ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRENTON MALIK BARNES,

APPELLANT,

Appellate Case No. 2014-002771

FINAL BRIEF OF RESPONDENT

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II. Codefendant Young's jailhouse confessions to Wright and Schaefer, which inculpated Appellant Barnes, were improperly admitted under Rule 804(b)(3) .

III. The Bruton rule was triggered by limiting the cross-examination of Rolanda Coleman, and by inculpating of Appellant through nontestimonial confessions of an unavailable codefendant absent proper grounds for hearsay exceptions.

IV. The Trial Court allowed the solicitor to improperly impeach Latoya Barnes by admitting extrinsic evidence of a prior inconsistent statement two days after the witness was excused and could not provide an explanation or context to the newly admitted evidence.

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I. The trial court did not abuse its discretion in denying Defendant Barnes' motion for severance because there was no serious risk the joint trial would compromise Appellant's rights. Appellant had ample opportunity to examine the State's witnesses for bias, and their testimony was properly admissible under SCRE 804(b)(3). (Appellant's Issues I, II, and II.)

II. The trial court did not abuse its discretion in later admitting the audio recording of a telephone call pursuant to SCRE Rule 613(b) when the witness was given notice of the prior inconsistent statement in the form of a transcript, the witness denied making the statement, and Appellant was able to cross examine the witness but elected not to highlight this portion of her testimony. (Appellant's Issue IV)

RESPONDENT'S STATEMENT OF THE CASE

A Richland County grand jury indicted Appellant, Trenton Barnes, in February 2014 for murder, kidnapping, second degree burglary, and attempted armed robbery. (R. pp. 1 – 8 Indictments.) The grand jury also indicted Lorenzo Young (Young) and Troy Stevenson (Stevenson). (R. p. 32, lines 20-24; pp. 115-65.)

On November 10, 2014, Appellant's case was called to trial before the Honorable Robert Hood. (R. p. 54) Appellant and Young were tried jointly. (R. p. 54). Mark Schnee, Esquire, represented Barnes. (R. p. 54) Steven Krzyston, Esquire, represented Young during the trial. (R. p. 54). Assistant Solicitors Dolly Garfield, Kathryn Campbell, and Nicole Simpson represented the State. (R. p. 54.) The jury returned verdicts of guilty as to all charges. (R. p. 1018, line 8- p. 1019, line 8.) In a separate sentencing proceeding, Judge Hood sentenced Appellant to fifty years' imprisonment for murder, fifteen years' imprisonment for burglary, and twenty years' imprisonment for attempted armed robbery. (R. Dec. 12, 2014, pp. 1040; 1104, lines 5-12; 1113, lines 10-14.)

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 the 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. 233, line 13 – p. 234, 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 (Young) and his co-defendant Trenton Barnes (Appellant) in a robbery (R. p. 232, lines 21-23; p. 234, lines 15-20.)

Hunnewell arrived every morning at 3:00 am to make the bagels and sandwiches for the popular downtown deli. (R. p. 244, line 2-p. 245, line 6.) She would typically work until 11:00 am so she could go home and care for her four young children. (R. p. 245, lines 1-18.) On the morning of the murder, Appellant and Young intended to rob the nearby Original Ale House. (R. p. 229, lines 2-16.) When they realized the bar was closed, Appellant and Young chose the next most convenient victim. Hunnewell was in the bakery next door with the lights on and the door propped open. (R. p. 234, lines 3-6.) The men approached Hunnewell, who was working at the stove and had her back to the door. (R. p. 828, line 20 – p. 829, line 2.) The suspect in the red hoodie pointed his gun at her head. (R. p. 829, line 19 – p. 830, line 19.) After a struggle in which Hunnewell tried to defend herself, the men shot her multiple times. (R. p. 830, line 17 – p. 831, line 24.) Kelly Hunnewell collapsed on floor with a bullet lodged in her back, drowning in her own blood. (R. p. 597, line 16; p. 604, lines 2-21.)

Hunnewell's neighbor heard her screams and called the police. (R. p. 235, lines 1-8.) The police arrived within minutes and found Hunnewll dead on the floor. (R. p. 235, lines 9-10; p. 223, line 14- p. 225, line 11; p. 236, lines 15-20.) The police processed the

scene, collecting four .45 Glock Automatic Pistol (G.A.P.) shell casings and two .40 caliber Smith and Wesson casings, projectiles and video surveillance footage. (R. p. 227, line 5- p. 228, line 9; p. 237, lines 3-11; p. 238, lines 10-14; p. 240, lines 20-25; p. 241; line 16-p. 242, line 11; p. 797, line 22 –p. 799, line 10.) The bakery's security cameras recorded the murder from several different views. (R. p. 246, line 6 – p. 247, line 4.) In the video, Hunnewell is working at the stove when two suspects, one in a red hoodie and one in a grey hoodie, enter the bakery. (R. p. 281, line 9 – p. 282, 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. (R. p. 282, lines 20-24.)

Investigators canvased the area around the bakery to look for witnesses. (R. p. 257, line 11 – p. 258, line 24.) The police released the video to the media in an effort to gain more information about the perpetrators. (R. p. 649, line 21 – p. 650, line 9.) Police received tips identifying Appellant, his brother Troy Stevenson, and Lorenzo Young as the men who committed the crime. (R. p, 248, line 14 – p. 249, line 14; p. 259, line 4 – p. 261, line 4; p. 652, line 21 – p. 653, line 21; p. 657, lines 6-18.) All three suspects lived near the bakery. (R. p. 394, lines 12-17; p. 642, lines 15-24; p. 698, line 11 – p. 699, line 20.)

Donald Moore, a friend of Appellant and Troy Stevenson, testified for the State. (R. p. 374, line 1 – p. 375, line 22.) Though he recanted his story later, he testified he contacted the police after he saw the story about the murder on television. (R. p. 376, line 10 – p. 377, line 15.) Moore told police Young and Stevenson talked about robbing the Ale House before the murder. (R. p. 378, lines 9-15.) Moore also told police he saw Young showing off a Glock gun prior to the murder, and he told Young to put the gun

away because of the nearby children. (R. p. 379, line 17 – p. 381, line 17.) Moore also identified Young in the video as the men wearing the red hoodie. (R. p. 382, line 19 – p. 383, line 23.)

Based upon Moore's information, the police obtained and executed a search warrant for Young 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 round bullets from a .40 caliber Smith and Wesson, a 9 mm Luger, and a .45 G.A.P. (R. pp. 472-475.) Crime scene analysists also found a Glock magazine in Coleman's purse and several pairs of black gloves. (R. pp. 470-471.) The police also confiscated a pair of black Nike shoes and a scan disc, camcorder, laptop, and two cell phones. (R. p. 482-485.) Testing later revealed gunshot residue on the black gloves. (R. p. 486, lines 7-14.)

Young's girlfriend, Rolanda Coleman, told police he 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. 290, line 18 – p. 293, line 25.) Young returned home the morning of the murder with his firearm, wrapped it in his shirt, and hid it in a crib. (R. p. 284, lines 17-24; p. 294, line 21 – p. 295, line 24.) Coleman overheard a conversation between Young and his mother shortly after seeing a news video about the murder in which his mother told him to get rid of the gun. (R. p. 301, lines 1-9.) Coleman also recognized the man wearing the grey hoodie in the video as Appellant Trenton Barnes. (R. p. 301, line 10 – p. 302, line 15.)

Appellant's mother testified her sons were with Young at her house the night of the murder. (R. p. 386, lines 1-24.) She testified Young and Appellant left the house

around midnight. (R. p. 387, lines 5-14.) Around three in the morning, she received a phone call from Young , asking to talk to another man staying at the house. (R. p. 388, line 14 – p. 389, line 8.) Cell phone records confirmed these calls. (R. p. 605, line 8 – p. 606, line 3.) The second time Young, Ms. Barnes told him to send her son Barnes home. (R. p. 389, line 21 – p. 390, line 7.) After a few minutes, she sent her other son, Troy Stevenson, to locate the men to bring his brother home. (R. p. 391, lines 2-20.) Ms. Barnes testified Young was wearing a red hoodie when he left the house and Appellant was wearing a grey hoodie, which she could identify from a tear in the fabric. (R. p. 393, lines 3-19.) When Stevenson left to look for his brother, he was wearing a dark jacket. (R. p. 393, line 23 – p. 394, line 8.)

After Appellant was arrested, he wrote a letter to his mother implicating himself and Young in the crime:

> 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

(R. p. v, State's Exhibit 404 (errors in original); R. p. 400, lines 1-22.) In his letter to his mother, Appellant admits telling Young 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"). Appellant also admits he was complicit in Young'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").

Mary Brown, a neighbor and acquaintance of Appellant, Young, and Stevenson, also saw the men wearing the red and grey hoodie the night of the robbery. (R. p. 542-545.) Brown saw the video released to the news media and recognized Appellant and his codefendant, but did not know their names. (R. p. 547, line 6 – p. 550, line 18.)

Following Young's arrest, he approached inmate Dominique Wright to assist him in the defense of his case. (R. p. 453, line 17 –p. 454, line 10.) Wright was helping another inmate with some legal work and Young overhead the men discussing the "stand your ground law." (R. p. 456, lines 7-10.) Young 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. 455, lines 5-13.) Young told Wright when the woman in the bakery resisted, he shot her twice. (R. p. 455, lines 10-13.) Wright testified Young sought his advice to discuss how he could use the victim's efforts to defend herself as an advantage to reducing his charge. (R. p. 456, lines 13-15.) Wright documented what Young told him and sent the information to an investigator, who passed it on to the solicitor's office. (R. p. 457, line 19 – p. 458, line 5.)

Another inmate, Michael Peterson, testified Young discussed the murder with him while they were in the law library together. (R. p. 488, line 11 – p. 489, line 8.) Young heard Peterson was familiar with the law and asked for help. (R. p. 489, lines 7-10.) Young explained to Peterson he "went on this lick." (R. p. 489, lines 18-19.) When Peterson asked Young if he meant the bakery job on Beltline, Young confirmed, saying, "yeah, it was all over the news." (R. p. 489, lines 18-20.) Young told Peterson he shot the victim when she acted like she was about to use her phone to call the police. (R. p. 490, lines 1-4.) Young told Peterson, "Yeah, my homies must have seen the blood and started running, so I turned around and started running, too." (R. p. 490, lines 8-10.) Young 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. 491, line 7 – p. 492, line 1.) Peterson later overheard Troy Stevenson and Young discussing the robbery in the prison showers.

(R. p. 498, lines 1-11.) Peterson said Young was nervous and reassured Stevenson the police only had shell casings. (R. p. 498, lines 1-25.)

Michael Schaefer, another inmate at Alvin Glenn Detention Center, testified he had several opportunities to speak with Young while they were housed together in the same dorm. (R. p. 552, line 13 – p. 553, line 19.) Schaefer and Young 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. 554, lines 10-17; 555, 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. 557, lines 11-24.) Schaefer also testified he spoke to Young around the holidays, expressing remorse for his crime of robbing a bank. Young responded, "Well, I shouldn't have shot that bitch." (R. p. 558, lines 1-7.)

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. pp. 568 – 595.) 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 Young and Barnes. (R. pp. 243, lines 12-17; p. 582, lines 8-18.)

ARGUMENT

I.

The trial court did not abuse its discretion in denying Defendant Barnes' motion for severance because there was no serious risk the joint trial would compromise Appellant's rights. Appellant had ample opportunity to examine the State's witnesses for bias, and their testimony was properly admissible under SCRE 804(b)(3). (Appellant's Issues I, II, and II.)

Introduction

Appellant was not entitled to a severance of trial from his co-defendant as a matter of right, and there was no reasonable probability he would have been obtained a more favorable result in a separate trial. *State v. Stuckey*, 347 S.C. 484, 497, 556 S.E.2d 403, 409 (Ct.App.2001). The trial court properly exercised its discretion in denying Appellant's motion to sever after considering any potential *Bruton*[1] issues and instead chose to address the admissibility of evidence as it was presented at trial. Appellant was allowed to cross examine the State's witnesses for bias and on their credibility. Moreover, any statements of co-defendant Young to his girlfriend or other incarcerated inmates were properly admissible under South Carolina Rules of Evidence 804(b)(3) because the statements were sufficiently inculpatory.

No Entitlement to a Severance

In South Carolina, criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right. *State v. Kelsey*, 331 S.C. 50, 73, 502 S.E.2d 63, 75 (1998). Motions for a severance are addressed to the discretion of the trial court. *Id.* at 74, 502 S.E.2d at 75. A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent

[1] 391 U.S 123 (1968)

the jury from making a reliable judgment about a codefendant's guilt. *State v. Dennis*, 337 S.C. 275, 282, 523 S.E.2d 173, 176 (1999) (citing *Zafiro v. United States*, 506 U.S. 534, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993)). Furthermore, "[a]n appellate court should not reverse a conviction achieved at a joint trial in the absence of a reasonable probability that the defendant would have obtained a more favorable result at a separate trial." *State v. Stuckey*, 347 S.C. 484, 497, 556 S.E.2d 403, 409 (Ct.App.2001); *State v. Cope*, 405 S.C. 317, 340, 748 S.E.2d 194, 206 (2013).

Appellant argues the limitation of his impeachment of Rolanda Coleman on her pending burglary charge with co-defendant Young (Issue I), as well as the admission of testimony by Coleman and other inmates of Young's inculpatory statements (Issues I and II), compromised his right to a fair trial. However, as will be fully discussed below, after finding *Bruton* inapplicable to the evidence at hand (Issue III), the court determined Appellant had ample opportunity to impeach Coleman, and his Confrontation Clause rights were never compromised.

Bias and Credibility of Witness Was Challenged on Cross Examination

During a contentious hearing in which Appellant requested a motion for a mistrial based on the court's refusal to allow him to introduce evidence of Young's pending burglary charge, the following exchange occurred:

> MR. SCHNEE: Judge, I specifically did not say that I would be talking about Lorenzo Young's pending charges.
> THE COURT: What you said was, "I'm going to go into the credibility of Rolanda" – – – is that her name?
> MS. GARFIELD: Yes, sir.
> THE COURT: – – – "Rolando Coleman, who has pending charges."
> THE COURT: I informed you that you can talk about her pending charges as much as you want to. You said, "Her pending charges that she has with Mr. Young." That means that Mr. Young has

> pending charges, and I would not allow you to go into the information concerning the fact in front of the jury to Mr. Young has pending charges, and I would deem that to be inadmissible. You said, "I don't understand that ruling." I said, "You don't have to understand it. That's the ruling of the court in you to follow it."
> MR. SCHNEE: Judge, if I may for the record, what I indicated in chambers was that my intention was to attack the credibility, motive, and bias of Rolanda Coleman. The fact that she has pending charges is relevant. The fact that she is a witness for the State and originally presented an alibi for Lorenzo Young is relevant. The fact of the pending charges also involve Mr. Young with relation to Ms. Coleman's credibility and her motive to lie or relevant issues. I specifically asked Your Honor if it was a separate trial if that would be admissible. Your Honor indicated that it probably would, which is why I moved for severance based on that.
>
> I did not indicate that I would be trying to impugn the credibility or character of Mr. Young, but in order for me to fully go into the credibility of Rolando Coleman, it's impossible to do that without indicating that the charges involve her child's father, as well. That's all I have for the record, Judge.

(R. p. 210, line 19 – p. 212, line 10.) In direct examination, the State addressed Coleman's pending burglary charge, asking her if she'd been promised anything for her testimony. (R. p. 304, line 12 – p. 305, line 6.) Counsel for Young questioned Coleman on her relationship with her two young children, pressing the point that Coleman had a lot to lose if she were imprisoned on the burglary charge. (R. pp 306-311.) Further, counsel for Appellant attacked Coleman's credibility by pointing out Coleman recognized Appellant in the crime scene video but could not recognize the father of her children as the other man. (R. pp. 312-313.) Appellant further inquired if Coleman understood the solicitors could offer her a deal if she testified for them, stating "You understand that if you don't get any kind if deal and you end up getting convicted, you will not see your kids while they're still children?" (R. p. 313, lines 22-24.)

As the record reflects, Appellant had no trouble pointing out Coleman's "extreme bias" in favor of protecting the father of her children, even absent the mention of the shared burglary charged. As Appellant noted, Coleman had a strong incentive to testify for the State in order to secure a favorable sentence in the burglary charge. Appellant had no need to mention Young's involvement in the burglary to show the jury Coleman might be inclined to protect Young. Thus, Appellant's rights were not compromised because he was free to impeach the witness and demonstrate her bias for Young. In this regard, Appellant suffered no prejudice from the joint trial.

Confrontation Clause Applies to Testimonial Statements

The trial judge refused to grant Appellant's request to sever the trials, in part, because he found no issues in violation of *Bruton v. United States*, 391 U.S. 123 (1968). A review of the holding in *Bruton* provides clarification of the State's position the statements by Young to third parties were admissible against both Barnes and Young, and therefore Appellant's rights were not compromised by virtue of the joint trial.

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* "very narrow exception to the almost invariable assumption of the law that jurors follow their instructions in the situation when the facially incriminating confession of a nontestifying codefendant is introduced at a joint trial and the jury is instructed to consider the confession only against the co-defendant." *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, 107 S. Ct. 1702, 1708-09, 95 L. Ed. 2d 176 (1987). The *Richardson* court suggests the deference to the co-defendant's rights pursuant to the Confrontation Clause in *Bruton* be limited to the precise facts of that case.

The Court also considered the nature of out of court statements offered against a defendant in *Crawford v. Washington*, 541 U.S. 36, 50, 124 S. Ct. 1354, 1363, 158 L. Ed. 2d 177 (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 two 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 v. Washington, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 1365, 158 L. Ed. 2d 177 (2004). 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*, 565 Fed. Appx. 653 (9th Cir. March 4, 2014) (because the out-of-court statement by the nontestifying 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) ("it 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.'" (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 Statements to Others are Nontestimonial

Turning to the facts of the case at hand, Co-defendant's Young's statements to his girlfriend and to other inmates following his arrest clearly fall outside the scope of

testimonial statements contemplated by *Crawford*, thus landing 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 (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's argument intertwines 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, however, because co-defendant Young's statements are admissible against both Young and Appellant.

The Statements Are Admissible under SCRE 804(b)(3)

Following the *Richardson* Court's conclusion *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 statements, the decision to try Appellant and Young together caused no undue prejudice to Appellant because the statements are admissible against both defendants under SCRE 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 (Young) 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 (2008) (finding a co-defendant's statement to a third party admissible against defendant under 804(b)(3)) Had the trials been severed, Young's statements to his girlfriend and the other inmates could have been admitted against Appellant under the same exception.

The Statements Were 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. Young's

statements to his girlfriend, his conversation with his mother, and his statements to the other inmates fully implicated him, along with Appellant, in the murder of the victim.

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, according to *Williamson v. United States*, 512 U.S. 594,600-601 (1994)(emphasis added). 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 v. United States, 512 U.S. 594, 600-01 (1994). 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 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 and those that were not, finding the exercise a "fact intensive inquiry." *Id.* at 604.

In the case *sub judice*, Young's statements to his girlfriend and fellow inmates implicate the declarant and Appellant in the **same** criminal act, rather than "separate criminal activity," as they were in *Williamson*. Yolanda Coleman's testimony regarding Young's statement he was at the home of Appellant and Troy Sevenson the morning after the murder places the declarant with his codefendant immediately following the murder. Coleman's testimony she overheard Young and his mother discuss the disposal of Young's gun after they saw a news story about the bakery murder places the murder weapon in the declarant's possession and implicates himself only. (R. pp. 292-293, 298-299.) These statements were inculpatory of Young's involvement in the crime and would have been used against him. Because these statements were also nontestimonial statements against interest, they carried the indicia of trustworthiness enumerated in 804(b)(3), and were therefore exceptions to the prohibition against hearsay. As such, the State could properly introduce these statements against Appellant, as well.

Similarly, Young's statements to the other inmates clearly placed him at the scene of the crime and as one of the triggermen. In discussing a possible defense with inmate Wright, Young did not deny his involvement or attempt to implicate Appellant as the sole perpetrator; he admitted he shot the victim. (R. p.455, lines 10-13.) Young was even more direct when he told inmate Schaefer he "shouldn't have shot that bitch." (R. p. 558, lines 1-7.)

Unlike the declarant in *Williamson*, Young admits his culpability, along with Appellant's, in the commission of the crime. The statement is sufficiently self-inculpatory because Young 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 would also liken his circumstances to those in *State v. Fuller*, 337 S.C. 236 (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; *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, but 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.

Young's statements to his girlfriend and to the inmates are distinguishable from those of *Williamson* and *Fuller* because the statements were 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 Young to his girlfriend (or mother) and the inmates in purportedly private conversations. While

statements to law enforcement may be induced by a desire for leniency, Young would expect no such deal from Coleman, Schaeffer, and Wright.

The Statements Were Independently Corroborated

In addition to the inherent indicia of trustworthiness of the statement made against Young's penal interest, the other independent evidence corroborated the reliability of Young's statements to his girlfriend and the inmates. First, multiple witnesses testified Young and Appellant were together late the night before the murder. (R. pp. 542-545.) Appellant's 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 Appellant following Young's phone call to her house. (R. pp. 388 – 390.) The video surveillance showed two suspects with guns firing at the victim. (R. pp. 831-832.) Two different types of shell casings were found at the scene of the crime. (R. pp. 472-475.) Rolanda Coleman testified she saw Young hiding his gun the following morning, and she identified Appellant in the surveillance video. (R. pp. 284-302.) Young's description of the crime to inmate Dominique Wright matched Appellant's 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. pp. 453-458.) Furthermore, inmate Michael Schaefer also testified Young told him a similar story (R. p. 554, lines 10-17.), while inmate Michael Peterson overheard Young and Troy Stevenson discussing the murder in the showers. (R. p. 495, lines 4-13; p. 498, lines 1-25.) Finally, Appellant's own statement corroborated the details of the crime. (R. p. v, State's Exhibit 404.)

The details contained in Young's statements to his girlfriend, mother, and the other inmates were fully corroborated by 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, and the men shot her in return, running from the scene of the crime.

Young's statements qualify as statements against interest under 804(b)(3) because he sufficiently inculpated himself in the same criminal activity as Appellant. Viewed in the context of a conversation with his girlfriend, mother, and inmates, as opposed to a testimonial confession or statement to police, Young had no reason to believe he would incur favor or leniency by making the statement. Though the comments incriminated Appellant as well, other independent evidence corroborated the statements and inculpated Appellant as an accomplice. SCRE 804(b)(3) does not limit the use of a statement only against the party making the statement. Thus, the statements are an exception to the hearsay rule as a statement against interest, and may be offered against the declarant or his co-defendant. Appellant's rights were not prejudiced by the admission of this evidence against Young because the evidence was also properly admissible against Appellant.

II.

The trial court did not abuse its discretion in later admitting the audio recording of a telephone call pursuant to SCRE Rule 613(b) when the witness was given notice of the prior inconsistent statement in the form of a transcript, the witness denied making the statement, and Appellant was able to cross examine the witness but elected not to highlight this portion of her testimony. (Appellant's Issue IV)

In his last issue on appeal, Appellant asserts the trial court improperly admitted the audio recording of Ms. Barnes' conversation with Investigator McCoy as extrinsic evidence of a prior inconsistent statement pursuant to Rule 613(b). (IBOA p. 17; State's

Exhibit 440) The court concluded that there was no violation of Rule 613(b) because the witness had notice of the statement, was given an opportunity to explain the statement, and denied identifying Appellant as one of the men in the video. Although the State read from a transcript of the statement when Ms. Barnes was on the stand, Appellant chose not to cross examine the witness on this statement. Later, when the audio was admitted through Investigator McCoy, Appellant did not request Ms. Barnes be recalled for additional testimony.

How the Issue Was Presented at Trial

Appellant's mother, Latoya Barnes, was called to the stand and testified Appellant and Young left their home together the night of the murder. (R. p. 387, lines 5-14.) She also described what they were wearing. (R. p. 393, lines 3-13.) Ms. Barnes testified she spoke to Investigator McCoy several weeks later, following the arrest of her sons, and again described what the men were wearing that night, but she denied telling McCoy she recognized Appellant as the man in the grey hoodie in the video. (R. p. 398, line 7 – p. 399, line 18.) The Solicitor read from a transcript of the conversation to impeach Ms. Barnes' claim she did not identify her son to McCoy. (R. p. 399, lines 1-8.) Barnes denied it again. The State moved on to introduce the letter Appellant wrote his mother from jail, which resulted in a protracted argument on its admissibility. (R. pp. 401-421.) Counsel for Young cross-examined Ms. Barnes first; then it was Appellant's opportunity. Appellant broached the subject of the phone call with McCoy, asking Ms. Barnes if McCoy indicated one of her sons would "take a fall" for the murder. (R. p. 431, lines 13-25.) Appellant then went on to question Ms. Barnes about the letter her son sent from prison, asking if Appellant wanted to "protect his older brother." (R. p. 433, lines 1-17.)

Appellant did not cross-examine Ms. Barnes on her statement to McCoy she recognized her son in the video.

Later, when the State attempted to introduce the limited portion of the audio recording while Investigator McCoy was on the stand, Appellant objected, stating, "I had no opportunity to be questioning Ms. Barnes at this point if I even wanted to re-question her about it based on what the actual audio says." (R. p. 684, lines 2-5.) Appellant went on to argue the audio was an admission of "different testimony and new information that [he] clearly did not have any intention on crossing her on... ." (R. p. 684, lines 11-13.) The court overruled Appellant's objection, stating:

> She would have multiple notice about this and she continued to deny it saying that she said that she said that Trenton was the one wearing the grey sweatshirt and she was informed multiple times about the substance of the statement, the time and place it was made, and the person to whom it was made and she was given an opportunity to explain or deny the statement and she denied the statement and it says if the witness does not admit that he has made a prior consistent statement, extrinsic evidence is admissible.
>
> All right. You need to play the portion for him that you want to play, but at this point it's admissible.

(R. p. 684, line 18 – p. 685, line 6.) Appellant did not ask the court to recall Ms. Barnes to the stand.

Analysis

The admission of the audio recording of Ms. Barnes' conversation with Investigator McCoy is governed by Rule 613, which reads:

> (b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement,

> extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

SCRE 613(b). The State fully complied with the elements of Rule 613(b) when questioning Ms. Barnes about her conversation with McCoy in August 2013. (R. p. 398, lines 5-19.) The witness testified she remembered the conversation, but when asked if she recalled telling McCoy "Trenton was the one in the video in the gray sweatshirt," she stated, "I never told him that." (R. p. 398, lines 7-12.) When the State read from the transcript of the phone conversation, Appellant's only objection was, "that's not a valid transcript." (R. p. 399, lines 1-3.) Appellant did not, at that time, object on the grounds of Rule 613(b), and he elected not to cross-examine Ms. Barnes about that statement while she was on the stand. Nothing in Rule 613(b) requires a party to move the statement into evidence immediately once the notice of its existence has been given.

Further, our courts have addressed this scenario in *State v. Stokes*, 381 S.C. 390, 673 S.E.2d 434(2009), in which the State sought to introduce a statement to law enforcement through the officer and pursuant to Rule 613(b) after the declarant testified. Although the defendant objected on Confrontation Clause grounds, the Court found:

> Thus, it is the opportunity to cross-examine that is constitutionally protected. In the instant case, appellant had that opportunity. It is undisputed Brown appeared at trial, was available for cross-examination, and could have been recalled after the statement was admitted. Instead, appellant's trial counsel chose not to cross-examine on this subject. Although trial counsel apparently decided that such cross-examination would be to appellant's detriment, this does not amount to a violation of appellant's right to confrontation. *See Crawford, supra* (Confrontation Clause implicated only when declarant is unavailable); *California v. Green*, 399 U.S. at 161, 90 S.Ct. 1930 ("none of our decisions interpreting the Confrontation Clause requires excluding the out-of-court statements of a witness who is available and testifying at trial"); United States v. Owens,

> 484 U.S. at 559, 108 S.Ct. 838 (the Confrontation Clause guarantees the opportunity for effective cross-examination, but "not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish").

Id. at 402-403, 672 S.E.2d at 440. In *Stokes*, the trial court offered to recall the witness for additional cross examination but the defendant declined, not wanting to draw further attention to the testimony. Similarly, in the instant case, Appellant made no mention of recalling Ms. Barnes to the stand. Appellant certainly had the opportunity to cross examine Ms. Barnes on this prior inconsistent statement when she was on the stand and he chose not to do so. Appellant also chose not to ask the court to recall Ms. Barnes after McCoy's testimony. Moreover, Appellant was not prejudiced the admission of the audio recording because the jury heard the statement when the State read the transcript. According, Appellant cannot show any prejudice from the admission of the document, and his conviction should be affirmed on this ground.

Harmless Error

Even if, as Appellant argues, Young's statements were admitted in violation of *Bruton*, *Williamson*, and *Fuller*, their admission was harmless beyond a reasonable doubt. The same is true for the extrinsic evidence of Ms. Barnes' prior inconsistent statement. In *Chapman v. California*, the Supreme Court held error of even 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 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) (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 Young's statements 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 Young's statements. The State presented the following evidence against the co-defendants:

- Most significantly, Appellant's letter to his mother fully corroborated the State's theory of the case and was a confession of Appellant's role of the murder of Hunnewell (R. p. v, State's Exhibit 404);
- The bakery's security cameras revealed two armed perpetrators, one wearing a red hoodie and the other wearing a grey hoodie (R. pp. 828-831);
- .45 G.A.P. and .40 caliber shell casings were found at the scene (R. pp.227-228, 237, 238, 240, 242, 797-799) ;
- Young and Barnes live within walking distance of the bakery (R. p. 394, 642, 698-699);
- Police discovered ammunition of the same caliber at that at the scene of the crime in Young's home (R. pp. 472-475);
- Police also discovered a Glock magazine in the purse of Rolanda Coleman (R. pp. 470-471);

- Coleman testified Young returned the morning after the murder with his gun, which he attempted to hide in his baby's crib (R. pp. 284, 294-295);
- Coleman identified Appellant in the video as the man in the grey hoodie (R. pp. 301-302);
- Donald Moore overheard Young and Stevenson planning the robbery of the Ale House before the murder (R. p. 378);
- Donald Moore saw Young with a Glock prior to the murder (R. pp. 379-381);
- Donald Moore identified Young in the video as the man wearing the red hoodie (R. pp. 382-383);
- Appellant's own mother placed the three men together the night of the murder (R. p. 399);
- Cell phone records corroborated Ms. Barnes story Young called the house before she sent her son out to find the men (R. pp. 605-606);
- Ms. Barnes testified Young was wearing a red hoodie, Appellant was wearing a grey hoodie, and Stevenson was wearing a dark jacket the night of the murder (R. pp. 391-394);
- Mary Brown also placed the two men together the night of the crime, and described the red and grey hoodies the men were wearing. Brown also recognized the men in the video (R. pp. 542-545);

- Michael Peterson testified Young sought him out in the library to discuss his case and admitted his involvement (R. pp. 487-491);
- Police found gunshot residue on Young's black gloves (R. p. 486); and
- DNA found on the spoon Hunnewell used to defend herself could not exclude Appellant and Young (R. p. 243, 582).

The State's case against Appellant was compelling. Indeed, Appellant's own letter to his mother in which he described the killing may have been the most convincing evidence to the jury. Even excluding Young's statements to Coleman and inmates Wright and Schaefer, 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.

In sum, Appellant's right to a fair trial was not violated by the court's refusal to sever the trials. The U.S. Supreme Court has specifically found the admission in a joint trial of a codefendant's statement to police violates the Confrontation Clause. The statements are unreliable because of the likelihood the declarant seeks to obtain a better deal for himself, yet he is unavailable for cross examination in a joint trial. However, in the event of a nontestimonial statement, such as to a confidante or family member, the declarant has no such incentive to lie. Because the declarant is still unavailable to testify in the join trial, however, the statement must have the inherent indicia of trustworthiness as enumerated in Rule 803 (b). In particular, our courts have provided guidelines on when these statements of codefendants are admissible under 804(b)(3). A statement is admissible against a codefendant under 804(b)(3) when it is sufficiently inculpatory and when it is independently corroborated with consistent with the evidence at trial. Young's

statements were not to police, and judging from the content, certainly cannot be said to be exculpatory. Moreover, Appellant's own letter to his mother, along with a wealth of other incriminating evidence, corroborated Young's statements, proving its truthfulness. As such, the trial court did not abuse its discretion in admitting this evidence, and Appellant's convictions should be affirmed.

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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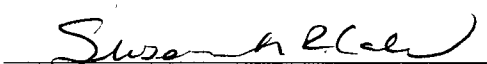
BY: 
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRENTON BARNES,

APPELLANT,

Appellate Case No. 2014-002771

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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May 24, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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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:

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

This 24th day of May, 2016.

Susannah R. Cole
Assistant Attorney General
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