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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Robert E. Hood., Circuit Court Judge

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SC Court of Appeals

Trial Court Case No.: 2014-GS-40-0752
2014-GS-40-0754
2014-GS-40-0755
2014-GS-40-0756

Appellate Case No.: 2014-002771

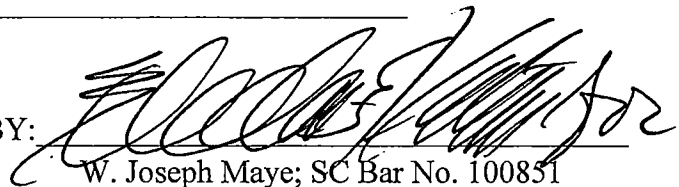
The State,Respondent

v.

Trenton Barnes, Appellant

REPLY BRIEF OF APPELLANT

BY:



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June 7, 2016

ATTORNEY FOR APPELLANT

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FACTS

At trial, the testimony of Mr. Wright and Mr. Schaefer demonstrate that Young's inculcating statement did not provide sufficient detail to immediately inform the jailhouse witnesses of the identity of Young's accomplices, nicknamed Trigg and Trap. (R. p. 455, lines 3-7; R. p. 555, lines 3-15) Appellant's and Stevenson's association with those nicknames was discovered after such statements from Young. *Id.* The record is silent as to the how and in what context Mr. Wright and Mr. Schaefer were informed of who those nicknames correspond to. (R., p. 452 through 468; R. p. 551 through 567). Despite the delay in associating Appellant to Young's statements, and without knowledge of what context the association was acquired, the trial court permitted Mr. Wright and Mr. Schaefer to testify as to Mr. Young's statements, in denial of counsel's objection pursuant to South Carolina Rule of Evidence 804(b)(3), and likewise continued to deny Appellant's motion for severance. (R. p. 554, lines 4-6; R. p. 454, lines 23-25; R. p. 836, lines 8-10; R. p. 109, lines 22-23) The court also permitted prior inconsistent statements of Ms. Barnes, days after her testimony at trial, over objection of counsel pursuant to South Carolina Rule of Evidence 613. (R. p. 680, line 12 through R. p. 688, line 16)

During the trial, a letter written by Appellant was admitted which seemingly admits to the crimes and absolves his older brother, Troy Stevenson, from participation. (R. p. 400, lines 23-24; R. p. 420, line 13) Trial Counsel for Appellant argued that the letter to his mother seemingly confessing to the crimes was simply the act of a little brother trying to protect his big brother. (R. p. 217, lines 9-18; R. p. 433, lines 8-25; R. p. 973, lines 9 through R. p. 974, line 18; R. p. 975, lines 7-11). In addition to the letter, there is minimal evidence which lends support to the identification of Appellant as having committed the

crimes of July 1, 2013. The first of such evidence is testimony from Mary Brown wherein she claims to remember Appellant and Young wearing grey and red jackets that day and thought the red jacket on the video looked like the one she saw (R. p. 542, line 25 through R. p. 893, line 3; R. p. 550, lines 15-18). Second, the prosecution put forth Ms. Coleman's testimony identifying Appellant as the grey hoodie suspect, despite not being able to see his face in the video. (R. p. 301, line 12 through R. p. 302, line 2). Third, Ms. Barnes apparently recognized Appellant based solely on the grey hoodie and the build of the suspect in the surveillance video. (R. p. 399, lines 5-8) Fourth, Ms. Barnes' testimony put Mr. Young, Mr. Barnes, and Mr. Stevenson together on the night of the crime. (R. p. 390, line 1 through R. p. 391, line 2). At the conclusion of trial, the jury found Trenton Barnes guilty of kidnapping, attempted armed robbery, burglary, and murder. (R. p. 1018, lines 14-21).

ARGUMENTS

I. The trial court's application of Rule 804(b)(3) was improper under the circumstances presented, as it is factually distinguishable from authorities relied upon by Respondent.

There are distinguishable differences between the arguments of *U.S. v. Jordan* and *People v. Taylor* which allow for this Court to more precisely address the circumstances that would limit the admissibility of statements against penal interest that inculcate a co-defendant under Rule 804(b)(3).

Both cases cited by Respondent address the admissibility of statements against interest by an unavailable witness that inculcate the Defendant on trial. *United States v. Jordan*, 509 F.3d 191, 203 (4th Cir. 2007); *People v. Taylor*, 759 N.W.2d 361, 368 (2008). However, in both cases, the unavailable witness was not a co-defendant during a joint trial.

In *Jordan* and *Taylor*, the unavailable witnesses' testimony provided under 804(b)(3) was not a Defendant in the trial itself, thus the Court was not dealing with a circumstance where the rights of co-defendants are directly antagonistic to each other. *Id.* That is precisely the circumstance here, where Defendant Young's right not to take the stand in his own defense is being favored against the right of Appellant to cross-examine a witness. To this end, those cases are distinguishable because the alleged declarant is not being simultaneously judged by the jury. The result is that the weight of the testimony in the eyes of the jury increases drastically, and the co-defendant is still left without recourse to cross-examine the declarant. Appellant was substantially prejudiced as a result.

In the present case, Young made his actions known to the jailhouse witnesses, and during such statements he demonstrated that he was accompanied by two other individuals: Trigg and Trap. (R. p. 455, lines 5-7; R. p. 554, lines 10-13) Appellant still maintains that the logic behind Rule 804(b)(3) only makes sense as to the declarant; the inclusion and inculcation of others is in no way self-incriminating and is susceptible to a myriad of motivations that may be harbored by the declarant, any of which could drastically impair the reliability of his statements. Such motivations could include anger for abandoning a plan at the last moment, anger for prior histories between the individuals, fear for being convicted alone, scheming in the hopes that blame gets shifted or shared as opposed to falling on a single defendant, guilt and the instinct to argue that the declarant didn't act alone, or anger and revenge against an individual for refusing to partake in a plan. Rule 804(b)(3) is a perfectly reasonable exception to hearsay when used against the individual speaking against his own interests, as the logic of the rule remains intact. Stretching that rule to be applied against an individual who did not speak the inculcating

statement, comment on it, or even be present for it leaves the reliability of such inculcation vulnerable to the worst inclinations of the human condition and can no longer be admissible under its own logic, especially with such little corroborating evidence. (Supra, pg. 1-2).

It bears mentioning that both Wright and Schaefer admit that the original discussion with Young did not give them the details needed to know that Trenton Barnes was the individual associated with the nickname Trap. (R. p. 455, line 19; R. p. 555, lines 5-15) Both witnesses discovered this *after* Young's inculcating statements and the record is unclear as to exactly how they came to associate that nickname to Appellant. (R. pp. 453-468; R. pp. 551-567). It is impossible to know whether the subsequently acquired information by Mr. Schaefer was also in the context of an inculcating statement of co-defendant Young. Much worse, while not providing details, Mr. Wright states that he learned who Trigg and Trap were from someone other than Young. (R. p. 455, lines 5-8). As Appellant argued in Brief on the basis of the *Williamson, Lilly, and Fuller*, the inculcating statement against interest cannot be looked at in the aggregate, but must be evaluated individually to determine its admissibility against other defendants. *Lilly v. Virginia*, 527 U.S. 116, 119 S.Ct. 1887, 144 L.Ed. 2d. 117 (1999); *Williamson v. United States*, 512 U.S. 594, 114 S.Ct. 2431, 129 L.Ed.2d 476 (1994); *State v. Fuller*, 523 S.E.2d 168, 337 S.C. 236, 243 (S.C. 1999). Non-self-inculpatory statements are not admissible, and the manner in which Young's statement ultimately inculcates Appellant cannot be shown to be inculpatory against Young. This fact demonstrates that the statements by Young to the two jailhouse witnesses were not properly admissible against Appellant under Rule 804(b)(3). This gap in nickname association is yet another reason why the unreliability of such testimony negates the logic behind the exception.

Respondent cites *People v. Taylor* as part of its authority for arguing 804(b)(3) was properly applied in admitting the jailhouse witness testimony. If the approach and analysis of the Michigan Court Supreme Court in *Taylor* is applied to the case at hand, the factors would strongly disfavor admission of Wright's and Schaefer's testimony. See *People v. Taylor*, 759 N.W.2d 361, 368 (2008).

The statement was not made contemporaneously with the events referenced, as they were mentioned long after the actual crime occurred and after Mr. Young had been arrested for committing the crime. The statements were not made to family, friends, colleagues, or confederates. As the transcripts point out, these witnesses were not prior acquaintances of Mr. Young. Mr. Wright was an inmate who had a reputation for being knowledgeable in criminal defense. Mr. Schaefer was likewise not a friend, just someone with whom Young discussed the legalities of his case (R. p. 454, lines 5-18; R. p. 553, line 7 through R. p. 554, line 20) A distortion of truth could easily be possible to such individuals if Mr. Young is looking for ways in which to strengthen his position at trial. These statements were not "uttered spontaneously at the initiation of the declarant and without prompting or inquiry by the listener". Again, the purpose of Young's utterance was to gain legal advice and understanding in order to strengthen his own case; such a purpose is easily susceptible to dishonest motivations. The lack of initial understanding of who "Trigg" or "Trap" were, demonstrates that some degree of prompting and inquiry occurred beyond the exchange testified to by Mr. Wright and Mr. Schaefer. In naming "Trigg and Trap" as participants Mr. Young minimizes his own role and shifts blame away from himself. This could easily have been done to curry favor, relieve guilt, exact revenge for Appellant refusing to go through with a crime, or otherwise punish Appellant for failing to

be loyal. All of these factors and possibilities detract from the reliability of this testimony as it applies to Appellant and renders the application of Rule 804(b)(3) improper in this circumstance. The Court erred in admitting the testimony and further erred in not at least providing some limiting instruction to the jury. Both failures by the Court were to the severe prejudice of Appellant and reversal and remand for a new trial is necessary.

II. The court's failure to grant severance, its improper admission of hearsay evidence, and its improper admission of Ms. Barnes prior inconsistent statements do not constitute harmless error.

Respondent suggests that the volume of evidence presented against Appellant is sufficient to render the court's errors relating to severance and hearsay as harmless error. However, Respondent's own arguments demonstrate just how one sided the evidence was at trial. Most all of the circumstantial and direct evidence at trial connected either Young and/or Stevenson to the crime, but very little connects Appellant to the crime. (infra pg. 7).

The Supreme Court in *State v. Lowry* provides an excellent explanation of how the harmless error doctrine should be applied. The Court states:

"harmless error review looks to the basis on which the jury actually rested its verdict. *Sullivan*, 508 U.S. at 279, 113 S.Ct. 2078. From this perspective, in order to conclude that the error did not contribute to the verdict, the Court must "find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." *Lowry v. State*, 376 S.C. 499, 657 S.E.2d 760 (S.C., 2008) (citing *Yates v. Evatt*, 500 U.S. 391, 403, 111 S.Ct. 1884, 114 L.Ed.2d 432 (1991)).

If after conducting such an inquiry, the error is still deemed harmless beyond a reasonable doubt, then the verdict may stand. *Id.* The harmless error doctrine carries inherent dangers and should be used cautiously. *United States v. Lane, Lane v. United States*, 474 U.S. 438, 480, 106 S.Ct. 725, 88 L.Ed.2d 814 (1986) (Footnote 13 noting the

dangers of misuse of the harmless error rule.)

Respondent lays out eighteen bullet points demonstrating the evidence at trial. However, only a handful have any connection to Appellant. By Respondent's own admission the only evidence connecting Appellant to the crime is as follows:

- a) testimony from Mary Brown indicating Appellant was wearing a grey hoodie the day of the crime (R. p. 542, line 12 through R. p. 546, line 5);
- b) testimony from Mary Brown indicating she saw Young and Appellant together the day of the crime, and that the red jacket seemed to match the one she saw in the surveillance video *Id.*;
- c) Coleman's testimony that she believed the suspect in the grey hoodie was Appellant, despite not seeing any faces and not being able to identify her own boyfriend and the father of their children as the red hoodie suspect (R. p. 301, line 14 through, R. p. 302, line 2);
- d) Ms. Barnes' prior statement and testimony recognizing the grey hoodie in the video, and placing Young, Stevenson, and Appellant together the night of the crime (State's Exhibit 440; R. p. 423, line 23 through R. p. 424, line 19; R. p. 390, line 3 through R. p. 391, line 2); and
- e) the letter from Appellant to his mother allegedly admitting to the crime (State's Exhibit 404).

One of the main challenges to the prosecution's trial was identification. As is stated by multiple witnesses, no faces can be seen from the surveillance video, DNA testing was drastically inconclusive, and the physical evidence collected only links Young to the crimes (R. p. 312, lines 16-17; R. p. 643, lines 2-8; R. p. 593-595; R. p. ; R. p. 486, R. p. 470-475).

Consequently, the prosecution leans upon three things to prove identity: 1) the letter from Barnes to his mother, 2) the familiarity of a grey hoodie, and 3) the testimony of Wright and Schaefer.

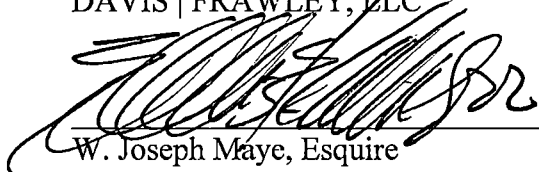
As was stated numerous times at trial, Appellant sought to protect his brother and wrote the letter in order to take the blame for his brother's participation. (R. p. 217, lines 9-18; R. p. 433, lines 8-25; R. p. 973, lines 9 through R. p. 974, line 18; R. p. 975, lines 7-11). This is a believable theory for the jury, depending on how other evidence paints the picture. As has been argued by Appellant, the jailhouse witness testimony is the only other testimony that directly links Appellant to the crime, as the rest merely shows that the defendants were friends and spent time together. Had the jailhouse witness testimony been properly excluded or a separate trial granted to protect Appellant from such hearsay, the jury may have believed the letter was only an attempt to protect a brother. With such little evidence remaining to prove identification of Barnes, the trial could have reasonably resulted in a different outcome. It certainly fails to rise to the beyond reasonable doubt standard necessary to allow an error by the court to stand as harmless. Thus, the court's mistakes do not constitute harmless error and a new trial is necessary.

CONCLUSION

In addition to Appellant's arguments set forth in their Initial Brief, the arguments above justify reversal and remand for new trial in this matter.

Respectfully submitted,

DAVIS | FRAWLEY, LLC

A handwritten signature in black ink, appearing to read 'W. Joseph Maye', is written over a horizontal line.

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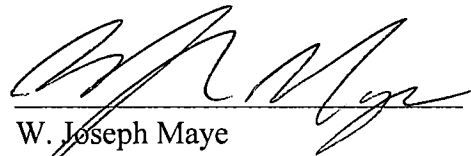
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CERTIFICATE OF COUNSEL

I hereby certify that this Brief of Appellant complies with Rule 211(b) of the South Carolina Appellate Court Rules.



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RESPONDENT,

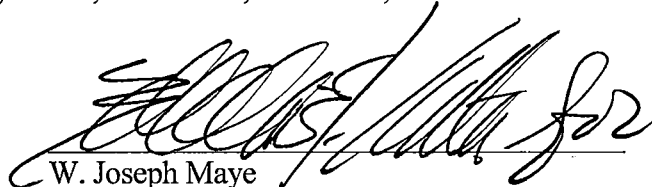
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TRENTON MALIK BARNES,

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CERTIFICATE OF SERVICE

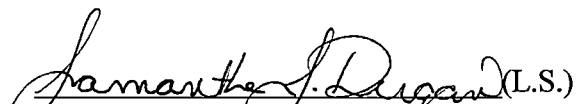
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Susannah R. Cole, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 7th day of June, 2016.



W. Joseph Maye
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of June, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: April 27, 2026.