STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JAMAL DEVONTAE COBURN,

APPELLANT.

Appellate Case No. 2020-001528

INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER

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RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Did the trial court act within its discretion by finding a nexus between the evidence of flight and the crime charged where the totality of the evidence included facts showing: 1) Appellant was placed under investigative detention on August 25th, 2) Appellant was informed of his and his vehicle's suspected involvement in the shooting incident that took place just one day prior, 3) Appellant's internet search history contained news websites concerning the shooting, 4) Appellant was informed that his car was being seized as evidence connected to the crime, and 5) Appellant was arrested in Arizona twenty-five days after his investigative detention?

STATEMENT OF THE CASE

Jamal Devontae Coburn (hereinafter "Appellant") was charged with one count of murder (2019-GS-32-00322). (Tr. p. 16). A four day jury trial was held before the Honorable William Keesley on November 4th - 6th, and 9th, 2020. (Tr. p. 1). Appellant was represented at trial by attorneys Stanley Myers, Gill Bell, and Peter O'Reilly. The State was represented by Assistant Solicitors Rhonda Patterson and Melanie Darko. (Tr. p. 1). At the conclusion of the trial, the jury found Appellant guilty as charged. (Tr. p. 777, lines 8-12). Judge Keesley sentenced Appellant to thirty-five (35) years imprisonment for murder. (Tr. p. 794-795).

This appeal now follows.

STATEMENT OF FACTS

Corey Jamison (hereinafter "Victim") and Mikelle Coburn (hereinafter "Khelle"), were formerly in a relationship and had an infant child, Osirus, together. The couple had recently broken up because of disputes over parenting styles, but were still living together at their Riverbend Drive apartment. (Tr. p. 495; p. 47). While at a family cookout on August 24, 2018, the two were involved in a domestic dispute regarding their co-parenting issue. Khelle insisted Victim give up his keys to their apartment. (Tr. p. 59-61). The dispute became somewhat physical on both sides; Khelle apparently scratched Victim in her efforts to physically take the keys and Victim "mushed" Khelle in the face and neck in an effort to push her away. (Tr. p. 455; p. 506). The dispute escalated when Khelle went to the trunk of her car and retrieved a socket wrench and advanced toward Victim. In response, Victim pulled and pointed a gun at Khelle.

Victim's mother, Margie Schoultz (hereinafter "Margie") and a family friend, Cliff Anderson (hereinafter "Cliff") were present for the altercation. After seeing the dispute escalate, Margie and Cliff intervened. (Tr. p. 56-57; p. 141-142). Though the physical altercation ended,

Margie heard Khelle exclaim: "[o]h, you wanna be gangster? I'm going to show you gangster. They're going to take my baby tonight because I'm going to fuck you up." (Tr. p. 55). She then saw Khelle make a phone call and heard her say, "Come get Corey, bring your shit." (Tr. p. 58). Victim's cousin, Paris Jamison, arrived at the end of the dispute and also testified to hearing Khelle say: "He in Cayce, go bring the shit." (Tr. p. 190). Paris testified that she attempted to confront Khelle, but was stopped by her aunt, Margie. (Tr. p. 190-191).

Khelle took baby Osirus home in her car. Victim, Margie, Cliff, and Paris returned to the cookout. Margie testified that Victim had calmed down since the confrontation and had asked her if she would take him home. However, she did not answer him. Approximately 30 minutes after Khelle had left the cookout, Margie saw that she was receiving a call from Victim, despite Victim being beside her.[1] (Tr. p. 60-61). The call went unanswered, but Margie then received two texts from Khelle; one included a photograph of Victim and his baby Osirus and the other informed Margie that Khell was moving out and that there were a few of her belongings at their apartment that she needed to come retrieve. (Tr. p. 62-63). Margie told Victim about the text message[2] and shortly after Victim asked for a second time if Margie would take him back home. (Tr. p. 61; p. 64-65). Upon Victim's second request to be taken home, Margie agreed. Margie, Victim, Cliff, and their dog proceeded to drive to the Riverbend apartment. (Tr. p. 65-66).

Upon arriving at the apartment complex, Margie and Victim saw Khelle talking to an individual that they could not identify at the time. She then saw Khelle seemingly point them out to the individual she was with. (Tr. p. 68-69). As Victim was collecting his belongings and preparing to exit his mother's Ford Explorer[3], Margie saw Appellant with a gun drawn along with

[1] It was determined that Victim's phone was in Khelle's car. (Tr. p. 323; p. 62).
[2] She did not show him the texted photograph.
[3] In the record, Margie often refers to her vehicle as a truck.

one other *unknown assailant* (hereinafter "Brandon") run toward Victim.[4] (Tr. p. 69; p. 71). Margie attempted to jump out of the car, and as she did she heard Victim say: "Put the guns down and I'll beat both y'all mother fuckers like a man. Put them down, we don't have to have the guns." After which, Appellant shot Victim. Margie attempted to intervene and Appellant pointed the gun at her and pulled the trigger. Fortunately, the gun jammed. Margie testified that Appellant then cleared the jam and shot at Victim again, but missed.[5] (Tr. p. 69-70). Margie testified that after Appellant attempted to shoot Victim a second time, both Appellant and Brandon pistol whipped Victim in the head. (Tr. p. 72).

For the next few moments Margie was with her son, bleeding on the pavement beside her tire[6]; she attempted to dial 911, but in the hysteria dropped and broke her phone on the pavement. (Tr. p. 72-73). She then saw Khelle running back and forth from her apartment to the car. She also saw Appellant and Brandon get in their car, drive to the complex entrance, and stop. (Tr. p. 72). When she saw Khelle heading for her car she went to confront Khelle screaming: "Mikhelle, I'm going to kill your MF ass." However, Khelle was able to get in her car and drive away before Margie could reach her. Margie then watched as Appellant's car and Khelle's car left the scene together. (Tr. p. 74).

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[4] Appellant was accompanied by an individual that the State's witnesses did not know. Law enforcement were unable to identify him. (Tr. p. 334). This "unknown assailant" was later named by Appellant during his testimony on direct examination as "Brandon Williams". For clarity, Respondent will refer to this assailant by his name, despite the witnesses not using his name during their testimony.

[5] The forensics investigation recovered two spent shell casing as well as a single round of unfired ammunition from the scene. Forensics found a laceration to the crown of Victim's head and found no stippling or blackening on Victim. (Tr. p. 293; p. 295). Ballistics showed that the same gun fired the two spent casings, and the ballistics did not match the gun found in Appellant's car. (Tr. p. 436).

[6] Officer Peter Conklin was within earshot of the gunfire and responded to the scene within two minutes time. (Tr. p. 203-204). Investigator Sanner confirmed that Victim's body was beside the front passenger door of the Ford Explorer. (Tr. p. 215).

Margie testified that during the assault from Appellant and Brandon she never saw her son with a gun, and she specifically noted that he pulled his shirt up to show the assailants that he was not armed. (Tr. p. 73). However, Margie testified that she saw both Appellant and Brandon with guns. She testified that Brandon had for most of the confrontation been standing off to the side and witnessed him pick a gun up off the ground in that area, an area she commented that Victim had never been that night. On cross examination she accepted defense counsel's phrasing of having seen three guns, but was adamant that she did not see Victim with a gun that night at the scene. (Tr. p. 126-127; p. 122; p. 131-132). When talking with responding law enforcement, Margie was not familiar with Appellant's name during the night of the crime, but she recognized him as Khelle's brother. She initially thought his name was Jeremy[7], and gave officers a description of Appellant.[8] (Tr. p. 76).

The State also offered the testimony of Cliff Anderson, who corroborated much of Margie's description as to how the murder took place. He heard Khelle shout: "There he is right there" as they drove up to the apartments. Cliff noted that Appellant and Brandon were already at the Explorer attempting to swing at Victim by the time he and Victim could fully exit the vehicle. (Tr. p. 144). Cliff heard Appellant at the beginning of the confrontation accuse Victim of putting his hands on his sister, which Victim denied. Cliff only saw Appellant with a firearm that night. He confirmed that Victim yelled at the Appellant "Hey man, put the gun down, I'll beat both of y'all"; Appellant never lowed his weapon and shot Victim almost immediately after Victim's challenge to fight. Cliff confirmed the two shots fired by Appellant, the jammed second bullet[9],

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[7] Khelle has a brother named Jamal, as well as brother named Jeremy.
[8] Investigator Sanner confirmed that in speaking with Margie, she was confident it was "victim's baby mama's brother", but uncertain of Appellant's name. (Tr. p. 216).
[9] Cliff's testimony did not describe where Appellant was pointing his gun when his gun jammed. (Tr. p. 145; p. 148-149).

and the strike to Victim's head at the end. (Tr. p. 145-147; p. 171). Cliff did not know Appellant, but provided a description to police. (Tr. p. 151). *Of note, Cliff identified Appellant's vehicle as a black impala with no hubcaps.* (Tr. p. 149). Both Margie and Cliff selected Appellant from the photograph lineups they were presented on August 26, 2018. (Tr. p. 330-333).

The State also offered the testimony of bystander Jade Sapienza. She testified that upon hearing gunshots she dropped to the ground. From underneath a car she could see a dark-skinned African American man holding a gun towards another man. The man in front of the gunman fell to the ground holding his stomach and did not get up. She then saw the gunman run back to a black sedan with tinted windows and speed off. (Tr. p. 178-180). On cross-examination, Jade testified that she did not see the gunman "beating on the man on the ground." (Tr. p. 183).

Khelle returned to the scene of the crime at approximately 3:00am. Though she was unable to complete her interview due to becoming emotional, *she informed police that it was her brother Jamal Coburn at the scene of the crime that night.* (Tr. p. 319-322). Khelle denied calling her brother for the purpose of causing harm to Victim, and claimed that he was just there to help her move. (Tr. p. 511). Khelle testified that upon his arrival, Victim exited the car quickly and was "gunning" straight for her and Jamal. (Tr. p. 519; p. 561). She ran to her apartment, claimed to have heard Margie screaming in the parking lot, *and then* saw Victim running toward her front apartment door. (Tr. p. 519; 561). Khelle claimed that Victim was running toward her front door so she closed and locked it, and "[t]hat's when [she] heard the shots. . ." (Tr. p. 519-520). Khelle was not informed by Appellant that he was going to Arizona. Khelle and Appellant did not speak for a long time following the shooting. (Tr. p. 575-576).

Appellant testified at trial and claimed self-defense. He testified that Khelle called him for help moving out of the apartment and informed him that Victim had been "beating on her" and

had pulled a gun on her. (Tr. p. 599). Appellant identified the other assailant as Brandon Williams, who he claims also came to help Khelle move. (Tr. p. 598-599). Appellant testified that Victim arrived shortly after they arrived. Appellant testified that Khelle took off upon seeing Victim. He testified that Victim was coming toward him, challenged him, and immediately pulled out a gun. Appellant testified that he responded by pulling his own gun and informing Victim: "You don't want to do that." (Tr. p. 603, line 5 through p. 604, line 19). Appellant claimed he then had to duck away from "the woman" coming toward him. Appellant testified that he continued to step around and continued efforts to talk to Victim. However, he realized that Victim had come to the passenger side of the car and was pointing his gun at him; he felt he had to shoot. (Tr. p. 604, line 17 through p. 606, line 12).

Appellant testified that he jumped back after the first shot and saw Victim rub at his stomach. He then claimed that Victim charged him with his gun pointed. Appellant claimed he continued to jump backward to avoid him and shot a second time. He attempted to shoot a third time, but looked down to find his gun jammed. When he looked up, Victim was on his knees with his gun in his hand and was attempting to get back up. Appellant explained that since his gun was jammed he chose to hit Victim in the head with it instead. (Tr. p. 606, line 13 through p. 607, line 9). Appellant testified that Brandon then exclaimed that Victim had dropped his gun; Appellant instructed Brandon to pick it up. Appellant testified that he watched as Victim, with bloody hands to his head, stumbled all the way back to the passenger side of the vehicle and fell to a seated position. Appellant claimed he left the scene thinking the blood was from Victim's head and that he had not actually shot Victim; Victim testified that he heard sirens approaching and fled the scene. (Tr. p. 607, line 20 through p. 608, line 19; p. 611).

Appellant identified Exhibit 62 as "[Victim's] gun" that he had taken from the scene. He

testified that Brandon had picked it up from behind where Appellant was standing because the gun had "flew behind him". (Tr. p. 609). Appellant explained that he learned of Victim's death the following day and became scared, so he threw his gun into a pond in Swansea. Exhibit 62, the gun Appellant claimed to have taken from Victim, was recovered in Appellant's car. (Tr. p. 613; p. 359). Appellant claimed he took Victim's supposed gun "because I felt like he should use that gun to protect his family, but instead he used that gun and turned it towards his family and I didn't feel like he deserved the gun for it." (Tr. p. 620, lines 7-12). Appellant first claimed that he went to Arizona because he was concerned about retaliation and his safety, as he no longer possessed a gun to defend himself. (Tr. p. 617, lines 23 through p. 618, line 2). He then explained that he had helped an old girlfriend move out to Arizona in early August; he "felt like this situation was going to get heated so [he] needed to bring her stuff at that time." (Tr. p. 617, line 2 through p. 618, line 7). On cross-examination Appellant testified that after his detention he felt like he was "kind of done with the situation. I was kind of like they can have the car." (Tr. p. 641, lines 2-8). Explained that he bought a bus ticket to get to Arizona, maintaining he was bringing his ex-girlfriend's clothes to her. (Tr. p. 641, lines 9-21).

ISSUE AS IT WAS PRESENTED AT TRIAL

An arrest warrant was issued for Appellant on August 26, 2018. He was located and arrested in Glendale, Arizona, on September 19, 2018. (Motion Tr. p. 36, line 19 through p. 37, line 22). Motions in Limine were argued before Judge Keesley on November 3, 2020. As part of the hearing the State moved to address the admissibility of evidence of flight against Appellant in its case-in-chief. Expecting an objection from the defense, the State sought to address the matter before the start of trial. (Motion Tr. p. 19-20). In support of its motion, the State put forth the following evidence and arguments:

Deputy Sharpe testified that on the night of August 25, 2018, he was responding to a noise complaint in the Rolling Meadows mobile home park. Upon arriving at 11:10pm, he spotted a parked black Chevy Impala with black rims that matched the BOLO description of the suspect's vehicle from the prior night's shooting. (Motion Tr. p. 24, line 14 through p. 25, line 7; p. 27, lines 3-9; p. 27, lines 15-20). Deputy Sharpe made contact with the individual sitting in the driver's seat, who identified himself as Jamal Coburn and provided identification. Deputy Sharpe testified that he recalled Coburn being the last name of the suspect from the previous night's shootings. As such, he placed Appellant under investigative detention and placed him in the back seat of his police car until detectives could arrive and speak with him. (Motion Tr. p. 25, line 8 through p. 26, line 3). Deputy Sharpe explained to Appellant four separate times that he was under investigative detention as a possible suspect for an incident the prior night. Appellant was informed that his vehicle was identified at the scene as well. (Motion Tr. p. 25, line 23 through p. 26, line 6).

Detective Burrell testified that he was assigned to the murder that took place at the Riverbend apartments on August 24, 2018. (Motion Tr. p. 33, lines 3-6). Detective Burrell testified that in his investigations at the scene of the crime he learned that the shooting suspect's name was Jamal Coburn, and that he was driving a black Impala with black rims. He confirmed that this information was relayed to road unit police officers. (Motion Tr. p. 33, lines 9-25). Detective Burrell testified that on August 25, 2018, he and Detective Lyons were notified to respond to the Rolling Meadows mobile home park. The drive took approximately 35 minutes. (Motion Tr. p. 34, lines 1-11; p. 34, lines 21-22). When Detective Burrell arrived, Appellant was with Deputy Sharpe. Detective Burrell introduced himself and Detective Lyons to Appellant and sat him down in the front seat of their vehicle. In his attempts to question Appellant, Detective Burrell informed

Appellant several times that he and his vehicle were identified as being involved in a shooting incident that occurred the night before. (Motion Tr. p. 34, line 12 through p. 35, line 10).

Once finished, Detective Burrell informed Appellant that he was free to leave,[10] but he informed Appellant that his car would be seized as evidence in the case and would be searched upon the acquisition of a search warrant. (Motion Tr. p. 35, line 13 through p. 36, line 13). On August 26, 2018, Detective Burrell was able to obtain an arrest warrant for Appellant; the warrant was taken to the warrant division for servicing and placed on the NCIC database. However, Appellant was not arrested in South Carolina. Instead, he was located and arrested in Glendale, Arizona, on September 19, 2018. (Motion Tr. p. 36, line 19 through p. 37, line 22).

The State also admitted certain forensic evidence in support of its arguments. Following a forensic examination of Appellant's phone (which was inside the car at the time it was seized), the browser history revealed that at 11:11pm the phone had viewed a WLTX website news article published at 2:41pm on August 25, 2018, discussing the shooting incident from August 24th. The article sought public assistance in identifying anyone involved in the shooting. (Motion Tr. p. 45, line 3 through p. 48, line 22). Lastly, the State admitted evidence demonstrating that one of Appellant's phone contacts, Yetti Whiting, whom Appellant was also friends with on Facebook, had posted a Facebook article that identified Appellant by photograph as wanted in connection with shooting. (Motion Tr. p. 52, line 20 through p. 53, line 23).

The State cited to *State v. Walker,* 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005) and argued that the standard that must be met is that a nexus exist between the flight of the defendant and the offense charged; in order to satisfy that standard a totality of the evidence must create an inference

[10] Law enforcement had not yet acquired an arrest warrant for Appellant in the matter. (Motion Tr. p. 29, lines 7-14).

that defendant had knowledge he was being sought by authorities for the offense in question. (Motion Tr. p. 55, lines 13-23). The State argued that, like *Walker*, contact with law enforcement about the crimes in question took place before the arrest warrant was issued, the suspect was free to leave, and there was no evidence admitted of a plan to flee or escape. The State argued that it in light of the evidence presented, it had satisfied the standard for admissibility of the evidence.

Appellant did not put up any evidence of his own and instead relied upon cross examination and argument. In so doing, Appellant argued that there was no proof that it was Appellant who had searched for the WLTX website.[11] Defense counsel also argued that there is no proof that Appellant actually saw his friend's Facebook post. (Motion Tr. p. 51, lines 10-21; p. 63, line 16 through p. 64, line 3). Appellant highlighted the fact that Appellant was told he was free to leave after being questioned by police, and that Appellant did not resist his August 25th detention or his subsequent arrest in Arizona. Appellant attempted to distinguish the facts in *Walker* from Appellant's circumstance by noting that Appellant was not told by police to stay nearby for possible future contact. (Motion Tr. p. 30, lines 13-18; p. 41, line 21; p. 64, lines 13-20). Appellant also demonstrated on cross that, as a result of the later search of Appellant's car, police found a bag of drugs which Appellant was later charged with in addition to murder. (Motion Tr. p. 42, lines 8-14). Appellant attempted to argue that the drugs would be the reason that Appellant fled, as opposed to the shooting incidence, thereby preventing the necessary nexus between the evidence of flight and the charge for which the trial was concerned.

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[11] Contrary to this argument, the evidence demonstrated the browser search was mere moments before Officer Sharpe arrived, and the facts demonstrate Appellant was found alone in his car. Appellant's argument appears to disregard the low standard necessary for authentication. See *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019), aff'd as modified, 432 S.C. 97, 851 S.E.2d 440 (2020).

The trial court concluded that both referenced cases by the parties, *State v. Walker* and *State v. Robinson,* 360 S.C. 187, 600 S.E.2d 100, (Ct. App. 2004), demonstrate that unexplained flight is admissible to demonstrate consciousness of guilt. Specific to *Robinson*, the trial court noted that where it is clear the defendant is fleeing while being investigated for a separate crime other than the one he is facing at trial, evidence of that flight must be excluded. However, the trial court found that there was no clear link between the recovered drugs and Appellant's instance of flight, so as to deem the evidence inadmissible under *Robinson*. The trial court then found that the requisite nexus was established in light of the contact that took place between law enforcement and Appellant on August 25th, and therefore the trial court ruled that the evidence of flight was admissible. Defense counsel then made the additional argument that the court's conclusion that no clear link existed between the flight and the drugs placed the burden of proof upon Appellant. The trial court understood the argument, but found no merit warranting a differing ruling. (Motion Tr. p. 73, line 17 through p. 74, line 6).

Appellant objected again before opening statements, though opening statements did not allude to flight or Appellant's place of arrest. (Tr. p. 5-6). At trial, Deputy Sharpe and Detective Burrell testified substantially, as they had during the motion in limine. However, the jury also learned that the supposed third gun seen by Margie was recovered from Appellant's vehicle. The jury learned that in objecting to his car being seized, Appellant claimed that if the vehicle was his then all of the car's contents were his as well. (Tr. p. 338). DNA testing of the gun was conducted, two of the three swabs lacked sufficient DNA profile for analysis, the third swab contained a mixture of three (3) DNA contributors, but Victim was excluded as a possible contributor. (Tr. p. 412-413). Additionally, the jury learned that in Detective Burrell's efforts to speak with Appellant, Appellant exercised his right to remain silent during his investigative detention for the limited

purpose of confirming the officers had not been informed of his position of self-defense. (Tr. p. 369-371). The jury was not informed of the bag of drugs that was recovered from Appellant's car.

Appellant renewed its motion a third time, at length, at the close of the state's evidence, and suggested that the State should not be permitted to argue evidence of flight to the jury. (Tr. p. 465). At that point, the jury had been made aware that 1) an arrest warrant was obtained by law enforcement, 2) Appellant was not immediately served with the warrant, and 3) that Appellant was arrested in Arizona on September 19, 2018. (Tr. p. 333-334). Appellant added that the State had not put forth its evidence concerning the WLTX website or the Facebook post. The trial court declined to alter its ruling. (Tr. p. 465-468). Appellant objected a final time at the close of evidence, but the trial court again found no basis to alter its ruling. (Tr. p. 674-675).

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) "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).

ARGUMENT

I. The evidence presented by the State well exceeded the necessary standard for admitting the evidence of flight against Appellant.

The trial court did not abuse its discretion in permitting the evidence of flight against Appellant. The evidence set forth in the record demonstrated in numerous ways that Appellant was being sought by police in connection with Victim's murder. He was expressly told so by multiple officers, detained for a considerable amount of time to give detectives a chance to question him on the matter, his vehicle was seized as evidence in connection with the crime, and his browser history contained news articles about the event. This more than satisfies the "critical factor" that based upon the totality of the evidence an inference existed that Appellant knew police were seeking him in connection to Victim's murder. As such, the trial court was correct to find a nexus between the crime and Appellant's flight.

The admissibility of evidence of flight is a well evolved standard of law. Evidence of flight is admissible to show guilty knowledge and intent. *State v. Beckham*, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999); *State v. Pagan*, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006). Ultimately, "flight or evasion of arrest is a circumstance to go to the jury." *Id.* "The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities." *Id.*

This "critical factor" language has been the benchmark test for the admissibility of evidence for flight for decades. In 2004, the Court of Appeals in *Robinson* was faced with a peculiar circumstance wherein the defendant claimed his decision to flee was in relation to a separate charge that was not being prosecuted during the trial in question. The Court of Appeals in *Robinson* articulated that determining the *relevance* of evidence of flight is contingent upon that

flight having a nexus *to the crime charged. State v. Robinson*, 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004) (citing *United States v. Beahm*, 664 F.2d 414, 419-20 (4th Cir.1981); *United States v. Foutz*, 540 F.2d 733, 740 (4th Cir.1976))(emphasis added).

Not to be mistaken, the Court of Appeals in *Robinson* conceded the defendant knew police considered him a suspect in an unrelated murder investigation, and conceded that such knowledge "somewhat attenuated" the inference of guilt in connection with the armed robbery charge. *Id.* However, they found the defendant was "keenly aware" of the armed robbery charge and fled while assisting law enforcement in its investigation of that crime. The Court of Appeals concluded that the trial court acted within its discretion in admitting the evidence of flight, and noted that in an objective consideration of the issue, it could not conclude that the defendant's explanation was dispositive as to the question of admissibility. *Id.* at 196. As such, the Court of Appeals articulated that "evidence of flight should be excluded when the flight is *clearly linked* to a separate offense for which the defendant is not on trial." *Id.* at 195 (emphasis added). This parameter has since been cited favorably and applied by the South Carolina Supreme Court. *State v. Pagan, 3*69 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) (reversing the Court of Appeals' holding that evidence of flight by defendant fleeing from a blue light was admissible to prove Petitioner *was attempting to violate his bond provisions* for his pending murder charge because such bore no nexus between the flight and the current offense of murder). The collective law provides the roadmap for evaluating the case at hand, and leads to the ultimate conclusion that the trial court was well within its discretion to find a nexus between Appellant's flight and the charged offense of murder.

Here, the evidence demonstrated that Appellant had 1) already fled the scene of the crime even though police responded within just two minutes, 2) had viewed news reports regarding the crime on his phone just before his detention, 3) was detained by police for questioning in

connection with the crime, 4) informed that he was a suspect to the crime, and 5) had his vehicle seized as evidence connected to the crime. All of which came before Appellant fled for Arizona, and was found there by law enforcement just twenty-five days later. Based upon the totality of the evidence, there is an inference that Appellant knew he was being sought by police. The presented evidence demonstrates a practically undeniable inference to such.

On the issue of relevance, the evidence presented also demonstrates that his flight followed being sought by police *specifically for Victim's death.* As the trial court rightfully found, Appellant's contact with law enforcement in connection to Victim's murder established the requisite nexus to that charge. Appellant argues that because Appellant also knew his drugs would be found in the car once searched, that his flight was instead a result of third drug conviction. The record does not contain any other evidence concerning the drugs. Citing *Robinson*, Appellant argues that such evidence should render Appellant's flight inadmissible. However, *Robinson* explicitly demonstrates that simply because a defendant is aware of police interest for two crimes does not render his flight from one crime inadmissible. The trial court was correct to find no clear link to the drugs that would render the evidence of flight inadmissible, and like *Robinson*, that decision was within its discretion.

Likewise, the trial court was rightfully unconvinced by Appellant's assertion that the holding was the result of burden shifting. The State bears the burden of demonstrating a nexus between the flight and the crime charged, via an inference that Appellant was sought by police for that crime. Here the State met its burden, in excess, and thus demonstrated the admissibility of the evidence. The State bears the burden of proving a nexus for its own evidence, not disproving a nexus to the slender evidence of another crime presented by the defense, when such falls well short of the totality of the evidence and lacks the requisite clear link demanded in *Robinson.*

Appellant's remaining arguments do not accurately set forth the law and suggest that the State lacked evidence it had no obligation to present. There is no requirement that law enforcement officers inform the suspect to "stay nearby" or "not leave town." That's not a prerequisite for admitting evidence of flight as Appellant attempts to argue. While that was the factual scenario in *Walker*, it was not independently required.

Similarly, there is no prerequisite that the State demonstrate an explicit failed attempt to serve the resulting arrest warrant; such evidence would in fact have absolutely no impact on a defendant's knowledge that he was being sought by police for a crime, because such evidence is created only *by his absence*. Nor does the law demand that the defense put forth an excuse for his absence so that the court can compare it to the evidence of flight presented by the State.[12] In any case the State reiterated that Detective Burrell testified that due to the nature of the case, these types of arrest warrants are typically served quickly, and that he is kept informed as to the status of those warrants. However, Burrell did not receive any word on Appellant's arrest warrant until September 19th when he learned Appellant had been arrested in Glendale, Arizona. (Motion Tr. p. 37, lines 1-24; p. 59, line 7 through p. 61, lines 2-11).

While the trial court initially articulated concern for such matters, it concluded after review of the case law that *unexplained flight* is admissible such that those details do not need to be answered explicitly in order for it to rule on whether the necessary inference existed. "Flight or evasion of arrest is a circumstance to go to the jury." *State v. Beckham*, 334 S.C. 302, 315, 513 S.E.2d 606, 612 (1999). Thus, the court appropriately applied the law by considering the evidence presented and weighing it upon the standard instructed. There was no error or abuse of discretion

[12] Though unconvincing, the trial record demonstrates that Appellant provided an explanation for his trip to Arizona. Counsel chose not to present such testimony during the motion in limine.

in the trial court's ruling.

Additionally, while Respondent argues that there was no error on the part of the trial court, the matter would ultimately be cumulative, and therefore harmless. *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). Despite law enforcement's fast response to the scene, the jury had already heard evidence that Appellant fled the scene of the crime, thereby demonstrating the same consciousness of guilt. Appellant even stated that he fled upon hearing approaching sirens. (Tr. p. 608). Moreover, *if Appellant's explanation is to be believed*, he had already removed Victim's supposed gun from the scene and eliminated any threat to remain at the scene to speak with responding officers. If Appellant's explanation regarding the gun is not to be believed, then there is no basis for which to support his claim of self-defense. The jury also heard evidence of Appellant throwing his own gun into the pond in Swansea, preventing its recovery, which serves as additional evidence of guilty knowledge or conscience.

Specific to the issue in this case, Appellant's own testimony on direct examination set forth that in allegedly choosing to take his ex-girlfriend's clothing to her in Arizona he admitted that, "I felt like this situation was going to get heated so I needed to bring her stuff at that time." Though Appellant claimed a fear of retaliation, this is explicit testimony of his mindset that the timing of his decision to leave for Arizona was due to the crime involving Victim's death. As such, Appellant cannot demonstrate prejudice stemming from the evidence in question such that there is a reasonable probability that the jury's verdict was influenced by the challenged evidence of flight. *State v. White,* 372 S.C. 364, 373, 642 S.E.2d 607, 611 (Ct. App. 2007). Appellant's conviction and sentence should therefore be affirmed.

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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January 14, 2022

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JAMAL DEVONTAE COBURN,

APPELLANT.

Appellate Case No. 2020-001528

PROOF 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 Proof of Service has been forwarded to Appellant's counsel, Adam S. Ruffin, Esq., via email today, January 14, 2022 to aruffin@sccid.sc.gov, and to his assistant, Scott Leverett at sleverett@sccid.sc.gov.

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

This 14th day of January, 2022.

Donna D'Alessio

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

Donna D'Alessio

From: Donna D'Alessio
Sent: Friday, January 14, 2022 4:24 PM
To: 'aruffin@sccid.sc.gov'
Cc: 'sleverett@sccid.sc.gov'
Subject: Coburn, Jamal D. - Appellate Case No. 2020-001528 - Initial Brief of Respondent, Designation of Matter and Proof of Service
Attachments: Coburn, Jamal Devontae - Appellate Case No. 2020-001528 - Initial Brief of Respondent, Designation of Matter, Proof of Service 1-14-22 (02874272xD2C78).pdf

Dear Mr. Ruffin:

Attached is a scanned copy of the Initial Brief of Respondent, Designation of Matter and Proof of Service regarding the above matter. The Initial Brief and supporting documents are being submitted to the South Carolina Court of Appeals through e-filing, along with a copy of this email.

Hope you are well and thank you.

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