STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RALPH MARTIN,

APPELLANT

APPELLATE CASE NO. 2015-000311

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in admitting in evidence a recording of statements made by Appellant's wife when the State failed to lay the proper foundation for admission pursuant to Rule 613(b) SCRE?

2. Did the trial judge err in admitting in evidence a written statement made by Appellant's wife when the wife admitted to making the statement but at trial testified that she could not remember the contents of the statement?

STATEMENT OF THE CASE

In October of 2014, the Dorchester County Grand Jury indicted Appellant Martin for criminal domestic violence of a high and aggravated nature, indictment #2014-GS-18-0851. On February 10, 2015, Martin proceeded to jury trial before the Honorable Maite Murphy. Pierce Wehman and John Loy represented Martin at trial. Glenn Justice and Kyle Ward prosecuted the case. The jury returned a verdict of guilty. Judge Murphy sentenced Martin to ten years suspended upon the service of nine years and eleven months with probation to follow for four years. A timely notice of intent to appeal was served on February 12, 2015. This appeal follows.

STATEMENT OF FACTS

On July 1, 2014, at approximately 9:15 PM Richard Stevens called 911 to report a domestic disturbance at a neighbor's house. (R. p. 10, line 10 – p. 11, lines 1-6; p. 74, lines 3-24). Deputy Jarrod Powell with the Dorchester County Sheriff's Department responded to the 911 call. When he arrived he heard a woman screaming inside the residence. (R. p. 75, lines 8-17). Deputy Powell testified that when he announced his presence, the woman said, "Come in and help me." (R. p. 75, lines 20-23). Before Deputy Powell had a chance to enter the house, Becky Martin, Appellant's wife, opened the door. (R. p. 77, lines 1-4). The Appellant, Ralph Martin, was standing 20 feet behind her. (R. p. 77, lines 7-10). According to Deputy Powell, Becky Martin had a red mark on the side of her neck. (R. p. 77, lines 11-15). Deputy Powell placed Appellant in handcuffs and put him in the back of the patrol car. (R. p. 77, line 24 – p. 78, lines 1-18). Deputy Powell wore a body microphone on the night in question and portions of the audio were admitted, over objection, in evidence at trial as State's Exhibit #4 and played for the jury.

Deputy Carlin Strickland, also with the Dorchester County Sheriff's Department, arrived at the residence and interviewed Becky Martin. (R. p. 53, lines 4-25). Ms. Martin provided a written statement that was admitted, over objection, in evidence at trial as State's Exhibit #5. (R. p. 63, lines 2-3). Becky Martin was called as a State's witness at trial. Ms. Martin admitted making the statement but testified that she did not remember the content. (R. p. 18, line 2 – p. 19, lines 1-13).

Appellant, Ralph Martin, is a Vietnam Veteran who suffers from post traumatic stress disorder. (R. p. 129, lines 2-18). At sentencing Becky martin asked the judge to order treatment rather than prison time for her husband. (R. p. 132, lines 14-21). Instead, the judge sentenced Appellant to ten years suspended upon the service of nine years and eleven months with probation to follow for four years.

ARGUMENTS

1. The trial judge erred in admitting in evidence a recording of statements made by Appellant's wife when the State failed to lay the proper foundation for admission pursuant to Rule 613(b) SCRE.

Deputy Powell was the first officer to arrive at the house. He wore a body microphone on the night in question and at trial the State moved to admit portions of the audio in evidence. (R. p. 44, line 23 – p. 45, 46, line 1-25). The audio includes statements made by Appellant's wife, Becky Martin, who had already testified at trial. Appellant objected to the admission of the audio. (R. p. 47, lines 4-23). Appellant also renewed his previous objection to the admission of a written statement by Ms. Martin and that argument is addressed in issue number two below. Appellant further argued, "And secondly, extrinsic evidence of a statement that she made is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made and the person to whom it was made. And that's State v. Galloway, which is still good law in South Carolina." (R. p. 47, lines 18-23). The judge, relying on State v. Blalock, 357 S.C. 74, 591 S.E.2d 632, (Ct. App. 2003), overruled the objection. The judge stated, "So based upon that, I think it's clearly – it goes to being offered that the witness told a different story at the time, not for the truth of the matter asserted, so I think the witness's statement does come in, as does the oral statements, because statements can be either oral or written so I think you're free to proceed on those grounds." (R. p. 49, line 25 – p. 50, lines 1-5). The audio was admitted in evidence, over objection, as State's Exhibit #4 and played for the jury. (R. p. 84, line 22 – p. 85, lines 1-16). The trial judge erred in admitting the audio of the body microphone.

Rule 613(b), SCRE, provides, "Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the

opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible." The audio from the body microphone worn by Deputy Powell is extrinsic evidence of a prior inconsistent statement made by Becky Martin. Pursuant to Rule 613(b), the audio was inadmissible unless the State established the proper foundation. The State failed to lay the proper foundation. The State failed to advise Ms. Martin of the substance of the oral statements heard on the audio, the time and place the statements were allegedly made and the person to whom the statement was made. Additionally, the State did not allow Ms. Martin the opportunity to explain or deny the statements heard on the audio. The State's argument in regard to the written statement provided to Deputy Strickland and addressed in issue two below does not carry over to the oral statements heard on the audio from the body microphone worn by Deputy Powell. The trial judge erred in admitting the audio without the proper foundation.

Becky Martin was called as a witness by the State. When asked what she told the police when they arrived, Ms. Martin testified, "I don't remember. I don't remember anything from that night." (R. p. 17, lines 22-24). Ms. Martin testified that she remembered Deputy Powell being at the house on the night in question. (R. p. 19, lines 14-23). The prosecutor, however, never asked Ms. Martin about the statements allegedly made to Deputy Powell and heard on the audio.

The trial judge's reliance on Blalock is misplaced because the issue in Blalock involved whether the witness unequivocally admitted making the prior inconsistent statement. In Blalock this Court wrote:

> In determining whether a witness has admitted making a prior inconsistent statement and thereby obviated the need for extrinsic proof, the courts of our state and other jurisdictions have held that the witness must admit making the prior statement unequivocally and without qualification. See State v. Bottoms, 260 S.C.

> 187, 194, 195 S.E.2d 116, 118 (1973) (when a witness admits unequivocally that a prior inconsistent statement has been made by him, he has thereby impeached himself and further evidence is unnecessary and inadmissible); 98 C.J.S. Witnesses 727 (2002) (stating admission must be unequivocal).

Blalock, 357 S.C. at 80, 591 S.E.2d at 635. The question in regard to the statements heard on the audio in the present case did not involve whether Ms. Martin unequivocally admitted making the prior statements. Ms. Martin neither admitted nor denied making the statements heard on the audio as she was not asked about these statements. The State failed to lay the proper foundation for admission.

In State v. McLeod, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004), this Court wrote:

> The South Carolina rule differs from the federal rule in that a proper foundation must be laid before admitting a prior inconsistent statement. It is mandatory that a witness be permitted to admit, deny, or explain a prior inconsistent statement. Under Rule 613(b), extrinsic evidence of the statement is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made. Rule 613(b) explicates the procedure for impeachment by a prior inconsistent statement and requires laying the foundation. See State v. Sierra, 337 S.C. 368, 523 S.E.2d 187 (Ct.App.1999).

In McLeod this Court found that the trial judge did not abuse his discretion in excluding testimony in regard to a prior inconsistent statement due to the failure to provide a sufficient foundation. In the present case the trial judge abused his discretion in allowing the audio when the State failed to provide a sufficient foundation for admission.

2. The trial judge erred in admitting in evidence a written statement made by Appellant's wife when the wife admitted to making the statement but at trial testified that she could not remember the contents of the statement.

In addition to the recorded statements discussed above in issue one, the State also moved to admit a written statement Becky Martin provided to Deputy Strickland on the night in question. (R. p. 43, lines 8 – p. 44, lines 1-15). The State relied on Rule 613(b) SCRE and State v. Moses, 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010). Appellant objected and argued that Ms. Martin was not given the opportunity to admit or deny the content of the written statement. (R. p. 42, line 8 – p. 43, lines 1-6). The State responded stating, "She [Ms. Martin] looked at the entire statement, both pages; the time and place it was allegedly made, we did cover that with her; and the person to whom it was made, we said Deputy Strickland, given the opportunity to explain or deny it. Her explanation was she didn't remember. She didn't say she didn't make the statement; she didn't say she did. She said, "I don't remember. It's my handwriting, but I don't remember." (R. p. 43, lines 14-22). The judge overruled the objection stating, "Pursuant to Rule 613, a witness's own out-of-court statement is hearsay if offered for its truth. However, when a witness's prior inconsistent statement is offered for impeachment, however, it's being offered merely to show the witness told a different story at a different time, so it's admissible." (R. p. 44, lines 16-21).

The trial judge heard further argument in regard to Ms. Martin's written statement and then stated, "The Court's recollection of her testimony was that she was given the statement. She indicated that it was her handwriting on the date in question, which was July 1st. She also stated that it was her signature. Her testimony, however, was not unequivocal admission that she made the statement, said it was her writing, but she doesn't remember making the contents of the statement." (R. p. 49, lines 2-8). The judge, again relying on State v. Blalock, 357 S.C. 74, 591

S.E.2d 632, (Ct. App. 2003), ruled that the written statement was admissible. (R. p. 49, line 9 – p. 50, lines 1-5).

When the State moved to admit the written statement as State's Exhibit #5 (R. p. 63, lines 2-3), Appellant objected stating, "Your Honor, we would object. I would renew my previous motion. Also, we would argue that foundation hasn't been laid at this point. It's not consistent or inconsistent." (R. p. 63, lines 5-8). The judge overruled the objection, admitted the written statement and the statement was published for the jury. (R. p. 63, lines 9-14). The trial judge erred.

During trial Becky Martin testified as follows:

Q. And what did you tell police when they arrived?

A. I don't remember. I don't remember anything from that night.

Q. Okay. Do you remember giving a written statement to police that evening?

A. No. I mean, I remember writing, but I don't remember what I wrote or why.

Q. So you don't recall giving a written statement to Deputy Strickland that evening?

A. No, sir.

Q. I'm showing you what's been marked as State's Exhibit 5. Do you recognize it? Please take a moment to look at it. Do you recognize that?

A. Yes, that's my handwriting.

Q. Okay.

A. But I don't remember what these questions were that I answered. I don't remember that.

Q. So you remember making a statement, but you don't remember - -

A. Yes.

Q. - - the content of the statement?

A. No.

Q. Would that be a fair - -

A. Yes.

Q. - - statement to say?

A. Yes.

(R. p. 17, lines 22 - p. 18, lines 1-22). Contrary to the State's argument, Ms. Martin remembered making the statement but simply did not remember the content of the statement. Ms. Martin confirmed that the statement was dated July 1st, was in her handwriting and her signature appeared on the bottom. (R. p. 18, lines 23 – p. 19, lines 1-8). When asked if reading the statement would refresh her memory about what she told the police on the night in question, Ms. Martin responded, "No." (R. p. 19, lines 9-13). The State failed to ask any further questions of Ms. Martin in regard to the written statement. Critically, the State never asked her if she made the statement.

The present case is distinguished from Blalock, the case relied upon by the trial judge. In Blalock a State's witness, upon being asked about a prior statement, was declared hostile pursuant to Rule 607, SCRE and then the State attempted to impeach the witness with her prior statement. The State then sought to introduce extrinsic evidence of the prior inconsistent statement pursuant to Rule 613(b) SCRE. As discussed above, the issue in Blalock involved whether the witness unequivocally admitted making the prior inconsistent statement. This Court in Blalock wrote:

> In this case, we find Ms. Blalocks response, when confronted with her prior statement, does not meet the standard of a clear and unequivocal admission that

> the precedent case law demands. We are mindful that, towards the end of the solicitors examination of Ms. Blalock regarding the statement, she does admit that she said the portion of the statement quoted. She is adamant throughout her testimony, however, that the statement as recorded by the detective was incomplete. As demonstrated in the excerpted testimony above, Ms. Blalock repeatedly insists that she did not merely say she saw her husbands hand on Janes backside, but that she saw his hand on the back side of her leg. When the solicitor presses her on when and to whom she said back side of her leg, Ms. Blalock testifies that she feel[s] like that is what she told Detective Lindsey at the time he took her statement. Ultimately, she equivocates as to whether the statement was in fact her own words, testifying that she may have been unclear or that Detective Lindsey had paraphrased what she said.

State v. Blalock, 357 S.C. 74, 80-81, 591 S.E.2d 632, 636 (Ct. App. 2003).

In the present case the State failed to declare Ms. Martin hostile pursuant to Rule 607, SCRE and failed to attempt to impeach Ms. Martin with her prior statement. Pursuant to Rule 613(b), if the State had asked Ms. Martin if she made the written statement and Ms. Martin stated that she did not remember **making** the statement, then the State could have properly moved to admit the prior written statement as extrinsic evidence of a prior inconsistent statement. The State, however, failed to ask the critical question in order to lay the proper foundation. Unlike the witness in Blalock, Ms. Martin was not confronted with her prior statement. Ms. Martin's statement that she did not remember the content of her statement, standing alone, is not sufficient to establish the foundation required to admit the prior written statement. The State should have confronted her with the content of her statement so that she could either admit or deny. Contrary to the State's argument, simply showing the statement to the witness does not constitute confronting the witness and advising the witness of the substance of the statement as required by Rule 613(b).

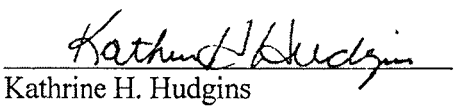
The present case is also distinguished from State v. Moses, 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010). In Moses the witness did not remember making the prior inconsistent statement and the State properly introduced extrinsic evidence of the prior inconsistent statement. In

contrast, in the present case Ms. Martin did not testify that she did not remember making the statement.

CONCLUSION

Based on the above arguments, Appellants conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
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ATTORNEY FOR APPELLANT

This 23rd day of May, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

May 23rd, 2016

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RALPH MARTIN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of May, 2016.

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Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of May, 2016.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Maite Murphy, Circuit Court Judge

Appellate Case No. 2015-000311

THE STATE,

Respondent,

v.

RALPH MARTIN,

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In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Maite Murphy, Circuit Court Judge

Appellate Case No. 2015-000311

THE STATE,

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court properly admitted a written statement by Victim into evidence because the State laid the proper foundation pursuant to Rule 613(b), SCRE, and Victim did not unequivocally admit she wrote the statement. (Appellant's Issue #2).

II.

The trial court properly admitted Victim's recorded statements because the State laid the proper foundation when Deputy Powell authenticated the audio recording, the recorded statements were not hearsay, and they were cumulative evidence of her written statements and therefore were harmlessly admitted. (Appellant's Issue #1).

STATEMENT OF THE CASE

A Dorchester County Grand Jury indicted Appellant for criminal domestic violence of a high and aggravated nature. (R.139-140). On February 10, 2015, Appellant proceeded to a one-day trial before the Honorable Maite Murphy. Assistant Solicitors Glenn Justis and Kyle Ward represented the State, and Assistant Public Defenders Pierce Wehman and John Loy represented Appellant. The jury found Appellant guilty, and Judge Murphy sentenced him to ten years' imprisonment suspended upon the service of nine years and eleven months with probation to follow for four years. (R. 136, lines 7–14).

Appellant filed a timely notice of intent to appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On July 1, 2014, Richard Stevens and his wife walked outside onto the porch of their house to smoke when Stevens noticed a shadowy figure in the driveway of the house located three houses down and across the street from his. (R. 10, lines 16–25; R. 11, line 1). Stevens heard this shadowy figure cry for help and a male voice subsequently telling the person to get back into the house. (R. 10, lines 22–25; R. 11, line 1). Stevens called 911 to report a domestic disturbance. (R. 11, lines 2–6).

Deputy Jarrod Powell, of the Dorchester County Sheriff's Department, responded to the 911 call. When Deputy Powell arrived at the location, he heard a disturbance coming from inside the residence. (R. 74, lines 22–25; R. 75, lines 1–2). Deputy Powell announced his presence at the door of the residence and heard a female distinctively scream, "Come in and help me!" (R. 75, lines 20–23). Before Deputy Powell entered the house, Appellant's wife (Victim) opened the door. (R. 77, lines 1–4). Appellant was standing about twenty feet behind her. (R. 77, lines 7–10). According to Deputy Powell, Victim was sweating, breathing heavily, and had a very distinctive red mark on the side of her neck. (R. 77, lines 11–14). Deputy Powell detained Appellant in handcuffs and placed him in the back of his police car. (R. 77, lines 24–25; R. 78, lines 8–10). Deputy Powell was wearing a body microphone that recorded the entire incident on the night in question, including verbal statements made by Victim. (R. 83, lines 4–11).

When Deputy Carlin Strickland, also of the Dorchester County Sheriff's Department, arrived at the scene, he testified he noticed Deputy Powell "arguing" and "somewhat wrestling" with Appellant as he was getting him into handcuffs. (R. 53, lines 15–17). Deputy Strickland testified he noticed Victim had redness around her mouth,

which appeared to be dried blood, marks on her wrist, as if something had been tied or wrapped around her wrists, and a mark on the side and back of her neck that was "quite big." (R. 54, lines 14–25; Tr. 55, lines 1–9). Deputy Strickland further testified he stood by and observed Victim write a statement and helped her fill out the form. (R. 61, lines 23–25; R. 62, lines 1–3). Appellant was arrested and charged with criminal domestic violence of a high and aggravated nature. (R. 77, lines 24–25; R. 81, lines 22–23; R. 139-140).

At trial, prior to calling Deputy Powell and Deputy Strickland, the State called Victim as a witness. She testified under oath, "I don't remember anything from that night." (R. 17, lines 23–24). Victim was given a copy of her statement and was asked if she remembered making it. She testified she did remember writing the statement, but did not remember the content. (R. 18, lines 2–3). She specifically stated, "I don't remember what these questions were that I answered. I don't remember that." (R. 18, lines 12–13). She agreed with the solicitor and repeated that she remembered making a statement but did not remember the content of the statement. (R. 18, lines 14–22). When the State asked her whether reading her written statement would help refresh her memory about what she told police that night, she responded, "No." (R. 19, lines 9–13). She made no effort to cooperate with the State during her direct examination.

Specifically, defense counsel argued, "The contents of that statement were not—were not delved into. We did not hear what she wrote. She did not get a chance to admit or deny that she said those things." (R. 42, line 25–R. 43, line 2). The State then noted that Rule 613(b), SCRE, states that "unless the witness is advised of the substance of the statement," and argued she was so advised because she was given the opportunity to read

it, which she did. He further argued she was given the opportunity to explain or deny and she explained that she did not remember. He cited State v. Moses for the wide latitude granted to trial courts to allow extrinsic evidence when a witness is unable to recall or remember a previous statement.[1]

Prior to the examinations of Deputy Powell and Deputy Strickland, Appellant objected to the admission of the written and recorded statements. (R. 42, lines 8–25; R. 43, lines 1–6; R. 47, lines 4-25; R. 48, lines 1–12). Defense counsel argued the statements recorded on the body microphone were hearsay. (R. 47, lines 4–11). He also renewed his previous argument as to the written statement coming in as extrinsic evidence and cited State v. Galloway for the proposition that extrinsic evidence of a statement is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made.[2] (R. 47, lines 18–23). The trial court overruled Appellant's objection and stated:

> The Court's recollection of [Victim's] testimony was that she was given the statement. She indicated that it was her handwriting on the date in question, which was July 1st. She also stated that it was her signature. Her testimony, however, was not unequivocal admission that she made the statement, said it was her handwriting, but she doesn't remember making the contents of the statement. . . . She said that she did not remember, so therefore, evidence is admitted when simply – when the witness simply avoids any direct answer, which is what she did. She just basically said that she did not remember. . . . So based upon that, I think it's clearly—it goes to being offered that the witness told a different story at the time, not for the truth of the matter asserted, so I think [Victim]'s statement does come in, as does [sic] the oral statements, because statements can

[1] 390 S.C. 502, 522-23, 702 S.E.2d 395, 406 (Ct. App. 2010).

[2] The State has been unable to find any case called State v. Galloway involving the admission of extrinsic evidence in this type of situation.

> be either oral or written, so I think you're free to proceed on those grounds.

(R. 49, lines 2–17; R. 49, line 25–R. 50, line 5) (emphasis added).

The State then called Deputy Strickland and questioned him regarding Victim's written statement because he witnessed her write it. (R. 61, line 15–R. 62, line 3). The State gave him a copy of Victim's written statement, and he was asked to read portions of it. (R. 63, line 13–R. 68, line 9). Deputy Strickland read a portion of the statement, which said:

> [Appellant] was in the bedroom all day, and when he came out, he started slapping me and punching me. Then he decided to tie me up and tie me with his fishing string and was choking me when police come [sic]. He said he was going to kill me.

(R. 65, lines 3–7). Subsequently, Deputy Strickland read the next section where he asked Victim questions and she wrote her answers:

> My question was that the first one was, "Where did [Appellant] slap and punch you?" [Victim] responded with her answer was, "Face, head and back."
>
> The second question was, "How many different things did he tie you up with?" The answer was, "A leash and twine."
>
> The third question was, "How did he tie you up?" The answer was, "First he tied my neck, then my hands and was starting to tie my feet to – when the police came to the door."

(R. 65, lines 24–25; R. 66, lines 1–7). This written statement was admitted into evidence, over objection, as State's Exhibit #5.

The State also called Deputy Powell to the witness stand. Deputy Powell verified the recording from his body microphone on the night in question. (R. 83, lines 12–25).

He testified he had an opportunity to listen to the redacted version of the recording and that it was a fair and accurate representation of the events of that evening. (R. 84, lines 1–10). Appellant objected to the recording based on hearsay. (R. 47, lines 4–11). Portions of the recording from the body microphone were admitted into evidence, over objection, as State's Exhibit #4. (R. 84, line 22–R. 85, line 2). These audio portions were published and played for the jury. (R. 85, lines 7–16).

Appellant was found guilty of criminal domestic violence of a high and aggravated nature and was sentenced to ten years in prison suspended upon the service of nine years and eleven months followed by four years of probation. (R. 136, lines 7–14).

ARGUMENT

I.

The trial court properly admitted a written statement by Victim into evidence because the State laid the proper foundation pursuant to Rule 613(b), SCRE, and Victim did not unequivocally admit she wrote the statement. (Appellant's Issue #2).

Appellant argues the trial court erred in admitting Victim's written statement because she did not have the opportunity to admit or deny its content. (Br. App. 13). However, the State presented Victim with a copy of her written statement and she was given an opportunity to read over the content of the statement. Still, she consistently denied recalling the content. Thus, the trial court properly admitted the written statement pursuant to Rule 613, SCRE.

> Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. **If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible.** However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible.

Rule 613(b), SCRE (emphasis added). It is uncontested that Victim was advised of the time, place, and to whom the written statement was made.

> Q. So you don't recall **giving a written statement to Deputy Strickland that evening?**
>
> A. No, sir.
>
> Q. I'm showing you what has been marked as State's Exhibit 5. Do you recognize it? Please take a moment to look at it. Do you recognize that?

A. Yes, that's my handwriting.

(R. 18, lines 4–10) (emphasis added). After the solicitor asked her to take a moment to look at the statement, she stated she did not remember "what these questions were that I answered" and she did not remember the content. (R. 18, lines 7–22). This testimony demonstrates Victim's knowledge of the substance of the statement by her ability to assert she did not remember it. Further, her comment on the questions shows she did review the statement when asked to look at it.

While the copy of the written statement was in front of Victim, the State asked, "Would it help if you read this to refresh your memory about what you told police that night?" (R. 19, lines 9-10). She simply answered, "No." (R. 19, line 11). However, Victim had already been sufficiently presented with the substance of her written statement as required by Rule 613(b), SCRE, because although she denied remembering the content of her statement and she declined to refresh her memory, the State provided her with a copy of the statement and gave her an opportunity to read it. And as addressed above, her testimony demonstrates she actually took the opportunity to read over the statement, at the very least enough to read the questions the officer asked her and to conclude she did not remember the content.

Further, Victim did not unequivocally admit she made the written statement. Evidence of prior inconsistent statements is inadmissible when the witness admits "making the prior statement unequivocally and without qualification." State v. Blalock, 357 S.C. 74, 80, 591 S.E.2d 632, 635 (Ct. App. 2003). See 98 C.J.S. *Witnesses* § 727 (2012) (stating admission must be unequivocal).

> Generally, where the witness has responded with anything less than an unequivocal admission, trial courts have been

> granted wide latitude to allow extrinsic evidence proving the statement. For example, **a witness's failure to fully recall her prior statement has been found to be a sufficient denial to allow extrinsic evidence.**

Blalock, 357 S.C. at 80, 591 S.E.2d at 636 (emphasis added) (citing State v. Brown, 296 S.C. 191, 193, 371 S.E.2d 523, 524 (1988)). "Extrinsic evidence is also usually admitted when the witness simply avoids any direct answer." Blalock, 357 S.C. at 80, 591 S.E.2d at 636. Similarly, extrinsic evidence is admissible to impeach a witness when the witness merely testifies that he does not remember, or has no recollection of, making the statements presented. State v. Miller, 262 S.C. 369, 371, 204 S.E.2d 738, 738-39 (1974).

> If the witness neither directly admit [sic] nor deny [sic] the act or declaration, as when he merely says that he does not recollect, or, as it seems, gives any other indirect answer not amounting to an admission, it is competent for the adversary to prove the affirmative, for **otherwise the witness might in every such case exclude evidence of what he had done or said by answering that he did not remember.**

Blalock, 357 S.C. at 80, 591 S.E.2d at 636 (emphasis added) (quoting State v. Sullivan, 43 S.C. 205, 211, 21 S.E. 4, 7 (1895)).

Here, Victim failed to recall her prior statement. When asked if she recognized the statement, she answered, "Yes, that's my handwriting. . . . But I don't remember what these questions were that I answered. I don't remember that." (R. 18, lines 10–13). Upon clarification by the State, Victim reiterated she remembered making a statement but did not remember the content of the statement. (R. 18, lines 14–18). Thus, under the circumstances, the trial court correctly admitted the statement because Victim's difficulty recalling the statement does not amount to an "unequivocal admission."

Assuming, *arguendo*, this Court finds the State insufficiently advised Victim of

the content of her statement under Rule 613(b), SCRE, by providing her with a copy, the trial court, nonetheless, properly admitted the written statement. During the State's direct examination, Victim was uncooperative and clearly became an adverse witness. It would have been fruitless for the State to ask her to admit or deny her statements because she reiterated numerous times that she did not remember what she told police, stated that she did not remember anything from that night, and refused to refresh her memory. (R. p.17, lines 23–24; R. 19, lines 9–13). Therefore, the trial court did not err in admitting Victim's written statement because, as in Blalock, exclusion of this extrinsic evidence would allow Victim to avoid impeachment by merely stating she did not remember her prior statement. See Blalock, 357 S.C. at 80, 591 S.E.2d at 636 (allowing extrinsic evidence when witness does not recollect or gives other indirect answer not amounting to an admission or denial because "otherwise the witness might in every such case exclude evidence of what she had done or said by answering that he did not remember"); see also State v. Moses, 390 S.C. 502, 522-23, 702 S.E.2d 395, 406 (Ct. App. 2010) (recognizing the wide latitude granted to trial courts to allow extrinsic evidence when a witness is unable to recall or remember a previous statement).

II.

The trial court properly admitted Victim's recorded statements because the State laid the proper foundation when Deputy Powell authenticated the audio recording, the recorded statements were not hearsay, and they were cumulative evidence of her written statements and therefore were harmlessly admitted. (Appellant's Issue #1).

Appellant argues the trial court improperly admitted the audio recording from Deputy Powell's body microphone because the State failed to lay the proper foundation pursuant to Rule 613(b), SCRE. However, at trial the only objection to the recording was based on hearsay, and the trial court ruled it was not hearsay because it was not offered "for the truth of the matter asserted." Appellant raised no specific objection to the recording on the basis of Rule 613(b), SCRE, and, thus, the argument is not preserved. Additionally, the audio recording was cumulative to Victim's written statements, which were properly admitted earlier in the trial, and thus any possible error in the admission of the recording was harmless. Therefore, the trial court correctly admitted the audio recording over Appellant's hearsay objection.

According to American Jurisprudence, audio recordings today "have almost universal approval as an acceptable form of evidence providing a proper foundation is first established for their admission." 23 Am. Jur. 3d *Proof of Facts* § 315 (1993). "Foundation" in terms of audio recordings refers to the preliminary questions asked of a witness that establish their admissibility. Id. Before introducing any audio recording as evidence, the proponent is required to "lay a foundation" through a properly qualified witness. Id. Thus, the "first requirement for introducing a [] recording is that a foundation must be laid demonstrating that the [recording] is authentic and correct." Id.

"'Hearsay' is 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" in the statement. Rule 801(c), SCRE. "Hearsay is not admissible" unless an exception applies, or "as provided by . . . other rules . . . or by statute." Rule 802, SCRE. See Rule 803(1), SCRE (defining present sense impression as "a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter"); Rule 803(2), SCRE (defining excited utterance as "a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition"). State v. Hendricks, 408 S.C. 525, 530, 759 S.E.2d 434, 437 (Ct. App. 2014).

First, Appellant's argument on appeal that a proper foundation was not laid pursuant to Rule 613(b), SCRE, was not raised to or ruled upon by the trial court. Rather, Appellant's argument as to Rule 613(b), SCRE, involved only the written statement, not the audio recording. It seems appellate counsel conflates the part of the trial where Appellant renewed his previous objection as to the written statement with an argument regarding the recording. (R. 47, line 12–R. 48, line 12). However, a plain reading of the record shows the only objection involving the audio recording was based on hearsay. Thus, Appellant's argument that the audio recording was lacking a foundation under Rule 613(b), SCRE, is not preserved for review. To the extent Appellant did sufficiently object to a lack of proper foundation for the audio recording, the State did lay a proper foundation when it had Detective Powell authenticate the recording by testifying it was a fair and accurate representation of what took place on the night in question. Detective Powell testified his department's policy is to carry a body microphone (mic) at all times

so that it can audio record what officers are saying and what is going on during an investigation. (R. 82, line 23–R. 83, line 3). He testified he was wearing his body mic the night of the incident involving Appellant and Victim and that the body mic recorded the investigation. (R. 83, lines 4–11). He then identified State's Exhibit #4 as a CDR recording of the incident. (R. 83, lines 12–25). Detective Powell verified he watched and listened to the recording and testified it was a fair and accurate representation of the events of the evening. (R. 84, lines 1–10). He confirmed that the audio recording included statements from Victim about what occurred that evening. (R. 85, lines 3–6).

Second, the trial court's ruling that the statements included in the audio recording were not hearsay was correct. Because the recording was offered to show the inconsistency between what Victim said the night of the incident and what she said at trial, it was not offered for the "truth of the matter asserted" and, thus, was not hearsay. As the trial court noted, the recording of Victim's statements was "being offered [to show] that the witness told a different story at the time, not for the truth of the matter asserted." (R. 50, lines 1–2). However, if this Court determines the recording somehow constitutes hearsay, the State submits it could still be admitted under two hearsay exceptions: present sense impression and excited utterance. See Rule 803(1), SCRE (defining present sense impression as "a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter"); Rule 803(2), SCRE (defining excited utterance as "a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition").

Finally, the audio recording of the incident was cumulative to Victim's written

statement given to police that same night, which was already admitted. In South Carolina, our appellate courts have consistently held that a trial court's decision to admit evidence of a witness's prior inconsistent statement will not be reversed absent a manifest abuse of discretion. State v. Lynn, 277 S.C. 222, 225, 284 S.E.2d 786, 788 (1981); State v. Sierra, 337 S.C. 368, 373, 523 S.E.2d 187, 189 (Ct. App. 1999) (finding appellant must show both abuse of discretion and resulting prejudice). This Court has held an "[e]rror is harmless where it could not reasonably have affected the result of the trial." State v. Kirton, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008). Appellate courts will generally not set aside convictions based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Thus, an insubstantial error that does not affect the result of the trial is harmless when guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. Kirton, 381 S.C. at 37, 671 S.E.2d at 122 (citing State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)). "The admission of improper evidence is harmless where the evidence is merely cumulative to other properly admitted evidence." Id. "Cumulative evidence has repeatedly been defined to be additional evidence of the same kind to the same point." State v. Funderburke, 251 S.C. 536, 164 S.E.2d 309 (1968).

Here, even though one statement was verbal and the other was written, they are evidence of the same kind because they are both statements from and about the same incident. Furthermore, the recorded statements merely tended to show what had already been established by the written statement. Both statements tended to prove, at the very least, Victim's fear and the abuse she endured on the night in question. The statements were introduced to show inconsistency with Victim's trial testimony. Accordingly,

introduction of the recorded statements was harmless because it did not reasonably affect the result of the trial. Even absent the recorded statements, Appellant's guilt had already been conclusively proven through witness testimony (including neighbor Richard Stevens who saw and heard a disturbance concerning enough to call the police), multiple photographs of Victim's injuries, Victim's statements and behavior at the scene (including calling for Deputy Powell to come and help her when he announced his presence), and Victim's written statement. Likewise, the inconsistencies between her trial testimony and her prior statement were shown by the written statement. Thus, this Court should not set aside Appellant's conviction even if it finds the trial court erred in admitting the recorded statement because the admission did not affect the result. Admission of the audio recorded statements was harmless beyond a reasonable doubt.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

June 1, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Maite Murphy, Circuit Court Judge

Appellate Case No. 2015-000311

THE STATE,

Respondent,

v.

RALPH MARTIN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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THE STATE,

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Appellant.

PROOF OF SERVICE

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

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.
This 1st day of June, 2016.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RALPH MARTIN,

APPELLANT

APPELLATE CASE NO. 2015-000311

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENTS IN REPLY

1. The trial judge erred in admitting in evidence a recording of statements made by Appellant's wife when the State failed to lay the proper foundation for admission pursuant to Rule 613(b) SCRE.

Respondent argues that Appellant only challenged the State's failure to lay a proper foundation pursuant to Rule 613(b) SCRE in regard to the written statement and not the oral statements recorded on the officer's body microphone. (IBOR pp. 12-13). The objection based on lack of foundation was made in regard to both the written and the recorded oral statements. Appellant first objected to the admission of the written statement arguing:

> I believe the State is intending to call the deputy to elicit the statement that's been made. And the defense's argument would be that the witness has been called to the stand. She has been confronted with this statement. She admitted that she signed the statement. She did deny not remembering what was in the statement.
>
> However, the Rule 613 does allow impeachment of a witness on their own statement. However, it must be – she must be confronted with what is in the statement. The solicitor is well within his rights to go through that statement, advise her of what is in there, have her admit or deny on the record whether she made that statement.
>
> At that point, if she denies making the contents of that statement, extrinsic evidence of that statement is admissible. He can publish the statement. He can try to submit it into evidence. However, in this case, she was presented with the statement. She said that was her signature. The contents of that statement were not – were not delved into. We did not hear what she wrote. She did not get a chance to admit or deny that she said these things.
>
> Based on that, we would argue on – based on the notes on Rule 613 that the State did not allow her to comment on the contents of that statement and, therefore, no further extrinsic evidence of that statement is admissible.

(R. p. 42, line 8 – p. 43, lines 1-6). The judge overruled the objection stating, "Pursuant to Rule 613, a witness's own out-of-court statement is hearsay if offered for its truth. However, when a witness's prior inconsistent statement is offered for impeachment, however, it's being offered

merely to show the witness told a different story at a different time, so it's admissible." (R. p. 44, lines 16-21).

Immediately following the ruling on the written statement, the State advised the trial judge that there was a similar situation with some recorded oral statements.

> And, Your Honor, if we might real quick, before we bring the jury out, we have a similar situation with oral statement that were made to Deputy Powell. Deputy Powell had his body mic on the entire time, and she makes some oral statements similar – I mean, similar to what she puts in her written statement. She makes some oral statements, and it would be our intention with Deputy Powell to get into those oral statements. We have provided that recording, and that was provided to the defense also.
>
> So we have the same issue. Rather than having to bring the jury in and out, if you want to address it, we would make the same argument that she – you know, I asked her about oral statements that she made to the police officers. She, again, said she couldn't remember.

(R. p. 44, line 23 – p. 45, lines 1-12). The prosecutor discussed some redactions he intended to make before moving to admit the recording and a brief recess was taken to address the redactions. (R. p. 45, lines 13- p. 46, lines 1-17). Appellant objected to the oral statements arguing:

> It's my understanding that there will be four segments of audio from, I believe, Officer Powell that will be attempted to be introduced into evidence. And we would make the argument that these are captured on a body microphone. There's no video. It's just his dash cam was on and he was recording. His body mic picked up all these statements made by Becky, Becky Martin. We would argue that these are hearsay.
>
> And secondly, we would kind of renew our previous argument as to the written statement. We would argue that this is extrinsic evidence of a statement. First, she – that statement that she made in writing is going to be introduced into evidence. You've already ruled on that a few moments ago.

> And secondly, extrinsic evidence of a statement that she made is not admissible unless the witness is advised of the substance of the statement, the time and the place it was allegedly made and the person to whom it was made. And that's State v. Galloway, which is still good law in South Carolina.

(R. p. 47, lines 4-23). While counsel for Appellant then discussed the written statement, the above objection was to the oral statements based on the lack of a proper foundation pursuant to Rule 613(b), SCRE. Appellant had previously objected to the written statement based on the failure to lay a proper foundation pursuant to Rule 613(b) and the judge overruled the objection. Appellant objected to the oral statements on hearsay grounds but additionally objected because the State failed to advise the witness of the substance of the prior oral statements. Appellant renewed the Rule 613(b) objection but this time in reference to the oral rather than the written statement, specifically noting that the judge had previously ruled on the written statment.

The objection to the admission of the prior statements recorded on the officer's body microphone based on the State's failure to lay a proper foundation was raised to the trial judge although Appellant did not reference the specific rule number. Appellant referenced the content of Rule 613(b) in the objection to the oral statements and had specifically referenced Rule 613(b) in the earlier objection to the written statement that was overruled by the judge. A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). It is clear that Appellant objected to the admission of the oral statements based on the fact that the State failed to advise the witness of the substance of the statements, the time and the place the statements were allegedly made and the person to whom the statements were made.

The judge, relying on State v. Blalock, 357 S.C. 74, 591 S.E.2d 632, (Ct. App. 2003), overruled the objection stating, "So based upon that, I think it's clearly – it goes to being offered that the witness told a different story at the time, not for the truth of the matter asserted, so I think the witness's statement does come in, as does the oral statements, because statements can be either oral or written so I think you're free to proceed on those grounds." (R. p. 49, line 25 – p. 50, lines 1-5). The audio was admitted in evidence, over objection, as State's Exhibit #4 and played for the jury. (R. p. 84, line 22 – p. 85, lines 1-16). The trial judge erred in admitting the audio of the body microphone. The issue in regard to the State's failure to lay a proper foundation pursuant to Rule 613(b) for the admission of the oral statements was raised by Appellant and ruled upon erroneously by the trial judge. The issue is preserved for appellate review.

This Court should find that the trial judge erred in admitting in evidence a recording of statements made by Appellant's wife when the State failed to lay the proper foundation for admission pursuant to Rule 613(b) SCRE. In support, Appellant incorporates by reference the arguments presented in Appellant's initial brief. The error in admitting the oral statements is not harmless. As the Court noted in Saltz, "Erroneously admitted corroboration testimony is not harmless merely because it is cumulative. On the contrary, 'it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.' Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994)." 346 S.C. at 124, 551 S.E.2d at 246.

2. The trial judge erred in admitting in evidence a written statement made by Appellant's wife when the wife admitted to making the statement but at trial testified that she could not remember the contents of the statement.

Appellant's wife, Becky Martin, never denied making the statements contained in her written statement. Importantly, Ms. Martin never testified that she did not remember making the statement. She simply testified that she did not remember the content of the written statement. Ms. Martin testified as follows:

Q. And what did you tell police when they arrived?

A. I don't remember. I don't remember anything from that night.

Q. Okay. Do you remember giving a written statement to police that evening?

A. No. I mean, I remember writing, but I don't remember what I wrote or why.

Q. So you don't recall giving a written statement to Deputy Strickland that evening?

A. No, sir.

Q. I'm showing you what's been marked as State's Exhibit 5. Do you recognize it? Please take a moment to look at it. Do you recognize that?

A. Yes, that's my handwriting.

Q. Okay.

A. But I don't remember what these questions were that I answered. I don't remember that.

Q. So you remember making a statement, but you don't remember - -

A. Yes.

Q. - - the content of the statement?

A. No.

Q. Would that be a fair - -

A. Yes.

Q. - - statement to say?

A. Yes.

(R. p. 17, lines 22 - p. 18, lines 1-22). Contrary to the State's argument, Ms. Martin remembered making the statement but simply did not remember the content of the statement. Ms. Martin confirmed that the statement was dated July 1st, was in her handwriting and her signature appeared on the bottom. (R. p. 18, lines 23 – p. 19, lines 1-8). When asked if reading the statement would refresh her memory about what she told the police on the night in question, Ms. Martin responded, "No." (R. p. 19, lines 9-13). The State failed to ask any further questions of Ms. Martin in regard to the written statement. Critically, the State never asked Ms. Martin if she made the specific statements contained in the written statement. It was incumbent upon the State to confront Ms. Martin with her written statement. Simply asking her to review the statement is not sufficient.

Once confronted with the written statements, if Ms. Martin denied making the statements or testified that she did not remember **making** the statements, the State, pursuant to Rule 613(b), could have properly moved to introduce the written statement as extrinsic evidence of a prior inconsistent statement. The State, however, never confronted Ms. Martin with the specific statements contained in her written statement. On the other hand, once confronted with the written statements, Ms. Martin may have confirmed that she made the statements and the written statement would have bee inadmissible.

In State v. Miller, 262 S.C. 369, 371, 204 S.E.2d 738, 738-39 (1974) the South Carolina Supreme Court wrote:

> The appellant called as his witness the co-defendant, Raymond L. Davis, who admitted his guilt of the crime but named one 'Robert Smith' as his accomplice. On cross-examination of this witness the State attempted to impeach and contradict him by a prior written inconsistent statement which he admitted having signed. However, when confronted with the statement therein inculpating the appellant, Davis answered by saying 'I don't remember.' His prior inconsistent statement was admissible to impeach his trial testimony which exculpated the appellant.

In contrast to the present case, in Miller the witness was first confronted with the prior inconsistent statement. His prior inconsistent statement was only admissible after he testified that he did not remember making the statement. In the present case the State never confronted Ms. Martin with the prior written statement. Ms. Martin did not testify that she did not remember making the statement.

Similarly, in State v. Blalock, 357 S.C. 74, 80-81, 591 S.E.2d 632, 636 (Ct. App. 2003), this Court wrote:

> In this case, we find Ms. Blalocks response, when confronted with her prior statement, does not meet the standard of a clear and unequivocal admission that the precedent case law demands. We are mindful that, towards the end of the solicitors examination of Ms. Blalock regarding the statement, she does admit that she said the portion of the statement quoted. She is adamant throughout her testimony, however, that the statement as recorded by the detective was incomplete. As demonstrated in the excerpted testimony above, Ms. Blalock repeatedly insists that she did not merely say she saw her husbands hand on Janes backside, but that she saw his hand on the back side of her leg. When the solicitor presses her on when and to whom she said back side of her leg, Ms. Blalock testifies that she feel[s] like that is what she told Detective Lindsey at the time he took her statement. Ultimately, she equivocates as to whether the statement was in fact her own words, testifying that she may have been unclear or that Detective Lindsey had paraphrased what she said.

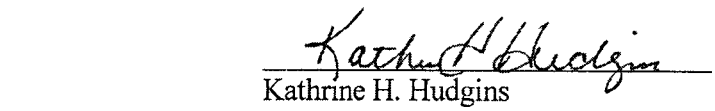
In the present case Ms. Martin was not given an opportunity to equivocate as to whether she in fact made the statements contained in her written statement because the State never

confronted her with those statements. Simply showing the statement to the witness does not constitute confronting the witness and advising the witness of the substance of the statement as required by Rule 613(b). In the present case the State simply did not meet the requirements of Rule 613(b) allowing admission into evidence of the written statement as extrinsic evidence of a prior inconsistent statement. The error in admitting the written statement is not harmless. As the Court noted in Saltz, "Erroneously admitted corroboration testimony is not harmless merely because it is cumulative. On the contrary, 'it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.' Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994)." 346 S.C. at 124, 551 S.E.2d at 246.

CONCLUSION

Based on the above arguments, Appellants conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
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ATTORNEY FOR APPELLANT.

This 23rd day of May, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Reply Brief 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."

May 23rd, 2016

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STATE OF SOUTH CAROLINA
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THE STATE,

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V.

RALPH MARTIN,

APPELLANT

APPELLATE CASE NO. 2015-000311

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of May, 2016.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
This 23rd day of May, 2016.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.