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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Edgefield County
The Honorable Eugene C. Griffith, Circuit Court Judge

Opinion No. 2021-UP-254 (S.C. Ct. App. filed July 7, 2021)
Lower Court Case No. 15-GS-19-00044

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

WILLIAM C. (BILLY) SELLERS,

Petitioner.

Appellate Case No. 2018-001667

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CONTENTS i

PETITIONER'S QUESTIONS PRESENTED 1

RESPONDENT'S COUNTER
PRESENTATION OF QUESTIONS PRESENTED 1

STATEMENT OF THE CASE 2

RESPONDENT'S STATEMENT OF FACTS 2

STANDARD OF REVIEW 9

ARGUMENT 10

I.

Judge Griffith's instruction on malice could not be interpreted to create an improper presumption, an impermissive inference, or shift the burden 10

II.

The trial court issued an instruction on accomplice liability in accord with the evidence presented trial 15

Harmless Error 21

CONCLUSION 25

PROOF OF SERVICE

PETITIONER'S QUESTIONS PRESENTED

I. Whether the Court of Appeals erred by not finding reversible error where it acknowledged the trial court's instruction that malice "is the intentional doing of a wrongful act without just cause or excuse" was needlessly confusing particularly where the charge also could reasonably have been interpreted as shifting the burden to petitioner to prove a justification or excuse for his wrongful acts thereby rendering the instruction violative of petitioner's Due Process constitutional rights?

II. Whether the Court of Appeals erred by finding no abuse of discretion in the trial court instructing the jury on accomplice liability, "the hand of one is the hand of all," since it was improper to instruct accomplice liability on the theory that the jury may believe some of the evidence and disbelieve other evidence, and it improperly invited speculation as to another person being the shooter and petitioner being guilty as a participant where the evidence did not justify this instruction under the precedent of State v. Washington, 431 S.C. 394, 848 S.E.2d 779 (2020)?

III. Whether the Court of Appeals erred by finding no error in the admission of State's Exhibits 58-59, the sentencing sheets, since they were irrelevant to allegedly prove crucial state's witness Phillip Griffin received no consideration from the state for his testimony against petitioner?

RESPONDENT'S COUNTER PRESENTATION OF QUESTIONS PRESENTED

I. Whether the Court of Appeals correctly affirmed Judge Griffith's malice instruction where he did not abuse his discretion but instructed the jury on the current and correct statement of the law pursuant to State v. Bell, 305 S.C. 11, 19 406 S.E.2d 165, 170 (1991); regardless, any instruction on malice was harmless beyond a reasonable doubt because Judge Griffith's specific instruction on malice and his instruction as a whole repeatedly explained the State had the burden of proof, including on malice; and, malice was not an issue in this case but the issue was whether Seller's was one of the perpetrators of the victim's murder?

II. Whether the Court of Appeals correctly affirmed Judge Griffith charging accomplice liability where there was evidence in the record from which the jury could find appellant Sellers committed the crime with another or others; and regardless, the instruction was harmless where there was overwhelming evidence of appellant's guilt?

III. Whether the Court of Appeals correctly affirmed Judge Griffith when he did not abuse his discretion in admitting sentencing sheets of a testifying witness when the evidence was relevant to an issue in the case, and the appellant opened the door to their admission through his cross-examination of the witness; and, regardless, the admission of this evidence was harmless given the evidence was similar to other evidence not objected to and given the other overwhelming evidence of appellant's guilt?

STATEMENT OF THE CASE

On October 10, 2014, petitioner William "Billy" Sellers ("Sellers") and another or others, murdered Johnny Hydrick in Edgefield County. Sellers was arrested October 30, 2014. On January 12, 2015, the Edgefield County Grand Jury indicted Sellers for murder. Bennett Casto and Elizabeth Fullwood, Esquires, represented Sellers. Deputy Solicitor Suzanne Mayes and Assistant Solicitor Robert McNair prosecuted the case. Seller's proceeded to a jury trial from August 27-31, 2018, before the Honorable Eugene C. Griffith, Jr. At its conclusion, the jury found Sellers guilty of murder. Sellers had a prior "strike" pursuant to S.C. Code Ann. §17-25-45 and was sentenced to life without parole (LWOP). Sellers directly appealed raising 3 issues. On July 7, 2021, the Court of Appeals affirmed in an unpublished *per curiam* opinion. State v. William C. (Billy) Sellers, 2021-UP-254 (Ct. App. filed July 7, 2021). A petition for rehearing was subsequently denied. Sellers then filed a Petition for Writ of Certiorari in this Court raising the same 3 issues. This is Respondent's Return to Petition for Writ of Certiorari.

RESPONDENT'S STATEMENT OF FACTS

Johnny Hydrick ("Victim") lived in a rural area, Trenton, in Edgefield County. He left his doors unlocked even at night, kept a .38 pistol with him at all times, and usually slept on his living room sofa with his pistol tucked under the cushions. He had been in a car accident, which left him disabled and in steady receipt of prescription pain medication. Victim last filled his prescription on October 6, 2014, receiving 120 twenty-milligram Oxycodone tablets. Victim was on probation and wore an ankle monitor tracking his movements. (R. 237-39; 35-36; 251-53; 63–64).

On October 11, 2014, after a day of no contact from Victim, Victim's brother Richard went to Victim's home to check on him. Victim's front door was closed and unlocked and his car was in the yard. Stepping inside, Richard found Victim dead on the floor and called 911. Edgefield

County deputies arrived at the scene and found no signs of forced entry. There was blood present in "several locations all throughout the house." Victim's hands were bound with duct tape; he was in his underwear, and he had been covered with a blanket. Victim had suffered several injuries to the head. In addition to his hands being bound with duct tape, officers observed handprints near both of his knees. Another piece of duct tape was found lying on the blanket covering Victim's lifeless body. Victim's cause of death was listed as closed head injury "due to a beating." He suffered multiple blunt force injuries to the head including lacerations to the left eyebrow and a fractured nose, the latter requiring significant force. (R. 36-40, 32; 52-55; 86-92; 384–86).

Richard last spoke with Victim on the night of October 9, 2014. The motion sensor on Victim's ankle monitor recorded Victim stopped moving at 1:43 AM on October 10, 2014. He never moved again after that, not even by the slightest vibration. (R. 67-72; 74-76).

While processing the scene, officers found blood transfer and spatter near the body, blood spatter on a nearby couch and vacuum cleaner, on the window blinds behind the couch, and more on the bed in a bedroom. The couch cushions had been removed by someone and wrapped in a sheet and part of the couch had been cut into. There were several more blood spatters on the refrigerator and blood transfers on the kitchen counter, 2 ceramic jars, on a basket, and on duct tape atop the refrigerator. There was also blood transfer on a kitchen light switch. All the blood was determined to be Victim's, though some areas showed another, unidentifiable, minor contributor. Officers could not recover any fingerprints, only Victim's palm print in 1 location: the non-adhesive side of a bloodied piece of duct tape. No other DNA was recovered from any sampled surface. (R. 98-99; 101-04; 120; 418-22; 427-31; 111-14; 115; 368-70; 153–54; 164).

Victim's guns, his prescription Oxycodone pills, and some change were missing from the home. Victim owned 3 shotguns and a rifle in addition to his pistol. Police found 3 boxes of

shotgun shells when processing the scene, but no guns. Victim also had a toy slot machine he kept in his kitchen area. Victim would deposit a coin in the slot machine each day. This was found busted into pieces in a room in the back of the house with other broken items. It was not broken when Richard saw it at Victim's home a day or so before the murder. (R. 143; 43-47; 127; 119).

Police investigated Victim's existing relationships. Victim had been seeing a woman, Jessica, but she lived with her boyfriend Travis. Jessica would buy pills from Victim, and Victim would drive Jessica and Travis around because they had no car. Investigators learned Travis and Sellers were friends and co-workers. Sellers drove Travis to work each day. On October 16, 2014, an investigator made contact with Sellers at his home in Aiken County. Sellers said he, Travis, and Shawn Nicholson, scrapped metal across the street from Victim's home on October 7th or 8th, 2014. Sellers also said "he knew Johnny [Victim] and would buy pills from him mostly on the weekend." This placed Sellers near Victim's home a day or two before the murder. Cell phone records also placed Sellers near Victim's home from 8:17 to 8:55 AM October 8th. Shawn corroborated he, Sellers, and Travis were scrapping near Victim's at that time. Shawn recalled Travis and Sellers talking trash about Victim, and something about "hitting a lick." Records also showed Sellers went to a metal recycling yard on Edgefield Highway, in a red van on October 7th & 8th, 2014, and sold scrap metal. (R. 40-41; 266-67; 490-95; 462; 578-86; 257-60).

Shawn and Sellers were neighbors. On the evening of October 9th, Sellers came over to Shawn's allegedly due to an argument with his girlfriend about meth. Sellers was on the phone, but Shawn did not know with whom. Shawn went to bed about 10:00 PM, but awoke at midnight, and Sellers was gone. Shawn called Sellers, but Sellers did not answer the phone. Between 2:00 and 3:00 AM, Sellers appeared at Shawn's door. Shawn let him in. This is corroborated by a phone call Shawn received from Sellers at 2:52 AM. Sellers' van was missing and Sellers was acting

uncomfortably. Sellers told Shawn he parked the van down the street so his girlfriend couldn't see it. Sellers did not say where he had been, and Shawn "never really asked." (R. 588-97; 607).

Another acquaintance of Sellers, Joey Lowe, was approached by Sellers in October 2014 who wanted to know if [Joey] wanted to "do a lick with him" on a disabled man who would be an "easy target." Lowe refused. Then, at 2:48 AM on October 10th, Sellers called Lowe asking to trade some pills, a shotgun, and a rifle Sellers had stolen for some crystal meth. Lowe refused. Sellers sounded out of breath and told Lowe during this phone call that "he would have given everything he had to not get a beating like that." The comment turned Lowe's stomach. The next day, Lowe heard on the news someone had been killed and "picked up enough of the pieces of the puzzle" to go to Aiken County police a couple of days later. Lowe was directed to Edgefield County police on October 24, 2014. He began cooperating with them. (R. 630-38; 657; 513; 650).

On October 22, 2014, during the execution of a search warrant for drugs, officers in Aiken County seized a gun connected to Victim's murder. The gun, a .38 revolver, was seized from the home of Hakim Talib, known as "Jersey." Talib sold weed to Sellers. Sellers would call Talib looking for a guy named "Gee" that Sellers worked with and Talib went to high school with. Talib testified that in October 2014, Sellers came to Talib's home in his red van to try to sell Talib "a shotgun, pills, and a .38." Talib refused to buy the shotgun or pills but gave Sellers some weed and $30 for the .38. Victim's niece, who lived with him from time to time, identified the .38 seized from Talib's home as the same pistol Victim kept on him at all times. Edgefield County police recovered the gun from Aiken County police and sent it to SLED. Victim's DNA was located on the gun by SLED. (R. 138-40; 247-78; 291-93; 334; 295-97; 299-301; 237-38; 434-35).

Police also extracted data from Sellers' phone. Phone records for Sellers and for Shawn Nicholson were examined for the period of time beginning October 9, 2014, at 7:46 PM through

October 10, 2014, at 9:52 AM. Contact information for "Gee," and any calls concerning him, had been deleted from Sellers' phone. At least one series of text messages taking place between 3:00 and 4:00 AM on October 10 had been deleted as well. Sellers' phone also showed a gap of activity on October 10th from 12:17 AM to 2:11 AM, corresponding with the "no-movement" on Victim's ankle monitor. Also during this time, calls made from Shawn Nicholson to Sellers were not reflected on Sellers' phone records, indicating Sellers' phone was off during this time. On October 10th at 2:36 AM, Sellers used his phone to Google the term K57. Victim's prescription pills were imprinted with the identifier K57. (R. 553-56; 558; 562-69; 603; 605; 254-56).

An inmate, Phillip Griffin, met Sellers for the first time when they became cellmates at the Edgefield County jail on November 21, 2014. The more they spoke, the more Sellers talked about the basis for his own charges. "His story would change a little bit" each time "and he kind of started putting himself involved in the case." At first, Sellers was inquisitive about DNA and said he was worried because he let somebody borrow his van and he was concerned there was blood inside it. Sellers said a guy named Gee borrowed his van and returned it around 2:00 or 3:00 that morning. Sellers also said that in September 2014 "the guy Johnny [Victim] fell down his steps and kind of broke his nose" and Sellers tried to help him into the van. Victim refused to go to the hospital, but Sellers worried Victim's blood may be in the van. Sellers said he wore blue jeans, black work boots, and a white t-shirt during the incident but he threw away the t-shirt "because even if he was going to bleach it, that the stains wouldn't come out." (R. 211; 200-05).

In November, after his arrest, Sellers asked to speak to the investigator. Sellers asked: "Have you found anyone else besides me who did this or do you feel like it's just me?" He wanted to know if another person had been arrested. On November 21, 2014, officers processed the red van for possible blood. None was visible to the naked eye. A presumptive test of the van's interior

was conducted with LCV. A small part of the interior driver's side door above the arm rest tested presumptively positive for the presence of blood and 3 small areas on the driver's floor mat and 1 more area on the driver's seat near the seat adjuster did too. (R. 502-05; 347-54).

Eventually, Sellers told his cell-mate Griffin something different: that he got in a fight with his old lady, left the house, and met up with his friend Gee. Sellers and Gee went to Wal-Mart. Then they drove down Highway 19 to Victim's house to rob him of his prescription pills and any money he had on hand. Sellers ultimately told Griffin:

> They were in his van and they drove down 19 and went close to his house, like an abandoned lot about a hundred, 150 yards away from where Johnny lived and that's where they parked and they went to his house. They parked there. They went to his house and they taped him up and was asking him where the pills were and they were pistol whipping him until he told them where the pills were.

Sellers "said when he left, the guy was still alive," leaving him surprised it was a murder. They did get the pills. Griffin did not know Sellers, the victim, the friend identified only as Gee "his weed man," or a person Sellers named only as Gee's cousin Jersey. Griffin recalled Sellers told him all of this prior to Sellers' preliminary hearing. Griffin went to an investigator with the information. Griffin also made efforts to be moved to another cell in order to avoid Sellers getting his discovery and Griffin "being in a room with him where he had information about [Griffin] talking to the investigators." Griffin's contact with police provided the first specific information a revolver had been involved in the killing. (R. 205-07; 211-13; 209-10; 212-13; 235; 507).

Dennis Amerson was also housed in the jail at the same time as Sellers. In on a probation violation, Amerson met and struck up a conversation with Sellers during rec time. Sellers told Amerson "some drug dealer had got[ten] caught . . . in Aiken or somewhere like that and he had told on him," leaving Sellers "worried that they were gonna find stuff in his van to convict him of" murder. Sellers hoped his wife would not "find out that he had done it." Sellers never named the

victim or said where he lived, but said that he "and some of his friends were scrapping metal across from" where Victim was murdered and that they returned later that day and tied up and beat the victim. Sellers said they took a slot machine, some pills, and some change from Victim's home but got rid of those items. Amerson had completed rehab, had no experience with Edgefield County or anyone living in it, and felt compelled to go police with this information because "[m]urder is totally different" than the drug charges he previously faced. (R. 175-80; 182-84).

Another cellmate of Sellers, Wesley Omar Brown, was arrested mid-January 2015. As they got to know each other, Brown learned he and Sellers had a mutual friend in Shawn Nicholson. Sellers told Brown that he and Shawn were playing a game that night and Shawn was his alibi, but "that a guy named Jersey was the reason why he was locked up." Sellers did not tell Brown what happened as he had done with Griffin and Amerson. Sellers negotiated with Brown, asking him "to go to the investigator and basically tell the investigator that Jersey was the one who killed the guy." Brown said he would consider it and went to sleep. When he awoke, Sellers gave Brown a piece of paper where Sellers had written down what he wanted Brown to say. Brown retorted if he "was gonna do it, [he] needed a little bit more detail." Sellers said "they" beat an old white guy with a .38, but never named the other person involved. (R. 440, ln. 14 – 443, ln. 5; 443, ll. 10-23; 445, ll. 3-23; 446, ln. 10 – 447, ln. 20). The statement Sellers wrote for Brown said:

> Sometime in the middle of October I went to serve some reefer to a guy named Jersey, a/k/a Hakim Talib. After I served him, he began to ask me if I was interested in buying a shotgun, a .38 revolver or some pain pills. He said he had beat some dude's ass who owe him some money. Beat him unconscious with a .38 he was trying to sell so he took the guy's shotgun and pills as payment. Told me that had it been him he'd have given everything that he had to avoid a beating like that. Jersey said he had his cousin handle it like pros, that there was no way it would come back on them. I said I didn't need anything like that. A couple of weeks later I was visiting a friend who told me Jersey got busted with a pound of reefer and some gun. I went to his house off Alfred Street and he told me that he was gonna get probation he thought because he told the police about the guy he beat who ended up dying and set up a white boy he used to sell reefer to. Jersey said he found out

> from the white boy dude named Billy that he was questioned by the Edgefield police about the death of his pill guy so Jersey had his cousin who was serving the white guy at the time start putting certain information in the white boy's phone but didn't say what. It said that the white boy was a duck and trusted anyone. He said he was a meth head and was an easy fall guy. Jersey then asked if I could get him right with some reefer and I said I'll see what I could do. I'll see what was up.

(R. 448, ln. 19 – 449, ln. 18). Brown had never met Jersey and he did not know who Gee was, though Sellers implied that Gee planted incriminating text messages into Sellers' phone to make it look like he did it. Brown turned the letter Sellers drafted over to an investigator and was removed as Sellers' cellmate that day. A handwriting analyst at SLED opined that Sellers indeed wrote the document Brown turned over. The information in the letter about the .38 formed the second reference to the revolver used in the killing, and gave rise to Edgefield investigator's contacting Aiken County law enforcement for information about Hakim "Jersey" Talib, who had already been arrested on drug charges. The .38 later identified as Victim's had already been seized by Aiken County law enforcement in the drug raid. (R. 450, ll. 7-25; 451; 485; 509-12).

STANDARD OF REVIEW

Appellate courts review only errors of law and will not reverse a trial court's decision concerning jury instructions unless the trial court abused its discretion. Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000). "An abuse of discretion occurs when the [trial] court's decision is unsupported by the evidence or controlled by an error of law." State v. Garris, 394 S.C. 336, 344, 714 S.E.2d 888, 893 (Ct. App. 2011). This Court "must consider the [trial] court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Adkins, 353 S.C. 312, 577 S.E.2d 460, 463 (Ct. App. 2003). "If as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000) (citing State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)).

I. Judge Griffith's instruction on malice could not be interpreted to create an improper presumption, an impermissive inference, or shift the burden.

Sellers complains about the malice instruction; however, as will be discussed herein, malice was not even an issue in this case. The victim was duct taped, beaten, and pistol whipped [tortured] throughout his home until he told where his prescription pills were, and his pills, guns and coins were stolen. There was no question Victim was murdered, i.e. killed with malice. The issue before this jury was the identity of Victim's killers and whether Sellers was one of the perpetrators. (R. 32, 35-41; 43-47; 52-53; 55; 63-64; 67-72; 74-76; 86-92; 98-99; 101-02; 120, 104, 111-15; 119; 127; 138-40; 143; 153-54; 164; 175-78; 182-84; 200-07; 209; 211-13; 224; 235; 237-39; 247-78; 291-93; 295-97; 299-301; 334; 347-54; 368-70; 384–86; 418-22; 427-31; 434-35; 440-43; 445-51; 462; 485; 490-95; 502-05; 507; 509-13; 553-56; 558; 562-66; 568-69; 578-86; 588-97; 603, 605; 607; 630-38; 650; 657; See also Defense closing argument R. 689-725).[1]

Regardless, Judge Griffith instructed the jury "that malice is defined as hatred, ill will, hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse or with an intent to inflict danger or under the circumstances which the law infers an evil intent or malice." (R. 741, ll. 2-7). Judge Griffith repeatedly instructed the jury throughout his charge the State had the burden of proof on each element of the offense of murder, including malice and criminal intent, and Sellers did not have to prove anything and was presumed innocent until the State proved him guilty beyond a reasonable doubt. (R. 731, ln. 21-732, ln. 8; 732, ln. 21-733, ln. 4; 736, ln. 24-737, ln. 24; 738, ln. 12-739, ln. 7; 740, ll. 11-15; 740, ln. 21-742, ln. 3; 743, ll. 12-17; 743, ln. 18-744, ln. 9; 744, ln. 21-745, ln. 15). Judge Griffith did not charge the inference

[1] Throughout closing argument, Seller's counsel refers to Victim's death as a "murder" and argues there is no credible evidence or proof beyond a reasonable doubt that Sellers was involved in the "murder." There was no argument the State did not prove malice or murder, just that there was insufficient proof Sellers was a participant in the "murder." (R. 689-725).

of malice arising from the commission of a felony dangerous to human life such as armed robbery, burglary or kidnapping, which was applicable in this case, or from the use of a deadly weapon. Lowery v. State, 376 S.C. 499, S.E.2d (2008); Gore v. Leeke, 261 S.C. 308, 199S.C. S.E.2d 755 (1973); State v. Belcher, 385 S.C. 597, 685 S.E2d 802 (2009).[2] If one reads Judge Griffith's entire charge [**R. 731-48**], it is inescapable the charge was neutral and favorable to Sellers. Adkins, 353 S.C. 312, 577 S.E.2d at 463 (Court must consider jury instructions as a whole in light of the evidence and issues presented at trial); Aleksey, 343 S.C. at 27, 538 S.E.2d at 251 (jury instructions will be considered as a whole and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error); Smith, 315 S.C. 547, 446 S.E.2d 411 (same). And the jury knew from the instruction as a whole [**R. 731-48**], the act being referred to was the unlawful act or acts against Victim. The jury was not confused by the instruction. Applying the jury instruction to the evidence, the burglary of a victim's home, kidnapping him, beating and torturing him to reveal the location of his medication, and then stealing his valuables and leaving him to die, **is the intentional doing of a wrongful act without just cause or excuse.**

"The law to be charged must be determined from the evidence presented at trial." State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391 (2001). In doing so, "the trial judge must charge the correct and current law of the state." State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805 (2001). A trial judge is only required to charge the current and correct statement of the law of South Carolina. State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996). The substance of the law is what must be charged, not any particular verbiage. State v. Burkart, 350 S.C. 252, 565 S.E.2d 298 (2002)

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[2] This case was tried before State v. Burdette, 427 S.C. 490, 501, 832 S.E.2d 575, 581 (2019) (doing away with inference of malice from a deadly weapon in all cases), overruling Belcher, *supra*, and State v. Smith, 430 S.C. 226, S.E.2d (2020); and, *there was no evidence reducing this crime to anything less than murder*. This instruction as a whole was overly beneficial to Sellers.

Malice is an element of murder. S.C. Code Ann. § 16-3-10. Instructing any jury on murder compels an explanation of the term malice. "In law, malice is a term of art, importing wickedness and excluding a just cause or excuse." State v. Doig, 2 Rich. 179, 31 S.C.L. 179, 182 (Ct. App. 1845). "This is substantially the famous definition of malice[, which,] in common acceptation, means ill will against a person, but in its legal sense it means a wrongful act done intentionally, without just cause or excuse." State v. McDaniel, 68 S.C. 304, 47 S.E. 384, 387 (1904); State v. Harvey, 220 S.C. 506, 514, 68 S.E.2d 409, 412 (1951)(affirming same definition); State v. Cain, 184 S.C. 388, 399-400, 192 S.E. 399, 399-400 (1937) (same). "The court here was instructing the jury with reference to murder, and malice as an essential ingredient." McDaniel, *supra.*

Malice "is the intentional doing of a wrongful act without just cause or excuse." State v. Bell, 305 S.C. 11, 19 406 S.E.2d 165, 170 (1992). (R. 741, ll. 3-5). Judge Griffith charged the current and correct statement of the law. Foust, 325 S.C. 12, 479 S.E.2d 50. Therefore, Judge Griffith could not have abused his discretion and the Court of Appeals could not have erred in affirming Judge Griffith on this issue, because the charge did comport with the instruction approved by this Court in Bell. William "Billy" Sellers, *supra* (Unpublished).

Sellers argues this instruction imposes upon the defendant a burden to demonstrate the existence of just cause or excuse. (BOA, p. 17). Sellers is wrong. This same argument was raised in Bell and rejected because the charge is not burden shifting and Judge Griffith, like the trial judge in Bell, repeatedly instructed the jury the State must prove malice and that the defendant, Sellers, had no burden to prove anything. **(R. 731, ln. 21-732, ln. 8; 732, ln. 21-733, ln. 4; 736, ln. 24-737, ln. 24; 738, ln. 12-739, ln. 7; 740, ll. 11-15; 740, ln. 21-742, ln. 3; 743, ll. 12-17; 743, ln. 18-744, ln. 9; 744, ln. 21-745, ln. 15).** The Court in Bell stated and held as follows:

> Appellant complains the trial judge improperly defined malice as "the doing of a wrongful act intentionally and without just cause or excuse."

> He claims the instruction created an unconstitutional burden shifting presumption. We disagree. The trial judge's definition of malice is correct, State v. Judge, 208 S.C. 497, 38 S.E.2d 715 (1946), and the charge given is devoid of any presumption. Moreover, the trial judge clearly instructed the jury it was the state's burden to prove malice.

Bell, 305 at 19, 406 S.C. at 170. Given the entire jury instructions, the jury could not have believed Sellers had the burden of proof **on any issue**, including this one. **(R. 731-48).** Bell, (propriety of a jury charge is measured by what a reasonable juror would have understood the charge to mean).[3]

This instruction's language, considered as a whole, which this Court will do, cannot be interpreted as burden-shifting. **(R. 731-48).** Aleksey, 43 S.C. at 27, 538 S.E.2d at 251; State v. Stanko, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013)("Jury instructions should be considered as a whole, and if as a whole, they are free from error, any isolated portions that may be misleading do not constitute reversible error.").[4] Malice is "the intentional doing of a wrongful act without just cause or excuse." (R. 741, ll. 3-5). Bell, 305 S.C. at 19; 406 S.E.2d at 170; McDaniel, 68 S.C. 304, 47 S.E. 384; Harvey, 220 S.C. at 514, 68 S.E.2d at 412; Cain, 184 S.C. at 399-400, 192 S.E. at 399-400. The instruction includes no permissive inference. Its plain meaning cannot reasonably be understood to urge or require the jury "to infer an element of the offense if the State proved certain predicate facts." *See* Lowry v. State, *supra.* The instruction cannot be construed to drive the jury's interpretation of facts presented. *See* Belcher, 385 S.C. 597, 685 S.E.2d 802 (where

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[3] Even where there is a presumption in a jury instruction, the first inquiry is a determination of the nature of a presumption. Sandstrom v. Montana, 442 U.S. 510, 514 (1979) (internal citations omitted), *modified by* Boyde v. California, 494 U.S. 370 (1990). "That determination requires careful attention to the words actually spoken to the jury, for whether a defendant has been accorded his constitutional rights depends upon the way in which a reasonable juror could have interpreted the instruction." Id. The "use of evidentiary presumptions in a jury charge that have the effect of relieving the State of its burden of proof beyond a reasonable doubt as to every essential element of the crime" are prohibited. Lowry v. State, 376 S.C. 499, 505, 657 S.E.2d 760, 763 (2008). That did not occur here. **(R. 731-48).**

[4] Stanko was *overruled on other grounds by* State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019).

evidence is presented reducing, mitigating, excusing or justifying a homicide caused by the use of a deadly weapon, juries shall not be charged with the permissive inference malice may be inferred from the use of a deadly weapon); *see also* Burdette, 427 S.C. at 501, 832 S.E.2d at 581 (implied malice instruction "allowed the jury to use the improperly charged inference of malice from the use of a deadly weapon to find Burdette guilty of voluntary manslaughter"). For this reason, Sellers' cited authority cannot be paralleled with the instruction in his case. Instead, the instruction is permissible because it does not relieve the State of proving any element of the offense of murder beyond a reasonable doubt. *See, e.g.*, Lowry. Judge Griffith repeatedly instructed the jury the State had the burden of proof on every element of murder, including malice **and** criminal intent, and Sellers did not have to prove anything; and, his not testifying or presenting a defense could not be considered or discussed in any way. **(R. 730-48).**

Moreover, this instruction contains no novel presumption. Malice is the intentional doing of a wrongful act without just cause or excuse. Belcher, 385 S.C. at 613, n. 5, 685 S.E.2d at 810-11, n. 5, *quoting* State v. Fennell, 340 S.C. 266, 275, n. 2, 531 S.E.2d 512, 517, n. 2 (2000).(R. 741, ll. 3-5). The entire instruction enforces the axiomatic presumption that a defendant is innocent until proven guilty beyond a reasonable doubt by the State. In re Winship, 397 U.S. 358, 364 (1970). Reasonably read, the only presumption which can be parsed from the instruction is that there can, in fact, be just cause or excuse for the act committed. In other words, Sellers is presumed innocent of the offense **unless and until the State meets its burden of proving there was the intentional commission of a wrongful act without any just cause or excuse.** Id.; *see* Harvey, *supra*; S.C. Code Ann. § 16-3-10. Thus, the instruction, when read as a whole, declines to shift any burden to the defendant. Aleksey, 343 S.C. at 27, 538 S.E.2d at 251; Stanko.

Further, this instruction was harmless on this record where the evidence of malice was overwhelming. Arnold v. State, 309 S.C. 157, 430 S.E.2d 834 (1992)(presumption of malice charge was harmless where there was overwhelming evidence of malice); Stanko, 402 S.C. at 260-65, 741 S.E.2d at 712-715 (malice instruction was harmless where there was overwhelming evidence of malice); Belcher, 385 S.C. 597, 611-12, n. 8, 685 S.E.2d 802, 809-10 (noting where an individual commits an armed robbery an erroneous inference of malice instruction would be harmless); Burdette, 427 S.C. 490, 498, 832 S.E.2d 580 ("When considering whether an incorrect jury instruction constitutes harmless error, we are required to review the trial court's charge to the jury in its entirety.").[5] All of the evidence showed Victim was murdered pursuant to a burglary, kidnapping, and armed robbery. The crime was motivated by the theft of Victim's prescription pills, his pistol, his long guns, and his money. Victim's hands were duct taped, he was beaten [tortured] throughout his home, forced to reveal where his pain killers were, a couch cushion was cut open, his slot machine broken open, and his personal items were stolen from his home. He died from the beating inflicted to accomplish the armed robbery. Id. Malice was not the issue in this case; identity was the issue. Arnold; Stanko. *See also* pg. 24 *infra.*

II. The trial court issued an instruction on accomplice liability in accord with the evidence presented at trial.

Judge Griffith instructed the jury on the law of accomplice liability: ". . .if two or more people are acting together assisting each other in committing the offense, the act of one is the act of all . . . . However, mere presence at the scene of the crime is not sufficient to convict one as a principal under the theory of aiding and abetting." (R. 742, ln. 4 – 743, ln. 7). The State requested the charge and Sellers opposed, arguing there existed "no competent evidence that there was

[5] Belcher was also *overruled on other grounds* by Burdette, 427 S.C. at 501, 832 S.E.2d at 581 (doing away with inference of malice from a deadly weapon in all cases).

anyone else involved. There are references to other people but they don't arise to the level of being more than a suggestion or innuendo[.]"(R. 662, ln. 4 – 663, ln. 15). Interpreting Wilds v. State, 407 S.C. 432, 756 S.E.2d 387 (Ct. App. 2014), Judge Griffith declined to accept Sellers' position, finding that "if believed," the evidence showed "there's more than one person there exacting the beating that took the life of Mr. Hydrick." (R. 663, ln. 16 – 666, ln. 2).

"The law to be charged must be determined from the evidence presented at trial." Knoten, 347 S.C. at 302, 555 S.E.2d at 394. "A charge is sufficient if, when considered as a whole, it covers the law applicable to the case." State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996). "If there is any evidence to support a charge, the trial judge should grant the request." Shuler, 344 S.C. at 632, 545 S.E.2d at 819. However, "an alternate theory of liability may only be charged when the evidence is equivocal on some integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact." Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011). So long as there is evidence from which the jury could conclude that Sellers acted with another person to effectuate the robbery and beating, the charge is appropriate. Id. at 239, 712 S.E.2d at 440 ("testimony offered at trial indicating there may have been two robbers armed with handguns is sufficient to warrant the jury charge").

Here, competent evidence existed from which the jury could conclude Sellers did not act alone. The State presented testimony from one of Sellers' cellmates that Sellers asked him to go to an investigator and say a guy named Jersey confessed to the murder. Sellers went so far as to draft a statement with this information and gave it to the inmate while he slept. (R. 443, ln. 1 – 445, ln. 18). In response, the inmate asked for more detail, and Sellers told him "*they* did it [beat him] with a .38." (R. 445, ln. 20-446, ln. 24; R. 447, ll. 17-20)(emph. added). Sellers never named

the other person or persons, but wanted his cellmate to pin it on Jersey. (R. 446, ln. 25-447, ln. 4). Sellers also said *they*, Sellers and another, took some pills from Victim's home. (R. 447, ln. 7-14).

Sellers told another cellmate that he got in a fight with his old lady, picked up a friend, and *they* went "to the guy's house" where "*they* taped him up and was asking him where the pills were and they were pistol whipping him until he told them where the pills were." (R. 205, ll. 18-24; 207, ll. 8-14)(emph. added). This cellmate's understanding was that "*they*"—meaning Sellers and "a guy named Gee"—robbed and beat the victim. (R. 206, ll. 1-21; 211, ll. 22-24)(emph. added). Sellers told his cellmate that during the course of the robbery he was asking the victim "where the pills were." (R. 212, ll. 1-11). Yet a third fellow inmate's account of what Sellers admitted to him indicated there was a "they" who committed the crimes. (R. 177, ln.19-179, ln. 11).

Sellers argues that because the co-defendant or co-defendants were unknown and no charge levied for conspiracy, that the accomplice liability instruction should not have been given because any evidence to support the charge was speculative at best. An indictment for conspiracy or of a co-defendant is not part of the recipe, and this proposition falls flat given the evidence. Barber v. State, *supra.* The cellmates' testimony proved more than speculative, finding corroboration in their references to the .38. Their statements provided the first and second connections to a gun used during the beating. This led to the discovery of Victim's gun, from Jersey, who bought the .38 from Sellers. Victim's DNA was found on that gun. (R. 237-38; 299-301; 509-12; 507; 434-35).

Sellers insufficiently premises his argument on Wilds v. State, wherein an accomplice liability instruction was found prejudicial because it was issued "in response to the jury's question regarding whether a conviction meant it found Wilds actually pulled the trigger, and because the jury returned guilty verdicts after receiving the instruction[.]" 407 S.C. 432, 439, 756 S.E.2d 387, 391 (Ct. App. 2014). As Sellers' trial judge recognized, however, this case is distinguishable from

Wilds. (R. 664, ln. 18 – 665, ln. 15). Wilds' identity as the shooter was known in that case. 407 S.C. at 439, 756 S.E.2d at 390. As a result, accomplice liability was not a fact in dispute. In contrast, Sellers' case meets the standard enunciated in Barber, where "the sum of the evidence presented at trial . . . was equivocal" as to who bludgeoned the victim and robbed him of his pills and guns. 393 S.C. at 236, 712 S.E.2d at 439. Given the totality of the evidence, the accomplice liability instruction was not charged in error. State v. Washington, 431 S.C. 394, 407, 848 S.E.2d 779, 786 (2020), *quoting* Barber v. State, 393 S.C. at 236, 712 S.E.2d at 439.

III. The trial court admitted Phillip Griffin's sentencing sheets during re-direct examination because they were relevant to the topic of cross-examination.

Phillip Griffin was one of Sellers' cellmates at the Edgefield County Jail. (R. 201, ll. 14-24). He was arrested in November 2014 on a charge of grand larceny, burglary 2nd degree (violent), PWID meth, and marijuana possession. (R. 221–23). Griffin pled guilty to grand larceny and burglary 2nd degree, the State dropped the 2 drug charges, and he received an active sentence of 18 months with probation. He served 11 months. (R. 226, ln. 18–227, ln. 23).

The court curtailed the State's direct examination of Griffin when the State began to ask about the type of sentence he received at his guilty plea, which took place in 2015. (R. 200). Then, on cross-examination, Sellers' counsel thoroughly visited the sentencing exposure Griffin faced on all charges, as well as the collateral statutory consequences of those charges. (R. 221–30). He was cross-examined on the charges to which he pled, the charges dropped, and the sentence received. (R. 226–30). Sellers' counsel probed Griffin to respond that he pled guilty because he did not want to face the maximum potential penalty. (R. 224–28). Griffin twice denied that leniency in sentencing was a motivation for him contacting police about Sellers. (R. 225-26; 228). He later answered yes, that when he was in trouble, he talked to law enforcement. (R. 229).

On re-direct examination, and over Sellers' objection, the court ruled the State could introduce Phillip Griffin's sentencing sheets from his plea on January 15, 2015. (R. 230–33). The State utilized them to demonstrate Griffin pled guilty to the two charges as-indicted, "without negotiations or recommendations." (R. 231; R. 232; 752-53).

Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence which assists the jury in arriving at the truth of an issue is relevant and admissible unless otherwise incompetent." State v. Sweat, 362 S.C. 117, 126, 606 S.E.2d 508, 513 (Ct. App. 2004). "Evidence is admissible if 'logically relevant' to establish a material fact or element of the crime; it need not be 'necessary' to the State's case in order to be admitted." State v. Sweat, 362 S.C. at 127, 606 S.E.2d at 513. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE; *see also* State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000).

"[I]t is generally recognized that the existence of a plea agreement 'may be elicited by the prosecutor on direct examination so that the jury may assess the credibility of the witnesses the government asks them to believe.'" United States v. Henderson, 717 F.2d 135, 137 (4th Cir. 1983) (quoting United States v. Halbert, 640 F.2d 1000, 1004 (9th Cir. 1981)); United States v. Sullivan, 455 F.3d 248, 259 (4th Cir. 2006). This is true on direct and on re-direct examination, particularly where the defense delves into the witness' criminal history as a potential motivator for his or her appearance against the defendant on trial. State v. Shuler, 344 S.C. 604, 628-31, 545 S.E.2d 805, 817-19 (2001) ; *see* United States v. Spriggs, 996 F.2d 320 (D.C. Cir. 1993) (permitting the State

on direct examination to introduce the witness' cooperation agreement in its entirety, and adopting majority rule that admission of plea agreements containing "truthtelling" and perjury provisions did not result in improper bolstering); *see also* State v. Wills, 390 S.C. 139, 700 S.E.2d 266 (Ct. App. 2010)(defendant's proffer agreement admissible for impeachment absent some affirmative indication proffer was entered into unknowingly or involuntarily). "At least where the defendant plans to impeach a witness by showing the existence of a plea agreement, the government's direct examination need not be restricted to the scope of the defendant's intended cross-examination." Henderson, *supra* (citing United States v. Whitehead, 618 F.2d 523, 529 (4th Cir. 1980)).

Moreover, "[w]hen a party introduces evidence about a particular matter, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." State v. McEachern, 399 S.C. 125, 137, 731 S.E.2d 604, 610 (Ct. App. 2020)(citations omitted). "It is firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence." State v. Page, 378 S.C. 476, 482, 663 S.E.2d 357, 360 (Ct. App. 2008). Once Sellers impeached Griffin, the State was entitled to present testimony on the now-open topic of Griffin's potential bias. *See* Rule 608(c), SCRE.

Here, Sellers' cross-examination of Griffin made a beeline to Griffin's guilty plea, which occurred within a couple months of his being arrested and housed with Sellers. (R. 221-23; 752-53). As a result of the plea, Griffin served only 11 months when he faced a maximum 50-year sentence on all charges. (R. 226-27). During cross-examination, Griffin denied that this sentence had anything to do with his assistance in Sellers' case, but he later answered that he went to law enforcement once he got in trouble. (R. 225-26; 228; 229). The State was entitled to respond by presenting additional facts regarding the plea agreement so the jury could better asses the

credibility of this witness. Henderson, *supra*; Shuler, *supra*; McEachern, *supra.* The trial court did not abuse its discretion, in admitting this evidence because it was relevant on direct to assess the witness' credibility, and Sellers further opened the door to its admission on cross-examination making it admissible on re-direct. The evidence made more probable the absence of a promise or negotiation by the State with the witness on the two charges he pled guilty to. The evidence was not unfairly prejudicial to Sellers. Rule 403, SCRE. The defense thoroughly probed all the charges that were dropped in exchange for the pleas, the total sentence the witness was originally facing, and the sentence he received after his cooperation. (R. 221-30). As the Court of Appeals found, Judge Griffith did not abuse his discretion in admitting the sentencing sheets over Sellers' *relevance* objection, the only objection made. Sellers, *supra.* Further, its admission was harmless.

Harmless Error

"Errors, including erroneous jury instructions, are subject to harmless error analysis." Belcher, 385 S.C. at 611, 685 S.E.2d at 809. An insubstantial error not affecting the result of the trial will be found harmless so long as "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); Chapman v. California, 386 U.S. 18, 24 (1967) (verdict stands so long as "beyond a reasonable doubt, the error[s] complained of did not contribute to the verdict obtained"). "No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Page, 378 S.C. at 483, 663 S.E.2d at 360 (internal citations omitted).

"[A]ll of the circumstances" presented by the State were "consistent with each other, and when taken together, point[ed] conclusively to the guilt of the accused beyond a reasonable doubt." State v. Logan, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013). Victim's ankle monitor logged "no motion" beginning at 1:43 AM on October 10, 2014. When his badly beaten body was discovered,

his hands were bound with duct tape, and his blood was spattered and strewn throughout his home; yet there were no signs of forced entry. (R. 67-72; 37; 52-55; 384-86; 418-22; 427-31).

Officers did not find any firearms, cash, or Oxycodone in Victim's home. Victim had refilled his prescription on October 6th. Victim sold pills to Sellers. Victim also sold pills to Jessica, who dated Travis. Sellers told police he went with Travis and Shawn to scrap metal across the street from Victim's home on October 7th or 8th. Records showed Sellers sold scrap metal on October 7th and 8th. Shawn's testimony and Seller's phone records corroborate they "scrapped" in that area at that time. Shawn also recalled Sellers talking with Travis about hitting a lick and other "trash" about Victim while they were scrapping. Yet another friend, Joey Lowe, recalled Sellers contacting him before the murder asking if he wanted to hit a lick [commit a robbery] on an older disabled man Sellers described as an "easy target." (R. 143; 251-53; 269; 40-41 490-93; 257-60; 578-86; 620; 630-31).

During the evening hours of October 9, Sellers came to Shawn's house, allegedly to escape a fight with his girlfriend. Shawn went to bed about 10:00 PM, but when he awoke around 12:00AM on October 10th, Sellers was not there. Sellers did not answer Shawn's phone calls and reappeared at Shawn's home between 2:00 and 3:00 AM on the 10th. This is corroborated by a phone call Shawn received from Sellers at 2:52 AM. Sellers appeared uncomfortable, and said he parked his van down the street so his girlfriend could not see it. Sellers did not tell Shawn where he had been, and Shawn "never really asked." Also around this time, at 2:48 AM on October 10th, Sellers called Joey Lowe asking to trade **pills, a shotgun**, and **a rifle** Sellers had stolen. Sellers was out of breath and told Joey that "he would have given everything he had to not get a beating like that." Sellers also mentioned the imprint on the pill to Joey. Joey independently sought out law enforcement when he saw news of Victim's murder. (R. 588-93; 595-97; 633; 632-338; 657).

During the same timeframe as the calls to Joey and Shawn, Sellers used his cell phone to Google the term K57. Victim's prescription pills were imprinted with the identifier K57. Sellers' phone records for this timeframe further showed a gap of activity on October 10th from 12:17 AM to 2:11 AM, corresponding with the "no-movement" on Victim's ankle monitor. Also during this time, calls made from Shawn to Sellers were not reflected on Sellers' phone records, indicating Sellers' phone was off during this period. (R. 567; 254-56; 564; 603; 565–66; 605).

Additionally, Victim's guns were missing after the murder. A .38 seized from Hakim "Jersey" Talib's home, was later connected to Victim's death and submitted to SLED. Jersey sold weed to Sellers. Jersey testified Sellers came to him looking to sell "a shotgun, pills, and a .38" in October. Jersey refused to buy the shotgun or pills but he did buy the .38. Jersey's girlfriend also identified Sellers as coming to the home to buy drugs in the red van and some sort of transaction took place in her yard. Victim's niece identified the .38 as the same .38 Victim kept on him at all times. Victim's DNA was located on the .38. Moreover, areas inside the red van were positive to a presumptive test for the presence of blood. Sellers told an inmate he was worried about what would be found in the van, and claimed Victim had bled in the van in the past. (R. 43; 138-40; 275-78; 291-93; 296-97; 299-301; 237-38; 434-35; 352-54).

Sellers called Jersey looking for a guy named Gee that Sellers worked with. Sellers later told Phillip Griffin that he met up with Gee and they went and pistol whipped Victim, robbing him of his prescription pills and money. Sellers told another cellmate he was scrapping metal across from Victim's home one day and they went back later that day and tied up and beat Victim and robbed him and got rid of the stolen items. Sellers tried to get another cellmate to pin the murder on Jersey, drafting a statement for that inmate to sign and turn in; however, Sellers told this cellmate "they" beat an old white guy with a .38. Sellers implied to this cellmate Gee planted text

messages in Sellers' phone to make it look like Sellers committed the crimes. The record further includes evidence of consciousness of guilt. After Sellers was arrested, he initiated contact with police, asking if they had "found anyone else" to arrest, or if they felt "it was just" him. Sellers' phone records showed he deleted the contact information for Gee, and any calls concerning him, from his phone. At least one series of text messages between 3:00 and 4:00 AM on October 10 had also been deleted. (R. 295; 334; 205-06; 211-12; 177-78; 443-49; 485; 450; 505; 562-63; 568-69).

Beyond a reasonable doubt, the error complained of did not contribute to the verdict in this case. Chapman. After a fact-intensive inquiry, the jury instructions on accomplice liability and malice could not have contributed to the verdict. Identity, not malice, was the issue in this case. The victim was kidnapped [duct taped], pistol whipped and beaten [tortured] throughout his home, and then robbed. The evidence conclusively establishes Sellers as a chief actor in the crime, regardless of Gee or another person, nevertheless, the evidence established someone else was involved. Sellers knew Victim, knew he had prescription pills, took his cell phone "off the grid" during the relevant timeframe, and made demonstrative efforts to offload the stolen items taken from Victim's home. Victim's DNA was recovered from the .38 sold by Sellers and there was a presumptive positive for blood located in 3 spots in Sellers' van. Sellers' "trash talking" Victim to Shawn while scrapping metal across the street from his home prior to the murder, and Sellers' contacting Lowe to ask him if he wanted to help hit a lick on an "easy target" demonstrate forethought of burglary and robbery. And the condition of Victim's body along with the condition of victim's home, show that Petitioner's intent was to force Sellers to reveal where valuables were located for theft, Sellers' obvious effort to conceal his own presence at Victim's home (no other prints or DNA could be identified from the scene), and Sellers' immediate efforts to offload the prescription pills to Lowe while telling him "he would have given everything he had to not get a

beating like that" further support the finding of malice. Belcher; Stanko. Again, malice was not the issue, but only the identity of the killer or killers. The trial record shows this, and defense counsel conceded in closing argument Victim was murdered.

Speaking specifically to issue III and the credibility of Phillip Griffin, harmless error, if any error at all, must result. An issue of witness credibility calls for the court to "consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case." State v. Fossick, 333 S.C. 66, 70, 508 S.E.2d 32, 34 (1998). Griffin testified without objection that his sentencing sheets reflected he received no recommendation as to his sentence. (R. 230-31). Then he again testified to the same after a general objection and a side bar, which the record reflects was raised as to the relevance of the documents [sentencing sheets]. (R. 231-33). Griffin was also not the only cellmate to mention the existence of the gun—Wesley Brown provided that information to police as well. (R. 446-48). Brown's testimony, which includes Sellers' handwritten statement that Brown turned in to authorities, is not only cumulative to that of Griffin, but also far more probative given its tie to Sellers' own handwritten explanation of events. (R. 485). This Court must also consider all of the other evidence of Sellers' guilt discussed previously, including Sellers statements to his friends about what he and another had done to Victim. Accordingly, any error in the trial court's rulings was harmless. Sellers' guilt was proven beyond any reasonable doubt.

CONCLUSION

For all the above stated reasons, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,
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ATTORNEY FOR RESPONDENT

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