STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort County
The Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

Respondent,

v.

SAMUEL T. COLLINS,

Appellant.

Appellate Case No. 2017-002221

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General
S.C. Bar No. 68383
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit
Post Office Box 1880
Bluffton, SC 29910
(843) 779-8477

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

I. Did the trial judge err in permitting the State to introduce text messages allegedly sent from Appellant's phone where the State failed to authenticate the messages?

II. Did the trial judge err in failing to direct a verdict in Appellant's favor on the charges of murder and possession of a weapon during the commission of a violent crime, where the evidence at trial only showed Appellant's wife driving around the home where the decedent was shot, where Appellant's DNA was found on the shotgun, and where no evidence was presented linking Appellant to the actual shooting?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. The trial court properly admitted the non-hearsay admission of a party opponent in text messages because the texts were sufficiently authenticated by a witness who identified the telephone number he associated with Appellant and offered corroborating extrinsic evidence proving Appellant authored the texts.

II. The trial court did not abuse its discretion in denying the motion for the directed verdict because, viewing the evidence in the light most favorable to the State, a reasonable juror could find Collins guilty of murder and possession of a weapon.

STATEMENT OF THE CASE

In April of 2016, a Beaufort County Grand Jury indicted Appellant, Samuel Collins, for murder and possession of a weapon during a violent crime. (Indictments.) Appellant proceeded to a jury trial on October 16, 2017, before the Honorable Brooks P. Goldmsith. Appellant was represented by Mitchell Edward Farley, Esquire. (T. p. 2.) Assistant Solicitors Kimberly L. Smith and Hunter Phelan Swanson, of the Fourteenth Circuit Solicitor's Office, represented the State. (T. p. 1.)

The jury found Appellant guilty of murder and the weapons charge. (T. p. 367, lines 18-25.) Judge Goldsmith sentenced Appellant to fifty years' imprisonment for murder and a concurrent term of five years for possession of a weapon during the commission of a violent crime. (T. p. 375, line 20 – p. 376, line 2.)

Appellant filed a timely notice of appeal, and Appellate Defender Taylor D. Gilliam filed the Initial Brief of Appellant on July 23, 2018. This Brief of Respondent follows.

STATEMENT OF FACTS

Officer Jeffrey Dickson responded to a call about a possible gunshot victim on October 28, 2018, at a home on Pinecrest Way in Beaufort County. (T. p. 98, lines 3-17.) When he arrived on the scene, Dickson approached the front door of the house, knocked on the door, and was greeted by two occupants of the house, Roberts Vaux and Joseph Rueby. (T. p. 99, lines 5-21.) The men told the officers their friend was on the back porch, outside the sliding glass door entry to the home. (T. p. 99, line 24 –p. 100, line 3.) The victim, Jon Chernol, was sitting upright on an outdoor couch, legs crossed, hands folded in his lap, with a fatal shotgun wound to the right side of his head. (T. p. 108, lines 4-13; p. 326, line 3 – p. 327, line 15.) While securing the crime scene, Dickson noticed two shotgun shell casings in the backyard. (T. p. 101, lines 13-24; p. 101, line 25 – p. 102, line 3.) One of the shell casings was spent and the other appeared to be intact. (T. p. 103, line 24 – p. 104, line 1.) Dickson also noticed what looked like shotgun blast damage to the house next door to the victim's house. (T. p. 104, lines 11-19.)

Roberts Vaux lived at the home and was a former business partner of the victim. (T. p. 109, line 9 – p. 110, line 15.) Vaux offered Chernol a place to live for a short period of time before Chernol planned to move in with his friend Joe Rueby. (T. p. 110, lines 15-20.) On the night of the murder, Vaux came home at approximately 6:00 pm, the men ate dinner, and then Vaux went to bed. (T. p. 110, line 21 – p. 11, line 14.) Around 12:20 am, Vaux woke up to use the bathroom and heard voices coming from the back porch. (T. p. 112, lines 2-9.) Chernol and Rueby were sitting outside, talking about the upcoming move. (T. p. 114, lines 1-5.) Vaux went back to sleep, but about twenty minutes later was awakened by two shots from a shotgun. Vaux opened his bedroom door, saw Rueby rush inside, and called 911. (T. p. 114, lines 20-25; p. 115, lines 1 – 7.) Afraid, Vaux then hid in the master bedroom closet until the police arrived. (T. p.

115, lines 15-19.) Vaux later agreed to go to the police station, give a statement, submit his clothing for processing, and provide a DNA sample. (T. p. 116, lines 1-24.)

Joe Rueby testified he knew Jon Cherol through their work. (T. p. 120, lines 1-22.) On the night of the murder, Rueby got off work at approximately 11:30 pm and went to hang out with Chernol at Vaux's house. (T. p. 121, lines 2-19.) The men went outside to sit on the back porch and talk, and Chernol mentioned a woman came by the house about a half an hour before Rueby arrived. (T. p. 122, line 1 – p. 123, line 2.) Rueby said sometime after Vaux returned inside, the men were talking and he heard a noise that sounded like a gun racking. (T. p. 123, lines 3-16.) Rueby was looking at Chernol when he was shot, and Rueby thought he heard two shots from a shotgun in quick succession. (T. p. 123, lines 17-24.) Rueby also went to the police station and cooperated with the investigation. (T. p. 125, line 12 – p. 126, line 17.)

The shotgun shells found at the scene were collected and swabbed for DNA. (T. p. 134, line 10 – p. 135, line 18.) Crime scene investigators found a footwear impression in the soil near a window of the residence and near the shotgun shells. (T. p. 154, line 3 – p. 155, line 2; p. 158, lines 19-23.) Investigators also found a tire impression just off Master's Way, the road that ran perpendicular Pinecrest Way, where the residence was located. (T. p. 155, line 16 – p. 156, line 16.) A path led from the wooded area behind the residence to Master's Way. (T. p. 158, lines 4-7.)

Captain Babkiewicz explained how the investigation proceeded. After securing the scene and contacting SLED, officers canvasing the neighborhood learned there were surveillance videos of the area. (T. p. 212, lines 2-23.) One of videos shows a vehicle pulling in to the victim's house. (T. p. 215, lines 23-25.) Babkiewicz's investigation revealed the car was a 2007 Toyota Camry that belonged to Colette Collins, wife of Appellant. (T. p. 218, lines 2-16.) Stills

from the camera showed the car turn into Roberts' driveway. The surveillance video also show the victim coming outside with his dog and talking to Colette for about an hour, and then Colette drives away, leaving the neighborhood at 11:43 pm. (T. p. 220, line 20 – p. 221, line 8; State's Ex. 46.) The video shows the same vehicle returning at 12:42 am, braking in front of the victim's house, and then turning left onto Master's Way. (T. p. 216, lines 11-25; p. 221, lines 12-18.) The vehicle again drives by the house at 12:52 am and pulls up to a nearby stop sign for "a noticeably long time" of 23 seconds, then makes a left onto Master's Way. As the car proceeds out of range of the camera, the brake lights of the vehicle turn on. (T. p. 217, line 24 – p. 218, line 1.)

Captain Babkiewicz interviewed Samuel Collins on October 30, 2015 (T. p. 224, lines 18-24.) Collins admitted he knew Chernol because Chernol bought prescription pills from Collins, although Collins said Chernol never actually paid him for the pills. (T. p. 226, lines 10-20.) Collins said Chernol gave him his watch in exchange for the drugs, but still owed him money. (T. p. 226, lines 20-24.) Babkiewicz said Collins was reluctant to relay some information at first, but eventually told the investigators about an incident in which two men came to his house to rob him. Collins told Babkiewicz he "did what he had to do to get the people away" and the people ran off. (T. p. 227, lines 15-23.) Babkiewicz said Collins gave inconsistent versions of the attempted robbery and the story came in pieces, but Collins eventually told him he thought Jon Chernol was involved in the robbery because Chernol was over at his house for thirty minutes to an hour before the robbery happened. (T. p. 228, lines 11-16.) Collins said Chernol was nervous, and as soon as Chernol left Collins' house, the men showed up to rob Collins. (T. p. 228, lines 17-18.) Babkiewicz said when he later searched Collins' home, he saw what appeared to be birdshot holes in the walls, which corroborated Collins' story. (T. p. 229, lines 3-6.)

Officer David Murphy, of the Beaufort County Sheriff's Department, obtained a search warrant for the cell phone records of Collette Collins. (T. p. 180, lines 2-9.) Murphy said he also obtained the cell phone records for the telephone number (912) 659-4048, and learned the number belong to Samuel Collins. (T. p. 180, lines 7-17.) Murphy obtained a warrant for the records of Cody Brown's cell phone, and that number was (843) 368-7957. (T. p. 180, lines 10-25.) Murphy also found Brown's iPhone, as well as a black hat, a pair of camouflage pants, and a shirt in a cutout storage area of Brown's garage. (T. p. 185, lines 4-11.) Murphy also seized a 12 gauge shotgun from a gun cabinet inside Brown's home. (T. p. 186, lines 2-14.)

Cody Brown testified he has known Collins for approximately six years and met him through construction work. (T. p. 190, line 12 – p. 191, line 2.) Brown said Collins asked to borrow his 12 gauge shotgun for "self-defense." (T. p. 192, line 7 – p. 193, line 18.) Brown said Collins told him some people owed Collins money, he threatened them for repayment, and "They retaliated back at him and were threatening him." (T. p. 193, lines 21-23.) Brown said Collins returned the gun to him in the middle of the night on the night of the murder. Brown received a text message during the night that Collins put the gun in the back of Brown's truck. (T. p. 193, line 24 – p. 194, line 12.) Brown recalled the text message said "I returned your shotgun, something about I think I put it in the back of your truck and just riding around tonight or something." (T. p 199, lines 19-21.) Brown said he looked in his truck the first thing the following morning and found the gun in the back of the truck with items of clothing over it. (T. p. 200, lines 7-12.) Brown said the gun was loaded and the safety was off. (T. p. 200, lines 20-24.) Brown said he ejected the shells, and there was one fired round inside. (T. p. 201, lines 1-5.) Brown also said he gave Collins some birdshot ammunition when he loaned him the gun, but when the gun was returned it was loaded with buckshot. (T. p. 202, line 22 – p. 203, line 8.)

Brown then took the gun straight to his gun cabinet. (T. p. 201, lines 7-10.) Brown told investigators where the shotgun shells and clothing were in his garage. (T. p. 202, lines 1-9.) Two days later, Brown received another text from Collins saying, "You haven't seen me." (T. p. 202, lines 10-15.)

Collins' DNA[1] was found on the magazine cap and the stock of the shotgun. (T. p. 257, line 22 – p. 260, line 16.) Collins was the major contributor to a mixed DNA[2] profile found on the gun's trigger and grip. (T. p. 272, lines 16 – 23.) Collins' DNA was also found on the black hat[3] and jacket[4] found in Brown's garage. (T. p. 263, lines 11-20; p. 264, lines 4-24.)

The firearms examiner testified the shotgun shells he received for testing were one fired round and one misfired round. (T. p. 302, lines 2-23; p. 305, lines 2-13.) The expert said that when the shotgun misfired, a slight noise would have been made from the striking of the hammer or firing pin. (T. p. 304, lines 15-25.) The examiner concluded the fired round found at the scene was fired from the shotgun taken from Brown's home. (T. p. 305, lines 6-18.) The examiner also concluded a shotgun shell found on the coat chest was also fired by the shotgun. (T. p. 309, lines 4-7.)

The State's last witness was the pathologist, who told the jury the victim died from a shotgun wound to his head. (T. p. 321, line 18 – p. 323, line 23.) The pathologist demonstrated

---

[1] The probability of selecting a random unrelated person with the same DNA profile as the DNA profile from the swab of the magazine cap is approximately 1 in 2.46 sextillion. (T. p. 258, lines 6-10; p. 260, lines 11-16.)

[2] The probability of selecting a random unrelated person with the same DNA profile as the DNA profile from the swab of the stock is 1 in 86. (T. p. 259, line 4-p. 260, line 2.)

[3] The probability of selecting a random unrelated person with the same DNA profile as the DNA profile from the swab of the black hat is approximately 1 in 2.4 sextillion. (T. p. 262, line 21 – p. 263, line 20.)

[4] The probability of selecting a random unrelated person with the same DNA profile as the DNA profile from the swab of the jacket is approximately 1 in 26 trillion. (T. p. 264, line 16 – p. 265, line 4.)

the damage to the victim's head shown on an x-ray, which indicated numerous skull fractures from the shotgun fragments passing through the victim's cerebrum. (T. p. 324, line 18 – p. 327, line 15.)

ARGUMENT

I. The trial court properly admitted the non-hearsay admission of a party opponent in text messages because the texts were sufficiently authenticated by a witness who identified the telephone number he associated with Appellant and offered corroborating extrinsic evidence proving Appellant authored the texts.

Appellant cannot show the trial court abused its discretion to admit text messages sent from Collins to Brown when the State presented testimony that an officer obtained search warrants for the particular phone numbers belonging to Collins and Brown. The State further presented testimony from Brown that he identified the number sending the texts as belonging to Collins, the text referred to items Collins had borrowed from Brown, and the items Collins borrowed were located where the texts purported the items to be. The State's burden to authenticate the evidence is not high, and having met the threshold determination, the statements were properly admissible as an admission by a party opponent pursuant to Rule 801(d)(2), SCRE.

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. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). An abuse of discretion occurs when the conclusions of the trial court are based on an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice. *State v. Kelley*, 319

S.C. 173, 177, 460 S.E.2d 368, 370 (1995). The standard of review is limited to determining whether the trial court's ruling is supported by any evidence. *State v. Breeze*, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008) (emphasis added).

How the Issue Arose at Trial

The defense moved to suppress two text messages the State sought to introduce. The texts were allegedly from Collins' phone to that of Cody Brown (T. p. 169, line 8 – p. 170, line 12.) The defense argued the State must authenticate that the message came from Collins' phone, arguing the text messages were hearsay (T. p. 170, lines 14-18.) Collins further argued that the State must authenticate "that the person who owned that phone actually sent the text messages." (T. p. 170, line 19-23.)

The State argued Cody Brown would testify his number received the text messages and he would identify the receiving phone as his. (T. p. 171, lines 8-12.) The solicitor said Brown would identify the number he used to communicate with Collins several weeks before the crime. (T. p. 171, lines 12-18.) The State also argued that whether Collins actually sent the messages would "go to the weight of the evidence, not the admissibility." (T. p. 171, lines 19-23.)

Collins argued that without a witness who could authenticate "where those messages came from, how they were obtained, any kind of chain" then the messages should not be allowed to be admitted. (T. p. 172, line 19 –p. 173, line 5.) The solicitor told the judge an officer would testify he obtained a search warrant for the phone, and Brown would testify it is an accurate depiction of the content of the messages. (T. p. 173, line 9-12.) The Solicitor said she understood Collins' objected to the admission of the actual document with the printed out text conversation, but "Mr. Bown can testify to the content." (T. p. 173, lines 9-12.) The court appeared to understand the objection to the actual printout document, but denied Collins' motion to suppress

the messages for their content. (T. p. 173, lines 13-15.) The court clarified Brown could testify, after refreshing his memory from the document, if he could remember what was on his phone. (T. p. 173, lines 21-25.) The court said the document itself was not admissible because the State had no one to authenticate it. (T. p. 174, lines 1-3.)

Collins argued the document was the issue, not the content, saying "I totally agree with the Court and I think it would be fine for the witness, Mr. Brown, to testify from his, you know, memory as to what the text messages said. But I think entering that document in as a piece of evidence without being able to authenticate and establish a chain, I don't think that's fair game." (T. p. 174, lines 17-23.) The Court again agreed with the defense, finding the documents themselves inadmissible. (T. p. 175, lines 8-12.)

Later, during Brown's testimony, Brown said he received a text message during the night that Collins put the gun in the back of Brown's truck. (T. p. 193, line 24 – p. 194, line 12.) The defense did not object to Brown's recollection of the content of the text message. (T. p. 194, lines 1-7.) However, when asked what the text message specifically said, Collins objected, arguing hearsay. (T. p. 194, lines 12-13.) The court instructed the State to "lay a better foundation" to show the texts were a statement by a party opponent. (T. p. 194, lines 14-18.)

The State asked Brown if knew Collins' cell phone number, and Brown affirmed he did. (T. p. 194, line 24 – p. 195, line 2.) Brown said the message he received during the night was from the number he associated with Collins. (T. p. 195, lines 1-8.) When the State again asked what the text message said, Collins objected. (T. p. 196, lines 17-21.)

Collins said that because the State argued the texts messages were statements against interest and statements by a party opponent, then the State must prove the message came from the device in question. (T. p. 197, lines 5-11.) Specifically, Collins said the following:

> The crux of the matter is, is that if they're going to argue that the exception is statement by a party opponent, they have to show that the party opponent has made the statement. And just because that phone—just because that phone has a number associated with Mr. Collins doesn't, A, mean that Mr. Collins sent it, and they still have not shown that Mr. Collins' phone sent it. They can only say that Mr. Brown's phone received it. So clearly its hearsay.

(T. p. 197, lines 17-25.) The solicitor responded that, given they had shown Collins was associated with that phone number, the question of whether Collins sent the text was a question of the weight of the evidence, not admissibility. (T. p. 198, lines 5-25.) The court agreed, denying Collins' motion to suppress the messages. (T. p. 199, lines 1-3.)

Discussion

A party offering evidence must meet "[t]he requirement of authentication ... as a condition precedent to admissibility." Rule 901(a), SCRE. The authentication requirement "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." *Id.* "[T]he burden to authenticate ... is not high" and requires only that the proponent "offer[ ] a satisfactory foundation from which the jury could reasonably find that the evidence is authentic." *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir.2014) (decided under Fed.R.Evid. 901(a)(3)); *see also* 29A Am. Jur. 2d Evidence § 1045 (2008) ("The authentication requirement does not demand that the proponent of ... evidence conclusively demonstrate [its] genuineness...."). *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 64–65, 773 S.E.2d 607, 610 (Ct. App. 2015).

South Carolina's Rule of Evidence 901 provides a non-exclusive list of ways in which evidence may be authenticated. For example, Rule 901(b)(1) provides generally that a "witness with knowledge" that the testimony is what it is claimed to be may authenticate the evidence. By way of further example, statements over a telephone may be authenticated by voice identification. *See* Rule 901(b)(5). Handwriting may be identified by a non-expert familiar with

the writing. *See* 901(b)(2). Perhaps most relevant to text messaging, Rule 901(6) provides that telephone conversations may be authenticated with the following:

> Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

Rule 901(6), SCRE. Although the rule does not address text messages directly, Rule 901 explicitly states the examples listed in subsection (b) are "by way of illustration only" and are not intended to be an exhaustive list of the ways to properly authenticate evidence. This Court must look to supporting case law for that determination as it applies to text messages.

Respondent is unable to find any published South Carolina case directly addressing the authentication of text messages by non-experts or records custodian. However, other state and federal jurisdictions have examined this issue and found authentication by a lay witness to be sufficient, so long as the witness demonstrates a familiarity with the evidence offered. Contrary to Collins' argument the State must present proof Collins actually typed the text messages himself, other jurisdictions have not required proponents offering printouts of emails, internet chat room dialogues, and cellular phone text messages to authenticate them with direct evidence, such as an admission by the author or the testimony of a witness who saw the purported author typing the message. *See, e.g., United States v. Fluker*, 698 F.3d 988, 999 (7th Cir.2012). Rather, courts have held that circumstantial evidence establishing that the evidence was what the proponent claimed it to be was sufficient. *See, e.g., State v. Thompson*, 777 N.W.2d 617, 624 (N.D.2010). Circumstantial proof might include the email address, cell phone number, or screen name connected with the message; the content of the messages, facts included within the text, or style of writing; and metadata such as the document's size, last modification date, or the

computer IP address. *See Fluker*, 698 F.3d at 999; *United States v. Siddiqui*, 235 F.3d 1318, 1322–1323 (11th Cir.2000); *United States v. Safavian*, 435 F.Supp.2d 36, 40–41 (D.D.C.2006).

While direct evidence is not required to authenticate a text message or email, most jurisdictions require something more than just confirmation that the number or email address belonged to a particular person. *See, e.g., In re F.P.*, 878 A.2d 91, 93–95 (Pa.Super.Ct.2005) (instant messages properly authenticated through circumstantial evidence including screen names and context of messages and surrounding circumstances); *Commonwealth v. Williams*, 456 Mass. 857, 926 N.E.2d 1162 (2010) (admission of MySpace message was error where proponent advanced no circumstantial evidence as to security of MySpace page or purported author's exclusive access). It is important that there be evidence that the emails, instant messages, or text messages themselves contained factual information or references corroborated by the parties involved. For example, in *Safavian* the District of Columbia district court held that email messages were properly authenticated where the email addresses contained distinctive characteristics such as the name of the person connected to the address, the name of the sender or recipient, and the content of the emails further authenticated them as being from the purported sender to the purported recipient. *Safavian*, 435 F. Supp. 2d 36, 39 (D.D.C. 2006) (also stating "the Court need not find that the e-mails are necessarily what the proponent claims, only that there is evidence sufficient for the jury to make such a finding.")

As the rationale of these jurisdictions demonstrates, establishing the identity of the author of a text message or email through the use of corroborating evidence is critical to satisfying the threshold authentication requirement for admissibility. When there has been an objection to admissibility of a text message, the proponent of the evidence must explain the purpose for which the text message is being offered and provide sufficient direct or circumstantial

corroborating evidence of authorship in order to authenticate the text message as a condition precedent to its admission. *State v. Koch*, 334 P.3d 280, 288 (Idaho 2014).

The State, consistent with the requirements of authentication under Rule 901, SCRE, and consistent with numerous state and federal jurisdictions, sufficiently established that the text messages in question were what it purported the texts to be. Officer Murphy testified he obtained a search warrant for the cell phone records belonging to Samuel Collins. (T. p. 180, lines 3-20.) Murphy also testified he obtained a search warrant for the phone belonging to Cody Brown. (T. p. 180, line 21- p. 181, line 2.) Thus, with Murphy's testimony, the State presented evidence the phone numbers in question were assigned to Samuel Collins and Cody and Brown by the cellular service phone company.

The State then presented the testimony of Cody Brown, who would establish by extrinsic corroborating evidence that the sender of the texts was Collins. Brown testified he knew the texts were from Collins because the phone number sending the text was a number he identified in the past as belonging to Collins. (T. p. 195, lines 1-14.) Brown testified he told the police about the text from Collins, and the police confiscated the phone on which he received the text message. (T. p. 195, line 16 – p. 196, line 7.) Brown also testified that after his discussion with police about the text messages, the police searched his home and located the gun, shells, and clothes referenced in the message. (T. p. 196, lines 5-16.) Brown said he received the text in the middle of the night, but when he looked in the back of his truck the following morning, the gun and clothing were placed where the text said the items would be. (T. p. 199, line 12 – p. 200, line 14.)

Brown's testimony further authenticated the messages based the corroborating testimony that Brown found the items in the exact place where the text message said the items would be. The sender of the message clearly had familiarity with Brown's sleep habits, home address, and

personal vehicle. Moreover, the sender returned the particular items Collins borrowed from Brown. Thus, based on the context of the messages, the identification of the borrowed items, the corroboration of the items in the truck the next morning, and because Brown had called and texted Collins on the same number in the past, the State sufficiently authenticated the text messages.

In his brief, Collins suggests the State should have called a records custodian from the cell phone carrier to authenticate the texts. (IBOA p. 9.) However, even if the State had presented a custodian to testify that the number belonged to Collins (in addition to the testimony of Officer Murphy), the custodian would not be able to testify Collins actually typed the text to Brown. Instead, because the text messages were authenticated with extrinsic evidence by Brown, it was not necessary to establish a chain of custody by calling an employee of the cell phone provider. *See State v. Brockmeyer*, 406 S.C. 324, 352–53, 751 S.E.2d 645, 660 (2013) (noting if the challenged evidence is not fungible, but is unique and readily identifiable, a strict chain of custody is not required for admission into evidence). Under Rule 901, SCRE, "readily identifiable items must merely be authenticated by a showing of 'evidence sufficient to support a finding that the matter in question is what its proponent claims,'" *Id.* The ultimate goal of chain of custody requirements is simply to ensure that the item is what it is purported to be. *State v. Hatcher*, 392 S.C. 86, 95, 708 S.E.2d 750, 755 (2011); *State v. Aragon*, 354 S.C. 334, 336–37, 579 S.E.2d 626, 627 (Ct. App. 2003) (holding establishment of a chain of custody was not necessary since the audiotaped conversation was otherwise authenticated under Rule 901, SCRE); *United States v. Howard–Arias*, 679 F.2d 363, 366 (4th Cir. 1982) ("The 'chain of custody' rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence."). As the case law shows, the inference that Collins authored the

messages may be proven circumstantially through the testimony of Brown and Murphy. The State was not required to present a representative from the phone carrier to prove a strict chain of custody and authenticate the texts.

The State presented sufficient evidence to support authentication of the text messages, and the trial court properly found them admissible on this basis. Further, the State argued the text messages were statements made by a party opponent pursuant to Rule 801(d)(2), SCRE. Having authenticated the texts as a prerequisite to admissibility, the texts were not hearsay and were properly admissible as Collins own admissions of the location of the murder weapon following the shooting death of Jon Chernol.

Harmless Error

Even if this Court were to find the admission of the texts to be error, any error is entirely harmless in this case. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. *State v. Fletcher*, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008); *see also, State v. Garner*, 389 S.C. 61, 67–68, 697 S.E.2d 615, 618 (Ct. App. 2010) ("[I]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice. Such error is deemed harmless when it could not have reasonably affected the result of the trial, and an appellate court will not set aside a conviction for such insubstantial errors.") The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. *State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003).

Collins argued he did not object to Brown testifying to the contents of the text messages between Brown and Collins and he, in fact, did not object when Brown recalled he received a text message during the night indicating that Collins put the gun in the back of Brown's truck.

(T. p. 193, line 24 – p. 194, line 12.) Thus, when Collins objected to the specific contents of the text as hearsay, the proverbial cat was out of the bag. The jury knew Collins texted Brown to inform him he returned the murder weapon to the back of Brown's truck. The particularities of the text, by the time Collins objected, were cumulative to Brown's earlier testimony.

II. The trial court did not abuse its discretion in denying the motion for the directed verdict because, viewing the evidence in the light most favorable to the State, a reasonable juror could find Collins guilty of murder and possession of a weapon.

Collins argues the trial court erred in denying his directed verdict motion, claiming the State did not present substantial circumstantial evidence proving he fired the fatal gunshot blast that killed Jon Chernol. (IBOA at p. 11.) Additionally, he argues the evidence only raised a suspicion of his guilt and that the State failed to present substantial circumstantial evidence Collins was in possession of a weapon during the commission of a violent crime. (IBOA at p. 15.) On the contrary, the State did present substantial circumstantial evidence, which established more than merely a suspicion of guilt, to submit the case to the jury. Thus, this Court should affirm the trial court's denial of Collins' directed verdict motion.

Standard of Review

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. *Id.* Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. *State v. Robinson*, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime

beyond a reasonable doubt in affirming the denial of a motion for directed verdict). "[A] court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." *State v. Bennett*, 415 S.C. 232, 236, 781 S.E.2d 352, 354 (2016). The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *Id.*

How the Issue Arose at Trial

After the State rested its case in chief, Collins moved for a directed verdict. (T, p. 328, line 24 – p. 329, line 14.) The trial court denied the motion. (T. p. 331, lines 13-17.) The defense opted not to put forth any evidence. (T. p. 333, lines 23-25.) The defense renewed its motion following closing arguments, and before the jury charge. (T. p. 356, line 17 – 357, line 3.) The defense also renewed its motion following the jury's verdict of guilt. (T. p. 371, lines 13-14.)

Discussion

There were no eyewitnesses who saw Collins shoot Chernol, nor did Collins confess. Thus, the State's case against Collins was based entirely on circumstantial evidence. "When ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is "any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." *Bennett*, 415 S.C. at 236–37, 781 S.E.2d at 354 (citing *State v. Littlejohn*, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955)). "This objective test is founded upon reasonableness. Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *Id.* at 237, 781 S.E.2d at 354; *see also Jackson v. Virginia*, 443 U.S. 307, 318 (1979) ("the critical inquiry on

review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." Because the State presented substantial circumstantial evidence from which a reasonable juror could find Appellant guilty beyond a reasonable doubt, this Court should affirm the denial of the directed verdict motion.

Here, the evidence and all reasonable inferences, viewed in the light most favorable to the State, told a classic tale of revenge. **1)** Samuel Collins told the police Jon Chernol bought prescription drugs from him, but still owed him money. (T. p. 226, lines 10-20.) **2)** Collins said he attempted to collect on the debt, and thought he needed a shotgun to protect himself. (T. p. 192, line 7 – p. 193, line 18.) **3)** Collins suspected Chernol was part of a robbery attempt at Collins' house because Chernol spent time at his house just before the men attempted to rob him, i.e. Chernol made sure Collins was home just before the crime. (T. p. 227, lines 15-23; p. 228, lines 11-18.) **4)** In a remarkably similar plan, Collins' wife is seen on camera approaching the victim the night of the murder, spending almost an hour with the victim, and then leaving the neighborhood. (T. p. 220, line 20 – p. 221, line 8.) **5)** Approximately an hour later, at the time of the shooting, the same car returns to the neighborhood, slowly drives by the victim's house. (T. p. 215, lines 23-25; p. 220, line 20 – p. 221, line 8.) **6)** Colette Collins appears to stop at a stop sign, as if waiting for something, and then turns left toward the path which leads directly to the back of the victim's house from Master's Way. (T. p. 216, lines 11-25; p. 221, lines 12-18.) **7)** As the car rolls out of frame, the brake lights appear, giving rise to the inference she has stopped to pick up Collins after he fired the fatal shot and then ran back through the woods to Master's Way. (T. p. 217, line 24 – p. 218, line 1.)

8) The shotgun seized from Brown's home was tested and confirmed as the gun that fired a shell found at the murder scene. (T. p. 305, lines 6-18.) This testimony shows Brown's shotgun is the murder weapon. **9)** Collins' DNA was found in four places on the shotgun seized from Brown's house: the trigger and the grip, the magazine, the stock, and the butt and forestock. (T. p. 257, line 22 – p. 265, line 4.) **10)** Brown testified Collins told him he needed to borrow the gun for protection, so Brown loaned him the gun (T. p. 190, line 12 – p. 193, line 23.) Brown's testimony, as well as the DNA, places the murder weapon in Collins' hands.

11) In the middle of the night following the murder, Brown receives a text message from Collins telling him he has returned the murder weapon. (T. p. 193, line 24 – p. 199, line 21.) **12)** The next morning, Brown finds the murder weapon, and clothes, in the back of his truck where Collins said it would be. (T. p. 200, lines 7-12.) **13)** Collins' DNA was also found on the clothes that wrapped the gun. (T. p. 263, lines 11-20; p. 264, lines 4-24.) **14)** Two days later, Collins sends another incriminating text to Brown saying, "You haven't seen me." (T. p. 202, lines 10-15.)

As noted by the Supreme Court of South Carolina in *State v. Pearson*, at the directed verdict stage, the State need only show the evidence *could induce a reasonable juror* to find the defendant guilty. 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016)(emphasis added)(finding a single fingerprint on the stolen vehicle and defendant's false statements to police sufficient evidence). In sum, the State placed the murder weapon in Collins' hands the night of the murder. The State also showed Collins sought to rid himself of the murder weapon as quickly as possible after the shooting. In a ruse that looked remarkably like the robbery attempted against Collins, the State showed Colette Collins acted as a lookout at the Veaux home, ensuring Chernol was home and awake before they returned to kill him later. Lastly, Collins tried to cover his tracks,

by suggesting Brown lie to the police about his whereabouts during the time of the murder. The trial judge correctly found this was substantial circumstantial evidence sufficient to survive the directed verdict stage and submit the case to the jury for its resolution. That finding should be affirmed.

CONCLUSION

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

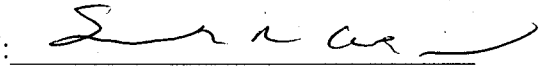
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General

BY: 
SUSANNAH R. COLE

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

November 7, 2018.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Beaufort County
The Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

Respondent,

v.

SAMUEL T. COLLINS,

Appellant.

Appellate Case No. 2017-002221

PROOF OF SERVICE

I, Susannah Cole, counsel for Respondent, certify that I have served the within Brief of Respondent on Appellant by depositing two (2) copies of the same via inter-agency mail, addressed to his attorney of record at:

Taylor D. Gilliam
Appellate Defender
SCCID/Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.

This 7th day of November, 2018.

Susannah R. Cole
Assistant Attorney General
SC Bar No. 68383

ALAN WILSON
ATTORNEY GENERAL

November 7, 2018

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *The State v. Samuel T. Collins*
Appeal from Beaufort County
Appellate Case No. 2017-002221

Dear Ms. Kitchings:

Enclosed for filing in your office is the original Initial Brief of Respondent, Designation of Matter and Certificate of Service in the above-captioned matter.

Thank you for your assistance in this matter.

Sincerely,

SUSANNAH R. COLE
Assistant Attorney General

SRC/ams
Enclosures
cc: Taylor D. Gilliam, Esq. (w/two copies of encls.)
The Honorable Isaac McDuffie Stone, Solicitor, Fourteenth Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encls.)