THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2018-00103

APPEAL FROM YORK COUNTY
Grace Gilchrist Knie, Circuit Court Judge
Trial Court Case No. 2018-GS-46-2505

The State,..... Respondent

v.

Warren Tremaine Duvant,..... Appellant

FINAL BRIEF OF APPELLANT

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2. WHETHER THE TRIAL COURT ERRED IN INSTRUCTING THE JURY THAT "ACTUAL KNOWLEDGE OF THE PRESENCE OF THE COCAINE IS STRONG EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL ITS DISPOSITION OR USE."

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STATEMENT OF THE CASE

On April 19, 2018, the appellant was charged by bill of indictment with one count of trafficking cocaine, in violation of S.C. Code Ann. § 44-53-370(e). The indictment specifically charged that Mr. Duvant "did on or about August 23, 2017, knowingly sell, manufacture, cultivates, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more of cocaine or any mixtures containing cocaine, as provided in S.C. Code Ann. § 44-53-210(b)(4)..."

On May 22 through May 25, 2018, the parties appeared for trial by jury. A 12-member jury was empaneled. At the close of the State's case-in-chief, the defense moved for directed verdict, which was denied. After hearing the evidence and arguments of counsel, the jury found Mr. Duvant guilty of trafficking cocaine. (R. p. 283, lines 10-17). Trial counsel for Mr. Duvant moved for new trial, which was denied. On that same day, Mr. Duvant was sentenced to 25

years. (R. p. 286, lines 1-7). Mr. Duvant, through counsel, timely filed a Notice of Appeal. This appeal follows.

STATEMENT OF THE FACTS

On the morning of August 23, 2017, officers with the York County Sheriff's Office arrived at 403 Belaire Circle in Clover, for investigation into a matter unrelated to the instant case. Upon arriving, Detective David Vaughn observed spent marijuana blunts outside the front door, on the porch. (R. p. 46, lines 18-25). Det. Vaughn knocked on the door and Ms. Carolyn Johnson answered. (R. p. 47, lines 1-25). Det. Vaughn smelled a strong odor of marijuana, and asked Carolyn Johnson whether she had smoked any marijuana that day. Id. She admitted that she had, at which time Det. Vaughn determined there was probable cause for a search warrant and decided to conduct a protective sweep of the location. Det. Vaughn conducted a protective sweep, at which time he discovered Mr. Duvant asleep in a bedroom. (R. p. 48, lines 12-25). Det. Vaughn then contacted Detective Schifferle to obtain a search warrant. (R. p. 49, lines 16-25). The Drug Enforcement Unit (DEU) was dispatched to assist. (R. p. 50, lines 1-5). Mr. Duvant and Carolyn Johnson were read *Miranda* warnings, placed in handcuffs, seated in the front living room of the residence and questioned. (R. p. 50, lines 15-25). Mr. Duvant was questioned by Lieutenant Mike Ligon and Lieutenant Heath Clevenger whether he had knowledge of any narcotics in the home. At first, Mr. Duvant replied no. (R. p. 28, line 22). After being informed that the search warrant was signed, Lt. Ligon again asked Mr. Duvant whether there were any drugs in the home, informing him further that the search warrant was en route to the location. Lt. Ligon testified that at this point, Mr. Duvant stated that he did know of drugs at the location, and subsequently led the officers to the bedroom in which he had slept and

pointed to a container full of clothes. (R. p. 29, lines 4-19). Lt. Ligon retrieved the bag of cocaine. (R. p. 29, lines 9-10).

Det. Vaughn testified that he was present during Lt. Ligon's questioning of Mr. Duvant. (R. pp. 51-52). Det. Vaughn testified that Mr. Duvant did not answer when first asked about whether there were drugs on the premises. (R. p. 52, line 2). Det. Vaughn stated that Lt. Ligon asked again if he knew of any drugs in the house, to which Mr. Duvant then replied that he would show them where they were located. (R. p. 52, lines 1-4). Det. Vaughn described Mr. Duvant's demeanor as surprised at what was happening. (R. p. 52, lines 5-7).

At the pretrial hearing on suppression, Investigator Stephen Ramsey testified that he advised Mr. Duvant of the following *Miranda* warning prior to questioning:

> You have the right to remain silent anything you say can be used against you in court. You have the right to talk to a lawyer for advice before any questions and to have your lawyer present during questioning. You have the right to the advice and presence of a lawyer even if you cannot afford to hire a one. We have no way of appointing you a lawyer but one will be appointed by the Court for you if you wish. If you wish you may answer questions without the presence of a lawyer and you may stop answering any time you desire.

(R. p. 18, lines 1-11).

Lt. Ligon testified that he and Lt. Clevenger were present to question Mr. Duvant. As many as four or five other officers were present while Carolyn Johnson and Mr. Duvant were being questioned. Lt. Ligon further testified that Mr. Duvant was "calm" when he made the statement concerning the location of the drugs. (R. p. 29, line 19).

Carolyn Johnson testified that the home located at 403 Belaire Circle belonged to her parents, both of whom are deceased. She denied that she lived in the home, stating instead that she was single and just kept her clothes there. (R. p. 167, lines 3-12). She stated that on the morning of August 23, 2017, she came to the home for only ten or fifteen minutes, to let her dog

out and to smoke a marijuana joint. (R. p. 156). It was during this time, that Detectives with the York County Sheriff's Department knocked on the front door, looking for her brother in connection with a separate and unrelated offense. (R. pp. 156-157). She testified that she had, in fact, just smoked marijuana, and that she consented to officer entry of the home. She admitted to having drugs in her purse. (R. p. 170). Law enforcement found a bag of marijuana and burnt ends of marijuana cigarettes and charged her with possessing all drugs that were found in her room. (R. p. 170). She claimed that Mr. Duvant had resided in the home for three to four months because he "was going through some hardships." (R. p. 153, lines 16-23). Not until April 2018, after a seven-month deal had been taken off the table by the State, did she claim that Mr. Duvant was a resident of the house. (R. pp. 170, 173-78). She testified that she was testifying at his trial because she wanted to "do the right thing." (R. p. 180, lines 7-10).

Lieutenant Heath Clevenger testified concerning placement of evidence into custody. The State, acknowledging that he had informed it that he was mistaken about certain evidence he had previously identified during testimony, was permitted to recall him to the stand twice, in order for him to correct testimony concerning evidence he placed into custody.

ARGUMENTS

1. THE STATE FAILED TO PROVIDE SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S FINDING THAT APPELLANT WAS GUILTY BEYOND A REASONABLE DOUBT OF TRAFFICKING COCAINE.

A. Standard of Review

In ruling on a motion for directed verdict in a criminal case, a trial court must view the evidence in the light most favorable to the State. *State v. Buckmon*, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001). The trial court is concerned with the existence or nonexistence of evidence, not its weight. *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). The

defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). A circuit court should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 451-52 (1984).

On appeal from the denial of a directed verdict, the court must view the evidence and all reasonable inferences in the light most favorable to the State. *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). If there is any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the reviewing court must find the case was properly submitted to the jury. *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); *State v. James*, 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004).

B. Argument

In this matter, the evidence was insufficient to support a finding that Mr. Duvant was guilty of cocaine trafficking beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The State presented only circumstantial evidence against Mr. Duvant—and any evidence purportedly linking Mr. Duvant to even possessing the cocaine found, was far from substantial. Specifically, the State presented evidence that Mr. Duvant was found in the home on the morning of August 23, 2017 and that he allegedly made a statement to law enforcement wherein he stated that drugs could be found in the room in which he had slept, that he made such a statement in a "calm" manner. The State presented Carolyn Johnson to testify that Mr. Duvant lived in the home. However, Mr. Duvant's state identification showed that he actually lived on Queensgate Drive. Carolyn Johnson, the State's star witness, actually owned the home at 403 Belaire, but disavowed ownership, stating instead that the home belonged to her deceased parents. Notwithstanding the sheer absurdity of that statement, she

also claimed to have just stopped by the home for ten or fifteen minutes, during which time she stated, "I smoked, and I was about to let my dog out." (R. p. 156). However, on cross-examination, she stated that the dog was not hers, and that she only kept her clothes and all her belongings there. (R. p. 166). Adding to her stream of inconsistent statements, Carolyn Johnson then admitted that she had not made any statements to law enforcement about Mr. Duvant until she purportedly lost the seven-year deal the State had previously offered her in a plea. (R. p. 164). With all the altruism of a fox in a henhouse, she proclaimed that she was now present and testifying at this trial because, "I just made up my mind that it was the right thing to do." (R. p. 180). She admitted that she was "prepared" for testifying by meeting with the prosecutor and her own attorney just a day before. Regardless, the twists and turns in her own self-serving statements do not end there. Despite cocaine being found in her own purse, and the fact that she had been smoking marijuana immediately prior to law enforcement knocking on her door, she claimed that all the drug paraphernalia found in "her" kitchen (R. p. 163), did not belong to her. And, it should be noted, that Carolyn Johnson never even mentioned that Mr. Duvant lived at the 403 Belaire home, much less that Mr. Duvant was ever seen with drugs, until ***after*** she lost her seven-year deal. (R. p. 175-76). And, even though this exchanged occurred during rehabilitation of Carolyn Johnson's testimony:

> Q. Did you know of anyone else that was staying there at the house on Belaire Circle in late August of 2017, other than you, Eric Johnson, and the Defendant?
>
> A. No.

(R. p. 182).

So, too, did this exchange occur:

Q: How many bedrooms are in that house at 403 Belaire?

A: Three.

Q: And was it just the three of you all living there?

A: Yeah, well, different people periodically, because we a large family.

(R. p. 154). Carolyn Johnson's testimony was wholly unreliable.

The State presented Mr. Duvant's alleged statement concerning knowledge of drugs that were present in the room he stayed in the previous night. He made no statement that the drugs belonged to him, and the State conceded that the drugs could have belonged to anyone. The container in which the drugs were found, was not fingerprinted. The paraphernalia in the kitchen—scales, heat/vacuum sealer, plastic sandwich bags, rubber bands, bag of glutamine—were not tested for fingerprints, palm prints, DNA touch. (R. p. 96). Mr. Duvant's State identification showed that he actually lived at a completely different address, on Queensgate Drive. There is no question that Mr. Duvant was present where drugs were found. However, the State did not produce any evidence to support an inference that Mr. Duvant intended to possess the drugs found in the container. Constructive possession requires more than mere presence of an individual in the vicinity where drugs have been located. The State did not produce any evidence to support an inference that the paraphernalia found in the kitchen were under his dominion and control, much less that he had a right of dominion and/or control over those materials. These circumstances, in and of themselves, may appear suspicious, but suspicion alone is insufficient to support a guilty verdict. *In State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011), the South Carolina Supreme Court considered the standard regarding the proof necessary in a circumstantial evidence case. The supreme court reversed the trial court's decision denying

the defendant's motion for a directed verdict, finding that the State had failed to produce substantial circumstantial evidence that the defendant had committed the charged crimes. Specifically, the defendant was charged with first degree burglary, grand larceny, criminal conspiracy and malicious injury. The State's case relied solely on circumstantial evidence, namely: defendant's location in a getaway car with the burglars and stolen goods, his subsequent flight from law enforcement and his attempt to enlist an uninvolved person to lie for him. In that matter, an eyewitness had described only two men at the scene of the burglary. Law enforcement collected twelve sets of fingerprints in the car and from the stolen goods, none of which matched the defendant. One of the burglars testified that the defendant did not know about the crimes committed. The State, however, failed to connect defendant's flight from police with the charged offenses. The Supreme Court reasoned:

> The traditional circumstantial evidence definition illustrates the deficiency in the State's evidence against Petitioner. This definition provided that if the State relies on circumstantial evidence to prove its case, the jury may not convict the defendant unless:
>
> > Every circumstance relied upon by the State be proven beyond a reasonable doubt; and . . . all of the circumstances proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.
>
> *Id.* at 626 n.2, 677 S.E.2d at 606 n.2 (*citing State v. Edwards*, 298 S.C. 272, 274-76, 379 S.E.2d 888, 889 (1989), *abrogated by State v. Cherry*, 361 S.C. 588, 595-606, 606 S.E.2d 475, 478-82 (2004)).

State v. Odems, 395 S.C. at 590. The Court reversed the defendant's convictions, finding that the circumstantial evidence presented did not reasonably tend to prove the defendant's guilt, and failed the "Court's well-settled directive that circumstantial evidence that is not substantial is insufficient to go to the jury." *Odems*, 395 S.C. at 592.

Likewise, in the instant matter, the circumstantial evidence presented by the State proves that: 1) Mr. Duvant knew that drugs were located in a container in the room in which he had slept overnight, 2) his state identification reflected that he did not live at the Belaire location, 3) no drugs, paraphernalia, residue or money were found on Mr. Duvant or in his possession, 4) drugs and paraphernalia, commonly used for distribution of narcotics, were found in the kitchen. There was no evidence connecting Mr. Duvant with the tote containing the cocaine package or connecting him to the package of cocaine itself. There was no search conducted of the vehicle he drove, which was parked outside the location. Police did not test for fingerprints, palm prints or DNA on the cocaine package, or on any of the materials attributed to Mr. Duvant and for which he was ultimately charged. At the time of arrest, the homeowner never stated that Mr. Duvant lived at that location, but only later made this statement after her plea offer was rescinded. And it should be noted that if Mr. Duvant was actually trafficking cocaine, as the State alleged, would money not have been found on his person? That the officers did not seek to expand their search warrant or attempt to obtain a second warrant for the Queensgate location or the vehicle, makes little sense, if, in fact, they actually believed Mr. Duvant was actually involved in cocaine trafficking. No rational trier of fact could have found Mr. Duvant guilty of trafficking cocaine beyond a reasonable doubt.

2. WHETHER THE TRIAL COURT ERRED IN INSTRUCTING THE JURY THAT "ACTUAL KNOWLEDGE OF THE PRESENCE OF THE COCAINE IS STRONG EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL ITS DISPOSITION OR USE."

A. Standard of Review

The Due Process Clause "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." Thus, "what the factfinder must determine to return a verdict of guilty is prescribed by

the Due Process Clause." *Sullivan v. Louisiana*, 508 U.S. 275, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993). The State always bears the burden of proving all elements of the offense charged; and it must persuade the factfinder beyond a reasonable doubt of the facts necessary to establish each of those elements. *Patterson v. New York*, 432 U.S. 197, 210, 97 S. Ct. 2319, 2327, 53 L. Ed. 2d 281 (1977); *Leland v. Oregon*, 343 U.S. 790, 795, 72 S. Ct. 1002, 1005; *In Re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1072, 25 L. Ed. 2d 368 (1970). Due process assures that defendant "the right to have the jury, rather than the judge, reach the requisite finding of 'guilty.'" *Sullivan v. Louisiana, supra.*

Errors, including erroneous jury instructions, are subject to harmless error analysis. *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) (*citing Lowry v. State*, 376 S.C. 499, 510-11, 657 S.E.2d 760, 766 (2008)).

B. Argument

Trial counsel moved for directed verdict based on the State's reliance wholly on circumstantial evidence in its case against Mr. Duvant. (R. p. 236). As argued above, the State presented no direct evidence that Mr. Duvant participated in any drug activities. The State presented no overwhelming evidence of Mr. Duvant's guilt. However, the court's jury charge presented an impermissible inference for the jury to consider. During the jury charge, the following instruction was given:

> Actual possession means that the cocaine was in the actual physical custody of the defendant. Constructive possession means that the defendant had dominion and control, or the right to exercise dominion or control over either the cocaine itself or the property on which the cocaine was found. Mere presence at the scene where the drugs were found is not enough to prove possession. ***Actual knowledge of the presence of the cocaine is strong evidence of the defendant's intent to control it's disposition or use.*** The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you, along with the other evidence in the case, and

> to be given the weight you decide it should have. Two or more persons may have joint possession of a drug. Mere presence at the scene is not sufficient to prove someone guilty of a crime. The defendant's presence where a crime is being committed, or mere association with a person who commits a crime, does not make a defendant an accomplice, or, an aider or abettor of the person committing the crime.

(R. pp. 277-78) (emphasis added). The trial court's jury instruction concerning "actual knowledge of the presence of the cocaine is strong evidence of the defendant's intent to control it's [sic] or use," is a comment on the facts and the weight to be given those facts. Appellant avers that such a charge contradicts, if not negates, the "mere presence" language instruction also given. Under the circumstances of this case, wherein the State presented evidence against the defendant/appellant that was completely circumstantial, without any overwhelming evidence connecting Mr. Duvant to the offense charged, such a charge would have created an improper presumption of Mr. Duvant's guilt. *State v. Cheeks*, 401 S.C. 322, 737 S.E.2d 480 (2013). There is a substantial probability that the jury's verdict was attributable to this erroneous charge. In light of the holding in *State v. Cheeks*, *supra*, and based upon principles of Due Process and fundamental fairness, Appellant's conviction and sentence cannot stand. Accordingly, Appellant respectfully avers that his conviction and sentence should be vacated, and this matter remanded for new trial, as the jury's verdict was constitutionally infirm.[1]

3. THE TRIAL COURT ERRED IN FAILING TO SUPPRESS STATEMENTS MADE BY THE DEFENDANT DURING INTERROGATION AND FAILING TO SUPPRESS EVIDENCE GATHERED AS A RESULT OF THOSE STATEMENTS, AS FRUIT OF THE POISONOUS TREE.

A. Standard of Review

[1] Claims involving ineffective assistance of counsel are not considered on direct appeal but are limited to review on post-conviction relief. See *In re Chapman*, 419 S.C. 172, 182, 796 S.E.2d 843, 847-48 (2017) (internal citations omitted). To the extent that the absence of a contemporaneous objection by trial counsel creates a bar to considering this issue on direct appeal, Appellant further argues that trial counsel was ineffective for failing to so object. However, as ineffective assistance of counsel claims are more appropriate for post-conviction relief, Appellant preserves this argument for post-conviction relief in the event this issue is pretermitted herein.

"In criminal cases, the appellate court sits to review errors of law only." *State v. Jenkins*, 412 S.C. 643, 650, 773 S.E.2d 906, 909 (2015). The decision of whether to admit or exclude evidence is within the sound discretion of the circuit court. *State v. Jackson*, 384 S.C. 29, 34, 681 S.E.2d 17, 19 (Ct. App. 2009). This court will not disturb the circuit court's admissibility determinations absent a prejudicial abuse of discretion. *State v. Adkins*, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct. App. 2003). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001); *State v. Medley*, 417 S.C. 18, 24, 787 S.E.2d 847, 850 (Ct. App. 2016).

B. Argument

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. In *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), the United States Supreme Court held the Fifth Amendment privilege against self-incrimination prohibits admitting statements, whether exculpatory or inculpatory, given by a suspect during "custodial interrogation" without following prescribed procedural safeguards. *Id.* at 444. Custodial interrogation means "questioning initiated by law enforcement officers after a person has been taken into custody." *Id.* "The warning mandated by Miranda was meant to preserve the privilege during 'incommunicado interrogation of individuals in a police-dominated atmosphere.'" *Illinois v. Perkins*, 496 U.S. 292, 296, 110 S. Ct. 2394 (1990) (*quoting Miranda*, 384 U.S. at 445); *State v. Kirton*, 381 S.C. 7, 39, 671 S.E.2d 107, 123 (Ct. App. 2008).

A waiver of *Miranda* rights is determined from the totality of the circumstances. *State v. Moultrie*, 273 S.C. 60, 254 S.E. (2d) 294 (1979). An express waiver is unnecessary. *North Carolina v. Butler*, 441 U.S. 369, 99 S. Ct. 1755 (1979). An express waiver is not necessary after

warnings are given because if a defendant indicates in any way that he wishes to remain silent, the interrogation must cease. 384 U.S. at 473, 86 S. Ct. at 1627. Once a valid waiver is effected, the waiver continues until such time as the defendant indicates he wishes to revoke the waiver or it appears that his will has been overborne and his capacity for self-determination critically impaired. *State v. Moultrie, supra.*; *State v. Tyson*, 283 S.C. 375, 378-79, 323 S.E.2d 770, 771-72 (1984).

Mr. Duvant was advised of his *Miranda* rights prior to questioning during the custodial interrogation at 403 Belaire Circle. The warnings, however, presented a problematic contradiction in a fundamental precept required of the warning, namely the right to have an attorney present during custodial questioning. The warning recited to Mr. Duvant was:

> You have the right to remain silent, anything you say can be used against you in court. You have the right to talk to a lawyer for advice before any questions and to have your lawyer present during questioning. You have the right to the advice and presence of a lawyer even if you cannot afford to hire a one. We have no way of appointing you a lawyer but one will be appointed by the for you if you wish. If you wish you may answer without the presence of a lawyer and you may stop answering any time you desire."

(R. p. 18, lines 1-11). The right to have any attorney present was improperly qualified by the curious statement that, "We have no way of appointing you a lawyer but one will be appointed by the Court for you if you wish." This statement necessarily relies on a future point in time after the present questioning, separate and apart from the current situation, in which an attorney could be appointed for advice. Following that statement with, "If you wish you may answer questions without the presence of a lawyer," simply reinforced that inference and served to further confuse the right to an attorney for present questioning issue, as it lulls the defendant into seeming comfort with a decision not to have his attorney present *at the current time*. Of course,

an accused may waive his right to have an attorney present, but he must understand that right before he can waive it.

And, although a defendant may have been Mirandized in previous criminal matters, that does not mean he would not think the law or procedures had changed since his last arrest. The circumstances surrounding Mr. Duvant's questioning were tense—he had just been awakened from sleep by police, surrounded by law enforcement. The warnings could have reasonably left the defendant confused about his rights—and under the circumstances, the expectation that one would ask his interrogator for clarification is unreasonable. Although *Miranda* warnings need not be rigid, they must convey the basic concepts, one of which is the understanding that an attorney may be present for the questioning about to take place. *California v. Prysock*, 453 U.S. 355, 360, 101 S.Ct. 2806, 2810 (1981). Mr. Duvant was not afforded that opportunity based on the warning given to him immediately prior to questioning. Accordingly, the trial court erred in failing to suppress Mr. Duvant's statement and for denying the suppression of evidence retrieved as a result of that statement, as fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407 (1963).

CONCLUSION

For the reasons stated, Appellant, Warren Tremaine Duvant's conviction and sentence should be reversed.

November 25, 2019.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

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

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