CR-14-936

IN THE ARKANSAS COURT OF APPEALS

JACK W. GILLEAN **APPELLANT**

V. **NO. CR-14-936**

STATE OF ARKANSAS **APPELLEE**

AN APPEAL FROM THE
FAULKNER COUNTY CIRCUIT COURT

THE HONORABLE CHARLES CLAWSON
CIRCUIT JUDGE

BRIEF OF APPELLEE

Respectfully submitted,

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[ABSTRACTOR'S NOTE: The following are portions of the jury trial held on March 10, 2014, in *State of Arkansas v. Jack W. Gillean,* 23CR-2012-1044, in the Faulkner County Circuit Court, with the Honorable Charles E. Clawson, Jr., Circuit Judge, presiding. The State of Arkansas was represented by Prosecuting Attorney Cody Hiland, and Deputy Prosecuting Attorneys Troy Braswell and Joan Shipley. The Defendant, Jack W. Gillean, was represented by Attorneys Tim Dudley, Nicki Nicolo, and Ralph Blagg.]

[ABSTRACTOR'S NOTE: The following colloquy occurred during the Motion Hearing held May 10, 2013 (Vol. 4, R. 591-595).]

MR. DUDLEY: Okay. But, Your Honor, very briefly, I think we have a Constitutional Right to at least be notified in a manner in which we can properly prepare a defense in a case.

On the three burglary counts they've amended to give us the offense that they claim was intended when the breaking and entering allegedly occurred. They've give us some structures that they claim was entered. The one big problem I have with that count though, Your Honor, is they give us a year as a date, from - - I don't remember exactly, but it's like from April of one year to April of the next year. (R. 591)

Well, Your Honor, we might have an alibi defense if we could find out what date they claim these burglaries occurred on, but there's no way we can figure out an alibi defense when the time span is a year.

THE COURT: Uh-huh.

MR. DUDLEY: I've - - I would ask the Court to order them on that to at least tell us when they claim these burglaries occurred, not sometime during a year.

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THE COURT: Mr. Prosecutor, as far as the dates (R. 592) on the burglaries, can the State be more specific?

MR. BRASWELL: Your Honor, the State is - - has been as specific as it possibly can, especially in the affidavit that so much has been of today. It clearly lays out in more detail what the allegations are. As the Court knows there are times - - let's use sex offenses, for instance - - that the exact date cannot be given.

THE COURT: Uh-huh.

MR. BRASWELL: But, Judge, we've done our best in the affidavit - - excuse me. Sargent Chris Turner with UCA Police Department did his best that he could to lay out specifically when those things were alleged to have occurred. Each building that was - - we allege was broken into for the purpose of stealing the tests are listed. The rooms that were entered are provided. What was stolen was provided. From what professors was provided, what semester of college it was. I

believe that some of the statements made by some of the witnesses in the case give even further detail.

And, Judge, that gets to the point that we've - - we've provided discovery. We've given them everything that they need to be able to form their - - their defense in those instances, Your Honor. So (R. 593) I've given them everything I can as far as the dates.

Judge, in response to the insurance acts, Judge, specifically Paragraph 15 and 16 of the affidavit lay that out. We even - - I'm not sure if they got - - how they received their copies, but they're even tabbed and - - what I have - - for discovery purposes, they're all in the same section that - - we've produced those documents, and it's laid out in 15 and 16 of how those are relevant, Judge, so - -

THE COURT: Okay.

MR. BRASWELL: - - we've tried to give them as - - they've got everything I've got is what I'm trying to say, Judge.

THE COURT: Okay.

MR. DUDLEY: And - -

THE COURT: Yes, sir.

THE COURT: - - if I could, Your Honor, that may well be true. My problem is assume that we're successful and Jack gets acquitted and they charge him again.

If - - if we don't have something official that says this is what he's charged with in this case, how do we plead double jeopardy next time?

THE COURT: Uh-huh.

MR. DUDLEY: I mean, he just - - he just said - - one thing we want to know was what property was going (R. 594) to be stolen. He says it's a test. That's what we thought it was but, there's nothing anywhere that says that's the basis for the charge. And I want something to protect my client from double jeopardy if - - if that ever occurs. (R. 595)

[ABSTRACTOR'S NOTE: The following colloquy occurred during direct examination of Preston Grumbles (Vol. 6, R. 900 - 904).]

My name is Preston Grumbles. I am employed at the UCA Police Department. I have been with the UCA Police Department since 2001. I am a detective. I was serving in that capacity in June of 2012. I received a report of an office break-in after June 10th, 2012, and I investigated it.

MS. SHIPLEY: I'm showing for the record, Judge, Defense counsel, what's been marked as State's 1. May I approach?

THE COURT: Certainly.

MS. SHIPLEY CONTINUING: (R. 900)

I recognize the surveillance video capturing of the incident in question of the burglary that took place. Cameron Stark was identified as being in the video. The

picture accurately reflects what I saw on the video. At that time I saw the video and then the still picture was captured.

MS. SHIPLEY: Judge, the State at this time moves to introduce State's Exhibit 1.

MR. DUDLEY: No objection.

THE COURT: Be admitted without objection.

MS. SHIPLEY: Thank you.

(Whereupon, State's Exhibit No. 1, having been previously marked for identification, was received into evidence without objection.)

MS. SHIPLEY: Judge, may I publish?

THE COURT: Yes, ma'am. (R. 901)

MS. SHIPLEY CONTINUING:

When Cameron Stark was identified as a subject of my investigation, I continued the investigation and contacted other members in my department to start the investigation to capture Mr. Stark. And I indeed captured Mr. Stark. It happened in front of his residence a block from the University. I went over there. I was not alone. Several officers, the ones that stand out is Major John Murgey and other officers that I - - I don't recall exactly who was there. We did make contact with Mr. Stark. As far as how he had gained entrance into this office, you can see the time on there is - - is – I believe (R. 902) 1:38. Is that what I - - in the morning,

which the building - - the exterior and interior - - most of the interior will be locked at that - - at that hour. That being a business building, there's no classes or anything in that nature that takes place in that building. It's strictly administrative. It appeared he reached into his pocket and pulled out an object I could not see and - - and stuck it towards the mechanism. That's just - - I mean - - that's what the video shows.

When I'm outside Mr. Stark's residence and I made contact with him, I advised him he was under arrest and to place his hands behind his back. He did make spontaneous statements to me at that time. As I grabbed his right arm and - - and put it behind his back, he stated, "The keys are in my pocket." After I got him in custody with my handcuffs, I did retrieve in his front pocket a set of keys. They appeared to be University keys. It was the kind of keys I've carried every day since I've been employed there. I handed them the keys to Major Murgey. I never had possession of those keys again. Once I had Mr. Stark in custody, he was transferred back to the police department where he was read his Miranda rights. He requested counsel. After his counsel arrived, I went back and talked with him later that night. He had been given immunity. (R. 904)

[ABSTRACTOR'S NOTE: The following colloquy occurred during direct examination of Benjamin Rowley (Vol. 6, R. 1003 - 1005).]

Essentially, I had been emailed from Jack Gillean sort of at the behest of Cameron Stark to ask him to - - to ask me to put him into my microbiology course. He'd been trying for a couple of semesters to get in and it was always full. He asked me to put him into the course. As far as how you enter classes that are full, there is no University policy, but within our own department, we generally - - especially within the last couple of years, adapted a new policy for it. We have formal waiting lists now. At the time we did not though. As far as my policy goes, once they're full, they're full. It becomes a safety issue in the labs because you only have so much space and you're dealing with potentially dangerous things. So once it's full, it's full. I had no waiting list in case somebody dropped off before the class actually began. I'm a little bit ashamed to admit that it was a little bit more of a hassle than I wanted to deal with, so I just said, you know, "Keep an eye on the system yourself and (R. 1003) if a slot opens up, then take it." But I did not maintain a formal waiting list.

Q. I appreciate your honesty, Doctor. And what was your response to that request by Jack Gillean?

A. I'm sorry. Would you like me to read it or - -

Q. If you don't mind.

A. Okay. My - - sorry, go ahead.

MS. SHIPLEY: Judge, at this point in time, I'd like to introduce State's Exhibit No. 15.

MR. DUDLEY: No objection.

THE COURT: Be admitted without objection.

MS. SHIPLEY: Thank you.

(Whereupon, State's Exhibit No. 13, having been previously marked for identification, was received into evidence without objection.)

My response was: I can appreciate Cameron's dilemma, however, I can't help in this situation. I've been received between two and four such requests per week since registration closed in Spring, and I've had to tell each one the same things. I don't overload my courses due to safety issues in the lab. I advise them to check daily to see if a seat opens in the section they want and to grab it if it does. While I'd like to help him out, to do so in this situation would be (R. 1004) special treatment and favoritism. I strive to avoid such things. I'm sorry that I can't assist him here.

I've had several requests to do the same thing, but I'll be honest, I don't recall who those requests were from. It was University students there. Students just need the course. They email me to try to get in. I knew Jack Gillean at the time to be a member of the administration. We didn't really have much interaction

outside of work, just here and there. I really hadn't received a request like this before and that's why it kind of stuck in my brain as being unusual. It wasn't common place for administrators to ask these kinds of things. (R. 1005)

[ABSTRACTOR'S NOTE: The following colloquy occurred during direct examination of Brian Williams (Vol. 7, R. 1162 - 1166).]

So if you bring me a device and ask me, "Can I get deleted text messages off of it?" I'm going to - - my answer is going to be, "It depends." And it depends on many variable. It's never a sure thing that I'm going to pull everything off of a phone.

And another instance is I may pull a deleted text message off from last week and then another deleted text message from two years ago. It all depends on how your phone rewrites over deleted articles on it's hard drive and it's operating software. It can just pick random text messages. I may - - like, I say, have a really really old text and one new text and nothing in between. I've seen that before. It just depends on what the software can pull.

I was able to extract all the contents from the iphone. I was able to specifically extract a contact or locate a contact that was saved for a phone number attached to Jack Gillean. It was (R. 1162) created on the device on 3/10/2011 at 17:19 hours. The data extraction revealed that information and the software I have was able to determine when that file was created on the phone. Based on the

phone number that's assigned to that contact, I was able to find and locate, extract text messages between the device I have, the iphone, and the contact for Jack Gillean. Between 2/28/11 and 9/211, I was able to recover a total of 439 text messages. On this device I was not able to recover after 9/2 of '11. That's why I gave that date range. On this particular device, 2/28 of 2011, was the first text message. Then the contact was created on 3/10 of 2011, (R. 1163) and then the last contact between the two was on 9/2 of 2011 on the iphone. 439 was the total. I may, 158 of those were deleted text messages and 281 of those text were still what they call allocated on the phone where you can - - you could basically pick the phone up, hit text messages, and read them. They were allocated on the phone. That's the difference between allocated and deleted. Allocated is basically an existing file that a user can access utilizing the interface on the device. The other device from Cameron Stark is a HTC phone. It's a HTC-A9192 Inspire 4g cell phone. I was able to pull contacts from that phone as well. I found contacts for a Jack Gillean. The information on the iphone such as create a date or to save a date (R. 1164) was information not available on this device. That does not cause me any concern because this happens - - like I said, every phone is different. You're going to get different results off of different phones. I was able to extract the contents - - or the contacts, the name associated that was saved in the phone, but it did not give me a created date. I do not have any independent knowledge of what

Jack Gillean's phone number was during this time frame. I'm taking that based on the number that's saved on the phone. I recovered 280 text messages off of the HTC device belonging to Cameron Stark and the contact that says it's Jack Gillean. 10/25 of 2011, was the first date that I found and the last date was 5/3 of 2012. 142 of (R. 1165) those were received and 151 of those were sent. I was able to recover zero deleted text messages from the HTC phone. The software that I utilized in this particular device and the way this device operates, I was unable to recover any deleted messages. There were 280 messages on the HTC phone. I absolutely cannot say for sure that's the only text messages that went back and forth between those numbers.

ARGUMENT

In 2001, Appellant, an attorney, was employed by the University of Central Arkansas ("UCA") as its Chief of Staff. With his position, came possession of a key card and master keys that opened the doors to most of the buildings and offices on the campus. Beginning in the spring of 2011, Appellant, who was friends with a UCA student named Cameron Stark, acted as an accomplice to commercial burglary by providing Stark access to his master keys knowing that Stark was using them to unlawfully enter professors' offices in order to steal exams.

A Faulkner County jury convicted Appellant of six counts of commercial burglary and sentenced him to 36 months' imprisonment in the Arkansas Department of Correction as to Count one, 10 years' probation as to Counts two through six, and assessed a cumulative fine of $35,000. (R. 492-96, Add. 287-90). Appellant argues that the circuit court erred by (a) admitting evidence that he had been in a relationship with a male prosecution witness; (b) admitting evidence that he drank alcohol with UCA students; (c) admitting evidence that he refused to give an explanation when confronted by UCA officials; (d) denying his directed-verdict motions; (e) that there was insufficient notice that his conduct constituted criminal behavior in violation of due process; and (f) admitting evidence of illicit drug use during sentencing. Although he raises it in his fourth point, because of double-jeopardy concerns, this court must first address the challenge to the sufficiency of

the evidence. E.g., Spearman v. State, 2013 Ark. 196, at 1, 427 S.W.3d 593, 594. Appellant's arguments are meritless, and his convictions should be affirmed.

I., II., & III.

THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING EVIDENCE OVER APPELLANT'S OBJECTIONS; ALTERNATIVELY, ANY ERROR WAS HARMLESS.

A circuit court has wide discretion in making evidentiary rulings and will not be reversed absent an abuse of discretion. E.g., Banks v. State, 2010 Ark. 108, at 4-5, 366 S.W.3d 341, 343. As a general rule, all relevant evidence is admissible. See Ark. R. Evid. 402 (2014). Relevant evidence is "evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Ark. R. Evid. 401 (2014). "Any circumstance that ties a defendant to the crime or raises a possible motive for the crime is independently relevant and admissible as evidence." Jackson v. State, 359 Ark. 297, 305, 197 S.W.3d 468, 474 (2004). Under Ark. R. Evid. 403 (2014), however, relevant evidence may be excluded if its probative value is "substantially outweighed" by the danger of unfair prejudice. Nevertheless, the mere fact that evidence is prejudicial does not make it inadmissible; it is only excludable if the danger of unfair prejudice substantially outweighs its probative value. E.g., Lamb v. State, 372 Ark. 277, 285, 275 S.W.3d

144, 151 (2008). Under these standards, the circuit court did not abuse its discretion by admitting the challenged evidence.

Before trial, defense counsel sought to limit the introduction of evidence that Appellant (a) had been engaged in a homosexual relationship with State's witness Ryan Scott, (b) had used drugs and alcohol with students, and (c) had failed to defend himself to superiors when questioned about the burglaries, arguing that such evidence was irrelevant and more prejudicial than probative. (R. 460-62, Add. 267-68). The State agreed not to introduce evidence of drug use but argued that, because alcohol use was not illegal, any mention of it was relevant to characterize Appellant's relationship with the witnesses. (R. 470-72, Ab. 271-73). The State also made clear that it had no intention of making Appellant's sexual orientation an issue in the case arguing instead that it only sought to introduce evidence that Appellant had an intimate relationship with Scott to bolster his credibility and knowledge of key events. (Id.). Finally, the State argued that any challenge to Appellant's superiors testifying as to their perceptions should be rejected under Ark. R. Evid. 701 as lay witnesses may offer their opinion as to what they perceived. (Id.). The motion was orally argued before trial, and the trial court determined all of the proposed testimony was relevant and not overly prejudicial. (R. 656-65, Ab. 20-27). Appellant challenges this decision.

A. Appellant's and Scott's Relationship

Appellant alleges that evidence of his relationship with Scott was not only irrelevant but also highly prejudicial. He is wrong.

Stark testified that, upon their meeting, he and Appellant quickly became good friends. (R. 918-19, Ab. 53-54). He explained that he regularly stayed at Appellant's house anywhere from three to five nights a week and often brought friends over for drinks. (Id.). Scott similarly testified that there were always lots of people coming and going in Appellant's apartment. (R. 1180-81, Ab. 136).

Over the defense's renewed objection to Scott's testimony about the nature of his and Appellant's relationship, Scott testified that he and Appellant began dating in 2010, eventually moving in together. (R. 1171-174, Ab. 134-35). Their relationship was relevant to show to the jury that Scott was not just one of many friends and houseguests who frequented Appellant's home. Rather, because of his intimate relationship with Appellant, Scott was privy to interactions and conversations that those who were just coming and going were not. Scott saw firsthand the depth of Appellant and Stark's friendship, knew that the two saw each other daily, and testified that the two were "always" passing the key back and forth so that Stark could steal tests. (R. 1176-177, Ab. 135-36). Moreover, Scott not only heard Appellant tell Stark "you should have studied" followed by "the key is over there," but also saw Appellant give Stark the key – information that only a

confidant would have. (R. 1177-179, Ab. 136). As such, the trial court did not abuse its discretion in finding the evidence relevant to bolster Scott's credibility and to show his opportunity to observe key events. (R. 658-64, Ab. 21-26). In short, it was the fact of their relationship, not its homosexual nature, that was exceedingly relevant at trial.

Appellant also contends that the evidence should have been excluded because its prejudicial effect outweighed any probative value. As evidence of the prejudice, Appellant cites to the prosecutor's closing rebuttal statement in which he opined that Appellant's motive for allowing Stark to have the key was because he was someone who liked to be in control and to have attention, "someone that likes having young students in their home, somebody that is going to meet his boyfriend on Craig's list?" (R. 1384, Ab. 248). In support of his argument that such comments and evidence was prejudicial, Appellant relies on several out-of-state cases that can be readily distinguished. In each case, homosexuality was discussed – not to establish, as here, why and how a witness came to observe key events in the case – but, to show a propensity for deviate acts. For example, in People v. Garcia, 177 Cal. Rptr. 3d 231 (2014), upon which Appellant relies, the defendant's conviction for sexually abusing a child was reversed and remanded on a finding that the prosecutor's argument during closing that the defendant's sexual orientation was relevant to prove motive effectively confirmed in the minds of the

jurors any preconceived notions that homosexuals are also child molesters. Id. at 315-317.

The State's rebuttal statement was not an overly prejudicial comment aimed at shaming Appellant or drawing on prejudices of the jury. Cf. United States v. Birrell, 421 F.2d 665, 666 (9th Cir. 1970) (reversed and remanded for new trial finding government's closing plea to the jury to not turn defendant, a homosexual, loose on society irrelevant to his charged crime of interstate transport of a stolen car); Wessel v. State of Florida, 968 So.2d 634 (2007) (reversed and remanded for new trial finding evidence of the defendant's homosexuality was irrelevant and prejudicial to charge of lewd and lascivious molestation of his minor grandchildren); Hughey v. State, 729 So.2d 828, 831 (Miss. Ct. App. 1998) (finding no error in the trial court rejecting the defendant's attempts to discredit the State's witness with evidence of his homosexuality); State v. Bates, 507 N.W.2d 847, 852 (1993) (holding defendant's sexuality was irrelevant as to whether he had a propensity for abusing children but did not amount to reversible prejudicial error). Rather, when read as a whole, the prosecutor's comment tended to explain why a learned man in a position of authority would act so injudiciously and irresponsibly – because he enjoyed the attention and the power. Moreover, both parties were able to thoroughly voir dire the potential jurors as to their feelings toward homosexuality and move to strike those with obvious prejudices, further

reducing the threat of prejudicial impact. (R. 694-97, 801-12, 844-45, 854-55, Ab. 32-40). Because the evidence was relevant and because Appellant has not shown prejudice substantially outweighing its probity, the trial court's admission of the evidence should be affirmed.

B. Alcohol

Appellant next contends that the introduction of evidence that Appellant drank with Stark socially and attended events where alcohol was present was irrelevant and overly prejudicial as it did "nothing more than to further erode Appellant's character in the eyes of the jury." (Appt.'s Br. at 9). He is wrong.

Any discussion of alcohol use was not overly prejudicial and was relevant to illustrate the close nature of Appellant's friendship with Stark. It certainly demonstrated the level of comfort both men had with one another. The testimony that a man in leadership at the university opted to socialize with students and to allow those students to drink at his home evidenced Appellant's state of mind – again, one of irresponsibility and poor judgment. The evidence of legal, social drinking was not introduced to show that Appellant was a drunk, or a bad person. Instead, it was only discussed from Stark's point of view as one of many descriptors of the close and familiar nature of his relationship with Appellant. In fact, the record evidence shows that it was Stark who could not recall how he came into permanent possession of Appellant's keys due to his drunkenness the night

before, which arguably did more harm to his credibility rather than to Appellant. (R. 942, 962, Ab. 62, 69). Finally, the passing references to alcohol use were certainly no more prejudicial than the un-objected to evidence that Appellant and Stark also liked to play video games and go four-wheeling in the snow – activities that equally demonstrate Appellant's close friendship with, and efforts to endear himself to, Stark.

C. Reaction to Superiors

In his third point on appeal, Appellant contends that evidence of his reaction to being questioned by his superiors was not relevant and highly prejudicial. Alternatively, he contends that its introduction violated his Fifth Amendment right against self-incrimination.

Dr. Graham Gillis, an Associate Vice President at UCA, testified that he had worked both for and with Appellant during his career at the university. (R. 1249-250, Ab. 159). After university police made Dr. Gillis and UCA President Tom Courtway aware of the allegations, the two men met with Appellant on June 13, 2012, along with a member of campus security and explained that he would be put on administrative leave while the allegations were investigated. (R. 1251-252, Ab. 160-61). According to Dr. Gillis, Appellant simply responded, "I understand" and left the room. (R. 1252, Ab. 161). A couple of days later, the men again requested a meeting with Appellant, hoping to allow him to hear the statements that had been

made and to explain his side of the story. (R. 1254, Ab. 161-62). President Courtway opened the conversation by supporting Appellant, explaining that they had a long work history and wanted to give him the benefit of the doubt. (R. 1277, Ab. 171-72). However, Appellant refused to listen to the recorded statements instead stating, "why don't you just let me resign." (R. 1255, 1277, Ab. 162-63, 172). President Courtway explained that he accepted Appellant's resignation because he knew Stark had used Appellant's key and that, when confronted, Appellant had not seemed shocked or surprised by the allegations that he had allowed the use of the keys. (R. 1286-87, Ab. 176-77).

Appellant contends that the State sought to introduce the evidence "to permit the jury to infer, that because Appellant did not explain the accusations against him or profess his innocence, he was guilty of the crimes charged." Dr. Gillis's and President Courtway's testimonies were relevant to show what steps the university took to investigate the allegations. That they were unsuccessful in their attempts to ascertain what happened by talking with their longtime friend and colleague personally does not make their testimony more prejudicial than probative. For the same reason, the evidence was admissible under the *res gestae* exception allowing the State to introduce evidence showing all circumstances that explain the charged act. E.g., Caery v. State, 2014 Ark. App. 583, at 5-6. Applying this standard,

Appellant's reaction to his co-workers when questioned about the allegations aided the jury in understanding the events that led to his termination and formal charges.

As for his alternative argument, that the introduction of the evidence violated his constitutional right to remain silent, it is not preserved. In his motion in limine argued before trial, Appellant's sole argument was that his supervisors' impressions of his reaction were inadmissible under evidentiary standards as not relevant and prejudicial. (R. 460, Add. 267). Only when summing up his argument during pretrial discussions did Appellant add, "I think we made this clear but I'm not sure – we're contending that he's being punished for exercising his constitutional right to silence." (R. 665, Ab. 27). The trial court denied the motion stating that it did not agree. (Id.). Appellant now expands this argument in an attempt to create a constitutional argument contending that he was effectively in custody because the discussion "carried with it the force of official compulsion or governmental coercion." (Appt.'s Br. at 14). Relying on Miranda v. Arizona, 384 U.S. 436 (1966) and Cagle v. State, 68 Ark. App. 248, 6 S.W.3d 801 (1999), Appellant further argues that the State could not use "as substantive evidence the fact that Appellant failed to give an explanation in the face of accusation." (Appt.'s Br. at 14). He is wrong.

First, a general objection by a party who cites to constitutional provisions is not sufficient to preserve a constitutional question for appeal. E.g., Raymond v.

State, 354 Ark. 157, 165, 118 S.W.3d 567, 572 (2003). Second, even if the matter were preserved, Miranda does not apply to non-custodial meetings of colleagues held in the course of their employment.

The Fifth Amendment to the United States Constitution provides, in part, that "no person ... shall be compelled in any criminal case to be a witness against himself." Collins v. State, 2014 Ark. App. 574, 4-5, 446 S.W.3d 199, 203. In Miranda, the Supreme Court acknowledged that "the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves." Id. at 467. Miranda held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from *custodial* interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Id., at 444 (emphasis added). A person is "in custody" for purposes of the Miranda warnings when he is "deprived of his freedom by formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." Hall v. State, 361 Ark. 379, 389, 206 S.W.3d 830, 837 (2005).

Despite Appellant's assertion otherwise, his meeting with Dr. Gillis and President Courtway does not constitute a custodial interrogation triggering Miranda and Fifth Amendment rights. He was not restrained. He was not under

arrest. In fact, he was free to leave at any time, which he did as soon as the parties realized that there was no point to further discussion. Because Appellant cannot demonstrate that a custodial interrogation occurred, his Fifth Amendment argument should be denied. As a result, Appellant's briefed argument that he need not affirmatively invoke his Fifth Amendment right in order to be protected by the privilege need not be addressed. (Appt.'s Br. at 14-15) (citing Salinas v. Texas, 133 S.Ct. 2174 (2013). Neither is this a situation like that found in Garrity v. New Jersey, 385 U.S. 493 (1967), to which he cites, as he was not questioned under threat of removal. See, Green v. City of North Little Rock, 2012 Ark. App. 21, at15, 388 S.W.3d 85, 93. Indeed, the appellant asked to be able to resign. For all these reasons, Appellant has failed to show that the trial court abused its discretion in allowing the evidence, and the admission of the evidence should be affirmed.

D. Harmless Error

Finally, even if this court finds that any of the evidence addressed in sub-points A-C above was erroneously admitted under either Rule 401 or Rule 403, the State contends that any error was harmless under the facts in this case. E.g., Johnston v. State, 2014 Ark. 110, 7, 431 S.W.3d 895, 899. The admission of evidence may be considered harmless when there is overwhelming of guilt and the error is slight. Id. "Prejudice is not presumed, and a conviction will not be reversed on appeal absent a showing of prejudice by the defendant." Eastin v.

State, 370 Ark. 10, at 22, 257 S.W.3d 58, 67 (2007). Taking the evidence as a whole, there was overwhelming evidence of Appellant's guilt.

A person commits commercial burglary if he enters a commercial occupiable structure of another person with the purpose of committing any offense punishable by imprisonment. Ark. Code Ann. § 5–39–201(b)(1) (Repl. 2013). According to the felony information, the intended offense punishable by imprisonment in this case was theft of property. (R. 455-56, Add. 263-64). A person commits theft of property if he knowingly takes or exercises unauthorized control over or makes an unauthorized transfer of an interest in the property of another person with the purpose of depriving the owner of the property. Ark. Code Ann. § 5–36–103(a)(l) (Supp. 2013). Theft of property is defined as, and considered a Class A misdemeanor if, the value of the property taken "has inherent, subjective, or idiosyncratic value to its owner or possessor even if the property has no market value or replacement cost." Ark. Code Ann. §§ 5-36-101(12)(iii) (Repl. 2013) & -103(b)(4)(B) (Repl. 2013). A person is criminally liable for the conduct of another person if the person is an accomplice of the other person in the commission of an offense. Ark. Code Ann. § 5–2–402(2) (Repl. 2013). Based on the evidence presented below, there was overwhelming evidence that Appellant was Stark's accomplice to commercial burglary.

The burglaries came to light on June 10, 2012, after a campus break-in was reported. (R. 900, Supp. Ab. 4). Stark was identified as the burglar from surveillance videos taken within an administrative building at 1:38 a.m. where the theft occurred. (R. 901, Supp. Ab. 4-5). Officer Preston Grumbles testified that, upon being placed under arrest, Appellant immediately confessed "the keys are in my pocket." (R. 903, Supp. Ab. 6).

Having been granted immunity, Stark testified that he had used a master key to burglarize Andrew Linn's office. (R. 914, Ab. 52). In fact, it was Linn who introduced Stark and Appellant. (R. 917, Ab. 53). Stark explained that after their introduction, he and Appellant quickly became close friends and that Appellant assisted him in getting a student job along with him in the president's office. (R. 917-19, Ab. 53-54). Appellant even went so far as to use his position as Chief of Staff to attempt to have Stark admitted to an already full class – a request deemed by the recipient to be highly unusual having never received another such request from a school administrator. (R. 919, 1003-05, Ab. 54, Supp. Ab. 7-9).

Stark, who was a pre-med biology major, was enrolled in zoology (Dr. Vohra), organic chemistry II (Dr. Tarka), and Physics II (Dr. Menon) during the spring semester of 2011. Pressured to succeed on an upcoming exam, Stark questioned Appellant in February 2011, whether he would be willing to let him into the Lewis Science Center to steal a copy of the exam. (R. 921, Ab. 55).

According to Stark, Appellant readily agreed, used his key to gain access to both the building and Dr. Vohra's office, assured Stark that if anyone saw them he had an excuse ready, and stood watch in the hall while Appellant found the exam on Dr. Vohra's computer and copied the test. (R. 921-25, 968-71, Ab. 55-57, 71-72). While in the office, Stark took a photograph of Dr. Vohra's desk and computer as proof that he had been there. (R. 925, Ab. 57). With the test in hand, Stark then went to fellow UCA student Jared Santiago's dorm room to ask his help in determining the correct answers. (R. 926, Ab. 57). Santiago confirmed that Stark came to his room that night with the test bragging that Appellant had allowed him access to the office and showed Santiago the picture taken within the office as proof. (R. 1110-114, Ab. 117-119). Dr. Vohra identified his syllabus connecting the date of the theft with a test date several days later, identified the stolen test, and verified Stark's testimony as to the location of the test within his office. (R. 1010-013, Ab. 88-89).

After the first theft, Stark testified that Appellant routinely allowed him to borrow his keys and swipe card to enter campus offices at night to steal exams. Stark explained that he would typically borrow Appellant's keys the night before an exam, enter in the middle of the night, and return the keys the following day. (R. 927-30, Ab.57-58). Stark, accompanied by Santiago, stole the exam for Dr. Tarka's February 15, 2011, organic chemistry exam. (R. 929, 1072, 1093, 1117-

18, Ab. 58, 105, 111, 120-21). However, when he attempted to steal Dr. Menon's March 7, 2011, Physics II exam, Stark discovered that Appellant's keys would not work for that building. (R. 931, 1101, Ab. 59, 114). Appellant remedied the problem by immediately having an alternative master key made allowing Stark to gain access to Dr. Menon's office; however, even with access to the office, Stark was unable to find the April 1st, Physics II exam. (R. 932-36, 1077-079, 1101, Ab. 59-60, 107, 114). Nevertheless, Stark continued to burgle Dr. Tarka's office successfully stealing his March 17, 2011, chemistry exam as well as a chemistry quiz given on March 21, 2011. (R. 933-35, 1073-074, 1093-094, Ab. 59-60, 105-06, 112).

At some point in the spring, Stark wrecked Appellant's motorcycle after borrowing it without permission, resulting in their friendship ending and Stark being fired. (R. 936-37, Ab. 60). Terrified that testing poorly on Dr. Tarka's third exam would raise a red-flag, Stark unsuccessfully attempted to convince Scott to get him the keys. (R. 937-38, 945, Ab. 60-61, 63). Appellant ended up skipping the exam rather than risk conspicuously failing it. (R. 939, Ab. 61). Although unable to recall a specific time that Scott would have seen Appellant give him the keys, Stark testified that he undoubtedly was sure Scott knew about the key arrangement because of his and Appellant's living arrangement and because of his own attempts to convince Scott to give him the keys during the time that Appellant

and he were not speaking. (R. 987-89, Ab. 82-82). Scott confirmed his knowledge of the arrangement testifying that Stark had texted asking for the keys but that Appellant, who had gone out of town, had given him specific instructions to not let Stark have the keys. (R. 1182, Ab. 137). Although Stark firmly maintained that Scott never gave him the keys, Scott testified that he may have given them to him but he could just not recall for sure. (R. 945, 988-89, 1188, Ab. 63, 82-83).

Nevertheless, having missed Dr. Tarka's third exam and motivated by his fear of failing the final exam, Stark made every effort to mend the broken relationship with Appellant and was able to secure the keys again to steal the final exam on May 3, 2011. (R. 940-42, 1074-075, 1095, 1125, Ab. 61-62, 106, 112, 123). Thereafter, Stark managed to secure the keys permanently following a night of heavy drinking at Appellant's – he could not recall whether he took them or whether Appellant allowed him to have them – nevertheless, he possessed them until his arrest. (R. 942, Ab. 62). Thereafter, in the fall of 2011, Appellant reported his keys lost. However, after discussing the matter with university police and President Tom Courtway, the president decided not to rekey the entire campus due to the projected cost of between $150,000-$250,000. (R. 1272, Ab. 169).

When arrested, Stark readily gave over two cell phones and his computer to police contending that his text messages would verify his story. (R. 950-51, 962, Ab. 65, 68). Officer Brian Williams confirmed that Appellant was a contact on

both of Stark's phones and, of the recovered messages that the two men shared, at least 700 text messages were located cumulatively between the two phones. (R. 1162-163, Supp. Ab. 9-10). Despite the volume of messages recovered, Stark maintained that there were large gaps in the timeline of his recovered texts. (R. 950-51, 962, Ab. 65, 68). Officer Williams confirmed that, because every phone is different depending on how it writes over deleted articles, it could not be predicted what information a phone will retain. (R. 1162, Supp. Ab. 9). Essentially, Officer Williams did not think it odd that he could not recover every message Stark believed he and Appellant exchanged. (R. 1162-166, Supp. Ab. 9-11).

Overwhelming evidence supports Appellant's conviction for commercial burglary. Stark possessed keys confirmed to have been issued to Appellant and unlawfully used them enter administrative buildings in the middle of the night in order to steal exams. In fact, when Stark needed a different key to access a separate building, a building that in his entire career Appellant had no need to enter in off hours, Appellant immediately had one made as confirmed by his signature on the requisition form. Further, the timing of the key creation, March 7, 2011, exactly corresponded with the test Appellant was attempting to steal. (R. 932, 1079, 1100-02, Ab. 59, 114). Despite the defense's attempts to lead the jurors to believe that Stark may have just stolen the keys and was using them without Appellant's knowledge, Scott rebuffed that contention testifying that there was no

reason for Stark to have stolen the keys from Appellant because it was no big deal for him to have them whenever he wanted. (R. 1183, Ab. 137). Furthermore, not only did Santiago also know about the arrangement, but Stark's friend and army mentor, Jeff Scarborough, testified that Stark likewise told him all about the thefts. (R. 1213, Ab. 147). Scarborough testified that he warned Stark that there would be serious consequences and that, when he confronted Appellant about allowing Stark to have the key, Appellant just nervously laughed and said, "I know. I know." (R. 1214-215, Ab. 148). Taken as a whole, these circumstances illustrate that any evidentiary error was harmless as there was overwhelming evidence of Appellant's guilt.

IV.

SUBSTANTIAL EVIDENCE SUPPORTS APPELLANT'S CONVICTION.

In reviewing a challenge to the sufficiency of the evidence, a motion for directed verdict is treated as a challenge to the sufficiency of the evidence. E.g., Williamson v. State, 2011 Ark. App. 73, at 3-4, 381 S.W.3d 134, 137 (2011). In determining if the evidence is sufficient, this Court views it in the light most favorable to the State. E.g., id. Thus, only evidence that supports a conviction will be considered, and the conviction will be affirmed if it is supported by substantial evidence. E.g., id. Evidence is substantial when it is forceful enough to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture.

E.g., id. Moreover, when the sufficiency of the evidence is challenged, an appellate court will not weigh witness credibility, because that is for the fact-finder to determine. E.g., id. "Intent is rarely capable of direct proof but must usually be inferred from the circumstances." Green v. State, 2011 Ark. App. 700, 2. "The fact-finder is permitted to draw on common knowledge and experience to infer intent from the circumstances." Id.

In his motion for directed verdict, Appellant challenged the State's proof of the predicate offense, theft of property. (R. 1291, Ab. 179-80). Specifically, Appellant, relying on Holt v. State, 2011 Ark. 391, 384 S.W.3d. 498, argued that the State failed to prove that Appellant or his accomplice entered a commercial structure with the intent to commit a felony therein. (Id.). Because the State's proof as to the value of the property taken was not quantified, Appellant argued that the trial evidence only supported a misdemeanor theft of property and, therefore, did not constitute a felony under Holt. Appellant further argued that because Stark only took copies or photographs of the exams, the State failed to show the deprivation element of theft of property. (R. 1293-294, Ab. 181-82). Appellant suggests that the State should have quantified the tests' values by asking the professors to quantify the value of an advanced copy of the test. (Appt.'s Br. at 22). He contends that a test has no value unless a student has it beforehand –

which Stark did – and that without direct evidence of market value, the State did not meet his burden of proof.

As previously stated, theft of property is defined as, and considered a Class A misdemeanor if, the value of the property taken "has inherent, subjective, or idiosyncratic value to its owner or possessor even if the property has no market value or replacement cost." Ark. Code Ann. §§ 5–36–101(12)(iii) (Repl. 2013) & –103(b)(4)(B) (Repl. 2013). Property is defined in Ark. Code Ann. § 5–36–101(7) (Repl. 2006) as either tangible or intangible personal property, including any paper or document that represents or embodies anything of value. Deprive means to "[w]ithhold property or to cause it to be withheld either permanently or under circumstances such that a major portion of its economic value, use, or benefit is appropriated to the actor or lost to the owner." Ark. Code. Ann. § 5–36–101(4) (Repl. 2006). No minimum value is required for proof of misdemeanor theft of property. E.g., O'Riordan v. State, 281 Ark. 424, 426, 655 S.W.2d 255, 257 (1984).

This Court has held "misdemeanor theft of property is an offense punishable by imprisonment" sufficient to constitute commercial burglary. Washington v. State, 2013 Ark. App. 148, at 3-4 (citing Ark. Code Ann. § 5-4-401(b), which governs terms of imprisonment for misdemeanor offenses). Moreover, this Court's interpretation of the commercial-burglary statute in Washington is directly in line

with the legislative intent of the statute's drafters. In the original commentary to § 5–39–201, the legislature explicitly stated that it intentionally drafted the commercial burglary statute to include "any offense punishable by imprisonment," in order to encompass "entry with purpose to commit misdemeanors . . . to create liability." Original Commentary to Ark. Code Ann. § 5–39–201, Vol. B. (Repl. 1995). Accordingly, since misdemeanor theft of property is an offense punishable by imprisonment, Ark. Code Ann. § 5–4–401(b)(1) (Repl. 2013), then both elements of the commercial-burglary statute have been satisfied. See Washington, 2013 Ark. App. at 4.

The three professors from whom tests were stolen each testified as to their estimation of the value. Dr. Vohra testified that he was unable to put a dollar value on his exams arguing that they were, in fact, invaluable, as his student's entire futures were based on their success on those same exams. (R. 1014, Ab. 90). Drs. Tarka and Menon similarly testified that their tests' value came from their ability to level the playing field and prevent unfair advantage for any student. (R. 1097, 1103, Ab. 113, 115). In addressing the value of the stolen exams, President Courtway explained that it was hard to put a figure on the damages to the university or the value of exams because the core of any university's academic integrity hinges on the fact that the a degree earned was earned legitimately and that that degree has inherent value – value forged from years of concentrated work

from validly passing exams that, in turn, proves aptitude in a specific field. (R. 1278, Ab. 172-73).

Appellant's conclusory allegation that copies and photographs of tests do not fit within the statutory definitions is unsupported by authority and should be rejected. Appellate courts will not consider an argument, even a constitutional one, when the appellant presents no citation to authority or convincing argument in its support, and it is not apparent without further research that the argument is well taken. E.g., Britton v. State, 2014 Ark. 192, 11, 433 S.W.3d 856, 863. Regardless, the evidence presented at trial was that Stark either took photos of the exams with his cell phone or made a photo copy of the exam, leaving the original where he found it. (R. 971, 981-82, Ab. 73, 78-79). Appellant's attempts to argue that either a copy or photograph does not constitute property must fail as both items qualify as tangible property, and there was substantial evidence that the items constituted "paper or document[s] that represents or embodies anything of value." §5–36–101(7). Further, when Appellant knowingly exercised unauthorized control over them, a major portion of the tests' inherent value was lost and appropriated to him. The professors' value testimony was sufficient State's evidence upon which the jury could determine, based on the AMCI 2nd 3601 instruction given, that the tests had inherent worth to the professors and to the university as a whole and, therefore, did not offend Canon v. State, 265 Ark. 270,

578 S.W.2d 20 (1979) or Apprendi v. New Jersey, 530 U.S. 466 (2000), as Appellant now contends. The stolen exams possessed a value precisely because they were images of the actual exams. Stealing the actual exam was of no greater value to Stark because doing so would have risked discovery and likely would have resulted in the exam not being given. Although no minimum value need be shown, it is clear from the evidence presented that the exams were not worthless as everyone who testified as to their value stated that they were invaluable.

Furthermore, Appellant's reliance both below and on appeal on *obiter dictum* in the Holt opinion is flawed because appellate courts are not bound by conclusions stated as *obiter dictum* as they are nothing more than mere comment and not a decision of the court. E.g., Green v. State, 343 Ark. 244, 251, 33 S.W.3d 485, 490 (2000). Dicta includes any discussion or comment in an opinion that is unnecessary to the decision reached. Id. In Holt, the defendant appealed his conviction for aggravated-residential burglary arguing that the State had presented insufficient evidence that he entered the residence unlawfully and that he intended to commit an offense punishable by imprisonment. Holt, 2011 Ark. at 5, 384 S.W.3d 498, 503. The court held that Holt did not preserve his intent argument. Id. at 8, 384 S.W.3d at 504. Nevertheless, in addressing this point, the supreme court, quoting Norton v. State, 271 Ark. 451, 609 S.W.2d 1 (1980), recounted the elements of residential burglary as requiring both (1) illegal entering and "(2)

having the purpose to commit a felony in that residence." Id. at 6, 384 S.W.3d at 503. Appellant contends that the supreme court has thus, redefined the commercial burglary statute to mean that "any crime punishable by imprisonment" requires a felony offense. That contention is wrong.

The supreme court has since quoted Holt only once in the appeal of the denial of postconviction relief wherein it cited Holt for the premise that commercial burglary requires both illegal entering and the intent to commit a felony therein. See Sherman v. State, 2014 Ark. 474, at 9, 448 S.W.3d 704, 711 (per curiam). It appears that Sherman's reliance on Holt was solely for standard of proof for burglary. Further, Norton, upon which the supreme court relied in Holt, does not hold that commercial burglary requires that intent be proven by a felony predicate offense. Norton, 271 Ark. at 454, 609 S.W.2d at 3. Therefore, its citation to Norton, like Sherman, seems to be solely for definitional purposes. Because the supreme court in Holt determined that Holt had not preserved the intent element of his directed-verdict challenge for appeal, any comment made by the Court in defining intent was nothing more than dicta by which this Court is not bound. See Green, supra. Moreover, since Holt, this Court has continued to find misdemeanor theft of property sufficient to support a burglary charge. See, Washington, supra.

As set out above, substantial evidence was presented that Appellant, acting as an accomplice, committed six counts of commercial burglary. Based on the above, the trial judge was correct in denying the directed-verdict motions.

V.

APPELLANT WAS GIVEN SUFFICIENT NOTICE OF HIS CRIMES.

In further reliance on Holt, supra, Appellant contends in his fifth point on appeal that "if the commercial burglary elements included anything less than felony theft, [then he] was not given adequate notice that his conduct was criminal and was therefore denied due process." (Appt.'s Br. at 27); (R. 1294-295, Ab. 182). Because the information said that he was being charged with stealing tests, and because no actual tests were taken, Appellant argues that he had no notice that he actually would have to defend the stealing of information – since, only copies and images were taken.

"[D]ue process requires that the defendant be provided sufficient notice of the precise criminal charges brought against him and that he must have adequate opportunity to prepare his defense." Johnson v. State, 71 Ark. App. 58, 69, 25 S.W.3d 445, 452 (2000). Here, Appellant was charged by felony information on October 5, 2012, with three counts of commercial burglary. (R. 11-12, Add. 1-2). An amended information was field on May 9, 2013, changing the dates of the alleged offenses. (R. 365-66, Add. 236-37). After a May 10, 2013, motions

hearing in which defendant's bill of particulars requesting more specific information of the crimes charged, including exact dates of entry was argued, (R. 591-95, Supp. Ab.), the State filed a second amended felony information on August 8, 2013, charging Appellant with five counts of commercial burglary based on the predicate offense of theft of property and listed the exact dates, buildings, and items stolen in support of the charges. (R. 411-12, Add. 240-41). Finally on February 20, 2014, the State filed its third and final felony information naming in detail six commercial burglary charges predicated on theft of property. (R. 455-56, Add. 263-64). The jury trial occurred over two days on March 10-11, 2014. Appellant was given sufficient notice that he was to defend himself against charges of commercial burglary and any potential due process violations due to any insufficiencies in the information was cured by Appellant's challenging of the informations through his bill of particulars resulting in several amendments being filed to cure any alleged inadequacies.

Moreover, Appellant's due-process argument fails as his sufficiency argument does, because it depends on his interpretation of Holt. For all the reasons recounted in Point IV above, Holt's comment on the commercial burglary statute was dicta and should not be considered a rewriting of otherwise consistent case law that commercial burglary can be proved by misdemeanor theft of property.

VI.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING EVIDENCE OF APPELLANT'S DRUG USE DURING THE SENTENCING PHASE OF TRIAL.

Before the sentencing phase of trial, the State requested permission to introduce several text messages between Stark and Appellant referencing both marijuana availability and use as character evidence. (R. 1397, Ab. 258). Over defense counsel's 404(b) objection, which prohibits the State, in part, from using past bad acts as character evidence to show a defendant is a criminal or a bad person, the trial court allowed the evidence. (R. 1398-402, Ab. 258-63). The trial court did not abuse its discretion in reaching this decision.

Just as with the guilt phase, a trial court's decision to admit evidence during the sentencing phase of a trial is reviewed for an abuse of discretion, e.g., Helms v. State, 92 Ark. App. 79, 82, 211 S.W.3d 53, 55 (2005), and will be reversed only if demonstrable prejudice resulted from the admission of the evidence. E.g., Buckley v. State, 341 Ark. 864, 20 S.W.3d 331 (2000). Under Ark. Code Ann. § 16–97–103(5) & (6) (Repl. 2006), any relevant character evidence or evidence of aggravating circumstances is admissible at sentencing. E.g., Doles v. State, 2011 Ark. App. 476, 5, 385 S.W.3d 315, 318. Relevant evidence is 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. Ark. R. Evid. 401.

During the guilt phase of trial, the defense attempted to create reasonable doubt as to Appellant's knowledge of, and participation in, the commercial burglaries of the exams by suggesting that Stark may have been taking Appellant's key without his knowledge. The text messages between Stark and Appellant concerning the transfer and use of marijuana was properly admitted character evidence relevant to show that Appellant was not naïvely allowing a student to use him for a key. Rather, it shows Appellant's propensity to engage in criminal conduct. See Crawford v. State, 362 Ark. 301, 306, 308, 208 S.W.3d 146, 149, 151 (2005) (holding that evidence of subsequent drug activities was relevant character evidence demonstrating propensity to engage in illegal conduct); e.g., Thomas v. State, 2012 Ark. App. 466, 6, 422 S.W.3d 217, 220-221 (citing Brown v. State, 2010 Ark. 420, at 14, 378 S.W.3d 66, 74, for its holding that evidence of prior or subsequent uncharged criminal conduct can be admissible at the penalty phase of a trial if it is relevant evidence of the defendant's character or as character evidence or evidence of an aggravating circumstance);

Regardless, Appellant has not established prejudice from the admission of the evidence during sentencing. A defendant who is sentenced within the statutory range—and short of the maximum sentence—cannot establish prejudice. E.g.,

Holley v. State, 2014 Ark. App. 557, 7, 444 S.W.3d 884, 888 (citing Tate v. State, 367 Ark. 576, 583, 242 S.W.3d 254, 261 (2006) for its decision to decline to decide alleged sentencing-phase error because the defendant received less than the maximum sentence and therefore could not establish a prejudicial error)). The statutory sentencing range for commercial burglary is three to ten years, Ark. Code Ann. § 5–4–401(a)(4) (Repl. 2013), and Appellant received a cumulative sentence on his six convictions of three years. See, Holley, 2014 Ark. App. 557,at 8, 444 S.W.3d at 889. For all these reasons, Appellant had not shown that the trial court abused its discretion or that he was prejudiced as a result.

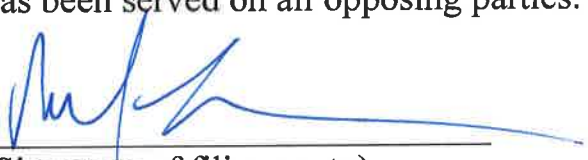
CONCLUSION

For the reasons and authorities set forth above, the State respectfully requests that Appellant's convictions and sentences be affirmed in all respects.

Case Name: Jack Gillean v. State
Docket Number: CR 14-936
Title of Document: Appellee's Brief

CERTIFICATE OF COMPLIANCE

I have submitted and served on opposing counsel (except for incarcerated pro se litigants) an unredacted, and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF document(s) are identical to the corresponding parts of the paper document(s) from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.



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March 16, 2015
(Date)