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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Certiorari to the Court of Appeals  
Appeal From Lexington County  
James W. Johnson, Jr., Circuit Court Judge  
Appellate Case No. 2011-194288

S.C. Supreme Court

THE STATE,

Respondent,

vs.

LAWRENCE BURGESS,

Petitioner.

**BRIEF OF RESPONDENT**

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## TABLE OF CONTENTS

|                             |    |
|-----------------------------|----|
| TABLE OF AUTHORITIES.....   | ii |
| ISSUES PRESENTED.....       | 1  |
| STATEMENT OF THE CASE.....  | 2  |
| STATEMENT OF THE FACTS..... | 3  |
| ARGUMENT.....               | 8  |
| CONCLUSION.....             | 18 |

## TABLE OF AUTHORITIES

### Cases:

|   |             |
|---|-------------|
| <u>IRON, LLC v. Town of Mt. Pleasant</u> , 338 S.C, 406, 526 S.E. 2d 716, (2000)..... | 11          |
| <u>James v. State</u> , 372 S.C. 287, 641S.E. 2d 899 (2007).....                      | 11          |
| <u>State v. Bonneau</u> , 276 S.C. 122, 276 S.E.2d 300 (1981).....                    | 12          |
| <u>State v. Boswell</u> , 391 S.C. 592, 707 S.E.2d 265 (2011).....                    | 8,12,14, 15 |
| <u>State v. Douglas</u> , 369 S.C.424, 632 S.E.2d 845 (2006).....                     | 16          |
| <u>State v. Jackson</u> , 681 S.E.2d 17 (Ct. App. 2009).....                          | 16          |
| <u>State v. Washington</u> , 338 S.C. 392, 526 S.E.2d 709 (2000).....                 | 11          |

### Statutes

|  |           |
|--|-----------|
| S.C. Code §23-1-210 (2007).....          | passim    |
| S.C. Code §23-1-210(A) (Supp. 2012)..... | 9, 10     |
| S.C. Code §23-1-215 (2007).....          | passim    |
| S.C. Code §23-1-215(E) (2007).....       | 5, 11, 12 |
| S.C. Code §§23-20-10 (2007).....         | 13        |
| S.C. Code §23-20-30(A) (2007).....       | 14        |
| S.C. Code §23-20-30(B) (2007).....       | 14        |
| S.C. Code §23-20-50(A) (2007).....       | 13        |

### Other

|   |    |
|---|----|
| 2007 Act No. 3, §1-13 .....             | 13 |
| 1987 Act No. 107, §1-13.....            | 13 |
| 1994 Atty. Gen. Op. No. 94 – 38-13..... | 13 |

## STATEMENT OF ISSUES

I. The Court of Appeals properly affirmed the circuit court's finding that the arresting officer was acting pursuant to a valid multi-jurisdictional agreement when he arrested Petitioner.?

II. The Court of Appeals properly affirmed the circuit court's exclusion of evidence regarding the arresting officer's removal from the NET as irrelevant and unduly prejudicial.

**STATEMENT OF THE CASE**

Respondent concurs with Petitioner's procedural Statement of the Case.

## STATEMENT OF FACTS

On March 2, 2006, officers assigned to the Lexington County Narcotics Enforcement Team (the "NET") executed a search warrant for narcotics at a location in the Batesburg area of Lexington County. Officer Emmitt Gilliam ("Gilliam") of the Batesburg-Leesville Police Department participated in executing the warrant pursuant to his assignment to the NET.

There were three mobile homes at the location, and Petitioner Lawrence Burgess ("Burgess") was standing outside one of the homes when the officers arrived. As the officers exited their vehicles, Burgess ran around the end of the home, and Gilliam ran around the other end to cut him off. (Record on Appeal [R.], pp. 82-84).

When Gilliam confronted him, Burgess dropped a clear plastic medicine bottle by his feet. After Gilliam and a Lexington County deputy handcuffed Burgess, Gilliam checked the medicine bottle, which did not have a top on it, and saw crack cocaine residue in it. (R., p. 84).

The Lexington County deputy checked the path Burgess took when he ran, and found the medicine bottle top and crack cocaine (5.67 grams) on the ground. (Supp. R. p. 14). Burgess was arrested for possession with intent to distribute crack cocaine, and the Lexington County Grand Jury indicted him on that charge in May 2006. (R., pp.170-171).

The matter was called for trial on September 13, 2007, before the Honorable James W. Johnson, Jr., Circuit Court Judge. Prior to trial, Burgess moved to dismiss the charge on the ground Gilliam did not have authority to arrest Burgess because the incident occurred outside the Batesburg-Leesville town limits. He argued the 2001 agreement forming the NET was invalid because written notice of its execution was not sent to the

members' governing bodies as required by S.C. Code §23-1-215(C) (2007).<sup>1</sup> (R., pp. 1-5, 9-10).

The State argued the NET Agreement was valid under §23-1-215 because the governing bodies of Lexington County and Batesburg-Leesville had actual notice of the agreement, and approved it by assigning officers and appropriating funds to support it. (R., pp. 5-10). The State further argued the NET Agreement provided for expanded police authority under other statutes. (R., pp. 11-12, 14-15).

The circuit court continued the case for the State to check with Batesburg-Leesville officials regarding approval of the NET Agreement, and provide other authority for a town police officer to make an arrest outside the town limits. (R., pp. 15-16). The case was again called for trial on October 9, 2007.

In a continuation of the pre-trial motion hearing, the State presented testimony from the Clerk of the Lexington County Council, and the minutes of two Council meetings. On January 8, 2002, the Council discussed and approved the Sheriff's Department's request to apply for grants to support the NET. On December 10, 2002, the Council discussed and approved a request to apply for a grant supporting two prosecutor positions dedicated to prosecuting the increased number of narcotics cases generated by the NET. (R., pp. 20-24, 152).

The State also presented testimony from the Batesburg-Leesville Mayor *Pro Tem*, and a videotape of the August 13, 2001 Town Council meeting. At that meeting, the Chief of Police informed Council about the NET, and Council authorized him to enter into the

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<sup>1</sup>The original agreement executed on September 18, 2001, and all addenda, are hereinafter referenced as the "NET Agreement."

NET Agreement. The Mayor testified Town Council's records contained copies of the executed NET Agreement and all addenda. (R., pp. 24-34, 157).

Lieutenant Byron Snelgrove ("Lt. Snelgrove") of the Lexington County Sheriff's Department testified he supervised the NET, and the Batesburg-Leesville Chief of Police assigned Gilliam to the NET. As the NET supervisor, Lt. Snelgrove assigned Gilliam to work the Batesburg area in general, as well as the particular case leading to Burgess' arrest. (R., pp. 34-40).

The State argued the evidence indicated the governing bodies of Lexington County and Batesburg-Leesville had actual knowledge of the NET Agreement, which satisfied the §23-1-215(E) notice requirement. The State further argued Batesburg-Leesville temporarily transferred Gilliam to the NET, and he had authority to act outside the town limits under S.C. Code §23-1-210 (2007). (R., pp. 40-46, 49-50).

Burgess argued §23-1-210 did not apply because the NET Agreement was not signed by the governing bodies. He again asserted the NET Agreement was invalid under §23-1-215 because there was no evidence the governing bodies of Lexington County and Batesburg-Leesville received written notice within seventy-two hours of the NET Agreement's execution. (R., pp. 47-51).

The circuit court found the NET Agreement did not comply with the requirements of §23-1-215, because there was no evidence the governing bodies received the statutorily required written notice. The court denied the motion to dismiss, however, finding the NET Agreement was valid under §23-1-210. (R., pp. 51-53).

The State then moved *in limine* to exclude information from Gilliam's personnel records relating to his removal from the NET in 2007, arguing it was not relevant to

Gilliam's credibility. The circuit court granted the motion, but indicated the issue could be re-visited if necessary during Gilliam's testimony. (R., pp. 55-56, 173).

Deputy Billy Laney ("Laney") of the Lexington County Sheriff's Department testified he was part of the team executing the search warrant when Burgess was arrested. Burgess was standing next to a mobile home adjacent to the home they were going to search, and he ran behind the mobile home when the officers got out of their vehicles. After the front area was secured, Laney went around to the back of the mobile home where Gilliam had apprehended Burgess. Laney backtracked along the route Burgess ran, and found crack cocaine laying on the ground. (R., pp. 64-69, 75-79).

Gilliam testified the Batesburg-Leesville Chief of Police assigned him to the NET, and in that capacity, he investigated narcotics cases in Lexington County. After officers made two controlled buys at a mobile home on Two Notch Road, Gilliam secured a search warrant for that location. He then testified about execution of the search warrant and the circumstances leading to Burgess' arrest. (R., pp. 81-86, 91-96, 103-105, Supp. R. p. 14).

During cross-examination, Burgess sought to question Gilliam about why he was removed from the NET in 2007. The circuit court again excluded the evidence, finding the personnel matter was irrelevant and highly prejudicial. (R., pp. 99-100, 173).

At the close of the State's case, Burgess moved for a directed verdict on the ground the evidence was insufficient to prove he possessed the crack found on the ground. The circuit court denied the motion, finding there was sufficient evidence to submit the case to the jury.

The jury convicted Burgess of possession with intent to distribute cocaine, and the

circuit court sentenced him to three years incarceration and a \$25,000 fine. (R., p. 150, Supp. R. p. 16). This appeal followed.

The Court of Appeals affirmed Burgess' conviction by opinion filed April 20, 2011, and denied his Petition for Rehearing by Order dated May 26, 2011. (Appendix, pp. 1-22). On August 26, 2011, Burgess filed a Petition for Writ of Certiorari seeking review of the Court of Appeals decision, which the Court granted by Order dated December 20, 2012.

## ARGUMENT

**I. The Court of Appeals properly concluded there was a valid multi-jurisdictional agreement between Lexington County and the Town of Batesburg-Leesville, and Petitioner's arrest occurred pursuant to that agreement.**

Burgess contends the Court of Appeals erred in affirming his conviction because Gilliam did not have authority to arrest him outside the Batesburg-Leesville town limits. He asserts the NET Agreement was not valid under either §23-1-210 or §23-1-215, because the Batesburg-Leesville Chief of Police was not authorized to sign the NET Agreement, and there was no evidence the governing authorities received written notice of the NET Agreement within seventy-two hours of when it was executed. He further asserts the Court of Appeals erred in distinguishing this case from State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011).

### **A. Section 23-2-210**

Title 23 of the South Carolina Code is entitled "Law Enforcement and Public Safety." Section 23-1-210 is in the "General Provisions" section of Title 23, and is entitled "Temporary transfer of law enforcement officer; written agreement; compensation."

Prior to 2007, it provided:

A) Any municipal or county law enforcement officer may be transferred on a temporary basis to work in law enforcement in any other municipality or county in this State under the conditions set forth in this section, and when so transferred shall have all powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred.

(B) Prior to any transfer as authorized in subsection (A), the concerned municipalities or counties shall enter into written agreements stating the conditions and terms of the temporary employment of officers to be transferred.

A 2007 amendment to subsection A specifically authorizes temporary assignments to

“multijurisdictional (sic) task forces established for the mutual aid and benefit of the participating jurisdictions.” S.C. Code §23-1-210(A) (Supp 2012).<sup>2</sup>

The NET Agreement in this case was originally executed in September 2001, and specifically references §23-1-210.<sup>3</sup> It further expressly provides that each party will designate officers to perform duties under the NET Agreement, with the parties retaining all liability for assigned officers’ actions, compensation and other benefits. (R., p. 157).

Burgess contends the NET Agreement is not valid under §23-1-210 because it was signed by the chief officers of the participating law enforcement agencies rather than their governing bodies.<sup>4</sup> As the circuit court found, and the Court of Appeals agreed, nothing in §23-1-210 prohibits a participating county or municipality from authorizing the sheriff or police chief to enter into an agreement under the statute.<sup>5</sup> (Appendix, p. 6). If, as in this case, the governing bodies have actual notice of the agreement and its terms, the chief law enforcement officers are the logical individuals to execute the agreement on behalf of the county or municipality.

Burgess further asserts the State failed to present any evidence Batesburg-Leesville

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<sup>2</sup>The relevant history of §§23-1-210 and 23-1-215 is discussed in more detail below.

<sup>3</sup>The NET Agreement was amended in May 2002 and July 2005 to add other law enforcement agencies to the NET, but the substantive provisions remained the same. (R., pp. 157).

<sup>4</sup>Burgess also argued in the circuit court and Court of Appeals that his arrest was invalid because Gilliam was not “temporarily” assigned to the NET, but has abandoned that contention before this Court.

<sup>5</sup>Contrary to Burgess’ assertion that council members must execute a §23-1-210 agreement, §23-1-210 does not require particular signees to an agreement, merely that a written agreement exist.

gave the Chief of Police authority to enter into such agreements. This assertion is simply wrong. The Batesburg-Leesville Mayor *Pro Tem* specifically testified the Town Council authorized the Chief to execute the NET Agreement on behalf of the town. (R., pp. 29, 33). Therefore, his actual authority to do so is undisputed.

Burgess' contention the agreement is not a valid §23-1-210 agreement between Lexington County and Batesburg-Leesville because they are not the "parties" to the agreement is disingenuous. The agreement provides each "party" remains liable for all compensation, insurance coverage, benefits, bonds, and the "acts and omissions" of their officers assigned to the NET. Lexington County and Batesburg-Leesville fund, and are responsible for, the operations of their respective law enforcement agencies, and therefore, they are necessarily "parties" for purposes of the NET agreement.

The 2007 amendment to §23-1-210(A) is particularly relevant in this case because it specifically authorizes multi-jurisdictional task force agreements. The Legislature's express inclusion of the task force language in the statute clearly evidences the legislative intent that §23-1-210 govern task force agreements such as the NET Agreement at issue in this case.

**Section 23-1-215**

By way of additional sustaining ground, the State submits the NET Agreement is also valid under §23-1-215, which expressly authorizes agreements between multiple law

enforcement jurisdictions for purposes of criminal investigations.<sup>6</sup> The statute provides in pertinent part:

(A) In the event of a crime where multiple jurisdictions, either county or municipal, are involved, law enforcement officers are authorized to exercise jurisdiction within other counties or municipalities for the purpose of criminal investigation only if a written agreement between or among the law enforcement agencies involved has been executed.

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(E) The respective governing bodies of the political subdivisions, wherein each of the law enforcement agencies entering into the agreement authorized in subsection (A) is located, must be notified by its agency of the agreement's execution and termination. The notification must be in writing and accomplished within seventy-two hours of the agreement's execution and within seventy-two hours of the agreement's termination.

§23-1-215 (A) and (E).

On its face, §23-1-215(E) is a notice statute. Under such statutes, the law only requires actual notice. James v. State, 372 S.C. 287, 641 S.E.2d 899, 902 (2007) (citing State v. Washington, 338 S.C. 392, 526 S.E.2d 709 [2000]) (actual notice sufficient to satisfy recidivist statute written notice requirement for sentence enhancement).

Burgess asserts the NET Agreement was not valid under §23-1-215 because there was no evidence the governing bodies of Lexington County and Batesburg-Leesville received "written" notice as required by §23--215(E). It is undisputed both the Lexington

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<sup>6</sup>For the first time in this appeal, Burgess asserts the State failed to preserve this issue because it did not appeal the circuit court ruling that the NET Agreement was not valid under §23-1-215, or ask the Court of Appeals to rule on the issue. Since the preservation issue was not raised in the Court of Appeals, either by way of brief or petition for rehearing, it is not properly before this Court. In any event, the State properly asserted the issue as an additional sustaining ground in both the Final Brief of Respondent and the Return to Petition for Writ of Certiorari. See I'ON, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716, 722-724 (2000) (discussion and clarification of additional sustaining ground rules). Therefore, the issue is properly before this Court.

County Council and the Batesburg-Leesville Town Council had actual notice of the NET Agreement, and approved their respective law enforcement agencies' participation in the NET.

The Lexington County Council allocated funds to support the NET, and authorized the sheriff to apply for grants for further support, including funding for two assistant solicitors to handle the increase in drug prosecutions. The Batesburg-Leesville Mayor *Pro Tem* testified the Town Council knew about the NET Agreement before it was executed, authorized the Police Chief to sign it, and had copies of the executed NET Agreement, including all addendums, in its records.<sup>7</sup>

In the face of undisputed evidence the governing bodies knew about and approved the NET Agreement, invalidating it in the absence of a written document specifically stating it was "notice" to those bodies, truly elevates form over substance, and is contrary to well established law regarding notice requirements. *See State v. Bonneau*, 276 S.C. 122, 276 S.E.2d 300, 302 (1981) (reversing for a new trial when an alternate juror was briefly in the jury room after the jury charge would substitute form over substance and necessitate a new trial based on the flimsiest of technicalities). Therefore, §23-1-215 provides an additional basis to uphold the validity of the NET Agreement in this case.

**State v. Boswell**

Apparently conceding the governing bodies had actual notice of the NET Agreement, Burgess, contends the Boswell analysis mandates strict compliance with the seventy-two hour written notice requirement of §23-1-215(E). His reliance on Boswell is

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<sup>7</sup>Council's possession of the executed documents clearly evidences it received "written," as well as actual, notice of the NET Agreement.

misplaced.

Initially, the Boswell analysis centered on S.C. Code §23-20-50(A) (2007), which was not asserted before either the circuit court or the Court of Appeals as a basis for invalidating the NET Agreement, and therefore, is not an issue in this case. Further, as the Court of Appeals found, this case is clearly distinguishable from the Boswell case.

In 1981, the Legislature enacted §23-1-210, authorizing written agreements between municipalities or counties for the temporary transfer of law enforcement officers. 1981 Act No. 109, §1. As discussed above, the Legislature amended this section in 2007 to specifically provide for the temporary assignment of officers “to work in law enforcement within multijurisdictional (sic) task forces established for the mutual aid and benefit of the participating jurisdictions.” 2007 Act. No. 3, §1. Thus, the Legislature clearly intended §23-1-210 to encompass the exact type of multi-jurisdictional agreement at issue in this case.

In addition to §23-1-210, the Legislature enacted §23-1-215 in 1987, authorizing law enforcement officers to exercise jurisdiction within other municipalities or counties for the purpose of criminal investigations pursuant to written agreements between law enforcement agencies. 1987 Act. No. 107, §1. This section authorizes agreements between multiple law enforcement agencies for drug enforcement purposes. 1994 Atty Gen. Op. No. 94-38.

In 2000, the Legislature enacted the “Law Enforcement Assistance and Support Act” (the “LEAS Act”). S.C. Code §§23-20-10 (2007). The purpose of the LEAS Act is to authorize contractual agreements between law enforcement agencies “for the proper and prudent exercise of public safety functions,” including “traditional public safety activities

which are performed over a specified time period for **patrol services, crowd control and traffic control, and other emergency service situations.**” S.C. Code §23-20-30(A) (2007) (emphasis added). On its face, the LEAS Act contemplates assistance agreements for traditional law enforcement activities during specific situations, rather than on-going criminal investigations transcending jurisdictional boundaries.

Significantly, the Legislature specifically provided that nothing in the LEAS Act “may be construed to alter, amend, or affect any rights, duties, or responsibilities of law enforcement authorities established by South Carolina’s constitutional or **statutory laws** . . . , except as expressly provided for **in this chapter.**” S.C. Code §23-20-30(B) (2007) (emphasis added). Therefore, by its clear and unambiguous terms, the LEAS Act does **not** apply to agreements authorized by other statutes, including §§23-1-210 and 23-1-215.

The agreement at issue in Boswell provided for “mutual aid in the event of natural disaster, disorder, or other emergency situations.”<sup>8</sup> It further expressly provided the agreement “shall not repeal or supersede any existing agreements . . . concerning the exchange and utilization of narcotics investigators.” Thus, the Boswell agreement was more in the nature of agreements encompassed within the LEAS Act for assistance in specific situations involving public safety, rather than formation of a multi-jurisdictional task force for continuing investigations of particular types of crimes (i.e., narcotics violations). See Burgess, Appendix, pp. 6-7, n. 5 (§23-1-210 authorizes temporary transfer of officers under different circumstances than those contemplated by the LEAS Act).

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<sup>8</sup>The State asks the Court to take judicial notice of the agreement at issue in Boswell, as found at pages 297-301 of the State v. Boswell Record on Appeal.

In addition to the clear legal distinctions, this case is factually distinguishable from Boswell. This Court found the agreement at issue in Boswell contemplated employment of officers from adjacent jurisdictions only in emergency situations or when specifically requested, and officers from the requesting and sending agencies were intended to work simultaneously. Significantly, the Court then found none of the “specific facts” of the Boswell case met the agreement requirements. 707 S.E.2d at 271.

As discussed above, the NET Agreement at issue in this case expressly encompassed “mutual assistance in criminal narcotics investigations by the continuation and operation of a multijurisdictional (sic) task force within Lexington County.” Nothing in the NET Agreement contemplated emergency situations, or required officers assigned to the NET to work “simultaneously” with other assigned officers.

Further, in Boswell, Lexington County deputies arrested the defendant in Calhoun County, with no Calhoun County deputies present at the time of the arrest. 707 S.E.2d at 271. In this case, however, Burgess’ arrest occurred in Lexington County, Lexington County deputies were on scene at all times, one or more Lexington County deputies participated in Burgess’ arrest, and all the evidence seized in connection with Burgess’ arrest was transported to the Lexington County Sheriff’s Department evidence room. (R., pp. 62-96, 103-110). Therefore, even if the NET Agreement did contemplate that officers work “simultaneously,” they did so in this case.

The NET Agreement is valid under §23-1-210 and §23-1-215, and the LEAS Act does not apply. The circuit court and the Court of Appeals properly found the NET Agreement was valid, and Gilliam had full authority to arrest Burgess on March 2, 2006. Accordingly, Burgess’ arrest was valid, and his conviction should be affirmed.

**II. The Court of Appeals properly found the record supported the circuit court's exclusion of evidence regarding the arresting officer's removal from the NET in 2007.**

Burgess contends the circuit abused its discretion in excluding evidence relating to Gilliam's removal from the NET in 2007. He asserts the information constituted evidence of bias and motive to misrepresent.

The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice. State v. Douglas, 369 S.C. 424, 632 S.E.2d 845, 847-48 (2006); State v. Jackson, 681 S.E.2d 17 (Ct. App. 2009). There was no abuse of discretion in this case.

Burgess grossly overstates the contents and implications of the records at issue. At most, the records Burgess proffered indicate Gilliam disagreed with another NET officer about the reliability of a confidential informant over a year **after** Burgess' arrest, he was not a team player, and his attitude made it difficult for other members of the team to work with him.<sup>9</sup> (R., pp. 173-179). Nothing in the records indicates the disputed confidential informant was associated in any way with the case against Burgess, or that Gilliam ever lied, or even misrepresented anything, about investigations or arrests. Consequently, the information did not tend to show bias or motive to misrepresent the case against Burgess.

The Court of Appeals properly determined the circuit court acted within its discretion in excluding evidence regarding Gilliam's removal from the NET as irrelevant

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<sup>9</sup>It should be noted everything in the proffered records was inadmissible hearsay.

and unduly prejudicial. Therefore, it should be affirmed on this issue.

## CONCLUSION

Based on the foregoing, the State respectfully submits Burgess' conviction should be affirmed.

Respectfully submitted,

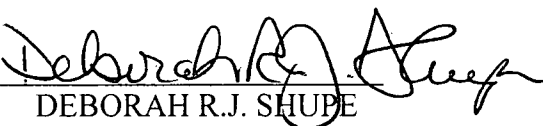
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ATTORNEYS FOR RESPONDENT

June 19, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

On Certiorari to the Court of Appeals  
Appeal From Lexington County  
The Honorable James W. Johnson, Jr., Circuit Court Judge  
Appellate Case No. 2011-194288

THE STATE,

Respondent,

vs.

LAWRENCE BURGESS,

Petitioner.

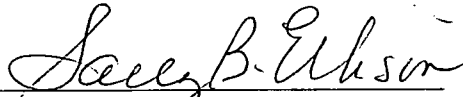
**PROOF OF SERVICE**

I, Sally B. Ellison, certify I served the Brief of Respondent on Petitioner by depositing two copies in the United States mail, postage prepaid, addressed to:

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

This 19th day of June 2013.

  
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