

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2021-000570

THE STATE,

Respondent,

vs.

JEREMIAH DICAPUA,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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1 now from coming back to Circuit Court for three years. So
2 if the Clerk of Court resummons you, you can tell the Clerk
3 that you did serve for the next three years.

4 With that, you are now excused. Thank you very
5 much.

6 (WHEREUPON, the jury exited the courtroom at 11:07
7 a.m.)

8 THE COURT: All right. Motions from the defense,
9 Mr. Edgeworth?

10 MR. EDGEWORTH: Yes, Your Honor. At this time the
11 defense would ask that the Court entertain a motion to set
12 aside the jury's verdict as it is against the weight of the
13 evidence or the evidence that was presented in this case.

14 THE COURT: All right. Thank you.

15 The Court having respectfully declined the motion
16 for a Directed Verdict by the defense after the presentation
17 of evidence, the motion by the defense now is for a new
18 trial.

19 The Court does find that there was competent
20 evidence to sustain the jury's verdict. Again, not being my
21 job at the Directed Verdict stage to judge credibility and
22 believability. The Court did say that there was sufficient
23 evidence, and there was more than sufficient evidence to
24 present the matter to the jury on kidnapping and attempted
25 kidnapping. Those facts are in evidence, and the jury

1 having reached their verdict, the Court does find that there
2 was more than sufficient evidence, competent evidence, to
3 sustain the jury's verdict for guilty on the crime of
4 attempted kidnapping.

5 All right. Is the State prepared to go forward
6 with sentencing?

7 MS. RICHARDSON: Yes, Your Honor.

8 THE COURT: Is the defense prepared to go forward?

9 MR. EDGEWORTH: Yes, Your Honor.

10 THE COURT: All right. Solicitor, I'll be glad to
11 hear from you, ma'am.

12 MS. RICHARDSON: Your Honor, Mr. Dicapua was
13 convicted of murder on December 11th, 1980 in Horry County.
14 The State did file notice to seek life without parole in
15 July of 2019 based on that conviction, I do understand the
16 Court's ruling in that regard.

17 Prior to 1980, his record consisted of
18 misdemeanors and a violation of probation in the State of
19 Maryland and that was in the 1970s.

20 He had an escape that he was convicted of in
21 Richland County. In October of 1996, he was located and
22 brought back from Maryland, the Baltimore area, at that
23 time. The escape was 10/22 of 1996. He was paroled in the
24 year 2000, according to records provided by the Department
25 of Probation and Parole.

1 He was rearrested on drug charges and convicted of
2 those charges in 2005. It was a PWID distribution of
3 cocaine or cocaine base in Horry County. That conviction
4 had a very lengthy procedural history. It was set aside by
5 Judge Baxley after the trial. That was appealed by the
6 State. It was reinstated. Then he was granted PCR and then
7 that was appealed and reversed. So that was a very tochered
8 history. I think it took from 2005 until about 2014.

9 His parole was revoked on the murder and -- or
10 partial revocation on the murder and the escape, it looks
11 like back in 2007, with those -- during that process with
12 the drug convictions. He was released, according to records
13 from the Department of Probation and Parole, from the
14 Department of Corrections in April of 2015. He was arrested
15 on these charges just a little over three years later in
16 June of 2018.

17 Your Honor, additionally, evidence that was not
18 before the jury, but was received by the State, but that was
19 excluded from the jury, is that the defendant, three days
20 before this, on June 7th, we had cellphone evidence showing
21 that the defendant was in this same area in Garden City,
22 particularly more of the Horry County side of South Waccamaw
23 on the side streets. And that he was photographing -- we
24 had two photographs of him photographing women in bikinis.
25 There was also a picture of what appeared to be a younger

1 female who appeared to be working with Kroger fully dressed
2 he had also taken a picture of, as well.

3 Your Honor, there were also on his computer and
4 phone, these were excluded from the jury as well,
5 pornographic searches and that sort of thing. Some of them
6 were very concerning just because they were rape or
7 forceful, not all of them, but there were some that was the
8 search or the sites that were pulled up. And some of those
9 were -- none of them were in June, but some of those were
10 earlier in 2018.

11 There was also, on his cellphone, some pictures
12 and some live pictures with a little bit of a video of a
13 woman in his vehicle that appeared to be incapacitated in a
14 state of partial undress. No indication of who she was
15 or -- that was involuntary. But he was taped photographing
16 her while she appeared to be incapacitated and photographing
17 her dressed.

18 Your Honor, based on all of this, his murder
19 conviction, the escape, being out of jail just a little over
20 three years before this occurred, he was also out on bond
21 for an arson that's still pending when this occurred.

22 The State would ask that you impose the maximum
23 sentence in this case.

24 The victim has previously given statements and
25 you've heard testimony from both her and her husband. I'm

1 going to see if she wants to say anything else. She does
2 not. And does law enforcement? And Investigator Sarvis
3 would also like to address the Court.

4 THE COURT: Yes, sir.

5 INVESTIGATOR STARVIS: Yes, Your Honor. The
6 State's, or the Law Enforcement's position is that
7 Mr. Dicapua is a threat to the community and society and
8 respectfully wish that you do consider the maximum sentence.

9 THE COURT: All right, sir. Thank you very much.

10 All right. Mr. Edgeworth, let me hear from you,
11 sir.

12 MR. EDGEWORTH: Thank you, You Honor. May it
13 please the Court.

14 First and foremost, Your Honor, I'd like the Court
15 to take into consideration the age of Mr. Dicapua. He is
16 70 years of age. He suffers from substantial medical
17 conditions to include Lupus he has to take medication for.

18 At the time of this incident and before he was
19 living with his mother. Obviously, her companion in life,
20 as they live together in Garden City. And, you know, taking
21 away him would be taking a caregiver, or at least for a
22 significant period of time.

23 In addressing the Court as to his former record, I
24 would like to at least point out a few things. One of which
25 is, of course, despite his conviction for the murder, he did

1 serve that time. And despite the State's position as to,
2 you know, being the old-type of parole eligible-type of
3 murder, he did do the time that he was required to do.

4 The escape was related to Mr. Dicapua's decision
5 to -- he had a family member that passed away and made the
6 unfortunate decision to leave that confinement and go to
7 Maryland for the funeral-type arrangements.

8 And as far as the other events to which that he
9 has not been convicted. The arson was a pending case,
10 which, quite honestly, was probably a case that would be
11 tried if this case resulted in a different verdict. We
12 would ask that the Court not to consider that in its
13 consideration for the sentencing in this particular case.

14 As to some of the evidence that the State has
15 referred to that was excluded by this Court, I would note
16 that I believe Your Honor had actually viewed some of the
17 photos before excluding them on the basis that they were
18 completely irrelevant. But if you notice in those photos,
19 the women in those photos have a jovial disposition. I
20 don't think they perceived any -- anything in the nature of
21 some type of disturbing activity or you may have seen a
22 different expression on their faces, in each of those photos
23 they're smiling and kind of getting along. And so I don't
24 think those are relevant.

25 Secondly, the searches that the State is

1 referring to, it is clear from the computer searches and the
2 catalog that was provided to me in discovery, that it is a
3 family computer. There's multitudes of searches, so I don't
4 know that the State would ever have been able to lay a
5 foundation as to who actually performed those searches.

6 Admittedly, and the Court's already reviewed,
7 there are some what appear to be pornographic-type searches.
8 I certainly don't think that that is relevant for the
9 purposes of this sentencing.

10 Thankfully, the victim in this case was not
11 harmed, other than emotionally, and that's understood. And
12 hopefully she can gather some healing from that. But I
13 think the Court should weigh more of its decision on the
14 basis that Mr. Dicapua, despite the finding of guilt, any
15 significant length of sentence would essentially be a death
16 sentence.

17 And I don't -- and we would argue that that is
18 not -- that does equate to the actions that occurred in the
19 case. And we would ask the Court to sentence Mr. Dicapua in
20 the most lenient fashion if it deems appropriate.

21 Thank you.

22 THE COURT: Thank you very much.

23 MS. RICHARDSON: Your Honor, I do have a
24 sentencing sheet.

25 THE COURT: Thank you, ma'am.

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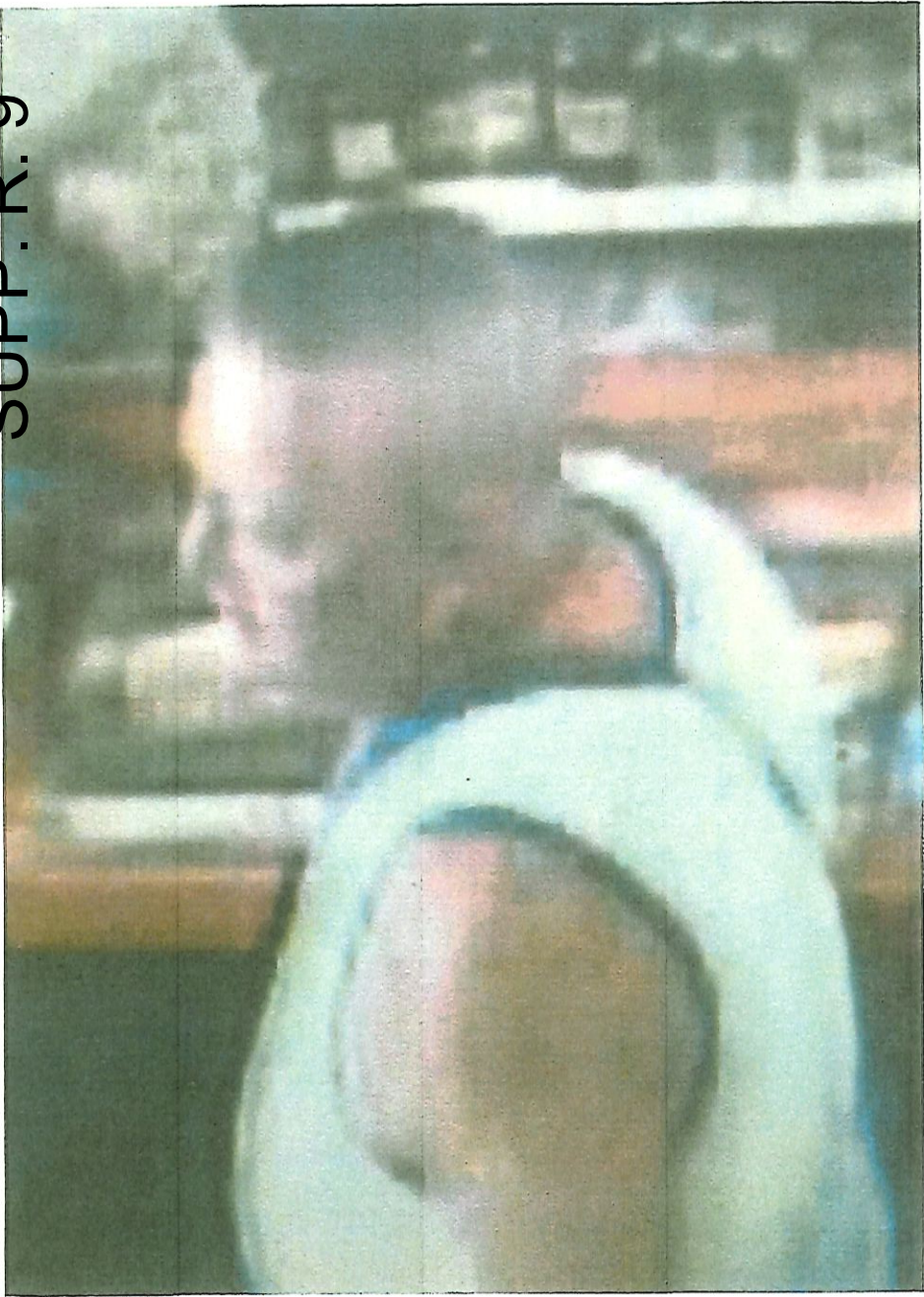
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Georgetown County
6/10/18
Scotty E. Jordan HCS

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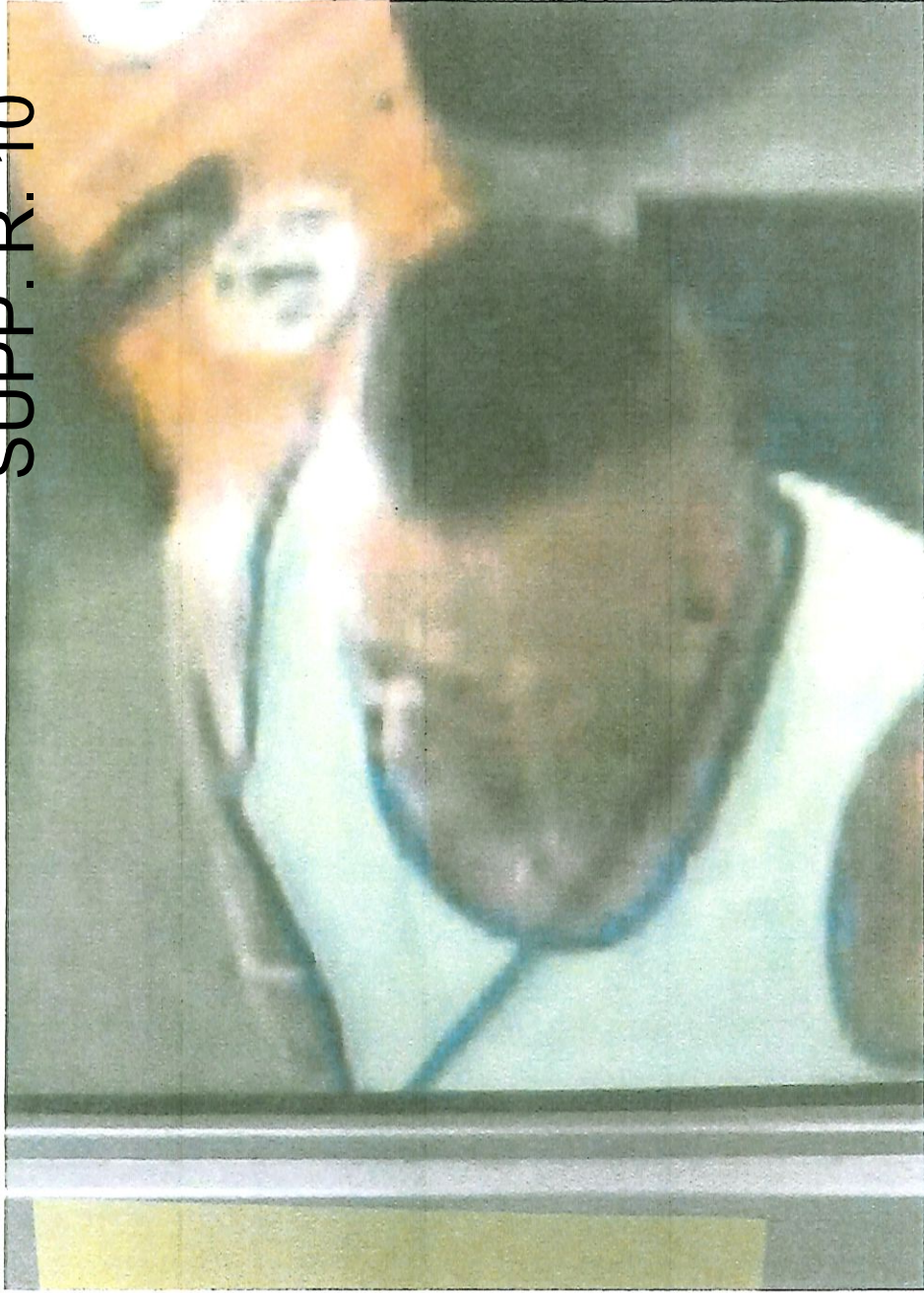
Still Photos from Atlantic Discount Sports

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SUPP. R. 11





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AT - ATLANTIC DISCOUNT SPIRITS
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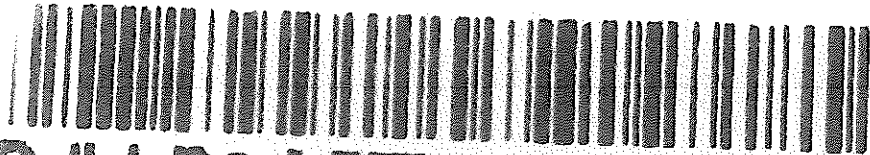
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Suspect Vehicle Paper tag

18015680

3 TEMP SC BLACK
EEP CHER LAP2 IRAR SXM



PJLLB3 KD 184534

Average Key Replacement Cost \$225

Suspect Vehicle Vin#

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STATE'S
EXHIBIT

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Georgetown County
6/10/18
Kathy E. Jordan HC:



STATE'S EXHIBIT
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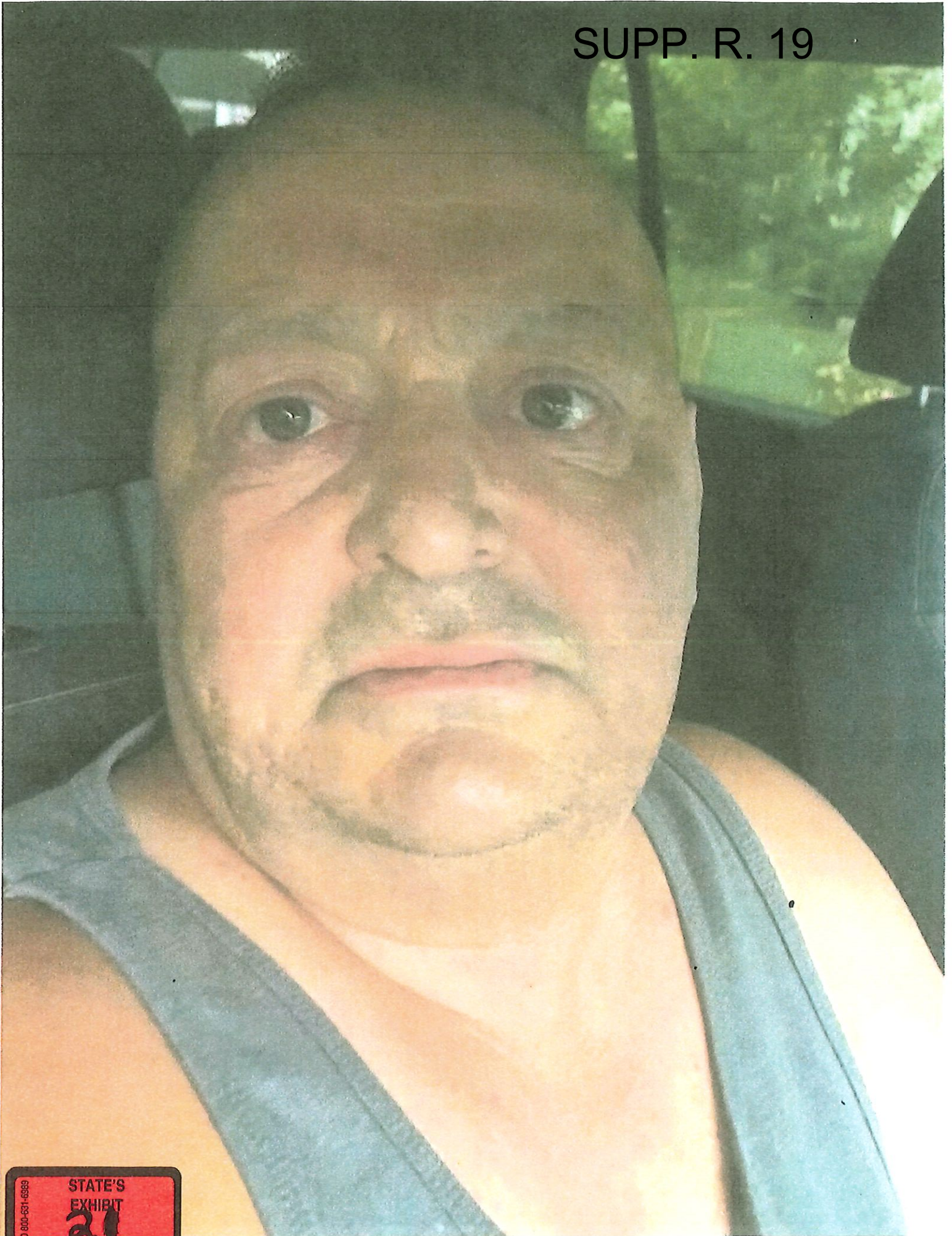


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CERTIFICATE OF COUNSEL

Counsel for Respondent certifies this Supplemental Record on Appeal contains all the supplemental material proposed to be included by any of the parties and not any other material and complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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Oct 04 2022

SC Court of Appeals



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October 4, 2022