STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County

The Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRELL ERVIN RAINES ,

APPELLANT

Appellate Case No. 2016-000142

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

I. The trial court erred reversibly by admitting the unredacted video tape of Appellant's interrogation by law enforcement during which investigators, several of whom did not testify at trial, repeatedly called Appellant a liar, misrepresented or fabricated evidence of Appellant's guilt during the interrogation, and urged Appellant to confess to Myranda Southern's murder; all of which constituted inadmissible hearsay.

II. The trial court erred reversibly in admitting texts messages purportedly sent by Myranda Southern to Appellant where the text messages purportedly sent by Southern constituted inadmissible hearsay, not fitting within any exception.

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

I. The trial court did not abuse its discretion in admitting the interrogation video because the statements of the officers were not offered for the truth of the matter asserted, Appellant had the opportunity to confront the witnesses against him, and the video evidence was not unfairly prejudicial to Appellant.

II. The trial court did not abuse its discretion in finding text messages from the victim's phone admissible because the messages were not introduced to prove the truth of the matter asserted. Moreover, Appellant offered an overly broad objection to the identification of the texts and then withdrew his objection to the texts at their introduction into evidence. The issue is procedurally barred by the withdrawal of the objection.

III. Any error in the admission of the interrogation video and/or the text messages from the victim before her death is harmless beyond a reasonable doubt in light of the overwhelming evidence of Appellant's guilt.

RESPONDENT'S STATEMENT OF THE CASE

A Laurens County Grand Jury indicted Appellant, Darrell Raines, in November of 2013 for murder and possession of a weapon during the commission of a violent crime. (Indictments.) On December 7, 2015, Appellant's case was called to trial before the Honorable Donald B. Hocker. (Transcript p. 1.) Appellant was represented by Brian Able, Esquire. (Tr. p. 1.) Solicitors Dale Scott and Margaret Boykin represented the State. (Tr. p. 1.) At the conclusion of the five-day trial, the jury returned a verdict of guilty on both charges. (Tr. p. 1; p. 699, lines 14-24.) Judge Hocker sentenced Appellant to life imprisonment for murder and a consecutive term of five years' imprisonment for the weapons charges. (Tr. pp. 710, lines 13-22.) Appellant's sentence on the weapons charge was later vacated in order signed by Judge Hocker on April 26, 2016. (Order, April 26, 2016). Thereafter, Appellant filed this appeal.

RESPONDENT'S STATEMENT OF FACTS

Around 12:00 a.m. on August 19, 2013, Myranda Southern left her job at Charter Communications in Simpsonville, South Carolina. This was the last time anyone, except Darrell Raines, would ever see Myranda alive. On August 23, 2013, Myranda's decomposing body was found in the middle of a grassy field off Bramlett Church Road in Gray Court, South Carolina. Killed by a gunshot to her neck, Myranda's death was ruled a homicide. A thorough investigation by the Greenville County Sheriff's Office, Laurens County Sheriff's Office, and South Carolina Law Enforcement Division (SLED) ultimately led to Myranda's killer.

Background

The weeks leading up to Myranda's disappearance were troubling times for her. Myranda was a mother of two young children and recently separated from her husband, Shawn Southern. (T. p. 116, lines 16-25; p. 138, lines 2-10.) Myranda was living paycheck to paycheck and pawning her jewelry to pay bills. (T. p. 178, line 22 – p. 179, line 1.) Myranda joined an online dating website, PlentyofFish.com, in an effort to find companionship. (T. p. 118, lines 8-13.) In the beginning of August 2013, Myranda began chatting with Darrell Raines online. (T. p. 118, line 19- 25.) Raines was going through a similar break up of his marriage. (T. p. 138, lines 10-20; State's Exhibits #31, #32, and #47.) He had recently moved into to his mother's house in Berea, South Carolina after separating from his wife. (State's Exhibit #47.) Raines' inability to obtain steady work led to financial difficulties. (State's Exhibit #47.) In fact, multiple text messages from August 2013 reveal that Raines was desperate for a gun but could not afford one. (State's Exhibits #31 and #32.)

Raines and Myranda talked online for about a week before they met in person. (T. p. 119, lines 14-16.) On Tuesday, August 13, 2013, Myranda drove to Georgia to meet her mother,

Penny Smithers. (T. p. 138, line 21 – p. 139, line 10.) Myranda's two children were going to visit with Penny in Florida until Tuesday, August 20, when Myranda would retrieve them. (T. p. 139, lines 18-22.) When Myranda returned from meeting Penny that Tuesday night, she finally met Raines in person. (State's Exhibit #47.) The two spent the night together and from there began dating. (State's Exhibit #47.) They would frequently call and text one another. (State's Exhibits #31 and #32.). During this time, Raines was able to gain extensive access to Myranda's life. Raines obtained a copy of Myranda's apartment key and was given access to her computer. (T. p. 350, lines 20-21; p. 130, lines 22-24.) Times seemed to be improving for Myranda.

Myranda's Disappearance

On Sunday, August 18, 2013, Myranda left for work at 2:00 p.m. (T. p. 122, lines 15-22.) Myranda worked the evening hours at Charter Communications in Simpsonville. (T. p. 114, line 21 – p. 115, line 20.) She would usually leave around 2:00 p.m. and return home between 12:30 and 1:00 a.m. (T. p. 115, lines 7-9.) Around 6:30 p.m., Myranda spoke to Penny on the phone and confirmed they would meet on Tuesday, August 20 to exchange the kids. (T. p. 141, lines 10-14; p. 142, lines 2-4.) At 8:00 p.m., Myranda had her dinner break. (T. p. 170, lines 7-10.) She left Charter and drove to a gas station in Taylors, South Carolina where she used her debit card at 8:03 p.m. to purchase coffee and cigarettes. (T. p. 286, lines 15-19; p. 287, lines 18-24; State's Exhibit #36.) Myranda briefly met with her estranged husband, then drove back to Charter Communications. (T. p. 171, lines 1-2.) At 12:00 a.m. on August 19, Myranda left work. (T. p. 441, line 17 – p. 442, line 4.)

On the morning of Monday, August 19, Myranda's neighbor, Lauren Searcy, became worried when she did not see Myranda's car parked outside her apartment. (T. p.124, lines 2-17.) Concerned for Myranda's safety, Lauren sent a text message to Raines asking if he had heard

from Myranda. (T. p. 126, lines 1-9.) When Raines responded that he had not spoken to Myranda, Lauren checked Myranda's Facebook account for any information. (T. p. 126, lines 10-19.) Lauren saw that a message had been posted from Myranda's Facebook account on August 19 at 4:07 a.m., stating that Myranda was leaving for Florida to pick up her kids. (T. p. 127, lines 10-19; State's Exhibit 3.) The message troubled Lauren because she knew Myranda was not supposed to leave until Tuesday August 20. (T. p. 127, lines 10-15.). Furthermore, as Lauren would explain to the police, she did not believe the message was written by Myranda because that was "not the way Myranda would talk." (T. p. 128, lines 20-25.) That afternoon, Penny contacted Lauren. (T. p. 144, lines 11-12.) Penny had been trying to call Myranda all day and received no answer. (T. p. 144, lines 9-10.) This was especially worrisome to Penny because August 19 was Myranda's daughter's 8th birthday. (T. p. 139, line 25 – p. 140, line 2.) Penny became even more concerned when she received a strange Facebook message from Myranda's account at 5:16 a.m. on August 19, claiming she was on the way to Florida. (T. p. 143, lines 5-11; p. 145, lines 11-17; State's Exhibit 5.) Another Facebook message posted from Myranda's account at 7:29 p.m. on August 19 claimed Myranda was going to Savannah, Georgia to be with some friends. (T. p. 128, line 14 – p. 129, line 15; State's Exhibit 4.) Because Myranda did not know anyone in Savannah and the message did not sound like Myranda, Lauren filed a missing persons report later that night on Monday, August 19. (T. p. 129, line 16 – p. 130, line 130; p. 146, lines 5-7.)

Investigation

In an effort to locate Myranda, investigators obtained her financial records from BB&T to determine if there were any recent transactions. (T. p. 257, lines 13-18.) Bank records showed Myranda used her card twice on Sunday, August 18. (T. pp. 285-287.) The first transaction was

at 1:20 p.m. at 3301 Wade Hampton Boulevard in Taylors. (T. p. 288, lines 2-18.) The second transaction was at 8:03 p.m. at a 7-Eleven in Taylors. (T. p. 286, lines 15-19; p. 287, lines 18-24.) The last transaction made with Myranda's debit card was a $500 cash withdrawal from an ATM at the Berea BB&T in Greenville on August 19 at 3:36 a.m. (T. p. 281, lines 14-17; p. 282, lines 15-17; p. 283, lines 5-7.) The bank records showed that two balance inquiries were made on Myranda's account directly before the cash was withdrawn. (T. p. 289, lines 2-20.) Surveillance from the ATM showed Raines, alone in his truck, withdrawing the maximum daily withdrawal amount of $500 from Myranda's account. (T. p. 257, lines 13-18; p. 289, lines 21-25; p. 469, lines 21-24; State's Exhibit #26 and #29.)

Upon discovering the suspicious ATM transaction, Investigator Tracy King of the Greenville Sheriff's Office decided to interview Raines on Thursday, August 22. (T. p. 256, lines 7-10.) Raines told King he met Myranda on PlentyofFish.com and they met in person about a week later. (T. p. 258, lines 17-21.) Raines said Myranda called him Sunday night around midnight and told him she was "still dealing with Shawn." (T. p. 261, lines 9-11.) Raines said Myranda gave him her bank card and pin number on Saturday, August 17, the night before she went missing. (T. p. 259, lines 9-10; p. 261, lines 11-16.) Raines claimed Myranda was giving him $200 for a car payment. (T. p. 261, line 24 – p. 262, line 2.) Raines explained that after Myranda said she was dealing with Shawn, he suddenly remembered he still needed to make the withdrawal so he drove to the bank. (T. p. 262, lines 2-5.) While at the bank, Raines claimed he was on the phone with Myranda and she told him to withdraw $500. (T. p. 262, lines 5-8.) At the end of the interview, Raines voluntarily gave the officer's his cell phone. (T. p. 263, lines 11-15.) Officers then requested cell tower site locations and phone records on Raines' and Myranda's phones from the cell phone providers. (T. p. 264, line 6-12.)

On Friday August 23, a severely decomposed body was discovered in a field on Bramlett Church Road in Gray Court. (T. p. 217, lines 7-19; State's Exhibits #12 and #37.) The Laurens County Sheriff's Office, Greenville County Sheriff's Office, and SLED responded to the crime scene and began processing the evidence. (T. pp. 228-229, pp. 331-332; pp. 531-533.) During a search of the field, officers located a magazine of a Hi Point .380 pistol next to the body. (T. p. 231, lines 5-13; p. 233, lines 16-17; p. 240, lines 2-12; p. 433, lines, 8-17; p. 449, lines 11-15.) While on scene, Officer's spoke with Christian Yates, a woman who lived next door to the field on Bramlett Church Road. (T. p. 211, lines 6-9; p. 33, lines 5-15.) Christian said she was awakened by the sound of two gunshots between 1:00 and 1:30 a.m. on Monday, August 19. (T. p. 213, lines 2-20.) She got out of bed and looked out her window but was unable to see anything because it was too dark. (T. p. 213, lines 10-24.)

That same day, investigators located Myranda's abandoned car. Using the information obtained from Raines' and Myranda's cell phone records, investigators determined that Raines' and Myranda's phones pinged off cell phone towers in very close proximity to each other at 12:03 a.m. on August 19. (T. p. 269, lines 2-15; p. 270, lines 12-14). On August 23, investigators with the Greenville Sheriff's Office drove to the general area where the two cellphones pinged in Simpsonville. (T. p. 269, lines 11-19.) In searching the area, investigators discovered Myranda's car in the parking lot at the Simpsonville BI-LO grocery store. (T. p. 269, line 19 – p. 270, line 3.)

On Saturday, August 24, Dr. Janice Ross performed an autopsy of the body. (T. p. 319, line 21 – p. 320, line 1.) Due to the level of decomposition, Dr. Ross took multiple x-rays to determine what injuries the body sustained. (T. p. 320, lines 8-23.) The x-rays revealed a bullet lodged in the upper neck of the body. (T. p. 321, lines 2-4.) Dr. Ross concluded that the cause of

death was a gunshot wound to the neck and the manner of death was homicide. (T. p. 325, lines 7-10.) Using tissue samples taken from the autopsy and known DNA samples from Myranda's personal belongings, the body was positively identified as Myranda Southern. (T. p. 581, lines 2-6.) The bullet retrieved from Myranda's neck during the autopsy was most consistent with a bullet fired from a Hi Point .380 auto caliber pistol. (T. p. 429, line 25 – p. 430, line 3; p. 430, lines 13-20.)

After learning that Raines had used Myranda's debit card in the early morning hours of August 19, claiming he received the card on August 17, Investigator Keith McIntosh of the Laurens County Sheriff's Office began investigating the purchases made with Myranda's card on August 18. (T. p. 335, line 16 – p. 336, line 5.) McIntosh was able to obtain video surveillance that coincided with the two transactions on August 18. (T. p. 336, line 21 – p. 338, line 1.) Both videos from the gas stations in Taylors depicted Myranda using her debit card to make the purchases. (T. pp. 338-340.) Upon discovering that Myranda had possession of her debit card mere hours before she was believed to have been murdered, McIntosh decided to bring Raines in for another interview.

On August 29, Investigators McIntosh and Bryant Cheek interviewed Raines. (T. p. 341, lines 22-24.) Raines told investigators that he was the last person to talk to Myranda while she was alive. (T. p. 346, lines 2-4.) Raines stated that he was home on Sunday night and left only to go to the bank early Monday morning. (T. p. 347, lines 16-18.) Raines explained that the last time he saw Myranda was Sunday morning when he left her apartment. (T. p. 347, line 21 – p. 348, line 1; p. 379, lines 16-18.) Raines then explained Myranda gave him her debit card that morning on Sunday, August 18 so he could withdraw $200 for a truck payment. (T. p. 346, lines 9-23; p. 379, lines 18-20.) Raines told investigators that they could find the money and

Myranda's debit card in an end table at his mother's house. (T. p. 349, lines 6-11.) However, when officers executed a search warrant on Raines' mother's home, the money and debit card were nowhere to be found. (T. p. 349, lines 15-20; p. 415, line 20 – p. 416, line 7) During the interview, investigators asked Raines if he owned any guns. (T. p. 349, lines 21-24.) Raines responded that he owned a Hi Point 9 millimeter. (T. p. 350, line 1.) Raines told investigators that he had purchased the 9 millimeter from Traders Gun Shop in Greenville on Tuesday, August 20. (T. p. 351, lines 1-3.)

After Raines was arrested, investigators drove to Traders Gun Shop to inquire about Raines' purchase of the 9 millimeter Hi Point on August 20. (T. p. 351, lines 5-23.) They discovered Raines had returned to Traders on August 29 to inquire about returning the gun because it was malfunctioning. (T. p. 400, lines 12-15.) An employee had advised Raines that the warranty on the pistol was through the manufacturer, Hi Point. (T. p. 400, lines 23-25.) The employee offered to send the pistol back to Hi Point for Raines but Raines declined and said he would take care of it himself. (T. p. 401, lines 3-7.) Raines explained he was familiar with Hi Point's warranty policy because he had just sent back a .380 Hi Point to the manufacturer for modifications. (T. p. 401, lines 3-7.)

Investigators then contacted Hi Point and discovered Hi Point received a .380 from Raines on Friday, August 23. (T. p. 446, lines 1-3). However, by the time investigators contacted Hi Point, the .380 had already been fixed and was en route to be delivered to Raines' mother's house. (T. p. 408, line 24 – p. 409, line 16.) Officers obtained a search warrant for the residence and retrieved the packaged .380 pistol directly after it was delivered on September 3. (T. p. 409, line 16 – p. 410, line 2; p. 422, lines 17-23.) Inside the package, investigators found a .380 Hi

Point pistol, a copy of Raines' driver's license, and a note from the Hi Point explaining the modifications that were done to the pistol. (T. p. 411, lines 11-25.) Specifically, the note stated:

> Reamed chamber, replace live clip, firing pin and springs. Test fired, no problems. Sent extra clips.

(T. p. 412, lines 1-3.)

During the course of the investigation, officers discovered Raines had in fact purchased the .380 Hi Point pistol at a gun show in Greenville on the evening of Saturday, August 17. (T. p. 391, lines 20-25; p. 394, lines 10-21.) At trial, postmaster Garland Blue testified to the policies for shipping pistols in the mail. (T. pp. 519-520.) He explained pistols could only be shipped priority mail or overnight express mail. (T. p. 519, lines 5-6.) Blue testified that if Raines' gun was received by Hi Point on August 23, it would have been mailed by Raines on August 22 if he used overnight express mail. (T. p. 520, lines 2-9). If Raines shipped the pistol using priority express mail, then the pistol would have been mailed on August 20 or 21. (T. p. 520, lines 9-11.)

Using Raines' cell phone, investigators were able to piece together information regarding the whereabouts of Myranda and Raines during the hours before and after Myranda's death. Officer Dan Kelly of the Greenville Sheriff's Office was able to determine Raines' and Myranda's locations during Sunday, August 18 and Monday, August 19 by cross referencing cell phone records with the tower keys provided by Verizon and Sprint. (T. pp. 590-618.) Additionally, Investigator James Perry of the Greenville Sheriff's Office was able to obtain information from Raines' phone by performing a cell phone extraction. (T. p. 299, lines 13-20.) The extraction included information regarding Raines' phone calls, text messages, and internet activity. (T. p. 302, line 21 – p. 303, line 2, State's Exhibits #31, #32, #33, and #38.) The extraction also provided information that Raines attempted to delete from his phone. (T. p. 300, lines 17-21.)

A review of both reports revealed that on Sunday, August 18, Raines's phone pinged off a cell tower in Greer at 3:59 p.m. (T. p. 610, lines 17-22.) At that time, Myranda's phone was pinging from a cell tower near Charter Communications in Simpsonville. (T. p. 610, line 23 – p. 611, line 8.) Between 6:45 and 6:48 p.m., the following conversation took place between Myranda and Raines:

Raines:	Awesome :-) you get off at 12 right?
Myranda:	:-) yes 12
Raines:	Good. :-)
Myranda:	Will I be seeing you sir?
Raines:	Who knows.... Lol

(State's Exhibits #31 and #32.)

Moments before this text message exchange, Raines told Myranda to call her at 11:00 p.m. to wake him up from a nap. (State's Exhibits #31 and #32). However, Raines, who lived in Greenville, was not taking a nap, but rather was driving to Gray Court. At 7:29 p.m., Raines's phone traveled to Laurens County and pinged off a cell tower in the Gray Court area. (T. p. 611, lines 16-21.) Raines's phone then traveled back towards Greenville around 8:00 p.m., pinging off cell towers on Interstate 385. (T. p. 612, lines 11-17.) Next, Raines' phone pinged off a cell tower in downtown Greenville at 11:03 p.m., while Myranda's phone still transmitted from the cell tower near Charter Communications. (T. p. 612, line 22 – p. 613, line 8). At 11:49 p.m., the following text messages were exchanged:

Raines:	You off?
Myranda:	Hey you
Myranda:	10 minutes
Raines:	K. :-)

(State's Exhibits #31 and #32.)

At 12:03 a.m. on August 19, Myranda called Raines. (State's Exhibits #31 and #32.) At that moment, Raines' phone pinged off a cell tower in Simpsonville near Charter

Communications. (T. p. 613, lines 9-17.) At 12:09 a.m., Myranda's phone pinged off a cell tower near Charter Communications. (T. p. 613, lines 17-23.) Raines' phone stopped moving while Myranda's phone traveled to Laurens County and pinged off a cell tower at 12:51 a.m. (T. p. 613, line 24 – p. 615, line 6.)

Between 2:56 and 3:27 a.m., an hour and a half to two hours after Christian Yates heard gunshots, the following suspicious text messages were sent between Myranda's and Raines' phones:

Raines:	I can't sleep. You?
Myranda:	I'm still with shawn. Hes being an ass. I'm not giving hin what he wants. Ill call you tomorrow.
Raines:	OK. Just let me know when you make it home. I'm headed to bed. Goodnight.
Myranda:	Ok goodnight :-)
Raines:	Oh I forgot to run by the bank like you asked. I'm gonna do it real quick before I go to bed.
Myranda:	Thsts fine and thank you so much for doing that. I'm heading home now.
Raines:	Your'ee welcome. What are friends for.
Raines:	Be careful

(State's Exhibits #31 and #32 (errors in original).)

Myranda's and Raines' phones then both pinged off cell towers in downtown Greenville at 3:30 a.m. when Myranda's phone called Raines'. (T. p. 614, line 23 – p. 615, line 4.) From there, Raines' phone traveled back up to Berea and Myranda's phone never moved again. (T. p. 615, lines 5-17.) Later that afternoon on Monday, August 19, Raines' phone pinged again off a cell tower in the Gray Court area of Laurens County at 3:56 p.m. (T. p. 616, lines 3-8.)

The phone extraction also revealed multiple suspicious phone calls that Raines had made the week of August 18. The extraction showed that Raines placed two calls on August 19, to the BI-LO where Myranda's car was ultimately located. (T. p. 418, line 19 – p. 419, line 5; p. 564, lines 16-18; State's Exhibits #33 and #38.) The phone extraction indicated that Raines attempted

to delete these calls from his phone. (T. p. 654, lines 16-18.) The phone extraction also showed that Raines called numbers associated with Hi Point thirty times between August 18 and August 21. (T. p. 563, line 14 – p. 565, line 23; State's Exhibits #33 and #38). Again, Raines attempted to delete all of these calls from his phone. (T. p. 566, lines 10-12.)

Motive

At trial, the State theorized Raines' motive for murdering Myranda revolved around his infatuation for Lisa Hamlett. (T. pp. 99-107, 642-669.) During 2013, Raines had become increasingly obsessed with Lisa, a woman he had known since childhood. Lisa had gone on two dates with Raines in 2012 and then broke off contact with him. (T. p. 482, line 23 – p. 485, line 14.) However, Raines was unwilling to let Lisa go. The State presented multiple witnesses that testified to Raines' unhealthy obsession with Lisa. (T. pp. 457-465, 466-470, 473-476, 478-518.) Raines told numerous friends that he and Lisa were in love and lived together. (T. p. 461, lines 3-4; p. 467, lines 21-25; p. 468, lines 1-4.) At trial, Lisa testified to disturbing letters and presents that Raines' would leave for her on her doorstep. (T. pp. 487-493.) She testified that Raines would text and Facebook message her regularly, sometimes even having his mother to reach out to Lisa on his behalf. (T. p. 495, lines 4-8.).

Raines' fixation grew as Lisa began dating Jason Gillespie. At trial, the State presented text messages sent between Myranda and Raines discussing Lisa. (State's Exhibits #31 and #32.) Many of the text messages revolved around a Facebook message sent from Myranda's Facebook account to Lisa on Saturday, August 17. (State's Exhibit #52). The message claimed that Myranda had recently slept with Lisa's boyfriend, Jason. (State's Exhibit #52.) It was clear from the text messages Raines instigated the ruse to break up Lisa and Jason. (State's Exhibits #31 and #32). Before the message was sent, Raines texted Myranda:

> Thought... If he isn't there tonight (he's home right now), and we send the messages tonight, and she confronts him, I know how I'd react to something like that and want to drive over immediately. Think we should plant phase 2 either way?

(State's Exhibits #31 and #32.) On Saturday night, after the message was sent, Raines asked Myranda to drive by Lisa's house to see if the message had made any impact. (State's Exhibits #31 and #32.) On Sunday, Raines commented that he believed the message had an impact on Lisa as she was more active on Facebook than she previously had been. (State's Exhibits #31 and #32.) During this time, Raines would log into his Facebook account, using the password "All4Lisa", and perform multiple searches for Lisa and Jason on Facebook. (T. p. 303, lines 8-22; State's Exhibits #31 and #32.) Lisa testified at trial that she had never met Myranda and immediately reported the message to the police when she saw on the news that Myranda was missing. (T. p. 502, lines 22-24; 503, lines 7-13.)

Because of the complexities of this case and the number of witnesses who testified, Respondent has compiled a calendar of events, with endnotes citing the record, to aid the Court in its explanation of the facts.

(Calendar Attachment on Following Pages)

August 2013

Sun.	Mon.	Tue.	Wed.	Thu.	Fri.	Sat.
11	12	13 - Myranda dropped her kids off with her mom in Georgia[1] -Raines and Myranda met in person for the first time[2]	14	15	16	17 - Myranda's Facebook (FB) account sends message to Lisa at 6:38 a.m.[3] - Raines buys 380 from gun show[4] - Raines claims received card from Myranda in 1st interview[5]
18 -Raines claims received card from Myranda in 2nd interview[6] - Myranda leaves for work at 2:00 p.m.[7] - 8:03 p.m. uses credit card at gas station[8] - Myranda gets off work at 12 a.m.[9]	19 - Christian Yates hears 2 gun shots between 1-1:30 a.m.[10] -Raines withdraws $500 from ATM at 3:36 a.m.[11] - 4:07 am FB post[12] - 5:16 AM FB message to Penny[13] - 7:29 pm FB post[14] - Myranda reported missing[15]	20 - Myranda supposed to pick up her kids[16] - Raines buys 9 MM[17] - Possibly sent off .380[18]	21 - Possibly sent off .380[19]	22 - 1st statement from Raines[20] - Possibly sent off .380[21] - Investigators request phone records on Raines' and Myranda's cell phones[22]	23 - Myranda's body Found off Bramlett Church Road[23] - Hi-Point receives .380 from Raines[24] - Myranda's car found at BI-LO[25]	24
25	26	27	28	29 - Raines interviewed and arrested for murder[26] - Search Raines' home[27]	30	31

[1] (Tr. p. 138, line 21 – p. 139, line 10; State's Exhibit 47).
[2] (State's Exhibit 47).
[3] (Tr. p. 495, line 22 – p. 496, line 15; State's Exhibit 52).
[4] (Tr. p. 391, lines 20-25; p. 394, lines 10-21).
[5] . (Tr. p. 259, lines 9-10; p. 261, lines 11-16; State's Exhibit 1).
[6] (Tr. p. 346, lines 9-23; p. 379, lines 18-20; State's Exhibit 47).
[7] (Tr. p. 122, lines 15-22).
[8] (Tr. p. 286, lines 15-19; p. 287, lines 18-24; State's Ex. 36).
[9] (Tr. p. 441, line 17 – p. 442, line 4).
[10] (Tr. p. 213, lines 2-20).
[11] (Tr. p. 281, lines 14-17; p. 282, lines 15-17; p. 283, lines 5-7).
[12] (Tr. p. 127, lines 10-19; State's Exhibit 3).
[13] (Tr. p. 143, lines 5-11; p. 145, lines 11-17; State's Exhibit 5).
[14] (Tr. p. 128, line 14 – p. 129, line 15; State's Exhibit 4).
[15] . (Tr. p. 129, line 21 – p. 130, line 130).
[16] (Tr. p. 139, lines 18-22).
[17] (Tr. p. 398, line 6 – p. 399, line 7).
[18] (Tr. p. 520, lines 9-11).
[19] (Tr. p. 520, lines 9-11).
[20] (Tr. p. 256, lines 7-10; State's Exhibit 1).
[21] (Tr. p. 520, lines 2-9).
[22] (Tr. p. 264, line 6-12).
[23] (Tr. p. 228, line 25 – p. 229, line 13; State's Exhibits 6-12).
[24] (Tr. p. 446, lines 1-3).
[25] (Tr. p. 269, line 11 – p. 270, line 3).
[26] (Tr. p. 341, lines 22-24; p. 354, lines 12-21).
[27] (Tr. p. 349, lines 15-20; p. 415, line 20 – p. 416, line 7).

ARGUMENT

I. The trial court did not abuse its discretion in admitting the interrogation video because the statements of the officers were not offered for the truth of the matter asserted, Appellant had the opportunity to confront the witnesses against him, and the video evidence was not unfairly prejudicial to Appellant.

The trial court properly admitted the video interrogation of Raines by Laurens County investigators because the video was not unfairly prejudicial to Appellant and was relevant to the State's theory of the case. The statements of the investigators were not hearsay because the officers did not quote unavailable declarants implicating Raines in the commission of the crime but instead attempted an investigaoty technique of misrepresenting evidence which ultimately failed to produce a confession. Because the officers testified the misrepresented evidence did not exist, Appellant suffered no confrontation clause violation with the admission of the statements. Moreover, the officers' questions provided context for Raines' explanation of the events leading to Myranda's death. Because the statements were not offered for the truth of the matter asserted, the statements were not impermissible hearsay. Moreover, despite the accusations Raines was lying during his statement, the jury was entitled to consider the context of Raines' answers to the officers in evaluating his credibility.

How the Issue Was Presented at Trial

Laurens County Investigator Keith McIntosh testified he became involved in the investigation after the discovery of the victim's body in the field in Gray Court. (T. p. 331, lines 14-24.) McIntosh consulted investigators from Greenville who were looking into the Myranda Southern missing persons report (T. pp. 333, line 16 – p.335, line 19.) McIntosh watched videos from two different stores, one at 1:20 pm, and a second at 8:03 pm on August 18, 2013, in which Myranda used her debit card to make purchases. (T. p. 335, line 16 – p. 341, line 1.) On August

29, 2013, McIntosh and investigator Brian Cheeks interviewed Raines about the video of Raines using the Myranda's debit card to withdraw $500 from her account, and Raines told the investigators Myranda gave him the card sometime early Sunday morning or possibly even late Saturday night. Raines claimed she gave him the card so he could borrow some money for himself and withdraw some cash for her. (T. p. 346, line 9 – p. 347, line 15.) The State offered the video recording of the interview into evidence, and the defense objected. (T. p. 356, line 7 – pp. 356-377; States Ex. 47.)

Appellant objected to the admission of the video for two reasons. First, he argued the statements made by different the investigators in the room were hearsay because the State did not call all the investigators in the video as witnesses, and second, he argued that when the investigators called Appellant a "liar," they shifted the burden of proof to Appellant to prove his innocence. (T. p. 356, line 10 – p. 358, line 1.) Appellant also argued the investigators misrepresented evidence and referred to seeking the death penalty in the case against him. (T. p. 358, lines 15.)

Before the State argued in response, the trial court said, "On a purely hearsay objection, I don't think anything that the officers say are being offered to the truth of the matter asserted," and later saying, I'm not so certain that it's going to be a hearsay situation." (T. p. 358, line 25 – p. 359, line 14.) The court then clarified whether Appellant was claiming the statement was coerced, to which Appellant replied:

> Yes. I mean, them calling him a liar repeatedly. That's something that wouldn't -- if they were-- if they were being taking life testimony that wouldn't be allowed. That's exactly what my point is. The manner about which they asked these questions. The comments they make to him I think would be inappropriate and would cause the jury to be -- it would be highly prejudicial of him.

(T. p. 360, line 25 – p. 361, line 6.)

In response, the solicitor pointed out he was not interested in anything the investigators were saying during the interview, saying "I want to focus on what [Appellant]'s talking about, and I think that is what the jury is going to do as well." (T. p. 361, lines 17-20.) The solicitor offered to ask McIntosh on direct about the police interrogation procedures, such as "good cop, bad cop" and ultimately tell the jury "there really wasn't any confession." (T. p. 362, lines 1-5.)

The trial court, reserving ruling until he could view the video, suggested the abrasive manner of the investigators might work to Appellant's advantage before a jury because ultimately the tactics failed to produce a confession. (T. p. 363, lines 15-19.) The court also noted he would instruct the jury "that anything said by the police officers during the entire interview are not evidence, because they are to –the interview is – their consideration of the interview is what the Defendant either said or did not say." (T. p. 364, lines 10-16.)

Following the viewing of the video, Appellant renewed his objections to its admissibility on the basis of what he deemed was hearsay by Investigator Cheeks and burden shifting by the officers when they called Appellant a liar. (T p. 368, line 5 – p. 369, line 13.) Appellant also objected to the misrepresentations of the evidence to Appellant during the interview and any references by the officers to the death penalty. (T. p. 369, line 14 – p. 370, line 22.) In support of his position, Appellant offered *State v. Brewer*, 411 S.C. 401, 768 S.E.2d 656(2015). Appellant acknowledged *Brewer* was a cautionary opinion instructing the trial courts to be vigilant in guarding against the admission of hearsay or prejudicial material. (T. p. 371, lines 2-25.)

The court distinguished the case at hand, in which investigators called Appellant a liar, from *Brewer*, in which the interviewer repeatedly told the suspect he had to prove his innocence. The solicitor argued that despite Appellant's assertions otherwise, the questions presented during the interview would have been appropriate during live testimony on the stand. For example, the

State could impeach a witness with a previous statement, asking when or if the witness was lying. However, any demand for a production of evidence to prove his innocence would be impermissible, either in court or by the police, as in *Brewer*. The solicitor argued:

> Judge, let me answer that. If Raines takes the stand tomorrow and he gets up there and tells his side of the story and I go to him and say that's just not the truth though, is it. That's not the truth. You're telling me that's the truth. That's not the truth, is it. I can cross-examine him all day long saying -- that's not shifting the burden. And that would be a proper cross-examination.

(T. p. 374, lines 13-19.)

After reviewing the video, the court denied the motion to suppress it. (T. p. 374, lines 20-21.) Judge Hocker ordered the redaction of the video to exclude any reference to the death penalty and redacted the arrest of Appellant at the end. (T. p. 374, line 22 – p. 375, line 3.) The Court also explained he would give a jury instruction on how they should view the statements by the officer. (T. p. 375, lines 10-17.) When the jury returned, the court instructed the following:

> In just a moment the State is going to, as far as their case, play a video of an interview that was conducted by law enforcement with Mr. Raines. And let me explain several things to you. One, by agreement there's a portion at the very end of this video that was what we call redacted or taken out. So at the very end if it looks like it just kind of stops at a funny place, that is the reason for that. You are to place absolutely so significance in the fact that a portion -- a small portion, but nonetheless a portion of that video was taken out and not for your viewing.
>
> Secondly, **anything that the police officers say during the course of this interview is not evidence and is not to be considered whatsoever as evidence in this case.**
>
> Thirdly, I'll remind you, and we'll explain this in great detail at the conclusion of this case, but it's already been mentioned at the outside, **the State has the burden of proof to prove each and every element of these two offenses beyond a reasonable doubt** is standard. The Defendant has no obligation whatsoever to prove anything. It's to the State to prove each and every element beyond a reasonable doubt. Keep that in your mind as we continue through this case. Okay?

(T. p. 376, line 8 – p. 377, line 4 (emphasis added).)

McIntosh resumed the stand following the publishing of the video to the jury. (T. p. 378, lines 19-24.) On cross-examination McIntosh acknowledged the information they told Appellant in the interview about having video footage of his car traveling down the highway was not true. (T. p. 384, lines 8-23.) The testimony was as follows:

> Q And on the video you're telling my client, you and him both, about -- you know, we got you going down 385 coming and going on these Highway Department cameras that are on these poles on the interstate. There's no such videos, are there?
> A There is video out there but it's not recordable. There is cameras on the interstate but it's not recordable.
> Q My point is, you all are saying we've got videos of you going up and down the highway. You all don't have those videos of my client going up and down the highway?
> A No, sir. There's no video there.
> Q And you mentioned a moment ago about the Bi-Lo video. There's nothing on that Bi-Lo video, is there? Surveillance video?
> A Only at one part we did see headlights and that's all. You couldn't see anything or make anything out as far as car or truck.

(T. p. 385, lines 4-20.)

Standard of Review

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006); *State v. Wilson*, 345 S.C. 1, 545 S.E.2d 827 (2001). "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. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jennings*, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011) (citation omitted).

Analysis

Appellant contends that the investigator's interview statements referring to video surveillance evidence of Appellant's guilt constituted inadmissible hearsay. Rule 801 of the Rules of Evidence defines "[h]earsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." S.C. R. Evid. 801(c). A statement that is not offered to prove the truth of the matter asserted should not be excluded as hearsay. *See State v. Blackburn*, 271 S.C. 324, 247 S.E.2d 334 (1978) (statement implicating defendant in alleged prior crimes, which was not offered to prove the truth of the matter asserted, that is, that defendant in fact committed the prior crimes, but to establish motive, was not "hearsay" and its admission was not error); *Hawkins v. Pathology Assocs. of Greenville, P.A.*, 330 S.C. 92, 498 S.E.2d 395 (Ct.App.1998) (allowing admission of letters, an anniversary card, and video to show close familial bond between the decedent, her husband, and her children in a malpractice action). In particular, statements of one person to another to explain subsequent actions taken by the person to whom the statements were made are admissible as non-hearsay evidence. *State v. Coffey*, 326 N.C. 268, 282, 389 S.E.2d 48, 56 (1990). "The reason such statements are admissible is not that they fall under an exception to the [hearsay] rule, but that they simply are not hearsay—they do not come within the ... legal definition of the term." *Long v. Paving Co.*, 268 S.E.2d 1, 5 (N.C, App. 1980).

Appellant argues *State v. Brewer,* 411 S.C. 401, 768 S.E.2d 656 (2015) compels this Court to find the trial court erred in admitting the interrogation interview. However, his objection to the video is comprised of varying arguments against its admissibility, all of which were considered by the trial court and rejected as distinguishable from *Brewer.* First, the misrepresentation of the evidence to Appellant is not a hearsay issue, nor is the failure to call all

the investigators who took part in the interview to the stand. As was fully developed on cross-examination, the statements by the investigators were not offered for the truth of the matter asserted. The "matter asserted" was that video footage placed his car on the highway and in the BiLo parking lot where the victim's car was found. McIntosh explained they had no such evidence of Appellant's car on any video surveillance cameras. Indeed, his testimony specifically discredited the **truth** of the matter asserted. The trial court made a specific finding that the statements of the investigators in the video were not being offered for the truth of the matter asserted. (T. p. 358, line 25 – p. 359, line 14.) The trial court's finding is consistent with other jurisdictions that have allowed out of court statements offered to show context or to show the reaction of one to whom the statement is made. *See, e.g. State v. Ninci*, 936 P.2d 1364, 1385 (Kansas 1997)(video tape interrogation not offered for truth of matter asserted but to place suspect's answers in context); *Lehman v. State*, 926 N.E.2d 35, 38 (Ind. Ct. App. 2010) (informant's statements recorded in the course of a controlled drug buy were not offered by the State to prove the truth of the matter asserted and, therefore, were not hearsay.)

Second, in *Brewer*, "investigators frequently referenced and quoted many purported eyewitnesses to Brewer shooting both victims." *Brewer*, at 406, 768 S.E.2d at 659. Here, investigators refer to capturing Appellant on video surveillance; they did not refer to statements by human beings. **Video surveillance is not a statement, nor is it made by a declarant**. And specifically, in this case, no video existed. Thus, as distinguished from *Brewer*, the investigators were not referring to out of court statements by anonymous declarants offered for the truth of the matter asserted. Moreover, the South Carolina Supreme Court's recent decision in *State v. Davis*, (Opinion No. 5476, Filed March 29, 2017), in which the testimony of a SLED agent about the activities and statements of a non-testifying confident informant during a controlled buy were

inadmissible hearsay, does not change this analysis. In *Davis,* a confidential informant was a declarant who necessarily informed the agent about the details of the purchase of drugs from the defendant's house. This scenario is vastly different from the suggestion video surveillance placed Raines near the victim's abandoned car, particularly when the testimony at trial informed the jury the video did not exist.

Apparently recognizing this distinction, Appellant then makes much of the State's election not to call to the stand Investigator Cheeks, who also took part in the interview. He suggests the unavailability of Cheeks creates the hearsay issue because he could not confront the declarant (Cheeks) about the truth of the matter asserted (the video surveillance placing Appellant at incriminating locations). Appellant certainly had the opportunity to raise this issue at the pre-trial motions hearing and to confront Cheeks when he testified at the *Jackson v. Denno*[1] hearing on November 19, 2015, but he elected not to raise the matter then. (Pre-trial Trans. Nov. 19, 2015.) Hearsay testimony is inadmissible because the adverse party is denied the opportunity to cross-examine the declarant. *State v. James*, 255 S.C. 365, 179 S.E.2d 41 (1971); *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 150–51 (1985). Appellant's opportunity to cross-examine Cheeks at a preliminary hearing on this very issue was sufficient to avoid a confrontation clause violation.

Regardless, Appellant was not prejudiced by Cheeks' unavailability because he could adequately confront McIntosh about the same matter asserted. "[R]eversal is not required unless appellant was prejudiced by the error." *Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150 (1985). Even if the court deems Cheeks' statements to be hearsay, improperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless. *State v. Blackburn*, 271 S.C.

[1] *Jackson v. Denno*, 378 U.S. 368 (1964),

324, 329, 247 S.E.2d 334, 337 (1978). Had Cheeks testified at trial, his testimony would have been cumulative to that of Investigator McIntosh. To the extent Appellant argues the State improperly admitting the out of court statements of Cheeks accusing Appellant of lying to prove the truth of the matter asserted –that Appellant was indeed lying—Appellant similarly could confront McIntosh about his statements to the same effect. All three of the investigators in the room with Appellant noted inconsistencies in his story. Appellant centers on Cheeks to make his hearsay argument because he did not testify at trial. However, under this theory, McIntosh's statements, which were not hearsay, would be admissible because he **did** testify at trial. Under either theory of the matter asserted, Appellant had the opportunity to confront the witnesses who accused him of lying, and he did so. Appellant's argument concerning the unavailability of Investigator Cheeks is merely a red herring, designed to create the impression of a hearsay violation without fully explaining how Appellant's rights were actually violated.

The other facet of Appellant's argument the interrogation video is inadmissible draws upon the portion of the *Brewer* opinion in which the Court cautioned against presenting to the jury any statements that appear to shift the burden of proof to the defendant. *See Brewer* at 408, 768S.E.2d at 659. Appellant argues that because the investigators called him a liar or accused him of lying during the interrogation, they impermissibly shifted the burden to Appellant to prove his innocence. Appellant confuses the hearsay argument with the burden shifting argument, neither of which is applicable here. In *Brewer*, the defendant was told to "prove" his innocence to the police. Here, the police questioned Appellant's credibility. That is a distinction with a very big difference. Challenging a witness's credibility is not a demand for proof of innocence. Witness credibility is frequently challenged on the stand through cross-examination and impeachment. In fact, in this particular case, Raines was questioned by the officers and the

officers were questioned by defense counsel on the credibility of the video surveillance evidence. The bottom line is investigators did not demand Raines to prove anything or produce any evidence. Neither the burden of production, nor the burden of persuasion, was shifted to Raines when the investigators challenged his credibility on certain statements he made during their interview. In fact, Raines appeared unfazed by the questions. In contrast with Brewer, who attempted to end the interview numerous times but was instead told he had to prove his innocence to cease the questioning, Appellant pushed back against the interviewers, remaining firm in his answers and apparently unwilling to take their bait. Appellant certainly understood during the interview that he had no obligation to prove his innocence. His current attempt to equate the accusations of deceit to warnings against burden shifting in *Brewer* does not make it any more applicable.

Appellant claims the State impermissibly shifted the burden of proof to the defendant when the jury saw the repeated accusations from the investigators that Raines was not telling the truth. (IBOA at 14.) As discussed above, *Brewer* is not on point with the facts of this case. Other jurisdictions, however, have decided the admissibility of such an interrogation video, but framed the question differently. Although Appellant did not base his objection on this ground and it is not preserved for review, other states have examined these statements as testimony concerning the credibility of other witnesses. To the extent this Court construes his argument similarly, Respondent submits the interrogation video, when preceded by the trial court's clear instruction to the jury, was properly admissible.

Admissibility of Video Evidence To Assess Credibility As a Matter of Policy

As a general rule, "the assessment of witness credibility is within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct.App.2012) (citing

State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977)). A witness may not give an opinion on whether he or she believes another witness is telling the truth or comment on another witness' veracity. *State v. Kromah*, 401 S.C. 340, 358–59, 737 S.E.2d 490, 499–500 (2013); *State v. Smith*, 411 S.C. 161, 170, 767 S.E.2d 212, 217 (Ct. App. 2014). These rules provide guidance for the permissible boundaries of witness testimony on the stand before a jury. In a trial, however, the jury observes the precise questions and the tone presented by counsel when the questions are asked. The jury assesses the witness' response in that context. With the introduction of a defendant's out of court statement, however, the court must balance the probative and prejudicial impact of showing the jury the context in which the statement is made. After all, how can the jury assess the credibility of the statement if it does not know the question, tone, or statements of the interviewer immediately preceding it? The video recording has inherent indicia of reliability because it is a contemporaneous and completely accurate narrative of the context of the defendant's statement. It is clear from the record the trial court considered the potential prejudicial impact, as well as the benefit to the defense, of showing this particular recording[2] to the jury.

The *Brewer* Court directed the trial courts to "be vigilant in redacting problematic portions of law enforcement's investigatory questions," but did not create a "categorical rule that any statement by an investigator during an interrogation is inadmissible." *Brewer*, at 407-408, 768 S.E.2d at 659. Thus, the finding of admissibility is a fact specific inquiry. Accordingly, and in consideration of that language, the trial court redacted the impermissible references to capital

[2] The State cannot stress enough the importance of the Court's review of the interrogation video. Frankly, the obnoxious interrogation technique employed by one of the investigators arguably portrayed Raines as calm and nonreactive under pressure. The investigator's accusations should not be taken out of the context of the entire video, in which the tone, posture, and other statements of the investigators also play a part of the Rule 403 analysis.

punishment as well as Raines' arrest. The court then considered that the admission of the remaining video could actually benefit the defense, given Appellant's demeanor throughout the interrogation. Judge Hocker, apparently unimpressed with the investigators' efforts, said "I'm not necessarily real concerned about police tactics. I almost have to, to some extent, agree with Solicitor Scott that that might be working in your advantage. The police give you some arguments to make to the jury to really cast some – something against the police." (T. p. 363, lines 11-19.) Though not explicitly stated as a Rule 403, SCRE analysis, Judge Hocker clearly wrestled with whether the video unfairly prejudiced Raines or, in fact, helped him.

The video's admissibility for the benefit of the defense is not without support in current and emerging law. In 2009, South Carolina began to require law enforcement to video record the behavior at the scene of a person suspected of driving under the influence. *See* S.C. Code Ann. §56-5-2953. In 2015, the General Assembly passed legislation requiring State and local law enforcement agencies to develop procedures for the use of body-worn cameras. *See* S.C. Code Ann. § 23-1-240. According to §23-1-240(G)(5)(a) and (b), the subject of the recording or a criminal defendant is entitled to the data upon his request. Further, recent proposed state legislation reflects the trend towards a *preference* for a video or audio recording of interaction between a suspect and police. In December 2016, a South Carolina State legislator pre-filed Senate Bill No. 166, which proposes that certain custodial interrogations must be audio or video recorded. The Bill includes a provision that a court must instruct a jury it may draw an adverse inference for a law enforcement officer who fails to do so. 2017 S.C. Sen. Bill No. 166, SC 122 Session General Assembly – 1st Reg. Session. Similarly, a 2017 South Carolina House Bill proposes to make it unlawful for a law enforcement officer to knowingly obstruct or render inoperable a law enforcement vehicles recording equipment of a body camera. 2017 SC House

Bill No. 3268, SC 122 Session General Assembly – 1st Reg. Session. Video recordings are becoming so commonplace that the absence of a video appears suspicious to a layperson. For example, even the American Civil Liberties Union of Massachusetts has produced a report entitled "No Tape, No Tesimony," in which it argues jurors should be told to devalue an officer's testimony, or--in extreme cases--disregard it altogether when police fail to turn on their body-worn cameras.[3]

In a current culture in which attitudes toward interactions between law enforcement and civilians are in flux, the availability of a tool to aid the trier of fact by providing reliable evidence of the interaction, whether for the benefit of law enforcement or for the benefit of the suspect, weighs heavily in favor of its admission. In other words, if no rule of evidence prohibits the video's admission, sound public policy supports its publication to the fact-finder.

Ultimately, this Court must consider whether Judge Hocker abused his discretion in finding the investigators comments that Raines was lying were not unfairly prejudicial to Appellant's case. Numerous jurisdictions have held this particular police tactic is not so prejudicial as to preclude its submission to the jury. In *State v. Casteneda*, 715 S.E.2d 290 (2011), the North Carolina Court of Appeals upheld the admission of a transcribed video in which the investigators told defendant parts of his story were not true, finding:

> The majority of appellate courts of other jurisdictions that have considered such statements have held them admissible based on the rationale that such "accusations" by interrogators are an interrogation technique and are not made for the purpose of giving opinion testimony at trial. *See, e.g., Dubria v. Smith*, 224 F.3d 995, 1001 (9th Cir.2000) (rejecting, in habeas corpus case, defendant's argument that detective's "comments and questions contained statements of disbelief of [defendant] 's story, opinions concerning [defendant]'s guilt,

[3] Found on the ACLU Massachusetts website: https://aclum.org/our-work/aclum-issues/police-accountability/no-tape-no-testimony/#report and available for download here: https://aclum.org/wp-content/uploads/2016/11/ACLU_BodyCameras_11.21_final.pdf (Last viewed April 14, 2017.)

> elaborations of the police theory of [vicitm]'s death, and references to [defendant]'s involvement in the crime" should have been redacted from tape and transcript because "[t]he questions and comments by [the detective] placed [defendant]'s answers in context");

Castaneda, 715 S.E.2d at 294 (2011). In *Lanham v. Com.*, 171 S.W.3d 14 (2005), the Kentucky Supreme Court advised the admission of statements by the police that a defendant is lying should include a limiting admonition to the jury before its publication. *Lanham*, 171 S.W.3d at 28.

In *State v. Boggs*, 185 P.3d 111 (Az. 2008), the Arizona Supreme Court found the accusations by law enforcement that the defendant was lying were part of an ordinary interrogation technique, were not offered for the purposes of giving opinion testimony, and provided a necessary context for the defendant's responses. *Boggs*, at 121. In *State v. O'Brien*, 857 S.W.2d 212 (1993), the Missouri Supreme Court upheld an officer's testimony in which he recalled accusing the defendant of lying during an interrogation. The court found that reading the testimony and challenged statement in their respective contexts, the admission was not error. O'Brien, at 221.

Moreover, the courts in Georgia have allowed latitude given police interview question that are admitted into evidence. *Windhom v. State*, 729 S.E.2d 25 (Ga. App. 2012), citing *Axelburg v. State*, 616, 669 S.E.2d 439 (Ga. App. 2008); *DeYoung v. State*, 493 S.E.2d 157 (Ga. 1997) (trial court did not err in denying motion to suppress statement obtained through police trickery or deceit); *Carroll v. State*, 408 S.E.2d 412 (Ga. 1991) (trial court, which redacted other portions of interview, did not abuse discretion in not redacting interrogator's argumentative comments).

In the instant case, after performing the Rule 403 analysis, the trial court found the video admissible and fashioned an appropriate instruction preceding its publication to the jury on how, as a matter of law, the jury was to consider the evidence. Judge Hocker's instructed the jury that

anything said by the officers was not evidence and was not to be considered as evidence. He followed that with a reminder of the State's burden to prove every element of the offense beyond a reasonable doubt and told the jury the defendant was required to prove nothing. (T. p. 376, line 8 – p. 377, line 4.) This instruction, combined with the testimony of McIntosh that the video surveillance referenced by the investigators did not exist, properly protected Appellant's rights to Due Process and protection under the Confrontation Clause. Because the video contained no impermissible hearsay and was not unfairly prejudicial, the jury, as the trier of fact, was entitled to view the relevant, probative, and contemporaneous representation of Raines' statement to law enforcement. As a matter of policy, such sunshine on the police tactics should be encouraged.

II. The trial court did not abuse its discretion in finding text messages from the victim's phone admissible because the messages were not introduced to prove the truth of the matter asserted. Moreover, Appellant offered an overly broad objection to the identification of the texts and then withdrew his objection to the texts at their introduction into evidence. The issue is procedurally barred by the withdrawal of the objection.

Appellant withdrew his objection to the admission of the texts from Myranda to Raines in the days before she died after the State produced numerous witnesses to provide context for the texts between Myranda and Raines. To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court. *See State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). Thus, the issue is not properly before the court.

In his initial objection to the identification of the summary of the text exchanges, Appellant broadly objected to admission of any text from Myranda before she died as impermissible hearsay. After Appellant failed to cite to a specific text offered to prove the truth of the matter asserted, the trial court agreed to the identification of the summary because it did not appear to contain hearsay. The court later admitted the summary after receiving no objection

from Appellant. Regardless, the text messages sent from Myranda, to the extent any were offered for their truth, were insubstantial and cumulative to the overwhelming testimony of Raines' obsession with Lisa Hamlett.

How the Issue Was Presented at Trial

James Perry, an investigator from the Greenville County Computer Crime Investigations Unit, testified he performed a search of the content of Myranda's phone white it was still a missing persons case. (T. p. 298, line 16 – p. 299, line 20.) Perry also obtained the content of Raines' cell phone when he voluntarily submitted it to law enforcement on August 22. (T. p. 300, lines 2-18.) The report generated from the extraction of the cell phone was admitted into evidence without objection. (T. p. 302, lines 1-15, State's Exhibit #30.) The report reflected calls, text messages, internet searches, and Facebook searches. (T. p. 302, line 18 – p. 303, line 1.) State's Exhibit #31 contained an excerpt from the report, focusing on the particular days surrounding the murder. (T. p. 306, lines 12.) State's Exhibit #31 also adjusted the time zone to conform with Eastern Standard time and adjusted to reflect the conversation between Myranda and Raines. The State offered the exhibit as "a summary of a voluminous report under Rule 1006, Rules of Evidence." (T. p. 306, line 24 – p. 307, line 1.)

Defense counsel acknowledged the text messages from Raines were admissible, but objected to the messages from Myranda as impermissible hearsay. (T. p. 307, lines 3-6.) The following exchange occurred:

> MR. SCOTT: I'm not finished. None of it -- none of it is to the truth of the matter asserted. I guess we could review it in-camera if we needed to, but --
> THE COURT: Well, I guess probably what I need to do is to not review the entire report but just review a sampling to kind of get an idea of what is there for me to determine whether or not it's being offered for the truth of the matter asserted or not. So Mr. Foreman, ladies and gentlemen of the jury, be patient with us, but this is something I want to review with the lawyers to make a ruling whether or not this will come in in full or not. Consequently, that means you'll have to go back to

your jury room. And again, please be patient with us. Don't begin any discussions about this case. Thank you.
(Whereupon, the jury exited the courtroom at 3:30 p.m.)
THE COURT: Solicitor, if you will just give me several examples of what this report shows these text messages.
MR. SCOTT: Yes, sir. And this is just kind of the same thing but in a blown up, I guess, version of it. What we have undertaken to do to make it, I guess, reader friendly, blue would be Darrell Raines, pink would be Myranda Southern.
THE COURT: Okay.
MR. SCOTT: The yellow indicate deleted texts. And again, this is from a phone extraction of Mr. Raines' phone. And this is going to make sense with subsequent witnesses. But here's what Darrell text on August 16th around 9:33 p.m. "Thought. If he isn't there tonight, he's home right now, and we send the messages tonight and she confronts him. I know how I'd react to something like that and went to drive over immediately. Think we should plant phase two either way." She says, "I know. I can't -- I can't use my computer." He says, "Huh". She says, "I can't use my computer here to plug in the charger, and I need to think about that," referencing his thought. He goes, "Only two more hours before you get off. If your battery is low, turn your data off and it might safe some battery." She says, "Yea." And then he says, "If you go under settings and then under networks, mobile networks, uncheck data," that turns off the Internet portion." Then she says, "Are you anxiously awaiting me to get off - lol." He says, "Yes - lol." And she says "Lol. I will when I get a sec." Then he says, "Will what A-M-A-O." And then she says the thing about my battery. It goes on. It's just really kind of laying the groundwork. You ultimately get down to -- if I could fast forward. I'm going to start about August 17th, 10:08. He's out, I think, downtown drinking liquor or something, and she says, "Wow, sounds like quite the party." 10:08 he says, "Not really." And then she does a Emoticon. It looks like a frowny face. He says, "Oh, well. Maybe one more drink and that's it for me. The slushies suck. The waitress is cute though. Too bad she looks a lot like Lisa." As you know, Lisa is going to be a name you're going to be hearing a lot of. She says, "Geez. I could possibly get out at 11:00 if you need or want company." He says, "I don't know." She says, "Maybe you need some alone time. Try a different type of slushy," and he says, "The slushies are 750 each - lol -- or $7.50 each."

Here you have Myranda calls Darrell and the call lasts 24 seconds. That's August 18th, 11:03 p.m. 11:49 p.m. he says, "You off?" And she says, "Hey, you, 10 minutes." And then he does a smiley face.

Now, here's the critical time right here, Judge. 12:03 a.m. there's an outgoing call from Myranda to Darrell's phone and it lasts six minutes and 12 seconds, and then it just goes off. And we're going to have like -- what we intend to show as some animation. What her phone – the location she's traveling after she gets off work. Regarding her testimony, between 1:00 and 1:30 there's a gunshot. Then you heard testimony at 3:30 a.m. he's at the bank using her card. 2:56 a.m. his phone sends a text message to hers. "Can't sleep. You," question mark. What we now know, or what the State's proposition is, this is him using her phone to text back, because she's dead. 3:00 a.m. from her phone you get, "I'm

still with Shawn. He's being an ass. I'm not giving him what he wants. I'll call you tomorrow." Then Darrell says, "Okay. Just let me know when you make it home. I'm headed to bed. Good night." It all fits into a larger theory that the State is trying to show. None of this, Your Honor, is really being offered for proof of the content or proof of what –

THE COURT: Well, and I'm going to -- I'm going to allow it in. Two grounds, one is it does not appear from --we didn't go through the entire record. But you gave me a sampling, and based upon the sampling it does not appear it's being offered for the truth of the matter asserted, which would make it hearsay. And two, the comment is similar to that of the Face book postings wherein the State's theory is that the Face book postings were created by the Defendant and not by Myranda. And so, their theory, as far as these last texts from Myranda's phone, is based upon their theory that the Defendant created those text messages.

MR. ABLE: And I understand that, Judge.

THE COURT: Right.

MR. ABLE: I mean, but if over my objection you're wanting to allow the last few lines into that, I could understand that based upon -- but my objection is to the whole thing.

THE COURT: Right. I understand.

MR. ABLE: I don't know what it would be offered for except for the truth of the matter asserted.

THE COURT: Well, just for example. I mean, they talked about her computer going dead and then recharging it. I mean, because I don't know where -- how that is really helpful to the State's case. But, you know, offered for -- it's not offered for the truth of the matter asserted that she had a dead computer. You see what I'm saying? So based upon the sampling that the Solicitor gave me -- and it's the same kind of stuff, correct, throughout this whole --

MR. SCOTT: Yes, sir. I mean, Your Honor, I'm not going to introduce it now. I want him to ID it, because there's still a lot of information that needs to come in to make some of this stuff relevant. I was telling you some of this stuff that hadn't been testified to yet. So I don't want to publish this to a jury yet. What I can do -- let me get him to ID it and I'll provide Your Honor with a copy to sort of review.

(T. p. 307, line 22 – p. 312, line 14.) The exhibit was offered for identification only by James Perry. (p. 314, line 8- p. 315, line 12.) Following Perry's testimony, the State called 1) the pathologist; 2) a chain of custody witness; 3) Laurens County investigator Keith McIntosh (during which the video of the interrogation was introduced); 4) two employees of a pawn shop; 5) the Lauren's county investigator who interviewed the pawn shop employees and searched Raines' house; 6) the SLED firearms examiner; 7) a co-worker of Myranda's at Charter Communications; 8) a consultant for Hi-Point firearms who testified about re-tooling Raines'

.380 caliber firearm on August 23, 2013; 9) a friend of Raines who testified about his infatuation with Lisa Hamlett and his computer savvy; 10) another friend of Raines who characterized his feelings for Lisa Hamlett as obsessive[4] and testified Raines told her Myranda was in the car with him when he withdrew money from her account hours after she was killed, 11) a young woman who testified Raines initiated a romantic relationship via Facebook and text messages beginning when she was 17 years old but Raines also spoke of Lisa Hamlett; and 12) Lisa Hamlett, who testified she and Raines were friends in school who caught up later in adulthood, had a brief romantic encounter one night, and then she broke it off with him when she learned he was seeing multiple women. (T. pp. 316-517.) Lisa Hamlett, who gave the most insight into Raines' frame of mind, testified about the unusual and disturbing efforts Raines made to speak to her following that night. (T. pp. 487-496.) Hamlett also testified about the numerous Facebook messages she received from Raines, Raines' mother, and a woman she did not know named Myranda Southern, who claimed to have had a sexual relationship with Hamlett's then boyfriend. (T. pp. 493-496)

The State then offered State's Exhibit #52, the Facebook message purportedly sent from Myranda to Hamlett, into evidence. (T. p. 496, lines 7-18.) The trial court specifically asked Appellant if he had any objection, and he declined. (T. p. 496, lines 16-22.) Hamlett then read the entirety of the Facebook conversation between her and Myranda's account. (T. pp. 498-501.) Hamlett was confused at the time because she was not friends with Myranda on Facebook and her privacy settings would have prevented a person who was not friends with her from seeing the type of information mentioned in Myranda's messages. (T. p. 502, lines 1-24.) Hamlett testified when she saw the news Myranda was missing, she explained the strange Facebook message exchange to the Greenville County Sheriff's Department. (T. p. 503, lines 2-20.)

[4] T. p. 467, lines 21-25.

Lastly, the State called Antonio Bailey, a homicide investigator with the Greenville County Sheriff's Department, who testified about the timeline of their investigation. Bailey detailed the investigation of Darrell Raines as a suspect because of his use of Myranda's debit card the morning of her disappearance. (T. pp. 522-525.) Raines turned over his phone, and the investigators performed an extraction of its content. (T. p. 526, lines 2-12.) The solicitor asked Bailey if he spoke to Lisa Hamlett and "found out about the Facebook posts supposedly from Myranda Southern." (T. p. 536, lines, 9-14.) The solicitor later showed Bailey State's Exhibit #31, or, the summary of the phone extraction already entered into evidence as State's Exhibit #30. (T. p. 538, lines 12-25.) After Bailey's positive identification of State's Exhibit #31, the solicitor then moved the exhibit into evidence and asked to publish the summary to the jury. (T. p. 539, lines 2-5.) The trial court asked Appellant if he needed to see anything about the exhibit. Appellant responded, "I do. Without objection." (T. p. 539, lines 6-8.) State's Exhibit #31, the summary of the text messages and phone calls between Myranda and Appellant, was then admitted without objection.

Analysis

In his second issue on appeal, Appellant challenges the admissibility of State's Exhibit 31, the summary of the texts from the victim to Raines as impermissible hearsay. Appellant argues the texts were offered to prove the matter asserted by directing this Court's attention to the State's closing argument, in which the solicitor reminded the jury Raines had access to Myranda's Facebook account and sent messages from Myranda to Lisa Hamlett. (IBOA at p. 19.) Appellant also claims the defense objected to State's Exhibit 31 "prior to the messages being admitted into evidence." (IBOA at p. 16.) The record before this Court, however, clearly tells a different tale.

Appellant did indeed object to State's Exhibit #31, but only **after** State's Exhibit #30 was already introduced into evidence. State's Exhibit #30 was the content of Appellant's cell phone dump, while State's Exhibit #31 was a summary of a portion of that information. At the time Appellant objected to the summary, the text messages contained in the summary were already admitted into evidence. To properly preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005). Appellant offered no contemporaneous objection when the text messages were first introduced into evidence, and therefore the issue is unpreserved for review.

Additionally, Appellant only offered a preliminary objection to State's Exhibit #31 when the State first discussed the summary with the investigator who created it, James Perry. Following the exchange about the admissibility of the text messages and whether they were being offered for the truth of the matter asserted, the solicitor informed the trial court he was not moving the summary into evidence, but was only offering the exhibit for identification only. The trial court indicated it was not making a final determination, but would rule on the motion when the exhibit was actually moved into evidence. (T. p. 313, lines 6-10.) Approximately fourteen witnesses later, after the State more substantially developed Raines' obsession with Lisa Hamlett as a possible motive for the murder, the solicitor actually moved the summary into evidence and intended to publish the summary to the jury. At this critical point, even when prompted by the trial court for any response to the motion, Appellant did not object. Appellant did not renew his objection to this evidence at the time the evidence was introduced.

Even if this Court were to construe Appellant's objection as timely, the objection was overly broad. An objection must be sufficiently specific to inform the trial court of the point being urged by the objector. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory. *In the Matter of the Care and Treatment of McCracken*, 346 S.C. 87, 551 S.E.2d 235 (2001); *State v. Jones*, 344 S.C. 48, 543 S.E.2d 541 (2001); *State v. Cutro*, 332 S.C. 100, 504 S.E.2d 324 (1998) (a one sentence argument is too conclusory to present any issue on appeal); *Solomon v. City Realty Co.*, 262 S.C. 198, 203 S.E.2d 435 (1974).

Although Appellant specifically argued the text messages from the victim were impermissible hearsay, he did not point out to the court the specific texts he argued were offered for the truth of the matter asserted. According to Appellant's brief, he now takes issue with the admissibility of the text messages tending to prove Raines sent messages from Myranda's Facebook account to Hamlett. Out of approximately two hundred fifty entries in State's Exhibit #31, which summarized the phone and text exchanges between Myranda and Raines in the few days leading to her death, only one text (at line 56), when Myranda texts Darrell, "You didn't tell me you msgd her back," is **arguably** proof of the matter asserted. (*But see* discussion below). However, when the solicitor and the trial court considered the content, the judge commented on texts not offered for their truth, such as recharging a dead computer or texts the State contended were sent by Raines from Myranda's phone. (T. p. 311, line 3 – p. 312, line 6.) Had Appellant cited that particular text to the trial court when the parties discussed how the texts were being offered, the trial court could have considered Appellant's objection to that specific entry and ordered the State to redact the Exhibit excluding the impermissible texts. Instead, Appellant objected to the entirety of the exhibit, arguing all the texts were offered for their truth.(T. p. 311, lines 22-23.) The court suggested the solicitor mark it for identification, then call more witnesses to show the context of the messages, and then Appellant would have the opportunity to renew his objection at its introduction into evidence. (T. p. 313, lines 6-10.) Of course, as discussed earlier,

Appellant did not renew his objection; he withdrew it instead and allowed State's Exhibit #31 in without objection.

Lastly, even if Appellant did properly and timely object to the texts from Myranda as impermissible hearsay, the State did not rely on that particular text from Myranda to Raines to prove their theory of the case. The State argued Raines manipulated, took advantage of, and then murdered Myranda Southern, possibly as part of some bizarre plan to win Lisa Hamlett's affections. The text exchanges were simply part of the narrative, and not offered for the truth of the matter asserted. When Myranda texted Raines, "You didn't tell me you msgd her back," it was not relevant to the State's theory of the case that Raines messaged Lisa Hamlett instead of Myranda. The evidence had previously shown Raines had access to her apartment and her computer. Lisa Hamlett testified about Raines' unusual and disturbing behavior, as well as the series of Facebook messages. It made no difference whether Raines sent follow up messages, even if Myranda sent the initial message at Raines' request. He was clearly using her in his deception of Lisa Hamlett. The text is not as significant for its truth – that Raines messaged Lisa – as it is for its reflection of Raines' fascination with this other woman. Raines' own texts to Myranda, which were certainly admissible, are more probative of this theory. (State's Ex. #31, line 2: "Thought... If he isn't there tonight (he's home right now), and we send the messages tonight, and she confronts him, I know how I'd react to something like that and want to drive over immediately. Think we should plant phase 2 either way?") *See United States. v. Walter*, 434 F.3d 30, 35 (1st Cir. 2006)("statements introduced solely to place a defendant's admissions into context are not hearsay, and as such, do not run afoul of the Confrontation Clause");

Myranda's texts before her death, by and large, gave perspective to this unusual relationship with Raines and gave context to his responses. Myranda's texts in response to his

were admissible for this purpose. *See United States v. Wills*, 346 F.3d 476, 490 (4th Cir. 2003) (witness statements made in conversation with defendant properly admitted to show context of incriminating admissions); *United States v. McDowell*, 918 F.2d 1004, 1007 (1st Cir. 1990)("McDowell's own statements could, of course, be used against him; his part of the conversations was plainly not hearsay. Nor can a defendant, having made admissions, keep from the jury other segments of the discussion reasonably required to place those admissions into context."). Collectively, the texts were not offered for the truth of the statements but as the context to Raines' statements against interest; consequently, they were not hearsay.

Even assuming arguendo that the content of Myranda's text message was hearsay, harmless error can apply to this narrow issue. S*ee State v. Armstead*, 432 So.2d 837, 839 (La.1983) ("[C]omputer printouts which reflect computer stored human statements are hearsay when introduced for the truth of the matter asserted in the statements."), *State v. Salkil*, 820 N.W.2d 159 (Iowa Ct. App. 2012) (finding the messages themselves were cumulative and noting the court will not find prejudice in the admission of hearsay evidence if "substantially the same evidence has come into the record without objection"). Lisa Hamlett testified to the content of the unusual Facebook messages before State's Exhibit #31 was moved into evidence. At that point in the trial, the single text message from Myranda to Raines was unsubstantial and cumulative.

III. Any error in the admission of the interrogation video and/or the text messages from the victim before her death is harmless beyond a reasonable doubt in light of the overwhelming evidence of Appellant's guilt.

The precise motive for Myranda's death is unclear, but the State presented witness after witness who offered evidence of Raines' obsession with Hamlett, his access to Myranda's belongings, Myranda's inexplicable trust of Raines, and the efforts Raines made to execute and

then conceal Myranda's murder. In fact, in denying the Raines' motion for a directed verdict, the trial court said, "Yeah, I've kept a lot of notes and I made a list of what I consider -- what I considered to be substantial circumstantial evidence in this case, and I've got it numbered at up to 21 different things." (T. p. 634, lines 6-9). On a broader scale, any errors in the admissions of the interrogation video, in which Raines admitted nothing, or the text message from Myranda to Raines, which were less significant than those of Raines, were harmless beyond a reasonable doubt.

"To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or lack thereof." *State v. Commander*, 396 S.C. 254, 263, 721 S.E.2d 413, 418 (2011). "An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result." *State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). "In applying the harmless error rule, the court must be able to declare the error had little, if any, likelihood of having changed the result of the trial and the court must be able to declare such belief beyond a reasonable doubt." *State v. Watts*, 321 S.C. 158, 165, 467 S.E.2d 272, 277 (Ct. App. 1996) (citing *Chapman v. California*, 386 U.S. 18 (1967)). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v. Chavis*, 412 S.C. 101, 109–10, 771 S.E.2d 336, 340 (2015). The factors for consideration in any harmless error analysis include:

> the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course the overall strength of the prosecutions' case.

Delaware v. Van Ardsall, 475 U.S. 673, 684 (1986).

In Appellant's case, the remaining evidence of his guilt conclusively proved Raines murdered Myranda Southern. Notwithstanding the video of his interrogation and the text messages from the victim's cell phone, the jury considered the following evidence presented at trial:

A) Incriminating information on Raines' access to Myranda's life:

- Met Raines in person for the first time about a week before her death. (T. p. 119, lines 3-16.)
- Raines had a copy of Myranda's apartment key and was given access to her computer. (T. p. 350, lines 20-21.)
- Raines convinces Myranda to participate in a Facebook scheme to deceive Lisa Hamlett (T. p. 497, lines 4-17.)
- Raines has a computer science background. (T. p. 461, lines 10-19.)

B) Incriminating information of Raines' possession of the debit card:

- At 8:00 p.m., Myranda took her dinner break and is seen using her debit card at a gas station at 8:03 pm the night of August 18. (T. p. 286, lines 15-19; p. 287, lines 18-24; State's Ex. 36.)
- At 12:00 a.m. on August 19, 2013, Myranda left work. (T. p. 441, line 17 – p. 442, line 4.)
- The last transaction made from Myranda's debit card was a $500 cash withdrawal from an ATM at the Berea BB&T on August 19, 2013 at 3:36 a.m. (T. p. 281, lines 14-17; p. 282, lines 15-17; p. 283, lines 5-7.)

- Surveillance from the ATM showed Raines, alone in his truck, withdrawing $500 from Myranda's account. (T. p. 257, lines 13-18; p. 469, lines 21-24; State's Ex. 26 and 29.)
- Raines told investigators Myranda gave him her debit card and pin number on August 17, 2013, the night before she went missing. (T. p. 259, lines 9-10; p. 261, lines 11-16.)

C) Incriminating cell tower information from the night of the murder:

- Contrary to his claims he was taking a nap on the evening of August 18, Raines' phone pinged off a cell tower in downtown Greenville at 11:03 p.m., while Myranda's phone is still being traced to the cell tower near Charter Communications. (T. p. 612, line 22 – p. 613, line 8.)
- An hour later, at 12:03 a.m. on August 19, 2013, Raines' phone pinged off a cell tower in Simpsonville near Charter Communications. (T. p. 613, lines 9-17.)
- At 12:09 a.m., Myranda's phone pinged off a cell tower near Charter Communications. (T. p. 613, lines 17-23.)
- Raines' phone stopped moving while Myranda's phone traveled to the Gray Court area of Laurens County (where her body was located) and pinged off a cell tower at 12:51 a.m. (T. p. 613, line 24 – p. 615, line 6.)
- The witness who lived next door to the field where the body was found in Gray Court was awakened by the sound of two gunshots between 1:00 and 1:30 a.m. on August 19, 2013. (T. p. 213, lines 2-20.)
- Myranda and Raines' phones then traveled towards Greenville, where they both pinged off cell towers downtown at 3:30 a.m. (T. p. 614, line 23 – p. 615, line 4.)
- From there, Raines' phone traveled back up to Berea, and Myranda's phone never moved again. (T. p. 615, lines 5-17.)

- Later the afternoon of the 19th, at 3:56 p.m., Raines' phone pinged again off a cell tower in the Gray Court area of Laurens County, the location where Myranda's body was found. (T. p. 616, lines 3-8).
- In searching the area where the two cell phones pinged, investigators discovered Myranda's car in the Simpsonville BI-LO grocery store parking lot. (T. p. 269, line 11 – p. 270, line 3.)

D) Incriminating phone calls:

- Myranda calls Darrell minutes after she leaves work on the night she is murdered. (State's Exhibit #31.)
- Myranda's phone calls Raines at 3:30 am, approximately two hours after the estimated time of death, and the call lasts for thirty-five minutes. (State's Exhibit #31.)
- On Monday August 19, 2013, Raines made two calls to the BI-LO where Myranda's car was located. (T. p. 564, lines 16-18.)
- Raines called numbers associated with Hi Point thirty times between August 18, 2013 and August 21, 2013. (T. p. 563, line 14 – p. 565, line 23.)

E) Incriminating gun purchases:

- Raines lied about owning a Hi Point .380 caliber weapon, believed to be the murder weapon. (T. p. 391, lines 20-25; p. 394, lines 10-21.)
- Raines returned the .380 to the manufacturer for re-tooling, and it was received on August 23, 2013. (T. p. 446, lines 1-3.)
- According to postmaster shipping policies, pistols could only be shipped priority mail or overnight express mail. (T. p. 519, lines 5-6.)

- If Raines' gun was received by Hi Point on August 23, 2013, it would have been mailed by Raines on August 22nd if he used overnight express mail. (T. p. 520, lines 2-9) or on August 20th or 21st if Raines shipped the pistol using priority express mail. (T. p. 520, lines 9-11.)

F) Raines' suspicious obsession with Lisa Hamlett, giving rise to a possible motive:

- The Facebook message from Myranda to Lisa. (T. p. 497, lines 2-17.)
- His Facebook password was All4Lisa. (T. p. 303, lines 8-12.)
- His numerous Facebook searches for Lisa and her boyfriend, Jason Gillespie. (T. p. 303, lines 16-22.)
- Raines sent numerous, bizarre communications to Lisa, including letters, Facebook messages, call from his mother on his behalf, a request to rent a room from her, hundreds of jolly ranchers candies and a Build a Bear stuffed teddy bear left on her front porch. (T. pp. 486-500.)
- Raines talked to other women about Lisa, asking them to proof read letters he wanted to send her. (T. p. 468, lines 3-13; p. 475, lines 7-25.)
- Raines' continued plot to make Lisa break up with her boyfriend. (State's Exhibit #31, line 2.)

Considering the totality of the evidence presented by the State, the admission of the interrogation video and text message of Myranda to Raines, if the Court were to find error, could not have affected the outcome of the trial and was harmless beyond a reasonable doubt. Given the amount of circumstantial evidence linking Appellant to the murder, any testimony concerning the video or text messages are unnecessary to reach the same conclusion. *State v. Brockmeyer*, 406 S.C. 324, 356, 751 S.E.2d 645, 662 (2013) ("Because the improper admission

of hearsay constitutes reversible error only when it results in prejudice, it is our view [defendant] has failed to show he was prejudiced, and thus, has failed to show reversible error.") As a result, any error in the admission of the video and messages prove harmless.

Thus, even if the Court were to determine the trial court abused its discretion in admitting all or part of the investigators' statements in the interrogation video or all or part of Myranda's text messages to Raines before her death, Appellant's guilt is clear from the all the other State's evidence proving Raines murdered Myranda Southern.

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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