STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

v.

WILLIAM C. (BILLY) SELLERS,

Appellant

Appellate Case No. 2018-001667

FINAL BRIEF OF RESPONDENT

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II. By instructing the jury on the hand of one is the hand of all, did the trial court issue an instruction demanded by the evidence presented at trial?

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IV. By ruling in the manner presented in issues I through III, did the trial court err in a manner having any effect on the verdict?

STATEMENT OF THE CASE

In January 2015, the Edgefield County Grand Jury indicted Appellant William "Billy" Sellers for the murder of Johnny Hydrick by means of beating. (R. pp. 757-58). Attorneys Bennett Casto and Elizabeth Fullwood of the Eleventh Circuit Public Defender's Office represented Sellers on the charge. (R. p. 1). Seller's Edgefield County jury was selected on August 27, 2018, and his trial took place August 28 through 31, 2018, before the Honorable Eugene C. Griffith, Jr. (R. p. 1). Deputy Solicitor Suzanne Mayes and Assistant Solicitor Robbie McNair of the Eleventh Circuit Solicitors Office prosecuted the case. (R. p. 1). The jury convicted Sellers of the murder. (R. p. 749, lines 1-5). Judge Griffith sentenced Sellers, who had a prior Florida conviction for armed while in a dwelling, to life without parole. (R. p. 750, line 21 – p. 751, line 11). This appeal follows. (R. pp. 754-56).

STATEMENT OF FACTS

Johnny Hydrick lived in a rural area of Trenton in Edgefield County. He left his doors unlocked even at night, kept a pistol with him at all times, and usually slept on his living room sofa with his pistol tucked under the cushions. (R. p. 237, line 6 – p. 239, line 8). He had been in a car accident which left him disabled and in steady receipt of prescription pain medication. (R. p. 35, line 19 – p. 36, line 11). Johnny last filled his prescription on October 6, 2014, receiving 120 20-milligram tablets of Oxycodone. (R. p. 251, line 10 – p. 253, line 25). Johnny was also on probation and wore an ankle monitor which tracked his movements with GPS. (R. p. 63, line 18 – p. 64, line 14).

Johnny had a little brother named Richard. They communicated regularly, but Johnny did not return Richard's texts on October 10, 2014. After one day of no contact, the boys' mother suggested that Richard pay Johnny a visit to check on him. (R. p. 36, line 14 – p. 37, line 20). When Richard arrived at Johnny's house, the front door was closed and unlocked. (R. p. 39, line 22 – p. 40, line 2). Johnny's vehicle was outside the mobile home. (R. p. 52, lines 2-4). Stepping inside, he found his brother Johnny on the floor and called 911. (R. p. 37, line 21 – p. 38 line 8).

Richard's call to 911 came in at 11:19 AM on October 11, 2014, and officers from the Edgefield County Sheriff's Department arrived at the scene at 12:16 PM. (R. p. 32, lines 7-25). Responding officers observed no signs of forced entry into the residence. (R. p. 52 lines 9-11). Johnny was located on the floor and there was blood present in "several locations all throughout the house." (R. p. 52, line 6 – p. 53, line 2). Johnny's hands were bound with duct tape and he had been covered with a blanket. (R. p. 55, lines 7-15).

Law enforcement processed the scene that day, a Saturday, observing that Johnny 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. They found another piece of duct tape lying on the blanket which covered Johnny's lifeless body. (R. p. 86, line 5 – p. 92, line 24). Johnny's cause of death was listed as closed head injury "due to a beating." (R. p. 386, lines 21-25). 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. p. 384, line 18 – p. 386, line 20).

In fact, the motion sensor on Johnny's ankle monitor recorded that Johnny stopped moving at 1:43 AM on October 10, 2014. He never moved again after that, not even by the slightest vibration. (R. p. 67, line 23 – p. 72, line 3). The ankle monitor sent several audible, vibrating alerts to Johnny beginning at 15:19 on October 10 due to the lack of movement, but Johnny never acknowledged the monitor. (R. p. 74, line 16 – p. 76, line 25).

While processing the scene, officers observed and photographed blood transfer and spatter near the body, blood spatter on a nearby couch and vacuum cleaner, and more on the bed in Johnny's back bedroom. (R. p. 98, lines 1-7). The couch cushions had been removed and wrapped in a sheet and a section of the couch had been cut into. (R. p. 101, line 22 – p. 102, line 2). There was blood spatter on the window blinds behind the couch. (R. p. 102, lines 5-9). There were several more blood spatters on the refrigerator and there were blood transfers on the kitchen counter, two ceramic jars, and on a basket and on duct tape located atop the refrigerator. (R. p. 99, lines 5-11; R. p. 120, lines 5-14). There was blood transfer on the kitchen light switch. (R. p. 104, lines 7-11). The blood was later determined to be from Johnny, though some areas showed another, unidentifiable, minor contributor of DNA. (R. p. 418, line 14 – p. 422, line 9; R. p. 427, line 17 – p. 431, line 17). From the living room, officers located and collected a hammer and an empty rubbing alcohol bottle, neither of which appeared to contain blood. (R. p. 113, line 2 – p. 114, line 25). Officers could not recover any latent fingerprints from the scene. (R. p. 111, line 1

– p. 113, line 22; R. p. 115, lines 1-3). They could only recover Johnny's own palm print in one location: the non-adhesive side of a bloodied piece of duct tape. (R. p. 368, line 13 – p. 370, line 7). No other DNA was recovered from any sampled surface. (R. p. 153, line 25 – p. 154, line 3; R. p. 164, lines 7-10).

Officers did not find any firearms, cash, or prescription bottles of OxyContin in Johnny's residence. (R. p. 143, lines 1-16). A few days later, Richard reported that Johnny's guns and some other items were missing. (R. p. 43, lines 1-6). Johnny was known to have three shotguns and a rifle in addition to his pistol. (R. p. 237, lines 13-23). Law enforcement found three boxes of shotgun shells when they processed the scene, but again, they did not find any guns in Johnny's house. (R. p. 119, lines 6-23). Richard also recalled that Johnny had a toy slot machine that he kept in his kitchen area. (R. p. 45, lines 14-22). Johnny would deposit a coin in the slot machine to "pull his luck for the day." (R. p. 46, line 24 – p. 47, line 23). Richard thought the machine was missing after the murder, but he later found it busted into pieces in a room in the back of the house with other broken items. (R. p. 44, line 22 – p. 45, line 13). It was not broken when Richard saw it at Johnny's a day or so before the murder. (R. p. 46, lines 3-22).

Identifying a Suspect

Johnny had been seeing a woman named Jessica, but she also lived with another boyfriend named Travis. (R. p. 40, line 8 – p. 41, line 1). Jessica and would buy pills from Johnny and Johnny would drive Jessica and Travis around because Jessica and Travis did not have their own transportation. (R. p. 266, line 13 – p. 267, line 25). While working this case, the lead investigator learned that Travis and Appellant Sellers were friends and co-workers. Sellers would drive Travis to work every day. (R. p. 490, line 4 – p. 491, line 10).

On October 16, 2014, the investigator made contact with Sellers at his residence in Aiken

County. (R. p. 491, lines 1-22). Appellant told the investigator and he and Travis and a third person, Shawn Nicholson, scrapped metal together across the street from the victim's house on either October 7 or 8. (R. p. 492, lines 1-5). Sellers told the investigator "he knew Johnny and would buy pills from him mostly on the weekend." (R. p. 495, lines 19-23). This placed Sellers near Johnny's residence within a day or two of the murder. (R. p. 493, lines 14-22). Cell phone records also placed Sellers near Johnny's house between 8:17 and 8:55 AM the morning of October 8, 2014. (R. p. 620, lines 1-22). Shawn Nicholson corroborated that they were scrapping at that location together at that time. (R. p. 578, lines 24 – p. 583, line 13). Shawn recalled Travis and Sellers talking trash about Johnny, and maybe talking about hitting a lick, but Shawn did not know Johnny and did not take the conversation seriously. (R. p. 584, line 8 – p. 586, line 24).

Shawn and Sellers were neighbors. (R. p. 607, lines 4-12). Shawn testified that on the evening of October 9, Sellers came over to Shawn's because he got in an argument with his girlfriend about meth. Sellers was on the phone but Shawn did not know who he was talking to. (R. p. 588, line 15 – p. 590, line 24). Shawn went to sleep around 10:00 PM, but when he woke up around midnight, Sellers wasn't at his house anymore. (R. p. 591, lines 11-15; R. p. 595, lines 17-22). Shawn called Sellers but Sellers did not answer the phone. (R. p. 591, line 18 – p. 592, line 2). Then, between 2:00 and 3:00 AM, Sellers showed up outside Shawn's door. Shawn let him in. (R. p. 592, lines 3-11). This is corroborated by a phone call Shawn received from Sellers at 2:52 AM. (R. p. 596, lines 1-8). Sellers did not have his van and was acting uncomfortably. Sellers told Shawn he had parked his van down the street so his girlfriend couldn't see it. (R. p. 592, line 14 – p. 593, line 8). Sellers did not tell Shawn where he had been, and Shawn "never really asked." (R. p. 597, lines 11-24).

Sellers went to Coastal Recycle and Scrap, a metal recycling feeder yard on Edgefield

Highway, in a red Windstar on October 7, 2014, and sold some scrap metal for $28.80. He brought more metal to Coastal on October 8. (R. p. 257, line 6 – p. 260, line 19). On November 21, 2014, officers processed a red van. (R. p. 347, lines 10-16). The search warrant for the van called for an examination for possible blood evidence. None was visible to the examiner's naked eye. Next, the examiner conducted a presumptive test with LCV. (R. p. 348, lines 1-8). The examiner processed the interior and exterior door panels, all of the passenger compartments and floorboard, and miscellaneous items found on the rear floorboard of the van. (R. p. 351, lines 16-20). A small part of the interior driver's side door above the arm rest tested presumptively positive for the presence of blood. (R. p. 352, lines 21-25). Three small areas on the driver's floor mat and one more small area on the plastic portion of the driver's seat near the seat adjuster did too. (R. p. 353, lines 10-21; R. p. 354, lines 18-23).

Another acquaintance of Sellers, Joey Lowe, was approached by Sellers who wanted to know if [Joey] wanted to do a lick with him" on a disabled man who would be an "easy target." Joey refused. (R. p. 630, line 1 – p. 631, line 9). Then, around 2:00 or 3:00 AM one night, Sellers called Joey asking to trade some pills, a shotgun, and a rifle Sellers had stolen for some crystal meth. Joey refused. (R. p. 632, line 3 – p. 633, line 11). Sellers told Joey 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. (R. p. 632, lines 17-25). Sellers sounded out of breath. (R. p. 633, lines 20-21). The call occurred on October 10 at 2:48 AM. (R. p. 637, line 24 – p. 638, line 3). The next day, Lowe heard on the news that someone had been killed and "picked up enough of the pieces of the puzzle" to go to the police a couple of days later. (R. p. 634, line 22 – p. 636, line 7; R. p. 638, lines 4-8; R. p. 657, lines 9-12). Lowe was directed to, and began speaking with, Edgefield County law enforcement on October 24, 2014. (R. p. 513, lines 2-14). Working with an

investigator, Lowe continued answering Sellers' phone calls. (R. p. 636, lines 8-15; R. p. 650, lines 4-9).

In November, after his arrest, Sellers asked to speak to the investigator. Sellers wanted to know whether his personal property could be returned to his wife. (R. p. 502, line 1 – p. 505, line 1). He also 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. (R. p. 505, lines 2-24).

Later, officers in Edgefield took a firearm connected to the scene into custody and submitted it to SLED. (R. p. 138, line 9 – p. 140, line 19). The firearm, a .38 revolver, was seized from the Aiken residence of Hakim Talib on October 22, 2014, during the execution of a search warrant unrelated to Johnny's killing. (R. p. 247, line 1 – p. 278, line 21). However, Hakim Talib, known as Jersey, sold weed to Sellers. Jersey knew that Sellers drove a red van. (R. p. 291, line 21 – p. 293, line 12). Sometimes Sellers called Jersey looking for a guy named Gee that Sellers worked with. (R. p. 295, lines 1-6; R. p. 334, lines 4-6). One time in October 2014, Sellers came to Jersey's in his red van to try to sell him "a shotgun, pills, and a .38." (R. p. 296, line 11 – p. 297, line 25). Jersey refused to buy the shotgun or the pills but gave Sellers some weed and $30 in exchange for the .38 because Jersey knew he could flip the pistol. (R. p. 299, line 1 – p. 291, line 11). Johnny's niece, who had lived with him from time to time, identified the pistol seized from Jersey's house as the same pistol Johnny kept on him at all times. (R. p. 237, line 4 – p. 238, line 16). Johnny's DNA was located on the gun. (R. p. 434, line 2 – p. 435, line 10).

Officers extracted its data from Sellers' phone in November 2014, and a second time in July 2018 with updated software. (R. p. 553, line 1 – p. 556, line 23). 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. (R. p. 558, lines 17-24). Contact information for Gee, and any calls concerning him, had been deleted from Sellers' phone. (R. p. 562, line 24 – p. 563, line 10; R. p. 569, lines 15-17). At least one series of text messages taking place between 3:00 and 4:00 AM on October 10 had been deleted as well. (R. p. 563, lines 1-20; R. p. 568, lines 2-14). His phone also showed a gap of activity on October 10 from 12:17 AM to 2:11 AM, corresponding with the no-movement notification on Johnny's ankle monitor. (R. p. 564, lines 5-19; R. p. 603, lines 16-17). 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. p. 565, line 2 – p. 566, line 8; R. p. 605, lines 1-5).

On October 10 at 2:36 AM, Sellers used his phone to Google for the term K57. (R. p. 567, lines 4-19). Johnny's prescription pills were light brown, round, and imprinted with the identifier K57. (R. p. 254, line 10 – p. 256, line 4).

At the Jailhouse

An inmate, Phillip Griffin, met Sellers for the first time when they became cellmates at the Edgefield County jail on November 21, 2014. (R. p. 200, line 25 – p. 201, line 24). 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." (R. p. 202, line 21 – p. 203, line 11). At first, Sellers was inquisitive about DNA and expressed he was worried because he let somebody borrow his van and he was concerned there was blood inside it. (R. p. 204, lines 15-21). Sellers said that a guy named Gee borrowed his van and returned it around two or three that morning. (R. p. 211, lines 13-19). He also told his cellmate that in September 2014 "the guy Johnny fell down his steps and kind of broke his nose" and Sellers tried to help him into the van. Johnny refused to go to the hospital, but Sellers was worried

Johnny's blood may be in the van. (R. p. 203, line 16 – p. 205, line 1). Sellers said that 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. p. 205, lines 3-12).

Eventually, Sellers told 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 Johnny Hydrick's house to rob him of his prescription pills and any money he had on hand. (R. p. 205, line 16 – p. 206, line 14; R. p. 211, line 20 – p. 212, line 11). 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.

(R. p. 207, lines 8-14). Sellers "said when he left, the guy was still alive," leaving him surprised that it was a murder. (R. p. 209, lines 7-10). They did get the pills. (R. p. 210, lines 2-3). 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. (R. p. 206, line 15 – p. 207, line 4; R. p. 212, line 12 – p. 213, line 3). Griffin recalled that Sellers told him all of this prior to Sellers' preliminary hearing. (R. p. 214, lines 13-23).

Griffin went to an investigator with Sellers' information. (R. p. 213, lines 8-24). 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." (R. p. 235, lines 15-19). Griffin's contact with the investigator provided the first information that a revolver had been involved in the killing. (R. p. 507, lines 1-22).

Dennis Amerson was also housed in the Edgefield County Jail at the same time as Sellers. In on a probation violation, Amerson met and struck up conversation with Sellers during rec time. (R. p. 175, line 3 – p. 176, line 16). Sellers told the inmate that "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. (R. p. 176, lines 22 – p. 177, line 1; R. p. 179, line 24 – p. 180, line 1). Sellers hoped his wife would not "find out that he had done it." (R. p. 177, lines 9-10). 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 the victim was murdered and that they returned later that day and tied up and beat the victim. (R. p. 177, line 19 – p. 178, line 18). Sellers said they took a slot machine, some pills, and some change from the victim's house but got rid of those items. (R. p. 178, lines 19-24). This inmate, who completed rehab at SC STRONG, had no experience with Edgefield County or with anyone living in it, and felt compelled to go an investigator with this information because "[m]urder is totally different" than the drug charges he previously faced. (R. p. 182, line 18 – p. 184 line 25).

Another cellmate of Sellers, Wesley Omar Brown, was arrested mid-January 2015. (R. p. 453, lines 1-7). Brown testified that as they got to know each other, Brown learned that they had a mutual friend in Shawn Nicholson. Sellers told this cellmate 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." (R. p. 440, line 14 – p. 443, line 5). Sellers did not just 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." (R. p. 443, lines 10-23). Brown said he'd consider it and went to sleep. When he woke up, Sellers gave Brown a piece of paper where Sellers had written down what he wanted Brown to

tell the investigator. Brown retorted that if he "was gonna do it, [he] needed a little bit more detail." (R. p. 445, lines 3-23). Sellers said "they" beat an old white guy with a .38, but never named the other person involved. (R. p. 446, line 10 – p. 447, line 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. p. 448, line 19 – p. 449, line 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. (R. p. 450, lines 7-25). Brown turned the letter Sellers drafted over to an investigator and was removed as Sellers' cellmate that day. (R. p. 451, lines 12-25). A handwriting analyst at SLED opined that Sellers indeed wrote the document Brown turned over. (R. p. 485, lines 2-10). The information in the letter about the .38 formed the second reference to the revolver used in the killing, and gave rise to the 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 Johnny's had already been seized by Aiken County law enforcement. (R. p. 509, line 2 – p. 512, line 13).

STANDARD OF REVIEW FOR ISSUES I & II

"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." *State v. Miller*, 397 S.C. 630, 634-35, 725 S.E.2d 724, 727 (Ct. App. 2012). "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. The trial court issued an instruction on malice that could not be interpreted to create an improper presumption, nor to give rise to any permissive inference.

The court 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. p. 741, lines 2-7). Prior to the charge, Sellers requested the court delete the latter sentence[1] from its instruction on the basis that it was burden-shifting, but the court refused.[2] (R. p. 725, line 20 – p. 726, line 15). The court also declined Sellers' request to alter the latter sentence to state "under the circumstances which could lead to an inference of malice depending on your view of the evidence." (R. p. 726, line 24 – p. 727, line 12).

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[1] The court did not read the challenged instruction to the jury verbatim. (*See* R. p. 725, lines 9-25; R. p. 727, line 3).

[2] Preserved at the conclusion of the jury charge. (R. p. 748, lines 2-4).

In crafting a jury instruction, "judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21; *State v. Hughey*, 339 S.C. 439, 529 S.E.2d 721 (2000), *overruled on other grounds by Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009). "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, 394 (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, 819 (2001).

Sellers' jury was to decide whether malice, as an element of murder, existed at the time of the beating. S.C. Code Ann. § 16-3-10. Instructing any jury on murder compels an explanation of the term malice. Malice must exist at the time of the act producing the resulting death, and it need not exist for any appreciable length of time before that act's commission. *State v. Harvey*, 220 S.C. 506, 514-15, 68 S.E.2d 409, 412-13 (1951), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). "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. at 514, 68 S.E.2d at 412 (1951) (affirming use of 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." (R. p. 741, lines 3-5). Sellers argues that this instruction imposes upon the defendant a burden to

demonstrate the existence of just cause or excuse. (Br. of App. at 17). The first inquiry is a determination of the nature of the presumption described in the instruction, if any. *Sandstrom v. Montana*, 442 U.S. 510, 514, 99 S. Ct. 2450, 2454 (1979) (internal citations omitted), *holding modified by Boyde v. California*, 494 U.S. 370, 110 S.Ct. 1190 (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).

This instruction's language cannot be interpreted as burden-shifting. Malice "is the intentional doing of a wrongful act without just cause or excuse." (R. p. 741, lines 3-5). 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 State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) (where evidence is presented that would reduce, mitigate, excuse or justify a homicide caused by the use of a deadly weapon, juries shall not be charged with the permissive inference that malice may be inferred from the use of a deadly weapon); *see also State v. Burdette*, 427 S.C. 490, 501, 832 S.E.2d 575, 581 (2019), *reh'g denied* (Sept. 27, 2019) (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. (*See* Br. of App. at 15-16). 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, supra.*

More, this instruction contains no novel presumption. Malice "is the intentional doing of a wrongful act without just cause or excuse." (R. p. 741, lines 3-5). The instruction enforces the axiomatic presumption that a defendant is innocent until proven guilty beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072 (1970). Reasonably read, the only presumption which can be parsed from the instruction is that there is, in fact, just cause or excuse for the act committed. In other words, that 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. *Id.*; *see State v. Harvey*, *supra*; S.C. Code Ann. § 16-3-10. Thus, the instruction declines to shift any burden upon the defendant and its use should be affirmed.

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

The court instructed the jury on the law of accomplice liability: ". . .if the 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. p. 742, line 4 – p. 743, line 7). The State requested the charge and Sellers opposed, citing that there existed "no competent evidence that there was 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[.]"[3] (R. p. 662, line 4 – p. 663, line 15). Interpreting *Wilds v. State*, 407 S.C. 432, 756 S.E.2d 387 (Ct. App. 2014), the court declined to accept Sellers' position, finding that "if believed," evidence showed "there's more than one

[3] Preserved at the conclusion of the jury charge. (R. p. 748, lines 2-4).

person there exacting the beating that took the life of Mr. Hydrick." (R. p. 663, line 16 – p. 666, line 2).

"The law to be charged must be determined from the evidence presented at trial." *State v. 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." *State v. 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 ("the 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 upon which the jury could conclude that Sellers did not act alone. The State presented testimony from one of Sellers' cellmates that Sellers asked the cellmate to go to an investigator and say that 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. p. 443, line 1 – p. 445, line 18). In response, the inmate asked for more detail, and Sellers told him "they did it [beat him] with a .38." (R. p. 445, line 20 – p. 446, line 24; R. p. 447, lines 17-20). Sellers never named the other person or persons but wanted his cellmate to pin it on Jersey. (R. p. 446, line 25 – p. 447, line 4). Sellers said they took some pills from the victim's house. (R. p. 447, lines 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. p. 205, lines 18-24; R. p. 207, lines 8-14). This cellmate's understanding was that "they"—meaning Sellers and "a guy named Gee"—robbed and beat the victim. (R. p. 206, lines 1-21; R. p. 211, lines 22-24). Sellers told his cellmate that during the course of the robbery he was asking the victim "where the pills were." (R. p. 212, lines 1-11). Yet a third fellow inmate's account of what Sellers admitted to him indicated that there was a "they" who committed the crimes. (R. p. 177, line 19 – p. 179, line 11).

Sellers argues that because the co-defendant or co-defendants were unknown and there was 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. (Br. of App. at 19-20). 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' testimonies proved more than speculative, finding corroboration in their references to the .38. Their statements provided the first and second connections to any weapon used during the beating. (R. p. 507, lines 1-22; R. p. 509, lines 7-11). They led to the discovery and identification of the victim's own .38, which had been lawfully seized from Jersey, who had taken the .38 from Sellers in exchange for $30 and some marijuana. (R. p. 237, line 4 – p. 238, line 16; R. p. 299, line 1 – p. 301, line 11; R. p. 509, line 2 – p. 512, line 13). Analysts located the victim's DNA on that gun. (R. p. 434, line 2 – p. 435, line 10).

Sellers elsewhere 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 v. State*. (R. p. 664, line 18 – p. 665, line 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. *Barber v. State*, *supra.*

STANDARD OF REVIEW FOR ISSUE III

"The trial court has broad discretion in determining the relevancy of evidence and its decision to admit or exclude evidence will not be reversed on appeal absent an abuse of that discretion and a showing of prejudice." *State v. McEachern*, 399 S.C. 125, 140, 731 S.E.2d 604, 611 (Ct. App. 2012). An abuse of discretion occurs "'when the appellate court is in substantial or violent disagreement'" with the trial court's ruling. *State v. Lyles*, 379 S.C. 328, 339, 665 S.E.2d 201, 207 (Ct. App. 2008) (quoting *Rish v. Rish*, 296 S.C. 14, 15-16, 370 S.E.2d 102, 103 (Ct. App. 1988)).

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 Detention Center. (R. p. 201, lines 14-24). He was arrested in November 2014 on a charge of grand larceny, second degree burglary (violent), possession with intent to distribute methamphetamine, and possession

of marijuana. (R. p. 221, line 23 – p. 223, line 24). Griffin pled guilty to grand larceny and second degree burglary, the State dropped the two drug charges, and he received an active sentence of 18 months with probation. He served eleven months. (R. p. 226, line 18 – p. 227, line 23).

The court curtailed the State's direct examination of Phillip Griffin when the State began to ask about the type of sentence he received at this guilty plea, which took place in 2015. (R. p. 200, lines 1-23). Then, on cross-examination, Sellers' counsel thoroughly visited the sentencing exposure Griffin faced on the Edgefield charges, as well as the collateral statutory consequences of those charges. (R. p. 221, line 23 – p. 224, line 16). He was cross-examined on the charges pled, the charges dropped, and the sentence received. (R. p. 226, line 18 – p. 227, line 23). Sellers' counsel probed Griffin to respond that he pled guilty because he did not want to face the maximum potential penalty. (R. p. 224, line 17 – p. 228, line 20). Griffin twice denied that leniency in sentencing was any motivation for him contacting law enforcement about Sellers. (R. p. 225, line 24 – p. 226, line 4; R. p. 228, lines 21-25). He later answered yes, that when he was in trouble, he talked to law enforcement. (R. p. 229, lines 20-24).

On re-direct examination, and over Sellers' objection, the court ruled State could introduce Phillip Griffin's sentencing sheets from a plea taking place January 15, 2015. (R. p. 230, line 21 – p. 233, line 1). The State utilized them to demonstrate Griffin pled guilty to the two charges as indicted, "without negotiations or recommendations." (R. p. 231, lines 1-15; R. p. 232, lines 4-8; R. pp. 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) (although evidence is relevant, it should be excluded where danger of unfair prejudice substantially outweighs its probative value). And, "[e]vidence which is not relevant is not admissible." Rule 402, SCRE.

"[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. at 628-31, 545 S.E.2d at 817-19; *see United States v. Spriggs*, 996 F.2d 320 (D.C. Cir. 1993) (permitting the prosecution 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 the 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." *United States v. 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. at 137, 731 S.E.2d at 610 (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. p. 221, line 23 – p. 223, line 24; R. pp. 752-53). As a result of the plea, Griffin served only eleven months when he faced a maximum fifty-year sentence on all charges. (R. p. 226, line 18 – p. 227, line 23). 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. p. 225, line 24 – p. 226, line 4; R. p. 228, lines 21-25; R. p. 229, lines 20-24). The State was entitled to respond by presenting additional facts regarding the plea agreement so that the jury could better asses the credibility of this witness. *United States v. Henderson, supra*; *State v. Shuler, supra*; *State v. McEachern, supra.*

IV. Any error proves harmless beyond a reasonable doubt.

"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, 87 S.Ct. 824, 828 (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).

The State delivered a case succinctly probative of guilt. "[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). Johnny Hydrick's GPS ankle monitor logged a "no motion" beginning at 1:43 AM on October 10, 2014. (R. p. 67, line 23 – p. 72, line 3). When his badly beaten body was discovered over 24 hours later, he appeared as though he had been deceased for some time, his hands were bound with duct tape, and his blood was spattered and strewn throughout the residence; yet there were no signs of forced entry. (R. p. 37, lines 14-24; R. p. 52, line 6 – p. 55, line 12; R. p. 384, line 18 – p. 386, line 20; R. p. 418, line 14 – p. 422, line 9; R. p. 427, line 17 – p. 431, line 17).

Officers did not find any firearms, cash, or prescription bottles of OxyContin in Johnny's residence. (R. p. 143, lines 1-16). However, he had refilled his prescription pain medication on

October 6. (R. p. 251, line 10 – p. 253, line 25). Johnny was known to sell the pills to other people, including Sellers. (R. p. 269, lines 12-20; R. p. 493, lines 19-23). One of the people Johnny sold the pills to (Jessica) dated one of Johnny's co-workers (Travis). (R. p. 40, line 8 – p. 41, line 1). Johnny would drive Travis to work every day. (R. p. 490, line 4 – p. 491, line 10). Sellers told law enforcement that he went with Travis and his neighbor Shawn to scrap metal across the street from Johnny's house on October 7 or 8. (R. p. 492, lines 1-5). Records from Coastal Recycle and Scrap showed that Sellers sold scrap metal on October 7 and 8. (R. p. 257, line 6 – p. 260, line 19). Sellers' cell phone records and Shawn further corroborated that they were scrapping in that area at that time. (R. p. 578, lines 24 – p. 583, line 13; R. p. 620, lines 1-22). Shawn also recalled Johnny talking about hitting a lick and other "trash" about Johnny while they were scrapping that day. (R. p. 584, line 8 – p. 586, line 24). Yet another one of Sellers' acquaintances, Joey Lowe, recalled Sellers contacting him asking if he wanted to hit a lick on an older disabled man Sellers described as an "easy target." (R. p. 630, line 1 – p. 631, line 9).

Then, during the evening hours and into the night of October 9, Sellers came over to Shawn's house to escape a fight he had with his significant other. (R. p. 588, line 15 – p. 590, line 24). Shawn went to sleep around 10:00 PM, but when he woke up around midnight on October 10, Sellers wasn't there. (R. p. 591, lines 11-15; R. p. 595, lines 17-22). Sellers did not answer Shawn's phone calls, (R. p. 591, line 18 – p. 592, line 2), and he reappeared at Shawn's house between 2:00 and 3:00 AM. (R. p. 592, lines 3-11). This is corroborated by a phone call Shawn received from Sellers at 2:52 AM. (R. p. 596, lines 1-8). According to Shawn, Sellers appeared uncomfortable, and said he had parked his van down the street so his girlfriend couldn't see it. (R. p. 592, line 14 – p. 593, line 8). Sellers did not tell Shawn where he had been, and Shawn "never really asked." (R. p. 597, lines 11-24). Also around this time, at 2:48 AM on

October 10, Sellers called Joey Lowe asking to trade pills, a shotgun, and a rifle Sellers had stolen. (R. p. 632, line 3 – p. 633, line 11; R. p. 637, line 24 – p. 638, line 3). Sellers sounded out of breath and told Joey that "he would have given everything he had to not get a beating like that." (R. p. 632, lines 17-25; R. p. 633, lines 20-21). Sellers also mentioned the imprint on the pill to Joey Lowe. (R. p. 633, lines 2-3). Joey independently sought out law enforcement when he saw news of Johnny's murder. (R. p. 634, line 22 – p. 636, line 7; R. p. 638, lines 4-8; R. p. 657, lines 6-12).

During the same timeframe as the calls to Joey and Shawn, Sellers used his cell phone to Google the term K57. (R. p. 567, lines 4-19). Johnny's prescription pills were light brown, round, and imprinted with the identifier K57. (R. p. 254, line 10 – p. 256, line 4). Sellers' phone records for this timeframe further showed a gap of activity on October 10 from 12:17 AM to 2:11 AM, corresponding with the no-movement notification on Johnny's ankle monitor. (R. p. 564, lines 5-19; R. p. 603, lines 16-17). 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. p. 565, line 2 – p. 566, line 8; R. p. 605, lines 1-5).

Additionally, Johnny's family reported his guns missing shortly after the murder. (R. p. 43, lines 1-6). A .38 revolver seized during an unrelated investigation of the home of Hakim "Jersey" Talib, was later connected to the Johnny's death and submitted it to SLED. (R. p. 138, line 9 – p. 140, line 19; R. p. 275, line 1 – p. 278, line 21). Jersey sold weed to Sellers and knew Sellers drove a red van. (R. p. 291, line 21 – p. 293, line 12). According to Jersey, Sellers came to him looking to sell "a shotgun, pills, and a .38" in October. (R. p. 296, line 11 – p. 297, line 25). Jersey refused to buy the shotgun or the pills but he did take the .38. (R. p. 299, line 1 – p. 301, line 11). Johnny's niece identified the pistol seized from Jersey's house as the same pistol

Johnny kept on him at all times. (R. p. 237, line 4 – p. 238, line 16). Johnny's DNA was located on the gun. (R. p. 434, line 2 – p. 435, line 10). Moreover, areas inside the red van reacted positively to a presumptive test for the presence of blood. (R. p. 352, lines 21-25; R. p. 353, lines 10-21; R. p. 354, lines 18-23).

Sometimes Sellers called Jersey looking for a guy named Gee that Sellers worked with. (R. p. 295, lines 1-6; R. p. 334, lines 4-6). Sellers later told his cellmate Phillip Griffin that he met up with Gee and they went and pistol whipped Johnny, robbing him of his prescription pills and money. (R. p. 205, line 16 – p. 206, line 14; R. p. 207, lines 8-14; R. p. 211, line 20 – p. 212, line 11). Sellers told another cellmate that he was scrapping metal across from the victim's house one day and that they went back later that day and tied up and beat the victim and robbed him and got rid of the stolen items. (R. p. 177, line 19 – p. 178, line 24). Sellers tried to get yet another cellmate to pin the murder on Jersey, drafting a statement for that inmate to sign and turn in; however, Sellers told this cellmate that "they" beat an old white guy with a .38. (R. p. 443, line 10 – p. 449, line 18; R. p. 485, lines 2-10). Sellers implied to this cellmate that Gee planted text messages into Sellers' phone to make it look like Sellers committed the crimes. (R. p. 450, lines 7-25).

The record further includes evidence of consciousness of guilt. After Sellers was arrested, he initiated contact with law enforcement, asking if they had "found anyone else" to arrest, or if they felt "it was just" him. (R. p. 505, lines 2-24). Sellers' phone records divulged that he deleted the contact information for Gee, and any calls concerning him, from his phone. (R. p. 562, line 2 – p. 563, line 20; R. p. 569, lines 15-17). At least one series of text messages taking place between 3:00 and 4:00 AM on October 10 had been deleted as well. (R. p. 563, lines 1-20; R. p. 568, lines 2-14).

Beyond a reasonable doubt, the error complained of did not contribute to the verdict in this case. *Chapman v. California*, *supra.* After a fact-intensive inquiry, the jury instructions on hand of one, hand of all, and the definition of malice could not have contributed to the verdict obtained. The evidence conclusively establishes Sellers as a chief actor in the crime, regardless of the presence of Gee or another person. Sellers knew the victim, knew he had prescription pills, took his cell phone "off the grid" during the material timeframe, and made demonstrative efforts to offload the pills and guns taken from the victim's home. The victim's DNA was recovered from the. 38 tied back to Sellers and there was a presumptive positive for blood located in three spots in Sellers' van. Sellers' "trash talking" the victim to Shawn while they were scrapping metal across the street from his house prior to the murder, and Sellers' contacting Joey Lowe to ask him if he wanted to help hit a lick on an "easy target" demonstrate forethought. And the condition of the victim, Sellers' obvious effort to conceal his own presence at the victim's house (no other prints or DNA could be identified from the scene), and Sellers' immediate efforts to offload the prescription pills to Joey Lowe while telling him that "he would have given everything he had to not get a beating like that" further support the finding of malice absent just cause or excuse.

Even more, 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 was also not the only cellmate to mention the existence of the gun—Wesley Omar Brown

provided that information to law enforcement as well. (R. p. 446, line 10 – p. 447, line 20; R. p. 448, lines 19-25). Brown's testimony, which includes Sellers' handwritten statement that Brown turned in to authorities, is not only cumulative to that of Griffin, but is far more probative given its tie to Sellers' own handwritten explanation of events. (R. p. 485, lines 2-10).

Accordingly, any error in the trial court's rulings should be determined harmless. For the reasons described herein, the State presented an entirely consistent narrative indubitably probative of Sellers' guilt beyond a reasonable doubt.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should affirm Appellant Sellers' conviction for murder.

Respectfully submitted,

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March 30, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

v.

WILLIAM C. (BILLY) SELLERS,

Appellant.

Appellate Case No. 2018-001667

CERTIFICATE OF COMPLIANCE

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

This 30th day of March, 2020.

s/Caroline Scrantom
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