STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Lancaster County
The Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2015-000126

THE STATE,

Respondent,

v.

DEMARIO MONTE THOMPSON,

Appellant.

AMENDED FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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II. The circuit court properly admitted the 911 recording, which was authenticated by the Director of Public Communications and the dispatcher who took the call, and its contents did not violate Appellant's rights under the Confrontation Clause.

III. The circuit court properly denied Appellant's directed verdict motion because there was ample evidence in the record from which the jury could, and did, find Appellant entered the victim's apartment without consent in the nighttime, and with the intent to commit a crime therein.

IV. The circuit court properly denied Appellant's motion for a new trial because the court did not commit errors so prejudicial as to deprive Appellant of a fair trial.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In October 2014, the Lancaster County Grand Jury indicted Appellant Demario Monte Thompson on one count of attempted murder, one count of first degree burglary, one count of possession or display of a firearm during a violent crime, and two counts of pointing and presenting a firearm. The case was called for a jury trial on January 5, 2015, before the Honorable Brian Gibbons, Circuit Court Judge.

During pre-trial motions, Appellant moved to suppress testimony from the apartment complex manager regarding a trespass notice indicating Appellant was banned from coming on the complex property. The State argued the testimony and letter went directly to the first degree burglary charge because it established Appellant was not a resident of the complex, and could not have had consent to enter the victim's apartment. The court denied Appellant's motion, finding the fact the victim received the trespass notice as the apartment occupant went to the manager's credibility, and Appellant could cross-examine her about whether she sent a copy of the letter to him personally. (Trial Transcript [TT], pp. 23-30; Record on Appeal [R.], pp. 6-13).

Appellant then moved to suppress the testimony and notice under Rule 404(B), SCRE, arguing it was inadmissible character evidence. The State indicated it did not intend to ask the manager about why the notice was issued, but was presenting the notice to show Appellant was not a resident at the complex, and the victim could not give him consent to be there. The court denied the motion to suppress under Rule 404(B), finding the State was not offering the letter as character evidence, but to prove a specific element of the crime. (TT, pp. 30-32; R., pp. 13-15).

Appellant then moved to suppress the testimony and notice as unduly prejudicial. The court denied the motion, finding the evidence's probative value on the issue of Appellant's right to be in the victim's apartment outweighed any prejudicial value. (TT, pp. 34-35; R., pp. 17-18).

Deputy Rueben Silberman of the Lancaster County Sheriff's Office testified he responded to a disturbance call at an apartment complex between 4:00 a.m. and 5:00 a.m. on the morning of July 2, 2014. When he arrived at the complex, he spoke with the victim, who was very upset, had wounds on her head and neck, torn clothes, and appeared like she had been in a physical altercation. He saw the victim's apartment door had been kicked in, and was hanging off the hinges. The apartment living room looked like a disturbance and physical altercation had occurred there. Appellant was not present, but Deputy Silberman spoke with the victim's neighbors. (TT, pp. 52-61, State's Exhibit 1 [Photos]; R., pp. 35-44). [1]

Dominique Huff testified he lived across the hallway from the victim's apartment, and he was in his apartment the morning of July 2, 2014, when he heard a disturbance coming from the victim's apartment. He went outside and saw the victim's apartment door hanging off the hinges. It was dark inside the apartment, but he heard "just a whole bunch of commotion" inside. He returned to his apartment, but then heard someone yell "he had a gun," so he grabbed his gun and went back outside. At that time, he saw Appellant downstairs in a verbal altercation with another neighbor. He also saw the victim come out of her apartment wearing a shirt and underwear, and crying hysterically. (TT, pp. 62-70; R., pp. 45-53).

[1] State's Exhibit #1 is on file with the Court.

Jamie Hunt testified she lived with Dominique Huff and their three children, and they woke up early on the morning of July 2, 2014, when they "heard the disturbance and someone kicking in doors and stuff like that." After Mr. Huff went outside to check on it, he came back in and told her to call 911, which she did. (TT, pp. 71-73; R., pp. 54-56).

The apartment complex manager testified, over Appellant's objection, she had been the manager at the victim's apartment complex for seven years, and Appellant had never been a resident at the complex. She further testified she prepared a letter dated March 18, 2014, advising the victim Appellant was banned from the complex. She personally presented the letter to the victim, and had the victim sign at the bottom of the letter acknowledging she received and understood the letter's contents. (TT, pp. 73-76; R., pp. 56-59).

The letter stated Appellant was banned from the complex and would be charged with trespassing if he came back on the property. It also advised the victim the complex would take legal action to terminate her lease if she, or a guest of hers, allowed Appellant to enter her apartment, or if she was found in Appellant's presence on the property. (State's Exhibit 2; R., p. 123).

Appellant then objected to introduction of the recording of the victim's 911 call, arguing it violated the Confrontation Clause because the victim's statements during the call were testimonial in nature, and he did not have an opportunity to cross-examine the declarant (victim), who was not present to testify at trial. The State argued the call was non-testimonial because it was not the result of an interrogation, and all the dispatcher's questions were aimed at obtaining as much information as possible for the responding officers. (TT, pp. 77-82; R., pp. 60-65). After listening to the recording, the court

overruled Appellant's objection. (TT, pp. 82-83, Audio Recording of 911 Call; R., pp. 65-66).[2]

The Deputy Director for Lancaster County Public Communications testified about the recording and maintenance process for 911 calls, and identified the recordings associated with the July 2, 2014, incident. The 911 dispatcher on duty that night verified she handled the call in question, and identified her own voice in the recording. (TT, pp. 84-90; R., pp. 67-73).

The circuit court granted Appellant's directed verdict motion on both pointing and presenting charges, but submitted the remaining charges to the jury. The court also submitted multiple lesser included offenses as to the attempted murder charge. (TT, pp. 91-98, 103; R., pp. 74-81, 86).

The jury convicted Appellant on the first degree burglary charge and the lesser-included offense of assault and battery third degree on the attempted murder charge, and acquitted him on the possession or display of a firearm during a violent crime charge. The circuit court sentenced him to fifteen years incarceration on the first degree burglary conviction, and time served on the assault and battery third degree conviction. This appeal followed.

[2]The Audio Recording of the 911 call is on file with the Court.

ARGUMENT

I. The circuit court properly admitted the trespass notice letter because it was directly relevant to an element of first degree burglary, the probative value far outweighed any potential prejudice to Appellant, it was admissible as a business record prepared in the ordinary course of business, and it was not prior bad act evidence.

Appellant contends the circuit court erred in admitting the trespass notice letter because it was irrelevant, unduly prejudicial, impermissible hearsay, and inadmissible prior bad act evidence. To the contrary, the circuit court acted well within its discretion in determining the apartment manager's testimony and the trespass notice letter were directly relevant to the first degree burglary charge, the probative value outweighed any prejudicial effect, the apartment manager's testimony the victim signed it in her presence was not inadmissible hearsay, and the evidence presented did not contain anything about purported prior bad acts.

"'The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.'" State v. Black, 400 S.C. 10, 732 S.E.2d 880, 884 (2012) (*quoting* State v. Saltz, 346 S.C. 114, 551 S.E.2d 240, 244 [2001]). "'An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.'" *Id.* (*quoting* State v. Jennings, 394 S.C. 473, 716 S.E.2d 91, 93 [2011]). "To warrant reversal, an error must result in prejudice to the appealing party." *Id; see also* State v. King, Op. No. 2012-213461, 2016 WL 1039478, at *7 (S.C. Ct. App., filed March. 16, 2016).

> A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:
>
> (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
> (a) is armed with a deadly weapon or explosive; or
> (b) causes physical injury to a person who is not a participant in the crime; or
> (c) uses or threatens the use of a dangerous instrument; or
> (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
> (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
> (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. § 16-11-311 (2015). In this case, it is undisputed Appellant entered the victim's apartment during the early morning hours of July 2, 2014, and the primary issue in dispute at trial was whether he entered without consent.

A. Relevancy

Appellant contends the circuit court erred in admitting the trespass notice because it was irrelevant to any issue at trial, and was unduly prejudicial. As the circuit court found, however, it is readily apparent the trespass notice was directly relevant to the issue of consent by substantiating Appellant was not a resident, and had no possessory interest in the apartment giving him implicit consent to enter it.

Appellant's reliance on State v. Singley, 392 S.C. 270, 709 S.E.2d 602 (2011), is misplaced. The defendant in Singley inherited a one-half undivided interest in his mother's house after the death of his father. He lived in the house with his mother for a period of time, but she ultimately evicted him. He subsequently broke into the house through a window while his mother was out, and attacked her when she came home. *Id.* at 604.

At trial and on appeal, the defendant argued it was legally impossible for him to burglarize the house because he was an owner. The Court acknowledged the well-established axiom that a person cannot burglarize his own home, but noted merely holding title to property is not dispositive of the consent issue. Rather, the court must look beyond title to the totality of the circumstances in determining whether the defendant "had custody and control of, and the right and expectation to be safe and secure in the dwelling burglarized." *Id.* at 606. The Court concluded the jury could find the defendant did not have a possessory interest in the home, even though he did have an ownership interest. *Id.* at 607.

In this case, while the victim did have a possessory interest in the apartment, the extent of her interest was governed by the terms of the rental agreement between her and the property owner. After she acknowledged receipt of the trespass notice, it effectively became a part of the rental agreement, the victim's possessory interest was subject to its terms, and she could not legally give consent for Appellant to enter the apartment for any purpose.

The State never alleged Appellant knew about the trespass notice. Rather, the notice was offered to show Appellant was not a resident of the apartment on July 2, 2014, and the victim risked eviction if she allowed him to enter the apartment.[3] Nor did the State "repeatedly" stress the trespass notice during closing argument as Appellant alleges, but mentioned it **once** as only **one** piece of evidence on the consent issue. (TT, pp. 109-110; R., pp. 92-93).

[3]Unfortunately, as frequently happens in cases involving domestic violence, the victim would not testify against her assailant at trial.

B. Hearsay

Appellant also argues the trespass notice was inadmissible hearsay because the victim was the declarant, which is patently incorrect. The property manager prepared the notice, making her the declarant, and the victim's signature merely acknowledged receipt of the notice. In addition, the notice was a business record prepared and maintained in the ordinary course of the apartment complex's business, authenticated by the property manager as the custodian of those records, and as such, it was not inadmissible hearsay. *See* Rule 803(6), SCRE (business records prepared in the ordinary course of business activity are not inadmissible hearsay).[4]

C. Prior Bad Acts

Appellant also asserts the notice constituted prior bad act evidence, contending "the insinuation from the letter is as damning as it is obvious." The notice did not allege, and the property manager did not testify, it was premised on any bad act committed by Appellant. There are a myriad of reasons a property owner may issue a trespass notice, most of which do not involve criminal activity. For instance, Appellant could have been banned simply because the property manager did not like his looks, other tenants complained about him playing loud music, or his car muffler was too loud, none of which constitute criminal acts.[5]

---

[4]Further, the notice was not offered to prove Appellant was banned from the property, but as evidence he was not a resident of the complex. Thus, it is arguable the notice was not hearsay under Rule 801(c), SCRE, because it was not offered for the truth of the matter asserted therein.

[5]Appellant's assertion the notice "invited speculation by the jury" is itself rank speculation. The State told the jury exactly what the notice showed in connection with the burglary charge - Appellant was not a resident of the apartment complex, and did not have consent to be on the property on July 2, 2014.

D. Harmless Error

Finally, any error in admitting the notice was harmless beyond any reasonable doubt in light of the overwhelming evidence of Appellant's guilt. *See* State v. Keenon, 356 S.C. 457, 590 S.E.2d 34,35 (2003) (evidentiary error was harmless error in light of the overwhelming evidence of the defendant's guilt).

As discussed above, the assailant's identity was not disputed, and consent was the primary issue at trial. The fact Appellant kicked in the apartment door to gain entry, as shown by the photographs entered into evidence without objection, the victim's 911 call (discussed below in Issue II), combined with the extent of the victim's injuries shown in the photographs, fairly conclusively established Appellant did not have consent to enter the apartment. If the victim willingly invited Appellant into the apartment, it is highly unlikely he just kicked in the door for no reason. It is also highly unlikely the victim invited him inside to beat her.

The circuit court properly considered the relevance and probative value of the trespass notice, as well as the prejudice to Appellant, and did not abuse its discretion in admitting the notice into the evidence. Further, any error in admitting the notice was harmless. Accordingly, the circuit court's rulings and Appellant's conviction should be affirmed.

II. The circuit court properly admitted the 911 recording, which was authenticated by the Department of Public Communications and the dispatcher who took the call, and its contents did not violate Appellant's rights under the Confrontation Clause.

Appellant asserts the circuit court erred in admitting the recording of the victim's 911 call. He argues the State failed to establish a proper foundation showing the victim was the actual caller, and admitting the recordings violated his Sixth and Fourteenth confrontation rights as discussed in Crawford v. Washington, 541 U.S. 36 (2004), and Davis v. Washington, 547 U.S. 813 (2006). Both contentions are meritless.

A. Foundation

The Director of Lancaster County Public Communications testified the County's 911 calls are automatically recorded on County servers, and maintained on the servers for three years. She identified the 911 calls involving the incident on July 2, 2014, and the victim's 911 call recording was published to the jury over Appellant's objection.[6]

The 911 dispatcher who took the victim's call identified her own voice on the recording. She further testified the recording contained the entire conversation, and dispatchers have to rely on information they receive from the caller in order to dispatch necessary services. She could not testify with certainty the woman who called was the victim.

Appellant correctly notes there are no South Carolina cases addressing the particular foundational situation at issue in this case, however, other jurisdictions have addressed it. In State v. Williams, 136 Wash. App. 486, 150 P.3d 111, 118 (2007), the court held a sound recording need not be authenticated by a witness with personal

[6]The State indicated there were seven related recordings, and it intended to introduce several of the recordings, but it is unclear from the record whether any recordings other than the victim's recording were published to the jury.

knowledge of the events recorded, but the proponent can authenticate a recording with conversation on it by **any method that produces evidence sufficient to support basic findings of identification and authentication.** *See also* Johnson v. State, 699 N.E.2d 746, 749 (Ind. Ct. App. 1998) (voices on a recording may be identified by circumstantial evidence).

In State v. C.D.L., 250 P.3d 69 (Utah 2011), the court interpreted Rule 901 of the Utah Rules of Evidence, which is virtually identical to Rule 901, SCRE, and sets forth authentication requirements for evidence. The court stated:

> Rule 901 of the Utah Rules of Evidence requires authentication by "evidence sufficient to support a finding that the matter in question is what its proponent claims." Utah R. Evid. 901. To this end, the rule provides a nonexhaustive list of examples illustrating how authentication can be satisfied, noting, for example, that a voice may be identified "by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker" or where "circumstances, including self-identification, show the person answering to be the one called." *Id.* R. 901(b)(5), (6). Proper authentication does not require conclusive proof but, instead, requires only that the trial court determine that there is "evidence sufficient to support a finding of the fulfillment of [a] condition" of fact
>
> **Authentication of a telephone caller's identity can be accomplished by combining that caller's self-identification during the call with circumstances surrounding the call. Particularly, "[t]he identity of a telephone caller may be established by self-identification of the caller coupled with additional evidence such as the context and timing of the telephone call, the contents of the statement challenged, internal patterns or other distinctive characteristics, and disclosure of knowledge of facts known peculiarly to the caller."** United States v. Orozco–Santillan, 903 F.2d 1262, 1266 (9th Cir.1990), overruled in part on other grounds by United States v. Hanna, 293 F.3d 1080, 1088 n. 5 (9th Cir.2002); *see also* State v. Rushton, 2003 UT App 25U, para. 4, 2003 WL 21299576 (mem.) (looking to self-identification and other contextual evidence to authenticate a caller's identity); United States v. Puerta Restrepo, 814 F.2d 1236, 1239 (7th Cir.1987) **("[I]t is not necessary that someone familiar with the speaker's voice identify it. The authentication may be established by circumstantial evidence such as the similarity between what was discussed by the speakers and what each subsequently did."** (citation omitted))

Id. at 69, 78 (emphasis added); *see also* Rodriguez-Nova v. State, 295 Ga. 868, 763 S.E.2d 698, 701 (2014) (proper foundation established by the 911 operator who received the call verifying the 911 recording's accuracy, and the employee who made the recording verifying the authenticity of the copy; an audio recording can be authenticated by testimony of one party to the recorded conversation).

The cases cited and discussed above set forth a reasonable analysis for the authentication of 911 recordings. In this case, the Director and dispatcher verified the authenticity of the recording, and the dispatcher identified her voice on the recording of the victim's call. During the call, the victim identified herself and Appellant, gave the 911 dispatcher her specific address, and said Appellant kicked in her apartment door while she was sleeping, pointed a gun at her and beat her. Except for Appellant's possession of a gun, when they arrived at the apartment, law enforcement verified all of the information provided to 911 by observing the damaged door, indications of a struggle inside the apartment, and the victim's injuries, and by interviewing neighbors about the incident. Considered in totality, there was substantial circumstantial evidence from which the jury could find the victim was the caller on the recording.

B. Confrontation Clause

Citing Crawford and Davis, Appellant contends admitting the recording of the victim's 911 call violated the Confrontation Clause because "large portions" of the recording contained testimonial statements he never had an opportunity to cross-examine. Neither Crawford nor Davis support Appellant's contention.

Appellant engages in the same misapprehension and mischaracterization regarding the 911 call he accuses the State of engaging in before the circuit court. In his

attempt to make the victim's 911 call testimonial, it is clear Appellant has no understanding of police and 911 procedures because he insists the emergency was over when the victim called, and therefore, the dispatcher interrogated the victim for purposes of a subsequent prosecution. When considered in light of the existing circumstances surrounding the victim's call, the fallacy of Appellant's argument becomes clear.

Two of the seven 911 calls received that night (including the victim's) mentioned the assailant had a gun, and he was injuring the victim.[7] Therefore, the officers were responding to a violent situation, with the potential for an active shooter, and the dispatcher's job was to provide them with as much information as possible for safety reasons. When the victim stated Appellant was no longer at the apartment, contrary to Appellant's contention, the emergency situation was **not** over. Rather, the potentially armed assailant could still be in the area, and possibly return to the apartment, and it was important for the dispatcher to get a description of his clothes so the responding officers could distinguish him from other people who might be in the area.

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[7]Appellant attempts to draw some distinction between the one call reporting someone said he had a gun and the victim's call stating he had a gun and pointed it at her, and argues the distinction "is important when prosecuting a case, but immaterial when responding to an emergency." (Brief of Appellant, p. 28). This attempt further illustrates Appellant's complete lack of knowledge regarding law enforcement procedures when responding to an emergency. The distinction Appellant makes is truly "immaterial" to responding officers because they have to proceed as if a gun is involved, and take the necessary precautions to protect themselves and the public. Likewise, contrary to Appellant's contention there was no evidence the dispatcher relayed the information she got from the victim to the officers, she testified the times she was not talking during the call, she was typing the information provided by the victim. (TT, p. 89; R., pp, 72). Modern emergency notification systems send the information the dispatcher types directly to computers in the officers' patrol cars in real time. If the officers' cars are not equipped with computers, the dispatcher's information is immediately relayed to the officers by radio.

Rather than supporting Appellant's contention the recording at issue was testimonial under Crawford, Davis is almost on point with the facts of this case, and clearly establishes Crawford does not apply to the recording at issue. Davis also involved a domestic dispute, and the victim, who did not testify at trial, called 911.

The 911 dispatcher asked the victim multiple questions regarding the assailant's identity, the presence of any weapons in the house, and whether the assailant had been drinking. 547 U.S. at 817-818 The Court held the victim's responses to those questions were nontestimonial because the questions and responses were about events as they were actually happening, rather than information about past events. "A 911 call ... and at least the initial interrogation conducted in connection with a 911 call, is ordinarily not designed primarily to 'establis[h] or prov[e]' some past fact, but to describe current circumstances requiring police assistance." *Id.* at 827-828. The Court concluded from all the circumstances the primary purpose of the questions and responses was to enable police assistance to meet an ongoing emergency, and the victim was not acting as a witness or testifying at that time. *Id.* at 828.

In State v. Bratschi, 413 S.C. 97, 775 S.E.2d 39 (Ct. App. 2015), the South Carolina Court of Appeals acknowledged the distinction between the testimonial statements at issue in Crawford, and the non-testimonial statements in Davis, and held the circuit court did not err in admitting the victim's 911 call.[8] The Court stated the 911 call at issue fell "between those in Crawford and Davis," but was "closer to Davis." Id. at 48-

[8]The victim in Bratschi could not testify at trial because the defendant (his wife) murdered him at some point after the 911 call, and the Court's opinion does not indicate whether someone was able to identify the victim's voice on the recording.

50. Significantly, the 911 recording in Bratschi was much longer, with substantially more substance, than the call at issue in this case

Under the holdings in Davis and Bratschi, the circuit court properly determined the victim's statements were non-testimonial and admitted the 911 recording into evidence. Accordingly, there was no Confrontation Clause violation, and the circuit court's ruling should be affirmed.

III. The circuit court properly denied Appellant's directed verdict motion because there was ample evidence in the record from which the jury could, and did, find Appellant entered the victim's apartment without consent in the nighttime and with the intent to commit a crime therein.

Appellant asserts the circuit court erred in denying his directed verdict motion on the burglary charge, contending the State failed to present sufficient evidence regarding his intent to commit a crime in the apartment, or that he injured the victim in the course of committing the burglary, and the evidence presented merely raised suspicion Appellant was guilty. On the contrary, there was substantial circumstantial evidence that warranted submitting the burglary charge to the jury.

In reviewing a defendant's directed verdict motion, the trial judge is only concerned with the existence of evidence, not with its weight, and the appellate courts must view the evidence and reasonable inferences in the light most favorable to the State. State v. Larmand, 415 S.C. 23, 780 S.E.2d 892, 895 (2015). If there is either any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, appellate courts must find the trial judge properly submitted the case to the jury. *Id.*

In addition to the victim's 911 recording identifying Appellant by name, and stating he kicked the door in while she slept and beat her up, the pictures of the door revealed it was forced open with such force the deadbolt lock could not withstand it. The pictures of the victim's injuries show exactly what Appellant did after forcing his way into the apartment. (State's Exhibit 1 [Photos]; R., pp. _____).[9]

[9] State's Exhibit 1 on file with the Court.

Further, Dominique Huff testified he came out of his apartment when he heard a commotion outside, and saw the victim's door hanging open. The apartment interior was dark so he could not see anyone inside, but he heard "a whole bunch of commotion" coming from the apartment. He went back inside his apartment, but came outside a second time after he heard the man had a gun. At that time, he saw Appellant standing downstairs arguing with another neighbor. He also saw the victim come outside her apartment wearing only a shirt and underwear, and she was crying and "hysterical." (TT, pp. 64-70; R., pp. 47-53).

Considering the evidence, and all reasonable inferences, in the light most favorable to the State, the jury could, and did, easily conclude Appellant entered the victim's apartment without consent, in the nighttime, and with the intent to harm her. Therefore, the circuit court properly denied Appellant's directed verdict motion and submitted the burglary charge to the jury.

IV. The circuit court properly denied Appellant's motion for a new trial because the court did not commit errors so prejudicial as to deprive Appellant of a fair trial.

Appellant argues the circuit court erred in denying his motion for a new trial because the cumulative effect of the purported evidentiary errors deprived him of a fair trial. As discussed above, the circuit court did not abuse its discretion in admitting any of the challenged evidence, and there was sufficient evidence in the record to support the court's denial of Appellant's directed verdict motion. Even if this Court finds error in the admission of certain evidence, any error was harmless beyond a reasonable doubt in light of the overwhelming evidence of Appellant's guilt. Accordingly, there were no evidentiary errors that cumulatively prejudiced Appellant, and this issue is meritless.

CONCLUSION

Based on the foregoing, Respondent submits Appellant's convictions should be affirmed.

Respectfully submitted,

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v.

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Appellant.

CERTIFICATE OF COUNSEL

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

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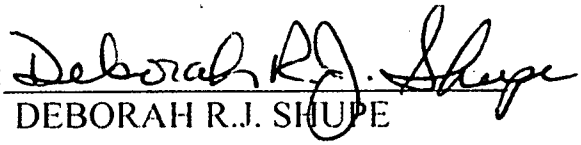
By: 
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PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Amended Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

John H. Strom
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

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

This 14th day of March 2017

Sally B. Ellison

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ALAN WILSON
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SC Court of Appeals

March 14, 2016

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Re: The State v. Demario Monte Thompson
Appellate Case No. 2014-000126

Dear Mr. Strom:

As requested by the Court, enclosed are two copies of the Amended Final Brief of the Respondent, with proof of service, in the above appeal which reflects the missing sentence on page 19 of the brief.

Sincerely,

FOR Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

DRJS/sbe

Enclosures

cc: The Honorable Jenny A. Kitchings (original and 10 copies enclosed)
Victim Services (with enclosure)