ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY

RECEIVED
MAR 22 2018
SC Court of Appeals

Court of General Sessions
Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2017-000281

THE STATE,

Respondent,

v.

JAWAN RAYELWHITE,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred by charging the full language of the trafficking statute where the statute lists the various grounds for guilt in plain and ordinary terms, and Appellant requested the charge.

II. Whether the trial court denied Appellant the right of confrontation by admitting video recording of his meeting with confidential informants where Appellant did not object to its admission and conversation on video did not constitute testimonial hearsay.

III. Whether the trial court denied Appellant the right of confrontation by allowing witness testimony elicited by Appellant regarding out-of-court statements by non-witnesses where the statements did not constitute testimonial hearsay.

STATEMENT OF THE CASE

An Horry County Grand Jury indicted Appellant for one count of trafficking in heroin. Respondent (the State) called the case for trial on June 13th, 2013. Appellant failed to appear and was tried in his absence before the Honorable Larry B. Hyman. John Hilliard, Esquire, represented Appellant. Assistant Solicitor Martin Spratlin represented the State. After a two day trial, the jury convicted Appellant and he was sentenced by the court. The sentence was sealed and placed in the custody of the clerk of court.

On July 18, 2014, Appellant appeared before Judge Hyman and his sentence was unsealed. At this hearing, Appellant was represented by Rosemary Parham, Esquire, and Bert von Herrmann, Esquire. The court published the sentence imposed on June 14, 2013 — 25 years' incarceration. Defense counsel moved to hold in abeyance the time limits[1] to file post-trial motions. The court ordered that the time limits be held in abeyance indefinitely.

On January 5, 2015, Appellant mailed a pro se motion for a new trial to the Horry County Clerk of Court. The Clerk of Court responded via letter dated January 20, 2015, advising Appellant that his motion should be handled by his attorney. On January 21, 2015, Appellant mailed a pro se "superseding motion" for a new trial. Again, the Clerk of Court responded via letter dated January 30, 2015, advising Appellant to go through his attorney. On May 9, 2015, defense counsel filed a motion to withdraw Appellant's pro se motion, enclosing an affidavit from Appellant stating his previous pro se motions were filed due to a misunderstanding.

On November 6, 2015, Appellant appeared before Judge Hyman to plead guilty to new charges. Appellant sought to condition his plea on the court vacating his June 14, 2013 conviction and re-sentencing Appellant to concurrent fourteen year sentences on the new charges

[1] Rule 29, SCRCrimP. "Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence."

and the old charge. Judge Hyman refused to vacate the conviction and asked the parties to brief the issue whether Appellant was entitled to a new trial.

On March 8, 2016, Appellant moved pro se to relieve his counsel, stating that he had retained Thurmond Brooker, Esquire, to represent him. The court relieved Mr. von Herrmann and Ms. Parham, conditioned on the completion of a brief in support of Appellant's motion for a new trial, or Mr. Brooker making an appearance on behalf of Appellant.

On September 14, 2016, a hearing was held on Appellant's motion for a new trial. Mr. Brooker appeared on behalf of Appellant. Appellant argued for the first time that the court erred by charging the jury the full language of the trafficking statute and by allowing witnesses to testify to conversations with a witness who did not testify. After hearing arguments from Mr. Brooker and Assistant Solicitor Gray Ervin, the court denied Appellant's motion in an order dated November 9, 2016. This order was filed on November 21, 2016. Mr. Brooker received notice on November 29, 2016.

On December 9, 2016, Appellant filed a motion to reconsider this ruling. At a hearing held on January 18, 2017, the court orally denied the motion. The court issued a written order denying Appellant's motion on the same day. The court also signed a form order denying Appellant's motion to reconsider. The form order was entered and a copy mailed to defense counsel on January 25, 2016, and filed on February 7, 2016. Mr. Brooker received written notice of the entry of the order on February 14, 2017.

On February 15, 2016, Appellant mailed a Notice of Appeal which was received by the Court of Appeals and filed on February 16, 2017, and subsequently submitted an Initial Brief of Appellant. This Initial Brief of Respondent now follows.

STATEMENT OF FACTS

In August 2011, Appellant became the target of an investigation by the Horry and Georgetown County joint Drug Enforcement Unit. R. p. 116. Randy Miller, an officer with the Myrtle Beach Police Department, testified that he received information that prompted the investigation. R. p. 116. Miller employed a confidential informant, Adrian Chavez, to meet with Appellant in order to arrange a heroin transaction. R. p. 116, l. 23 - p. 117, l.1. A second informant, employed by a different government agency, was also present at this meeting. R. p. 117, ll. 5-7.

Chavez testified that at this initial meeting, Appellant expressed that he wanted to buy four ounces of heroin from Chavez for $10,000. R. p. 88, l. 21 - p. 89, l. 6. Appellant and Chavez agreed that Appellant would call Chavez when he was ready to complete the transaction. The conversation was recorded by Chavez on a device provided by Miller. R. p. 118, ll. 1-4. Miller observed the meeting from a distance and later watched the recording taken by Chavez. R. p. 90; p. 119. The video of this meeting was admitted into evidence without objection. R. p. 85.

Three days later, Appellant called Chavez to complete the purchase. R. pp. 90-91. On August 20, 2011, Miller provided Chavez with approximately four ounces of imitation heroin and followed Chavez to the Coastal Grand Mall. R. p. 124. Appellant arrived and got into Chavez's car. R. p. 126. Appellant gave Chavez $10,000 and Chavez gave Appellant the imitation heroin. R. p. 96. Miller and other officers watched the transaction from a distance. R. p. 126. Upon seeing the exchange, the officers approached the car and arrested Appellant. R. p. 126. When the police approached Appellant, he had the imitation heroin tucked in his waistband. R. p. 126, ll. 18-25. $10,000 was recovered from the front driver's side of the

vehicle. R. p. 127. After being advised of his *Miranda* rights, Appellant told officers he came to the mall in order to purchase four ounces of heroin for $10,000. R. p. 134, ll. 5-8. Again, Chavez recorded the transaction. R. p. 95. The video was admitted into evidence without objection. R. p. 96.

At the outset of trial and again at the conclusion of the State's case, defense counsel moved to dismiss the case on the grounds that the State did not make the second informant available to the defense. R. pp. 38-42; pp. 143-144. Appellant's motion was premised on defense counsel's claim that examination of the second informant was necessary to develop a defense of entrapment. R. p. 42, ll. 12-14. The Court denied the motion, noting that Appellant, had he chosen to be present, could have presented evidence to support the defense of entrapment. R. pp. 144-145. Counsel did not invoke the confrontation clause as a basis for his motion, and did not identify any testimonial statements made by the second informant.

Before closing arguments, defense counsel requested that the court charge the jury on the definition of trafficking, minus language regarding the significance of imitation drugs that had been requested by the solicitor. R. p. 146, ll. 10-13. Defense counsel argued that the more specific charge requested by the State was a comment on the facts. R. p. 146, ll. 13-15. Counsel did not object to the court charging the definition of trafficking in the language of the statute.

ARGUMENT

I.

Appellant's argument that the trial court erred by charging the jury the full language of the trafficking statute is not preserved for review because Appellant requested the charge at trial. Even if preserved, the trial court properly charged the jury where the statute lists the various grounds for guilt in plain and ordinary terms.

Appellant argues the trial court erred by charging the jury the full language of the trafficking statute, claiming the charge was confusing to the jury. However, because Appellant did not raise the issue at trial, the issue has been waived and is not preserved for review. Furthermore, even had Appellant preserved the issue for review, the court did not err because the charge was a correct statement of law that appropriately informed the jury of the elements of the charged offense.

A. The issue is not preserved for review.

Appellant did not object at trial to the court's decision to charge the statute; rather, defense counsel actually requested that the court charge this portion of the statute, but asked the court not to charge additional language requested by the solicitor regarding the legal effect of imitation heroin being used in the transaction.[2] A defendant's failure to object to a jury charge results in a waiver of his right to complain about the charge on appeal. *State v. Stone*, 285 S.C. 386, 387, 330 S.E. 2d 286, 287 (1985); SCRCrimP 20(b).[3] Where counsel states at trial that he has no objection to a specific aspect of the jury charge, he may not later argue on appeal that the jury charge was erroneous. *Pinckney v. Pettijohn Builders*, 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct.App. 1986).

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[2] Defense counsel stated: "We would respectfully request the court to charge trafficking in the court's charge without the addition of the solicitor's requested language." R. p. 146.

[3] (b) Objections to Charge. Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule shall constitute a waiver of objection.

Appellant first sought to raise the issue through a motion for a new trial, and now seeks to raise it on appeal. However, an Appellant may not preserve through a post-trial motion an issue that was waived at trial. *State v. King*, 334 S.C. 504, 510, 514 S.E.2d 578, 581 (1999). Likewise, a trial court may not grant a new trial on grounds not raised at trial. *State v. Dicapua,* 383 S.C. 394, 399, 680 S.E.2d 292, 294 (2009). Appellant did not give the court an opportunity to exercise its discretion on the issue at trial, and cannot now complain about the court's ruling on appeal. *Stephens v. CSX Transportation, Inc.*, 400 S.C. 503, 508, 735 S.E.2d 505, 511 (Ct. App. 2012).

B. Even had Appellant preserved the issue, the court's charge was appropriate.

S.C. Code § 44-53-370(e) defines the types of conduct that constitute "trafficking in illegal drugs."[4] The statute prohibits the selling, manufacturing, cultivation, delivery, purchasing or bringing into the state of heroin, *or* aiding, abetting, attempting or conspiring to do the same. S.C. Code Ann. 44-53-370(e) (emphasis added). The trial court gave a nearly verbatim definition of the crime charged.[5] Appellant claims the charge was misleading and confusing to

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[4] S.C. Code § 44-53-370(e)(3)(c) reads in pertinent part:
(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:
(3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as "trafficking in illegal drugs" and, upon conviction, must be punished as follows if the quantity involved is:
(c) twenty-eight grams or more, a mandatory term of imprisonment of not less than twenty-five years nor more than forty years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

[5] The judge charged the jury as follows: "Now the Defendant is charged with trafficking in heroin. The State must prove, beyond a reasonable doubt, that the Defendant knowingly sold, manufactured, cultivated, delivered, purchased, brought into this State, provided financial assistance or otherwise aided, abetted, attempted or conspired to sell, manufacture, cultivate, deliver, purchase, or bring into this State, and was knowingly in actual or constructive possession, knowingly attempted to become in actual or constructive possession of heroin. In order to find the Defendant guilty the State must also prove, beyond a reasonable doubt, that the amount of the heroin, or any mixture containing heroin, was twenty-eight grams or more. Under trafficking in heroin, twenty-eight grams or more, the presence of only imitation heroin at the transaction is irrelevant if the State proves beyond a reasonable doubt that the Defendant conspired or attempted to purchase more than twenty-eight grams of real heroin."

the jury because the judge charged that Appellant could be convicted if found to have "conspired or attempted" to purchase or possess heroin, and the State did not produce evidence of an actual conspiracy. However, the law in South Carolina and other jurisdictions is clear that when a statute provides for alternative factual grounds for guilt, each being independently sufficient to convict on the charged offense, a court may define the offense to the jury by charging the full language of the statute.

In *City of Columbia v. Moser*, 280 S.C. 134, 311 S.E.2d 920 (1983), Moser was charged with violating a criminal statute prohibiting certain acts of "lewdness, assignation, or prostitution." Id. at 136, 311 S.E.2d at 921. Moser argued the trial court erred by charging the jury the entire statute when there was no evidence of assignation or prostitution, only lewdness. Id. at 137, 311 S.E.2d at 921. The Supreme Court held the trial court committed no error, especially where "the language complained of is not so offensive or confusing that reasonable minds would be mislead [sic] or prejudiced by the reading thereof." Id.

Where a statute defines the elements of a crime in plain and ordinary terms, it is proper for the court's charge to track the language of the statue. *Field v. Gregory*, 230 S.C. 39, 47, 94 S.E.2d 15, 20 (1956) ("As a general rule where the law governing a case is expressed in a statute, the court in its charge not only may, but should, use the language of the statute, and may, indeed, be guilty of error if it employs language which constitutes a departure in an essential respect from the statute.") (quoting 53 Am.Jur., Trial, para. 542, at page 433); *United States v. Wills*, 346 F.3d 476, 494 (4th Cir. 2003) (approving of a jury instruction that "tracks the language of both the interstate stalking statute and of the indictment..."); *Accord State v. Zichko*, 129 Idaho 259, 264, 923 P.2d 966, 971 (1996) ("Ordinarily the language employed by the legislature in defining a crime is deemed to be best suited for that purpose, and error cannot be predicated on its use in

jury instructions."); *Accord Lloyd v. State*, 152 A.3d 1266, 1271 (Del. 2016) ("An instruction which tracks the statutory language is adequate to inform the jury."); *People v. Fromuth*, 2 Cal. App. 5th 91, 108, 206 Cal. Rptr. 3d 83, 97 (Ct. App. 2016) (statutory language "is generally an appropriate and desirable basis for an instruction, and is ordinarily sufficient when the defendant fails to request amplification. If the jury would have no difficulty in understanding the statute without guidance, the court need do no more than instruct in statutory language.").

The trial judge may read the language of the statute verbatim, or he may phrase the statute in his own words. *Keel v. Seaboard Air Line Ry.*, 108 S.C. 390, 95 S.E. 64, 65 (1918) ("He read the statute to the jury, and that was sufficient. He had the right to read the statute to the jury, or, if the language of the statute was embodied in his own language, this was sufficient."). It is common practice for trial courts to charge the full language of drug trafficking statutes. *See, e.g.*, *State v. Ezell*, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996); *State v. Taylor*, 323 S.C. 162, 165, 473 S.E.2d 817, 818 (1996). The judge's charge correctly stated the applicable law. A jury charge which is substantially correct and covers the law does not require reversal. *State v. Cherry*, 348 S.C. 281, 287, 559 S.E.2d 297, 299 (Ct. App. 2001).

Appellant cites federal case law to support his argument, even though he does not allege a constitutional violation. However, the cases cited by Appellant do not support his argument. In *Stromberg v. People of State of Cal.*, 283 U.S. 359 (1931), Stromberg was convicted under a statute that contained three clauses with alternative bases for liability, one of which was ruled facially unconstitutional. Because the jury verdict did not specify under which clause it convicted, and because the prosecutor argued "emphatically" that conviction could be based on the unconstitutional portion of the statute alone, the possibility that the jury convicted under that portion meant that the verdict could not stand. *Stromberg*, 283 U.S. at 368-69 ("if any of the

clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld.").
In *Yates v. United States*, 354 U.S. 298 (1957), the court held that conviction on one of the grounds for liability was barred by statute of limitations, meaning that the general verdict possibly rested on an error of law, and could not stand. Neither of these circumstances is present in this case. Instead, each part of the trafficking statute is constitutionally and legally valid; the jury was merely asked to decide which part of the statute, if any, was violated.

The United States Supreme Court addressed this question in *Griffin v. United States*, 502 U.S. 46 (1991). In *Griffin*, defendant was charged with conspiracy to defraud the U.S. government. The indictment alleged that Griffin obstructed the IRS *and* DEA in the performance of their respective duties, either of which could constitute guilt of defrauding the government. The evidence presented at trial implicated Griffin only for obstructing the IRS. Griffin asked for a jury charge instructing the jury that it could not find her guilty of the underlying offense based on the allegation that she obstructing the DEA, which the trial court refused. The Court instead instructed the jury that it could find defendant guilty if it found that she engaged in *either* type of conduct alleged in the indictment. The Supreme Court held that the court committed no error. The Court described the history of general verdicts on multi-count indictments before addressing the issue before it— whether a jury charge on an indictment charging various factual grounds for conviction on a *single offense* may present the jury with these alternative bases for liability, even though there is no evidence to support one or more of the factual grounds. The court found that, whether on constitutional or procedural grounds, neither *Yates* nor *Stromberg* applied to the issue presented by Griffin. Calling Griffin's argument "unprecedented and extreme," the Court distinguished *Stomberg* and *Yates*, pointing out that Griffin's insufficient "bases of conviction was neither unconstitutional as in *Stromberg*,

nor even illegal as in *Yates*, but merely unsupported by sufficient evidence." *Griffin*, 502 U.S. at 56 (1991). The Court described approvingly the "regular practice for prosecutors to charge conjunctively, in one count, the various means of committing a statutory offense." *Griffin*, 502 U.S. at 51 (1991). The Court held the issue had already been decided in *Turner v. United States*, 396 U.S. 398 (1970), a drug case where Turner was convicted under a statute prohibiting the purchasing, selling, dispensing, or distributing of narcotics. Because the State had proven distribution, "the status of the case with respect to the other allegations is irrelevant to the validity of Turner's conviction." *Turner*, 396 U.S. at 420 (1970). *Griffin* and *Turner* establish that no constitutional or procedural violation occurs under federal law when a court submits various factual grounds for relief to a jury even though the evidence submitted does not support conviction on one of those legally valid grounds. *See also Crain v. United States*, 162 U.S. 625, 636 (1896) (approving "a verdict of guilty upon proof that the accused had done any one of the things constituting a substantive crime under the statute."); *Schad v. Arizona*, 501 U.S. 624, 636 (1991) ("Because statutes frequently enumerate alternatives that clearly are mere means of satisfying a single element of an offense, adoption of the dissent's approach of requiring a specific verdict as to every alternative would produce absurd results.").

Finally, there was no danger of confusion in the Court's charge because the State's theory of the case was clearly that Appellant had *attempted to purchase* heroin. In the State's opening statement and closing argument, the solicitor argued repeatedly that Appellant had attempted to purchase over an ounce of heroin. R. p. 72, ll. 13-15; p. 74, ll. 15-21; p. 148, ll. 15-21; p. 150, ll. 12-22; p. 151, ll. 15-18; p. 154, ll. 3-5, ll. 18-20; p. 155, l. 23; p. 157, ll. 5-23. The jury was well aware of the State's theory of the case. As the Supreme Court noted in *Griffin*, jurors are well equipped to analyze evidence; left with "the option of relying upon a factually inadequate

theory," there is no reason to believe jurors cannot weigh the evidence appropriately. *Griffin*, 502 U.S. at 59 (1991).

II.

Appellant's argument that the trial court erred in admitting a video recording of his meeting with confidential informants is not preserved for review because Appellant did not object to its admission at trial. Even if preserved, the trial court properly admitted the video recording because the conversation recorded did not constitute testimonial hearsay and therefore did not deny Appellant the right of confrontation.

Appellant claims the trial court erred by admitting a video of Appellant's initial meeting with Chavez and the second informant, citing the Confrontation Clause of the 6th amendment. However, because Appellant did not object to the admission of the video, he has waived the issue and it is not preserved for appellate review. Even had Appellant preserved the issue, the statements on the video do not constitute testimonial hearsay because they were not offered for their truth.

A. The issue is not preserved for review.

Defense counsel did not object to the admission of the videos at trial. Therefore, the issue is not preserved for review. *State v. Dicapua*, 383 S.C. 394, 399, 680 S.E.2d 292, 294 (2009) ("By consenting to the admission of the videotape evidence, Dicapua waived any direct challenge to the admission of the evidence."); *State v. Nichols*, 325 S.C. 111, 120, 481 S.E.2d 123 (1997) (objection must be entered on a specific ground at trial to preserve for appeal); *State v. Byram*, 326 S.C. 107, 112-13, 485 S.E.2d 360, 362-63 (1997) (noting a constitutional issue must be presented to the trial court to be preserved for review); *State v. McWee*, 322 S.C. 387, 391, 472 S.E.2d 235, 238 (1996) (finding a constitutional argument is not preserved for appeal where appellant failed to argue the constitutional basis for his request at trial).

B. Even had Appellant preserved the issue, the statements are not hearsay.

Although Appellant has not cited any specific statements made by the second informant in the video, the video was not offered to prove the truth of any of the statements contained

therein; it was admitted to show Appellant's conduct. The conversation captured on the video constitutes evidence of the crime itself; it demonstrates Appellant's preparations to purchase heroin. Because the State did not seek to prove the truth of any of the statements on the video, the statements are not hearsay. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 773 S.E.2d 607 (Ct.App. 2015). The admission of non-hearsay does not implicate a defendant's confrontation rights. *Crawford v. Washington*, 541 U.S. 36, 51 n. 9 (2004) ("The Clause ... does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.").

Even if the video had been improperly admitted, any error was harmless. The evidence of Appellant's guilt was overwhelming, particularly Appellant's admission that he had intended to purchase four ounces of heroin for $10,000. The finding of a Confrontation Clause violation does not require reversal where the properly admitted evidence of guilt is so overwhelming it is clear beyond a reasonable doubt that the improper use of the admission was harmless error. *State v. McDonald*, 412 S.C. 133, 142, 771 S.E.2d 840, 844 (2015), *quoting Schneble v. Florida*, 405 U.S. 427, 430 (1972).

III.

Appellant's argument that the trial court erred in admitting witness testimony regarding out-of-court statements by non-witnesses is not preserved for review because Appellant elicited this testimony at trial, opening the door to the testimony. Even if preserved, the trial court properly allowed the testimony where the statements did not constitute testimonial hearsay.

Appellant claims the trial court erred by allowing State witnesses to testify to extrajudicial statements, citing the Confrontation Clause of the 6th amendment. However, because Appellant elicited the testimony, he may not now complain about it on appeal. Furthermore, the statements do not constitute testimonial hearsay because they were not offered for their truth.

A. The issue is not preserved for review.

Appellant has no right to complain about this testimony because the statements were elicited by defense counsel and beneficial to Appellant. The only information the State elicited from Chavez regarding the second informant was that he was present at the first meeting with Appellant. It was defense counsel who questioned Chavez about specific statements made during the car ride to the meeting. An appellant cannot complain of prejudice from evidence he has brought before the jury. *State v. Brown*, 344 S.C. 70, 76, 543 S.E.2d 552, 555 (2001). Appellant also cites the testimony of Agent Miller as a basis for his constitutional argument. On cross examination, Miller stated that he had received information that Appellant was looking to purchase a large amount of heroin. When the solicitor asked Miller during direct examination about background information he had received about Appellant, the court sustained a defense objection based on hearsay. Only when defense counsel asked Miller about the content of the information he received did Miller testify about the specifics of that information. Defense

counsel elicited this information to further develop Appellant's entrapment defense. Again, Appellant may not claim error because he opened the door to Miller's testimony. *Id.*

B. Even had Appellant preserved the issue, the statements are not hearsay.

Chavez testified *on cross examination* about two statements made to him by the second informant: (1) that the informant was paid by the government; and (2) that the proposed deal was for four ounces of heroin. Miller testified *on cross examination* that he received a tip that Appellant was seeking to purchase a large amount of heroin. These statements were offered by Appellant to show that the government chose the amount of heroin to be purchased in an attempt to establish an entrapment defense, not by the State to establish that Appellant was in fact seeking to buy heroin. Even assuming one or more of the statements were testimonial, none were offered for the truth of the matter asserted. Therefore, they were not hearsay and do not implicate Appellant's right to confrontation. *See Crawford,* supra*; United States v. Love*, 767 F.2d 1052, 1063 (4th Cir.1985) (holding that an agent's testimony concerning information received from another agent "was offered not for its truth but only to explain why the officers and agents made the preparations that they did in anticipation of the appellant's arrest. As such it was not inadmissible hearsay.").

CONCLUSION

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

Respectfully submitted,

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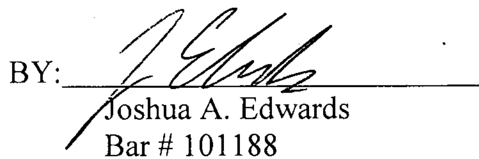
BY: 
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ATTORNEYS FOR RESPONDENT

March 22, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Larry B. Hyman, Circuit Court Judge

Appellate Case No. 2017-000281

THE STATE,

Respondent,

v.

JAWAN RAYEL WHITE,

Appellant.

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."

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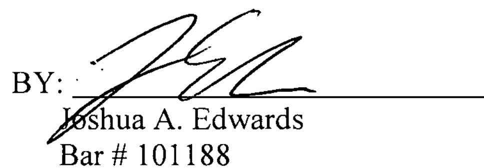

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March 22, 2018