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**Jan 04 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County  
Honorable Alex Kinlaw, Circuit Court Judge  
Appellate Case Tracking No. 2022-001709

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The State,

Appellant,

vs.

John J. Mello,

Respondent.

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**MEMORANDUM IN REPLY**

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Appellant, through its undersigned counsel, would respectfully show unto this Court as follows:

Respondent served and filed his Memorandum in Opposition of Appealability on December 19, 2022. In his Memorandum, Respondent asserts in part that the State's Notice of Appeal was not timely served due to its service and filing of a Motion to Reconsider the initial pre-trial order of the circuit court. He maintains the State does not have authority under Rule 29, SCCrimP, to serve a Motion to Reconsider unless it is a post-trial motion.

The State served and filed its Motion to Reconsider within ten days of the circuit court's ruling on Respondent's motion. The circuit court accepted the State's motion, considered the merits of the motion, and denied the motion. The fact the circuit court allowed the filing and considered the merits of the State's arguments indicates the prior ruling was not final for purposes of consideration on appeal but was, instead, subject to reconsideration by the court just like any *in limine* ruling generally is capable of reconsideration by the court prior to or at trial.

Cf. Rule 37, SCCrimP (“In any case where no provision is made by statute or these rules, the procedure shall be according to the practice as it has heretofore existed in the courts of the State.”). Pursuant to Rule 203 of the Appellate Court Rules, section 14-3-330 of the South Carolina Code, and State v. McKnight, the State has to serve and file its Notice of Appeal within 10 days of receiving notice of the **final order** which substantially impairs the State’s ability to prosecute its case. In this case, the Notice of Appeal was served within 10 days of receipt of notice of the circuit court’s final order—its order denying the State’s motion to reconsider.

WHEREFORE, the State asks this Court to find this appeal is a proper interlocutory appeal of the trial court’s pre-trial ruling that the victim cannot meet the definition of “legal custodian” because it precludes the State’s ability to prosecute the case unless an immediate appeal is allowed under either section 14-3-330(1) or (2); to allow the appeal to proceed; and for any other further relief the Court determines.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General

WALTER W. WILKINS, III  
Solicitor, Thirteenth Judicial Circuit

BY: 

William M. Blich, Jr.  
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ATTORNEYS FOR RESPONDENT

January 4, 2023

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**PROOF OF SERVICE**

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I, Caroline Collins, certify that I have served the Memorandum Regarding Appealability on Respondent by emailing a copy to Respondent's counsel of record, Marcelo Torricos, III, at his primary email address as provided by the Attorney Information System (AIS).

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

This 4<sup>th</sup> day of January, 2023.



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CAROLINE COLLINS  
Administrative Coordinator  
Office of Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727

## Caroline Collins

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**From:** Caroline Collins  
**Sent:** Wednesday, January 4, 2023 10:06 AM  
**To:** 'mtorricos@bannisterwyatt.com'  
**Cc:** William Blicht  
**Subject:** The State v. John Joey Mello (2022-001709)  
**Attachments:** MELLO John - Memorandum in Reply - 2022-001709 (03186700xD2C78).PDF

Good Morning Mr. Torricos,

Attached please find the State's Memorandum in Reply in The State v. John Joey Mello (2022-001709). This will be submitted to the South Carolina Court of Appeals via the AIS One Drive System.

If you will, please reply to this email to confirm receipt.

Thank you!

**CAROLINE COLLINS**, Administrative Coordinator  
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