STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

Court of General Sessions
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2022-000019

THE STATE,

Respondent,

v.

BREANTE DEON STEVENS,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

A trial court has the discretion to bifurcate a criminal trial, but bifurcation has only been required in the context of CSC cases where a prior CSC conviction is an element of the crime. The State prosecuted Stevens for possession of a firearm by a person previously convicted of a crime of violence, along with two counts of murder, eight counts of ABHAN, and another gun charge. All of the charges arose from the same facts. Did the trial court abuse its discretion by refusing to "bifurcate" the gun possession charge, and was Stevens prejudiced where evidence of his prior record was minimal and evidence of his guilt was overwhelming?

STATEMENT OF THE CASE

A Lancaster County grand jury indicted Appellant Breante Stevens for two counts of murder, eight counts of ABHAN, ten counts of possession of a weapon during the commission of a violent crime, and possession of a firearm by a person convicted of a crime of violence. These charges arose from a mass shooting in a night club in Lancaster. Stevens proceeded to jury trial on October 18–29, 2021, before the Honorable Brian M. Gibbons. Stevens was tried with a codefendant, Antonio Champion. Stevens was acquitted of both counts of murder, but convicted of the lesser-included voluntary manslaughter as to victim Lee Colvin, whom Stevens claimed he killed in self-defense. Stevens was convicted of one count of ABHAN, but acquitted of the seven others. He was convicted of possession of a firearm by a person convicted of a crime of violence. He was convicted of each count of possession of a weapon during the commission of a violent crime, but the counts associated with the murder charge and ABHAN charges for which he was acquitted were set aside as inconsistent verdicts. R.p.1681-83. He was sentenced to five years' incarceration for possession of a firearm by a person convicted of a crime of violence and five years' incarceration for each charge of possession of a weapon during the commission of a violent crime, with theses sentences to run concurrently with the remainder of his sentence. He was sentenced to twenty years' incarceration for ABHAN and thirty years' incarceration for voluntary manslaughter, with those sentences to be served consecutively. R.p.1697-98. This direct appeal follows.

STATEMENT OF FACTS

On the night of Friday, September 20, 2019, there was a massive party at Old Skool Sports Bar in Lancaster. All of the victims in this case attended this party, including Lee Colvin, Appellant Breante Stevens's intended victim. Colvin and Stevens were both local rap artists, and had a prior disagreement stemming from an incident with a mutual acquaintance. (R.p.1373). Stevens admitted at trial that there was animosity between him and Colvin. (R.p.1373). Another witness had observed a confrontation three weeks earlier between Colvin and Stevens, and observed Stevens threaten to kill Colvin. (R.p.234).

At around 2:15 in the morning, there was an altercation between Stevens and Colvin. Stevens claimed Colvin "bumped into" him. (R.p.1402). Stevens testified that after Colvin bumped into him a second time, he pushed Colvin and Colvin flashed a handgun that was in his waistband. (R.p.1407). Other witnesses observed the argument between Stevens and Colvin, and saw that Stevens was upset. (R.p.300, 374, 426, 439, 450, 497).

After this altercation, Stevens went out to the parking lot. The State theorized that Stevens went outside to arm himself with two handguns. Stevens testified that he was armed with a single handgun the entire time, and that he went to the parking lot because he was going to leave because he was "scared." (R.p.1355, 1415). He explained that he came back inside the club because he remembered that his two friends had ridden with him to the club. (R.p.1331).

Stanley Seegars recalled seeing a commotion at the club and heard someone say Stevens was "going to get a gun." (R.p.386). A security guard told Seegars to

lock the door, and he did. (R.p.387). Stevens came to the door and asked Seegars to let him in, but Seegars refused. (R.p.387). Seegars testified that a security guard then came back over and unlocked the door. (R.p.387). Seegars saw Stevens come back inside, and heard someone say to Stevens, "come on, I got you." (R.p.387). Shortly thereafter, Seegars heard gunshots and ran out of the club. (R.p.387). Stevens denied that anyone told him he could not return to the club. (R.p.1332).

Lashonda Barnes testified Stevens left the club but returned within five minutes. (R.p.410). Stevens went to the stage and began shooting. (R.p.411). Barnes was shot in the leg. (R.p.410). She testified that she saw Colvin "pull something out," but she did not see him shoot. (R.p.412). She told law enforcement after the shooting that Colvin had a gun but did not fire it. (R.p.423). She later told her sister that she was upset that Stevens had shot her. (R.p.415). Surveillance video appeared to confirm that Colvin was armed. (State's Exhibit #13). Another witness, Marquitta Ford, testified she saw Colvin with a gun. (R.p.515). Ford, who knew Stevens, also testified Stevens seemed "overly excited" and "wasn't himself that night." (R.p.531).

Charles Mobley told police he observed the shooting. (State's Exhibit #270). When Stevens came back in from the parking lot, he and two others approached Colvin, surrounding him. Mobley told police Stevens pulled out a gun, pointed it at Colvin, and shot him. (R.p.1107). Mobley picked Stevens from a photo lineup. (R.p.1107).

Much of the eyewitness testimony was corroborated by a surveillance video which showed most of the dancefloor, but did not include the stage in the corner of the room where the shooting occurred. (State's Exhibit #13). After the original argument, Stevens practically ran out of the club to retrieve his firearm. (State's Exhibit #13, channel 11 at 2:30:12). When he returns several minutes later, he marches directly up to the stage where Colvin was standing. (State's Exhibit #13, channel 11 at 2:33:12). Many party-goers turn and watch Stevens, seemingly in anticipation of violence. While Stevens cannot be seen shooting Colvin, within seconds crowds of people recoil from the stage area and flee. Stevens can be seen running away from the stage. Stevens stumbles, and the video shows Stevens is holding a handgun in each hand. (State's Exhibit #13, channel 11 at 2:33:37).

Stevens denied that he came back inside with the intention of killing Colvin. He claimed he "forgot about" his previous altercation with Colvin, and only rushed towards the stage because his song "Big Gansta" was playing and he was excited. (R.p.1335, 1370). He claimed Colvin shot at him first, and that he killed Colvin in self-defense with a .45 caliber handgun. (R.p.1336). He testified he did not intend to shoot Aaron Harris or any of the other eight victims. (R.p.1337). Stevens admitted he knew it was illegal for him to possess a firearm, and to take a gun into the club. (R.p.1369, 1397–98).

Police recovered three types of shell casings from inside the club: .45, .380, and 9mm. (R.p.927). All of the .45 shell casings were fired from the same gun, all of the .380 casings were fired from the same gun, and all of the 9mm casings were

fired from the same gun. (R.p.1551). Colvin was killed by a .45 caliber projectile, and Aaron Harris was killed by a 9mm projectile. (R.p.1174, 1202). The State introduced testimony that there were no bullet impressions in the area towards which Stevens claimed Colvin shot. (R.p.929-30, 1565). Following the shooting inside the club, there were also gunshots fired outside in the parking lot. Altogether, SLED scientists discovered casings from six different firearms. (R.p.1199).

Stevens fled the scene. He admitted he disposed of his .45 caliber handgun in a nearby storm drain. (R.p.1384). Stevens fled the state and was arrested in Broward County, Florida on September 29, 2019. (R.p.809-10, 864-69, 882-85). Stevens went to great lengths to avoid arrest, changing cell phones multiple times. (R.893-902; 1352, 1388). Despite his claim that he was scared of retribution from Colvin's friends, Stevens admitted he fled Charleston because he saw SWAT officers outside the apartment where he was staying. (R.p.1348). By contrast, Champion—who was acquitted of both murder charges—did not flee and police located him at his residence. (R.p.817).

STANDARD OF REVIEW

The decision whether to bifurcate or sever a trial rests in the discretion of the trial court. State v. Cross, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019); State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id.

ARGUMENT

The trial court acted within its discretion by refusing to bifurcate Stevens's trial, and Stevens was not prejudiced.

The trial court acted within its discretion when it denied Stevens's motion to "bifurcate"[1] his trial in order to be tried separately on the charge that he illegally possessed a handgun after having previously been convicted of a crime of violence. Stevens was not entitled to a separate trial on the illegal possession charge, and his being tried concurrently for each charge arising from the same set of facts did not reasonably affect the result of trial. This Court should affirm.

A. The trial court did not abuse its discretion by refusing to bifurcate his trial.

The decision whether to bifurcate a criminal trial is within the discretion of the trial court. State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019). For the reasons discussed below, the trial court did not abuse its discretion by refusing to "bifurcate" Stevens's trial to grant him a separate proceeding on the charge that he illegally possessed a handgun while having previously been convicted of a crime of violence. This Court should affirm.

Bifurcation is not required in non-capital cases. State v. Cross, 427 S.C. 465, 478, 832 S.E.2d 281, 288 (2019) (citing Chubb v. State, 303 S.C. 395, 397, 401 S.E.2d 159, 161 (1991)). The Supreme Court has addressed bifurcation a number of times, usually in the context of a defendant's motion to sever the guilt and sentencing phases of a criminal trial. See Chubb, 303 S.C. at 397, 401 S.E.2d at 288. The court has rejected the argument numerous times. See State v. Bennett,

[1] As will be discussed below, Stevens's motion to bifurcate was in substance a motion to sever the charges.

256 S.C. 234, 242, 182 S.E.2d 291, 295 (1971) ("The contention that a bifurcated trial should be held in this State has been addressed to the trial courts and to this court on numerous occasions in recent years. We now consider the matter settled.").

State v. Cross is the exception to this rule. In that case, the Supreme Court held the trial court erred by refusing to bifurcate a 1st degree CSC with a Minor trial where the State relied on a prior CSC conviction to prove an element of CSCM 1st: that the defendant had previously been convicted of a sex crime. State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019). The Court distinguished another line of cases in which it held the State could not be required to stipulate to an element of a charged offense, even when that element required proof that the defendant had previously been convicted of a similar crime. See State v. Benton, 338 S.C. 151, 153, 526 S.E.2d 228, 229 (2000) (holding the State could not be required to stipulate to a defendant's prior conviction for burglary when the conviction formed an element of First Degree Burglary).

The Cross court distinguished the Benton line of cases because of the uniquely prejudicial nature of a history of sex crimes. The court explained that "[o]n the surface, the evidentiary issues in this case resemble the evidentiary issues present in the first-degree burglary cases discussed above. . . . Nevertheless, we distinguish this case from the first-degree burglary case **because of the inherently prejudicial stigma a prior sex-related offense undoubtedly carries.**" State v. Cross, 427 S.C. at 478, 832 S.E.2d at 288. Thus, the Cross

opinion rests on the premise that in a CSC case, evidence of prior sex crimes is uniquely prejudicial.

Accordingly, the holding of Cross is limited to CSC cases, where the notoriously recidivistic nature of sexual offenders creates a uniquely dangerous tendency to prejudice the jury against a criminal defendant. The notorious and unique recidivism associated with sex crimes is not present in general "crimes of violence." This Court should not expand Cross beyond its setting as an exceptional procedure in cases where a prior sex crime forms an element of a charged offense.

Furthermore, Stevens's argument for bifurcation is distinguished from Cross in that Stevens sought "bifurcation" of his trial so that the jury could consider his guilt for the gun charge separately from his guilt for the other offenses with which he was charged. By contrast, Cross sought "bifurcation" of his trial for one offense into separate proceedings for particular elements of that offense. Stevens's motion is essentially a motion to sever, not to bifurcate. Cf. United States v. Alexander, 30 F. Supp. 3d 499, 504 (E.D. Va. 2014) ("Defendant requests that the prior felony conviction element of the felon in possession charge be tried separately from the knowingly possessing a firearm in interstate commerce elements.").

The general rule is that trial courts are not required to sever charges which arise from the same facts and are proven by the same evidence. State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002) ("Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the

power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced."); State v. Anderson, 318 S.C. 395, 398–400, 458 S.E.2d 56, 58–59 (Ct. App. 1995) (in a habitual traffic offender trial, "trial for the admission of Anderson's prior convictions for DUS and DUI threatened no real right that Anderson possessed under the particular circumstances"). Neither bifurcation nor severance was required in this case. See Carter v. State, 374 Md. 693, 709, 824 A.2d 123, 133 (2003) ("All of the evidence that Carter possessed a firearm goes directly to the elements of the crimes with which he was charged. It makes little sense to hold a completely separate trial on the criminal-in-possession charge when the 'only additional [evidence] as to [that] charge would be the fact of the prior conviction.'"). Federal courts have not required severance of comparable felon in possession offenses absent a particularized showing of actual prejudice. See, e.g. Alexander, 30 F. Supp. 3d at 502–03 ("Ultimately, in the absence of a showing of a substantial risk of actual prejudice, **the most appropriate option, pursuant to Fourth Circuit precedent, is to provide a limiting instruction to the jury as well as stipulate to the prior convictions**. . . . The Fourth Circuit has repeatedly upheld district courts' denial of motions to sever in cases such as the above-styled matter where a defendant contends that he will be prejudiced by evidence of prior felonies at a jury trial to satisfy an element of a felon in possession charge amidst other charges that do not require a previous conviction to be established.") (emphasis added).

Expanding the holding of Cross would create a slippery slope where "bifurcation" would undoubtedly be sought in every case where the existence of a prior conviction is at issue of a criminal trial. Doing so would significantly hamper the functioning of the judicial system. For example, if Stevens had also been charged with First Degree Burglary, he likely would have sought to bifurcate his trial yet again, requiring the court to conduct three separate trials for the same acts. There would inevitably be cumulative testimony as the State sought to meet the elements for each separate crime, one at a time. Though bifurcation may not create a prohibitive burden for the State in every case, in many cases bifurcation would create a bloated, unworkable system that would significantly impede the administration of justice and create an unworkable strain on the courts and witnesses subpoenaed in each case. South Carolina appellate courts have repeatedly rejected this approach, apart from the exceptional case of Cross.

Finally, the decision whether to bifurcate or sever a trial rests in the discretion of the trial court. State v. Cross, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019); State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002). As discussed above, apart from Cross, the precedent in this state overwhelmingly holds that neither bifurcation nor severance is required in these circumstances. It was within the trial court's discretion to permit the State to try Stevens concurrently for the myriad crimes with which he was charged—all of which arose

from the same facts and were proven by the same evidence—in the course of this complex two-week trial.[2] This Court should affirm.

B. Stevens was not prejudiced by the trial court's refusal to bifurcate his trial.

Even if this Court determines the trial court abused its discretion by refusing to "bifurcate" Stevens's trial, there is not a reasonable probability that this ruling affected the result of trial. See State v. Byers, 392 S.C. 438, 448, 710 S.E.2d 55, 60 (2011) ("Error is harmless when it could not reasonably have affected the result of the trial."). Accordingly, Stevens was not prejudiced. See United States v. Whitworth, 856 F.2d 1268, 1277 (9th Cir. 1988) ("A denial of severance will be upheld absent a showing that "joinder was so manifestly prejudicial that it outweighed the dominant concern with judicial economy and compelled exercise of the court's discretion to sever."). This Court should affirm.

i. The evidence overwhelmingly showed Stevens did not act in self-defense.

The record in this case, particularly the surveillance video, demonstrates conclusively that Stevens did not act in self-defense when he shot and killed Lee

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[2] Stevens could have eliminated the prejudice altogether by simply pleading guilty to the gun charge, as his codefendant did. Of course, Stevens was within his rights to demand a jury trial. However, Stevens admitted to all the elements of the charge through his trial testimony and a stipulation. During his trial testimony, he admitted to possessing the gun, and further admitted he was not legally allowed to carry it into the club. R.p.1397-98. He even entered into a stipulation with the State that he had been convicted of a crime of violence. R.p.1514-15. His attorney essentially admitted he was guilty to the judge in camera, and originally indicated he would plead guilty to the charge. R.p.228-230. Yet, for some reason Stevens never entered a plea to the charge. Given his stipulations, trial testimony, and his lawyer's indications early in trial that Stevens would likely plead guilty to the gun charge, his decision not to enter a guilty plea is a curious one.

Colvin. There are four elements a defendant must establish to justify the use of deadly force under the common law of self-defense:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Glenn, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019). The record overwhelmingly demonstrates that 1) Stevens was at fault in bringing about the difficulty, and 2) he could have avoided the danger.

Stevens admitted he had a prior disagreement with Colvin, even before the night of the shooting. (R.p.1373). Stevens admitted he became "agitated" because Colvin "bumped into" him on the stage prior to the violence. (R.p.1402). The surveillance video clearly shows that after this initial confrontation, Stevens practically ran out of the club to retrieve his firearms. (State's Exhibit #13, Channel 11 at 2:30:12). When he returned, he marched directly up to Colvin and shot him seconds later. (State's Exhibit #13 at 2:33:00). Stevens "intentionally [brought] a loaded, unlawfully-possessed pistol" into a confrontation with a person whom, according to his own testimony, he knew to be armed. See State v. Williams,

427 S.C. 246, 251, 830 S.E.2d 904, 907 (2019). Stevens was at fault in bringing on the difficulty.

Stevens told an unbelievable story, claiming he was "scared" when he left the club after Colvin flashed his gun. (R.p.1415). He then claimed that when he returned to the club, he heard his song and got "distracted" and was no longer scared. (R.p.1418). He claimed he returned to the stage to "promote [his] song" even though Colvin was there, and he knew Colvin was armed. (R.p.1419).

Because Stevens left the club following the original confrontation, he could have easily avoided the danger posed by Colvin. Instead, he armed himself with **two** handguns, returned to the club, marched directly up to Colvin, and shot him. Stevens was at fault in bringing on this deadly confrontation, and could have avoided the danger. He failed to meet the elements of self-defense as a matter of law, and no reasonable juror could have found otherwise. Evidence of his guilt was overwhelming. See State v. King, 424 S.C. 188, 201, 818 S.E.2d 204, 211 (2018) (error is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached").

ii. The jury's verdict shows it was not prejudiced against Stevens.

Stevens argues that "[h]ad the jury not heard the unfairly prejudicial fact that Stevens had previously been convicted of a crime of violence, he likely would have been acquitted of all charges." Brief of Appellant at 4. This argument is based on the illogical premise that the jury convicted Stevens of manslaughter because they were prejudiced against him based on his prior record, but was able to look

past this supposed prejudice when they completely acquitted him of another count of murder and seven counts of ABHAN. Stevens thus claims the jury was prejudiced against him, but **only regarding the charges for which he was convicted**. In making this conclusory, self-serving argument, Stevens conveniently ignores the acquittals. The jury acquitted Stevens of Colvin's murder despite evidence of his prior animosity towards Colvin, and the fact that he left the club in a fit of anger, armed himself with **two** handguns, came back inside, went directly to Colvin, and shot him. (R.p.334, 374-75, 410–11, 426, 1336, 1567). The jury gave Stevens every benefit of the doubt in this case, despite the very strong evidence against him. The verdicts show that the jury decided this case based on the facts, not on a prejudiced view of Stevens's character, as Stevens asserts in conclusory fashion. See Com. v. Delaney, 425 Mass. 587, 595, 682 N.E.2d 611, 617 (1997) (holding appellant failed to demonstrate prejudice from joinder of charges where jury convicted him of some charges but acquitted him of others, explaining it was "clear that the jury carefully considered the evidence with regard to each crime charged"); Alexander, 30 F. Supp. 3d at 504 (holding appellant's mere "assertion" that jury would not be able to look past his prior convictions "is insufficient to demonstrate prejudice").

iii. Stevens admitted it was illegal for him to possess a gun.

During his trial testimony, Stevens admitted to the substance of the gun possession charge. He admitted: "I knew it was absolutely illegal for me to have a gun that night." (R.p.1369-70). While he did not testify that he had been convicted of a "crime of violence," the jury must have been aware that

there was some reason why he was prohibited from possessing a firearm. This properly-admitted evidence rendered the fact of Stevens's prohibition against possessing firearms because he had been convicted of a "crime of violence" largely cumulative, and therefore harmless.

iv. The State's stipulation and the trial court's jury instruction reduced the danger of unfair prejudice, and the State made no comment suggesting Stevens had a propensity for violence.

Finally, the danger of unfair prejudice was reduced by the State's agreement—at Stevens's request— to stipulate that Stevens had been convicted of a "crime of violence." (R.p.1158). Because of this stipulation, the jury did not hear any specifics about Stevens's extensive prior record. See State v. Simmons, 352 S.C. 342, 357, 573 S.E.2d 856, 864 (Ct. App. 2002) (explaining in trial for first-degree burglary premised on prior convictions, "the trial court should limit the evidence to the prior burglary and/or housebreaking convictions" such that "[d]etailed, particular information about the prior . . . convictions should not be admitted"). The danger of unfair prejudice was further reduced by the trial court's instruction—again at Stevens's request—that a "crime of violence" did not equate to a "violent crime," such as murder. (R.p.1663). Additionally, the trial court instructed the jury to "decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decision as to any other indictment." (R.p.1644). See Alexander, 30 F. Supp. 3d at 502–03 (explaining "the most appropriate option, pursuant to Fourth Circuit precedent, is to provide a limiting instruction to the jury as well as stipulate to the prior convictions").

None of the attorneys discussed the possession of a firearm by a person convicted of a crime of violence charge in their closing statements. The solicitor's only comment regarding the gun crimes was: "I didn't address the gun charges but those are before you, too." (R.p.1581). The solicitor made no mention of Stevens's prior record and made no comments remotely impugning his character or suggesting that he had a propensity for violence. Instead, the attorneys understandably focused on the murder and ABHAN charges, and attempted to disentangle the voluminous evidence about who shot whom and why. No juror would have based his verdict on Stevens's supposed propensity for violence, particularly when there were no improper comments to that effect and when Stevens testified at length explaining his side of the story in an attempt to show self-defense, and the evidence showed Colvin was also armed. While the gun charge in question is a serious crime, and the State had a legitimate interest in prosecuting it, it was not a major factor in this case and did not affect the verdict. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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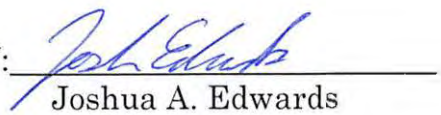
BY: 
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and 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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