STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2016-000088

THE STATE,

Respondent,

v.

ROBERT WILSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court did not abuse its discretion in sustaining the State's objection to Appellant's questioning witness Young regarding his truthfulness to police in an unrelated case. Additionally, Appellant's argument that the specific instance of lying should have been admitted pursuant to Rule 608(b), SCRE, is not preserved.

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County Grand Jury of two counts of armed robbery (2015-GS-10-1767 and 2015-GS-10-769) in April 2015. Appellant proceeded to a trial by jury which was heard on January 6 and 7, 2016 in Charleston, South Carolina. At the conclusion of trial, Appellant was found guilty as indicted. The Honorable Kristi Lea Harrington sentenced him to a term of imprisonment of thirteen years for each count, to be served concurrently and with credit given for time served. Appellant timely filed a notice of appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On October 7, 2014, at 2:51 a.m., the BP Kangaroo Gas Station at 2572 Ashley River Road in Charleston was robbed by Denelle Great (a/k/a "D") and Ulysis Great (a/k/a "Big T"). (Tr. 136 lines 24–25; Tr. 232 lines 7–8; Tr. 261, line 8–Tr. 262, line 1). Thomas Young was out that morning driving through the area looking for scrap metal that could be sold. (Tr. 98, line 13). Young intended to go to the gas station to purchase cigarettes and coffee, but he stopped when he saw two men dressed in all black crouched outside the store. (Tr. 101–02). As he passed by he saw one of the men with what appeared to be a handgun. (Tr. 103, lines 14-19). When the men heard Young's truck, they looked up, which is when Young noticed they had masks covering their faces. (Tr. 104, lines 5–9). Young called 911 at 3:02 a.m., believing the two males were preparing to rob the store, though he later learned the robbery had already taken place. (Tr. 117, lines 23–25; Tr. 118, lines 1–4; Tr. 138, lines 12–14). Young testified that as he passed through the intersection where the gas station was located, he almost hit a white Ford Taurus, which was idling in the intersection with its lights off. (Tr. 110–12). As Young passed the Taurus, it fled from the scene at a high rate of speed. (Tr. 110, lines 17–25). At trial he identified a photograph of the Taurus as the one he saw that night. (Tr. 112, lines 12–17).

Police arrived on the scene to find that the door handles to the Kangaroo station had been duct taped shut. (Tr. 139, lines 3–5). Inside the store police found the two victims of the robbery: William Finch (a customer in the store) and Walter Singleton (the store clerk). (Tr. 139, lines 14–16). In their statements to police and under oath at trial, Finch and Singleton said that two men had entered the store with revolvers drawn and pointed at them. (Tr. 179, 15–18; Tr. 205 lines 17–19). The men announced they were robbing the store. (Tr. 205, lines17–19). One man took cigarettes and the cash from the registers. (Tr. 181). The men escorted Finch and Singleton to the back storeroom when they learned Singleton could not open the store safe. (Tr.

182; Tr. 207 lines 19–23). They made the victims lie down side-by-side and proceeded to duct tape their hands and feet. (Tr. 182, lines 21–25; Tr. 207–08). As the men duct taped Singleton, one of them pushed a gun into his temple and asked him if he was "brave." (Tr. 186, lines 21–25). After the robbers had bound the victims, they placed the guns against the backs of their heads. (Tr. 182 lines 24–25). One of the robbers told the other that they did not need any witnesses, saying, "Let's ghost both these MFs." (Tr. 183, lines 1–8; Tr. 208 5–6). However, one of the men convinced the other to abandon executing the victims, and the robbers fled the store. (Tr. 183, lines 3–5; Tr. 208, lines 8–11). They duct taped the door as they fled. (Tr. 187, 9–15).

The victims were able to give a description of the suspects to the police, as well as a description of the "get away" vehicle. (Tr. 140). Finch and Singleton described the car as a white Ford Taurus with a sunroof. (Tr. 140, line 10). Police viewed the security camera footage from the gas station, which showed a white Ford Taurus driving past the store six minutes before the robbery. (Tr. 221, 5–14). Detectives asked Singleton, the store's clerk that night, whether anything suspicious had happened earlier in the evening. (Tr. 225). Singleton informed the police that a man had come into the store a little after 11:00 p.m., made a purchase, and asked Singleton if he was working all night by himself. (Tr. 191–92). Police were suspicious of this encounter and reviewed the security footage for the time period in question. (Tr. 225, lines 12–25). In the security footage, police found that the men in question had come to the store in a white Ford Taurus with bubble-style headlights. The video showed that one man entered the store and that the driver of the car wore a grey Gamecock shirt. (Tr. 226). Police then obtained security footage from a nearby gas station which showed the same car pull in, with the same driver in the same shirt, at 2:19 a.m., approximately thirty-two minutes before the robbery. (Tr. 231). The additional footage showed clear damage to the Ford Taurus's front, driver's side

panel. (Tr. 237, lines 17–18). Based upon the information obtained by the security cameras at both locations and the interviews with the victims, police issued a "be on the lookout" (BOLO) for the vehicle and the suspects. (Tr. 236).

Detective Yolanda Brown, the lead detective in the case, requested a listing of all white Ford Tauruses between the model years of 2000 and 2003 registered in Charleston County. (Tr. 238, lines 3–5). She entered the license plates into the Automatic License Plate Reader (ALPR), a system of automatic scanners attached to police vehicles and throughout the municipalities that can scan license plates. (Tr. 238, lines 6–18). Through the images provided by the ALPR, police found a white Ford Taurus with a sunroof and a dent above the front driver's side wheel well that seemed to be the vehicle they were looking for. (Tr. 238, lines 17-25). The vehicle was registered to Appellant and was subsequently located at his residence. (Tr. 239–40). Detective Brown made contact with Appellant, who agreed to be interviewed by police at the police station on October 20, 2014. (Tr. 240–43).

Appellant confirmed it was his vehicle that appeared in the still images from the surveillance video footage. (Tr. 245, lines 7–22). During the interview, Appellant further identified D and Big T from line-up photos. (Tr. 260, lines 7–19). Appellant told police that only he drove his car and that he did not let others drive it. (Tr. 256, lines 14–22). During the questioning, Appellant changed his story multiple times including: he was at home at the time of the robbery, he was only with D, he was only with Big T, there was a woman in his car, the "person" seen in his car was actually a pile of clothes, he went to get cigarettes, and he was in his car drinking beer and soda. (Tr. 247–56). However, security camera footage provided by the other gas station showed Appellant in his vehicle at that store during the same time. Detective Brown stated that when she told Appellant she was a robbery detective, he was not surprised. (Tr. 251).

Appellant eventually admitted he was present in the car the night of the robbery. (Tr. 258). He told police that D and Big T exited the vehicle at the CVS across the street from the gas station and told him to wait there. (Tr. 258, lines 8–11). He did not ask where they were going or why he was being asked to park at the CVS. (Tr. 258, lines 12–19). Appellant told Detective Brown that the men left the car dressed in white, but when they came back they were dressed in all black. (Tr. 258, line 25–Tr. 259, line 5). Appellant stated the men paid him $5.00 for all of the driving he did. (Tr. 259, lines 6–13). Appellant was subsequently arrested on October 24, 2014, and charged with armed robbery. (Tr. 267, lines 14–18; *R. Indictment).

Pretrial, the State brought up witness Young's prior convictions and whether Appellant would be able to use them to impeach. (Tr. 58, line 1–Tr. 59, line 13). The State argued his convictions should not come in because they were not crimes of dishonesty and were more prejudicial than probative. (Tr. 58–62). After the trial judge agreed to take the matter under advisement, the solicitor stated that he would be willing to stipulate that Young was a convicted felon without getting into the eight or nine convictions. (Tr. 62, lines 8–19). Defense counsel agreed to the stipulation but added that he would like to question Young regarding another incident because he argued it went to bias toward the solicitor's office in regard to his testimony. (Tr. 62, line 22–Tr. 63, line 13). Specifically, defense counsel argued "the fact that they have a witness with pending charges I think goes to his motive to get up here and cooperate with the State in any way he can." (Tr. 64, lines 13–25). The trial judge did determine defense counsel could cross-examine Young as to bias and whether anything was offered to him for his testimony. (Tr. 66, lines 8–11). Subsequently, the solicitor informed the trial judge that he had researched Young's pending charge and discovered it had been in General Sessions by mistake and was actually a municipal charge. (Tr. 68, lines 9–25). The solicitor argued no bias could exist when the charge was improperly in General Sessions in the first place. (Tr. 69, lines 1–5).

Defense counsel then argued the petit larceny municipal charge should come in as a crime of dishonesty. (Tr. 69, line 10–Tr. 70, line 5). The State responded that the crime was not one of dishonesty in and of itself without any additional false statement or act of deceit. (Tr. 70, lines 6–15). The solicitor gave an example that if Young had misrepresented himself in some way in order to commit the theft, then it would be a crime of dishonesty and qualify. (Tr. 70, lines 17–23). After the solicitor argued there were no misrepresentations, false statements, or any type of deceit, defense counsel countered with a police report that showed Young had lied to police, stating, "If that's not indicative of dishonesty, I don't know what else is." (Tr. 71, line 8–Tr. 79, line 19). The trial judge marked the police report as Court's Exhibit #1 and ruled that defense counsel could inquire as to the petit larceny conviction. (Tr. 72, lines 20–24).

At trial defense counsel repeatedly accused witness Young of lying, alleging that he intentionally misled the police about his location and travels on the night of the robbery. (Tr. 113–19). Defense counsel attempted to question Young about any previous lies that he may have made to the police by asking, "And you've been untruthful with law enforcement in the past, have you not?" (Tr. 120, lines 3–4). The solicitor objected to the question on the grounds of relevance, and an off-the-record bench conference was held. (Tr. 120, lines 5–10). The trial judge sustained the objection and subsequently allowed a proffer, during which defense counsel and the solicitor asked Young questions. (Tr. 120, line 11; Tr. 130, line 2–Tr. 131, line 19). At the end of the proffer, the trial judge asked for any objections. (Tr. 131, line 25). Defense counsel stated, "Well, it depends on the -- it depends on the ruling of Your Honor." When the trial judge stated she was going to stand by her initial ruling, defense counsel said, "Then no objection, Your Honor." (Tr. 132, lines 1–5).

ARGUMENT

The trial court did not abuse its discretion in sustaining the State's objection to Appellant's questioning witness Young regarding his truthfulness to police in an unrelated case. Additionally, Appellant's argument that the specific instance of lying should have been admitted pursuant to Rule 608(b), SCRE, is not preserved.

Appellant argues the trial judge erred in prohibiting Appellant from cross-examining witness Thomas Young about lying to the police. Specifically, he contends the evidence was relevant because it was probative of Young's truthfulness in his trial testimony and should have been admissible under Rule 608(b), SCRE. Initially, the issue of whether the evidence was admissible under Rule 608(b), SCRE, was not raised to and ruled upon by the trial court and, thus, is not preserved for appeal. Additionally, the State's objection on the basis of relevance was properly sustained by the trial judge because the question was not relevant to the instant case and, to the extent Young's truthfulness in a prior police investigation was probative of anything related to Appellant's case, it was only for the purpose of admitting his prior conviction for petit larceny. This Court should affirm.

Preservation

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. . . . A party may not argue one ground at trial and an alternate ground on appeal." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003). At trial, after the trial judge sustained the State's objection to defense counsel's question to Young about being untruthful to law enforcement in the past, Appellant simply moved on. At the end of Young's testimony, the trial judge waited until the jury left and then asked defense counsel if he wished to proffer the testimony. Counsel then proffered the questions he would have asked Young and Young answered. Next, the State did the same. At that time, the trial court asked for

any objections and Appellant said he had none after confirming that the trial court was standing by its initial ruling. Defense counsel did not provide details about what he meant by not objecting; however, he seems to have agreed with the trial judge's ruling that he could use the conviction to impeach but was not permitted to ask about Young's lying to police in regard to that conviction. The fact that he said his objection would depend on her ruling, and then didn't object, seems to indicate a waiver of any objection, particularly where defense counsel did not attempt to ask the question again. If he believed the judge's ruling permitted the question, he would have asked it again. If he believed the judge's ruling did not permit the question, he waived his right to raise this issue on appeal by saying he had no obligation. In any event, at no time did Appellant argue Rule 608(b), SCRE. Thus, he cannot now argue the testimony should have been admissible on that basis.

Merits

In criminal cases, appellate courts sit to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions to admit or exclude evidence rest in the sound discretion of the trial court and will only be reversed on appeal for an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "A trial [court] has considerable latitude in ruling on the admissibility of evidence and [its] rulings will not be disturbed absent a showing of probable prejudice." *State v. Kelley*, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

Pretrial, defense counsel introduced a police report, which showed Young had lied to police, for the sole purpose of convincing the trial judge to allow him to use Young's petit larceny conviction to impeach him. The reason he introduced the police report was because the conviction was not a crime of dishonesty alone and required more to be admitted under Rule 609(a)(2), SCRE. He successfully argued that the fact that Young lied established the required dishonesty to allow him to inquire into this particular conviction. When defense counsel later wanted to inquire as to the specifics of the lying itself, this went outside the bounds of what the trial judge had allowed. Defense counsel attempted to show Young was a dishonest person by questioning him about lying to police in front of the jury, as a way to discredit him and call his credibility into question. That was not the intended purpose of the police report and its evidence of Young's lying. The only purpose for which defense counsel introduced the police report and the fact that Young lied was to get the conviction in for impeachment, which he did. The State even clarified the trial court's ruling by stating, "Just to clarify in reference to that. [Defense counsel] can –if I understand correctly, can impeach him regarding that conviction but not in reference to any bias from my office?" (Tr. 73, lines 3-6). The trial judge stated, "Correct," and defense counsel did not ask for any additional ruling regarding use of the conviction or the fact that Young lied to police in association with that conviction. That conviction served to impeach Young's credibility as allowed under Rule 609(a)(2), SCRE.

Even if this Court finds Appellant's Rule 608(b), SCRE, argument is preserved, the trial judge was within her discretion to exclude the evidence.

> Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. **They may, however, in the discretion of the court**, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2)

> concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Rule 608(b), SCRE (emphasis added).

Under Rule 608(b), SCRE, the court has discretion to determine whether specific instances of the conduct of a witness may be inquired into on cross-examination concerning the witness's character for truthfulness or untruthfulness. Here, the trial judge did not abuse her discretion in rejecting Appellant's attempt to inquire about a specific instance of Young's conduct to attack his credibility and in sustaining the State's objection on the basis of relevance. She had already allowed the defense to present the conviction for petit larceny based on the additional information that Young lied to the police, making a crime that would not otherwise have been eligible to attack his credibility admissible under (a)(2) of Rule 609, SCRE. The trial judge was perfectly within her discretion to not then allow defense counsel to go beyond that original ruling concerning the use of the police report and gain an additional use of the same information, in essence having twice the opportunity to impeach Young's credibility. Once the police report that showed Young lied was used for its original purpose of making the petit larceny crime eligible for use as an impeachment tool, it was not relevant for any other purpose, particularly where the judge has absolute discretion over whether to permit its use under Rule 608(b), SCRE. The trial judge correctly sustained the State's objection on that basis, and this Court should affirm.

If this Court somehow finds the trial judge erred in preventing Appellant from questioning Young about his previous misstatements to police in the unrelated matter, the trial judge's decision amounted to harmless error given the other evidence in the case, which overwhelmingly supported Appellant's conviction. In determining harmless error regarding any issue of witness credibility, an appellate court will consider the importance of the witness's

testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case. *State v. Fossick*, 333 S.C. 66, 70, 508 S.E.2d 32, 34 (1998) (citing *State v. Holmes*, 320 S.C. 259, 464 S.E.2d 334 (1995) (citing *Delaware v. Van Arsdall*, 475 U.S. 673 (1986))). If this court finds error in the trial judge's decision, it "must ask what other evidence was considered besides the evidence entered in error." *State v. Baccus*, 367 S.C. 41, 55, 625 S.E.2d 216, 224 (2006) (citing *State v. Parker*, 315 S.C. 230, 433 S.E.2d 831 (1993)). "When guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached, this Court will not set aside a conviction for insubstantial errors not affecting the result." *Baccus*, 315 S.C. at 55, 625 S.E.2d at 224 (citing *State v. Livingston*, 282 S.C. 1, 317 S.E.2d 129 (1984)); *see also State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (admission or denial of improper evidence is harmless where the evidence is merely cumulative to other evidence.); *State v. Schumpert*, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (any error in admission or denial of evidence cumulative to other unobjected-to evidence is harmless); *State v. Pickens*, 320 S.C. 528, 531, 466 S.E.2d 364, 366 (1996) (citation omitted) ("[W]here a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed.").

In *Fossick*, our Supreme Court found the trial court erred in excluding testimony by someone who allegedly heard a State's witness say, "I killed that bitch and I'll kill you." 333 S.C. at 69, 508 S.E.2d at 33. The appellant had wanted the evidence to come in as extrinsic evidence of a prior inconsistent statement under Rule 613(b), SCRE, in order to attack the witness's credibility. *Id.* Our Supreme Court determined that even though the trial court erred in excluding the evidence, the error was harmless. *Id.* at 70, 508 S.E.2d at 33. The Court considered the importance of the witness's testimony to the prosecution's case, whether the

witness's testimony was cumulative, whether other evidence corroborated or contradicted the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case. *Id.* at 70, 508 S.E.2d at 34. The Court found the same information about what happened on the day of the murder was admitted through the appellant's statement and the appellant's father's statement; thus, the witness's testimony was cumulative. *Id.* Additionally, the Court determined the testimony of the State's witness was relatively unimportant to the State's case because the appellant confessed and led police to the murder weapon. *Id.* The Court also noted the appellant was permitted extensive cross-examination of the State's witness and was able to impeach him. *Id.*

As noted above, "A trial [court] has considerable latitude in ruling on the admissibility of evidence and [its] rulings will not be disturbed absent a showing of probable prejudice." *State v. Kelley*, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). In *Wilder v. State*, 388 S.C. 282, 696 S.E.2d 587 (2010), the Supreme Court found that even though the trial judge erred in refusing to allow the petitioner to impeach a witness with nine incidents of preparing false tax returns, the error was harmless because the Court could not find Wilder was prejudiced. There were five other eyewitnesses who identified the petitioner as the shooter, physical evidence linked the petitioner to the murder, and the witness's testimony was merely cumulative to other overwhelming evidence of guilt. Similarly here, no prejudice exists where Young's testimony merely corroborated other evidence.

In Appellant's case, when looking at the above factors to determine harmless error, the State's case certainly did not rely solely on Young's testimony. The State had the victims' statements, video footage from surveillance cameras, and Appellant's statements to support its case. Young's testimony was merely cumulative. No other testimony contradicted Young; rather, the other evidence corroborated his testimony. For example, Young's statement to police

and testimony at trial that he saw two men at the gas station, and that the heavier man had what looked like a gun, was corroborated by the surveillance video showing two men exiting the gas station with the heavier one armed. (Tr. 102–03; Tr. 220, lines 7–15). Cross-examination was permitted on Young's past convictions, including the petit larceny conviction that only came in because of the extra information about dishonesty provided through the police report that showed Young had lied to the police. (Tr. 120, lines 12-19). These convictions allowed defense counsel to attack Young's credibility through impeachment. Additionally, defense counsel elicited admissions from Young on the stand that he lied to the police during this investigation, specifically about where he had been and where he was going. (Tr. 113, line 3–Tr. 117, line 1). Finally, the State's case was strong and certainly did not hinge on Young's testimony. It merely served as corroboration of what was seen on the surveillance videos.

Furthermore, Appellant fails to show how the outcome of his trial would have been different but for being able to further question Young about his lying to the police. This is because the outcome would not have been different; the admitted and unobjected-to evidence overwhelmingly supported Appellant's conviction. The victims in the case, William Finch and Terry Singleton, positively identified the white Ford Taurus as the get-away vehicle. (Tr. 139, line 10–Tr. 140, line 10). Police procured the video camera security footage of the robbery from the station, which showed a white vehicle, possibly a Ford Taurus. Other footage showed a white vehicle that looked like a Ford Taurus driving past the station six minutes before the robbery. (Tr. 221, lines 5–14). Still-frame photos were developed from the video of Appellant entering the Circle K and of him walking toward the station from his car. (Tr. 231, line 15–Tr. 232, line 4). According to Detective Brown, the video from the Kangaroo station showed the same person driving the car as the video at the incident site. (Tr. 233, lines 6–24). The damage to the vehicle was apparent in the video, which is how the police developed the suspected

vehicle. (Tr. 237, line 15–Tr. 238, line 25). That vehicle was registered to Appellant and was located at Appellant's house. (Tr. 239, line 1–Tr. 240, line 12). Appellant confirmed that the vehicle in the still shots produced from the video was his and identified himself as well. (Tr. 245, lines 7–24).

When police requested security camera footage from a nearby gas station, they found that thirty-two minutes before the robbery the same white Ford Taurus pulled into that station. (Tr. 231). Police gained additional information about the vehicle in that footage, specifically that there was damage to the front, driver's side panel. (Tr. 237, lines 15–18). Detective Brown testified it was the surveillance video footage and testimony of the victims that led her to place a BOLO on that vehicle, to obtain DMV records matching that vehicle, and to load those records into the ALPR camera system. (Tr. 223, lines 14–19; Tr. 225, lines 3–25; Tr. 226, lines 1–12; Tr. 231, lines 3–12, 15–21; Tr. 232, lines 1–25; Tr. 233, lines 12–24; Tr. 236, lines 7–11; Tr. 238, lines 1–10). Once the Taurus was found matching the description, the detective then made contact with Appellant and interviewed him. (Tr. 238, line 14–Tr. 239, line 25; Tr. 240–43). Appellant's statements to police ultimately led to his arrest, and were the final, cumulative piece of evidence at his trial.

Young's statements to police, as well as his 911 call, merely served to lay out a timeline that was otherwise deducible from the time-stamp on the security camera footage and the statements of the victims in the case. Young's statements helped police to reduce the amount of time they would have searched for the suspect vehicle on the security tapes, rather than having to wade through hours of footage. However, this case never hinged on Young's statements. To the extent the case depended at all on the jury's consideration of Young's veracity, the admission of his felony convictions and the exploration of his lying to the police about where he had been and where he was going on the night in question were sufficient to suggest to the jury Young may

have issues with truthfulness that would affect his credibility. The evidence he sought to introduce here was otherwise cumulative and overwhelming.

Even if defense counsel had been able to introduce the fact that Young lied to police, his credibility had already been tested by introduction of the prior petit larceny conviction itself, not to mention his other felony convictions that automatically came in under Rule 609(a)(2), SCRE. As such, any error that resulted from the trial court's decision was harmless. A review of the record clearly shows that any error that resulted from Appellant's inability to cross-examine Young on this singular issue, when the jury was already aware of his felony convictions, establishes that such an error is harmless beyond a reasonable doubt. As Appellant's guilt was conclusively proven, and no other rational conclusion could have been reached by the trier of fact given the breadth of the evidence, this Court should not set aside a conviction for insubstantial errors that cannot be shown to otherwise have affected the result. *Baccus*, 367 S.C. at 55, 625 S.E.2d at 223.

CONCLUSION

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

Respectfully submitted,

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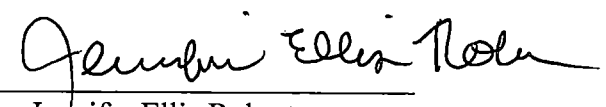
BY: 
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November 4, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of General Sessions

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2016-000088

THE STATE,

Respondent,

v.

ROBERT WILSON,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 4th day of November, 2016.

Angela Bennett

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November 4, 2016

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Robert Wilson
Appellate Case No. 2016-000088

Dear Ms. Hudgins,

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/ab
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Services