STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARCO SIARA SANDERS

APPELLANT,

Appellate Case No. 2014-001201.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

KAYCIE S. TIMMONS
Assistant Attorney General
SC Bar No. 100237

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

E.L. CLEMENTS, III
Solicitor, Twelfth Circuit
Box Q, City-County Complex
Florence, SC 29501
(843) 665-3091

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ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to allow cross examination of a witness about the fact that he was fired from the Marion County Sheriff's Department for issues with controlled substances, when the witness placed Appellant and the co-defendant in a vehicle matching the description of the vehicle seen leaving the crime scene?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion in in prohibiting Appellant from cross-examining a witness about being fired from the sheriff's office for issues with controlled substances where Appellant failed to establish the witness had any bias, prejudice, or motive to misrepresent.

RESPONDENT'S STATEMENT OF THE CASE

A Marion County Grand Jury indicted Appellant, Marco Siara Sanders, in May 2013 for the murder of Samuel Rowell (Victim), as well as for armed robbery, burglary first degree, attempted murder, possession of a firearm in commission of a violent crime, and conspiracy. (R. pp. 708–10).

Appellant had three pretrial hearings before the Honorable D. Craig Brown. The pretrial hearings were held on May 13, 2013, April 21, 2014, and May 8, 2014.

On May 19, 2014, Appellant's case was called to trial before Judge Brown. (R. p. 1). Appellant was represented by Ralph Wilson, Sr., Esquire, during the four-day trial. (R. p. 1). Appellant was tried along with his co-defendant, Tyrell Woods, who was represented by Scott P. Floyd and William Vick Meetze, Esquires. (R. p. 1). Solicitor Ed Clements and Deputy Solicitor Dudley Saleeby represented the State. (R. p. 1). On May 22, 2014, the jury returned verdicts of guilty on all counts as charged for both Appellant and Woods. (R. p. 682, line 23–p. 684, line 24). Judge Brown sentenced Appellant to life imprisonment for murder, to life imprisonment for burglary first degree, to thirty years of incarceration for armed robbery, to thirty years of incarceration for attempted murder, to five years of incarceration for criminal conspiracy, and to five years of incarceration for possession of a weapon during the commission of a violent crime. (R. p. 703, line 14–p. 704, line 9). Judge Brown set the sentences to run consecutively. (R. p. 704, lines 11–13).

Thereafter, Appellant served a timely notice of appeal. (R. p. 707).

RESPONDENT'S STATEMENT OF THE FACTS

The Shooting

Victim ran a club out of his home for parties and get-togethers. (R. p. 135, line 24–p. 136, line 3). Eddie Godbold, Jr., Victim's friend and neighbor, stopped by Victim's home on July 4, 2012 to borrow a deep fryer. (R. p. 129, line 14–p. 130, line 16). When he arrived, Godbold saw Victim's truck parked outside, but Godbold received no answer when he knocked on the front door and called for Victim. (R. p. 131, lines 4–14). Godbold then walked around to the back and knocked and called for Victim. (R. p. 131, lines 12–16). Again, Godbold received no answer. (R. p. 131, lines 10–16). As Godbold was walking to the front of the home, he passed a side door and heard Victim. (R. p. 131, lines 15–20). According to Godbold, "[Victim] said, 'Eddie.' He says, 'They're trying to rob me.' He said, 'Open the door.'" (R. p. 131, lines 17–18). As Godbold reached for the door, he heard gunshots. (R. p. 131, lines 18–20). He heard about four or five gunshots total, but Godbold believed that three of those shots were fired at him. (R. p. 132, lines 12–14; R. p. 137, lines 16–25). Godbold then ran and hid for a few minutes. (R. p. 131, line 24–p. 132, line 11). He did not see anyone during the ordeal because it was dark outside. (R. p. 131, lines 21–22; R. p. 138, lines 1–3). Eventually, Godbold snuck away and went down the road to call the police. (R. p. 133, line 16–p. 135, line 6). Godbold testified that he told the police he had seen a white SUV, which he told the police was an Escalade, backed up in a driveway between Lafayette Reed's house and the Victim's house. (R. p. 143, line 2–p. 145, line 5).

Lafayette Reed, who lived about a hundred yards from Victim's home, was standing in his yard the night of July 4, 2012 when he heard about three gunshots coming

from the direction of Victim's home. (R. p. 341, line 2–p. 342, line 24). He immediately grabbed his own gun and got in his car to head towards Victim's place. (R. p. 342, line 25–p. 343, line 10). As Reed approached Victim's home, he saw Godbold crouched down and getting into his car. (R. p. 343, lines 11–19). But before Reed could get to Godbold's car, a set of lights from another car came on and came toward him quickly, and Reed had to run off the road to avoid them. (R. p. 343, line 17–p. 345, line 2). Though Reed did not see who was driving the car, he testified that it was a light-colored vehicle. (R. p. 345, line 3–p. 347, line 13). According to Reed, it "looked like it was a Expedition or a Ford Explorer." (R. p. 345, lines 5–6). Reed attempted to follow the vehicle, but he was unable to find it, so he turned around and went back toward Victim's home. (R. p. 349, line 14–p. 352, line 24).

A group of people, including Godbold and Reed, gathered outside Victim's home. (R. p. 352, line 25–p. 353, line 20). Reed testified that the side door to Victim's home was open and that he could see Victim's feet when he peered through the door. (R. p. 354, lines 9–16). Reed also called Victim's name but did not get a response. (R. p. 354, lines 17–20). According to Reed, he never saw anyone get too close to the house. (R. p. 353, line 13–p. 355, line 13).

The Police Investigation

Officers from the Marion County Sheriff's Office arrived at Victim's home, and they secured the scene. (R. p. 153, line 11–p. 163, line 13; R. p. 172, line 7–p. 177, line 23). Officers with the South Carolina Law Enforcement Division (SLED) then processed the scene. (R. p. 227, line 14–p. 291, line 16). The SLED officers found three fired 9 mm cartridge cases in the grass near the side door. (R. p. 234, line 19–p. 236, line 7).

The SLED officers found Victim laying on the floor inside the door. (R. p. 236, lines 15–24). SLED Officer Sabrina Fellers described what she saw:

> He was clothed. He did not have shoes on, but he had socks on. The ankle area was bound with duct tape. His hands were behind his back and there was duct tape wrapped around those. And he had a white undergarment stuffed in his mouth with duct tape around his head. There was a blood pool around the head area, and a hat was on the floor kind of towards the front of the residence from his head.

(R. p. 236, lines 18–24). Three of Victim's pockets appeared to have been pulled out. (R. p. 237, lines 2–13). The officers noticed surveillance cameras around the outside of Victim's house. (R. p. 238, line 22–p. 239, line 10). There was a monitor at the foot of Victim's bed, and some of the cords to that monitor had been cut. (R. p. 241, lines 13–23; R. p. 257, lines 14–21). The pillows on Victim's bed did not have pillowcases. (R. p. 240, line 23–p. 241, line 1). Fellers found two pillowcases filled with items sitting on the couch in the living room—one contained a Crown Royal box and ten boxes of cigars, and the other contained numerous toiletry items and prescription bottles. (R. p. 242, lines 10–16; R. p. 260, lines 9–23). The officers found the surveillance video recorder box with the cords cut in the dining area. (R. p. 267, lines 1–18; R. p. 417, line 7–p. 418, line 18). According to Fellers, the door to a storage room in Victim's home had been damaged. (R. p. 243, lines 1–6). The storage room contained tobacco items, liquor, and beer. (R. p. 243, lines 1–6).

At the end of the first night, the only lead the police had was a white, Expedition-style SUV.[1] (R. p. 412, lines 7–18). A couple days after the shooting, James Lee, the lead investigator on the case, spoke with Levern "JJ" Nichols, another law enforcement

[1] Officer Neil Rouse testified that he took statements from various people who had gathered near Victim's house the night of the shooting, and those statements drew his attention "to two black males and a white SUV." (R. p. 512, line 20–p. 513, line 16).

officer, and Nichols told Lee that the day before the shooting he had seen Appellant and Tyrell Woods, Appellant's nephew, in a white Expedition. (R. p. 389, line 16–p. 393, line 19; R. p. 412, line 14–p. 413, line 12). The police then started looking for Appellant and Woods. (R. p. 413, lines 7–12). Lee found that Woods had been seeing a woman who lived in Florence, and they learned that she owned a white Expedition, and SLED subsequently searched that Expedition and photographed it. (R. p. 414, line 7–p. 416, line 17; R. p. 445, line 1–p. 447, line 13; State's Exs. 17-A & 17-B).

Police officers did not get warrants for Appellant and Woods until July 12, 2012 when they showed Shawn Davis two photo line-ups, one with Appellant's photo and one with Woods's photo. (R. p. 437, line 15–p. 438, line 22).

The surveillance video recorder box found at Victim's home was taken to SLED, but the box had been damaged, and it took some time until law enforcement had the appropriate equipment to view the video surveillance. (R. p. 417, line 7–p. 418, line 18; R. p. 476, line 20–p. 490, line 23). A portion of that video surveillance—in particular, a portion comprised of various clips from July 4, 2012 from 7:28 until 8:03 p.m.—was played for the jury. (R. p. 479, line 5–p. 489, line 5; State's Ex. 18). The video shows a white SUV drive by the front of Victim's house around 7:28:20. (State's Ex. 18). A view from a different camera shows the same white SUV drive by the back of Victim's home, going away from the home at 7:29:34. (State's Ex. 18). At 7:36:48 the same white SUV drives by the back of Victim's home going toward the home. (State's Ex. 18). At 7:37:23 a man in a black t-shirt and long pants approaches the front of Victim's home, knocks on the door, and then walks out of the view of the camera. (State's Ex. 18). At 7:48:15 another man, wearing plaid pants and a white tank top, approaches

Victim's front door. (State's Ex. 18). The man in the black t-shirt also approaches the door. (State's Ex. 18). Both men have guns in their hands. (State's Ex. 18). The man in the plaid pants appears to open the front door as the man in the black t-shirt aims his gun at the door. (State's Ex. 18). The two men enter the home at 7:48:41. (State's Ex. 18). The surveillance video recorder stopped recording at 8:03. (R. p. 486, lines 7–15).

Multiple officers testified that when they viewed the surveillance video, they recognized Appellant on the video. Lee recognized both Appellant and Woods on the video.[2] (R. p. 438, line 23–p. 441, line 6). Rouse viewed the video in September 2012, and he recognized Appellant on the video.[3] (R. p. 515, line 12–p. 516, line 24). Rouse testified that he had known Appellant since December 1993 when Appellant was twelve years old. (R. p. 516, lines 14–24).

Victim was killed by a close-range gunshot to the head. (R. p. 206, line 14–p. 211, line 25). Dan Defreese, an expert in firearms and tool mark identification from SLED, testified that the bullet fragment removed from Victim's head was a fragment of a .22 caliber bullet. (R. p. 532, line 20–p. 534, line 13). He also testified that the three 9 mm cartridges found at the scene were fired from the same gun, likely a semi-automatic. (R. p. 530, line 1–p. 532, line 19). Defreese testified that the same weapon could not have fired both the .22 and the 9 mm bullets. (R. p. 534, lines 10–18). Defreese also testified that he watched the surveillance video from Victim's home—he identified one of

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[2] Investigator Lee's testimony was consistent with his testimony in a pretrial hearing that he recognized both Appellant and Woods in the video. (R. p. 30, line 8–p. 46, line 24). Lee had known both Appellant and Woods since 2007. (R. p. 34, lines 2–24).

[3] Rouse testified in a pretrial hearing that he did not immediately recognize Woods from the video, but he recognized Appellant as soon as he saw the video, and he had known Appellant for "[p]robably fifteen years" though he admitted on cross-examination it had actually been longer than that. (R. p. 15, line 15–p. 29, line 2).

the guns seen in the video as a semi-automatic (State's Exs. 19-H & 19-Q) and the other gun as a revolver with something that appeared to be a homemade silencer attached to the barrel (State's Exs. 19-I & 19-K). (R. p. 538, line 16–p. 545, line 2).

Thomas Darnell, an expert in latent print identification from SLED, testified that he tested multiple items recovered from Victim's house and found both Appellant's and Woods's prints on those items. In particular, he identified Appellant's fingerprints on two cigar boxes found in a pillowcase. (R. p. 563, line 9–p. 564, line 1; *see also* R. p. 264, line 16–p. 265, line 15). He also identified Woods's fingerprints on cigar boxes and on a Crown Royal box found in the pillowcase. (R. p. 562, line 3–p. 563, line 7). Woods's fingerprints were also found on the duct tape from Victim's head and feet. (R. p. 565, line 8–p. 568, line 5).

ARGUMENT

The trial court did not err in denying Appellant's request to impeach a witness about being fired from the sheriff's office for issues with controlled substances where Appellant failed to establish the witness had any bias, prejudice, or motive to misrepresent in connection to the firing.

Introduction

Appellant wanted to impeach Levern "JJ" Nichols about the fact that he was fired from the Marion County Sheriff's Office for issues with controlled substances. However, that evidence was not proper impeachment under Rule 608(c), SCRE because Appellant failed to establish any bias, prejudice, or motive to misrepresent on Nichols's part. Thus, the trial court properly limited Appellant's cross-examination of Nichols. However, even if the trial court abused its discretion, such error was harmless.

How the Issue Was Raised

Levern "JJ" Nichols testified that he ran a detail shop where all kinds of cars were hand washed and detailed. (R. p. 377, line 14–p. 378, line 10). Nichols testified that he had previously worked for the Marion County Sheriff's Office. (R. p. 378, lines 11–13). Nichols testified that, at the time officers were still looking for a white SUV that had been seen near Victim's home, he told Investigator James Lee that he had seen Appellant and Woods in a white Expedition on July 3, 2012, the day before the shooting.[4] (R. p. 378, line 17–p. 380, line 10). Nichols testified that he had known Appellant for about twenty years and had known Woods for a year or two. (R. p. 379, lines 12–17). He then made an in-court identification of Appellant and Nichols. (R. p. 380, lines 11–23).

[4] Nichols later testified that his oral statement was given the week after the shooting. (R. p. 398, line 11–p. 401, line 19).

Appellant's counsel then asked to take up a matter outside of the jury's presence, and the trial judge excused the jury. (R. p. 381, lines 3–16).

Appellant's counsel noted that he had previously made a motion asking to have *in camera* hearing prior to any in-court identifications, which had not been done for Nichols. (R. p. 381, line 18–p. 382, line 2). The Solicitor responded that he had forgotten about the request. (R. p. 382, lines 7–13). The trial court acknowledged that what Appellant's counsel had asked for had not been done but found that a proper foundation had been laid for Nichols's knowledge of both Appellant and Woods. (R. p. 382, line 21–p. 383, line 16). The trial court stated that based on what he had heard from Nichols, he would have allowed the in-court identifications, and he found there was no prejudice to the defendants from the in-court identifications. (R. p. 383, lines 7–17). The trial court then gave counsel for both defendants the opportunity to further question Nichols *in camera*. (R. p. 383, lines 16–19).

Prior to beginning his questioning of Nichols, Appellant's counsel indicated that he was not comfortable asking some of the questions Appellant wanted him to ask. (R. p. 383, lines 20–22). He then proceeded with the following *in camera* examination:

Q: Let me ask you just a couple of questions. You said that you've known Mr. Sanders for twenty years; is that correct?

A: Yes, sir.

Q: How do you know him?

A: Well, not personally. Just, you know, I've been in business in Marion for about the last twenty years; so I've had different locations with detail shops. You always see him I mean regularly throughout the day and stuff like that.

Q: Okay. Have you ever been involved with drugs with Mr. Sanders?

A: No, I haven't.

Q: Okay. Have you ever bought or sold drugs to or from him?

A: No, sir.

Q: All right. Now, you—when you made this—when you made this statement, you were working for the Marion Sheriff's Office?

A: Yes, sir.

Q: All right. And you're no longer there?

A: No, sir.

Q: All right. Why is that?

A: I was fired for issues with controlled substances.

Q: Issues with what?

A: Controlled substance.

(R. p. 384, line 21–p. 385, line 18). Woods's counsel and the Solicitor then questioned Nichols, and as the jury came back into the courtroom, the trial judge had a brief bench conference with both sides. (R. p. 385, line 23–p. 389, line 3).

During the remainder of Nichols's direct examination, he gave additional details about the statements he made to Lee, and he gave additional details about seeing Appellant and Woods on July 3, 2012. (R. p. 389, line 16–p. 394, line 12). For instance, Nichols testified that he saw Appellant driving a Ford Expedition in the parking lot of a gas station. (R. p. 390, lines 12–25). Woods was in the passenger seat at the time. (R. p. 390, lines 19–23). Nichols also identified pictures of the vehicle he had seen Appellant driving. (R. p. 392, line 3–p. 394, line 6; State's Exs. 17-A & 17-B).

On cross-examination, Appellant's counsel did not ask the same questions he had asked Nichols during the *in camera* hearing. (R. p. 394, line 17–p. 398, line 4). Instead,

he focused on the timing of Nichols's oral statement to Lee versus his written statement. (R. p. 394, line 17–p. 398, line 4). Appellant's counsel concluded his questioning by accusing Nichols of making up his story "after the fact in order to inculcate these defendants, . . ." which Nichols denied. (R. p. 398, lines 2–4).

After a brief redirect and recross-examination, the trial court excused the jury and indicated that, at the earlier bench conference, the court had informed Appellant's counsel that it would not allow the questions Appellant's counsel had asked during the *in camera* examination. (R. p. 398, line 10–p. 404, line 17). The trial court then offered to let Appellant's counsel ask any additional questions he may have had out of the presence of the jury, but Appellant's counsel declined. (R. p. 404, line 13–p. 405, line 8). The trial court indicated that it had limited counsel's cross-examination of Nichols based on *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000) and Rule 609, SCRE. (R. p. 405, line 15–p. 406, line 21). The trial court noted that under Rule 609 a witness could be impeached by evidence of conviction of certain crimes, but there was no evidence that Nichols had been convicted of a crime. (R. p. 405, line 23–p. 406, line 13). The trial court additionally noted that violations of narcotics laws are generally not probative of truthfulness or untruthfulness. (R. p. 406, lines 13–16). The trial court reaffirmed his ruling limiting the cross-examination based on Rules 608 and 609 and on *Aleksey*. (R. p. 406, lines 17–21).

Counsel then indicated "[his] objection was twofold. One on identification, but also on credibility." (R. p. 406, lines 22–24). In response, the trial court reaffirmed his prior rulings on those objections. (R. p. 406, line 25–p. 407, line 9).

Standard of Review

The Confrontation Clause of the Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."

> The right to a meaningful cross-examination of an adverse witness is included in the defendant's Sixth Amendment right to confront his accusers. This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination. On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant.

State v. Aleksey, 343 S.C. 20, 33–34, 538 S.E.2d 248, 255 (2000) (internal quotations and citations omitted). Generally, "[t]he admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's discretion will not be reversed absent an abuse of discretion." *State v. Morris*, 376 S.C. 189, 205–06, 656 S.E.2d 359, 368 (2008) (citing *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002)). And even where a court errs in limiting a defendant's cross-examination of a witness, that error is subject to a harmless error analysis. *See State v. Starnes*, 340 S.C. 312, 326 n.11, 531 S.E.2d 907, 915 n.11 (2000).

Analysis

No Bias, Prejudice, or Motive to Misrepresent

The trial court did not abuse its discretion in limiting Appellant's counsel's cross-examination of Nichols where the information counsel sought to elicit was not proper impeachment under Rule 608, SCRE.[5]

Appellant asserts that, pursuant to Rule 608(c), SCRE, the trial court should have permitted the cross-examination of Nichols on the fact that he was fired from the Marion County Sheriff's Department for issues with controlled substances. Rule 608(c) provides that "[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Appellant claims that "[t]he fact that Nichols was later fired from the Marion County Sheriff's Department for issues with controlled substances shows that at the time Nichols made the statement implicating Appellant, he needed to try and stay in the good graces of the investigators." Final Br. of Appellant, pp. 8–9. However, Appellant's inference that

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[5] Appellant has only argued in his brief that the trial judge should have permitted the cross-examination of Nichols pursuant to Rule 608(c), SCRE. Nevertheless, Respondent would note that in addition to relying on his reading of Rule 608 in limiting the cross-examination, the trial judge also relied on Rule 609, SCRE and *Aleksey v. State*, 343 S.C. 20, 538 S.E.2d 248. Respondent notes that the cross-examination testimony that Appellant's counsel sought to elicit was clearly not proper impeachment under Rule 609, SCRE because there was no evidence that Nichols was convicted of any crimes involving controlled substances. *See* Rule 609, SCRE.

There is no testimony detailing what Nichols's issues with controlled substances were, but had Nichols been convicted of some crime in connection to his issues with controlled substances, the conviction still may not have been admissible under Rule 609(a)(2). While issues with controlled substances and narcotics violations are not necessarily one and the same, the South Carolina Supreme Court had indicated, "[n]arcotics offenses are generally not considered probative of truthfulness." *Aleksey*, 343 S.C. at 34, 538 S.E.2d at 255. Respondent also notes that *Aleksey* recognizes that dismissed narcotics indictments are not necessarily proper impeachment under Rule 608(c). *Id.*

Nichols had a motive to misrepresent at the time he made his statement to Lee goes beyond the bounds of the evidence elicited at trial. Nichols's testimony established (1) that Nichols was working for the sheriff's office in July 2012 when he made a statement to Lee identifying Appellant and Woods and (2) that, as of May 2014 (the time of trial), Nichols had been fired from the sheriff's office for issues with controlled substances. There was no testimony regarding when Nichols was fired, nor was there any testimony regarding whether he even had issues with controlled substances (or whether he was suspected of having issues) in July 2012. The inference that Appellant makes—that Appellant had a motive to misrepresent in July 2012 because he was fired some time later for issues with controlled substances—goes too far.

This case has similarities to *State v. Burgess*, 408 S.C. 421, 759 S.E.2d 407 (2014), where the South Carolina Supreme Court found a trial court properly limited the cross-examination of a police officer about his personnel records where the evidence contained in those personnel records failed to establish the officer lacked any credibility due to a bias against the defendant. Though the officer had disciplinary problems, the court noted "each of the disciplinary incidents occurred after [the defendant]'s arrest and did not involve [the defendant]. Furthermore, [the officer]'s hostile actions were directed at co-workers rather than subjects of criminal investigation." *Burgess*, 408 S.C. at 442, 759 S.E.2d at 418. Here, too, the evidence does not establish a nexus—temporal or otherwise—between Nichols's statement identifying Appellant and his dismissal from the sheriff's office. Indeed, the evidence presented at trial did not directly establish that Nichols had any bias, prejudice, or motive to misrepresent, nor can any of those mentalities be inferred from the evidence. Nichols's *in camera* testimony regarding

being fired was not proper impeachment evidence under Rule 608(c), SCRE. Accordingly, the trial court did not err in limiting Appellant's counsel's cross-examination of Nichols on that issue.

Harmless Error

Even had Appellant established that Nichols had some motive to misrepresent when he first told Lee that he had seen Appellant and Woods in a white Expedition on July 3rd, the exclusion of the evidence regarding Nichols's dismissal from the sheriff's office was harmless.

> "Whether such an error is harmless in a particular case depends upon a host of factors . . . . The factors include the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution's case."

State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986)).

Most importantly, the State had a very strong case against Appellant even without Nichols's statement. There was surveillance video that showed a white SUV driving by Victim's home multiple times and shortly thereafter showed Woods approaching Victim's door and then knocking and walking away. Then both Woods and Appellant walked up to Victim's door, guns drawn, and entered Victim's home. The evidence presented at trial established that Victim was shot and killed approximately an hour later, apparently during a robbery that was interrupted by Godbold. And shortly after Victim was shot, a white SUV sped away from a close proximity to Victim's house. Both Appellant's and Woods's fingerprints were found on items in the pillowcases left in

Victim's home, and Woods's fingerprints were found on the duct tape that bound Victim's head and feet. The evidence against Appellant was overwhelming.

Additionally, though Nichols's statement to Lee caused police to begin looking for Appellant and Woods, his testimony was not particularly important as far as establishing guilt. There was circumstantial evidence that placed Appellant and Woods in the white Expedition even closer to the time of the murder—namely, the surveillance video that showed Appellant and Woods approaching Victim's home shortly after a white SUV drove by multiple times, in conjunction with Godbold's and Reed's testimony putting the white SUV in close proximity to Victim's house at the time of the burglary/murder. Another factor that supports Respondent's contention that any error was harmless is that Appellant's counsel was permitted to cross-examine Nichols fairly extensively and quite aggressively on the veracity of his oral and written statements to Lee. Indeed, the only *Van Arsdall* factor in Appellant's favor is that Nichols's testimony was not cumulative as no other evidence put Appellant and Woods in the white SUV on July 3, 2012. The majority of the *Van Arsdall* factors indicate that any error in limiting the cross-examination of Nichols was harmless.

CONCLUSION

For all the foregoing reasons, Respondent respectfully asserts that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

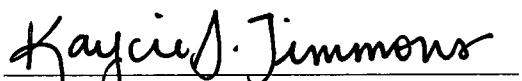
DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

KAYCIE S. TIMMONS
Assistant Attorney General
SC Bar No. 100237

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

E.L. CLEMENTS, III
Solicitor, Twelfth Circuit

ATTORNEYS FOR RESPONDENT



Kaycie S. Timmons
ATTORNEY FOR RESPONDENT

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MARCO SANDERS,

APPELLANT,

Appellate Case No. 2014-001201.

CERTIFICATE OF COMPLIANCE

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

Kaycie S. Timmons
Assistant Attorney General
S.C. Bar No. 100237

Office of the Attorney General
Post Office Box 11549
Columbia, S.C. 29211-1549
(803) 734-0265

ATTORNEY FOR RESPONDENT

July 15, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUL 15 2015
SC Court of Appeals

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARCO SANDERS,

APPELLANT,

Appellate Case No. 2014-001201.

PROOF OF SERVICE

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

Kathrine H. Hudgins
Appellate Defender
SCCID/Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

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

This fifteenth day of July, 2015.

Kaycie S. Timmons

Kaycie S. Timmons
Assistant Attorney General
SC Bar No. 100237

ALAN WILSON
ATTORNEY GENERAL

July 15, 2015

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

Re: The State v. Marco Sanders
Appeal from Marion County
Appellate Case No. 2014-001201

Dear Ms. Kitchings:

Enclosed please find the original plus nine (9) copies of the ***Final Brief of Respondent*** and ***Certificate of Compliance***, along with proof of service, in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Kaycie S. Timmons
Assistant Attorney General

KST/mv
Enclosures

cc: Kathrine H. Hudgins, Appellate Defender
The Honorable E. L. Clements, III, Twelfth Circuit Solicitor
Trisha Allen, Victim Services