

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED
MAY 13 2013
SC COURT OF APPEALS

Case No.: 2010-CP-40-7546

Richland County Sheriff's Department,.....Appellant,

v.

Nizar Awde,.....Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. WAS JUDGE BENJAMIN CORRECT IN AFFIRMING MAGISTRATE DAVIS'S FINDING THAT THE TWO CHESS CHALLENGE II GAMES ARE GAMES OF SKILL DISTINGUISHABLE FROM ILLEGAL VENDING MACHINES?
2. WAS JUDGE BENJAMIN CORRECT IN AFFIRMING MAGISTRATE DAVIS'S FINDING THAT THE TWO CHESS CHALLENGE II GAMES ARE GAMES OF SKILL DISTINGUISHABLE FROM ILLEGAL VIDEO GAMES WITH FREE PLAY FEATURES?
3. DID JUDGE BENJAMIN APPLY THE CORRECT STANDARD OF REVIEW IN AFFIRMING MAGISTRATE DAVIS?
4. IS THE PRESENT CASE INDISTINGUISHABLE FROM *SOUTH CAROLINA LAW ENFORCEMENT DIVISION V. ONE SPEEDMASTER*, 397 S.C. 94, 723 S.E.2D 809 (Ct. App. 2011)?
5. DID JUDGE BENJAMIN CORRECTLY AFFIRM MAGISTRATE DAVIS'S APPLICATION OF THE "DOMINANT FACTOR" TEST IN DETERMINING THE TWO CHESS CHALLENGE II GAMES TO BE GAMES OF SKILL?
6. WERE THE TWO CHESS CHALLENGE II GAMES "USED FOR GAMBLING?"
7. DID JUDGE BENJAMIN CORRECTLY AFFIRM MAGISTRATE DAVIS'S FINDING THAT APPELLANT LACKED PROBABLE CAUSE TO SEIZE THE TWO CHESS CHALLENGE II GAMES?

STATEMENT OF CASE

Two Chess Challenge II games were seized from Respondent's business on December 29, 2008. An Order for Destruction/Notice of Post Seizure Hearing was issued by Magistrate Michael Davis (hereinafter "Magistrate Davis"). The post seizure hearing was held on February 6, 2009 at which Magistrate Davis examined the operation and play of both games and received the testimony of lay and expert witnesses. On March 3, 2009, Magistrate Davis issued an order declaring:

- (a) The two Chess Challenge II games are games of skill that are lawful to possess, own, and operate under South Carolina law; and
- (b) the seizure of the Chess Challenge II games was unlawful and without probable cause.

Appellant moved to alter or amend the judgment pursuant to Rule 59 (e), SCRCF. Appellant's motion was heard on May 22, 2009. On June 19, 2009, Magistrate Davis denied Appellant's motion.

Appellant filed an appeal to the Richland County Court of Common Pleas. The appeal was heard by the Honorable DeAndrea G. Benjamin (hereinafter "Judge Benjamin") on September 1, 2011. By order dated October 13, 2011, Judge Benjamin affirmed Magistrate Davis. Appellant filed a motion to alter or amend judgment pursuant to Rule 59 (e), SCRCF. Judge Benjamin denied Appellant's motion on November 22, 2011.

FACTS

On December 29, 2008, Investigator Robbie Crane (hereinafter “Investigator Crane”) of the Richland County Sheriff’s Dept. seized two Chess Challenge II games after receiving an anonymous complaint in reference to video poker machines at Respondent’s business (R. p. 115, lines 19-21). Investigator Crane did not play either game or observe others engaged in play (R. p. 118, lines 12-15) and had no experience in distinguishing between lawful games of skill and illegal games of chance (R. p. 119, lines 1-3). Upon seeing the games, Investigator Crane contacted an agent with SLED who stated that he believed the games to be illegal gambling devices without examining their operation (R. p. 116, lines 5-10). Investigator Crane brought the two games before Magistrate Davis who issued an Order for Destruction/Notice of Post Seizure Hearing.

Respondent requested a post seizure hearing which was held on February 6, 2009 and lasted approximately six (6) hours. Magistrate Davis examined each game separately and observed the play of both games (R. p. 340). Respondent’s expert, Robert Snyder (hereinafter “Snyder”), and Appellant’s expert, SLED Agent Bradley Godfrey (hereinafter “Agent Godfrey”), testified that the two games operate in an identical manner (R. p. 43, line 17 - p. 44, line 1).

On the screen of each game, four rotating wheels spin through a series of seven icons at a fixed sequence (R. p. 341). A player’s goal is to stop each reel on matching icons and matching three of the four reels is considered a win (R. p. 341). A player is able to stop each reel individually by pushing a corresponding button (R. p. 341). Experts for both parties testified that the icon sequence was fixed (R. p. 174, lines 5-7).

Snyder was able to repeatedly stop the rotating icons on the icon of his choosing and testified as to learnable techniques by which a skillful player could repeatedly win the game (R. p. 341). Agent Godfrey conceded that Snyder proved that the two games were games of skill:

Magistrate Davis: "The work Mr. Snyder did earlier today, getting all four kings up there, was that a game of chance or was that skill that he had?"

Agent Godfrey: "I believe that was done by an individual that has spent a lot of time and knows exactly how this machine works from the inside out."

*Magistrate Davis: "**That took skill on his part?**"*

*Agent Godfrey: "**Yes sir.**"* (R. p. 169, lines 13-20)[Emph. Added.]

Magistrate Davis: "And you saw Mr. Snyder nail those four windows?"

Agent Godfrey: "Yes sir."

Magistrate Davis: "And you testified earlier that because he is able to do that, you wouldn't want him in your place of business because he'd (inaudible)."

Agent Godfrey: "True."

*Magistrate Davis: "**He could win almost every time?**"*

*Witness: "**Yes sir.**"* (R. p. 174, lines 11-19)[Emph. Added.]

Prior to the post seizure hearing, the parties stipulated that the dominant factor test as set forth in Justice Burnett's dissent in *Johnson v. Collins Entertainment Company*, 333 S.C. 96, 508 S.E.2d 575 (1998), was the correct standard to apply in determining whether the games violated Section 12-21-2710 (R. p. 340).

STANDARD OF REVIEW

“Where there is any evidence, however slight, tending to prove the issues involved, the Appellate Court may not question a Magistrate Court’s findings of fact that were approved by a Circuit Court on appeal,” Allendale County Sheriff’s Office v. Two Chess Challenge II, 361 S.C. 581, 585, 606 S.E. 2d 471, 473 (2004) and South Carolina Law Enforcement Division v. One Speedmaster, 397 S.C. 94, 723 S.E.2d 809 (Ct. App. 2011).

“The Supreme Court, on appeal from judgment of a circuit court reviewing a Magistrate’s judgments, cannot review Circuit Judges’ findings of fact where sustained by some evidence,” O’Neal v. Atlas Assur. Co. of London, England, 168 S.C. 174, 167 S.E.2d 227 (1933).

ARGUMENTS

1. JUDGE BENJAMIN WAS CORRECT IN AFFIRMING MAGISTRATE DAVIS'S FINDING THAT THE TWO CHESS CHALLENGE II GAMES ARE GAMES OF SKILL DISTINGUISHABLE FROM ILLEGAL VENDING MACHINES.

At the post seizure hearing, the parties stipulated that the “*dominant factor*” test was the correct standard for Magistrate Davis to apply to determine whether the two games were lawful games of skill or illegal games of chance. Magistrate Davis’s order reflects this stipulation and includes the elements of the “*dominant factor*” test as set forth in Justice Burnett’s dissent in *Johnson v. Collins Entertainment Company*, 333 S.C. 96, 508 S.E.2d 575 (1998). Justice Burnett opined, “*if through the exercise of skill or judgment, a participant can determine the outcome, the scheme is not a lottery.*”

In *South Carolina Law Enforcement Division v. One Speedmaster*, 397 S.C. 94, 723 S.E.2d 809 (Ct.App.2011), the Court affirmed a Magistrate’s application of the “*dominant factor*” test in determining a *Speedmaster* game to be a game of skill. The Court noted, “*the evidence showed a good player could win every game*” and “*thus, is not an illegal gaming device pursuant to section 12-21-2710.*”

In his order, Magistrate Davis set forth detailed findings of fact as to the operations of the two games, all of which were affirmed by Judge Benjamin. His findings include the following:

1. The two games operate identically;
2. A player’s goal is to stop each reel on matching icons;
3. The icon sequence is fixed;
4. The speed of icon rotation is consistent;
5. Matching three of the four reels constitutes a win;
6. A player is able to stop each reel individually by pushing a corresponding button and employing hand/eye coordination and dexterity;
7. Experts for both parties testified that the games’ icon sequence is fixed;
8. Respondent’s expert demonstrated that the games could be played skillfully;

9. Respondent's expert was able to stop the rotating icons with a high degree of certainty on the icon of his choosing;
10. It is possible for a player to skillfully play the game and achieve the desired result;
11. A player, through observation and experience, can learn some or all of the icon sequence and develop a strategy for successful play; and
12. The games contain no picture substitution, morphing or other quality that would prevent a player from stopping the reels on the icons of their choosing.

Magistrate Davis found that the games were redemption games of skill and were not a type of device which violated S.C. Code Ann. § 12-21-2710.

At the conclusion of the post seizure hearing, Appellant argued, for the first time, that the legality of the games was not governed by the "*dominant factor*" standard because they were vending machines¹. In support of this contention, Appellant cited *Harvie v. Heise*, 150 S.C. 277, 148 S.E.66 (1929). In *Heise*, the Court considered the legality of a vending machine that distributed packages of mints and provided purchasers an opportunity to play an admitted game of chance. The machine owner's contention that the machine was a legal vending machine with a promotional game was rejected by the Court which declared it to be an illegal slot machine.

Magistrate Davis properly rejected Appellant's attempt to analogize the two games before him to the machine in *Harvie* and stated in his order, "*Chess Challenge II is not a vending machine. Vending machines provide snacks, beverages or other products to consumers. Chess Challenge II is an amusement game of skill and thus not a vending machine.*"

More recently, the Supreme Court considered the legality of a purported vending machine which dispensed electronic phonecards in *Sun Light Prepaid Phonecard Co.*,

¹ At the commencement of the post seizure hearing, counsel for Appellant stated, "Our position has always been that the Supreme Court is most likely to favor what is known as the predominant factor test." (R. p. 5, lines 17-20).

Inc. v. State, 360 S.C. 49, 600 S.E.2d 61 (2004). In *Sun Light*, phonecard purchasers were provided an opportunity to “play” a game of chance on the machine’s video monitor. While the machines’ owner contended they were vending machines which contained a legal promotion under Section 61-4-580 (3), the Circuit Court found the machines to be illegal slot machines. In distinguishing the phonecard dispensers from vending machines, the Court stated that the machines had “*features present in a gambling device as opposed to a machine that simply dispensed a product.*” The Supreme Court affirmed and found, “*the trial Court correctly determined that these phonecard dispensers are like slot machines and not traditional vending machines exempted from section 12-21-2710.*”²

The games present in the machines at issue in *Harvie* and *Sun Light* were unquestionably illegal games of chance. While seventy-five years separated these cases, both machine owners unsuccessfully argued that the games were exempt as legal promotions. The two Chess Challenge II games are not part of any promotion. They do not distribute mints, phonecards, or any product and are, thus, not vending machines. Unlike the games in *Harvie* and *Sun Light*, they are games of skill.

Under Section 12-21-2712, Magistrates are charged with determining whether any seized machine or device are the type that violate Section 12-21-2710 or any other law of the state. Magistrate Davis and Judge Benjamin correctly concluded that the two games are games of skill and not vending machines.

² The Court also considered Section 61-4-580 (3) which exempts legitimate promotions or sweepstakes and: “*the main difference between the dispensers and vending machines is that vending machines dispense promotional game products that are legitimate because their companies are attempting to promote the sale of those products. The phonecard dispensers, on the other hand, do not issue game pieces, part of a legitimate promotion or sweepstakes. The product being sold to consumers is not the long distance phone service, but a game of chance.*”

2. JUDGE BENJAMIN WAS CORRECT IN AFFIRMING MAGISTRATE DAVIS'S FINDING THAT THE TWO CHESS CHALLENGE II GAMES ARE GAMES OF SKILL DISTINGUISHABLE FROM ILLEGAL VIDEO GAMES WITH FREE PLAY FEATURES.

In closing argument, Appellant argued that the "*dominant factor*" test does not determine the games' legality because they are video games with a free play feature³. Magistrate Davis rejected this argument and found that, "*a successful player of Chess Challenge II uses his winnings for prizes or merchandise.*" Magistrate Davis further noted in his order that, "*the Attorney General has opined that awarding merchandise or prizes to successful players of games of skill is in accordance with South Carolina law and this Court concurs with the opinion of the Attorney General.*"⁴ Judge Benjamin affirmed Magistrate Davis's findings that the games were games of skill and that successful players use their winnings to redeem prizes or merchandise.

In 1982, the General Assembly passed Act. No. 466 which allowed video poker machines "*with a free play feature*" to operate in South Carolina. This loophole was closed in 2000 when the General Assembly amended Section 12-21-2710. In addition to outlawing video poker, the General Assembly declared two other categories of machines to be illegal *per se*:

(1) other devices operated by a slot in which deposited is a coin or anything of value for the play of poker, black jack, keno, lotto, bingo or craps;

³In support of its argument, Appellant refers to the testimony of Respondent's expert. Snyder's testimony as to free plays addressed the presence of such a feature in pinball games:

Question: "Are you familiar with a free-what a free play feature is?"

Answer: "On a game? Sure, sure."

Question: "Could you explain to the Court what that is?"

Answer: "Well, on games, perhaps like pinball, if you get a certain score, you get a free game. That's what that is." (R. p. 64, lines 16-22).

⁴"*This office has previously opined that the payment of an entry fee and the awarding of prizes for a game of skill (golf) does not violate this state's lottery laws.*" Op. Attorney General dated August 28, 2002.

(2) any machine or device licensed pursuant to S.C. Code Ann. § 12-21-2720 and used for gambling.

The General Assembly did not alter Section 12-21-2710's catch all anti gambling provision which prohibited:

“other device pertaining to games of chance of whatever name or kind, including those machines, boards or other devices that display different pictures, words or symbols, at different plays or different numbers, whether in words or figures...” [Emph. Added.]

Section 12-21-2710 charges Magistrates with determining the “type” of a particular machine or device and whether it is prohibited by law. Magistrate Davis found the two games to be neither illegal vending machines or video games with a free play feature. Judge Benjamin affirmed his finding. After doing so, the Courts considered whether the games “*pertain to games of chance*” and concluded that they are games of skill. The record contains considerable support for their findings.

3. JUDGE BENJAMIN APPLIED THE CORRECT STANDARD OF REVIEW IN AFFIRMING MAGISTRATE DAVIS.

Judge Benjamin applied the de novo standard of review as set forth in Section 18-7-170 in reviewing Magistrate Davis's orders for errors of law or fact. In her order, Judge Benjamin affirmed the following findings of fact of Magistrate Davis:

1. *The two games operate in an identical manner;*
2. *The icon sequence for both games is fixed and not subject to manipulation;*
3. *A player is able to stop each reel individually by pushing a corresponding button and employing hand/eye coordination and dexterity;*
4. *The games can be played skillfully;*
5. *The games contain no picture substitution or morphing that would prevent a player from being able to stop a rotating reel on the icon of their choosing; and*
6. *Appellant's expert did not dispute that the games contain no quality which would prevent a player from playing them skillfully.*

Judge Benjamin also affirmed Magistrate Davis's finding of law that "*the two games are lawful games of skill which comply with South Carolina law including Section 12-21-2710*" and that Magistrate Davis "*properly applied the dominant factor test, the legal standard promoted by the Attorney General as set forth in Justice Burnett's dissent in reaching his conclusion.*"

In addition to the findings set forth in her order, the transcript confirms Judge Benjamin's scrutiny of the record on appeal and evidence offered:

Judge Benjamin: "And I read over his order, and you all had expert witnesses here—I mean there. You had an expert and they had an expert, from what I'm reading. And there was extensive testimony taken regarding the machines. I will rely on the transcript." (R. p. 274, lines 1-8).

Appellant's contention that Judge Benjamin did not rely on the transcript or apply the proper standard of review is contradicted by the transcript and Judge Benjamin's order.

4. THE PRESENT CASE IS INDISTINGUISHABLE FROM SOUTH CAROLINA LAW ENFORCEMENT DIVISION V. ONE SPEEDMASTER, 397 S.C. 94, 723 S.E.2D 809 (Ct. App. 2011).

Subsequent to the post seizure hearing but prior to the argument before Judge Benjamin, the Court of Appeals affirmed Judge Cole's affirmance of a Magistrate's order declaring a Speedmaster game to be a lawful game of skill in South Carolina Law Enforcement Division v. One Speedmaster, 397 S.C. 94, 723 S.E.2d 809 (Ct. App. 2011). In *Speedmaster*, the Magistrate observed a player win fifteen out of sixteen games with the single loss being due to player error. In affirming Judge Cole, the Court noted that the evidence showed, "*a good player could win every game*" and that "*a player will not always win if an element of the game is beyond his control.*" The Court also stated that with games of chance, "*an adept player will not always win because an element of the game is beyond his or her control. Such is the case with card games in which a good player cannot win every hand simply because the cards that are given are determined by chance*".⁵

The present case is indistinguishable from *Speedmaster*. Magistrate Davis observed skillful and successful play and found the two games to be games of skill. Judge Benjamin found that *Speedmaster* "*provides additional support for Magistrate Davis's findings*" and that the games comply with South Carolina law.⁶

⁵ In *Speedmaster*, the Court of Appeals also addressed the standard of review and stated, "*when there is any evidence, however slight, tending to prove the issues involved, the Appellate Court may not question a Magistrate Court's findings of fact that were approved by a Circuit Court on appeal.*"

⁶ While Appellant now argues that the dominant factor test was misapplied, its counsel addressed the application of the standard at the post seizure hearing as follows, "*One thing is when you're trying to determine if chance or skill is the dominant factor, you have to look at your exercise of skill-if a player exercises skill to the fullest degree, does he still stand to lose due to chance?*" (R. p. 9, lines 9-13).

5. JUDGE BENJAMIN CORRECTLY AFFIRMED MAGISTRATE DAVIS'S APPLICATION OF THE "DOMINANT FACTOR" TEST IN DETERMINING THE TWO CHESS CHALLENGE II GAMES TO BE GAMES OF SKILL.

A. While contending that the two games are games of chance, Appellant argues that Respondent's expert was able to win each play because he possessed information unavailable to the public. The record contradicts Appellant's assertion which was rejected by Magistrate Davis and Judge Benjamin.

Respondent's expert testified that a player, unfamiliar with the games, could play them skillfully and that the games have no feature that would prevent a skillful player from being successful (R. p. 45, lines 11-18). Snyder also testified that players employ different strategies to play the game successfully.

Magistrate Davis found that the games contain no element that would preclude a skillful player from obtaining the desired result. As in *Speedmaster*, the evidence showed a good player could win every time. Appellant's expert, Agent Godfrey, concurred with Magistrate Davis's conclusion.

Magistrate Davis: "You would agree, and I believe you have already testified to this, that a game of skill is a game in which a player applying skill can achieve a desired outcome?"

Godfrey: "Yes."

Magistrate Davis: "You would agree that is what Mr. Snyder demonstrated today?"

Godfrey: "Yes sir." (R. p. 182, lines 19-25).

B. Appellant also argues that even if a player can skillfully match four icons in the spinning reels, chance precludes a player from matching a fifth icon in the grid. In support, Appellant contends that Respondent's expert testified that play in the grid was determined by chance. In fact, Snyder testified that skill plays a role in the grid:

Snyder: "Stopping in the seven columns, you can learn to do that by timing because the light bar that moves from left to right is very consistent," (R. p. 59, lines 16-18).

"You certainly can skill, predominantly, probably, with some 80 percent accuracy or better, the, vertical columns." (R. p. 59, lines 22-25).

Prior to play, the games display an award table advising players of the points they will receive for matching particular icons. The table states that matching three icons of a kind constitutes a win. The games' optimal result is matching four kings. Accordingly, a player can skillfully achieve the games' optimal result in the four reels. Appellant's contention was properly rejected by Magistrate Davis and Judge Benjamin.

C. The ability of a participant to determine the outcome of play through the exercise of skill or judgment is the critical determination in applying the "*dominant factor*" test. Magistrate Davis and Judge Benjamin applied this standard in determining the two games to be legal games of skill. Appellant now argues that even though the games can be played skillfully, they are illegal because a player may choose to play unskillfully. Magistrate Davis and Judge Benjamin rejected this argument.

Gambling devices have been consistently defined as "*machines in which the exercise of skill through hand/eye coordination, judgment, practice, and/or intellectual abilities cannot impact the outcome of play.*" The outcome in devices such as slot machines or video poker is determined by the machine, not the player. In this case, Respondent established that these two games can be played skillfully. They do not contain picture substitution, morphing or any element that would prevent a player from achieving the desired outcome. A skillful player can win every play. In sum, a player's skill and effort can determine their success. In a game of chance the application or non-application of skill is irrelevant. Neither impacts the outcome of play which is

determined by the device, not the player. Magistrate Davis and Judge Benjamin recognized this distinction in finding the two games to be games of skill.

6. THE TWO CHESS CHALLENGE II GAMES WERE NOT USED FOR GAMBLING.

In *Speedmaster*, the Court of Appeals interpreted Section 12-21-2710's provision declaring "*any machine or device licensed pursuant to Section 12-21-2720 and used for gambling*" to be unlawful. [Emph. Added.] Appellant maintains that the Department of Revenue issued licenses for both games and that they were "*used for gambling.*" While Respondent does not dispute the licensure of these games, the record contains no evidence of their use for gambling.

In *Speedmaster*, the Court interpreted the "*used for gambling*" provision of Section 12-21-2710 and referred to the definitions of "*gambling*" and "*gaming*" as defined in South Carolina Jurisprudence:

"As legal terms, gaming and gambling are the same and involve either fraud or cheating or chance applied in a situation of agreement between two or more persons in which, in accordance with certain rules, the parties play a game or contest, or weigh the outcome of some event, that will determine one or more winners or losers." [Emph. Added.] 7 S.C. Jur Gaming § 3 (1991) citing *Am. Jur.2d Gaming* § 10 (1967).

The Court noted that devices licensed pursuant to Section 12-21-2720 are "*largely what would be considered games of skill, not chance,*" and recognized that, "*consideration of this issue reveals an apparent contradiction in the statute.*" The Court reconciled this contradiction by applying the definition of gambling previously cited from S.C. Jurisprudence which contemplated "*two parties betting or wagering on a game.*"

In *Speedmaster*, the record revealed no evidence of parties wagering on the game and the Court affirmed the Magistrate's ruling that *Speedmaster* was not "*used for gambling.*" Likewise, the record reveals no evidence of parties wagering on the two

Chess Challenge games.⁷ Without such evidence, the games, like most games licensed under Section 12-21-2720, are legal games of skill.

⁷ Investigator Crane testified that he did not even observe the games being played (R. p. 118, lines 14-18).

7. JUDGE BENJAMIN CORRECTLY AFFIRMED MAGISTRATE DAVIS'S FINDING THAT APPELLANT LACKED PROBABLE CAUSE TO SEIZE THE GAMES.

After finding the games to be games of skill, Magistrate Davis addressed Appellant's basis for their seizure. Investigator Crane testified that he neither played the games or observed others engaged in play (R. p. 118, lines 12-18). He also testified that he had no experience in distinguishing between lawful games of skill and illegal games of chance (R. p. 119, lines 1-3). Magistrate Davis also received the expert testimony of David Byrd and Phillip Grimsley, two experts as to police procedure, who both testified that Appellant lacked probable cause to seize the games.

Magistrate Davis concluded that although Appellant had acted in good faith, it had insufficient knowledge of the two games to have formed any reasonable basis for conducting their seizure. Appellant contends that its lack of probable cause is a non-issue because the games violate Section 12-21-2710. As set forth herein, Magistrate Davis and Judge Benjamin correctly concluded that they are games of skill. Accordingly, the return of the games to Respondent is mandated.

CONCLUSION

For all of the foregoing reasons, Judge Benjamin and Magistrate Davis's rulings should be affirmed and the games returned to Respondent.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211 (b), SCACR.

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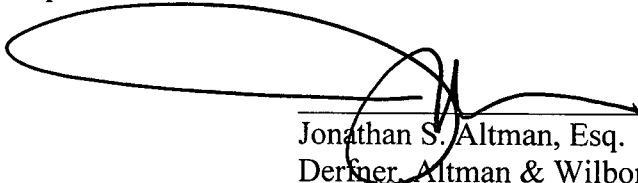
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Nizar Awde,.....Respondent..

PROOF OF SERVICE

I certify that I have served Respondent's Final Brief and Certificate of Counsel on Appellant via Regular U.S. Mail on May 8, 2013, addressed to Appellant's attorney of record, David A. Spencer, Esq.

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