STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of General Sessions
Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2015-002641

THE STATE, ...RESPONDENT,

v.

JASON MORTON,.....APPELLANT.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3713

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit

Post Office Box 607
Lancaster, SC 29721
(803) 416-9367

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The solicitor's statement that it was trial counsel's "job to create reasonable doubt" in the jurors' minds did not shift the burden of proof because both the solicitor and the trial judge informed the jury the State had the burden of proving Appellant's guilt beyond a reasonable doubt.

STATEMENT OF THE CASE

On September 8, 2015, the Chester County Grand Jury indicted Appellant for safecracking and receiving stolen goods in the amount of $2,000 or less, third offense. On December 15, 2015, Appellant proceeded to a jury trial before the Honorable Brian M. Gibbons. Devon Nielson, Esquire, represented Appellant; assistant solicitor Julie Hall, Esquire, represented the State. The jury convicted Appellant of both charges. The trial judge sentenced Appellant to concurrent terms of twenty years' incarceration for safecracking and ten years' incarceration for receiving stolen goods.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

Pretrial Matters

Prior to the parties' opening statements, the trial judge gave the jurors preliminary instructions on the judicial process and the general structure of the trial. Among other things, the trial judge told the jurors a trial "is a search for truth in an effort to make sure that justice is done between the parties before the Court, both the state of South Carolina and [Appellant]." He also explained that after both parties presented their closing arguments, he would instruct the jurors on the law applicable to the case and they would be required to apply the evidence presented to the instructed law in order to reach its verdict. He emphasized Appellant was presumed innocent "unless and until proven guilty beyond a reasonable doubt," a burden belonged to the State. (R.p.35, line 19–R.p.43, line 15).

Trial Testimony

Two of the victims in the case, Amberly Lee Ann Freeman and Mary Talbert, testified at trial. In April of 2015, Freeman was splitting time between her own residence and staying with her parents in their home to provide them with needed care. On April 23, 2015, she returned to her house after several days away to discover it had been ransacked. Her TV, microwave, and other items were stolen. Officers visited her home to investigate the thefts and learned Freeman had used her TV as collateral for a loan with a business called World Finance. (R.p.50, line 16–R.p.54, line 16).

During that same time period, Talbert was living in a home on Dawson Drive. Her prior residence, a home in which she lived with her late husband until his passing, was on Meadowbrook Road.[1] On May 4, 2015, Detective Brian Sanders went to the address

[1] Talbert, who was elderly at the time of trial and had hearing issues, had some issues recalling dates at trial. She believed her husband had died in 2007, but believed that was only two years prior to the December 2015 trial.

Meadowbrook address and observed an open window. After speaking with a neighbor, he was able to locate Talbert at her Dawson Drive residence. Talbert accompanied Detective Sanders and another officer back to the Meadowbrook home and discovered it was ransacked. She informed officers that approximately two months prior, someone had broken into the home and stolen firearms, old coins, and Dale Earnhardt collectibles. During the most recent break-in, it appeared someone had broken into the house again in the two weeks since she had last visited and stolen additional items, including several tools, a riding mower, a scooter, and a safe. (R.p.59, line 23–R.p.61, line 21; R.p.85, line 7–R.p.100, line 20).

Natasha Hatcher grew up in a familial relationship with Appellant's wife, Danielle Morton, and her brother Linsey Yarborough: Natasha's mother, Sylvia Little, was in a romantic relationship with Danielle and Linsey's father, Wayne Yarborough, and the two of them raised Hatcher, Danielle, and Linsey as siblings. Around the middle of April 2015, Hatcher, Hatcher's husband, and her son moved in with Appellant, Danielle, and their family. Approximately a week later, Hatcher noticed Appellant was acting strangely. During times when Hatcher believed Appellant was at work, his supervisor would call and ask why Appellant had not shown up that day. Also, Appellant would disappear at night but return home in the morning and sleep until the afternoon/evening. (R.p.101, line 14–R.p.107, line 22).

Appellant's suspicious behavior continued for several days until one night when Appellant and Linsey entered the home with a black and silver TV and a white microwave. Hatcher heard Appellant claim they stole they took the items from a house. Approximately two nights later, on April 21, 2015, Linsey and his girlfriend returned to the home with a collection of

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Detective Brian Sanders, an investigating officer who met with Talbert the day the break-in of her home was discovered, clarified the confusion surrounding the timeline of the burglaries. Notably, Talbert testified in place of her son, who had often stayed at Meadowbrook home during the period of the crimes but was in the hospital during the trial. (R.p.59, line 23–R.p.61, line 21; Rr.p.85, line 7–R.p.100, line 20).

gold and silver coins. Appellant asked Linsey where he obtained the coins and discovered the house had another safe. Appellant and Linsey changed into all black outfits, complete with gloves, and left with Danielle. Shortly thereafter, the group returned to the home with a collection of Dale Earnhardt memorabilia. The group left again, and returned with an old scooter, "really old" baseball cards, and a white safe. Hatcher and her husband witnessed Appellant and Linsey grab tools and begin efforts to pry open the safe, but decided to leave the room and remove themselves from the situation before they saw the men complete the act. However, they heard the door pop open and fall on the floor while lying in bed a short while later. When she got up to use the restroom, she observed the open safe. (R.p.107, line 23–R.p.114, line 10).

The next day, Hatcher spoke with Little and informed her of Appellant's, Linsey's, and Danielle's actions. Approximately a day after Hatcher's conversation with Little, Linsey returned to the house and confronted Appellant. After a brief argument, Appellant rentered the home, shot Hatcher an "evil look," and woke Danielle by shaking her arms. Screaming, he told her "they called the police" and convinced her to flee the home. Before leaving, Appellant flicked Hatcher's nose and threatened, "I got a bullet for you and your mama." Scared, she went to the store across the street to a local store. Hatcher was friends with the store's owner and informed him of her predicament. The owner instructed Hatcher to return that evening and speak with an employee of his who knew a few local police officers. Later, through that employee, Appellant contacted police officers and eventually the sheriff's office. (R.p.116, line 22–R.p.121, line 6).

Officers, including Detective Wade Young, arrived at the home later that night[2] to investigate. He immediately noticed a TV in the home matched the description of the stolen TV reported by Freeman. Detective Young took pictures of the suspicious items around the house, including the TV and its serial number, the microwave, the scooter. Additionally, he collected the safe from a pile of junk outside the home. (R.p.114, line 11–R.p.116, line 21; R.p.144, line 1–R.p.158, line 14).

Upon returning to the police station, Detective Young contacted World Finance and confirmed the serial number for Freeman's TV matched the one found in Appellant's home. Using this information, Detective Young obtained a search warrant. However, when he returned to the house, he discovered most of the items he photographed had disappeared. The only stolen items remaining in the home were the microwave and a bag filled with the Dale Earnhardt memorabilia. (R.p.150, line 23–R.p.154, line 21).

Later, using the photographs taken from Detective Young's first trip to Appellant's home and the few items recovered on the second trip, Freeman was able to identify the recovered microwave as hers.[3] Additionally, Talbert identified the missing safe, scooter, and Dale Earnhardt memorabilia as items stolen from her home. (R.p.52, lines 12–25; R.p.91, line 19–R.p.94, line 20).

Brittany Wells, one of Danielle's friends, recalled visiting the home in April 2015. She recalled seeing a closed, white safe on the floor. (R.p.136, line 23–R.p.139, line 8).

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[2] Detective Young testified the thefts and Hatcher's reporting thereof occurred on a slightly different timeline than indicated in the latter's testimony. Freeman contacted law enforcement regarding the thefts from her home on April 23, 2015 and Hatcher contacted his office on April 30, 2015. However, Detective Young did testify that Hatcher informed him Appellant and Linsey had brought several stolen items to the house on April 21, 2015. (R.p.143, line 18–R.p.144, line 3; R.p.168, lines 3–24).

[3] Freeman identified the microwave based on a "little red mark" on its exterior. Detective Young also noted markings on the microwave matched markings on the wall in Freeman's home. (R.p.158, line 15–R.p.159, line 18).

Linsey, the State's final witness, was also charged with safecracking and receiving stolen goods but pled guilty to his charges prior to trial. At trial, he testified he began breaking into houses with Mark Buccolu around January of 2015.[4] He claimed he bought Freeman's TV from Buccolu for $10, but it did not come with a power cord. He then sold the TV to Appellant for $40, but never received the money. Around April 24, 2015 Linsey went to Appellant's house and saw a safe on the floor. Appellant used a hammer and screwdriver to open the safe, inside of which were cheap baseball cards. He watched Appellant as he "threw" the safe into the backyard. The next morning, Little called him and stated she "knew about the safe" and that she and/or Hatcher had called the police. The next day, Linsey went to Appellant's home and told him about his conversation with Little and that they needed to "get rid" of the safe. Later, Appellant told him he got rid of the TV and burned the remainder of the items in his possession. Appellant and Danielle stayed with Linsey at the Econolodge in Rock Hill from April 24 to April 30. (R.p.180, line 8–R.p.193, line 9).

Three witnesses testified in Appellant's defense. Appellant's son testified the theft of the safe occurred prior to Appellant's release from incarceration for a separate offense, noting that while his dad was still imprisoned he was at Buccolu's house and received an old coin from him. Appellant's daughter recalled receiving old baseball cards from her uncle, Linsey, while visiting her grandmother's[5] house because. She claimed Appellant was still incarcerated at this time. Connie Morton, Appellant's grandmother, testified Appellant's daughter showed her the old baseball cards sometime in 2015. (R.p.206, line 22–R.p.220, line 24).

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[4] Linsey originally testified he began breaking into houses around February/March of 2015, but during cross-examination recalled he actually started In January 2015, sometime before he lost his job on January 28. (R.p.190, line 22–R.p.191, line 24).

[5] Linsey's biological mother, Maureen Yarborough.

Closing Statements and Jury Instructions

During his closing, trial counsel described reasonable doubt to the jurors and explaining that if they possessed reasonable doubt about Appellant's guilt, they should find him not guilty. (R.p.227, line 24–R.p.240, line 25).

After discussing the testimonies given by the State's witnesses, the State discussed reasonable doubt. It stated:

> [Trial counsel] talked about reasonable doubt being doubt that would cause a reasonable person to hesitate to act. That's not the entire definition. It may be the definition, but there's more that goes with it. Reasonable doubt can also be described as prof that leaves you firmly convinced of [a] defendant's guilt. There are very few things that we know in this world with absolute certainty and the law does not require proof that overcomes every possible doubt. It has to be reasonable doubt. It's our job to prove all of this beyond a reasonable doubt. That is absolutely the way that the law works. And it's [trial counsel]'s job to create reasonable doubt in your minds. I ask you to do is to not get lost in the red herrings --

(R.p.264, line 19–R.p.265, line 7).

At this point, trial counsel objected to the State's statement, complaining it was shifting the burden of proof. The trial judge noted trial counsel's "statement [was] on the record," before instructing the State to continue, at which point it stated:

> And as I said before, it's absolutely our job to prove it beyond a reasonable doubt. I don't want you to get lost in the red herrings. I don't want you to get lost in the confusion. Because there's not – there's a direct timeline. It is very distinct and what happened. I would submit to you there's ample evidence way beyond a reasonable doubt . . . [Appellant], as Natasha Hatcher said, opened the safe . . . .

(R.p.265, lines 8–24).

During his jury instructions, the trial judge explained: (1) he would explain the law applicable to the case; (2) the State "always" has the burden of proving a defendant guilty

beyond a reasonable doubt; (3) the jury should weigh all the evidence in the case; (4) a defendant is presumed innocent is always presumed to be not guilty of a crime unless guilt has been proven by evidence satisfying the jury of guilt beyond a reasonable doubt; (5) proof beyond a reasonable doubt must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it, or in other words proof that "leave you firmly convinced of the defendant's guilt"; (6) if the jury believed there was a "real possibility" Appellant was not guilty, then it must give him the benefit of the doubt and find him not guilty. (R.p.268, line 15–R.p.276, line 9).

ARGUMENT

The solicitor's statement that it was trial counsel's "job to create reasonable doubt" in the jurors' minds did not shift the burden of proof because both the solicitor and the trial judge informed the jury the State had the burden of proving Appellant's guilt beyond a reasonable doubt.

Appellant argues the trial judge erred in allowing the State to make its "burden-shifting" comment that it was trial counsel's "job to create reasonable doubt." He further alleges the trial judge's jury instructions magnified the error by informing jurors that a trial is a "search for the truth." The State disagrees with these allegations of error. The State, in its closing, repeatedly asserted it possessed the burden of proving Appellant's guilt beyond a reasonable doubt. Further, the trial judge could not have erred because he actually ruled in favor of trial counsel's objection, but trial counsel failed to request a specific curative instruction. instructions were an accurate explanation of the law, including the burden of proof. Finally, any alleged errors in allowing the State's comment or in the trial judge's instructions were harmless given the overwhelming evidence of Appellant's guilt.

The State's Closing Argument, as a Whole, Communicated the Correct Burden of Proof

The appropriateness of a solicitor's closing argument is a matter left to the trial court's sound discretion. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). The appellate tribunal will not disturb the trial court's ruling regarding closing argument unless there is an abuse of that discretion. State v. Penland, 275 S.C. 537, 273 S.E.2d 765 (1981). The test of granting a new trial for alleged improper closing argument is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Darden v. Wainwright, 477 U.S. 168 (1986); Donnelly v. DeChristoforo, 416 U.S. 637 (1974); State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997); State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990); see also State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996) (ruling test

of granting new trial for alleged improper closing argument of counsel is whether defendant was prejudiced to extent that he was denied a fair trial).

As demonstrated above, the State's singular comment claiming it was trial counsel's "job to create reasonable doubt" in the jurors' minds was overshadowed by its repeated emphasis that it was entirely the State's burden to prove defendant's guilt beyond a reasonable doubt. Additionally, the State's burden was reinforced to the jury through trial counsel's closing. Thus, even with the trial judge's instructions, jurors were repeatedly informed it was the State's burden to prove Appellant's guilt beyond a reasonable doubt and if it failed to do so then they should find Appellant not guilty of the charged crimes.

The Trial Judge Ruled in Favor of Appellant's Objection

Appellant fails to recognize the trial judge actually ruled in his favor at trial. Instead of overruling Appellant's motion, he noted it was "on the record" before instructing the State to move on. The State implicitly acknowledged this ruling by abstaining from further using the suspect language about reasonable doubt.

However, trial counsel did not request a mistrial or object to the sufficiency of the trial judge's jury instructions. Therefore, issues with the State's closing are not preserved for appellate review. State v. Ferguson, 376 S.C. 615, 621, 658 S.E.2d 101, 104 (Ct. App. 2008) ("[T]he issue is not preserved for review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial.").

The Trial Judge's Jury Instructions Corrected Any Alleged Error

However, even more important than the State's and trial counsel's explanations of the burden of proof were the trial judge's instructions. The trial judge's statements eliminated any

possibility the jurors misunderstood the appropriate standard for determining Appellant's guilt. Moreover, the trial judge did not err in "overruling" trial counsel's objection because the trial judge actually ruled in favor of Appellant's objection.

The purpose of a jury instruction is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010) (*quoting* State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003)) A jury charge that is substantially correct and covers the law does not require reversal. Mattison at 478, 697 S.E.2d at 583. "Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989).

The appropriate test for reviewing a jury charge involves determining whether there is a reasonable likelihood the jury applied the charge in a way that violated the Constitution. Estelle v. McGuire, 502 U.S. 62, 71 (1991). Ultimately, "[a] trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007); see State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal.").

Without question, the trial judge's final instructions to the jury accurately (and repeatedly) communicated to jurors the burden of proof. He explained: (1) he was the authority on the law applicable to the case; (2) the State "always" has the burden of proving a defendant guilty beyond a reasonable doubt; (3) the jury should weigh all the evidence in the case; (4) a

defendant is presumed innocent is always presumed to be not guilty of a crime unless guilt has been proven by evidence satisfying the jury of guilt beyond a reasonable doubt; (5) proof beyond a reasonable doubt must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it, or in other words proof that "leave you firmly convinced of the defendant's guilt"; (6) if the jury believed there was a "real possibility" Appellant was not guilty, then it must give him the benefit of the doubt and find him not guilty. Thus, the jurors knew to disregard any legal statements proposed by the State and trial counsel and apply only the law instructed by the judge. Moreover, the trial judge provided the jurors with accurate statements of the law. Accordingly, any alleged error in the State's misstatement had no impact on the jury's verdict.

The Trial Judge's Pretrial Statements Describing a Trial as a "Search for the Truth" Failed to Prejudice Appellant

Moreover, the State notes Appellant's claim that the trial judge's use of language asking jurors to "seek the truth" did not impact the jurors' understanding of the applicable law and their role in the judicial process. In fact, the irony of Appellant's remonstration is that the **central function** of the trial process in both criminal and civil cases is to discover the truth. See Portuondo v. Agard, 529 U.S. 61, 73 (2000) (stating "the central function of [a] trial . . . is to discover the truth"); see also State v. Wren, 322 S.C. 103, 105, 470 S.E.2d 111, 112 (Ct. App. 1996) ("A trial is a search for the truth[.]"); see, e.g., Carella v. California, 491 U.S. 263, 265 (1989) (explaining that burden-relieving jury instructions "subvert the presumption of innocence accorded to accused persons and also invade **the truth-finding task assigned solely to juries** in criminal cases" (emphasis added)).

As part of the truth-seeking process, the State carries the burden to prove a criminal defendant's guilt for every element of a criminal offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970); see also Burr v. Florida, 474 U.S. 879, 880 (1985) ("[T]he **beacon of the truth-seeking process** in criminal cases is not absolute certainty, but the 'reasonable doubt' standard[.]" (emphasis added)).

The Supreme Court has cautioned trial judges to avoid using language that instructs the jury to "seek the truth" due to the risk that such language could potentially shift the burden of proof to the defendant in an unconstitutional manner. State v. Aleksey, 343 S.C. 20, 27-28, 538 S.E.2d 248, 251 (2000). Additionally, the Supreme Court has advised trial judges not to instruct jurors that their verdicts "would represent truth and justice for the parties" due to the risk that such language could distract the jury from its core functions. State v. Daniels, 401 S.C. 251, 258, 737 S.E.2d 473, 477 (2012) (Toal, C.J., concurring for the majority).

However, our Supreme Court specifically declined to hold any mention of "the truth" in jury charges is unconstitutional. See Aleksey, 343 S.C. at 28, n. 2, 538 S.E.2d at 252 ("Although settled law disfavors instructing jurors to seek the truth in some contexts because it might be misleading as to the burden of proof, we decline to hold any mention of 'the truth' in jury charges is unconstitutional."); see also State v. Hoffman, 312 S.C. 386, 395, 440 S.E.2d 869, 874 (1994) (holding a reasonable doubt jury charge that included "in seeking the truth" language constituted a correct definition of reasonable doubt when read as a whole and did not shift the burden of proof to the defendant).

In the instant case, the "seeking the truth" comment came immediately after swearing the jury, prior to the parties' opening statements. Notably, this language did not occur during a discussion of the State's obligation to prove Appellant's guilt beyond a reasonable doubt. The

comments were made by the trial judge to impart to jurors the gravity of their responsibility in advance of the trial. The comment in this context was not improper. See Aleksey, 343 S.C. at 26–29, 538 S.E.2d at 251–53 (finding the trial court's instructions asking jurors to "seek the truth" were not error because they were given in context of the jury's role in determining the credibility of witnesses and were prefaced by a full instruction on reasonable doubt and by additional exhortation to remember the State's heavy burden of proof). Moreover, the trial judge's comments made during his formal instructions only told the jurors it was their duty to determine the "effect, the value, the weight, and the truth of the evidence" presented at trial. Notably, the trial judge's comments in this situation were given in the context of the jury's as factfinder and, as described above, were surrounded by repeated, and accurate statements of the law and the State's burden of proving guilt beyond a reasonable doubt. See id. Accordingly, the trial judge did not prejudice Appellant by including this language in his charge to the jury.

Harmless Error

Errors are considered to be harmless when they could not reasonably have affected the result of the trial. State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003). "It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him." State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 285, 288 (1947). When considering whether an error with respect to a jury instruction was harmless, the appellate court must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014). In making a harmless error analysis, the inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered. Id. Thus, whether or not the error was

harmless is a fact-intensive inquiry. Id. An error is insubstantial and harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006).

Should this Court find both the Solicitor's statement and the trial judge's "seek the truth language" were improper, these alleged mistakes were harmless given the overwhelming evidence of Appellant's guilt. Hatcher, despite possessing familial connections with Appellant and his family, testified Appellant was, at the very least, very aware that each of the items he possessed were stolen. Hatcher's account was supported by the other evidence presented at trial. Brittany Wells testified she saw a white safe in Appellant's living room around the time it was stolen from Talbert's home. Detective Young took pictures of several suspicious items in Appellant's home during his initial visit, many of which were identified by Freeman and Talbert as the items missing from their homes. Notably, the serial number on the television Freeman identified as hers matched the serial number she registered with World Finance and the microwave, which was recovered and possessed unique markings matching the area in Freeman's home from which it was removed. See State v. Lyles, 211 S.C. 334, 45 S.E.2d 181 (1947) (the possession of recently stolen property is evidence from which the possessor's guilt may be inferred); 76 C.J.S. *Receiving Stolen Goods* § 32 (2007) ("The fact that defendant knew or had reason to know that the property in his or her possession was stolen can be established by entirely circumstantial evidence).

Further, Appellant's knowledge that the items in his possession were stolen can also be inferred from his flight from law enforcement and the sudden disappearance of the items from his home during the night following Hatcher's meeting with Detective Wade. See 29 Am.Jur.2d

Evidence § 543 (2008) ("Flight, concealment, or analogous conduct, when unexplained, is admissible as indicating consciousness of guilt.").

Accordingly, given the overwhelming evidence of Appellant's guilt, any alleged error in the admission of the State's comment or the trial judge's "seek the truth" language is harmless.

CONCLUSION

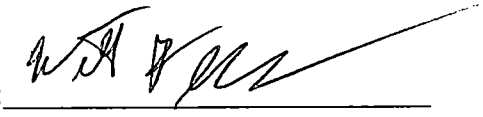
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit

BY: 

William F. Schumacher, IV
Bar # 100231
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3922

ATTORNEYS FOR RESPONDENT

February 6, 2018

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CERTIFICATE OF COUNSEL

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

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit

BY:_____
WILLIAM F. SCHUMACHER, IV

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Brief of Respondent by sending two copies of the same to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served this 6th day of February, 2018.

Angela Bennett
Administrative Coordinator
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-0368

ALAN WILSON
ATTORNEY GENERAL

February 6, 2018

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

RE: State v. Jason Morton – Appellate Case No. 2015-002641

Dear Mr. Alexander:

I am enclosing two copies of the Brief of Respondent in the above-referenced case.

Sincerely,

William F. Schumacher
Assistant Attorney General
Bar Number 100231

WFS/
Enclosures

cc: Honorable Jenny A. Kitchings
(original and nine copies enclosed)
Victim Advocacy Division

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283