STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

MELEKE D. STEWART,

Appellant

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SC Court of Appeals

Appellate Case No. 2018-001916.

INITIAL BRIEF OF RESPONDENT

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I. Did the trial court err[ ] in denying Appellant's Motion to Exclude all evidence to include the Appellant's statement, due to a warrantless search of his cell phone?

II. Did the trial court err[ ] in denying Appellant's Motion to Suppress the Defendant's statement based on the unavailability of Detective Kitelinger?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES ON APPEAL

I. The trial court properly refused to suppress all evidence obtained from Appellant's cell phone which was initially identified as Appellant's via a warrantless exigent circumstances request submitted to the cell service provider because the records obtained in the short time frame between the discovery of the victim and law enforcement's initial contact with Appellant were later obtained in duplicate as a result of a valid search warrant.

II. The trial court did not abuse its discretion in admitting the video recording of Appellant's interrogation where Appellant's interrogator Detective Kitelinger was unavailable at the time of trial because Detective Kitelinger's own statements made during the interrogation are non-testimonial and because the statement was voluntarily made. And, Appellant has abandoned any argument other than that pertaining to the Confrontation Clause.

STATEMENT OF THE CASE

The Horry County Grand Jury indicted Appellant Meleke Stewart for the June 2014 murder and attempted armed robbery of Alton Antonio Daniels, and possession of a weapon during the commission of a violent crime. (Tr. p. 116, line 16 – p. 117, line 23).

Appellant proceeded to a jury trial occurring October 16 through 18, 2018, before the Honorable Thomas W. Cooper, Jr. Attorneys Eric Fox and Jonathan Hiller of the Fifteenth Circuit Public Defender's Office represented Appellant on the charges. Senior Assistant Fifteenth Circuit Solicitor George DeBusk, Jr., and Assistant Solicitor Jonathan Miles prosecuted the case. (Tr. p. 1).

The jury convicted Appellant as indicted. (Tr. p. 498, line 23 – p. 499, line 8). Judge Cooper issued consecutive sentences of 30 years for murder, twenty years for attempted armed robbery, and five years for the possession of a weapon during the commission of a violent crime. Judge Cooper credited Appellant with 1584 days' time-served both in pre-trial detention and on home-detention with electronic monitoring. (Tr. p. 511, lines 7-19).

This appeal follows with notice being served October 23, 2018. (R. p. Notice of Appeal).

STATEMENT OF FACTS

Janitorial employees of the Days' Inn located in the South Ocean Boulevard area of Myrtle Beach discovered a deceased young man partially hanging from the open door of a car parked at the hotel. (Tr. p. 200, line 17 – p. 201, line 25). A City of Myrtle Beach Police Officer responded to the scene at Ninth Avenue South and Yaupon Drive during his routine day shift on June 16, 2014. He observed that the driver's door of the vehicle ajar and a leg protruding from the opening. Approaching the car, he observed the victim's head tilted backward. (Tr. p. 206, lines 4-17). He spotted the seatbelt unbuckled and the victim's pants undone. (Tr. p. 208, line 23 – p. 209, line 1). He had blood on his right hand. (Tr. p. 233, lines 22-24).

The victim had sustained a gunshot wound just below the right shoulder. The bullet penetrated the lower left lung and the left ventricle of the heart, exiting through the fifth rib interspace on the left side. (Tr. p. 160, lines 12-24). He also sustained a superficial abrasion and laceration to the webbing between the fourth and fifth fingers of his right hand. (Tr. p. 161, lines 17-18). Law enforcement photographed the victim as found. His body leaned over the center console of the car, a Mazda 6. (Tr. p. 219, lines 20-25; Tr. p. 231, line 18). An unopened condom, a stocking cap, and some change were located in the victim's pants pockets. (Tr. p. 394, lines 15-19).

Myrtle Beach Police Department officers located a cell phone, keys, and $61.00 cash in the interior of the victim's driver side door. (Tr. p. 218, lines 2-3; Tr. p. 228, lines 20-24). They recovered a total of two cell phones from the car. (Tr. p. 239, line 11). Under the driver's seat, officers located a black pouch with the victim's North Carolina driver's license and some other cards. (Tr. p. 239, line 12 – p. 240, line 2). The driver's side floor mat had been pushed forward, apparently in conjunction with the victim's attempt to exit the car. (Tr. p. 218, lines 21-22). One

spent shell casing was collected from the dashboard. (Tr. p. 220, lines 7-18). Another spent casing was collected from the driver's seat after the body was removed from the car. (Tr. p. 223, lines 5-8). These casings were later determined to have been fired from the same firearm. (Tr. p. 385, lines 13-24). In the trunk, officers located a Bible and the victim's wallet, which contained $115.00 cash. (Tr. p. 224, line 19 – p. 225, line 9; Tr. p. 229, lines 13-15). A soda bottle collected from the victim's car contained his own fingerprints. Two other drink containers collected from the Days' Inn parking lot returned no evidentiary value. (Tr. p. 227, lines 1-12).

Following the only available lead, Sergeant Lester Cook obtained a search warrant to extract data from the phones located inside the victim's vehicle. (Tr. p. 244, line 1 – p. 245, line 8). One phone contained data that was a few months old, so the Sergeant "didn't do anything further with that one." (Tr. p. 244, lines 18-20). The other phone exhibited recent text and phone call data which the Sergeant observed. The texts and calls were from an 803-899 number. (Tr. p. 244, lines 14-16; Tr. p. 245, lines 6-23). The text messages, sent June 15, 2014, are vague. In them, the victim initiates conversation with the 803-899 number and identifies himself as "the boy tt was in the bk car." The parties seemingly settle on a price of $75 or $80 for a brief sexual encounter. There are no other details regarding a meet-up, only an indication that it will occur soon thereafter, once the other individual can "get a way from [his] ppl." (State's Ex. 36 – 40; Tr. p. 249, line 17 – p. 251, line 7). Phone calls followed the text messages between these numbers. Occurring after midnight on June 16, the first was at 12:40 AM, and the last was a four-minute call at 1:02 AM. (Tr. p. 255, line 9 – p. 258, line 4; State's Ex. 41 and 47). The victim's phone showed no outbound traffic after 1:02 AM. (Tr. p. 258, lines 12-14). An incoming phone call to the victim's phone went unanswered at 1:17 AM. (Tr. p. 258, lines 7-11).

Based on the content of the text messages on the victim's phone, law enforcement

contacted the cellular provider and, citing the homicide as an exigent circumstance, obtained subscriber information for the 803-899 number.[1] They sought to identify the person with whom the victim last corresponded. That number belonged to a pre-paid Tracfone subscribed to Appellant. (Tr. p. 246, line 7 – p. 248, line 10; Defendant's Ex. 1). The Tracfone never reconnected to its network after 1:30 AM on June 16. (Tr. p. 269, lines 20-25).

A closer look at the victim's and Appellant's cell phone data showed that their cell phones were operating from the same cellular tower and sector location between 1:15 and 1:19 AM on June 16. (Tr. p. 315, line 7 – p. 316, line 13). Specifically between 1:16 and 1:17 AM, Verizon data estimated their cell phones were each obtaining service from a service area overlapping at the crime scene. (Tr. p. 316, line 19 – p. 320, line 19; State's Ex. 48 at p. 7).

Having identified Appellant as the last known person to communicate with the victim, law enforcement with the Myrtle Beach Police Department viewed Appellant as a person of interest. (Tr. p. 332, line 25 – p. 333, line 6). Based upon the text messages, Appellant was supposed to have met up with the victim. (Tr. p. 279, line 22 – p. 280, line 14). They located Appellant in Chester and traveled there to see if they could speak with him and to execute a search warrant on his house. (Tr. p. 332, lines 12-20). They located Appellant and took him to the police department in Chester. (Tr. p. 333, lines 7-12). In an interview room with a detective and the school resource officer from his local high school, Appellant waived his *Miranda* rights and gave a video recorded statement which lasted between 90 minutes and two hours. (Tr. p. 351, line 23 – p. 356, line 25).

In his video-recorded statement, Appellant provided details about his trip to Myrtle

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[1] As will be discussed in more detail, law enforcement thereafter obtained a search warrant for this same information. (Tr. p. 251, line 11 – p. 253, line 23; Tr. p. 265, lines 6-16).

Beach and admitted his role in the victim's death. He stated that he met the victim earlier that day and gave him his phone number believing they would get together to meet some girls. Appellant stated the victim began texting him and they met up. When he got in the victim's car, the victim asked Appellant to perform a sex act. Appellant explained to the detective that he had no intention of doing that and when he began to refuse, the victim got forceful with him by grabbing at Appellant and locking the doors upon Appellant's attempt to exit the car. Appellant claimed he began to get scared and introduced the gun. Utilizing the detective as a body double, Appellant physically acted out how the gun went off. Appellant consistently asserted that the gun fired two times as the victim was grabbing at it and trying to force Appellant to remain inside the car. As his confession progressed, Appellant eventually stated that he met with the victim because he thought he could get some money by taking the agreed-upon amount and running before having to perform any sex act, but the victim would not fall prey to his scheme. He one time stated that he wanted to beat the victim with the gun because he was angry at the text messages that had been exchanged. He stated he had never been involved in any homosexual act. Appellant stated that after the gun fired, he ran and never looked back. He described the trash can in which he threw the gun and further stated he threw his phone in a dumpster. (State's Ex. 2-A).

After the interview, law enforcement followed Appellant's lead to a convenience store in Rock Hill where they located, with Appellant's assistance, a shattered Tracfone. (Tr. p. 367, line 1 – p. 368, line 17). No data could be retrieved from the broken phone. (Tr. p. 397, lines 3-8). Law enforcement searched for the gun but it could not be recovered. (Tr. p. 226, lines 11-23).

STANDARD OF REVIEW FOR ISSUES I AND II

"The admission or exclusion of evidence falls within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion," which 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). The admission of erroneous evidence must also be prejudicial to warrant reversal. *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009).

I. The trial court properly refused to suppress all evidence obtained from Appellant's cell phone which was initially identified as Appellant's via a warrantless exigent circumstances request submitted to the cell service provider. The records obtained in the short time frame between the discovery of the victim and law enforcement's initial contact with Appellant were later obtained in duplicate as a result of a valid search warrant.

Appellant contends that each discrete type of data and personal information obtained from Appellant's cell phone required suppression because there existed no exigency to justify law enforcement's warrantless acquisition of that information. However, the record reflects that an exigent circumstance did exist and, further, that even if suppression as warranted in whole—or in part as the trial court ruled—that any defect in the data and personal information obtained from Appellant's phone was later cured when it was reproduced by the cell service provided in response to a valid search warrant.

A. How Law Enforcement Obtained the Records

Appellant moved to suppress records obtained for Appellant's Tracfone on the basis that the records were initially obtained without a search warrant, but rather through an exigency request submitted directly to the cell phone's service provider. (Tr. p. 75, line 15 – p. 77, line 2).

The cited exigency stated that "a murder occurred in Myrtle Beach and information from the victim's phone indicates he was supposed to meet the person w/ 803-899-[redacted]. At this time we don't know if they are another victim, in need of assistance, or if they are the perpetrator." (Def. Ex. 1). In response to the exigency request, the cell service provider, Verizon, thereafter produced Appellant's cell phone account information which allowed law enforcement access to Appellant's identity as the person texting with the victim, Appellant's call and text logs, and Appellant's cell phone's location information for the time period in question. (Tr. p. 77, lines 2-12).

Utilizing this information, law enforcement identified Appellant who was brought in for questioning. (Tr. p. 95, lines 4-5). In addition to Appellant's identity, the records Verizon produced in response to the exigency request allowed them to pinpoint when Appellant's "last calls were made to the victim," and to know that Appellant "was within the tower that covered the area where the crime occurred." (Tr. p. 97, lines 10-12). "It was a bluff on behalf of Detective Kitelinger [during the interrogation] to say they can track him point to point. They didn't have that kind of data at that point. And [the] subsequent search warrants [did not] produce[ ] that kind of data either. All they had was which tower a certain phone call hit off of." (Tr. p. 97, lines 12-17).

Appellant argues that these records were obtained absent a warrant or a justifiable exigency; that these records constituted the only manner in which Appellant could be linked to the shooting and located for questioning; and that Appellant's connection to the homicide and his resulting confession were the product of an unreasonable search and seizure protected by the Fourth Amendment. (Tr. p. 99, line 19 – p. 101, line 14; Tr. p. 103, line 3 – p. 104, line 1).

The State submitted that law enforcement was faced with an exigent circumstance. They

were called to the scene where they discovered a deceased victim with two of his own cell phones in his car. After obtaining warrants for these known phones, they discovered that the victim had last corresponded with the 803-899 number. More specifically, the text messages included sexual innuendo from which it could reasonably be deduced that the two individuals intended to meet up for a sexual encounter. The victim ended up dead and the shooter fled. At the time, therefore, it was unknown what had become of the shooter and any other potentially related party. The shooter could have been destroying the evidence, and one or more victims could have remained. (Tr. p. 92, line 24 – p. 94, line 16; Tr. p. 97, line 18 – p. 98, line 5).

One additional point the State noted bears particular weight: law enforcement thereafter submitted a search warrant to Verizon for the same records obtained pursuant to the exigency request. "That search warrant was ultimately returned with the same records one week later, way after the information could have been useful [to] any exigent circumstances. It takes approximately a week for Verizon to turn around a search warrant on phone records." (Tr. p. 94, lines 17-22). Later at trial, Sergeant Lester Cook testified that he obtained a search warrant for Appellant's phone records and obtained those records after "about four-and-a-half to five days." (Tr. p. 251, line 13 – p. 252, line 17). A Verizon custodian corroborated that testimony and defined the data provided to law enforcement only in response to the search warrant. (Tr. p. 287, lines 17-21; Tr. p. 290, line 25 – p. 295, line 21).

After lengthy submissions by the parties and a deliberation period, the trial court ruled:

> The motion to suppress the evidence emanating from the examination of the defendant's telephone without a warrant and to the extent that it is embodied into the motion to suppress the statement itself are before me at this point in time. Both motions are respectfully denied.
>
> And I deny the motion on a very narrow issue, and that is what I determine to be exigent circumstances which exist in this particular case. The victim's phone

found in the victim's vehicle was legally searched and it revealed the numbers of telephone calls from a single phone in addition to random calls from other numbers. Further text messages from that same call -- from that same number revealed some sort of rendezvous extensively for sexual purposes from that same telephone number.

Law enforcement, by looking at those numbers, could not tell form the victim's phone whether the text messages came from the perpetrator of the crime of from an innocent third party. The protection of an innocent third party engaged in communication with the decedent is a legitimate concern in my view of law enforcement, and I find it to be, frankly, the only exigent circumstance which can be made to exist in this case.

I note this, that in the case of *State vs. Moore*, the Georgia case of *State vs. Hill*, both represented the discoverability of telephone information from phones that were both found or left at the scene of a crime. The records were allowed in under limited circumstances in that particular case and not on exigent circumstances, quite frankly, as I understand the cases, but nevertheless, the fact that the phones in those particular cases were found at the scene of the crime creates something of a nexus between the owners of those phones and the perpetrator of the crime itself, much as a weapon dropped at the scene of a crime or some other bit of evidence found at the scene of a crime which is relevant or could be more likely connected to the person who committed the crime rather than some innocent third party.

In this particular case, as far as I know from looking at the transcript, I don't know if the defendant's telephone was ever found. Certainly, it was not found by time the interview was done, and so it may have never been found.

And so the hone itself, lacking any nexus by examination of the number itself to the crime in this particular case could have just as likely been the telephone number of some innocent third party.

And as I've said, the protection of this innocent third party engaged in communication with the decedent at the time in close connection to the time of this crime could just as well give rise to a concern on law enforcement that there might be another innocent party out there who could be victimized by the same criminal.

And that concern in my view is enough to permit the identification of the third caller, whoever it might be, and the information that came from that in the text messages, as well.

It, however, does not support in my view the discovery of the CSLI information. That information is not relevant to the protection of this innocent

> third party. It will be relevant to the perpetrator of the crime, that is where the person could be located. But in my view does not in and of itself lend itself to discoverability under this finding.
>
> No exigent circumstances exist in my view, in other words, as to the discovery of that particular information. To the extent that is referred to in the statements or any other part of the evidence linking this defendant with a crime, the suppression of that evidence is granted. Otherwise, the motion to suppress is denied.

(Tr. p. 109, line 23 – p. 112, line 16).

The trial court thus suppressed any reference to any CSLI obtained via the exigency request, and admitted subscriber information connecting Appellant to the phone number which last texted the victim. (Tr. p. 112, line 21 – p. 113, line 1). The trial court further permitted introduction of location information "found pursuant to a valid search warrant." (Tr. p. 113, lines 2-9). Appellant renewed his suppression motion prior to the admission of any of the data retrieved regarding Appellant's cell phone. (Tr. p. 247, lines 10-25; Tr. p. 287, line 18 – p. 288, line 9; Tr. p. 295, lines 15-19; Tr. p. 307, lines 9-14).

B. Fourth Amendment Standards

"The Fourth Amendment to the Constitution of the United States grants citizens the right to be secure against unreasonable search and seizure." *State v. Tindall*, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) "[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*, 533 U.S. 27, 33, 121 S.Ct. 2038, 2042 (2001). Under Fourth Amendment principles, a warrant is generally required prior to examining a cell phone's stored contents. *State v. Moore*, 421 S.C. 167, 177, 805 S.E.2d 585, 590 (2017), *reh'g denied* (Nov. 2, 2017), *cert. granted* (Mar. 28, 2018). In particular, the United States Supreme Court has most recently held that citizens enjoy

a legitimate expectation of privacy in their physical location data compiled and stored by wireless carriers, otherwise known as cell-site location information (CSLI). *Carpenter v. United States*, 138 S.Ct. 2206 (2018).

However, a limited, warrantless search of a cell phone for the purpose of identifying the number to which the phone corresponds is not unreasonable because the phone's owner enjoys "no reasonable expectation of privacy in the number itself." *State v. Moore*, 421 S.C. at 176, 805 S.E.2d at 590 (citing *State v. Hill*, 338 Ga. App. 57, 58-59, 789 S.E.2d 317, 318-19 (2016) (collecting cases and holding no reasonable expectation of privacy, and thus no Fourth Amendment violation, regarding a person's name, date of birth, or phone number)). Moreover, there are exceptions to the warrant requirement. *State v. Herring*, 387 S.C. 201, 210, 692 S.E.2d 490, 494-95 (2009).

First, the need for a search warrant "may be overcome" when "the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment." *Kentucky v. King*, 563 U.S. 452, 459-60, 131 S.Ct. 1849, 1856 (2011) (internal quotation omitted). "Law enforcement officers are under no constitutional duty to call a halt to criminal investigation the moment they have the minimum evidence to establish probable cause." *Id.* at 467, 131 S.Ct. at 1860-61 (holding exigent circumstances exception applies when police do not create the exigency by engaging or threatening to engage in conduct violative of the Fourth Amendment) (internal quotation omitted). Thus, "where, from an objective standard, a compelling need for official action and no time to secure a warrant exist," the exigent circumstances exception relieves law enforcement of the need to first obtain a search warrant before continuing to investigate the lead. *State v. Abdullah*, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004). "Such exigencies include the

need to pursue a fleeing suspect, protect individuals who are threatened with imminent harm, or prevent the imminent destruction of evidence." *Carpenter v. United States*, 138 S. Ct. at 2223. "[A]bsent hot pursuit, there must be at least probable cause to believe the exigent circumstances were present." *State v. Dobbins*, 420 S.C. 583, 592, 803 S.E.2d 876, 880 (Ct. App. 2017). *Carpenter* recognizes the continuing application of the exigent circumstances exception to the search warrant requirement even in regards to cell phone data. 138 S.Ct. at 2223.

Second, "if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, . . . then the deterrence rationale has so little basis that the evidence should be received." *State v. Simpson*, 425 S.C. 522, 540, 823 S.E.2d 229, 239 (Ct. App. 2019), *reh'g denied* (Feb. 21, 2019) (citing *Nix v. Williams*, 467 U.S. 431, 432, 104 S.Ct. 2501, 2503 (1984)). This is the inevitable discovery doctrine. *State v. Cardwell*, 425 S.C. 595, 601, 824 S.E.2d 451, 454 (2019), *reh'g denied* (Mar. 27, 2019) (citing *Nix v. Williams*, *supra* at 444, 104 S.Ct. at 2509).

Third, the good faith exception may excuse the warrant requirement "when investigators 'act with an objectively "reasonable good-faith belief" that their conduct is lawful,' the exclusionary rule will not apply." *United States v. Chavez*, 894 F.3d 593, 608 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 278 (2018) (quoting *Davis v. United States*, 564 U.S. 229, 238 (2011)). "Objectively reasonable good faith includes 'searches conducted in reasonable reliance on subsequently invalidated statutes'" and procedures. *Id.*; *United States v. Carpenter*, 926 F.3d 313, 318 (6th Cir. 2019) (*Carpenter II*) ("The Government's acquisition of Carpenter's CSLI violated the Fourth Amendment. The district court nevertheless properly denied suppression because the FBI agents relied in good faith on [the Act] when they obtained the data.").

The rationale for these exceptions to the warrant requirement lies in the judiciary's

determination that "the *sole* purpose of the exclusionary rule is to deter misconduct by law enforcement." *Davis v. United States*, 564 U.S. 229, 246, 131 S.Ct. 2419, 2432 (2011). "Where there is no misconduct, and thus no deterrent purpose to be served, suppression of the evidence is an unduly harsh sanction." *State v. Adams*, 409 S.C. 641, 653, 763 S.E.2d 341, 348 (2014). In a Fourth Amendment case, an appellate court must affirm if there is any evidence to support the ruling and will reverse only when there is clear error." *State v. Bruce*, 412 S.C. at 509, 772 S.E.2d at 755.

C. *The Scope of the Trial Court's Suppression is Accurately Controlled by* Carpenter's *Ban on Warrantless CSLI, the Recognized Lack of a Reasonable Expectation of Privacy in Cell Subscriber Information, and by the Exigent Circumstances Exception to the Fourth Amendment*

The trial court correctly suppressed only the cell phone location data (CSLI) which law enforcement obtained absent a search warrant. The trial court otherwise correctly concluded that the remainder of Appellant's cell phone records, his cell subscriber information and communication logs (calls and texts),[2] were not subject to suppression under the Fourth Amendment, and further that even the CSLI was admissible once obtained as a result of the subsequent search warrant. This ruling is fully and fairly supported by applicable Fourth Amendment standards.

Appellant's identity and phone number—his cell phone subscriber information—are discoverable absent a warrant because they are third party records in which Appellant enjoys no reasonable expectation of privacy. *State v. Moore*, *supra*. For this reason, Appellant's reliance upon *State v. Forrester*, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (2001), for the proposition the

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[2] It should be noted that the calls and texts between Appellant and the victim were cumulative to the call and text logs received from the victim's phone pursuant to a valid search warrant. (*E.g.*, Tr. p. 252, line 18 – p. 254, line 12).

State Constitutional right to privacy guarantees a heightened protection than the Fourth Amendment, fails. (Br. of App. at 19; *see also* Tr. p. 81, lines 2-8). *Forrester* concerns a privacy interest in the defendant's possession, or in other words, their "persons, houses, papers, and effects," *See* S.C. Const. Art. 1 §10, which is distinguishable from cell phone subscriber information.

Moreover, an exigency indeed existed to support the warrantless acquisition of Appellant's remaining cell phone information. "Such exigencies include the need to pursue a fleeing suspect, protect individuals who are threatened with imminent harm, or prevent the imminent destruction of evidence." *Carpenter v. United States*, 138 S. Ct. 2206, 2223; *Kentucky v. King*, 563 U.S. at 467, 131 S.Ct. at 1860-61. Law enforcement was investigating a homicide. The crime scene was limited to the victim's vehicle located in the parking of the Days' Inn on South Ocean Boulevard. The victim was not a guest at the hotel. (Tr. p. 332, lines 7-9). Other than the victim's own cell phones, neither the vehicle nor the parking lot contained any leads as to what had occurred. Law enforcement obtained a warrant for the victim's phones. (Tr. p. 244, line 1 – p. 245, line 8). Only then did were they able to discover the last numbers which whom the victim last communicated. (Tr. p. 244, lines 14-16; Tr. p. 245, lines 6-23). At that stage, officers could not "know if [that person was] another victim, in need of assistance, or if they [we]re the perpetrator." (Def. Ex. 1; *see* State's Ex. 36-40).

Thus, law enforcement reasonably identified the existence of exigent circumstances which supported their warrantless request for the subscriber information and communication log associated with the last phone number to communicate with the victim. The victim could not speak for himself. Law enforcement had no reason to believe there was not, in fact, any continuing threat. They had no way to if there were multiple victims, dead or alive. It was also

reasonable to conclude that evidence faced imminent destruction and that the suspect had, and could still be, fleeing the scene. Here, the need to preserve evidence and take steps to protect additional potential victims outweighed the intrusion that the warrantless obtainment of the unsuppressed cell phone data itself required. The warrantless submission of the exigent circumstances form to Verizon proves objectively reasonable under the totality of the circumstances.

D. Law Enforcement Later Obtained a Warrant, Curing Any Defect in the Exigency Request

Appellant also cannot prevail upon, or demonstrate prejudice from, his suppression argument because the CSLI and other records introduced at trial were in fact obtained via a valid search warrant. *State v. Moore*, 421 S.C. at 178, 805 S.E.2d at 591 (affirming search of cell phone contents under inevitable discovery doctrine as an additional sustaining ground). As represented by the State during the suppression hearing, law enforcement obtained a warrant for Appellant's cell phone data and the records were obtained after the passage of about a week. (Tr. p. 94, lines 17-22). Later at trial, Sergeant Lester Cook's testimony established that he obtained a search warrant for Appellant's cell phone data and obtained those records from the cell service provider after "about four-and-a-half to five days." (Tr. p. 251, line 13 – p. 252, line 17). A Verizon custodian testified that she submitted the cell phone information related to the 803-899 number in response to a search warrant. (Tr. p. 287, lines 17-21). She testified that warrants for cell phone information are complied with on a "first come, first served" basis. (Tr. p. 300, lines 9-15). Accordingly, the inevitable discovery doctrine applies as the State established that the receipt and admission of Appellant's cell phone data "would have ultimately been discovered by lawful means"—by issuance of a later-obtained search warrant. *Nix v. Williams*, *supra*; *State v.*

Moore, supra; *State v. Cardwell, supra.*

Even more, in light of the search warrant, and given that the *Carpenter* was decided in June 2018, well after the investigation in Appellant's case, the good faith exception applies to further protect the cell phone data's admission. *Hamrick v. State*, 426 S.C. 638, 654, 828 S.E.2d 596, 604 (2019), *reh'g denied* (July 1, 2019) ("When the officers made the decision to draw Hamrick's blood without a warrant, the law appeared to support the existence of exigent circumstances and the validity of statutory implied consent. There is nothing in this record that in any way suggests the officers did not act with an objectively reasonable good-faith belief that their conduct is lawful. Therefore, . . . we would find the food-faith exception to the exclusionary rule forecloses suppression." (internal quotations omitted)). *See also Carpenter II, supra.*

Given the applicability of two additional exceptions to the search warrant requirement, suppression would have been inappropriate. *Davis v. United States*, *supra*; *State v. Adams*, *supra* (noting suppression as a harsh remedy).

II. The trial court did not abuse its discretion in admitting the video recording of Appellant's interrogation where Appellant's interrogator Detective Kitelinger was unavailable at the time of trial. Detective Kitelinger's own statements made during the interrogation are non-testimonial. Further, Appellant has abandoned any argument other than that pertaining to the Confrontation Clause, and the statement itself was voluntarily made.

Appellant submits that Appellant's entire recorded interrogation requires suppression on the basis that the Detective who conducted the interview was not available at trial and thus could not be cross-examined regarding his role in the Miranda waiver and interview that took place on tape. However, the record reflects that another officer witnessed the entire exchange from a seat in the interview room so that the recording could be authenticated and the voluntariness of the Miranda waiver addressed. Further, the United States Supreme Court has instructed that statements law enforcement makes in the course of questioning a suspect are not testimonial in the manner argued by Appellant. Michigan v. Bryant, 562 U.S. 344, 368 n.11, 131 S. Ct. 1143, 1161 n.11 (2011).

A. Issue Preservation

Prior to publishing Appellant's video-recorded statement during a *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774 (1964), hearing, Appellant objected to its introduction on the basis that the State sought to enter the recoding through a witness who was present for the duration of the interview, but who did not personally conduct the interview or Mirandize Appellant. (Tr. p. 42, lines 8-23; Tr. p. 49, line 19 – p. 50, line 6). Officer Wade Young, Jr. was able to authenticate the recording for admission. (Tr. p. 54, line 17 – p. 56, line 15). Officer Young was present for the duration of the interview. However, Officer Young did not conduct the interrogation. That was done by Detective Kitelinger, who could not appear at trial. (Tr. p. 56, lines 12-15).

Appellant lodged his objection to the recording's admission pursuant to *Crawford v.*

Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004), because the interrogator, Detective Kitelinger, was never available for cross-examination. (Tr. p. 53, line 13 – p. 54, line 13; Tr. p. 173, line 24 – p. 174, line 3; *see also* Tr. p. 66, lines 6-24; Tr. p. 68, line 1 – p. 69, line 18; Tr. p. 71, lines 8-15). The State posited that the probative portions of the recording were Appellant's answers to the questions asked. "It's the statement of the defendant that is being offered for the truth of the matter asserted." (Tr. p. 69, line 22 – p. 70, line 13). The parties ultimately agreed that Detective Kitelinger was unavailable for trial. (Tr. p. 72, lines 16-24; Tr. p. 172, line 21 – p. 173, line 13).

The trial court found that the Detective's own statements were not testimonial in nature and were not evidence and, thus, *Crawford* did not apply in the manner argued by Appellant:

> The *Crawford* case which Mr. Fox has correctly cited, of course, is -- applies to witnesses who are bearing testimony against the accused. And *Crawford* describes that as a solemn declaration or affirmation made for the purpose of establishing or proving some fact. Testimonial statements include statements taken by police in interrogations, affidavits, prior testimony that a defendant was unable to cross-examination somebody and therefore the confrontation clause is brought to bear. And so Crawford primarily applies to testimony against a defendant which is offered -- that the defendant himself has not had the opportunity to confront or to cross-examine on, so I'm not sure, quite frankly, that Crawford applies to the officer's statements in this particular case. As a matter of fact, I'm pretty sure that it does not, but because the statements themselves, as I will instruct the jury, are not evidence in the case.
>
> I appreciate Mr. Fox wanting to explore the facts that he would have liked to have been able to go into it with the detective, the basis for some of those questions if there was a factual basis for them or what it was, if there was any, and I appreciate that.
>
> I don't think that is something *Crawford* is designed to address or to protect against. And so I simply renew my rulings in that regard[.]

(Tr. p. 174, line 5 – p. 175, line 6).

Pursuant to *Jackson v. Denno*, the trial court also earlier ruled that the statement met the threshold requirement for voluntariness such that it was admissible at trial, and that Detective

Kitelinger's absence on that point did not prejudice Appellant. (Tr. p. 67, lines 15-22). The court found Appellant was in custody at the time of the interrogation and that the State established by the greater weight of the evidence that Appellant understood the *Miranda* warnings and voluntarily waived them. (Tr. p. 64, line 25 – p. 66, line 3). Prior to the voluntariness ruling, the trial court reviewed the statement and heard testimony from Officer Young and from another officer, Sergeant Hugh Jones. Each witnessed Appellant's recorded *Miranda* waiver. (Tr. p. 35, line 22 – p. 56, line 22; Tr. p. 60, line 19 – p. 61, line 4).

Appellant renewed his objections as the State later published the recorded statement to the jury through the testimony of Wade Young, Jr. (Tr. p. 355, line 23 – p. 356, line 25).

Now on appeal, Appellant argues only that the introduction of the statement violated the Confrontation Clause due to Detective Kitelinger's unavailability. Appellant makes only a conclusory contention that the statement was not knowingly, intelligently, and voluntarily made and cites no case law in support of his allegation. (Br. of App. at 19-21). "An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court." *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004). Additionally, issues are "deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). "An issue is also deemed abandoned if the argument in the brief is merely conclusory." *State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998), *aff'd as modified*, 337 S.C. 622, 525 S.E.2d 246 (2000).

Appellant cites no case law and makes no supporting arguments regarding the voluntariness of the statement. He makes no argument at all concerning hearsay. (Br. of App. at 19-21). Also, the trial court only ruled upon the threshold standard for admission in light of

Jackson v. Denno, *supra*, and on the inapplicability of the Confrontation Clause. (Tr. p. 67, lines 15-22; Tr. p. 174, line 5 – p. 175, line 6). Respondent submits that to find more than the sole Confrontation Clause argument preserved for appellate review would contravene this Court's prohibition against conclusory arguments, as "short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001).

B. The Detective's Statements are Non-Testimonial

The Sixth Amendment's Confrontation Clause gives the accused "[i]n all criminal prosecutions . . . the right . . . to be confronted with the witnesses against him." U.S. Const. Amend. VI. The Clause permits admission of "[t]estimonial statements of witnesses absent from trial . . . only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine." *Crawford v. Washington,* 541 U.S. at 59, 124 S.Ct. at 1369. The Clause "applies to 'witnesses against the accused—in other words, those who 'bear testimony,'" which *Crawford's* majority defined as "'a solemn declaration or affirmation made for the purpose of establishing or proving some fact." *Crawford* at 51, 124 S.Ct. at 1364 (quoting 2 N. Webster, An American Dictionary of the English Language (1828)). Therefore, "where the primary purpose of an out-of-court statement is to serve as evidence or 'an out-of-court substitute for trial testimony,' the statement is considered testimonial" and its admission violates the Confrontation Clause unless the declarant is unavailable and the statement has been subject to cross-examination at a time prior to its admission at trial. *State v. Brockmeyer,* 406 S.C. 324, 342, 751 S.E.2d 645, 654 (2013) (quoting *Bullcoming v. New Mexico,* 564 U.S. 647, 131 S.Ct. 2705 (2011)). But, as alluded to and left purposely undefined by the *Crawford* Court, not all un-

cross-examined, out-of-court statements by unavailable witnesses are testimonial. *Crawford*, 541 U.S. at 68, 124 S. Ct. at 1374 ("We leave for another day any effort to spell out a comprehensive definition of 'testimonial.'").

"[S]tatements cited by the [*Crawford*] Court as testimonial share certain characteristics; all involve a declarant's knowing responses to structured questioning in an investigative environment or a courtroom setting where the declarant would reasonably expect that his or her responses might be used in future judicial proceedings." *United States v. Saget*, 377 F.3d 223, 228 (2d Cir. 2004); *see also United States v. Saner*, 313 F.Supp.2d 896 (S.D.Ind. 2004) (holding statements made in response to questioning outside of the courtroom by Department of Justice prosecutor were testimonial). Statements **taken by** police officers in the course of interrogations are considered testimonial when "the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Davis v. Washington*, 547 U.S. 813, 822, 126 S.Ct. 2266, 2273-74 (2006) (emphasis added); *State v. Stokes*, 381 S.C. 390, 401, 673 S.E.2d 434, 439 (2009) (citing *Crawford, supra* at 52-53, 124 S.Ct. at 1354). Courts can "recognize the point at which, for Sixth Amendment purposes, statements **in response to** interrogations become testimonial." *Id.* at 829, 126 S.Ct. at 2277 (emphasis added).

Our Supreme Court has stated that "it is the statements, and not the questions, that must be evaluated under the Sixth Amendment." *Michigan v. Bryant*, 562 U.S. 344, 368 n.11, 131 S. Ct. 1143, 1161 n.11 (2011). "At trial, the declarant's statements, not the interrogator's questions, will be introduced to 'establis[h] the truth of the matter asserted,' and must therefore pass the Sixth Amendment test." *Id.* at 369, 131 S.Ct. at 1162 (quoting *Crawford*, 541 U.S., at 60, n. 9, 124 S.Ct. 1354). While the statements made by the police officers themselves during the course of an interrogation are relevant to determining whether the response they have prompted are

testimonial and covered by the Sixth Amendment, the officers' words are not testimonial in the same manner as the responses the interrogation serves to obtain. *See id.*; *Crawford v. Washington*, 541 U.S. at 66, 124 S. Ct. at 1373 ("The Framers would be astounded to learn that *ex parte* testimony could be admitted against a criminal defendant because it was elicited by "neutral" government officers."); *cf. Hiibel v. Sixth Judicial Dist. Court of Nevada,* 542 U.S. 177, 195, 124 S.Ct. 2451, 2463 (2004) (Stevens, J., dissenting) ("Surely police questioning during a *Terry* stop qualifies as an interrogation, and it follows that responses to such questions are testimonial in nature.").

Here, the Detective's own statements do not fall within the class protected by *Crawford. Id.* An interrogator's speaking role is not to purvey information, but is rather to elicit it. Our courts recognize that law enforcement may utilize standard interrogation techniques "including misrepresenting the existence and strength of the evidence against an accused, as well as asking the accused to produce evidence voluntarily." *State v. Brewer*, 411 S.C. 401, 406, 768 S.E.2d 656, 658 (2015) (citing *State v. Von Dohlen,* 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996)). In doing so, our courts implicitly acknowledge that the words a detective utters in the course of an interrogation are not intended to personally bear testimony against the accused. *See State v. Osborne*, 335 S.C. 172, 176, 516 S.E.2d 201, 202 (1999) ("The legal definition of 'confession' is 'restricted to acknowledgment of guilt and does not apply to mere statement[s] of fact from which guilt may be inferred.'") (quoting *State v. Cunningham*, 275 S.C. 189, 192, 268 S.E.2d 289, 291 (1980)). An officer's word cannot make the case against a defendant—the State must produce independent, corroborative evidence in order to meet its burden of proof. *State v. Osborne*, 335 S.C. 172, 179-80, 516 S.E.2d 201, 204-05 (1999) (quoting *Opper v. United States*, 348 U.S. 84, 93, 75 S.Ct. 158, 164 (1954)). For these reasons, the Detective's own words do not

"bear testimony" against the accused in the manner *Crawford* defines and Detective Kitelinger's statements made throughout the interrogation are non-testimonial. The trial court properly admitted them as such.

C. The Statement Was Voluntarily Made

Appellant's statement also met the threshold determination of voluntariness such that it was admissible in the manner ruled upon by the trial court. (Tr. p. 67, lines 15-22). A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his or her rights under *Miranda. Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602 (1966). "If a suspect is advised of his *Miranda* rights, but chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived." *State v. Arrowood,* 375 S.C. 359, 366-67, 652 S.E.2d 438, 442 (Ct. App. 2007); *State v. Saltz,* 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). A voluntary waiver need not be express. Rather, "(1) the waiver must be 'voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception' and (2) the waiver must be 'made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" *State v. Moses,* 390 S.C. 502, 513, 702 S.E.2d 395, 401 (2010) (quoting *Berghuis v. Thompkins,* 560 U.S. 370, 382, 130 S.Ct. 2250, 2260 (2010)). "In South Carolina, the test for determining whether a defendant's confession was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the circumstances surrounding the confession." *Id.*; *Schneckloth v. Bustamonte,* 412 U.S. 218, 226, 93 S.Ct. 2041, 2047 (1973).

The "[d]etermination of whether a statement is involuntary 'requires more than a mere

color-matching of cases.' It requires careful evaluation of all the circumstances of the interrogation." *Mincey v. Arizona*, 437 U.S. 385, 401, 98 S. Ct. 2408, 2418 (1978) (quoting *Reck v. Pate*, 367 U.S. 433, 442, 81 S.Ct. 1541, 1547 (1961)); *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007) ("each case requires careful scrutiny of all the surrounding circumstances"). The factors to be considered when making a voluntariness determination have ben oft-examined and broadly defined by our courts. They include, but are not limited to the: "youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep." *Id.* (citing *Schneckloth v. Bustamonte, supra*)). Looking further, our courts have considered the accused's background, experience, conduct, age, maturity, physical condition, mental health, misrepresentations by law enforcement, isolation of a minor from a parent, direct or indirect promises (however slight), repeated and prolonged questioning, and exertion of improper influence. *State v. Moses,* 390 S.C. at 513-14, 702 S.E.2d at 401 (citing *Withrow v. Williams*, 507 U.S. 680, 113 S.Ct. 1745 (1993)) (also citing *Schneckloth v. Bustamonte*, *supra*)); *State v. Salisbury*, 330 S.C. 250, 272, 498 S.E.2d 655, 666 (Ct. App. 1998) (the existence or nonexistence of police coercion "is a necessary predicate" to determining a statement's voluntariness).

"When reviewing a trial court's ruling concerning voluntariness, this Court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence." *State v. Saltz*, 346 S.C. at 136, 551 S.E.2d at 252. The totality of the circumstances surrounding Appellant's confession supports the trial court ruling. Objectively, the environment in which Appellant made his

Miranda waiver cannot be found coercive. And, objectively, Detective Kitelinger could not, in the plainest of terms, have been nicer throughout the interrogation. (State's Ex. 2-A).

The recording demonstrates that the Detective provided Appellant with a cup of water at his request before he was even brought into the interview room. Appellant's school resource officer was included in the interview room as a means of providing the comfort of a familiar face in a custodial situation. Appellant answered the officers that he had an eleventh grade education, could read and write, and that English was his native language. Detective Kitelinger read Appellant his *Miranda* rights and after each right asked if he understood. Appellant, leaning calmly forward and appearing to intently listen to Detective Kitelinger, nodded yes at each juncture and signed and dated a waiver of rights form. (State's Ex. 2-A at 00:00 to 4:00). And, while Appellant is wearing only sneakers, athletic shorts, and no shirt during the interview, conversation at the close of the interrogation demonstrates that Detective Kitelinger did not wish to cause Appellant discomfort and specifically explained that he did not want him to be cold and that someone should bring him a shirt. He also explained that he would permit Appellant to talk to his mother before being transported to Horry County. (State's Ex. 2-A at 1:18:20 to 1:19:30). The recording also indicates it was warm outside when Appellant was brought in for questioning: the interrogation occurred on June 18, 2014. (State's Ex. 2-A at 1:35 to 1:50).

Sergeant Hugh Jones observed the waiver and interview from an adjacent viewing room. At the *Denno* hearing, Jones described Appellant as agreeing to talk to the officers after being read and understanding his *Miranda* rights. (Tr. p. 38, line 11 – p. 39, line 25). He observed no threats on the part of law enforcement or an invocation of the right to counsel on the part of the suspect. (Tr. p. 40, lines 1-6). Jones watched Appellant sign a formal waiver of rights form. (Tr. p. 40, line 12 – p. 41, line 15; State's Ex. 1). On that form, Appellant checked by each right and

signed to indicate that he reviewed and waived each right. (State's Ex. 1). Jones thereafter observed Appellant continue to freely and voluntarily speak with the officers in the interrogation room. (Tr. p. 41, lines 17-20). Appellant appeared to comprehend to the questions. He was responsive and did not appear to be under the influence of drugs or alcohol. (Tr. p. 43, lines 5-16).

Detective Wade Young, Jr., the high school resource officer, thereafter testified regarding his experience inside the interview room with Appellant and Detective Kitelinger. He testified he "was asked to sit in because Mr. Stewart was one of [his] students" in Chester County and, since he knew Appellant, it "would be more comfortable if someone he knew was in the room." (Tr. p. 46, line 21 – p. 47, line 8). He explained that no threats were issued for the duration of the interview, which he recalled taking between an hour and a half and two hours. He testified that Appellant was never denied access to a restroom, phone, or food or drink, and that Appellant was allowed to see his family at the interview's conclusion. (Tr. p. 47, lines 11-25). He testified that Detective Kitelinger read Appellant the *Miranda* warnings prior to questioning, that Appellant appeared to understand and acknowledge his rights by nodding his head and signing the waiver of rights form, and that Appellant did not indicate he did not want to engage in the interview. (Tr. p. 48, lines 1-25). Appellant was responsive to Detective Kitelinger's questions and never requested counsel. (Tr. p. 49, lines 1-5). Young testified that the recording of the interview wholly represented what occurred during the interview without alteration or omission. (Tr. p. 55, lines 3-16).

Even though Appellant alleges prejudice due to the unavailability of Detective Kitelinger at the *Denno* hearing and at trial, (Br. of App. at 22), Appellant derived no prejudice from absence of that particular cross-examination because two witnesses, Wade Young, Jr., who was

in the interrogation room throughout, and Hugh Jones, who was blindly situated behind a screen, each testified to and were cross-examined on the circumstances pertaining to the waiver. Their eyewitness testimony corroborates the statement was voluntarily made, and the same is additionally reflected in the video recording. (State's Ex. 2-A; Tr. p. 35, line 22 – p. 56, line 22; Tr. p. 60, line 19 – p. 61, line 4). Further, when a defendant's statement is introduced after a defective *Denno* hearing, harmless error may apply when voluntariness is only reasonable inference to be drawn from evidence regarding a defendant's confession.[3] *See State v. Victor*, 300 S.C. 220, 224, 387 S.E.2d 248, 50 (1989); *State v. Drayton*, 287 S.C. 226, 227, 337 S.E.2d 216, 217 (1985) (harmlessness standard also applies where statement admitted without accompanying jury instruction on voluntariness).

Given the foregoing evidence, Appellant's waiver indeed met the threshold standard for admission. *State v. Saltz*, *supra*; *State v. Moses*, *supra*; *State v. Arrowood*, *supra.* Thus, the recorded statement's introduction fails to warrant reversal. Because Detective Kitelinger's statements are non-testimonial, and because the statement indeed met the threshold standard for admission, the trial court properly admitted the statement.

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[3] Moreover, "[a] violation of a defendant's Sixth Amendment right to confront the witness is not *per se* reversible error; instead, this Court must determine whether the error was harmless beyond a reasonable doubt." *State v. Davis*, 371 S.C. 170, 181, 638 S.E.2d 57, 63 (2006). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985).

CONCLUSION

For all of the foregoing reasons, Respondent submits that this Court affirm Appellant's convictions and sentence for murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime.

Respectfully submitted,

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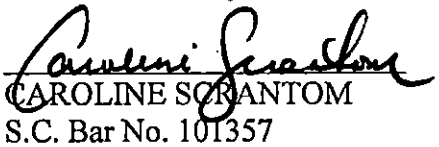

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November 12, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
The Honorable Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

MELEKE Da'SHAWN STEWART,

Appellant.

Appellate Case No. 2018-001916

CERTIFICATE OF SERVICE

I, Caroline Scrantom, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, postage pre-paid, and addressed to his attorney of record: Tommy A. Thomas, Esq., P.O. Box 88, Irmo, South Carolina 29063.

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

This 12th day of November, 2019.

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November 12, 2019

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

Re: *The State v. Meleke D. Stewart*
Appeal from Horry County
Appellate Case No. 2018-001916

Dear Ms. Kitchings:

Enclosed for filing please find the original Initial Brief of Respondent and Designation of Matter, together with Proof of Service in the above-referenced case. If you should have any questions, please feel free to contact me.

Sincerely,

Caroline Scrantom
Assistant Attorney General

CS:dmd
Enclosures
cc: Tommy A. Thomas, Esq. (w/two copies of encls.)
The Honorable Jimmy A. Richardson, III, Solicitor 15th Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encl.)

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