2006), for example, the Court determined the recording of the victim's 911 call in which she identified her attacker was nontestimonial and, therefore, admissible.

Other jurisdictions have followed suit, finding statements made to third parties not prohibited by the Confrontation Clause. *See, e.g., U.S. v. Mayhew*, 380 F. Supp.2d 961 (S.D. Ohio 2005) (finding letters written from victim to family and boyfriend were non-testimonial, and admissible to show state of mind); *State v. Rice,* 844 P.2d 416 (1983) (co-defendant's letter to girlfriend admitting guilt admissible as a statement against interest); *People v. Arceo,* 195 Cal App 4th 556, 577 (2011) (co-defendant's bragging to fellow gang members about his role in murder of two women admissible against defendant as declaration against interest.) . In *U.S. v. Dargan*, 738 F.3rd 643 (2013), the Fourth Circuit found a co-defendant's statements to other inmates implicating himself and defendant were nontestimonial and admissible pursuant to 804(b)(3). Specifically with respect to a *Bruton* challenge, the *Dargan* court said, "*Bruton* is simply irrelevant in the context of nontestimonial statements. *Bruton* espoused a prophylactic rule designed to prevent a specific type of Confrontation Clause violation. Statements that do not

implicate the Confrontation Clause, *a fortiori,* do not implicate *Bruton." Dargan*, at 651. *See also United States v. Dale*, 614 F.3rd 942, 956 (8th Cir. 2011) (holding a defendant's statement to an inmate informant who was wired was nontestimonial because the defendant did not believe his statement would later be used at trial.)

Appellant does not argue the admission of co-defendant Barnes' letter to his mother violates *Bruton*, or its progeny. Indeed, during the extensive discussion concerning the admissibility of the letter, defense counsel acknowledged the letter was non-testimonial;

> I'm not arguing that the statement itself is testimonial. Although acknowledging that it's not given to law enforcement. It's a letter that was written by Mr. Barnes and sent to his mother. The letter is admissible with Mr. Barnes's case under the hearsay exceptions. The statement against interest for Mr. Barnes does not apply to Mr. Young.

(R. p. 623, lines 15-21.) Appellant's argument does, however, intertwine the elements of a typical *Bruton* violation allegation by suggesting the trial judge's decision to allow the joint trial prejudiced Appellant. The argument is misplaced because co-defendant Barnes' letter is admissible against both Barnes and Appellant.

The Letter is Admissible under S.C.R.E. 804(b)(3)

Following the *Richardson* Court's conclusion that *Bruton* created a narrow Confrontation Clause prohibition of **testimonial** statements offered in **joint** trials, and the trial judge's ruling no *Bruton* issue existed because of the nontestimonial nature of the letter, the decision to try Appellant and Barnes together caused no undue prejudice to Appellant because the letter is admissible against both defendants under S.C.R.E. 804(b)(3). Rule 804(b)(3) provides:

> (3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest,

> or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

SCRE 804. The statement against interest provision is an exception to the hearsay rule because the statement has inherent indicia of trustworthiness, *i.e.*, the reasonable declarant would not implicate himself of criminal wrongdoing if it were not true. The statement against interest exception does not contain the limitation that the statement must be offered only against the declarant, as does for example, Rule 801(d)(2), which says:

> (2) Admission by Party-Opponent. The statement is offered **against a party** and is (A) **the party's own statement** in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

SCRE 801(d)(2) (emphasis added). Despite defense counsel's assertion to the contrary, a statement against interest, which is sufficiently inculpatory, may be admitted against the declarant himself (Barnes) and his co-defendant (Appellant). *See, e.g, United States v. Jordan,* 509 F.3d 191, 203 (4th Cir. 2007) (finding statements of co-conspirator to friend in an effort to relieve herself of guilt before her suicide subjected her to criminal liability for a drug conspiracy and murder and were admissible against defendant under Rule 804(b)(3)); *People v. Taylor*, 759 N.W.2d 361, 368 (Michigan 2008) (finding a co-defendant's statement to a third party admissible against defendant under 804(b)(3))

Again, contrary to Appellant's argument, had the trials been severed, Barnes' letter to his mother could have been admitted against Appellant under the same 804(b)(3) exception.

The Letter was Inculpatory

Appellant correctly argues case law disfavors admitting unreliable self-exculpatory statements, though portions of the statement may include inculpatory statements against interest. Courts have also found collateral exculpatory statements inadmissible, though the purported statement of the declarant was sufficiently inculpatory. Appellant misapplies the case law to the facts at hand, however. Barnes' letter to his mother fully implicated him, along with Appellant, in the murder of the victim.

According to *Williamson v. United States*, 512 U.S. 594, 600-601 (1994), Rule 804(b)(3) does not allow admission of non-self-inculpatory statements even if they are made within a broader narrative that is generally self-inculpatory. In that case, a co-defendant confessed to a police officer that he was involved in criminal activity and also gave details about Williamson's separate criminal activity. The Court concluded;

> In our view, the most faithful reading of Rule 804(b)(3) is that it does not allow admission of non-self-inculpatory statements, even if they are made within a broader narrative that is generally self-inculpatory. The district court may not just assume for purposes of Rule 804(b)(3) that a statement is self-inculpatory because it is part of a fuller confession, and this is especially true when the statement implicates someone else. "[T]he arrest statements of a codefendant have traditionally been viewed with special suspicion. Due to his strong motivation to implicate the defendant and to exonerate himself, a codefendant's statements about what the defendant said or did are less credible than ordinary hearsay evidence."

Williamson at 600-01. The confession implicated Williamson in joint criminality with the co-defendant, as well as criminality in which Williamson acted alone. The co-defendant thus made discrete non self-inculpatory statements within a "broader narrative" that was only "generally self-inculpatory." *Id.* The statements of the co-defendant pertaining to Williamson exclusively were, therefore, inadmissible as not self-inculpatory, as required by Rule 804(b)(3).

The *Williamson* Court went on to clarify its position on 804(3)(b) saying, "There are many circumstances in which Rule 804(b)(3) does allow the admission of statements that inculpate a criminal defendant. Even the confessions of arrested accomplices may be admissible if they are truly self-inculpatory, rather than merely attempts to shift blame or curry favor." *Id.* at 603. The Court acknowledged the determination of whether a statement is inculpatory or exculpatory can be made by "viewing it in context." *Id.* at 603. Furthermore, the Court distinguished the portions of the declarant's statement that were admissible from those that were not, finding the exercise a "fact intensive inquiry." *Id.* at 604.

In the case *sub judice*, the letter from Barnes to his mother implicates the declarant and the defendant in the **same** criminal act, rather than "separate criminal activity," as did the statement in *Williamson.* The letter from Barnes read:

> Your Son
> Trenton. B
> Wassup Ma they got me in lock up for 25 days for some crazy stuff they was go let me stay in the dorm but I came down here so I can talk to troy. I'm down here with troy and renzo. I talk to troy about the case. I'm ready to talk back with them people and tell them the truth ma tell that troy ain't had nothing to with it I should of told them that troy really came down there to get me. Ma what really happen was I was on the phone with Ty indika lul sis and renzo was on the phone with his baby mama we was the only two up and he got off the phone was like let me talk

tew you when you done. Then he was like I got this lul lick and then I was like I don't know bruh I'm koolin talking to my lady and he was like money come first. I ain't tell him yea or no yet. So I woke troy up and ask him what should I do and he said hell no don't go with dat man and he whent back to sleep. I whent back in my room renzo was back on th phone then Ty had text me renzo got off the phone and was like you ready and I told him I'm koolin then he started talking bout how much money was go be there then he said let's go scoope it out we ain't got to do nothing then we went outside and I said bruh I ain't tryna go to jail and he said on my baby you ain't going to jail lul bruh he ask me do I have a gun and I said no but I know way one at he said way at and I said **I know way Shorty be putting his gun at out side** so I took him to it and he pulled out his gun and said which one you won't and **I said the small one** then we started back walking then I said what type of lick is it because I don't be on that other stuff I just take moped' s and drit bikes and he was like just a lul lick so we was at the bar down the street from the house it started raining hard and I was like I'm bout to go home and he said hold on lul bruh then he was like damm they closed so I said come on let's go back to my house then he said you see that lady over there. I siad I don't see nobody he was like come on then we was by the door and **I seen a lady walk pass** and I looked back and seen troy waveing his hand telling me to come back then renzo walk into the place and I went behind him then he grabed her and put the gun to her head and told me to get in front of her and **she swang at me and I closed my and jump I got scared ma I didn't want to do it.** I'm sorry. I said it was troy because I was scared to go to jail with renzo by myself im sorry ma ma. I just wanna come home. I'm be good mama I promise. I miss you mama. **I should never listen to renzo.** I just wanna come home and be with you people keep telling me **im going to prison for a long time** love you mama I just wanna come home real soon not no grown man.
Love You MAMA
Your BaBy Boy

Trenton

(State's Exhibit 404) (Errors in original). In Barnes' statement to his mother, Barnes admits telling Appellant where he can find a gun ("I know way Shorty be putting his gun out side"); he admits choosing which gun he wants to use in the robbery ("the small one"); he admits he knows the victim is inside the bakery ("I seen a lady walk pass"); and he admits shooting the victim after she resisted him ("she swang at me and I closed my and jump I got scared ma I didn't want to do it"). Barnes also admits he was complicit in

Appellant's actions ("I should never listen to renzo"), and he recognized the likely consequences of his actions ("im going to prison for a long time").

Though the letter seems to express regret for his actions, the statement is not exculpatory. Barnes admits his willing participation in the crime-- placing a gun in his hand and himself at the crime scene during the murder. The only exculpatory statements in the letter are those applicable to his brother, Troy Stevenson, and not Barnes, himself. Unlike the declarant in *Williamson*, Barnes recognizes his culpability, along with Appellant's, in the commission of the crime. The statement is sufficiently self-inculpatory because Barnes implicates himself in the same criminal activity with Appellant. *See United States v. Saget*, 377 F.3d 223, 231 (2d Cir. 2004) (finding no abuse of discretion in the district court's admission of statements by a co-conspirator describing criminal conduct that the co-conspirator and the defendant had engaged in together).

Appellant compares his circumstances to those in *State v. Fuller*, 337 S.C. 236, 523 S.C. 2d 168 (1999). The South Carolina Supreme Court found a defendant's collateral statement to law enforcement containing the inculpatory statement of a decedent was inadmissible against his co-defendant because the defendant's collateral statement was exculpatory. In *Fuller*, co-defendant McKinney testified one of Fuller's accomplices told McKinney he and Fuller, along with another, committed the attempted robbery and murder of the victim. *Id.* at 243, 523 S.E.2d at 171-172. The accomplice was killed in another attempted robbery and was unavailable to testify. *Id.* at 239, 523 S.E.2d at 169. According to McKinney, he was supposed to aid Fuller and his accomplice on the night of the robbery, but he was at a friend's house instead. McKinney learned the robbery proceeded without him from the statement of the now deceased accomplice. *Id.*

at 243, 523 S.E.2d at 171-172. The Court cited *Lilly v. Virginia* for the proposition that such third party statements were unreliable. *Id.* at 244, 523 S.E.2d at 172, citing *Lilly v. Virginia*, 527 U.S. 116, 118-119 (1999) (finding the confession of the accomplice not a declaration against penal interest, but instead part of a custodial confession viewed with suspicion given the strong motivation to implicate the defendant and exonerate himself).

Both *Fuller* and *Lilly* involved the testimony of an admitted accomplice who attempted to distance himself from the crime charged by making inculpatory statements concerning some less significant criminal activity and exculpatory statements concerning the more serious criminal activity of the defendant. In *Fuller*, the accomplice's collateral statement to police removed himself from the murder of the victim on the night of the crime and provided the accomplice with an alibi. In *Lilly*, the accomplice admitted to stealing alcohol but implicated defendant and another in the theft of guns and the shooting of the victim. Both the South Carolina and the United States Supreme Courts found these types of self-serving statements unreliable. In *Fuller* the Court noted, however, "it may very well be that a statement which qualifies under Rule 804(b)(3) may also be used against a criminal defendant. For example, an accomplice's self-inculpatory statement combined with other independent evidence can inculpate a criminal defendant." *Fuller* at 245, 523 S.E.2d 168, 172 (1999). The Court also said, "a statement is not per se inadmissible simply because the declarant names another person. Nevertheless, such statements must meet the strict requirements of Rule 804(b)(3). *Id.* at 245.

Barnes' letter to his mother is distinguishable from the statements in *Williamson* and *Fuller* because the statement was in no way self-exculpatory. It should also be noted

in *Williamson* and *Fuller*, the statements were made to police (in the case of *Williamson*), or to a third party, but related to the police by an accomplice in a collateral statement (in the case of *Fuller*). When viewed in context, these testimonial statements to law enforcement are less reliable than those made by Barnes to his mother in a purportedly private correspondence. While the statements to law enforcement may have been induced by a desire for leniency, Barnes could expect no such deal from his mother.

The Letter was Independently Corroborated

In addition to finding the inherent indicia of trustworthiness of the statement made against his penal interest, the trial judge correctly found other independent evidence corroborated the reliability of Barnes' letter to his mother. First, multiple witnesses testified Barnes and Appellant were together late the night before the murder. (R. p. 846-849.) Barnes' own mother testified the two men were together at her house before leaving later that night, and she sent her son Troy out to look for Barnes following Appellant's phone call to her house. (R. p. 605 – p. 607.) The video surveillance showed two suspects with guns firing at the victim. (R. p. 1404 - p. 1405.) Two different types of shell casings were found at the scene of the crime. (R. p. 736 - 739.) Rolanda Coleman testified she saw Appellant hiding his gun the following morning, and she identified Barnes in the surveillance video. (R. p. 471 - p. 489.) Appellant's description of the crime to inmate Dominique Wright matched Barnes' account to his mother: two men attempted to rob the club, but because it was closed decided to rob the woman at the bakery next door -- shooting her when she resisted. (R. p. 698 - p. 703.) Furthermore, inmate Michael Schaefer also testified Appellant told him a similar story. (R. p. 874, lines 10-17.) Inmate

Michael Peterson overheard Appellant and Troy Stevenson discussing the murder in the showers. (R. p. 794, lines 4-13; p. 797, lines 1-25.)

The details contained in Barnes' letter to his mother were fully corroborated with the evidence at trial: The two men intended to rob the Ale House, but it was closed. The men chose the bakery because they saw an opportunity. Two men entered the bakery with guns. The victim swung at the men. Finally, Barnes' statement, "I closed my and jump I got scared ma I didn't want to do it" refers to the moment he shot the victim. (State's Exhibit 404.)

Barnes' statement to his mother qualifies as a statement against interest under 804(b)(3) because he sufficiently inculpates himself in the same criminal activity as Appellant. Viewed in the context of a letter to his mother, as opposed to a testimonial confession or statement to police, Barnes had no reason to believe he would incur favor or leniency by making the statement. Though the letter incriminated Appellant as well, other independent evidence corroborated the statement and inculpated Appellant as an accomplice. S.C.R.E. 804(b)(3) does not limit the use of a statement only against the party making the statement. Thus, the letter is an exception to the hearsay rule as a statement against interest, and may be offered against the declarant or his co-defendant.

The Limiting Instruction was Beneficial to Appellant

Because the letter was properly admissible against both Barnes and Appellant, the trial judge's efforts to issue the limiting instruction to the jury to protect Appellant was in no way prejudicial. In fact, Appellant was afforded a benefit he did not deserve. Appellant's argument the judge should have granted a mistrial because a limiting instruction was insufficient is based on the holding of *Bruton* and *State v. Henson*, 407

S.C. 154, 754 S.E. 2d 508 (2014). As thoroughly discussed in the previous sections, *Bruton* is inapplicable to these facts because no testimonial statement was given. In the *Henson* case, the redacted testimonial confession to the police used against the co-defendant in a joint trial was held to be a *Bruton* violation. Neither case is applicable to the facts at hand, in which a sufficiently inculpatory nontestimonial statement that is independently corroborated is offered against a codefendant.

While the jury's actual attention to the limiting instruction is unknown, the assumption the jury properly followed the instruction resulted in one less piece of evidence considered against the Appellant. Moreover, even if the jury did consider the letter against Appellant, it was proper for them to do so. Therefore, the sufficiency of the limiting instruction offers no basis for reversible error.

Harmless Error

Even if, as Appellant argues, the letter was admitted in violation of S.C.R.E. 801, its admission was harmless beyond a reasonable doubt. In *Chapman v. California*, the Supreme Court held error of even a constitutional magnitude may be deemed harmless if, "considering the entire record on appeal, the reviewing court finds beyond a reasonable doubt that the error did not contribute to the verdict." 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); *see also Taylor v. State*, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993). Similarly, our Supreme Court has intimated that any error in the failure to suppress a statement deemed inadmissible hearsay is subject to a harmless error analysis. *State v.Mitchell,* 286 S.C. 572, 336 S.E.2d 150 (1985); *see also State v. Key*, 256 S.C. 90, 180 S.E.2d 888 (1971) (Stating error is harmless when it "could not reasonably have affected the result of the trial.")

Here, considering the entire record on appeal, any error in admitting Barnes' letter to his mother was harmless beyond a reasonable doubt. The State presented compelling evidence of Appellant's guilt of murder, sufficiently proving Appellant and his co-defendant were the perpetrators of the crime, even without Barnes' letter. The State presented the following evidence against the co-defendants:

- The bakery's security cameras revealed two armed perpetrators, one wearing a red hoodie and the other wearing a grey hoodie;
- A third suspect entered the doorway as the shooting begins;
- .45 G.A.P. and .40 caliber shell casings were found at the scene;
- Appellant and Barnes lived within walking distance of the bakery;
- Police discovered ammunition of the same caliber at that at the scene of the crime in Appellant's home.
- Police also discovered a Glock magazine in the purse of Appellant's girlfriend;
- Rolanda Coleman testified Appellant returned the morning after the murder with his gun, which he attempted to hide in his baby's crib;
- Coleman overheard a conversation in which Appellant's mother instructed him to get rid of the gun;
- Coleman identified Trenton Barnes in the video as the man in the grey hoodie;
- Donald Moore overheard Appellant and Stevenson planning the robbery of the Ale House before the murder;

- Donald Moore saw Appellant with a Glock prior to the murder;
- Donald Moore identified Appellant in the video as the man wearing the red hoodie;
- Barnes' mother placed the three men together the night of the murder;
- Cell phone records corroborated Ms. Barnes story Appellant called the house before she sent her son out to find the men;
- Ms. Barnes testified Appellant wore a red hoodie, Barnes wore a grey hoodie, and Stevenson wore a dark jacket the night of the murder;
- Mary Brown also placed the two men together the night of the crime, and described the red and grey hoodies the men wore. Brown also recognized the men in the video;
- Dominque Wright testified Appellant told him about the murder in an effort to discuss possible defenses to the crime. Wright's testimony contained details corroborated by the security video;
- Michael Peterson testified Appellant sought him out in the library to discuss his case. Appellant admitted his involvement to Peterson;
- Peterson overheard Appellant and Stevenson discussing the murder, with Appellant stating the police only had shell casings;
- Michael Schaefer testified Appellant described the night of the murder, and later stated to him, "I shouldn't have shot that bitch;"

- Police found gunshot residue on Appellant's black gloves;
- Analysts discovered internet searches of the crime from Appellant's phone data, including images released by the media with the perpetrators' descriptions; and
- DNA found on the spoon Hunnewell used to defend herself could not exclude Appellant and Barnes.

The State's case against Appellant was compelling. Indeed, Appellant's own statements to others in which he described the killing may have been the evidence most convincing to the jury. Even excluding Barnes' letter to his mother, the record supports the jury's verdict of murder beyond of reasonable doubt. Any error in its admission by the trial court judge was harmless.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

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January 25, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
JAN 25 2016
SC Court of Appeals

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

APPELLANT,

Appellate Case No. 2014-002682.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

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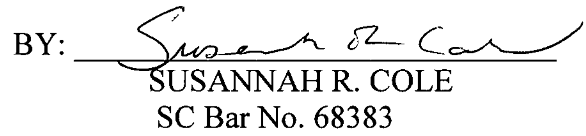
BY: 
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STATE OF SOUTH CAROLINA
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THE STATE,

RESPONDENT,

V.

LORENZO BERNARD YOUNG,

APPELLANT,

Appellate Case No. 2014-002548

PROOF OF SERVICE

I, Susannah Cole, counsel for the Respondent, certify that I have served the within Final Brief of Respondent on Appellant by depositing copies of the same in the United States mail, first class, postage prepaid, addressed to her attorney of record:

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

This 25th day of January, 2016.

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