STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Allendale County

The Honorable Perry M. Buckner, Circuit Court Judge

THE STATE,

Respondent,

v.

JAYCOBY TERREAK WILLIAMS,

Appellant.

Appellate Case No. 2017-000872

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Whether the trial judge erred in refusing to allow appellant to cross-examine the State's key witness about the potential sentences he faced on pending charges?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether any error by the court in not permitting appellant to cross-examine the State's key witness about the potential sentences the witness faced on two pending charges prejudiced the outcome of the trial?

STATEMENT OF THE CASE

Jaycoby Williams ("Appellant") was indicted by the Allendale County grand jury on the charge of murder (2015-GS-03-00086). (Supp.ROA p. 3, ll. 9-11). At trial, Appellant was represented by Ian Deysach, Esq. Assistant Solicitors Korey Williams, Esq., and Brian Hollen, Esq., prosecuted the case on behalf of the Fourteenth Circuit Solicitor's Office. (Supp.ROA. p. 2). Appellant was tried before the Honorable Perry M. Buckner, April 3rd, through April 5th, 2017. (Supp.ROA. p. 1). At the conclusion of the trial the jury found Appellant guilty of murder. (R. p. 290, ll. 17-22). Following the conviction, Judge Buckner sentenced Appellant to thirty-five (35) years. (R. p. 302, ll. 8-13). Appellant then filed a timely Notice of Appeal. David Alexander Esq., with the Division of Appellate Defense, submitted Appellant's Initial Brief on January 30, 2018. This Brief of Respondent follows.

STATEMENT OF THE FACTS

In the early evening of May 26, 2015, the victim, James Spellman, was outside his apartment in Allendale, speaking to his cousin, Dequincy Best. (R. p. 52, l. 17 – p. 54, l. 8; p. 105, l. 24 –p. 106, l. 3). At some point during their conversation Jaycoby Terreak Williams ("Appellant") arrived at the apartment complex in a blue Ford Focus. (R. p. 70, l. 24 – p. 71, l. 13; p. 102, l. 20 – p. 104, l. 12). Appellant and the victim had a tenuous relationship because the victim was dating and living with Appellant's longtime girlfriend and mother of his children. (R. p. 46, ll. 5-22; p. 51, l. 10 – p. 52, l. 16). When Appellant arrived at the apartment complex, he greeted the victim's cousin. However, he did not greet the victim. (R. p. 72, ll. 13-24). The victim's cousin noticed during their interaction that Appellant had a pistol tucked into his pants. (R. p. 72, ll. 17-22). After greeting the victim's cousin, Appellant walked a short distance then turned and fired a single shot into the victim. (R. p. 73, ll. 6-12; p. 107, l. 8 – p. 110, l. 1). He then positioned himself over the wounded victim in an attempt to finish him, but backed away after several witnesses yelled at him to stop. (R. p. 73, l. 14 – p. 75, l. 17; p. 108, l. 1 – p. 109, l. 16). After Appellant fled the scene the victim's cousin loaded the victim into his car and drove him to the Allendale County Hospital, however, the victim died shortly after arriving. (R. p. 75, l. 25 – p. 78, l. 25; p. 60, l. 4 – p. 61, l. 19).

SUMMARY OF THE ARGUMENT

Any error in not permitting Appellant to impeach the witness with potential penalties the witness faced on two pending charges was harmless. The excluded evidence was merely cumulative to properly received impeachment, and, furthermore, the witness was not crucial to identification. The Prosecution presented testimony from an additional eyewitness who knew Appellant prior to the murder and positively identified him as the shooter.

ARGUMENT

I. How The Issue Arose At Trial.

At trial, the prosecution called Rahem Devoe as a witness. (R. p. 99, ll. 22-25). Devoe had arrived at the apartment with Appellant immediately prior to the murder. (R. p. 104, ll. 3-5). Devoe was not charged with any connection to the murder of James Spellman. Prior to the prosecution calling Devoe as a State's witness, Defense Counsel requested a hearing outside the presence of the jury. (R. p. 96, ll. 1-5). Defense Counsel sought to impeach Devoe with two prior charges *and* the potential sentences he faced should he be convicted of those charges. (R. p. 96, l. 6 – p. 99, l. 7). One charge was for drug possession and the other was for armed robbery. (R. p. 97, l. 14 – p. 98, l. 9). Devoe also had a prior conviction for failing to stop for blue lights. (R. p. 97, ll. 18-21). In regards to the potential sentences the witness faced on the charges, the defense felt the issue was relevant to show Devoe's bias. (R. p. 98, ll. 18-22).

The trial court did not permit Defense Counsel to impeach the witness on the drug charge after concluding that this particular charge did not bear on the witness's character for truthfulness. (R. p. 98, ll. 5-9). However, the court did permit Defense Counsel to impeach Devoe with the charge of armed robbery and his conviction for failing to stop for blue lights. (R. p. 97, ll. 14-24). Lastly, the court denied Defense's request to impeach Devoe with the potential sentences he faced on the pending charges. In coming to this conclusion, Judge Buckner stated ". . . I felt that the penalty was a matter for the court, and therefore, not a matter . . . ." (R. p. 98, ll. 13-14).

During his testimony Devoe stated that he had been with Appellant prior to the murder. (R. p. 102, ll. 3-23). He testified that he was at his uncle's house when Appellant and several other acquaintances arrived in a blue Ford Escort. (R. p. 102, l. 21 – p. 103, l. 12). Devoe stated

that he left with Appellant and acquaintances and they proceeded to the Pinewood Apartments. (R. p. 103, l. 13 – p. 104, l. 12). Devoe testified that when they arrived he proceeded to go visit a cousin who lived in the upstairs apartments. (R. p. 104, ll. 7-16). He passed by the victim as he went up the stairs toward his cousin's apartment. (R. p. 105, l. 24 - p. 106, l. 15). Shortly thereafter, Devoe testified that he heard a gunshot. At this point he turned around and witnessed Appellant standing over the victim preparing to shoot a second time. (R. p. 105, l. 17 – p. 110, l. 9).

The prosecution also presented testimony from two additional witnesses. Dequincy Best was with the victim when Appellant shot him. (R. p. 65, l. 8 – p. 66, l. 1). Best also knew Appellant prior to the murder. Best testified that on May 26, 2015, he and the victim were chatting near the stairwell outside the apartment where the victim and his girlfriend (also Appellant's ex-girlfriend) were living. (R. p. 66, l. 18 – p. 68, l. 6). He stated that during this period Appellant and Rahem Devoe arrived to the apartments in a blue Ford Focus. (R. p. 70, l. 24 – p. 71, l. 13). Best confirmed that Devoe came up the stairs followed shortly by Appellant who he noticed was carrying a pistol. (R. p. 72, ll. 9-24). He said that Appellant came up the stairs and greeted him. (R. p. 71, ll. 13-16). Best testified that after Appellant greeted him Appellant began walking back down the stairs. (R. p. 73, ll. 3-5). At that point Best turned around to follow Devoe up the stairs and heard a gunshot. (R. p. 73, ll. 8-12). He then turned around to find Appellant standing over the wounded victim, pointing a gun at him. (R. p. 73, ll. 14-16).

Lastly, the State presented Franklin Williams who resided at the apartments where the shooting took place. (R. p. 27, ll. 10-12). At the moment of the shooting, Williams was inside talking to family on the phone. (R. p. 27, l. 18 - p. 28, l. 18). He testified that he peaked out the

window after hearing the shot and spotted a small blue car retreating from the apartment. (R. p. 28, ll. 19-25).

II. Standard Of Review

"The trial court has broad discretion in determining the general range and extent of cross-examination." *State v. Jenkins*, 322 S.C. 360, 474 S.E.2d 812, 814–15 (Ct. App. 1996) (citations omitted). "[T]rial judges may impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness's safety, or interrogation that is repetitive or only marginally relevant. *Jenkins*, 322 S.C. at 474 S.E.2d at 814–15 (citation omitted). "[T]he exercise of such discretion will not be disturbed except in cases of manifest abuse or injustice." *State v. Miller*, 258 S.C. 573, 577, 190 S.E.2d 23, 25 (1972); *see also State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247–48 (2000) ("Admission of evidence falls within the trial court's discretion and will not be disturbed on appeal absent abuse of that discretion."). "An abuse of discretion occurs when the trial court's decision is based on an error of law or upon factual findings that are without evidentiary support." *State v. McEachern*, 399 S.C. 125, 136–37, 731 S.E.2d 604, 609–10 (Ct. App. 2012) (citing to *State v. Morris,* 376 S.C. 189, 205, 656 S.E.2d 359, 368 (2008)). Moreover, "the court's decision will not be reversed on appeal absent a showing of prejudice." *Colf,* 337 S.C. at 625, 525 S.E.2d at 247–48. "Thus, an insubstantial error not affecting the result of the trial is harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." *State v. Williams*, 380 S.C. 336, 343–44, 669 S.E.2d 640, 644 (Ct. App. 2008) (citing *State v. Bryant,* 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006). "In determining whether error is harmless, the circumstances of each individual case are to be considered." *Id.*

III. Harmless Error—Any Error By The Trial Court In Not Permitting Appellant To Cross-Examine The State's Witness Regarding The Potential Sentences That Witnessed Faced On Two Pending Charges Did Not Prejudice The Outcome Of The Case Because The Testimony Given By The Witness Was Merely Cumulative To Other Evidence Presented.

The Supreme Court of South Carolina has held that "[a] violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis." *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012); *see also State v. Sherard,* 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) (finding no prejudice in the trial court's refusal to allow further inquiry into coconspirator's potential sentences where the defendant "amply demonstrated any bias on the part of [the two conspirators]"). In *State v. Gracely* the South Carolina applied the five factors set forth in the U.S. Supreme Court case of *Delaware v. Van Arsdall* to determine whether a violation of the Confrontation Clause constitutes harmless error. *See Gracely*, 399 S.C. at 375, 731 S.E.2d at 886 (citing *Delaware* v. *Van Arsdall*, 475 U.S. 673, 680, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)). In *Van Arsdall* the U.S. Supreme Court set forth:

> Whether such an error is harmless in a particular case depends upon a host of factors.... The factors include [1] the importance of the witness's testimony in the prosecution's case, [2] whether the testimony was cumulative, [3] the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, [4] the extent of cross examination otherwise permitted, and, of course, [5] the overall strength of the prosecution's case.

Gracely, 399 S.C. at 375, 731 S.E.2d at 886 (quoting *Van Arsdall*, 475 U.S. at 684, 106 S.Ct. at 1431); *see also State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994) ("The list of factors as set out in *Van Arsdall* is not exhaustive.").

It is important to note that the Court in *Gracely* remanded. However, *Gracely* dealt specifically with an accused being denied the opportunity to develop evidence that a coconspirator, turned witness, avoided a mandatory minimum sentence. *Gracely*, at 374-75, 731

S.E.2d at 886. Here, the witness at issue, Devoe, was not a coconspirator. In fact, the record indicates that he had nothing to do with the murder of James Spellman. This is a significant distinction from those cases finding the error to not to be harmless.

On the other hand, the Court in *State v. Whatley*, 407 S.C. 460, 756 S.E.2d 393 (Ct. App. 2014) found no prejudice existed from an improper limitation after an analysis using the *Van Arsdall* factors showed that the witnesses' testimony to the prosecution's case was both cumulative and corroborated by other evidence. *Whatley*, at 469-70, 756 S.E.2d at 397-98. The Court was also persuaded by the fact that, aside from sustaining the State's objection to Whatley's questioning concerning the sentences the witness faced for her accessory charge, the trial court did not restrict Whatley's cross-examination in any other way. *Id.*

In regards to Appellant's case all the *Van Arsdale* factors were satisfied. First, Devoe was hardly the "key witness" that Appellant claims. Devoe, was one of two witnesses who provided positive identification of Appellant as the shooter. At trial, the prosecution also presented eyewitness Dequincy Best. Both Devoe and Dequincy Best knew Appellant prior to the shooting and both were similarly close to Appellant and the victim at the moment the shooting took place. Second, Devoe's testimony was cumulative to Best's prior testimony. Despite being sequestered at trial, both gave almost identical descriptions of what occurred. Both Devoe and Best testified that upon hearing the gunshot they turned around to find Appellant standing over the wounded victim still pointing the gun. *See* R. p. 105, l. 17 – p. 110, l. 9; p. 73, ll. 8-16. Third, because their testimony was nearly identical, Best's testimony corroborated everything that Devoe testified to. Fourth, while the Court did not permit impeachment pertaining to Devoe's potential sentences, it

did permit thorough evaluation on *both* his pending charges and his single conviction.[1] Lastly, absent Devoe's testimony, the State presented sufficient evidence for the jury to reach a guilty verdict. The State presented independent testimony that (1) established the strained relationship between Appellant and James Spellman, (2) placed Appellant and his vehicle at the crime scene, and (3) provided positive identification that Appellant was the shooter. *See* R. p. 46, ll. 5-22; p. 51, l. 10 – p. 52, l. 16; p. 103, ll. 4-17; R. p. 28, ll. 9-25; R. p. 73, ll. 6-12; p. 107, l. 8 – p. 110, l. 1. The evidence presented at trial satisfied all five of the *Van Arsdale* factors.

Finally, Appellant appears to allude that family relations between the witnesses and the victim gave them motive to testify untruthfully. *See* Initial Brief of Appellant, p. 5. While the record indicates that both Devoe and Best were extended relatives of the victim, Appellant never gives any reason for why they would falsely implicate Appellant in particular. *See* R. p. 65, ll. 16-18; p. 101, ll. 8-12. To the contrary, the record reflects that Devoe was friends with Appellant prior to the murder. *See* R. p. 101, ll. 2-7; p. 102, ll. 3-21. Further, Best testified that he and Appellant were acquaintances. *See* R. p. 65, ll. 8-15. Appellant even took the time to greet Best shortly before the murder. *See* R. p. 71, l. 18 – p. 72, l. 16. Appellant fails to provide any history of bad relations that would motivate either witness to lie and implicate him. At any rate, the issue now raised on appeal has little to do with family connection. Likewise, as demonstrated, Devoe was cross-examined and his credibility challenged. There is no reversible error.

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[1] Originally, Judge Buckner ruled that the Defense could not impeach Devoe on his pending drug charge. However, during the prosecution's direct examination of Devoe, the Solicitor opened the door by soliciting testimony from Devoe regarding the drug charge. Thereafter, Judge Buckner permitted the Defense to fully impeach Devoe with the charge. *See* R. p. 111, ll. 8-20; p. 113, ll. 7-16.

CONCLUSION

When the circumstances of the trial are taken as a whole it is clear that any error in permitting only limited impeachment was harmless and did not prejudice the outcome of the trial. For this reason, it is respectfully submitted that the appeal be dismissed.

Respectfully submitted,

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May 21, 2018

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CERTIFICATE OF COMPLIANCE

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

SAMUEL M. BAILEY
Assistant Attorney General

May 21, 2018