STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions
R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2017-002158

THE STATE,

Respondent,

v.

DEVANTE ANTONIO GRANT,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

A Charleston County grand jury indicted Appellant for Armed Robbery and Possession of a Weapon during the Commission of a Violent Crime. Appellant proceeded to trial before the honorable R. Markley Dennis on August 7, 2017. After a three day trial, Appellant was convicted of both charges and sentenced to thirty years' incarceration for Armed Robbery and five years' incarceration for Possession of a Weapon during the Commission of a Violent Crime, to be served concurrently. This appeal follows.

STATEMENT OF FACTS

Kristina Hooks (Victim) worked at a deli in Charleston. Aug 7 Tr. 89. On January 26th, 2016, Victim finished work at 8:30 pm. Aug 7 Tr. 90. After locking up the restaurant, Victim walked across the empty parking lot and got into her car. Aug 7 Tr. 91; 94. The parking lot was well-lit and the moon was out. Aug 7 Tr. 93. Victim lit a cigarette and prepared to drive off, but heard a sudden loud bang on the driver's side window. Aug 7 Tr. 94; 132. She looked up and saw Appellant pointing a black handgun at her head. Aug 7 Tr. 94; 99. Appellant ordered Victim to get out of the car, repeatedly shouting "I will fucking kill you!" or "I will fucking hurt you!" Aug 7 Tr. 100. Victim complied, and then noticed a second individual with Appellant. Aug 7 Tr. 98. Both individuals had on hooded sweatshirts, but their faces were not covered. Aug 7 Tr. 97-98. The second individual, later identified as Saivon Chisolm, did not have a gun. Aug 7 Tr. 98. Appellant ordered Chisolm to get Victim's cell phone, and the two of them proceeded to plunder Victim's car. Aug 7 Tr. 100-01. After a few seconds, the two of them drove off in Victim's car and she ran across the highway to a shopping center to call the police. Aug 7 Tr. 100; 103-04. Officers with the City of Charleston Police Department responded to the scene. Aug 7 Tr. 68; 74.

On-call detective Adam Deming was dispatched to the scene. Aug 7 Tr. 137. While en route on Interstate 26 in an unmarked police car, Deming was passed by a vehicle matching the description of Victim's car travelling in the same direction. Aug 7 Tr. 137-38. Detective Deming estimated the car was travelling at a speed of more than one hundred miles per hour. Aug 7 Tr. 138. Detective Deming relayed this information to dispatch, but was unable to pursue the car because his vehicle was not equipped for a high-speed pursuit. Aug 7 Tr. 139. After responding to the scene of the robbery and transporting Victim to her home, Deming activated an

automated license plate recognition (ALPR) tool to track Victim's car. Aug 7 Tr. 141. Detective Deming later learned that the ALPR photographed Victim's vehicle on Dorchester Road in North Charleston just after 9:00 pm that evening. Aug 7 Tr. 141.

On February 2nd, Charleston Police Officer Abrial Washington-Saunders spotted Victim's car on Dorchester Road in North Charleston. Aug 7 Tr. 153; 160. Washington-Saunders conducted a traffic stop and arrested Saivon Chisolm, the only occupant of the car. Aug 7 Tr. 155-56. Washington-Saunders found a loaded, dark-in-color semi-automatic handgun underneath the passenger's seat. Aug 7 Tr. 157. The handgun was stolen. Aug 7 Tr. 159. Chisolm was charged with possession of a stolen pistol and possession of a stolen vehicle. Aug 7 Tr. 159. Chisolm's residence was minutes away from the location of the traffic stop. Aug 7 Tr. 160.

Charleston Police Detective Jason Jarrell interviewed Chisolm. Aug 8 Tr. 308. Chisolm implicated Appellant in the robbery, but refused to testify against Appellant when called at trial. Aug 8 Tr. 305; 308. Detective Jarrell arranged for SLED to compose a six-person photo lineup containing Appellant's picture. Aug 8 Tr. 309-10. Detective Jarrell presented the lineup to Victim on February 3rd, 2016. Aug 8 Tr. 309. Victim identified Appellant as the armed person who robbed her. Aug 8 Tr. 312. Victim also identified Appellant in the courtroom during trial. Aug 7 Tr. 109.

Detective Jarrell obtained a warrant for Appellant's arrest. Aug 8 Tr. 314. Appellant turned himself in. Aug 8 Tr. 337. Detective Jarrell interviewed Appellant, but he pleaded ignorance to Jarrell's questions. State's Exhibit 63. While incarcerated in the Charleston County Jail prior to trial, Appellant made numerous incriminating statements which were recorded on his phone calls and video visits at the jail. State's Exhibits 27; 32. The State also presented expert

testimony matching Appellant's handwriting to a threatening letter received by Saivon Chisolm while Appellant was incarcerated. Aug 8 Tr. 264-287; State's Exhibits 55-56. Appellant did not testify.

ARGUMENT

I.

The trial court did not abuse its discretion by refusing to exclude Appellant's recorded statement to police because Appellant voluntarily gave false statements revealing a consciousness of guilt.

Appellant asserts the trial court erred by refusing to exclude a recording of his interview with Detective Jarrell. Appellant claims the court wrongly admitted the statement because it made him "look bad." To the extent that this argument is based on Rule 403 SCRE, it is not preserved for appellate review because it was not raised at trial. Instead, Appellant moved to suppress the statement by generally alleging its admission would violate his "right to silence." The trial court and counsel for both parties referred to the hearing on Appellant's motion as a Jackson v. Denno hearing, suggesting Appellant's trial argument was based on the voluntariness of the statement. Aug 7 Tr. 46; 165. Appellant made no argument that the video's prejudicial effect substantially outweighed its probative value, and may not do so for the first time on appeal.

Even in regard to voluntariness, it is questionable whether trial counsel's argument was specific enough to preserve the issue for review. Trial counsel did not specify the legal basis for her argument, which consisted of the claim that "He doesn't have to assert his right to counsel; he just has to assert his right to remain silent." Aug 8 Tr. 175. Trial counsel's argument seemed to be that once Appellant stated he wanted his mother present for questioning, Detective Jarrell was required to cease reading Appellant his rights and stop the interview. However, trial counsel did not cite any case or rule of law in support of her argument and made no allegation of involuntariness or coercion.

Appellant continues the same vague argument on appeal, but does not cite to Jackson v. Denno or the Fifth Amendment. Instead, Appellant cites two inapposite cases involving impermissible impeachment and argument on a defendant's silence, neither of which occurred in this case. As discussed below, there is no unqualified constitutional "right to silence." Respondent is left guessing the specific legal basis for Appellant's argument. Because Appellant's argument is excessively vague and unsupported by authority, this Court should deem it abandoned.

Even if preserved, the argument is meritless. The admission of Appellant's statement did not violate Appellant's right to silence because he did not remain silent. The State made no comments suggesting Appellant was guilty because he ultimately invoked his right to counsel. Appellant claims "nothing on the videotape relates to appellant's guilt or innocence" because he "did not say anything inculpatory," but he omits the fact that he made multiple false statements or omissions which tended to show he was aware of his own guilt. Appellant seems to suggest the video lacked all probative value because he did not give an explicit confession, but cites no case in support of this argument and ignores well-established law to the contrary. Furthermore, the video recording shows Appellant's guilty demeanor and shows him writing with his right hand, a fact at issue during the trial. Therefore, Appellant inculpated himself through both words and conduct. Accordingly, Appellant's argument is meritless and this Court should affirm the trial court's ruling.

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011). "An abuse of discretion occurs when the trial

court's ruling is based on an error of law." Id. An appellate court will affirm a trial court's factual findings "if there is any evidence to support the ruling." State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000).

Issue Preservation and Abandonment

This Court should deem Appellant's argument abandoned because it is excessively vague and unsupported by citation to applicable authority. See SCACR 208 ("the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority"). "Mere allegations of error are not sufficient to demonstrate an abuse of discretion. On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling." First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). An argument will not be considered if it is "not supported with citations of authority, and it is so conclusory as to be an abandonment of this issue on appeal." Cole v. S.C. Elec. & Gas, Inc., 355 S.C. 183, 196, 584 S.E.2d 405, 412 (Ct. App. 2003), aff'd as modified, 362 S.C. 445, 608 S.E.2d 859 (2005).

It is doubtful whether Appellant preserved even the arguments he did make at trial because he did not cite a constitutional provision supporting his "right to silence" argument. Trial counsel's argument was so perfunctory and vague that this Court cannot know with certainty the legal grounds upon which she relied. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (objection must be entered on a specific ground at trial to preserve an appeal); State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (an objection should be sufficiently specific to bring the exact error to the trial court's attention). The only clue as to the basis of trial counsel's argument is her use of the phrase "right to silence" and her reference to the hearing as a Jackson v. Denno hearing. State v. Hill, 394 S.C. 280, 289, 715 S.E.2d 368, 373

(Ct. App. 2011), overruled on other grounds by State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016) (explaining "failed to meet his burden to support his motion" because he did not offer evidence to support his claims). However, trial counsel never argued the statement was involuntary.

Appellant continues the same vague "right to silence" argument on appeal, but does not cite Jackson v. Denno or allege that his statement was involuntary. Indeed, no variation of the word "voluntary" appears in Appellant's argument. More so, the minimal authority cited by Appellant is irrelevant to the facts of this case. Appellant inexplicably cites Doyle v. Ohio, 426 U.S. 610 (1976), for the proposition that the State may not use a defendant's post-arrest silence for impeachment purposes, even though Appellant did not testify and was not subjected to cross-examination. Naturally, this issue was not raised at trial. Appellant also cites State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), for the proposition that the State may not improperly comment on a defendant's assertion of a constitutional right. Although Appellant moved to suppress the statement, he did not object to any of the prosecutor's comments or arguments regarding the statement. Trial counsel, whom the court repeatedly praised for her professionalism, presumably did not raise this issue because the prosecutor made no such comments. The prosecutor's comments about Appellant's interview emphasized his statements, not his silence. Aug 9 Tr. 13 ("The defendant's own interview. Right off the bat the defendant **says some things** that are very interesting.") (emphasis added). Appellant has not identified any statement by the prosecutor encouraging the jury to draw a negative inference because he "refused to comment." See State v. Smith, 290 S.C. 393, 395, 350 S.E.2d 923, 924 (1986). Because these arguments were not presented at trial and are not supported by citations to the record, they are not preserved for review. State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210,

213 (Ct. App. 2002) (holding an issue must be raised to and ruled upon by the circuit court in order to be considered on appeal).

Appellant has cited no other case in support of his assertions.[1] Appellant has not given this Court the most basic tools needed to assess his claim of error— the applicable rule of law and specific facts implicating the rule. Because Appellant's argument is excessively vague and does not contain citations to applicable authority, this Court should consider the issue abandoned.

Right to Silence

Even if preserved, Appellant's arguments are meritless. Trial counsel moved to exclude the recording based on Appellant's statement that he would prefer his mother to be present for the interview, even though Appellant continued speaking with the investigator after being read his Miranda rights. When Appellant finally did request an attorney, the investigator immediately ended the interview. Recognizing this fact, trial counsel seemed to concede there was no violation of Appellant's right to counsel, arguing "He doesn't have to assert his right to counsel. He just has to assert his right to remain silent." Aug 8 Tr. 176.

The Constitution does not provide an unqualified "right to silence." Salinas v. Texas, 570 U.S. 178, 189 (2013) (explaining "[a] witness' constitutional right to refuse to answer questions depends on his reasons for doing so, and courts need to know those reasons to evaluate the merits of a Fifth Amendment claim"). Trial counsel's "right to silence" argument was presumably based on the United States Constitution's Fifth Amendment right against compelled self-incrimination because counsel and the court referred to the hearing as a Jackson v. Denno

[1] As noted above, if Appellant's argument relies on Rule 403 SCRE, it is not preserved for review because this argument was not raised at trial.

hearing.[2] However, Appellant has made no showing of (or argument for) involuntariness. There is no argument that Appellant's statements were compelled in any way other than his statement to Detective Jarrell that "I don't really want to answer no questions without my mom being present." State's Exhibit 63. This statement was made as Detective Jarrell began to explain to Appellant his Miranda rights. Detective Jarrell finished explaining Appellant his rights and told Appellant "you can tell me whatever you want to tell me." Detective Jarrell then asked Appellant if he wanted to tell him what happened. Appellant voluntarily responded to the investigator's questions, but chose to give false or evasive answers.

The trial court correctly ruled this did not amount to compelled self-incrimination or denial of counsel. Appellant never invoked his right against self-incrimination, only that he preferred to have his mother present, a request he was not entitled to have granted. Chaney v. Wainwright, 561 F.2d 1129, 1131 (5th Cir. 1977) (denial of "street-wise" seventeen-year-old's request to call his mother did not render his confession involuntary); U. S. ex rel. Riley v. Franzen, 653 F.2d 1153, 1161 (7th Cir. 1981) (sixteen-year-old's request to speak to parent could not "reasonably be construed as an invocation of his Fifth Amendment privilege"). In order to invoke the privilege against self-incrimination, a defendant must do so unambiguously. Berghuis v. Thompkins, 560 U.S. 370, 381 (2010). If an accused makes a statement concerning the privilege against self-incrimination "that is ambiguous or equivocal" or makes no statement, the police are not required to end the interrogation, or ask questions to clarify whether the accused wants to invoke his or her Miranda rights. Id. There is a crucial difference between requesting a non-lawyer third party's presence for questioning and an unequivocal statement refusing to

[2] Jackson v. Denno, 378 U.S. 368, 380 (1964) ("A defendant objecting to the admission of a confession is entitled to a fair hearing in which both the underlying factual issues and the voluntariness of his confession are actually and reliably determined.").

answer police questions. See Fare v. Michael C., 442 U.S. 707, 719 (1979) (recognizing the "unique role the lawyer plays in the adversary system of criminal justice" and holding a defendant's request to speak with his probation officer did not equate to an invocation of his Fifth Amendment rights). Appellant had extensive experience with law enforcement and the justice system and was capable of deciding whether he desired to have an attorney present before questioning (and later decided he did). See Riley, supra (noting juvenile defendant's experience with law enforcement showed he understood how to invoke his rights).

A person who "desires the protection of the privilege [against self-incrimination] must claim it, or he will not be considered to have been 'compelled' to implicate himself." United States v. Monia, 317 U.S. 424, 427 (1943). "The amendment speaks of compulsion. It does not preclude a witness from testifying voluntarily in matters which may incriminate him." Id. "If a witness—even one under a general compulsion to testify—answers a question that both he and the government should reasonably expect to incriminate him, the Court need ask only whether the particular disclosure was 'compelled' within the meaning of the Fifth Amendment." Minnesota v. Murphy, 465 U.S. 420, 428 (1984). If a defendant was advised of his Miranda rights, "but nevertheless chose to make a statement," the statement is admissible as long the State shows by a preponderance of the evidence that the statement was voluntary. State v. Franklin, 299 S.C. 133, 137, 382 S.E.2d 911, 913 (1989). The voluntariness of Appellant's statement is patent from the recording itself, wherein Appellant was fully informed of his rights and given a clear opportunity to remain silent. The video constitutes ample evidence to establish the statement's voluntariness.

Consciousness of Guilt

In making his claim that the State and trial judge were just trying to make him "look bad," Appellant implies an improper purpose and completely ignores the probative value of his

statement. The whole point of a criminal prosecution is to make a defendant "look bad" (guilty). See United States v. Lentz, 524 F.3d 501, 525 (4th Cir. 2008) (remarking that "all evidence suggesting guilt is prejudicial to a defendant"). Very few criminals look "good" in the eyes of a jury after having incriminating evidence presented against them. But this inconvenient fact does not prohibit the State from introducing relevant evidence to prove its case. As long as the prosecution stays within the bounds of the rules of evidence and the Constitution, it may make the defendant look as bad as it pleases. See Rule 402 SCRE (providing all relevant evidence is admissible unless it violates an evidentiary or constitutional rule). Appellant claims he "did not say anything inculpatory" during the interview, yet ignores the fact that his untruthful statements and sly demeanor made him look guilty. It is true that Appellant did not admit guilt during his interview. But Appellant has cited no case requiring a full confession in order to introduce an incriminating statement.

Evidence of a defendant's consciousness of guilt is highly probative. "No one doubts that the state of mind which we call 'guilty consciousness' is perhaps the strongest evidence that the person is indeed the guilty doer[.]" 2 Wigmore, Evidence § 273 (Chadburn rev. 1979) (internal citation omitted). As a general rule, "any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt." State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011), overruled on other grounds by State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). Specifically, lies and omissions about one's past conduct strongly suggest a guilty mind. United States v. McDougald, 650 F.2d 532, 533 (4th Cir. 1981) (approving a jury instruction that "an exculpatory statement made by a defendant and found to be untrue could be considered evidence of a defendant's consciousness of guilt").

When asked his current address, Appellant told Investigator Jarrell he "didn't really have an address," but that he stayed with his mother in North Charleston or his aunt in Goose Creek. State's Exhibit 63. He omitted that he had been living with Saivon Chisolm prior to the robbery.[3] He claimed he "was not even in contact with" Saivon Chisolm and hadn't seen him "in a long time," but Chisolm told police he was with Appellant when they committed the robbery days before, and Victim identified Appellant as the person with Chisolm during the robbery. He also claimed he did not have a phone and that he only used his mother's phone to communicate, but he refused to give the officer her number. State's Exhibit 63. However, in a conversation with his mother, Appellant expressed concern at his mother's statement that the police "had y'all's phone records." State's Exhibit 27a-2. These statements and omissions strongly suggest Appellant was intentionally misleading and hiding information from the investigator, a consideration relevant to the jury's determination of guilt.

Appellant also accuses the State of improperly "displaying his demeanor to the jury." Brief of Appellant 9. Again, Appellant does not provide a legal basis for his argument, though it appears to be based on some combination of the U.S. Constitution's Fifth Amendment right against self-incrimination and Rule 403 SCRE. However, one's demeanor is probative if it tends to show consciousness of guilt. See Orozco, supra. Appellant has not cited any case supporting his argument that a person has a constitutional right to privacy in their demeanor. Just as demeanor is a crucial factor in the credibility of a witness at trial, it is highly probative in assessing the truthfulness of a recorded statement. Instead of candidly answering the investigator's questions, Appellant responded with questions of his own, such as "why would I be in West Ashley?" and "how can the victim pick me out when I didn't even know the victim?"

[3] Chisolm's mother testified Appellant moved out of her house before the incident date, but could not give an exact date.

State's Exhibit 63. This is likely what the trial judge was referring to when he said Appellant was "playing games." The suspiciously unconcerned and evasive demeanor Appellant displayed during his interview is relevant evidence of his consciousness of guilt, and therefore relevant to the ultimate question whether he is guilty of the charged offense.

In conclusion, the State did not comment on Appellant's silence or ask the jury to draw a negative inference therefrom. Quite the opposite, the State commented on his words. Neither was Appellant compelled to answer the investigator's questions. Instead, Appellant "fail[ed] to claim the Fifth Amendment privilege after being suitably warned of his right to remain silent and of the consequences of his failure to assert it." Murphy, 465 U.S. at 430. The State merely pointed out the inculpatory nature of Appellant's statements. If Appellant had actually remained silent, none of these arguments would have been available to the State. Accordingly, the trial court properly refused to exclude the evidence.

II.

The trial court did not abuse its discretion by admitting Appellant's jail phone calls, video visits, and a threatening letter written in Appellant's handwriting directed at a cooperating witness because the letter was connected to Appellant and each piece of evidence was relevant to show Appellant's consciousness of guilt.

Appellant claims the trial court erred by admitting a threatening letter sent to a cooperating witness and recordings of his phone calls and video visits with his mother and a friend. Appellant claims the recordings and letter are irrelevant and, because they contain profanity, unfairly prejudicial. Appellant further claims the phone calls and video visits were "often unintelligible" and "largely incomprehensible." Appellant further claims the expert testimony linking Appellant to the letter was unreliable. Appellant's argument that the expert testimony was unreliable is not preserved for review because he did not raise the issue at trial. Regardless, the letter, phone calls and video visits were properly admitted because they contained numerous probative statements showing Appellant's consciousness of guilt. Because there is evidence to support the trial court's ruling that the danger of unfair prejudice did not substantially outweigh the probative value of the evidence, this court must affirm.

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." Id. An appellate court will affirm a trial court's factual findings "if there is any evidence to support the ruling." State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000).

Issue Preservation

To the extent Appellant argues the trial court erred by admitting expert testimony regarding the threatening letter, the issue is not preserved for review. Although Appellant claims the trial court "did not fulfill its gatekeeping function because the expert did not testify to a reasonable degree of professional certainty that Appellant wrote the letter," Appellant did not object on this basis at trial. Rather, Appellant objected that the letter had not been sufficiently authenticated and was not relevant.[4] Aug 4 Tr. 6. The State presented evidence that Saivon Chisolm gave the letter to his mother, who turned the letter over to Chisolm's attorney, who then gave it to police. Aug 8 Tr. 230-31; 242-43. Before trial, Appellant questioned "how she got the letter." Aug 4 Tr. 6. When the State offered forensic document examiner Gaile Heath as a handwriting expert, Appellant did not object to her qualifications and chose not to engage in any voir dire of Mrs. Heath. Aug 8 Tr. 268. When the letter was offered into evidence, Appellant merely renewed his pretrial objection to its authenticity (i.e. how Chisolm's mother "got the letter") and relevance. Aug 8 Tr. 273. Appellant never objected to the admissibility of Mrs. Heath's expert opinion. Because Appellant did not object to Mrs. Heath's qualifications or the reliability of her testimony, this issue is not preserved for review. State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 213 (Ct. App. 2002) (holding an issue must be raised to and ruled upon by the circuit court in order to be considered on appeal). The only issue regarding the letter that is preserved is Appellant's objection to its relevance.

[4] Appellant has abandoned the authentication issue on appeal because he did not raise it in his brief.

Witness Intimidation Evidence

Witness intimidation evidence, if linked to the defendant, may be admitted to show a consciousness of guilt. State v. Edwards, 383 S.C. 66, 72, 678 S.E.2d 405, 408 (2009); See Consciousness of Guilt, supra. "A defendant's attempt to threaten an adverse witness indicates 'his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit.'" United States v. Van Metre, 150 F.3d 339, 352 (4th Cir. 1998) citing 2 Wigmore, Evidence § 278 (Chadbourn Rev.1979).

Here, the State presented testimony from an expert witness who compared the handwriting from the letter to Appellant's known handwriting sample. The expert found sufficient similarities between the samples to conclude it was probable that Appellant wrote the letter. Aug 8 Tr. 269-271. Therefore, the state "presented evidence linking [Appellant] as the source of the witness intimidation[.]" See Edwards, 383 S.C. at 72, 678 S.E.2d at 408. The State was not required to prove beyond all doubt whether Appellant wrote the letter. State v. Rogers, 96 S.C. 350, 80 S.E. 620, 621 (1914) (holding the trial court should not have admitted witness intimidation evidence without "connecting the defendant in some manner with it"); State v. Goodson, 225 S.C. 418, 429, 82 S.E.2d 804, 809 (1954) (Eatmon, J. concurring) (explaining "it was the province of the jury, and not the province of the Court" to determine whether defendant threatened witness when witness gave inconsistent testimony). The handwriting expert's testimony, combined with the content and context of the letter, provided ample justification for the trial court's decision to admit it. United States v. Hayden, 85 F.3d 153, 159 (4th Cir. 1996) (finding admissible a threatening letter because its content suggested defendant as the author).

Contrary to Appellant's assertion, the letter contains several threatening statements clearly intended to discourage Chisolm from cooperating with the police. The letter was

addressed to "Savion Chisolm, Informant." State's Exhibit 56. The letter chastises Chisolm for not being a "real G" or "Gangsta," and says that "kno informants get good deal [sic]." The letter warns Chisolm "you know wassup [sic]," refers to Chisolm's mother as "that bitch yo mama," and contains what appears to be a drawing of a hand with the middle finger raised. State's Exhibit 55. The threatening nature of the letter and the use of the word "informant" implies that its author is party to some illegal conduct. As the trial court noted— "Why else would somebody do that?" Aug 4 Tr. 10. All of these statements support the trial court's decision to admit the letter. Under the abuse of discretion standard of review, this Court needn't go any further.

Phone Calls and Video Visits

Appellant objects to the phone calls and video visits on the same grounds— relevance. Like the letter, the phone calls and video visits expose Appellant's state of mind through his conversations with his mother and a friend named Michael Allen. They are relevant for the same reason the threatening letter and Appellant's interview are relevant— they tend to show Appellant's consciousness of guilt. See Consciousness of Guilt, supra.

In the February 8, 2016 phone conversation with Michael Allen, Appellant instructs Allen to delete his Facebook account because "[t]hem boy trying to find all the evidence they can." State's Exhibit 27a. In a May 17, 2017 call, Appellant tells Allen not to talk to the police, warning him he could be charged with accessory or conspiracy. State's Exhibit 27a-3. In a March 20, 2016 call to his mother, Appellant discusses a potential alibi that he was at work on the incident date, but he and his mother agree that he did not actually work that day. They also discuss the fact that police have Appellant's phone records, contradicting Appellant's statement to Detective Jarrell that he did not have a phone. They also discuss the threatening letter, and

Appellant's mother tells him to "stop writing them bad things in them letters before you get yourself in trouble." State's Exhibit 27a-2.

In the March 9, 2017 video visit, Appellant and Allen appear to discuss Savion Chisolm's cooperation with police, and agree that he "ain't gonna wanna come home [sic]." Appellant tells Allen to try to get Chisolm to "drop that" or "switch that thing up." State's Exhibit 32a-2. In the April 5, 2017 video visit, Appellant and Allen appear to discuss the fact that the police have incriminating Facebook messages. State's Exhibit 32a-3. All of the calls and video visits tend to incriminate Appellant by showing his efforts to influence Saivon Chisolm or otherwise suppress evidence against him. They also validate the State's accusation that Appellant wrote the threatening letter to Chisolm, and show that he lied to Detective Jarrell. Therefore, they too are relevant to show Appellant's consciousness of guilt. See Consciousness of Guilt, supra.

Appellant's reliance on State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), is unpersuasive. There, the content of the jail calls introduced by the State had no probative value because the State's reason for offering them— to show King owned a cellphone that he called from jail— could have easily been accomplished without introducing the calls themselves. Additionally, the calls contained references to prior bad acts. Because the recordings in this case had immense probative value and did not contain references to prior bad acts, King has very little persuasive value.

Profanity

The fact that the letters, phone calls, and video visits contained profanity is an insufficient reason to exclude them. Although the prejudicial effect of Appellant's bad language is relevant to the question of admissibility, Appellant must demonstrate that the trial court abused its discretion when it found that the danger of unfair prejudice did not substantially outweigh the

probative value of Appellant's statement. Appellant is asking this Court to substitute its judgment for the trial court's rather than applying an abuse of discretion standard of review by considering only whether there is evidence to support the ruling. To do so would be improper. A trial court has particularly wide discretion in ruling on Rule 403 objections. State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct.App.2012); State v. Dial, 405 S.C. 247, 260, 746 S.E.2d 495, 502 (Ct. App.2013) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances. We review a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment.") (citation omitted).

The unsubstantial danger that Appellant's vocabulary would offend the sensibilities of a sensitive juror to the extent he would base his decision on this basis pales in comparison to the interests of justice and community welfare that justify the presentation of a full case in the prosecution of a most serious crime. Hayden, 85 F.3d at 159 (holding foul language did not outweigh probative value of letter containing threatening statements because the "threats went directly to establish criminal intent and guilty consciousness"). The trial court did not abuse its discretion by refusing to exclude highly probative evidence merely because it contained profanity. This Court should affirm the trial court's ruling.

III.

The trial court did not abuse its discretion by sentencing Appellant to thirty years' incarceration given the egregious nature of the crime, Appellant's post-arrest conduct, and his extensive criminal history.

Appellant alleges the trial court abused its discretion by sentencing Appellant to thirty years' incarceration. However, the court's sentence was within the statutory limits and was justified based on the egregious nature of the crime and Appellant's extensive criminal history. This Court should affirm.

Standard of Review

The trial court has broad discretion in giving sentences within the statutory limits. Brooks v. State, 325 S.C. 269, 271-72, 481 S.E.2d 712, 713 (1997). "[T]his court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the trial court, and is not the result of prejudice, oppression or corrupt motive." State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976).

Discussion

"A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant." Brooks, 325 S.C. at 272, 481 S.E.2d at 713. "A [court] must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant." In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). Several factors justify the court's imposition of a thirty year sentence. First, Appellant's crime was egregious. Not only did Appellant use a handgun to commit the crime, he pointed the gun directly at Victim's head and emphatically threatened to kill her. Few acts can be more traumatic and terrifying to a victim. As the court noted, Victim did not know "whether [she was] going to live or die." Aug 9 Tr. 63.

Second, Appellant's conduct between the incident and trial compounded his culpability. Unlike his codefendant, Appellant repeatedly lied to the police. More importantly, he attempted to obstruct justice when he threatened his cooperating codefendant, Saivon Chisolm, to prevent him from testifying. He also solicited his friend, Michael Allen, to influence Chisolm and destroy evidence of his crime. It is fair to conclude that these efforts influenced Chisolm's decision not to testify.

Perhaps most importantly, Appellant has an alarming criminal history. At age seventeen, Appellant had already been convicted of armed robbery. Aug 9 Tr. 62. He had also been convicted of receiving stolen goods, possession of a stolen vehicle, petty larceny, and possession of marijuana. Aug 9 Tr. 62. He was out on bond for a pending strong-armed robbery charge at the time of the incident. Aug 9 Tr. 62. Appellant's jail records indicate he was a member of the Bloods gang. October 12 Tr. 10. These facts demonstrate he presents an extreme danger to the community.

The cases cited (inaccurately)[5] by Appellant in his brief are not applicable to this case. Appellant did not receive life imprisonment without the possibility of parole. Nor did he receive the death penalty. Indeed, the trial court noted Appellant would likely be released at the age of forty three. Aug 9 Tr. 71. Clearly, Appellant has the "meaningful opportunity to obtain release." Graham v. Fla., 560 U.S. 48, 75 (2010), as modified (July 6, 2010). The court sentenced him within the statutory limits, and there is no evidence that the court was motivated by a corrupt or oppressive motive. Given the grievous nature of his crime, his conduct leading up to trial, and

[5] Appellant cites Graham v. Florida, 560 U.S. 48 (2010), for the proposition that "deterrence is not a valid penological justification in the sentencing of juveniles." Brief of Appellant 28. However, this was not the court's holding. Rather, the court stated "any limited deterrent effect provided **by life without parole** is not enough to justify the sentence." Graham v. Fla., 560 U.S. 48, 72 (2010), as modified (July 6, 2010) (emphasis added). Appellant omits this portion of the opinion.

his criminal history, the court was well within its discretion when it imposed a thirty year sentence. This Court should affirm.

CONCLUSION

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

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 3, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2017-002158

THE STATE,

Respondent,

v.

DEVANTE ANTONIO GRANT,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by delivering two copies of the same addressed to Joanna K. Delany, Esquire, SCCID, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.
This 3rd day of October, 2018.

Anne Mueller

Anne A. Mueller
Legal Assistant for the Respondent

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ALAN WILSON
ATTORNEY GENERAL

October 3, 2018

Joanna K. Delany, Esquire
SCCID, Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

RE: State v. Devante Antonio Grant
Appellate Case No. **2017-002158**

Dear Ms. Delany:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Joshua A. Edwards
Assistant Attorney General
Bar # 101188

JAE/aam
Enclosures

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