THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUL 29 2013

S.C. SUPREME COURT

Appeal from Newberry County
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case Numbers: 2000-CP-36-0051
Appellate Case Number: 2011-204368

STEPHEN ANDREW BECKHAM, 236548,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Reply to the State's Return to Petition for Writ of *Certiorari*

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Issues I, II, & III

In Issues I, II, and III of his Reply to the State's Return to the Petition for Writ of *Certiorari* (hereinafter "Petition"), Stephen Beckham reaffirms the factual and legal framework he has asked this Court to use in analyzing juror and jury misconduct that occurred during his trial, the degree and breadth of which is not only unprecedented in this state, but in this entire country. After responding to the State's statement of facts, Mr. Beckham will discuss each of the three issues.

Response to State's Statement of Facts

While the jurors sat in judgment of Mr. Beckham for crimes the State alleged he committed, the South Carolina Law Enforcement Divisions (hereinafter "SLED") allowed the jurors to be victimized by crimes, unauthorized intrusions, and invasions of privacy. The State does not dispute that these events occurred. The State seeks to benefit from SLED's concealment of the acts from the trial court, the prosecution, and the defense. The State's attempt to minimize the seriousness of these events is contrary to the record in this case and the law of the land. As such, this Court should reject the State's obfuscation efforts and grant Applicant a new trial.

Someone intruded into a juror's motel room without permission on two occasions and plundered through his belongings. The State does not dispute that the incidents occurred. The State's contention that there is "no evidence of break-ins" or that the break-ins "were not related to this trial," Return, p. 5, is contrary to the juror's unimpeached testimony that the break-ins happened. The State's contention is contrary to state law. *State v. Haney*, 257 S.C. 89, 92, 184 S.E.2d 344, 345 (1971) ("proof of unlawful entry into a building which contains personal property that could be the subject

or larceny gives rise to an inference that will sustain a conviction of burglary). The juror did and still does believe that someone, he believes it was a *SLED* agent, searched his hotel room while the jurors were away. (Frankly, whether SLED or some unknown intruder committed the acts is irrelevant.) These break-ins led to two unreported extrajudicial investigations. A SLED agent, who was foreign to the SLED sequestration team, investigated the first incident; the jury foreperson investigated the second incident. Neither the break-ins nor the investigations were disclosed to the trial judge, the prosecution, or the defense. Petition, pp. 14-16.

A female juror's motel room was entered without permission, and the intruder plundered through her intimate clothing, stealing a pair of her underwear and a camisole. Petition, pp. 16-17. *See Haney, supra.* The State does not dispute that this incident occurred, but rather argues the "missing items of clothing were unconnected with Petitioner's trial." Return, p. 7. As discussed below, this contention is contrary to law. This incident was not disclosed to the trial judge, the prosecutors, Mr. Beckham or his lawyers.

In the sole juror incident actually reported to the judge and placed on the record—the "hung jury" comment at Bill & Fran's Restaurant—SLED falsely reported the information to the trial judge, thereby depriving the court of an opportunity to fully investigate the incident. The State does not dispute that this event occurred, but rather relies on the fact "that the matter was explored on the record at trial." The State, however, acknowledges, as it must, that SLED did not make a full and truthful report to Judge Floyd, in that more than one juror was aware of the incident. The State ignores the fact that at least one juror knew that SLED actually apprehended and detained the culprit,

but never brought him before Judge Floyd for further investigation or informed Judge Floyd of the capture and detention. This incident is evidence of the jurors' intimidation by influential outside intrusions. This event was preceded by other juror incidents, and the jurors did not feel secure enough to inform Judge Floyd that the SLED agent's account was untruthful. Petition, pp. 11-12, 17-19.

After an intoxicated man entered the motel room of yet another female juror's, "another lady came out and yelled at the agents," and SLED "ran up there" and physically removed the intruder." Petition, p. 19. The State does not dispute that this incident occurred, but rather argues it "was an attempt by the intoxicated man, a hotel guest, to be friendly and social." Return, p. 8. Societal norms do not recognize an uninvited and unknown intoxicated male entering a female's hotel room without permission as either friendly or social. This contention is also contrary to state law. *See Haney, supra*; *McMillian v. State*, 383 S.C. 480, 680 S.E.2d 905 (2009) (holding that trial counsel's act of advising defendant that a jury could infer the intent to commit burglary from defendant's act of trespassing did not constitute deficient performance, and therefore was not ineffective assistance of counsel). Most prosecutors, in fact, would argue that the intruders intent under these circumstances was to commit a sexual assault.

<u>Issue I</u>

The State addresses Mr. Beckham's Issue I in just two paragraphs in its Return, arguing, "[N]o error was committed when the post-conviction relief court declined to apply federal case law from Illinois." Return, Section I(B), p. 10.[1] The State then argues,

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[1] The State's Return addressed Issues I-III in a different order than the petition for *writ* of *certiorari*. In this Reply, Mr. Beckham discusses the issues in the same order as

"The decisions of this Court require an analysis for prejudice and do not presume bias." Mr. Beckham, respectfully, disagrees with this contention based on this Court's analysis in *State v. Bryant*, *infra*. If the State's contention is correct, then this Court's precedent does not comply with precedent form the Supreme Court of the United States. *See* discussion of the *Remmer* presumption of prejudice, *infra*. Before discussing *Remmer* and *Bryant*, Mr. Beckham will discuss the "Implied Bias" rule followed in *Hunley v. Godinez*, 975 F.2d 316 (7th Cir. 1992).

As discussed in Sections I-III(C)(1) of his petition for *certiorari*, *Hunley* involved burglaries of sequestered jurors' hotel rooms that are disturbingly similar to what happened during Mr. Beckham's trial. Mr. Beckham's citation to a case involving strikingly similar facts cannot seriously be construed as him overlooking underlying constitutional principles. *Hunley*, in fact, relied on *Smith v. Phillips*, 455 U.S. 209 (1982). In her concurring opinion, Justice O'Connor observed, "Determining whether a juror is biased or has prejudged a case is difficult, partly because the juror may have an interest in concealing his own bias and partly because the juror may be unaware of it." *Id.* at 221-22. She noted that the majority opinion in *Smith v. Phillips* did "not foreclos[e] the use of implied bias in appropriate situations." *Id.* at 224.

Simply stated, under the "Implied Bias" doctrine, once the improper contacts are established, prejudice is presumed and the State does not get an opportunity to rebut the prejudice or attempt to show the improper contact was harmless to the defendant. The unauthorized intrusions into the sanctity and independence of the sequestered jury during Mr. Beckham's trial are unprecedented, making it one of the "extreme situations," *id.* at

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in his petition to maintain logical consistency concerning the appropriate legal framework applicable in this case.

222, when the "Implied Bias" doctrine is appropriate. Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, this Court should grant the writ of *certiorari* to consider the question.

Issue II

As an alternative to the "Implied Bias" Doctrine, Mr. Beckham argues the court below erred by not applying the *Remmer* presumption of prejudice.[2] "Much like the case at bar, *Remmer* involved extremely serious allegations of juror intimidation." Petition, Section I-III(C)(2), p. 27. *Remmer* deemed the intrusions "presumptively prejudicial" and, although this "presumption is not conclusive," held "the burden rests heavily on the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant." *Remmer v. U.S.*, 347 U.S. 227, 229 (1954). Thus, under the *Remmer* presumption of prejudice, the burden of proof is on the State to rebut the prejudice and demonstrate the unauthorized contacts with Mr. Beckham's jurors were harmless to him. The State cannot. As pointed out in the petition, pp. 29-31, this Court applied the *Remmer* presumption in *State v. Bryant*, 354 S.C. 390, 581 S.E.2d 157 (2003).[3]

The State responded to Mr. Beckham's Issue II, making only passing reference to *Remmer*, in a single paragraph, without acknowledging that *Remmer* places the burden of proof on the State. Return Section I(C), pp. 11-12. The State does not make—nor could it under the facts of this case—an argument that it rebutted the presumption of prejudice.

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[2] *Remmer v. U.S.*, 347 U.S. 227 (1954) and *Remmer v. U.S.*, 350 U.S. 377 (1956).

[3] The State did not discuss *Bryant* in response to Mr. Beckham's Issues I-III. The State's only discussion of *Bryant* is in response to Mr. Beckham's Rule 606(b) issue. Return, pp. 18-19.

Rather than addressing its burden of proof under the unique facts of this case, the State attempts to equate what happened to Mr. Beckham's jurors to cases where no misconduct occurred and to cases involving only minor, incidental matters. The State cites four cases that are distinguishable because juror misconduct, in fact, did not occur. In *State v. Smith*, 338 S.C. 66, 73, 525 S.E.2d 263, 267 (Ct. App. 1999), "the trial judge stated on the record that he concluded the juror was awake and listening with her eyes closed, because on several occasions she surprised him by picking up her notebook and writing something down." *But see State v. Hurd*, 325 S.C. 384, 480 S.E.2d 94 (Ct. App. 1996) (reversing a conviction where court failed to make a determination of whether juror was actually sleeping). Likewise, in *State v. Carmack*, 388 S.C. 190, 198, 694 S.E.2d 224, 228 (Ct. App. 2010), after allegations arose that the foreperson of the jury had engaged in a conversation about the case with a live-in girlfriend, the trial judge determined that "no evidence existe[d]" that the improper conversation occurred. 388 S.C. at 198-99, 694 S.E.2d at 228. In *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995), post-trial testimony from one of the jurors did not did not demonstrate racial prejudice toward defendant or that juror felt threatened or coerced into voting guilty. In *State v. Covington*, 343 S.C. 157, 164, 539 S.E.2d 67, 70 (Ct. App. 2000), there was no proof that "the alleged misconduct occurred, either on *voir dire* or in jury deliberations." Mr. Beckham, by contrast, proved the improper contacts with and invasions of privacy actually occurred. *See* Petition Section I-III(A) and (B), pp. 7-22.

The State relies on two cases that have no application to the facts and the case before this Court. The State seeks to focus this Court's attention on two cases that involve very brief and minimal interaction between alternate jurors and regular jurors

who had begun the deliberative process, *State v. Grovenstein*, 335 S.C. 347, 517 S.E.2d 216 (1999) and *State v. Bonneau*, 276 S.C. 122, 126, 276 S.E.2d 300, 302 (1981). In Grovenstein—the case relied on heavily by the state—the trial judge overlooked excusing the alternate juror before sending the jury to deliberate. The "trial court called the remainder of the jury to the courtroom and instructed them that the alternate should have been removed, and that it was the remaining jurors' responsibility to reach a verdict without regard to anything the alternate had said or done." *Id.* 335 S.C. at 349-50, 517 S.E.2d at 217. *Id.* Likewise, in *Bonneau*, this Court held that an alternate juror's presence for ten or eleven minutes during deliberations was cured by the trial judge and "not an irregularity of constitutional dimensions." *Bonneau*, 276 at 126, 276 S.E.2d at302. It is simply unreasonable to equate what happened to the Mr. Beckham jurors, where multiple criminal stranger intrusions and thefts were perpetrated on the jurors, to an alternate juror briefly deliberating with the other jurors. Significantly, state actors were aware of the improper breaches of juror security and invasions of privacy of Mr. Beckham's jury.

The State also attempts to equate the case at bar with cases involving premature deliberation. The State cites *State v. Aldret*, 333 S.C. 307, 316, 509 S.E.2d 811, 815 (1999) where this Court outlined procedures for the trial court to follow when investigating allegations of premature deliberation, about which there are no such allegations lodged.

Of the other cases cited by the State, only four involved allegations of external influences on the jurors. Each case is discussed below. In *State v. Wasson*, 299 S.C. 508, 510, 386 S.E.2d 255, 256 (1989), the trial judge learned that some of the jurors were discussing a newspaper article reporting on the case being tried. "[T]he trial judge, on his

own motion, questioned the jury about the newspaper article." After a contemporaneous investigation that included questioning the jurors, "the trial judge was satisfied that the jury's verdict had been reached free from any outside influences." 299 S.C. at 510-11, 386 S.E.2d at 256-57.

State v. Pittman, 373 S.C. 527, 542, 647 S.E.2d 144, 151 (2007) involved two instances of juror misconduct that were thoroughly investigated by the trial judge: (1) one of the juror's wife improperly expressed her opinion about the case, but the juror never shared his wife's opinion with the other jurors, and (2) the same juror admitted telling a bartender that he believed Pittman was guilty, but the bartender never expressed his opinion about the case. Although the trial court judge found juror misconduct, the trial judge found facts that affirmatively established that no prejudice resulted from the misconduct. The judicial investigation was possible because of prompt disclosure, something that did not happen in Mr. Beckham's case.

In *State v. Carrigan*, 284 S.C. 610, 614, 328 S.E.2d 119, 121 (Ct. App. 1985), a juror had a "benign" conversation with a prosecution witness "regarding how the sister of the witness had improved her appearance by losing weight." After questioning the juror, "[T]he trial judge excused this juror from further participation in the case and replaced him with an alternate, but refused Carrigan's motion for a mistrial." 284 S.C. at 613-14, 328 S.E.2d at 121. This incidental contact, although requiring dismissal of the juror, is exponentially different than the improper contacts with and invasions of privacy that occurred with Mr. Beckham's jury.

Finally, *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998) one of the jurors shared a religious pamphlet with the other sequestered jurors during the penalty phase of

a capital trial. After prompt notification by another juror, the trial judge questioned all the jurors, removed the offending juror, "concluded ***no other juror had been exposed to the contents of this pamphlet***," and "found the remaining jury members were not biased by the pamphlet." 331 S.C. at 141, 502 S.E.2d at 104. (emphasis added.)

The conduct of the SLED agents responsible for sequestering Mr. Beckham's jurors deprived Mr. Beckham of a fair trial because they sequestered the criminal intrusions security breaches from the Court and the parties. Furthermore, as pointed out in the petition, pp. 5-33, the State did not rebut the presumption of prejudice.

Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, this Court should grant the writ of *certiorari* to consider the question.

Issue III

The State argues:

> Petitioner alleges that the PCR court committed an abuse of discretion in failing to find actual prejudice. Petitioner does not explain what the abuse is. Respondent submits that this claim is unsupported and Petitioner cited so little authority that the issue must be considered abandoned on appeal.

Return, p. 4. This contention is perplexing because it overlooks that the petition discussed Issues I, II, and III together because of the common factual background and outlined the legal framework involving three different approaches to analyze these facts. After a full discussion of the trial and PCR record facts, Petition Sections I-III(A) and (B), pp. 5-22, Mr. Beckham then expressly asserted that "his constitutional rights to a fair trial, and an impartial and unmolested jury, granted by the Fifth, Sixth, Amendment[s],

and the due process and equal protection clauses of the Fourteenth Amendment, were violated to the nth degree by state action." Petition, p. 24.

Mr. Beckham thoroughly discussed the legal framework he contended this Court should apply in Sections I-III(C)(1)-(3), pp. 24-32, including specific and detailed discussions of the United States Supreme Court holdings in *Remmer I & II* and this Court's holding in *Bryant*.

Mr. Beckham and the State may disagree about the legal principles in these cases, but Mr. Beckham's position is entirely consistent with Supreme Court precedent. *Compare* Petition, p. 28 (quoting *Remmer II*, "The presumption is not conclusive, but the burden resets heavily on the Government to establish, after notice and hearing of the defendant, that such contact with the juror was harmless to the defendant.") *with* Return p. 12 ("*Remmer* does not stand for the proposition that any of the alleged incidents in this case, even if true as alleged, are presumptively prejudicial as a matter of law."). *Compare also* Petition p. 30 ("In *Bryant*, although this Court did not expressly discuss the *Remmer* presumption, the Court applied it.") *with* Return p. 12 ("[T]his Court has repeatedly held that it is the defendant who must prove the prejudice from outside or improper influence on the jury.").

Although Section I-III(C)(3) is only one paragraph, Petition, p. 32, it must be considered along with the preceding twenty-seven pages, which thoroughly set forth the factual and legal framework Mr. Beckham asked this Court to apply. To say otherwise is to require that a petitioner must engage in redundancy after redundancy, and this Court has limits to what it tolerates in that regard.

Assuming *arguendo* that the State is correct that Mr. Beckham bears the burden of proof of establishing prejudice under *Remmer*, *Bryant*, and the other cases discussed at length in the petition, Mr. Beckham has satisfied his burden. While the jurors sat in judgment of Mr. Beckham for crimes the State alleged he committed, SLED presided over criminal victimizations, unauthorized intrusions, and invasions of privacy of the jurors.

Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, this Court should grant the writ of *certiorari* to consider the question.

Issue IV

In Issue IV, Mr. Beckham argued that the court below "erred by allowing the State to question the jurors in violation of Rule 606(b), SCRE, about whether the external contacts and invasions of privacy affected their deliberations." Petition, p. 33-36. The State "submits that the argument Petitioner presents on appeal was not properly presented and ruled upon by the PCR judge and may not be presented for the first time on appeal." The State, however, acknowledges Mr. Beckham's contemporaneous objections pursuant to Rule 606(b). Return, pp. 13-15. In addition to his contemporaneous objections, Mr. Beckham called this matter to the lower court' attention in his post-hearing brief, response to the state's post-hearing brief, and Rule 59(e), SCRCP motion. The arguments set forth in these post-hearing pleadings are identical to the argument set forth in the petition. Mr. Beckham, therefore, raised this legal principal to the trial court, in a timely manner, with sufficient specificity for the PCR judge to determine what evidence could legally be considered in reaching a decision. Mr. Beckham asserts the same legal

argument on appeal. *See S.C. Dep't of Transportation v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007).

The State also overlooks the significance of the fact that the evidentiary hearing was a bench trial, for what it matters, where the judge as trier of fact normally "is presumed to disregard prejudicial or inadmissible evidence." *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011). As the State acknowledges, Return, p. 16, "An abuse [of discretion] occurs when . . . the ruling is controlled by an error of law. *State v. Pagan*, 369 S.C. 201, 631 S.E.2d 262 (2006)." Mr. Beckham's legal argument is set forth in his petition, pp. 33-36. In its Return, the State misunderstands the *difference b*etween admissibility of testimony about the external influences and the jurors' *subjective beliefs* about the effect of the intrusion on the deliberations and their reactions to it all. For example, this Court has analyzed the substance of the jurors' testimony without reference to their subjective beliefs regarding the impact the external influence might have had on their deliberations. *See Pittman*, 373 S.C. at 555-57, 647 S.E.2d at 158-60. The same is true in *Bryant*. *See* Petition, pp. 35-36.

Because the lower court's conclusions of law are erroneous, this Court should grant the writ of *certiorari* to consider the question.

Issues V & VI

In Issues V and VI, Beckahm argued that "the undisputed evidence showed that juror John Grimes failed to disclose properly that, while he sat on Mr. Beckham's capital murder trial, he was licensed by SLED as an armed security guard. Because that was true, he was disqualified as a juror pursuant to S.C. Code Ann. §14-7-820, as a matter of law. *See Covington*, 343 S.C. at 164, 539 S.E.2d at 70 ("As to allegations that a juror

intentionally provided misleading, false, or incomplete answers on voir dire, a new trial is only necessary where the purposefully concealed information would have been a material factor in the party's use of peremptory challenges or would have supported a challenge for cause.')

In his petition for *certiorari*, Mr. Beckham fully and carefully set forth the relevant record evidence in support of his request that the Court either to reverse the PCR court's denial of his motion for summary judgment or reverse the PCR court's order denying post-conviction relief. Petition, pp. 36-41. The State now argues that this Court should not allow an appeal of the denial of Mr. Beckham's summary judgment motion and should not consider this issue as cognizable for post-conviction relief. Alternatively, the State argues Juror Grimes was not disqualified from jury service. Return, pp. 20-37.

Regardless of whether this Court considers this issue as an appeal of the summary judgment motion or as an appeal of the final order denying relief, the issue is entirely a matter of law. It is undisputed that Grimes was a SLED licensed, armed security guard with arrest and prosecution powers. As a matter of law, he was not a qualified juror. See Petition, Section V-VI((D), pp. 39-41 (discussing applicable law at length)

Because the lower court's conclusions of law are erroneous, this Court should grant the writ of *certiorari* to consider the question.

Issue VII

In Issue VII, Mr. Beckham argued this Court should grant him a new evidentiary hearing so that he can conduct discovery and present additional evidence about the SLED Jury Sequestration Manual, because the State possessed the manual during his PCR hearing and willfully failed to disclose it during pre-trial discovery in violation of the

South Carolina Rules of Civil Procedure (hereinafter "SCRCP"). Petition, p. 41-45. The State "regret[ed] that the documents [received from Judge Floyd] were not produced earlier, but it most certainly did not hide the material." Return, p. 39 (quoting its representation to the lower court). Counsel for the State acknowledge that this vital manual from the Federal District Court Judge had been on her desk the entire time, since before the evidentiary hearing until after post-hearing briefing! Thus, the State violated the SCRCP by not producing this document in response to Mr. Beckham's interrogatories and request for production. ate asks this Court to dismiss this ground for appeal, and thereby, effectively excuse its discovery violation, on procedural grounds. Return, pp. 40-42. The State claims Mr. Beckham did not cite any authority supporting his contention. To the contrary, Mr. Beckham cited *State v. Quattlebaum*, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000); *State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 822 (2001); and *State v. Lawton*, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009). Petition, p. 45. For all the reasons detailed in the petition, Mr. Beckham is entitled to a new trial.

Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, this Court should grant the writ of *certiorari* to consider the question.

Issue VIII

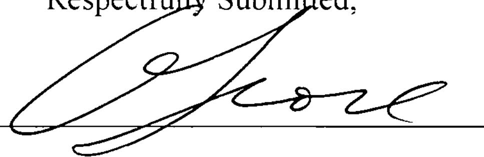
In his Issue VIII, Mr. Beckham asks this Court to apply the cumulative error doctrine. Petition, pp. 45-46. The State argues "that the cumulative error doctrine simply does not apply to Petitioner's case because Petitioner filed to show error or prejudice as to any of the claims upon which he relies as a basis for asserting cumulative error." Return, p. 51. As discussed throughout the Petition and this Reply, the State's contention

is not supported by the record in this case. Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, this Court should grant the writ of *certiorari* to consider the question.

Conclusion

Because the lower court's findings and conclusions of law are erroneous according to the record in this case, and state and federal law, this Court should grant the writ of *certiorari* to consider all questions presented.

Respectfully Submitted,

By 

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***Pro Bono* Counsel for the Petitioner**

July 26, 2012

THE STATE OF SOUTH CAROLINA
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Appeal from Newberry County
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STEPHEN ANDREW BECKHAM, 236548,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Certificate of Service

I certify that I have served the **Reply to the State's Return to Petition for Writ of *Certiorari*** on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

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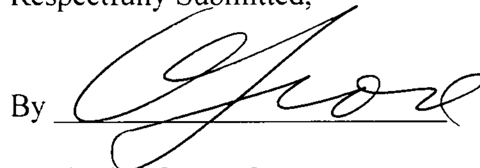
Attorney for Respondent

Respectfully Submitted,

By 

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July 26, 2013

The Honorable Daniel E. Shearouse
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JUL 29 2013
S.C. SUPREME COURT

Re: Stephen A. Beckham v. State of South Carolina
Case No. 2000-CP-36-0051
Appellate Case No. 2011-204368

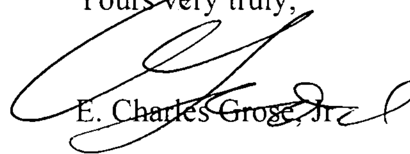
Dear Mr. Shearouse:

Enclosed please find the original and six copies of Mr. Beckham's Reply to the State's Return to Petition for Writ of *Certiorari*. By copy of this letter to Ms. Elliott, I am serving the State of South Carolina.

Thank you for your attention to this matter. If you have any questions or require additional information, please do not hesitate to contact me.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Diana Holt, Esquire
Salley W. Elliott, Esquire