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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Alex Kinlaw, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

vs.

JASON EDWIN STOOTS,

Appellant.

Appellate Case No. 2020-000430

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

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II.

The trial judge erred in refusing to charge the jury with the law on the defense of accident when there was evidence presented that while acting in self-defense, Appellant accidentally struck his wife causing injury.

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

I.

Because no evidence was presented that Appellant acted intentionally, the trial court did not err in declining to instruct the jury on self-defense, and Appellant was not prejudiced by the absence of the requested instruction, especially since he did not arm himself in self-defense.

II.

Because the trial court properly instructed the jury it needed to find criminal intent beyond a reasonable doubt to convict Appellant, the trial court did not err in declining to instruct the jury on accident and Appellant was not prejudiced by the absence of the requested instruction.

STATEMENT OF THE CASE

The Greenville County grand jury indicted Appellant Stoots for domestic violence in the first degree. The jury convicted Stoots on March 4, 2020, for domestic violence in the second degree. The presiding judge, the Honorable Alex Kinlaw, Jr., sentenced Stoots to three years' imprisonment suspended to eighteen months' probation.

STATEMENT OF FACTS

Appellant Stoots hit his wife, close-fisted, in the parking lot of a Taco Bell. She bled profusely as seen in State's Exhibit One. She is seen in a hospital gown with blood on her mouth and chin, and holding a thick plastic bag full of her own blood. Her tooth was displaced as a result of the punch.

Kimberly Stoots testified she was married to Appellant for thirty years and raised two children together. Before trial, Appellant called her and told her the best thing was for her to not show up for trial. R. pp. 60-61. The couple lived separately at the time of the assault. On October 30, 2018, he picked her up because they needed groceries for their teenage children, and they went to the drive-thru line at Taco Bell. However, Appellant was already agitated over a bad day at work. They broke into an argument prompted by a long line at the drive-thru, and this led to Appellant punching Kimberly. R. pp. 62-64.

Kimberly bled: she described it as a "waterfall of blood." She asked Appellant to take her to the hospital and he said no. Instead, he sprayed her with Windex to try and clean the blood off her. They drove around to various convenience stores in search of the particular brand of cigarettes he wanted. She asked for him to let her out of the car, but he would not let her. R. pp. 64-65 (direct quote, R. p. 64, lines 12-19). Blood sprayed on Appellant as Victim spoke – spindrift from

Kimberly's waterfall. Appellant complained she was attacking him with her blood. R. pp. 65-67.

Kimberly did not physically attack Appellant. R. pp. 67-68. She was finally able to leave the car and go to her uncle's house and then her parents' house, where they called an ambulance for her and she went to the hospital. R. pp. 68-70.

Margie Bishop, Kimberley's mother, testified Kimberly arrived at their house, bloody, and with her nose, lip, and chin swollen. R. pp. 82-84. Kimberly's niece, Courtney Bishop, provided similar testimony, noting Kimberley was scared and upset. Bishop noticed Kimberly was covered with a mixture of wet and dried blood. R. pp. 87-90.

Dr. Christopher Carey testified he was the second doctor to treat Victim. She arrived by ambulance at 12:30 a.m. He began his shift the next morning and saw her at approximately 7:00 a.m. He testified the records reflected swelling and bruising to Kimberly's face, a cut to the inner lip, and "one of the upper teeth was displaced posteriorly." She suffered a significant amount of bleeding. R. p. 51, lines 8-15.

Initially, medical staff used a powder known as QuikClot, which did not work. Her bleeding worsened when she laid back for a CT Scan, and they provided a second medication to stop the bleeding. R. pp. 51-52. Kimberly received the CT Scan because the extent of her injuries raised concerns of possible bleeding inside the brain. R. p. 52, lines 3-11.

Dr. Carey prescribed Roxicodone, a narcotic pain medication. R. p. 52, lines 18-19. On cross-examination, Dr. Carey testified the records indicated past methamphetamine use and a mood disorder. However, that was her history, not something he diagnosed that day. R. pp. 55-58.

Appellant testified on his own behalf. He claimed Kimberly was the person agitated that day and she had an episode while they were in the drive-in line at Taco Bell. Appellant testified

Kimberly said a female was tracking his radio signals. She started "throwing" her arms and hit Appellant. Appellant claimed he was trying to hold her wrists to keep from being hit and his hand hit her in the mouth. Appellant claimed he did not intend to hit her and he did not hit her hard. R. pp. 106-08. He admitted he sprayed her with Windex contending he was trying to help Kimberly because she was bleeding. Appellant claimed he drove to a store because Kimberly wanted him to buy her a drink and cigarettes. At the store, she yelled out the window that Appellant was kidnapping her. He claimed she then said he was transferring money to the store clerk and she became even more irate. R. pp. 108-10. According to Appellant, Kimberly first asked him to take her to the hospital, and then changed her mind and told him to take her to her uncle's house. R. p. 110, lines 18-25.

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). An appellate court will not reverse the trial court's decision regarding a jury charge absent an abuse of discretion. State v. Mattision, 388 S.C. 469, 479, 697 S.E.2d 578, 583-84 (2010). The appellant's case must have been prejudiced in order to reverse an appellant's verdict on the basis of an erroneous jury charge. State v. Lee-Grigg, 374 S.C. 388, 415, 649 S.E.2d 41, 55 (Ct. App. 2007); Brown v. Pearson, 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997) (holding "[a]n error not shown to be prejudicial does not constitute grounds for reversal").

ARGUMENT

I.

Because no evidence was presented that Appellant acted intentionally, the trial court did not err in declining to instruct the jury on self-defense, and Appellant was not prejudiced by the absence of the requested instruction, especially since he did not arm himself in self-defense.

Appellant claims he was entitled to a jury instruction for self-defense despite insisting at trial that he hit Victim by accident. No evidence supports a self-defense instruction because self-defense is an intentional act and Appellant did not testify he struck Victim intentionally.

Appellant testifies it was an accident

Appellant testified he picked up his wife and she was "upset, angry, just agitated, said she [did not have] anything to eat or drink or food for several days, and I said I would take her and get whatever she needed." R. p. 106, lines 4-8. They went to Taco Bell. There, Kimberly "was just talking random – a lot of random things. She was upset." Kimberly said there was a female that Appellant did not see who was tracking his radio signals from an infusion pump that was medically inserted in Appellant for his past injuries. R. p. 106, lines 16-22. Appellant said Kimberly had a history of saying these kind of these things. Appellant answered affirmatively when asked if Kimberly attacked him. R. p. 107. He then testified:

> She just got irate and upset about the person that was tracking the radio signals. I have a vision problem. I couldn't see from a distance, just maybe 100 yards. And she was just upset, throwing arms. And she hit me, and I just grabbed both her arms, so, you know, it was like push and pull.
>
> And then the next thing I know, it was just – I felt my hand – the back side of my hand hit her right there.

R. p. 107, line 21 – p. 108, line 5. Appellant said he did not mean to hit Kimberly in the mouth.

Defense counsel asked if Appellant struck "her hard in the mouth" and Appellant answered, "No. I mean, I was just holding her wrist and all that and it was going back and forth. It was accidental." R. p. 108, lines 8-11. He immediately added, **"There was no intent whatsoever."** R. p. 108, line 13.

On cross-examination, the prosecutor asked if Appellant was scared Kimberly would hurt him and he answered, "No, because when she has these episodes – I've been trying for years to help her." R. p. 112, lines 6-8.

When asked by the prosecutor if Kimberly attacked him, Appellant answered, "She started throwing her arms around me and started hitting me." R. p. 114, lines 15-18. He claimed he had scratches on his neck from the incident. R. p. 114, lines 21-23. Cross-examination led to the prosecutor asking, "Did she want to be hit in the mouth?" and Appellant answered, "I did not do that." R. p. 119, lines 18-19. During redirect, Appellant confirmed he did not want to hurt Kimberly at the Taco Bell drive-thru. R. p. 122, lines 18-20.

Requested instruction

Appellant requested the following instruction:

> A person is entitled to defend against reasonably anticipated unlawful bodily harm even though it would not be serious, but in defending, he must respond proportionally.
>
> A person is not entitled to self-defense unless the person was without fault in bringing on the difficulty.

R. p. 251.

A judge should decline a self-defense instruction if unsupported by evidence at trial.

"A jury charge on self-defense is not required unless it is supported by the evidence." State v. Wigington, 375 S.C. 25, 31, 649 S.E.2d 185, 188 (Ct. App. 2007). Stoots' testimony lacks any

evidence of an intentional act. "If the harm was caused by accident, the defendant is not criminally responsible because of the absence of criminal intent. It is precisely the lack of intent that separates accident from self-defense, for self-defense 'admits an intentional killing, and sets up as justification a necessity to kill in order to save the accused from death or serious bodily harm, whereas a defense of homicide by accident denies that the killing was intentional.'" State v. Owens, 427 S.C. 325, 831 S.E.2d 126 (Ct. App. 2019) (cert. granted March 12, 2020) (quoting State v. McDaniel, 68 S.C. 304, 317, 47 S.E. 384, 389 (1904)). Although a murder case, Owens conveys the requirement of intent for self-defense regardless of the resulting injury. Absent in this case is any evidence that Appellant intentionally punched Victim. Therefore, a self-defense instruction was not warranted.

Appellant cites to cases where some evidence is provided that a defendant armed themselves in self-defense and then accidently caused harm with the weapon. State v. White, 425 S.C. 304, 311, 821 S.E.2d 523, 527 (Ct. App. 2018); State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608-09 (Ct. App. 2012); see State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (finding a person may be acting lawfully, even if he is in unlawful possession of a weapon, if the person is entitled to arm themselves in self-defense, and therefore is entitled to an instruction on accident if the weapon discharges accidently). In the instant case, Appellant did not arm himself and there was no dispute as to whether he could lawfully restrain his wife from hitting him. Note Appellant was not charged with kidnapping. The only controversy was whether Appellant intentionally punched Kimberly, as testified to by Kimberly, or whether it was an accident, as testified to by Appellant. Therefore, the evidence did not support self-defense nor was a self-defense instruction necessary to the determination of whether Appellant had the criminal intent to cause the harm.

In order for a defendant to be entitled to a jury instruction on self-defense, evidence of the

following four elements must be presented:

> (1) The defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was in actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.

State v. Day, 341 S.C. 410, 416, 535 S.E.2d 431, 434 (2000). Wholly absent is any evidence Stoots believed he was in imminent danger of losing his life or sustaining serious bodily injury. State v. Bruno, 322 S.C. 534, 536-37, 473 S.E.2d 450, 452 (1996) ("Since Bruno presented no evidence that he believed he was in imminent danger of losing his life or sustaining serious bodily injury, he fails the second element of self-defense.").

Stoots argues he is allowed to act in self-defense when threatened by even non-serious injury. Case law on this point is less developed in South Carolina. In City of Gaffney v. Putnam, 197 S.C. 237, 15 S.E.2d 130 (1941), the defendant espoused his religious sect at a street corner and seemingly denounced all other sects. A bypassing pedestrian took offense, and attacked the defendant, "administer[ing] a severe beating to the defendant." Id. at 237, 15 S.E.2d at 131. The Supreme Court found evidence did not support a verdict for a city ordinance akin to breach of the peace, noting as follows: "One acting in self-defense to repel an unlawful attack is not guilty of assault; he may repel force with force and continue his self defense as long as the danger apparently continues." Id.

Perhaps then, under Putnam, Appellant could lawfully repel any attack on him if necessary. Nonetheless, Appellant did not testify he punched Kimberly out of necessity to repel her attack. He testified the back of his hand hit her **accidently**. Putnam does not call for the trial court to circumvent the requirement of an intentional act to support a jury instruction and there is no evidence that Appellant punched Kimberly intentionally in self-defense.

Further, the law of self-defense is based on the simple concepts of necessity, reasonableness, and proportionality. If there is reasonable means to avoid the danger rather than engage in violence, the necessity to resort to force does not exist, and therefore, neither should self-defense. State v. Beckham, 24 S.C. 283, 285 (1886) (noting "[a]ll the authorities agree that the right of self-defence rests upon necessity . . .").

This is demonstrated in a North Carolina case in which, according to the defendant, a "bad woman" threw stones at him and hit him with a stick, so he dismounted his horse and struck her with a stick. State v. Gibson, 10 Ired. 214, 32 N.C. 214 (1849). The North Carolina Supreme Court noted that "the law does not justify any assault by way of retaliation or revenge for a previous one by the prosecutrix, but only in the defendant's own defence. . . . [I]n cases of battery merely, the party, who strikes another, must be guilty, unless he be justified in committing it, as an act of self-defence; . . . ." Id. at 215. The Supreme Court found evidence supported the jury's verdict because "the prosecutrix was a woman and several yards from the defendant, then on horseback on the opposite side of the fence, he could not have believed himself in further danger from her, and therefore that his alighting from his horse and going the several yards to her and striking her with a stick on the head, was not in defence of himself, but an act of unmanly aggression on her." Id. at 216.

Necessity and proportionality remain the essential components of self-defense, even with the

use of non-lethal force to repel a slighter attack. This was the repeated theme in Golden v. State, 1 S.C. 292 (1870), which cited Gibson favorably and analyzed the defendant police officer's use of force against a drunken wagon driver. Following its discussion of several cases, including Gibson, the Supreme Court announced: "*Conclusion.* – Enough has now been said to show conclusively that the rule of law prevailing, both in England, in the various States of the Union, and particularly in South Carolina, limits the force which may be justified to the actual necessities of the immediate case." Golden, at 4.

Duty to retreat

Certainly, the ability to retreat renders use of force unnecessary. Therefore, the rule in Golden and its recognition of Putnam's holding evidences the common law of South Carolina requires that even the use of non-lethal force as a resort is lawful only when retreat is not a viable option. The common duty to retreat originates in English common law as a policy that preservation of life and aversion to violence was paramount. See Williamson, J. Dave, Untying the Hands of Prosecutors in "Stand Your Ground" States: Rethinking the Jury Charge on Reasonableness for Altercations Occurring Outside One's Home, 6 J. Marshall L.J. 243, 248-49 (Fall 2012). However, American judges and scholars in the nineteenth century rejected the English rule on the reasoning that a "true man" without fault should not be obliged to flee from an assailant. See id. Of course, South Carolina never adopted this now-archaic rationale and retained the duty to retreat or otherwise avoid the danger. See State v. Jackson, 384 S.C. 29, 37, 681 S.E.2d 17, 21 (Ct. App. 2009) ("Unless the incident occurred in the accused's home or business or on the curtilage thereof, the accused generally has a duty to retreat.").

The Alaska Supreme Court in Miller v. State, 462 P.2d 421, 426 (Alaska 1969) held it would

not continue to recognize the common law right to resist an unlawful arrest, and articulated a policy argument applicable to the issue in instant case, opining, "The control of man's destructive and aggressive impulses is one of the great unsolved problems of our society. Our rules of law should discourage the unnecessary use of physical force between man and man."

While historically, the majority of other jurisdictions find no duty to retreat before using non-deadly force, a notable exception exists. Massachusetts courts find the use of deadly or nondeadly force is impermissible in self-defense where retreat is practical. Commonwealth v. Tirado, 842 N.E.2d 980, 985 (Mass. App. Ct. 2006). Accordingly, retreat is predicate to the use of even nondeadly force in self-defense. See Commonwealth v. Bastarache, 414 N.E.2d 984 n. 15 (Mass. 1980). The holding of one case from the Commonwealth resonates to the instant case: "While the defendant may have had an equal right to remain on the public street, the measure of a duty to retreat is not equality of right to remain in the face of an unreasonable demand, but the ability to retreat." Commonwealth v. Toon, 773 N.E.2d 993, 1004 (Mass. App. Ct. 2002).

Appellant's analogy to S.C. Code §16-11-440(C) fails because the legislature could easily have authorized the use of non-lethal force without a duty to retreat in response to an assault without the risk of serious bodily injury and failed to do so. German Evangelical Lutheran Church v. City of Charleston, 352 S.C. 600, 576 S.E.2d 150 (2003) (Under the canon of construction "expressio unius est exclusio alterius" the expression or inclusion of one thing "implies the exclusion of another, or of the alternative.") (citation omitted).

The question of the duty to retreat in this case is simply academic because there was no evidence Stoots intended to act in self-defense – Kimberly testified she was struck without provocation and Appellant claims she was struck by accident.

Further, Appellant was not prejudiced by the lack of a self-defense instruction. As discussed in the second issue, the trial court instructed the jury on criminal intent and the need for the jury to find it beyond a reasonable doubt. If the jury believed Appellant's version of events or had a reasonable doubt about Kimberly's version of events, it would have acquitted Appellant because it would have found that the State failed to prove Appellant acted with criminal intent. Therefore, any error is harmless beyond a reasonable doubt. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial).

II.

Because the trial court admonished the jury it needed to find Appellant acted with criminal intent to find Appellant guilty of domestic violence, any error by the trial court in declining an instruction on accident.

The trial judge is required to charge only the current and correct law of South Carolina. State v. Zeigler, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005). The law to be charged must be determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Further, the substance of the law must be charged to the jury, not any particular verbiage. State v. Adkins, 353 S.C. 312, 318–19, 577 S.E.2d 460, 464 (Ct. App. 2003). A judge's charge to a jury is sufficient if, as a whole, it is substantially correct and covers the law applicable to the case. State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990).

Further, it is a "general rule that a trial judge should refrain from all comment which tends to indicate to the jury his opinion on the credibility of the witnesses, the weight of the evidence, or the guilt of the accused." State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989); see also S.C. Const. Art. V, Section 21 (2009) ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."). Trial judges should refrain from providing requested instructions that may constitute "an improper court-sponsored emphasis of a fact in evidence . . . ." State v. Burdette, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019).

The defense of accident generally has been discussed in the context of homicide cases. "A homicide will be excusable on the ground of accident when (1) the killing was unintentional, (2) the defendant was acting lawfully, and (3) due care was exercised in the handling of the weapon." State v. Chapman, 336 S.C. 149, 153, 519 S.E.2d 100, 102 (1999). This Court noted the defense is

available outside the realm of homicide cases: "If the harm was caused by accident the defendant is not criminally responsible because of the absence of criminal intent." State v. Owens, 427 S.C. 325, 831 S.E.2d 126 (Ct. App. 2019) (cert. granted March 12, 2020) (quoting State v. McDaniel, 68 S.C. 304, 317, 47 S.E. 384, 389 (1904)).

For sure, intent is a necessary element of any criminal assault, including domestic violence. See Mellen v. Lane, 377 S.C. 261, 277, 659 S.E.2d 236, 245 (Ct. App. 2008) ("There is a well-recognized distinction between criminal assault and a civil action for an assault and battery. In civil actions, the intent, while pertinent and relevant, is not an essential element.").

In the instant case, Appellant requested the following instruction:

> As with nearly every crime, the State must prove criminal intent beyond a reasonable doubt. In order to prevail, the State must prove not only that the Defendant cause[d] some level of injury to a household member but also that he intentionally did so. As such, accidental injuries do not give rise to criminal convictions.
>
> The defense of accident has three elements. First, the harm must be unintentional. Second, the Defendant must have been acting lawfully at the time of the incident. And third, that the injury was not the result of negligence.

Court's Exhibit 1.

The trial court declined to provide Appellant's requested instruction to the jury. However, the trial court did instruct the jury on the necessity of proving criminal intent, as follows:

> Now, in order to establish criminal liability in a case, a criminal case, the State must prove criminal intent. And criminal intent is a matter that must be determined by you from the facts as you heard the facts. There is no way to prove criminal intent in a mathematical certainty, so the law says that criminal intent may be inferred from the circumstances. It is not necessary to establish intent by direct evidence. Intent may be established by circumstantial evidence taken into account the circumstances that are at issue. Criminal intent is a mental state of conscious wrongdoing. It is up to you to determine

> what the defendant intended to do based on the circumstances shown to have existed.

R. p. 226, lines 11-25. This followed the trial court's instruction on reasonable doubt, including the admonishment: "[A]s to any issue of fact that is essential to a finding of guilt [if] you have a reasonable doubt as to how that issue should be resolved, then it is your duty to resolve it in the defendant's favor." R. pp. 225-26 (direct quote p. 226, lines 6-10).

Therefore, the trial court instructed the jury the essence of the first paragraph of Appellant's requested instruction, conveying that the harm must have been intentional and the jury needed to find intent beyond a reasonable doubt. Burton, (recognizing a judge's charge to a jury is sufficient if, as a whole, it is substantially correct and covers the law applicable to the case). The second paragraph of Appellant's requested instruction merely places two limitations on that defense: that defendant must have been acting lawfully and must not have been acting negligently. Appellant was not prejudiced by the lack of an instruction that provided two ways for the jury to disqualify his defense.

Further, the second sentence of the requested jury instruction makes a misstatement of law. It claims that the prosecution must show not only that the defendant caused "some level" of injury to the household member "but also that he intentionally did so." However, it is inaccurate to say that the State is required to prove the defendant intended the specific injury incurred. "There can be no doubt of the general rule of law that a person engaged in the commission of an unlawful act is legally responsible for all the consequences which naturally or necessarily flow from it, ..." State v. Williams, 189 S.C. 19, 199 S.E. 906, 908 (1938); State v. McCall, 304 S.C. 465, 405 S.E.2d 414 (Ct. App. 1991) ("McCall's argument that he did not intend to kill Stroud is untenable in view of the well-established law that a person is responsible for the results of his intentional and criminal acts.")

overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). The operative question is whether Appellant intended the act, not whether he intended the result. The requested instruction fails to adequately state this.

Therefore, the trial court's instruction fully covered the applicable law in this case since an instruction on criminal intent was provided, and Applicant was not prejudiced by the absence of his requested instruction since the jury was advised that it needed to find criminal intent beyond a reasonable doubt. Therefore, the conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: _____
DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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Appellant.

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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."

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

By: _____
DAVID SPENCER

Office of Attorney General
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(803) 734-3727

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