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**Feb 06 2023**  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
The Honorable J. Derham Cole, Circuit Court Judge

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Appellate Case No. 2019-001570

THE STATE, .....RESPONDENT,

v.

DEVIN ZACHARY ELIJAH RUTTLE, .....APPELLANT.

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**MOTION TO STRIKE ITEMS FROM  
APPELLANT’S DESIGNATION OF MATTER  
PURSUANT TO RULES 208(b)(4), 209, and 210(c), SCACR  
WITH CITATIONS INCLUDED**

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Respondent moves this Court to strike the items listed on the second and third pages of Appellant’s Designation of Matter. Appellant has not shown these items were officially admitted as Court’s, State’s, or Defense Exhibits during the May 12, 2021 Motion for a New Trial hearing (or any other lower court proceeding) before the Honorable J. Derham Cole. The exhibits were mentioned by name at the hearing but were never officially moved into evidence. New Trial Tr. 107-127 (Appendix 1). Judge Cole asked the solicitor and the defense to confer after the hearing was over and let him know what exhibits they agreed to admit, but no official record was made of any conversations or decisions post-hearing.

Judge Cole did not mention the proposed pieces of evidence in his Order denying the motion, and counsel for Appellant is unsure whether Judge Cole considered them at all. Appellant has not asked Respondent to consent to supplementing the record under Rule 212,

SCACR. Respondent therefore preemptively objects to any supplementation of the record on appeal. Only items properly before the lower court are available to be included in the Designation of Matter.

**Authorities:**

- **Rule 208(b)(4), SCACR: References to Record** – “The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged.”
- **Rule 209, SCACR: Designation of Matter to be Included in the Record on Appeal – (a)** “. . . a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal . . . . **(b) Content.** The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c) ]. A party shall not include in any matter in his Designation which is not relevant to the appeal . . . .”
- **Rule 210(c), SCACR: Record on Appeal – (c) Content.** “The Record on Appeal shall include all matter designated to be included by any party under Rule 209 . . . The Record shall not, however, include matter which was not presented to the lower court or tribunal . . . .”

**Items to strike:**

- Spartanburg Municipal Court Record for *State of South Carolina v. Nysha Maria Jefferies*, Citation No. 5102P0354081;
- Spartanburg County Public Index Printout for *Crown Pointe Apartment v. Thomas Lamont Rosemond, Janie Jefferies, and Nysha Jefferies*, to evict defendants from 201 Powell Mill Rd J-202 Spartanburg SC 29301;

- Greenville County Public Index Printout for Aundra Hunter Jr. for *State of South Carolina v. Aundra Hunter, Jr.*, Case Nos. 2015A2330210945 (Burglary First Degree), 2015A2330210950 (Discharging firearms into a dwelling), 2015A2330210948 (Kidnapping), and 2015A2330210946 (Armed Robbery);
- Spartanburg County Public Index Printout for Janie Marie Jefferies for *State of South Carolina v. Janie Marie Jefferies*, Case No. 28477GZ, indicating 2015 address as 359 Alexander Ave, Spartanburg, SC 29306;
- Printout of Watkins Garrett & Woods Mortuary's Obituary for Charles Edward Rosemond, Sr. identifying Janie M. Jefferies and Thomas L. Rosemond as his children and indicating family in Spartanburg would be located at 359 Alexander Ave, Spartanburg, SC;
- Spartanburg County Sheriff's Office booking information for Janie Marie Jefferies in connection with a May 13, 2020 [] that states that Janie Marie Jefferies' birthday is February 17, 1983 (printout from internet archive capture of Spartanburg County Sheriff's Office from August 2, 2020);
- Video of December 18, 2015 WSPA 7News segment reporting on death of Charles Rosemond, Sr.;
- Daniel Goss, Lethal Force Multipart Reporting Series, Greenville News (Sep. 29, 2019), <https://www.greenvilleonline.com/in-depth/news/local/south-carolina/2019/09/29/policeshootings-in-sc-greenville-county-sheriffs-office-tops-list/779095002/>;
- Staff Writer, Spartanburg High School Graduation Announcement, GoUpstate.com - HeraldJournal (June 7, 2016), <https://www.goupstate.com/story/news/local/2016/06/07/spartanburg-high-school/27973844007/>

Respectfully submitted,

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OFFICE OF THE ATTORNEY GENERAL

**APPENDIX TO MOTION TO STRIKE**

Cross-Examination of Devin Ruttle by Mr. Bulsa

1 Q. All right. So you would say there was a lot  
2 going on for you?

3 A. Yes.

4 Q. Okay. Would you say that the process was  
5 somewhat scary to you?

6 A. Yes, it was.

7 Q. And would you say that you were trying to pay  
8 attention as best you could, with all the various things  
9 that were going on during trial?

10 A. Yes.

11 Q. And did you have a lot of things that were  
12 requiring your attention as these events were brought  
13 up?

14 A. Yes.

15 MR. BRUMBACK: That's all I have, Your Honor.

16 MR. BULSA: Nothing further.

17 THE COURT: You may step down.

18 (Defendant returns to defense table.)

19 MR. BRUMBACK: Your Honor, that's all the  
20 witnesses I have. As we discussed previously, I do have  
21 some additional documentation concerning the other issue  
22 about the victim of a violent crime that I would like to  
23 present to the Court.

24 And I have, first of all -- and I would ask that  
25 the Court take judicial notice of the court records,

1    which exist, concerning the individual whose name is, I  
2    believe it's Andre Hunter, Jr., who was charged in  
3    connection with the robbery of Charles Rosemond. And I  
4    can provide those via email. But I also do have an  
5    article from the local news that is discussing the event  
6    in question.

7           And there are some additional news articles. One  
8    which actually identifies Nysha Jeffries at a rally that  
9    was held October 22nd, 2018. And I'll also provide this  
10   to the court, the rally was on October 22nd, 2018, which  
11   was a month and 12 days after this trial. And Nysha and  
12   her mother, Jeanie Jeffries and Aunt Candice Brewer, I  
13   believe is the aunt's name, were at a rally. And you  
14   can see in the picture is says, Nysha Jeffries holding  
15   crosses. They were holding crosses for people who have  
16   been killed as a result of events involving police  
17   officers.

18           And the involvement was that Mr. Andre Hunter on  
19   December 10th of 2015, broke into the home of Charles  
20   Rosemond -- uh, yes, Charles Rosemond. And he was also  
21   charged with kidnapping, armed robbery, burglary first  
22   degree, and possession of a weapon during the commission  
23   of a violent crime.

24           After Andre Hunter robbed Mr. Charles Rosemond,  
25   he fled from the scene. A neighbor of Mr. Rosemond

1 called the police. And the police reported to the scene  
2 and they made entry into Mr. Rosemond's home because  
3 they thought somebody may have been injured inside.

4 When they entered, Mr. Rosemond believed them to  
5 be the perpetrators coming back to harm them again. He  
6 fired on the police officers, striking one of them in  
7 the head. Police officers returned fire and, sadly, Mr.  
8 Rosemond was killed on December 10th, 2015.

9 Now, Nysha Jeffries happens to be, and I did not  
10 realize this until just yesterday or else I would have  
11 brought this to the Court's attention previously. But  
12 Nysha Jeffries is the granddaughter of Charles Rosemond.  
13 Her mother, Jeanie Jeffries, is Charles Rosemond's  
14 daughter. And that's also established by way of a  
15 lawsuit that was filed by Thomas Lamont Rosemond, Jeanie  
16 Jeffries brother and son to Charles Rosemond, who  
17 brought a suit for wrongful death in Greenville County.

18 And in those pleadings, it clearly states that  
19 Jeanie Jeffries is the daughter of Charles Rosemond. We  
20 know that Jeanie Jeffries is the mother of Nysha  
21 Jeffries, as was also testified to earlier. And that  
22 Thomas Lamont Rosemond is thereby Nysha Jeffries uncle.

23 There are also court records for an eviction from  
24 several years ago. I believe it was 2017 where the  
25 three defendants in that suit were Thomas Lamont

1 Rosemond, Jeanie Jeffries, and Nysha Jeffries. All  
2 three living in the Crown Point apartments.

3 Then I would ask the Court also to take judicial  
4 of that court record, which exists as well. And I can  
5 certainly provide the case captions for the titles.

6 That said, based on the documentary evidence, it  
7 is clear that Nysha Jeffries grandfather sadly was the  
8 victim of an armed robbery, burglary first degree and a  
9 kidnapping.

10 And so, the question that was asked by Your Honor  
11 concerning has anyone on the jury or any immediate  
12 family members with the victim of a violent crime, she  
13 then for some reason did not respond. And the thing  
14 that really brings it into focus is, as can be seen in  
15 the article that was handed up to the Court just now,  
16 the trial that occurred for Andre Hunter actually was  
17 going on at the same time as this trial.

18 It was the week of September 10th, 2018. And so,  
19 I don't know if there's any way we can say that she  
20 couldn't possibly have remembered that. I mean, it's  
21 certainly a significant event. And the fact is that she  
22 did not respond, when other jurors clearly responded.

23 I believe one of the other jurors stood up and  
24 said my nephew -- not a grandfather but a nephew. My  
25 nephew was shot and murdered, I believe, it was. And

1 she was actually removed from the jury, I believe, for  
2 cause by Your Honor excused.

3 And so, the fact is for some unknown reason,  
4 either through negligence, not sitting there and  
5 listening to the questions, Nysha either failed to  
6 respond to the church, school, or the fact that her  
7 grandfather had been a victim of a violent crime, ones  
8 that you specifically enumerated in the voir dire.

9 And so, it can only be said to be intentional,  
10 particularly, when intentional is not the lay term. It  
11 is the term of our asking was the question clear? Your  
12 questions were exceedingly clear, particularly on the  
13 church and on this final crime issue.

14 And then, two, were these events of such  
15 significance that it would be unreasonable not to  
16 respond or to have claimed to have forgotten. And I  
17 offer to the Court that your grandfather, being the  
18 victim of a crime that resulted in his death, the two  
19 events are somewhat separated but, nonetheless resulted  
20 in this death, triggered the events that ultimately  
21 culminated in that.

22 I -- and only two years before, so 2015 to -- or  
23 2013-2018, there's no way that she could say I don't  
24 remember this, particularly when the gentleman who  
25 started those events in motion was on trial that very

1 same week. And then not four or five weeks later she is  
2 at a memorial protest event in Greenville for Charles  
3 Rosmond. There with her mother and other family members  
4 protesting his killer.

5 And so, Your Honor, I think that it is  
6 implausible to offer that she wouldn't have remembered  
7 that at that time; and that it was unintentional as that  
8 term was masked in the case law that she failed to  
9 respond. And so, I would offer that.

10 And there is one other article. It's a, I think,  
11 a nine-part series that was done by the news. And it  
12 does have a photo of Nysha Jeffries and a caption that  
13 says Nysha Jeffries. And she can be seen in the  
14 photograph with the cross bearing Charles Rosemonds name  
15 and the date of death, 12-10- 15 is how it's written on  
16 top of the cross.

17 So, I would like to provide those to the Court.  
18 And I apologize, I don't -- I may have to send those to  
19 the Court. As I ran here as quickly as I could this  
20 morning. And I apologize for not having everything in a  
21 solid paper format, as I would generally have. But that  
22 is my position on the violent crime issue. And I did  
23 want to raise that to the Court's attention.

24 So that is the grounds for our motion. I think  
25 that it is clear that Nysha Jeffries was the person who

1 attended New Life Deliverance Worship Center, and that  
2 she was attending the church over a period of years.  
3 I'm incredulous to believe that someone wouldn't  
4 remember. If this was a one off, maybe I could  
5 understand that. But a person that attended a church  
6 over a number of years during formative years of their  
7 life, to claim that somehow between 2014, when she  
8 stopped regularly going, between 2014 and the trial of  
9 this case in 2018, that she's forgotten about that.

10 And the other thing is, we're not talking about a  
11 church with a name like First Baptist. If somebody said  
12 First Baptist, heck, there's a First Baptist in every  
13 town. New Life Deliverance Worship Center is a very  
14 specific particular name and it would be very difficult  
15 to forget.

16 And so, based on that, Your Honor, I offer that  
17 regardless of whether she meant to do it, that it was  
18 unreasonable and, thereby, intentional concealment. And  
19 having been intentional, the question then turns to  
20 whether it would have been material either for a for  
21 cause, would have been a grounds for a for cause strike,  
22 or it would have been a material, meaning significant,  
23 factor in a decision to use in preemptory challenge.

24 And Mr. Vieth testified that, yeah, that is  
25 something that would have been material. We would have

1 wanted to ask the question or have the judge go into it  
2 and say, well, you know, do you no longer go to the  
3 church? Well, why don't you any longer go to the  
4 church? Is it something that would, you know, create a  
5 source of bias? And the fact is that the statement  
6 about -- that Mr. Vieth made about an un-replied love,  
7 that was the conversation that I had with him, and it  
8 was speculation, as I was asking, you know, what might  
9 have this have been? You know, what could this be?

10           Because there seems to be no reason why you  
11 wouldn't respond. Heck, most people don't want to be on  
12 a jury, so why not say, yeah, I attended New Life  
13 Deliverance Church, or, yes, my grandfather was a victim  
14 of a violent crime? It simply doesn't make sense.

15           But, regardless, the fact is that Mr. Vieth  
16 clearly testified that it would have been material  
17 because he'd want to know. Maybe she did have a grudge.  
18 Maybe we'd know that. Maybe she did have a grudge. And  
19 that's why we don't want her on the jury. So it  
20 certainly would have been material.

21           And then, with regard to the fact that her  
22 grandfather was a victim of a crime perpetrated by three  
23 young black men and it was a violent crime when we're  
24 having a, you know, a trial for murder, that would  
25 certainly be a significant consideration. You'd want to

1 get a read on that juror as to whether this is somebody  
2 who's got an axe to grind, you know, or not, or is this  
3 somebody that can be fair? But unfortunately we were  
4 denied the ability to even know that because she didn't  
5 respond to any of these questions.

6 And so, Your Honor, I think that we have  
7 established the elements for intentional concealment and  
8 that the things that were concealed were either for  
9 cause or material to the use of a preemptory and,  
10 therefore, that Mr. Ruttle is entitled to a new trial.

11 Thank you, Your Honor. I appreciate you hearing  
12 me. And I will be happy, like I said, to provide those  
13 additional documents from their court dockets, as well  
14 as the news articles, electronically.

15 THE COURT: Let me ask you, earlier in your  
16 argument you mentioned the failure to respond to a  
17 question by the church connection with Mr. Ruttle of the  
18 church and the grandfather being a victim of a violent  
19 crime. You also mentioned school connection?

20 MR. BRUMBACK: Yes, Your Honor. I apologize. I  
21 should have asked Mr. Ruttle, and I may have, what high  
22 school he attended.

23 THE COURT: He said Spartanburg High School.

24 MR. BRUMBACK: He did. There is another record  
25 online where, I believe, one of the local publications

1 publishes all the names of the graduates who graduated  
2 from Spartanburg High. And, I believe, Nysha Jeffries  
3 graduated the year after -- one or two years after Mr.  
4 Ruttle from Spartanburg High. Her name does appear in  
5 the list of graduates from Spartanburg High for that  
6 year in the local news publication, so that's where that  
7 came from. I apologize for not listing that.

8 THE COURT: Was that part of the grounds of this  
9 motion?

10 MR. BRUMBACK: I think the school issue is a  
11 less ---

12 THE COURT: Well, that's not my question. Are  
13 you including that in the ground that you ---

14 MR. BRUMBACK: I would say we do mention it in  
15 your -- in the memorandum, Your Honor, simply that she  
16 did not respond to the fact of school either, though I  
17 think there may be some question that the name of the  
18 school was not used, as opposed to New Life Deliverance  
19 Church was not just a school or church, which may lead  
20 to some question as to which one.

21 But, yes, she did attend Spartanburg High. Mr.  
22 Ruttle attended Spartanburg High. She did not respond  
23 to that either. To that extent, yes, Your Honor.

24 THE COURT: Well, was she -- was the jury panel  
25 asked if they attended Spartanburg High School?

1           MR. BRUMBACK: They were asked if they attended  
2 the same school. And that's why I say it may have that.  
3 And I will acknowledge, on that ground that question  
4 should may have been more ambiguous since the school  
5 name was never used. And that's why I'm focusing more  
6 on the church, which was very clear. It was New Life  
7 Deliverance, and focusing on the crime element.  
8 Because, again, it was enumerated here specifically, as  
9 opposed to the school, which was not said Spartanburg  
10 High.

11           THE COURT: Okay. All right, Mr. Bulsa, do you  
12 want to respond?

13           MR. BULSA: Yes, sir, Your Honor. The defense  
14 said in his own argument that most jurors don't want to  
15 sit on juries, speaks highly that Ms. Jeffries would  
16 have wanted to get off this jury at every opportunity  
17 she could, based on his argument. And based on his  
18 argument, she had three reasons to get off. She knew  
19 him from school, she knew him church, and she had  
20 somebody, a relative, that was a victim of a violent  
21 crime.

22           The fact that she didn't respond means she didn't  
23 recall, she has no memory, she might not even have been  
24 told about her grandfather's situation, Your Honor. You  
25 cannot just speculate that she had all that knowledge.

1           The defendant testified that she sat there and  
2 chewed on her nails the whole time, so she was a  
3 disinterested juror. If she had any reason and had any  
4 recollection during this trial that she knew this man,  
5 she could have used it to get off of that case. They  
6 have not met their burden. You cannot say that this was  
7 an intentional act just because she didn't answer a  
8 question in the affirmative.

9           I don't -- I don't know where he gets his  
10 definition from, but how in the world could we even hold  
11 this hearing without having the juror here. They failed  
12 to bring her. They failed their burden of proof. This  
13 should end this, this argument once and for all. He  
14 should not get another bite at the apple. This case  
15 should be over. This appeal should be done.

16           Mr. Vieth said he would love to have somebody  
17 that went to the same church as my defendant. He would  
18 have put that witness or that juror on the jury if he  
19 knew that.

20           The defendant claims he had no interaction with  
21 her at school or at church. He didn't remember her the  
22 entire time. He watched her. That also supports the  
23 fact that she didn't recognize him. She would have had  
24 no reason to lie and mislead the Court. As the defense  
25 attorney said, she would have wanted to have been

1 released from this jury.

2 The witnesses testimony, Your Honor, is  
3 inconsistent with each other. Mr. Desor said that the  
4 juror only attended church three to six months, from  
5 November 2010 to March 2011.

6 Mr. Mimms says he doesn't start as the youth  
7 minister until 2012, months after Mr. Desor says that  
8 the juror would have left the church or not been  
9 involved anymore. The youth minister said she would  
10 have attended the youth services, as well as the worship  
11 services. Mr. Desor has no recollection of her being in  
12 any of his worship services. And once again, only  
13 limits her presence there for three to six months  
14 because he went through years and years of video, and  
15 all he could bring is one that he claims is from  
16 December of 2010 and January of 2011, when this young  
17 girl is, what, 12-years-old maybe.

18 We haven't even been provided her age. They have  
19 not even presented a picture. We don't even know if  
20 this is the same person. Just because Mr. Mimms says he  
21 recognizes that person as Nysha, doesn't mean that was  
22 the Nysha Jeffries that sat on the jury.

23 Your Honor, this is an affront to the family of  
24 the victim in this case for grasping as the defense is  
25 grasping at straws. They could have easily raised this

1 issue earlier. We understand that the Court of Appeals  
2 remanded this for a hearing. We didn't fight it,  
3 because we figured if we did, it would just be remanded  
4 again, so it would just delay the issue.

5 But we think the evidence is clear that there is  
6 no evidence that this juror, even as the person on the  
7 video or that that juror intentionally misled the Court  
8 in any way. And we find that -- we would ask that you  
9 find for the State and deny this motion.

10 MR. BRUMBACK: Your Honor, just briefly. The  
11 fact is, like I said at the beginning of this, case law  
12 clearly establishes intent is not about some sort of  
13 malicious willful act in the case of concealment for  
14 purposes of juror disqualification. The fact is that  
15 you could just negligently be sitting there and not  
16 listening to the question and the analysis says, was the  
17 question clear and was this something that the jurors  
18 should have remembered?

19 And so, the fact that the State wants to say we  
20 don't have any evidence that she meant to, it's not  
21 about that. It's not about what she meant to do. It's  
22 about the fact that you asked a very clear question and  
23 for whatever reason -- and the fact is the case law also  
24 says that the justification can be provided by the  
25 juror.

1           Well, that's on the State. What we have to  
2 provide is the fact that a clear question was asked, and  
3 that is something of such significance that it's  
4 unreasonable for you not to respond. If there's a  
5 justification why she didn't respond, then by all means,  
6 the State should have called her and put on the  
7 justification.

8           It's not my job, you know, to beat my own case  
9 and provide her justification for why she failed to  
10 respond, but the fact is, she failed to respond. I  
11 mean, no one can deny the fact that she simply did not  
12 respond. We have no idea why. But the fact is, the  
13 justification is what can possibly cut against this, cut  
14 against this, you know, the granting of this motion, but  
15 there is no justification.

16           And, frankly, I would offer the reason they  
17 probably didn't bring her is because what would the  
18 justification be? It would undergo his entire record.  
19 And then, you know, they can sit over there and say,  
20 well, she just didn't remember. But that doesn't  
21 matter. It doesn't matter whether she remembered. It  
22 doesn't matter whether it's intentional.

23           What matters is the fact that going to a church  
24 over a number of years is something of such significance  
25 that I think we can all say that you would remember it a

1 few short years later. And I think it's also very  
2 disingenuous to say that she might not know what  
3 happened to her grandfather? By the way, she attended a  
4 protest and is in a picture attending a protest four or  
5 five weeks after the trial of this case.

6 So, Your Honor, I find that to be a little  
7 suspect. But I think the main point here is the fact  
8 that the justification, we don't need to establish her  
9 reasoning for why she claims she didn't respond. It was  
10 unreasonable.

11 It is unreasonable in the face of such a clear  
12 question not to respond. And she denied you and the  
13 parties the ability to ask her further questions and  
14 determine whether she was an unbiased juror or not. And  
15 that goes to, again, justification, which is on their  
16 side of the case.

17 And so, without that justification, we've  
18 established the elements that we need to establish. And  
19 the Court of Appeals have said that that is a proper  
20 division. I think Justice Few actually wrote the  
21 opinion to that effect, that it's a proper division of  
22 the burden of proof. So, we establish the elements as  
23 to intentional concealment and the fact that it would  
24 have been material to us.

25 And one last point as to that, with regard to the

1 materiality, yeah, Mr. Vieth did say, yeah, I generalize  
2 -- generally I would love to have somebody on the  
3 church, from my church on a jury. But the fact is, sure  
4 I'd want someone on the jury from my church, but not if  
5 they were disgruntled. And we have no idea whether she  
6 was disgruntled. We have no idea why she stopped  
7 coming, but she did stop coming.

8           And Mr. Vieth saying, yeah, I'd want someone from  
9 my firm on a jury. I probably don't want somebody who  
10 used to be at my firm on my jury unless I know why  
11 they're no longer there and it wasn't because they had  
12 an axe to grind.

13           And so, the fact is that we established those  
14 elements. The State has provided no justification for  
15 her lack of response. And in that case, Mr. Ruttle  
16 should be entitled to a new trial.

17           THE COURT: Why do you roll your eyes?

18           MR. BULSA: It's ridiculous to say that you  
19 proved your point by just saying she didn't respond.  
20 People's memories are different. She was an 11 or  
21 12-year-old girl, if that's even her in those pictures.  
22 That's the only proof we have she was there at any time  
23 at that church, if that's even her.

24           And just because she didn't respond doesn't mean  
25 you can say that she was deliberately hiding something.

1 That is intentional. You have to deliberately hide it.  
2 Not the fact that you didn't remember. How can you say  
3 just because you don't remember it's not intentional.  
4 If she didn't remember, she would have never had  
5 answered the question, which is what she didn't do. She  
6 didn't remember, if that's in fact her.

7 We don't even believe it's her. We don't even  
8 think proof has been shown that that's her.

9 THE COURT: Mr. Brumback, you get the last word.

10 MR. BRUMBACK: Well, Your Honor, I appreciate  
11 that. And I would just say that I don't write the case  
12 law, but when I come into something like this, I  
13 certainly read it and study it closely. And do I think  
14 that the term intentionally probably creates some  
15 confusion amongst counsel when they read that or just  
16 lay people when they read that, I certainly think it  
17 does, but we all know those cases exist out there where  
18 the courts say one word, but it doesn't have an exact  
19 meaning. And you've got to apply the meaning that the  
20 courts give to it. And in this situation intentional  
21 does not mean what they're saying it means. It does not  
22 mean some willful intent. You can be intentionally  
23 concealing something simply by the fact that you weren't  
24 listening and didn't respond. And you just, even if you  
25 didn't remember, but it's something of such significance

1 that most think it's unreasonable to not remember it.  
2 So that is the question.

3 And I would just ask the Court, as it looks at  
4 this, to apply the term of intentional concealment in  
5 the way that it's illuminated in the case law. And so,  
6 thank you, Your Honor.

7 THE COURT: And the case law that you're relying  
8 upon is cited in your memo?

9 MR. BRUMBACK: At length, Your Honor.

10 THE COURT: Okay. All right. Now, as far as the  
11 additional exhibits that you all want in, did you all  
12 discuss those? Have you looked at them, Mr. Bulsa?

13 MR. BRUMBACK: We discussed before. I can  
14 certainly show them to him.

15 THE COURT: Let's do this. Whatever additional  
16 exhibits that you wish to rely upon for me to consider,  
17 you and Mr. Bulsa discuss those and agree to it, or if  
18 there's some objection, let me know what that objection  
19 is.

20 MR. BRUMBACK: Certainly. I have no problem with  
21 that, Your Honor. I can certainly assure that ---

22 MR. BULSA: I don't understand why he wasn't  
23 prepared for this hearing. He knew this was coming up  
24 for months. He could have easily had this ---

25 THE COURT: Well, I thought he said he learned of

1 it yesterday.

2 MR. BRUMBACK: I did last night, yes, sir.

3 MR. BULSA: How did he only find out yesterday?  
4 We've been working on this case for over a year.

5 THE COURT: Well, I can't answer that question,  
6 Mr. Bulsa.

7 MR. BRUMBACK: Your Honor, I would say that I was  
8 looking into an intentional issue. I did not even  
9 realize ---

10 THE COURT: Well, I understand. Here's the  
11 thing, you all can agree or disagree, object or consent.  
12 That's what I need you to do.

13 MR. BRUMBACK: Certainly, Your Honor.

14 THE COURT: And if there needs to be any  
15 additional proof, Mr. Bulsa, send me a note. But if the  
16 exhibits do come in and you need additional time to  
17 present something else in response to it or reply to it,  
18 that'll be fine. You all discuss it and let me know.

19 MR. BRUMBACK: Thank you, Your Honor.

20 THE COURT: All right, thank you.

21 (Court concluded at 3:00 p.m.)

22

23 --- THIS ENDS REQUESTED TRANSCRIPT ---

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## 1 COURT REPORTER CERTIFICATE

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3 I, the undersigned Julie A. Cendroski, Court  
4 Reporter for the Seventh Judicial Circuit Court of the  
5 State of South Carolina, do hereby certify that to the  
6 best of my ability the foregoing is a true, accurate,  
7 and complete transcript of record of all the proceedings  
8 and evidence introduced in the hearing and/or trial of  
9 the captioned case, relative to appeal, in the Court of  
10 General Sessions for Spartanburg County, South Carolina,  
11 on the 12th day of May, 2021.

12 I do further certify that I am neither of kin,  
13 counsel, nor interest to any party hereto.

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*s/o Julie A Cendroski*

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Julie A. Cendroski  
Circuit Court Reporter III  
Seventh Judicial Circuit

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