STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Barnwell County
The Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

Respondent,

v.

RAKEEM J.J. WHITE,

Appellant.

Appellate Case No. 2019-000403

INITIAL BRIEF OF RESPONDENT

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RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Did the trial court abuse its discretion and commit reversible error by admitting a recorded telephone call between Appellant and his girlfriend where Appellant expressed jubilation when his girlfriend shared mistaken information that Victim died from the subsequent car wreck and not from the gunshot wound, where such evidence constituted relevant evidence tending to show consciousness of guilt?

STATEMENT OF THE CASE

Appellant was charged with murder (2018-GS-06-00200) and armed robbery (2018-GS-06-00201). (Tr. p. 6, lines 2-7). A three day jury trial was held before the Honorable Doyet A. Early, III, on October 15, 2019 through October 17, 2019. Appellant was represented at trial by defense counsel Janek Kazmierski. The State was represented by Assistant Solicitors David W. Miller and R. Jackson Cooper. (Tr. p. 1). At the conclusion of the trial, the jury found Appellant guilty on both charges. (Tr. p. 273, lines 1-8). Judge Doyet sentenced Appellant to forty (40) years imprisonment for murder, and a concurrent thirty (30) years for armed robbery. (Tr. p. 279, line 18 through p. 280, line 1).

This appeal now follows.

STATEMENT OF FACTS

The Crime

Shortly after midnight on December 15, 2016, Rakeem White (hereinafter "Appellant") took his friend Rayquan Clifton to meet with Kort Woodley (hereinafter "Victim").[1] Appellant met up with Victim at the Kitchens Trailer Park in Williston, South Carolina in order to purchase crack cocaine from Victim. (Tr., p. 111, line 11 through p. 112, line 1). Victim arrived alone, driving his car, and met Appellant in front of the trailer belonging to Chris Dunbar. (Tr., p. 74, lines 4-22). Mr. Harry Dukes, who was Chris Dunbar's cousin, was at the trailer at the time and approached the car along with Appellant and Rayquan. Mr. Dukes also had a history of "hustling" drugs and was an in-law relative to Victim.[2] (Tr., p. 85, lines 6-10).

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[1] Appellant's nickname is "Rock", and is often referred to as "Rock" by witnesses in the transcript. Rayquan's nickname is "Ray Ray", and is often referred to as "Ray Ray" in the transcript.

[2] Mr. Dukes is the cousin of "Veronica Epps", who is the mother of Victim's children. (Tr., p. 73-74; 77, lines 18-20).

When the three men gathered around Victim's vehicle, Appellant and Rayquan stood at the driver's side door and Mr. Dukes was standing at the passenger door of Victim's vehicle. (Tr., p. 74, line 23 through p. 75, line 13). Victim did not exit the vehicle; he instead proceeded to conduct the drug sale from his driver's seat. Victim handed Appellant the crack cocaine. (Tr., p. 75, lines 3-20). Appellant passed the crack cocaine to Rayquan and Rayquan proceeded to turn and run with the drugs. (Tr., p. 75, lines 20-24). Victim attempted to grab Appellant through the car door window; Appellant reacted by shooting Victim and fleeing the scene. (Tr., p. 76, line 2 through p. 77, line 10).

Mr. Dukes was still at the car after the shooting and he asked Victim if he was alright. He saw Victim with a gunshot wound, but Victim did not respond to him. (Tr., p. 77, lines 10-15; p. 95, lines 9-10). Victim then sped off in his car. Shortly after leaving the scene Victim crossed highway 78, ramped the embankment, and wrecked his vehicle. (App., p. 77, lines 11-15; p. 58, lines 12-24). EMS and police responded to the traffic accident, but it was not immediately apparent that Victim had been shot. As a result, the car crash the scene was initially treated as it was dispatched: a traffic accident. (App., p. 59, line 23 through p. 60, line 8). Victim's gunshot wounds were not immediately identified and were not made known to police until after Victim was transported away. (Tr. p. 128, lines 1-19). However, his gunshot wound was fatal and Victim died at the hospital. (Tr., p. 131, line 20 through p. 132, line 7; p. 196, lines 2-8).

Testimony and Evidence Offered at Trial

Officer Christopher Orlando

Officer Orlando testified that he was working for the City of Williston Police Department on the night shift for December 14-15, 2016. (Tr., p. 44, lines 20-25). He received a dispatch call for a vehicle accident at 12445 Main Street, and responded to the scene. (Tr., p. 45, lines 6-24).

He testified that he found Victim as the individual involved in the accident, but Victim was unresponsive and lying face down in the street. (Tr., p. 46, lines 1-17). Victim was transported to the hospital, but was pronounced dead when he arrived. (Tr., p. 47, lines 10-12).

While at the hospital Officer Orlando interviewed Veronica Epps, the mother of Victim's children; the family informed him that she may know what led to Victim's death. (Tr., p. 48, line 12 through p. 49, line 5; p. 73, lines 18-22). He testified that she was reluctant to discuss the matter, but she ultimately informed him that Appellant was involved in the murder. (Tr., p. 49, lines 1-18).

Officer Kyle Breland

Officer Breland testified he also responded to the 12445 Main Street accident. (App., p. 56, lines 1-17). He testified that an inspection of the inside of the vehicle led to the discovery of a small bag of suspected crack cocaine. (Tr., p. 57, lines 19-21). Officer Breland testified that the collision report found that Victim's vehicle ramped the embankment on highway 78 and came to rest at the magistrate court parking lot. (Tr., p. 58, lines 12-18). He testified that the scene was not treated as a murder scene, but was instead initially treated as traffic accident, as that was how the call was dispatched. (App., p. 59, line 23 through p. 60, line 8). Officer Breland was not aware of forensic evidence being collected from the scene that night. (Tr., p. 67, lines 16-25). Officer Breland testified that he had no reason to believe the wreck was a murder scene until after being radioed with that information. (Tr., p. 69, lines 16-19).

Harry Dukes

Mr. Dukes testified that he has lived in Williston, South Carolina for many years and is familiar with Appellant, Rayquan, and Victim. (Tr., p. 70, line 8 through p. 71, line 9). He testified that Victim wanted to conduct a drug deal with Appellant and Rayquan and that he met

them at his cousin's trailer. (Tr. p. 71, line 10 through p. 73, line 14). He testified that Victim pulled up in his car, but did not get out. Appellant and Rayquan stood at the driver's window and spoke with Victim through the window. He was standing and looking in through the passenger side window. (Tr., p. 74, line 8 through p. 75, line 13). He saw Victim reach into his glove compartment and pull out "an ounce" of crack cocaine. Victim handed it to Appellant, and Appellant then handed it to Rayquan. (Tr., p. 75, lines 14-21). Rayqaun said "all right" and then took off running. In reaction Victim reached through the car window to try and grab Appellant, but Appellant drew his gun and shot Victim. (Tr. p. 74, lines 18 through p. 76, line 9). Mr. Dukes testified that he was at the car when the shooting occurred and had a clear view of the crime. (Tr. p. 76, lines 10-15).

Mr. Dukes testified that after shooting Victim, Appellant ran in the same direction as Rayquan. Mr. Dukes asked Victim if he was ok, but Victim did not respond. He just continued to breath and then took off in the car. Mr. Dukes then went into the trailer and told Veronica's brother what happened. (Tr. p. 77, lines 10-15). Mr. Dukes tried calling and texting Victim repeatedly but could not get a response. (Tr. p. 77, lines 16-20). He also called Veronica Epps to let her know what had happened to Victim. (Tr. p. 78, lines 4-15).

On the morning of December 15, 2016, Mr. Dukes made arrangements with law enforcement to discuss what he witnessed. (Tr. p. 79, lines 11-17). Mr. Dukes was later arrested on an unrelated matter and placed in Barnwell County jail. As a result, he was mistakenly incarcerated in the same facility as Appellant. (Tr. p. 81, lines 1-17). During this time Appellant presented a letter for Mr. Dukes to sign that provided a different story of the events of December 14, 2016. As a result of their imprisonment together, the admitted tension with Appellant, and the fear of actions by others, he agreed to sign the letter. Mr. Dukes testified that he ultimately

filled out his name and signed a letter that was written entirely by Appellant. (Tr., p. 81, line 21 through p. 82, line 23). He testified that he agreed to sign the letter because he was aware of threats against him while in prison. Also, Appellant came to him to convince him it was Rayquan who pulled the trigger, and attempted to appeal to his mercy by referencing his need to get home to his kids. (Tr., p. 82, line 17 through p. 83, line 5). He testified at trial that the letter is "bogus" and that justice should be served. (Tr., p. 83, lines 21-25). Mr. Dukes testified again that he was at the scene and he witnessed Appellant commit the shooting. (Tr. p. 83, lines 1-8). Mr. Dukes also testified that as he has no pending charges with Barnwell County and has not been promised anything in exchange for his testimony. (Tr., p. 83, lines 15-22).

Rayquan Clifton

At the outset of his testimony, Rayquan testified that he was charged with robbery and murder in relation to Victim's death and that those charges were still pending at the time of his testimony at trial. He testified that he had not received any promise for leniency in exchange for his cooperation. (Tr., p. 110, lines 1-8).

Rayquan testified that Appellant is his cousin. (Tr. p. 109, lines 11-14). He testified that prior to the crime he was at a club called Lucky Spot (aka as A&A) playing pool and drinking with Appellant and other friends. (Tr., p. 110, line 9 through p. 111, line 6). He testified that he did not see Appellant in possession of a gun at the time. He testified that he and Appellant left the club and walked over to the Kitchens Trailer Park to meet "a contact" of Appellant's for drugs. (Tr. p. 111, lines 1-24). The contact's name was Kort Woodley. (Tr. p. 111, line 25 through p. 112, line 1).

Rayquan testified that one other individual was present during the drug deal, a man nicknamed "Dirty" who Rayquan confirmed to be Harry Dukes. (Tr., p. 112, lines 1-8; p. 118,

lines 7-14). When they arrived at the trailer Victim handed Appellant the drugs and Rayquan testified that he then snatched the drugs from Appellant and ran. (Tr. p. 112, lines 13-24). Rayquan confirmed that he and Appellant were at the driver's side window while Mr. Dukes was on the other side of the car. (Tr. p. 115, lines 1-23). He did not hear gunshots after he ran from the scene. He testified that he soon left South Carolina and stayed in a hotel in Georgia. (Tr. p. 116, lines 19-20; p. 119, line 24 through p. 120, line 2).

Rayquan conceded that while in prison he sent a letter to the police claiming to have no knowledge regarding Victim's murder and claiming that his earlier statements to authorities were only given in order to secure a promise of leniency. (Tr. p. 113, line 6 through p. 114, line 5). However, he testified at trial that he wrote this letter in an effort to help out his cousin, Appellant. (Tr., p. 114, lines 11-18). Rayquan testified that his trial testimony is truthful. (Tr. p. 114, lines 19-20).

Police Chief Rodney Pruitt

Chief Pruitt testified that he was on scene for approximately twenty to thirty minutes before he became aware that Victim may have been shot. Victim was already being transported to the hospital and the Chief made the realization when one of the other emergency responders mentioned an unexplained puncture wound that he had attributed to part of the injuries from the wreck. (Tr. p. 128, line 1 through p. 129, line 2). In response Chief Pruitt sent Officer Orlando to catch up with the ambulance and begin investigating at the hospital. (Tr., p. 129, lines 7-16). Officer Orlando initially relayed to Chief Pruitt that they've got the driver (Victim) of the vehicle in the back, and that there seemed to be some hope he would survive. However, Chief Pruitt recalled that about 10-15 minutes later Officer Orlando called and informed him that Victim had passed away. (Tr., p. 131, line 20 through p. 132, line 7). Chief Pruitt received a third call from

Officer Orlando wherein Officer Orlando reported running into Veronica Epps and learning that Appellant was the individual behind the shooting. (Tr., p. 132, lines 7-11).

Chief Pruitt testified that near daybreak on December 15, 2016, he received a phone call from Harry Duke's uncle. The uncle explained to Chief Pruitt that Mr. Dukes had witnessed Appellant shoot Victim during a drug robbery and that Mr. Dukes was willing to come and talk to law enforcement about what he witnessed. (Tr. p.132, line 18 through p. 133, line 9). In addition to the lead with Mr. Dukes, Chief Pruitt also put out word that the police were looking for Appellant. (Tr., p. 134, line 1 through p. 135, line 6). They soon after received a tip that Appellant had been seen walking into a trailer on Robin Court that belonged to T.J. Moore. (Tr., p. 135, lines 7-20). Police responded with multiple officers arriving at the trailer. Chief Pruitt hit his siren upon arrival and only a few seconds later Appellant came out of Mr. Moore's house with his hands in the air, and then knelt to the ground. (Tr., p. 136, lines 1-15). None of the officers ever announced their intention to arrest Appellant from the home until after Appellant surrendered. (Tr., p. 136, line 16 through p. 137, line 3). Appellant was taken into investigative detention, and later arrested and charged with murder armed robbery. (Tr. p. 139, lines 1-9).

Chief Pruitt met with Harry Dukes in order to discuss in detail what he witnessed at the scene of the crime. As part of this discussion Chief Pruitt had to allay Mr. Dukes' concerns for talking to police against Appellant. (Tr. p. 144, line 4 through p. 145, line 12). After speaking with Mr. Dukes, warrants were obtained for both Appellant and Rayquan. (Tr. p. 146, lines 9-15).

ISSUE AS IT WAS PRESENTED AT TRIAL

The State was in possession of Appellant's jailhouse phone call he shared with his girlfriend, Maggie Aldrich, on December 24, 2016. The State turned this evidence over to the

defense counsel, Mr. Kazmierski, who made a motion to suppress the phone call. Mr. Kazmierski argued in his motion that the recording constitutes inadmissible hearsay, was not relevant, would only confuse the issues and mislead the jury at trial, and would be more prejudicial than probative. (Pre-trial Tr., p. 3, line 22 through p. 4, line 8). The matter was taken up during pre-trial hearing held on September 12, 2019.

The pertinent portion of the call involved the discussion of ultimately inaccurate information from Victim's autopsy report. Ms. Aldrich informed Appellant that the autopsy proved Victim died from the car wreck and not from the gunshot wound. (Pre-trial Tr., p. 5, lines 8-22). During the phone call Appellant responded with jubilation calling the news "the best Christmas present [he] can ask for" and telling other inmates that he has news to share. (State's Exhibit 2). Mr. Kazmierski argued that the recording incorrectly assumes that Appellant shot victim, but ultimately died from the car wreck, or that there was no gunshot wound and therefore no crime. (Pre-trial Tr., p. 5, line 23 through p. 6, line 4). He further argues that the evidence goes toward callousness or indifference to the fact someone died, and does not go toward consciousness of guilty. (Pre-trial Tr., p. 6, lines 13-19). Mr. Kazmierski and Judge Early agree that there was no case law directly on point. (Pre-trial Tr., p. 6, line 22 through p. 7, line 8).

The state responded that the comment to Appellant does not meet the definition of hearsay because the State is not offering Ms. Aldrich's statement for its truth; the state argues specifically that the statement is in fact inaccurate. (Pre-trial Tr., p. 9, lines 16-24). The State next argued that the phone call is "extremely relevant" in demonstrating the circumstances of the case as a whole. It is particularly relevant in demonstrating the mindset of Appellant as to whether he knew if he had mortally wounded victim, or shot victim at all, given that he fled the scene immediately after. If Victim had died from the car wreck and not from being shot -- which

is what Appellant is reacting to -- it is important toward demonstrating Appellant's jubilation and his consciousness of guilt. (Pre-trial Tr., p. 9, line 25 through p.10, line 23). The State concludes its argument that the context and tone of the conversation is likewise important to the probative value of the evidence, and that any prejudice does not rise to a level of substantially outweighing that probative value. (Pre-trial Tr., p. 11, lines 2-10).

Judge Early informed the parties that he would take their arguments under consideration and listen to the recording with his law clerk. Judge Early denied the motion to suppress as a motion in limine, but explicitly left the matter open to a renewed objection at the time of trial. (Pre-trial Tr., p. 13, lines 2-15). A formal order was issued by Judge Early denying Appellant's motion in limine. (Order, October 15, 2018). At trial the objection was renewed and the court referenced its prior Order denying the motion in limine and its decision to maintain that ruling. Judge Early then admitted Appellant's jailhouse phone call as State's Exhibit 2. (Tr., p. 152, lines 6-20). The phone call was then published to the jury after proper foundation and authentication from Chief Pruitt.

STANDARD OF REVIEW

"The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." *State v. Clasby*, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014)(quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App.2003)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). To warrant

reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice. *State v. White*, 372 S.C. 364, 373, 642 S.E.2d 607, 611 (Ct. App. 2007)(citing *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 623 S.E.2d 373 (2005). To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof. *Id.* (citing *Fields v. Regional Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). Admission of evidence pursuant to Rule 403 SCRE is subject to harmless error analysis. *State v. King*, 422 S.C. 47, 69, 810 S.E.2d 18, 30 (2017).

ARGUMENT

I. The trial court did not abuse its discretion by admitting a recorded jailhouse telephone call between Appellant and his girlfriend as such was evidence of consciousness of guilt wherein Appellant expressed jubilation to mistakenly learn that the Victim in his case had died as the result of the subsequent car accident and not the suspected gunshot wound.

The trial court did not abuse its discretion in admitting Appellant's jailhouse phone call. The evidence was demonstrated to be relevant and any perceived prejudice did not substantially outweigh the probative value that the phone call provided by way of consciousness of guilt. Morevoer, even if the ruling were to be found in error, such would be harmless error insufficient to warrant reversal of Appellant's conviction.

a) The jailhouse phone call was relevant evidence of consciousness of guilt

Appellant's first challenge to the jailhouse phone call is that the evidence itself was not relevant, and therefore improperly admitted by the trial court. South Carolina law sets forth that a "trial judge is given broad discretion in ruling on questions concerning the relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion." *State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991) (citing *State v. Jeffcoat*, 279 S.C. 167,

303 S.E.2d 855 (1983)). "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." *Id.*

At the pre-trial hearing the assistant solicitor argued that Appellant's jubilant reaction to the misinformation concerning the cause of Victim's death constituted a display of consciousness of guilt that the jury should have the opportunity to hear and consider. Specifically, the solicitor's arguments centered upon the rational that given the described actions of Appellant at the scene of the crime, Appellant may not have possessed a fully developed understanding of whether he actually shot Victim during the confrontation, and if so, how serious that gunshot injury might have been. Therefore, his reaction – while not an outright statement against interest or confession – arguably demonstrated excitement for the possibility that his actions did not cause Victim's death. While the reaction was based upon false information, Appellant's reaction is a genuine demonstration of his consciousness of guilt for the charged crime.

In contrast, Appellant argued that the evidence is not relevant, based on the presumption that Appellant's reaction would be the same regardless of whether he were innocent or guilty, because the misinformation, if true, would be a detriment to the state's case against an innocent suspect as well. Appellant's argument misses the mark.

An innocent man would only react joyously to the complete lack of a criminal act to support a charge against him: the realization that he must be released from prison. Anything less and he still faces unfounded potential charges for attempted murder, manslaughter, and possession of a firearm, etc. The man guilty of murder would react joyously to any news that would reduce the culpability he knew to exist. To that point, it is important to note that Ms. Aldrich's discussion with Appellant was not so detailed as to misinform Appellant that Victim had not sustained a gunshot wound; it only articulated (incorrectly) that Victim died as a result of

a car crash and "not from the gunshot wound." The conversation was not detailed enough to articulate whether 1) a gunshot wound actually existed, 2) how serious the gunshot wound was, if it existed, or 3) whether or not Appellant knew for certain that Victim had sustained a serious gunshot wound. When these issues are taken into consideration, the discussion does not provide sufficient misinformation for a completely innocent suspect to deduce that his case must be thrown out for lack of a criminal act. However, it is enough to deduce that Appellant reactions demonstrate his belief that his actions during the drug sale may not be as culpable as originally feared. Thus, his reactions stand as evidence of consciousness of guilt. While Appellant was free to argue to the jury his own competing inferences and rationalizations for the telephone conversation, Appellant's rationalization does not reasonably follow.

The evidence at issue is circumstantial in nature, and circumstantial evidence requires more than simply judging the reliability of the evidence presented. See *State v. Rogers*, 405 S.C. 554, 564, 748 S.E.2d 265, 270 (Ct. App. 2013) (holding that where inference is needed to surmise the meaning of a defendant's statement, the statement constitutes circumstantial evidence not direct evidence.).

> Issues involving circumstantial evidence present unique challenges, "requir[ing] careful reasoning by the trier of facts." *State v. Grippon*, 327 S.C. 79, 87, 489 S.E.2d 462, 466 (1997) (Toal, J., concurring) (quoting *People v. Ford*, 66 N.Y.2d 428, 497 N.Y.S.2d 637, 488 N.E.2d 458, 465 (1985)). "[A]nalysis of circumstantial evidence is a more intellectual process, requiring jurors to engage in lawyer-like scrutiny and forcing them to see both sides." 327 S.C. at 87–88, 489 S.E.2d at 466 (Toal, J., concurring) (quoting Irene Rosenberg and Yale Rosenberg, "Perhaps What Ye Say Is Based Only On Conjecture"—Circumstantial Evidence, Then and Now, 31 Hous. L.Rev. 1371, 1412 (1995)).

State v. Gilmore, 396 S.C. 72, 82, 719 S.E.2d 688, 693 (Ct. App. 2011). The jailhouse phone call is not direct evidence in the form of a confession or a specific reference to guilt, and as with any

form of circumstantial evidence, it requires an inference by the jury. It requires the jurors to consider the reaction of Appellant and surmise for themselves whether those reactions are a result of Appellant believing his criminal liability had been fortuitously lessened and therefore constitute consciousness of guilt. It is the province of the jury to determine the meaning behind a statement or reaction of a defendant when such meaning is not immediately apparent. See *Id.*, 405 S.C. at 564-65, 748 S.E.2d at 270-71(holding that the jury was first required to determine what defendant meant by the statement "It's done", before it could conclude that such a statement constituted a confession to murder.). The jury bore this responsibility for two other consciousness of guilt arguments presented by the state.[3] While Appellant may not agree with the State's interpretation of the evidence, and they were certainly free to argue a competing interpretation to the jury, the state's argument for admissibility does tend to make it more probable that Appellant is guilty of Victim's murder. The fact that an inference is required does not render such evidence "irrelevant".

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[3] The police arrived outside the home of Appellant's neighbor and did not announce for Appellant to come out. He did so on his own, and then surrendered to arrest on his own without instruction. Surrendering to arrest without being identified as the individual for which police have arrived is circumstantial evidence and it demonstrates a consciousness of guilt, *though not necessarily guilt toward the specific crime at hand.* (Tr., p. 234, lines 7-15).

Likewise, the principle is applicable to Appellant's efforts to draft a letter that would change Mr. Dukes' testimony and his pressure upon Mr. Dukes to sign such a letter. *State v. Tucker*, 423 S.C. 403, 410, 815 S.E.2d 467, 470 (Ct. App. 2018), reh'g denied (July 9, 2018) (evidence of witness intimidation may be admitted to show consciousness of guilt); (Tr., p. 234, line through p. 235, line 4).

The jailhouse phone call can be inferred as a demonstration of consciousness of guilt that is specific to the case at hand. Combining Petitioner's actions immediately prior to his arrest, his pressure to have Mr. Dukes recant his story, and his reaction to mistakenly learning that Victim's death resulted from the car crash and not the gunshot wound provides a multifaceted and compelling argument on the part of the state that Appellant has demonstrated a consciousness of guilt, and that such consciousness of guilt pertains specifically to Victim's murder.

b) The jailhouse phone call was more probative than prejudicial.

Appellant next challenged the ruling of the trial court that the jailhouse phone call was not substantially more prejudicial than probative. The probative value far outweighed any alleged unfair prejudice to Appellant. There was no error by the trial court.

A trial judge has "considerable latitude" when ruling on the admissibility of evidence, especially when ruling on Rule 403 objections, and his decision should not be disturbed in the absence of prejudicial abuse of discretion. *State v. Clasby*, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009); *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct.App.2012). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014)(quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App.2003)).

The probative value of the jailhouse phone call was argued effectively to the trial court. Appellant's reaction, the jubilation he showed, and the tone of his excitement all demonstrate the probative value present in the phone call. Appellant had just learned, falsely, that his actions nine days prior had not resulted in the death of Victim. He considered this the greatest Christmas gift he could have hoped for. As the solicitor argued during the pre-trial motion, short of confession or an explicit statement against interest as to his guilt, Appellant's reaction was the most probative form of evidence for a demonstration of consciousness of guilt to the crime committed. In contrast, the only evidence of prejudice that Appellant could argue during the motion hearing was that the evidence risked portraying Appellant as callous or indifferent to Victim's death. There are a number of issues with Appellant's arguments.

First, Appellant's own logic is counterintuitive. While Respondent contests the logic of Appellant's innocent man rationalization (supra), if the jury were to adopt such a rationalization

for an innocent man's jubilant reaction, then it would follow that the jury has already demonstrated a considerable understanding toward such an innocent defendant's reasons for joy and would not find such behavior prejudicially callous. Simply put, it is highly unlikely that a jury could find the evidence not demonstrative of guilt, but still find that the reaction reflects so poorly upon Appellant that the jury would consider finding him guilty on the improper basis of callousness. See generally *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991)(holding unfair prejudice means an undue tendency to suggest decision on an improper basis). Appellant argued no other basis for unfair prejudice during the hearing.

On appeal, Appellant likens his case to that of *State v. King*, where the Supreme Court found the trial court had abused its discretion in admitting defendant's recorded phone call to demonstrate the defendant's ownership of the phone in question. *State v. King*, 422 S.C. 47, 69, 810 S.E.2d 18, 30 (2017). Appellant argues that the two cases show a similarity in that the probative value of the short phone call was outweighed by the unfair prejudice to *King* stemming from a phone call that was 'riddled with profanity, racial slurs, and impermissible references to King's prior bad acts.' (*Id.*; Brief of Appellant, p. 10).

Appellant fails to discuss the monumental differences between his case and *State v. King*. First, the Supreme Court found an abuse of discretion in *King* based primarily on the trial court's adamant refusal to listen to the phone call prior to ruling the call admissible. (*Id.* at 29). In the case at hand Judge Early listened to the phone call prior to issuing a final ruling. (Order, October 15, 2018). Second, the phone call in *King* gave reference to the defendant's guilt of other prior bad acts similar to the one for which he was being tried. There is no reference to other bad acts by Appellant in his phone call with Ms. Aldrich. Third, the Supreme Court in *King* noted that the phone call was "littered with" racial slurs and profanity by the defendant. Appellant did not use

any racial slurs in his phone call with Ms. Aldrich, and the use of profanity was limited to only a few instances. Fourth, Appellant's and Ms. Aldrich's expressions of their love for each other during the phone call are genuinely rehabilitative to any perceived callousness or vulgarity and would have been beneficial to Appellant at trial. Fifth, even in consideration of all of the unfair prejudices found by the Court in *State v. King*, the court ruled that the error of the trial court in admitting the evidence was still insufficient to warrant reversal of all of defendant's convictions; it only served as an additional basis to reject harmless error as to the attempted murder charge. *Id.* at 30. Appellant's comparison of his case to *State v. King* lacks any meaningful similarity. Lastly, since Appellant did not raise objection to the profanity or the additional portions of the phone call being admitted at trial, nor raise these issues as a basis for unfair prejudice, Appellant cannot now rely upon those issues as a basis for error on appeal. *State v. Smith*, 337 S.C. 27, 34, 522 S.E.2d 598, 601 (1999) (holding an issue is not preserved for review if Appellant did not object at trial on the same grounds raised on appeal).

The phone call presented to the trial court constituted circumstantial evidence of Appellant's consciousness of guilt that dealt directly with the Victim's murder and directly with the Appellant's perception of his defense to that crime. His jubilant reaction was relevant and highly probative evidence of his guilt for the crime. Any perceived prejudice was minimal and speculative, and would fall well short of substantially outweighing the phone call's probative value. As such the court did not abuse its discretion in admitting the phone call at trial.

c) Harmless error

In the alternative, if the trial court's decision is found to be in error, such error is inevitably harmless. The eyewitness testimony of Harry Dukes, Rayquan's substantial corroboration of Mr. Dukes testimony, and the state's other evidence admitted at trial provided a

strong case of guilt against Appellant. The verdict of the jury was not reliant upon or influenced by the jailhouse phone call. Appellant has failed to satisfy the necessary element of prejudice to warrant reversal of the trial court's ruling.

Whether an error in the admission of evidence is harmless generally depends upon its materiality in relation to the case as a whole. *State v. Brown*, 344 S.C. 70, 75, 543 S.E.2d 552, 554–55 (2001) (citing *State v. Reeves*, 301 S.C. 191, 391 S.E.2d 241 (1990). "Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence." *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978); See *State v. Braxton*, 343 S.C. 629, 541 S.E.2d 833 (2001). To warrant reversal based on wrongly admitted evidence, the complaining party must prove resulting prejudice; a showing of prejudice requires that there be a reasonable probability that the wrongly admitted evidence influenced the jury's verdict. *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

The state presented the eyewitness testimony of Mr. Dukes who described in detail the drug deal and shooting between Appellant and Victim. Mr. Dukes was in close proximity of the crime and was familiar with Appellant prior to witnessing Appellant commit the crime. Likewise, though Rayquan was not present at the precise moment of the shooting, he testified consistently with Mr. Dukes and confirmed Appellant's presence during the deal and his actions to run away with the drugs that Appellant had just received. Additionally, the state presented evidence of Appellant's consciousness of guilt in the form of his unrequested surrender to police and his efforts to intimidate or interfere with Mr. Dukes testimony at trial by forcing Mr. Dukes to sign a statement that recanted the information he provided to police. These actions demonstrate a consciousness of guilt in entirely different ways and they likewise contribute greatly to the overall strength of the state's case. Given the other evidence presented at trial,

Appellant cannot demonstrate resulting prejudice from the admission of the jailhouse phone call. To the extent the admission of this evidence constituted error on the part of the trial court, such error is harmless as a matter of law.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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July 24, 2020

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STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
The Honorable Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

RAKEEM J. J. WHITE,

APPELLANT.

Appellate Case No. 2019-000403

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Respondent agrees with Appellant's proposal for the Record on Appeal, which includes:

(1) From September 12, 2018 Hearing: Tr. 1; Tr. 3-13;
(2) From the October 15-17, 2018 Trial: Tr. 1,; Tr. 30-98; Tr. 102-158; Tr. 160-188; Tr. 191-207; Tr. 216-218; Tr. 222-253; Tr. 255-273; Tr. 279-280;
(3) From September 12, 2018 Hearing: Court's Exhibit No. 1 (DVD of Jail Call);
(4) Motion to Suppress filed September 4, 2018;
(5) Order Denying Motion to Suppress filed October 15, 2018;
(6) True-Billed Indictments;
(7) Sentence Sheets

Respondent requests that the following additional portions of the transcript be included in the Record on Appeal:

(1) From the October 15-17, 2018: Tr. p. 6.

I certify that this designation contains no matter that is irrelevant to this appeal.

July 24, 2020.

s/ W. Joseph Maye
W. JOSEPH MAYE
Assistant Attorney General

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CERTIFICATE OF SERVICE

I, Donna D'Alessio, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Initial Brief of Respondent, Designation of Matter, and Certificate of Service has been forwarded to Appellant's counsel, Lara M. Caudy, Esq., via email today, July 24, 2020 to lcaudy@sccid.sc.gov, and to her assistant, lmatthews@sccid.sc.gov, and by depositing one copy of the same in the United States mail, postage prepaid, and addressed to his attorney of record: Lara M. Caudy, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201.

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

This 24th day of July, 2020.

Donna D'Alessio

Donna D'Alessio,
Legal Assistant to W. Joseph Maye
Assistant Attorney General