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**Jul 05 2024**  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Sumter County  
Honorable R. Ferrell Cothran, Circuit Court Judge  
Appellate Case Tracking No. 2019-000292  
Opinion No. 6063

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State,

Respondent,

vs.

Shawn Douglas Custer,

Appellant.

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PETITION FOR REHEARING

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On June 20, 2024, this Court issued a published opinion reversing Appellant's conviction for receiving stolen goods. State v. Custer, Op. No. 6063 (S.C. Ct. App. filed June 20, 2024). In reversing, this Court held the trial court abused its discretion by instructing the jurors that a defendant's knowledge and possession could be inferred when the stolen property is found on property under the defendant's control.

As support for its decision, this Court relied on State v. Stewart, 433 S.C. 382, 390, 858 S.E.2d 808, 812 (2021), which came out two years after Custer's conviction. Respectfully, under the specific circumstances involved, this Court's reliance on Stewart is misplaced because this case differs greatly.

In Stewart, our Supreme Court found that the trial court – who, like the trial judge in Custer's case, relied on the existing law – erred in charging the jury “the defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's

control.” State v. Stewart, 4533 S.C. 382, 390, 858 S.E.2d 808, 812 (2021); see State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987) (“The proper charge on constructive possession is to instruct the jury that the defendant’s knowledge and possession may be inferred if the substance was found on premises under his control.”). The Supreme Court further stated that the charge should no longer be given. Id. This case differs greatly because in Stewart, after executing a search warrant of Stewart’s house, officers found in a plastic basket on top of the refrigerator: 23.83 grams of heroin, fifty-six oxycodone tablets in a tinfoil wrapper, a digital scale with a powdery residue on it, and \$2,730 in case. Id. All these items are relatively small and could have been placed in that location by someone else without Stewart’s knowledge. Conversely, in this case, the items that are on Custer’s property are massive pieces of equipment, one of which was located approximately 150 feet from Custer’s house.

This Court further held that this error prejudiced Custer because the only evidence of his guilt was the fact the stolen property was found on his land; however, that is not the case. After officer’s explained to Custer why they were there, he denied them access. He also went straight into his house where he immediately called his lawyer. This shows a consciousness of guilt. Further, there was testimony that there were visible tire tracks in Appellant’s grass leading to the dump truck, and the backhoe was visible from Appellant’s house. Accordingly, even if the instruction was wrong, it could not have prejudiced Appellant in any way.

**CONCLUSION**

For all the foregoing reasons coupled with the reasons articulated in the State's brief and during oral argument before this Court, the State respectfully asks this Court to reconsider the matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion affirming the Appellant's conviction.


Respectfully submitted,

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July 5, 2024

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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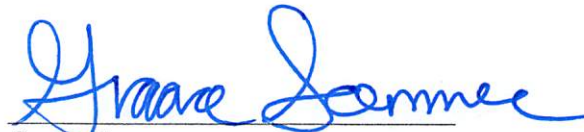
PROOF OF SERVICE

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I, Grace Sommer, certify that I have served the State's Petition for Rehearing on E. Charles Grose, Jr., Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

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

This 5<sup>th</sup> day of July, 2024.



Grace Sommer  
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## Grace Sommer

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**From:** Grace Sommer  
**Sent:** Friday, July 5, 2024 4:10 PM  
**To:** charles@groselawfirm.com  
**Cc:** Ambree Muller  
**Subject:** The State v. Shawn Douglas Custer (2019-000292)  
**Attachments:** CUSTER Shawn - Petition for Rehearing (03625838xD2C78).PDF

Good Afternoon Mr. Grose,

Attached please find a Petition for Rehearing in The State v. Shawn Douglas Custer (2019-000292). This Petition will be filed with the Court of Appeal via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you,

**Grace Sommer**, Legal Assistant  
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