ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THEODORE MANNING,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in failing to exclude the photograph of McPhatter's charred skeletal remains for being calculated to arouse the sympathies and prejudices of the jury?

II. Whether the trial court erred in failing to suppress the search warrant of 8047 Bluff Road and all fruits of that search as the executing agency lacked jurisdiction, the search warrant lacked probable cause and it does not fall under the good faith exception?

III. Whether the trial court erred in refusing to hold an evidentiary hearing on whether Manning was entitled to immunity under the Protection of Persons and Property Act, South Carolina Code Sections 16-11-410 though 450?

IV. Whether the trial court erred in failing to give a Castle Doctrine jury charge?

STATEMENT OF THE CASE

Appellant Theodore Manning (Manning) was indicted by the Richland County Grand Jury on September 15, 2010, for murder. The charge arose from the death of Nikki McPhatter (McPhatter) on May 6, 2009. Manning's case proceeded to trial from October 4 through 14, 2010, before the Honorable G. Thomas Cooper, Jr., and a jury. Luke Shealey, James May, and Fielding Pringle represented Manning, while the State was represented by W. Barney Giese, Luck Campbell, and Joanne McDuffie. R. 1.

The jury found Manning guilty of the lesser included offense of voluntary manslaughter. R. 1801, ll. 6-9. Manning was sentenced to thirty years imprisonment, with credit for time served. R. 1817, ll. 4-17.

STATEMENT OF THE FACTS

Manning and McPhatter met through an online service called Tagged.com approximately two to two and a half months prior to the shooting of May 6, 2009. Manning lived in Gadsden, South Carolina, and McPhatter lived in Charlotte, North Carolina. R. 1404, ll. 4-8; R. 1464, ln. 1—R. 1465, ln. 25; R. 1539, ll. 4-9. The nature of their long distance relationship was physical, yet McPhatter sought to make it more. However, Manning, a 29 year old Air Force veteran, had already been through one divorce and had a ten year old daughter; he had no desire to make his relationship with McPhatter anything more than "friends with benefits." R. 1463, ll. 16-20; R. 1458, ll. 3-14; R. 1469, ln. 9—R. 1471, ln. 17. After they each had stayed the night at the other's home several times, the status of their relationship was discussed. McPhatter continually stressed her desire to take the relationship down a more serious, monogamous path while Manning enjoyed the relationship's current casual tone. R. 1465, ll. 7-25; R. 1468, ll. 9-24; R. 1460, ll. 7-21; R. 1472, ll. 21-25; R. 1475, ln. 18—R. 1476, ln. 23; R. 1480, ln. 15—R. 1481, ln. 23. In April, McPhatter eventually contacted Manning again and sought to visit him one last time. R. 1480, ln. 4—R. 1483, ln. 18.

Manning agreed, and McPhatter drove down to his house in the greater Columbia area on May 6th, 2009. At one point, McPhatter contacted Manning on the way and indicated she was almost out of gas and had no money. Upon her arrival, the two continued the pattern of their thus far physical relationship and immediately proceeded to have sex in Manning's second-floor bedroom. R. 1483, ln. 21—R. 1486, ln. 5. Later, McPhatter contacted someone on her phone about needing gas, and Manning offered to assist. He drove McPhatter in her car to Freeman's, the local gas station; upon their return to

Manning's house, they again went to Manning's bedroom. R. 1486, ln. 12—R. 1488, ln. 11. After sleeping,[1] Manning awoke in the afternoon and washed. He came out and saw McPhatter walking around Manning's daughter's bedroom commenting how it could be decorated better with the help of a woman. R. 1489, ll. 17-23; R. 1490, ln. 8—R. 1491, ln. 10. Further comment ensued by McPhatter regarding the status of the relationship, and as Manning had previously expressed his desire to keep the relationship casual, he walked away. Manning walked into his bedroom, put a shirt on, and walked back to the doorway. R. 1491, ln. 11—R. 1492, ln. 14.

McPhatter stood in the hallway with her hands behind her back screaming that they can make it work. After Manning responded they were just friends with benefits, she pulled a Highpoint .380 pistol out from behind her back and pointed it at Manning. R. 1492, ln. 16—R. 1493, ln. 22. Manning testified that he was scared because he never had a gun pointed at him, and that he was "pissed" because it was his loaded gun that was being pointed at him. He was scared for his life, as he could see the gun going up and down in McPhatter's hands while she was behaving hysterically. Manning grabbed the gun, and was able to wrestle it away from McPhatter. While pointing the gun back at her from a distance of approximately three feet, he asked, "are you fucking crazy," and screamed at her to get out and leave. R. 1494, ln. 1—R. 1495, ln. 23. McPhatter continued to scream and yell. She slapped at the gun, and charged at Manning with her head flinching to the side. Manning testified that he was scared she was going for the gun; as she charged and swiped at the gun, and while Manning was backing up, he pulled the trigger. R. 1494, ln. 25—R.

[1] Manning worked third shift at a nuclear fuel company from approximately 11:30 pm to 7:30 am. R. 1102, ln. 17—R. 1104, ln. 5; R. 1460, ll. 5-11.

1496, ln. 6; R. 1511, ll. 1-15; 1513, ll. 7-17. McPhatter slumped against the wall and slid down as if sitting. R. 1512, ll. 2-4.

Manning immediately dropped the gun, and knelt next to McPhatter. He did not see any blood from her or a bullet hole in the wall, and thought she fainted. Manning held McPhatter and shouted for her to wake up; however, she had no pulse when he checked. R. 1512, ll. 6-20. The shooting occurred sometime after 3:00 pm or 4:00 pm. R. 1553, ln. 22—R. 1554, ln. 9; R. 1557, ln. 16—R. 1558, ln. 21.

Manning panicked and placed a call on his cell phone. He testified that another girlfriend of his that he also met on the internet, Kendra Goodman (Goodman), answered the phone. Manning indicated he needed help, and Goodman arrived shortly after. R. 1514, ll. 1-15; R. 1515, ll. 13-23; R. 1516, ln. 17-23.

Manning stated he never saw a dead person before, and did not know what to think. McPhatter's body was placed in the trunk of her car, and Goodman then mopped the stairs and upstairs hallway with bleach; Manning later drove up Interstate 77 with Goodman driving her car behind. R. 1518, ln. 16—R. 1519, ln. 15; R. 1523, ln. 15—R. 1524, ln. 3. The cars exited onto Peach Road in Fairfield County, South Carolina and drove to the parking lot of a white church. McPhatter's car was driven down a nearby dirt logging road into the woods approximately 1012 feet from Peach Rd. Manning and Goodman left to acquire gasoline from a B.P. gas station; when they returned with the gas, it was used to burn McPhatter's car with her remains in the trunk. R. 955, ln. 5—R. 956, ln. 3; R. 866, ln. 1—R. 872, ln. 16; R. 1109, ll. 10-23; R. 1525, ln. 7—R. 1530, ln. 4.

Manning gave several statements to law enforcement from both Charlotte Mecklenburg Police Department (CMPD) and Richland County Sheriff's Department

(RCSD), two of which were the product of approximately seven hours of interrogation subsequent to his arrest on the night of May 29, 2009. R. 685, ln. 20—R. 687, ln. 24; R. 755, ln. 20—R. 757, ln. 14; R. 1223 ln. 3—R. 1225, ln. 6; R. 1226, ll. 1-6; R. 1233, ll. 14-16; R. 1284, ll. 11-25; Tr. 1415, ln. 24—R. 1416, ln. 12; R. 1418, ll. 16-24.

At trial, the forensic pathologist who performed the autopsy, Dr. Bradley Marcus, identified McPhatter's remains, and stated that McPhatter died of a gunshot wound to the head. The State corroborated this with x-rays of her teeth and skull that were admitted into evidence. R. 815, ll. 5-24; R. 1025, ln. 17—R. 1026, ln. 9. Before, during and after trial, Manning objected *inter alia* to the introduction of photographs depicting the "grotesque skull and spinal column down to the pelvis" of McPhatter in the trunk of the burned out car. Over these objections, one of the photographs was admitted into evidence. R. 74, ln. 8—R. 76, ln. 15; R. 1154, ln. 13—R. 1155, ln. 7; R. 1157, ll. 4-9; R. 1166, ln. 1—R. 1170, ln. 3; R. 1426, ln. 22—R. 1427, ln. 4; R. 1437, ln. 13—R. 1438, ln. 3; R. 1636, ln. 23—R. 1638, ln. 2; R. 1817, ln. 18—R. 1818, ln. 4.

The jury found Manning guilty of the lesser included offense of voluntary manslaughter rather than murder, and he was sentenced to 30 years imprisonment. R. 1801, ll. 6-9; R. 1817, ll. 4-17. This appeal follows.

ARGUMENT

I. The trial court erred in failing to exclude the photograph of McPhatter's charred skeletal remains, as it was calculated to arouse the sympathies and prejudices of the jury.

During the trial of this case, the State introduced State's Exhibit No. 226 which was a photograph of Nikki McPhatter's charred skull, spinal column, and pelvis wrapped around a spare tire in the trunk of her burned car. This photograph was introduced through crime scene investigator Stan Richards towards the end of the trial. At the beginning of Richards' testimony, he testified to the photos he took of Kendra Goodman's apartment. R. 1137, ln.10-R. 1144, ln. 14. Richards also testified about the processing of the Chevy Lumina belonging to Kendra Goodman. R. 1144, ln. 15-R. 1151, ln. 12. Finally, Richards testified to processing and photographing the burned car of Nikki McPhatter. In the middle of this testimony the Assistant Solicitor offered States' Exhibits 226 and 227 into evidence. R. 1154, ll. 18-19. These photographs both depicted the interior of the trunk, including the burned remains of Ms. McPhatter. A bench conference was requested by counsel R. 1154, ln. 20. After the bench conference, Ms. Campbell offered State's Exhibit 226 into evidence. Defense counsel objected and asked to be heard at the appropriate time. The trial court admitted the photograph stating "[w]e'll allow one like this." R. 1155, ln. 2. The Court further indicated it would allow defense counsel to put their objection on the record. R. 1155, ll. 3-4. At the next break the court heard arguments from defense counsel that State's Exhibit 226 was not relevant and was highly prejudicial. R. 1166-1170. The Court overruled the objection and denied the request for a mistrial. R. 1154, ln. 23; R. 1170, ll. 1-9. The admitted

photograph was not relevant to any issue in the trial and was highly prejudicial to Appellant.

"Although photographs may be used to corroborate other evidence, it is well established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial." State v. Collins, 398 S.C. 197, 727 S.E.2d 751 (S.C. Ct. App. 2012) (gruesome photos of a deceased child should not have been admitted at trial even though they corroborated other witnesses' testimony where the photos were not necessary to substantiate any material fact at issue in the trial); State v. Torres, 390 S.C 618, 703 S.E.2d 226 (2010) (photos calculated to arouse the sympathy or prejudice of the jury should be excluded if they are not necessary to substantiate material facts or conditions); State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (internal citations omitted) (reversing and remanding where the information contained in the photographs was not really at issue, and other testimony negated any arguable evidentiary value of the photographs); see State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997) (agreeing with the same evidentiary principles, but factually different); State v. Waitus, 224 S.C. 12, 77 S.E.2d 256, 263 (1953); State v. Elders, 386 S.C. 474, 483, 688 S.E.2d 857, 862 (Ct. App. 2010) (agreeing with the same evidentiary principles, but factually different); see also Rule 401, SCRE (defining relevant evidence); Rule 402, SCRE (prohibiting admission of irrelevant evidence).

Additionally, Rule 403 of the South Carolina Rules of Evidence allows for relevant evidence to be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE; see also State v. Kelley, 319 S.C. 173,

177, 460 S.E.2d 370 (1995) ("It is well settled that evidence should be excluded when its probative value is outweighed by its prejudicial effect."). In order to constitute unfair prejudice, "the photographs must create a tendency to suggest a decision on an improper basis, commonly, although not necessarily, an emotional one." Kelley, 319 S.C. at 178, 460 S.E.2d at 370-71 (quoting State v. Alexander, 303 S.C. 377, 401 S.E.2d 146, 149 (1991)). Probative means tending to prove or disprove a fact in issue at trial. Probative value is "the measure of the importance of "that tendency to the outcome of a case." Collins, at 4. "It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. 'The more essential the evidence, the greater its probative value.'" Collins at 3-4 *quoting* United States v. Stout, 509 F.3d 796, 804 (6th Cir. 2007). Thus, the trial court must determine the probative value of a particular piece of evidence, not in a vacuum, but in the context of the specific issues present at trial.

In the present case, the inflammatory information contained in the admitted photograph was neither relevant nor necessary to the disputed issues at Manning's trial.[2] McPhatter's skeletal remains were not at the place of the shooting. The ghastly photograph depicts the scorched remains of McPhatter's skull, spine, and pelvis curled across the spare tire well of the trunk of her burned car located in the woods of Fairfield County, yet the shooting occurred inside the hallway of Manning's house miles away in Richland County. Moreover, the picture did not even indicate the cause of McPhatter's death—the bullet wound to her head was located on the back right side, which is not

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[2] Two photographs were offered by the State depicting essentially the same graphic image, and the trial court permitted one into evidence. R. 1154, ln. 113—R. 1155, ln. 7; R. 1170, ll. 1-2; Exhibits 226 and 227.

visible in the photograph. In fact at the time the photograph was entered into evidence, the cause of death had already been proven at trial by Dr. Marcus' testimony using x-rays to show the damage to McPhatter from the bullet. Additionally, Manning never contested how McPhatter was killed; from opening statement to closing argument, Manning's position throughout trial was that he indeed shot McPhatter in self defense. The admission of this photograph was purely gratuitous and designed to evoke an emotional response.

Further, while the issue of malice was contested, the picture of McPhatter's charred remains does not show malice at the time she was killed. The element of malice must be present at the time McPhatter was killed in order to prove murder, not after. As Manning's counsel repeatedly emphasized at trial, the State's case focused primarily on what occurred before or after McPhatter's death rather than the events that occurred inside Manning's home on the afternoon of May 6, 2009. Counsel's concerns were proven correct, as the State's attempt to justify admission of the photograph of McPhatter's burned skill, spine, and pelvis in the trunk of her car was thinly premised on showing malice. However, if anything, the fact that McPhatter's remains were burned in her car at a remote location in Fairfield County indicates Manning's attempt to hide or cover up the crime, not whether he harbored malice at the earlier time McPhatter was shot in Gadsden. Thus, the grotesque imagery of McPhatter's partial remains was irrelevant to even the contested issue of the case, and created a tendency to suggest a decision on an improper, emotional basis. See, e.g., Rules 401 and 402, SCRE; Middleton, 288 S.C. at 24, 339 S.E.2d at 693.

Moreover, the information contained in the photograph was already established by the State. As indicated above, the cause of death was already proven at trial by Dr. Marcus' testimony and McPhatter's x-rays well before the inflammatory picture was admitted. Also, testimony from multiple officers indicated where and in what conditions McPhatter's partial remains were found. R. 711, ll. 7-14; R. 956, ll. 10-15; R. 1111, ll. 11-15. Therefore, although the photograph corroborates other testimony, its probative evidentiary value was nonexistent as the facts it could prove were both repetitive and uncontested. Accordingly, the only value of the gruesome photograph devolves to the one reason expressly forbidden by law: to arouse the sympathies and prejudices of the jury. See, e.g., Rules 401, 402, and 403, SCRE; Middleton, 288 S.C. at 24, 339 S.E.2d at 693 (reversing conviction where the information contained in prejudicial photographs "was not really at issue," and where testimony from the forensic pathologist negated any arguable evidentiary value of the photographs."); Waitus, 224 S.C. at 27; 77 S.E.2d at 263.

Finally, the photograph of McPhatter's partial remains served to prejudice Manning. The State was permitted to enter a photograph into evidence displaying the scorched and twisted spine, pelvis, and skull of the victim inside the trunk of her burned out car. As in Waitus, the information contained in these photos was not disputed and was already established by testimony. Id. (reversing where four pictures of the victim at the crime scene that showed marks, bruises and abrasions, and the condition of the victim's clothes, were admitted into evidence even though those facts were not disputed and were already established by testimony). Therefore, the only remaining value of the photographs of McPhatter's partial remains was to arouse the sympathies and the

prejudices of the jury, thus creating a tendency to suggest a decision on an improper basis.[3] Middleton, 288 S.C. at 24, 339 S.E.2d at 693; Kelley, 319 S.C. at 178, 460 S.E.2d at 370-71. Less inflammatory photographs of autopsy pictures have been described as being at the outer limits of what the law permits a jury to consider in a *death penalty* case. Torres, 390 S.C. at 624, 703 S.E.2d at 229. In Torres the South Carolina Supreme Court specifically cautions "all solicitors to refrain from pushing the envelope on admissibility in order to gain a victory..." Id. In Torres the Court ultimately found that the gruesome photographs were admissible to show the circumstances of the crime and the nature of the defendant but it is important to note that Torres was a capital case in which other factors are at issue. That is not the case here. In this case the central issue was whether or not Manning killed Ms. McPhatter in self defense. Admitting into evidence this harrowing photograph served no purpose other than to cloud the solitary issue of the trial with emotion rendering the jury incapable of cool reflection and analysis.

Accordingly, the trial court erred in admitting the photographs in Manning's trial and Manning was prejudiced by the erroneous admission, as "[t]he prejudice created by the photographs clearly outweighed *any* evidentiary value." Id. (emphasis in original) (citing Waitus, 224 S.C. 12, 77 S.E.2d 256, and State v. Edwards, 194 S.C. 410, 10 S.E.2d 587 (1940)); see also Rule 403, SCRE. Therefore, Manning respectfully seeks reversal of his conviction, and remand of his case.

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[3] In fact, even the experienced trial court judge was so disturbed by the "desecration of the human body" that occurred well after the shooting that it had "no sympathy for [Manning] whatsoever" during sentencing phase; the court sentenced Manning to the maximum of 30 years. R. 1816, ln. 21—R. 1817, ln. 3. The photos of McPhatter's partial remains graphically displayed what was so shocking to the trial court.

II. Charlotte Mecklenburg Police Department lacked jurisdiction to execute the search warrant in Richland County and because the affidavit in support of the search warrant executed at 8047 Bluff Road lacked probable cause, the search was illegal under the Fourth Amendment of the United States Constitution, Article I, § 10 of the South Carolina Constitution, and South Carolina code § 17-13-140.

At trial defense counsel argued extensively during a pretrial suppression hearing that the May 22nd, 2009 search warrant of Manning's Bluff Road residence and fruits of that search should be suppressed for several reasons. R. 491-508; R. 529-539. Defense counsel submitted a brief on this issue with numerous exhibits to illustrate their point. Tr. 28. Included within the brief was the search warrant, affidavit and return, and numerous police reports evidencing what they believed was probable cause for the warrant. R. 491-508, R. 529-539.

On May 11, 2009 Charlotte Mecklenburg Police Department received a missing persons complaint stating that McPhatter had not been seen or reported to work since May 5th, 2009. CMPD initiated a missing persons report for McPhatter. CMPD's investigation of McPhatter's disappearance discovered that McPhatter's last known whereabouts was that she was en route to see a lover named "Teddy" in Columbia, South Carolina on May 6, 2009. It is discovered that the last known communication from McPhatter was to a friend named Mekenda Bradley (hereinafter Bradley), stating that she did not have any money, was low on gas and was requesting monetary assistance to get back to Charlotte. Bradley attempted to contact McPhatter twenty to thirty minutes later but was unsuccessful.

On May 11th, 2009 CMPD gains entry into McPhatter's residence via McPhatter's sister. On May 12th CMPD returns to McPhatter's residence to collect more information

and at no time did CMPD find evidence of foul play. On May 19th, 2009 CMPD contacts Columbia Police Department (hereinafter CPD) for help in locating a "Teddy". CPD consults with Richland County Sheriff's Department (hereinafter RCSD) and a joint agency briefing is conducted to help locate McPhatter.

On May 21st, 2009 RCSD identifies Theodore Manning as having talked to McPhatter on May 6th, through a phone records search. CMPD detectives come down to Richland County to locate Manning and conduct a non-Mirandized interrogation whereby Manning states that he saw McPhatter on May 6th, the two had sex, he filled up her car with gas and that she drove away. RCSD conducts a visual search of the area around Manning's residence with a helicopter and find no evidence of McPhatter.

On May 22, CMPD contacts RCSD expressing the desire to execute a Search Warrant on Manning's residence at 8047 Bluff Road Columbia, SC. A search warrant is obtained and Manning's residence is searched. During the execution of the search warrant of Manning's residence CMPD detectives instruct Manning to meet them at the RCSD substation, whereby a non-Mirandized interrogation occurs. During the interrogation CMPD officers searching Manning's home text message information found during the search to the interrogating officers, who then confront Manning with the evidence found. Manning is confronted in the interrogation with a Wal-Mart receipt for cleaning supplies. For the first time in the investigation Manning mentions the name Kendra Goodman (hereinafter Goodman). Manning states the two have an arrangement, where he buys her items that she cannot buy using her food stamps, and that she in turn buys him food with the food stamps – one item that she cannot buy is cleaning supplies. From this information the investigation begins to take shape and ultimately directed the

entire course of the investigation and was the lynchpin for the eventual prosecution. Through information from items seized in the execution of the search warrant and the simultaneous non-Mirandized interrogation, CMPD and RCSD focus their investigation on Goodman, who eventually implicates Manning in the killing of McPhatter. By May 29th, 2009 Goodman had shown law enforcement where the victim's body was located and Manning was arrested on the charge of murder.

A. Charlotte Mecklenburg Police Department lacked jurisdiction to execute a search warrant authorized by a Richland County Magistrate Judge for Richland County property and evidence obtained as a result should be suppressed.

The issue is whether it is permissible for an out of municipality, out of county, and out of state law enforcement officer, in this case the Charlotte Mecklenburg Police Department, to execute a search warrant authorized and conducted in a separate municipality, county, and state, in this case Richland County, South Carolina. The case law from South Carolina courts is scant to virtually non-existent on this issue. Even a survey of case law from other state courts and federal courts provides little insight. But Michele Hughes and Eric Surette in American Jurisprudence, 2nd Edition, offers important guidance on the topic as it relates to an arrest warrant, concluding:

> The power of a municipal or county peace officer is limited to the boundaries of the officer's municipality or county, ***except as statutes may provide otherwise***. He or she is an officer only within such territory, and outside it the officer's authority is no greater than that of a private citizen, and the officer cannot, ***with or without a warrant***, make an arrest outside the territory where the charge is a misdemeanor. If, however, the officer executing an arrest warrant is in fresh pursuit of the suspect, the officer may go outside the jurisdiction to make the arrest.

5 Am. Jur. 2d Arrest § 28 (July 2010) (emphasis added).

Ironically, the aforementioned authors principally rely on a ruling by the North Carolina Supreme Court regarding the territorial jurisdiction limits of law enforcement in that state. Wilson v. Town of Mooresville, 222 N.C. 283, 22 S.E.2d 907 (1942). Here, the North Carolina Supreme Court held that absent express authorization by state statute, that officers appointed to serve within one municipality or county are not permitted to conduct law enforcement activities in another territorial jurisdiction, except in those situations dealing with felony "hot pursuit." Town of Mooresville, 222 N.C. at 910-913. The opinion goes on to quote American Jurisprudence:

> In 37 Am.Jur. 698, on Municipal Corporations, Section 87, it is stated that: "The police department of a municipality derives its authority from the State, and where the municipality is not expressly or impliedly authorized to do so, it can neither enlarge nor restrict the duties of the police department or of its officers and agents as defined by the legislature."

Id. at 913.

While this opinion was drafted in 1942, nothing in current North Carolina state code, and more importantly, nothing in the South Carolina state code grants police officers from Charlotte, NC authorization to conduct law enforcement activities in Richland County, South Carolina. Under Title 17 "Criminal Procedures" of the Code of Laws of South Carolina 1976 Annotated, the state legislature authorizes the following:

> In the case of a warrant issued by a magistrate or a judge of a court of record, it shall be directed ***to any peace officer having jurisdiction in the county where issued***, including members of the South Carolina Law Enforcement Division, and shall be returnable to the issuing magistrate.

S.C. Code 1976 § 17-13-140 (emphasis added).

During the pretrial suppression motion RCSD Captain Stan Smith testifies from his report that on May 22, 2009 he was informed that "Charlotte was coming back to

Richland County and desired to do a S &W at Manning's residence." R. 249, ln 7 – R. 250, ln 6. CMPD Detective Camila Hopkins testifies during the suppression hearing that she had been assigned as lead detective of her agency, and per her report it is evident that her agency from Charlotte, not Richland County Sheriff's Department, was controlling this investigation. She references how her partner, Detective Fitch, had advised Stan Smith that he had completed a search warrant for Theodore Manning's residence while still in Charlotte, NC. She further testifies that once CMPD got to Columbia, South Carolina on May 22nd, 2009 it was then that Sergeant Don Robinson of RCSD was provided with *CMPD's* probable cause to obtain a search warrant for searching Manning's residence, his vehicle and his DNA R. 474 – R. 477. Mr. Manning's house was then searched by CMPD and Mr. Manning was then interviewed and provided an audio recorded statement to CMPD. All evidence collected during the search is only documented by a CMPD evidence collection form, and there is no Richland County counterpart showing evidence collected. The same CMPD evidence collection form lists CMPD officers Hopkins, Fitch, Martin and Flanders as participating in the search, with only Officer Holdorph listed as being present for Richland County. CMPD's role in drafting the probable cause for the search warrant, entering it into a Richland County form, searching Mr. Manning's house and then interviewing him clearly oversteps their jurisdictional constraints per South Carolina law. Any argument that Richland County was more than a remote observer in this stage of the investigation is pretextual at best, and accordingly all evidence obtained via this illegal search warrant should have been suppressed by the trial court.

B. The affiant's lack of personal knowledge and use of uncredited hearsay does not provide probable cause necessary to support a search warrant

State v. Dunbar provides a thorough summary of what is required of an application for a search warrant to meet the stringent demands of the Fourth Amendment to the United States Constitution. The Fourth Amendment, as well as Article I, § 10 of the South Carolina Constitution, protects the people from unreasonable searches and seizures. Dunbar, 361 S.C. 240, 246 (2004). State and federal constitutional law prohibit the use of search warrants not supported by "probable cause." Id. The probable cause requirement must be "supported by oath or affirmation." Id.

South Carolina courts hold that an affidavit "satisfies the minimal constitutional requirements that probable cause be supported by an 'oath or affirmation.'" Id., citing State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471, 472 (1987). The general rule for an affidavit is that it "must be made on the affiant's personal knowledge of the facts alleged in the petition." Id. at 248, quoting 3 Am.Jur.2d *Affidavits* § 14 (2002). The Dunbar Court quotes further, "The affidavit must in some way show that the affiant is personally familiar with the facts so that he could personally testify as a witness." Id. This is not a hard rule; however, as the Dunbar Court goes on to explain that "magistrates can issue search warrants based upon hearsay information that is not a result of direct personal observations of the affiant." Id. at 249, citing State v. Sullivan, 267 S.C. 610, 614-15, 230 S.E.2d 621, 623 (1976). Elaborating further, the court adds, "Probable cause for a search warrant can be supported by information given to the affiant by other officers." Id., citing U.S. v. Ventresca, 380 U.S. 102, 108, 85 S.Ct. 741 (1965).

The majority opinion in Dunbar does not go into any further detail as to what is demanded of an affiant when seeking a search warrant on the basis of hearsay information. Judge Anderson in the dissenting opinion, however, provides more clarity on the matter. When an affidavit in support of a search warrant is based on hearsay information, the affidavit must present a "***substantial basis*** for crediting the hearsay." Id. at 254, citing Jones v. U.S., 362 U.S. 257, 80 S.Ct. 725 (1960), overruled on other grounds by U.S. v. Salvucci, 448 U.S. 83, 100 S.Ct. 2547 (1980) (emphasis added). In fact, even in some cases where information provided by an officer in an affidavit is based off of double or even triple hearsay, these may be found valid "as long as underlying circumstances indicate there is a substantial basis for crediting hearsay ***at each level***." Id. at 255, citing Hennessy v. State, 660 S.W.2d 87 (Tex.Crim.App. 1983) (emphasis added). Applying the aforementioned body of case law to the instant facts, it is apparent that in his application for a search warrant on May 22, 2009, RCSD Investigator Tommy Croxton did not have personal knowledge of the facts stated in the affidavit and did not provide a substantial basis for crediting hearsay at each level. Upon questioning by the Court at trial Croxton admits that he does not know who typed up the probable cause used in the affidavit to obtain the search warrant. R. 513, ln 21 – R. 514, ln 7. The information provided in the affidavit by Croxton appears to be hearsay statements of RCSD Sergeant D. Robinson. The record is replete with the fact that Detective Fitch of CMPD constructed the probable cause for the search warrant prior to ever entering Richland County, and Sergeant Robinson confirms that he obtained Fitch's probable cause from a flash drive and entered it into a RCSD form. R. 521 ll 2-10. Robinson admits on cross examination that he essentially cut and pasted Fitch's probable cause into

a RCSD form and that his affidavit was virtually identical to what Fitch had previously prepared. When pressed on the subject Robinson claims that he did author the final conclusory phrase "[b]ased on these facts, it is believed that there is probable cause to believe that evidence of murder contained within the residence located at 8047 Bluff Road, Gadsden, South Carolina 29052." R. 525-526, R. 526, ln 11 – R. 528, ln 8. The trial judge even goes as far as to describe Robinson as a "transmitter of someone else's written form." R, 518, ln 16 – R. 519, ln 7. As it is clear from the record that Robinson had no personal knowledge of this case at this point, and only obtained his probable cause from an out of state agency, he could not have provided Croxton with a substantial basis to obtain the search warrant on his behalf.

Here, it is evident that Croxton has no personal knowledge and a level of hearsay exists, as he is signing on behalf of Robinson. Consequently, the affiant is tasked with the responsibility of establishing a substantial basis for crediting the hearsay. At no point in the affidavit, however, does Croxton explain the circumstances on how the information was provided to him by Robinson. The affiant failed to establish a substantial basis for crediting the hearsay received by Robinson.

Moreover, the affidavit, which appears to contain double and even triple hearsay, fails to establish a substantial basis for crediting the hearsay at each level as is required by Dunbar. At no point in the affidavit signed by Croxton, does the affiant indicate who Robinson is and where he stands in the chain of custody of hearsay information that was ultimately relayed before the magistrate judge on May 22, 2009. The affidavit mentions an "Officer Pickler" and generically refers to "Detectives," but the affidavit does not indicate who the detectives were, nor does it even attempt to provide a substantial basis

for the multiple levels of hearsay statements by crediting the appropriate declarant at each step of the chain of custody.

The affidavit provided on May 22, 2009 ultimately fails to meet the probable cause requirement of the Fourth Amendment to the U.S. Constitution. Accordingly, the trial Court erred by not suppressing this search warrant and all the fruits of the search.

C. The affidavit in support of the murder search warrant lacks probable cause.

At trial defense counsel during the suppression hearing argued the fact that the affidavit for the search warrant does not allege that a crime has even been committed. Accordingly, defense counsel challenged that the search warrant was defective. The Search Warrant contains an outline of the investigation and the conclusory statement:

> Based on these facts, it is believed that there is probable cause to believe that evidence of murder contained within the residence located at 8047 Bluff Road, Gadsden, South Carolina 29052.

Probable cause for a search warrant is such as to warrant a man of prudence and caution in believing that an offense has been committed. Stacey v. Emery, 97 U.S. 642 (1878). "A warrant application must demonstrate probable cause to believe that 1. A crime has been committed and 2. Enumerated evidence of the offense will be found at the place to be searched." U.S. v. Feliz, 182 F.3d 82 (1st Cir. 1999).

Moreover, an affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause, and a wholly conclusory statement fails to meet this requirement. Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the conclusions of others. Illinois v. Gates, 462 U.S. 213 (1983). The United States

Supreme Court held that "Under the Fourth Amendment, an officer may not properly issue a warrant to search a private dwelling unless he can find probable cause therefore from facts or circumstances presented to him under oath or affirmation. Mere affirmance of belief or suspicion is not enough." Nathanson v. U.S., 290 U.S. 41, (1933). "Mere conclusory statements which give the magistrate no basis to make a judgment regarding the probable cause are insufficient, "his action cannot be a mere ratification of the bare conclusions of others,"" State v. Smith, 301 S.C. 371, 392 S.E.2d 182 (S.C. 1990) quoting Illinois v. Gates, 462 U.S. 213 (1983). As in Smith supra the affidavit in the present case sets forth no facts as to why police believe that Manning committed the crime of murder, it should be noted that in Smith the defective affidavit went as far as to state:

> That on May 12th at approximately 11:45pm Reginald Jerome Smith went into the Master Inn located at 1468 Savannah Hwy., Charleston SC and he then robbed the manager at knife point..."

Id. at 372. In the present case, the affidavit for the murder search warrant has no allegation that Manning committed any crime or that McPhatter was believed to be dead.

The South Carolina Supreme Court reached a similar holding in State v. Weston 329 S.C. 287, 494 S.E.2d 801 (S.C. 1997), where convictions of murder and armed robbery were reversed due to the fact that "the affidavit failed to set forth any facts as to why police believed Weston Committed the Crumlin crime." Id. at 291.

Based on this precedent, the affidavit used to obtain the search warrant at issue is plainly insufficient. It sets forth no facts to establish probable cause that (1) McPhatter is dead, (2) that Manning killed McPhatter, or (3) that a crime occurred in Manning's

residence or car, which the police searched pursuant to the warrant. Indeed, there is not even a single allegation that a crime occurred in the body of the affidavit.

An examination of the Search Warrant provides no basis to believe that a crime has been committed or that such items would constitute evidence of a crime or would be found at the residence of Manning, his car, or that the seizing of DNA material could prove evidence of an enumerated crime. From CMPD's first arrival in Columbia, SC on May 21st, 2009 to May 22nd, 2009 when they searched the house, they learned nothing in their investigation that would have risen to the level of probable case. "Mere suspicion, rumor, or strong reason to suspect [wrongdoing] is not sufficient." United States v. Han, 74 F.3d 537, 541 (4th Cir.1996)

Defense counsel argued extensively during the pretrial suppression motion that RCSD and CMPD only had probable cause to believe this was a missing person case at the time they obtained the murder search warrant. R. 498, ln 16 – R. 501, ln 11. This argument was supported by the May 22, 2009 search warrant return stating case type as "Missing Person," and more telling was that RCSD Captain Stan Smith's report described how only on May 28th, 2009 had the investigation turned into a homicide investigation. It took six days of additional investigation into the information that was obtained from the search of Manning's residence for the investigation to transform from a Missing Persons case into a homicide investigation. Furthermore, when Manning's uncle arrived on scene during the execution of search warrant he was informed this was a missing person's investigation per police reports. Defense counsel's complaint that this search warrant lacked probable cause is confirmed by the testimony of Investigator Robinson when he admits that at the time he prepared the affidavit for the warrant law

enforcement did not have evidence that McPhatter was even deceased. R. 528, ll 11-14. Upon inquiry by the trial Court as to how probable cause can exist for a murder search warrant when a crime is not even alleged to have been committed, the prosecution responded that "the fact that there is no evidence leads to a conclusion of murder." R. 532, ln 15 – R. 533, ln, 13. This assertion by the state is not supported by the case law supra and underscores the fact that at the time of the search probable cause did not exist for a murder search warrant. Accordingly the search warrant and all of its fruits should have been suppressed by the Court.

D. The "good-faith" exception to the exclusionary rule does not apply in this case because the affidavit upon which the search was conducted did not provide the magistrate with a substantial basis for finding probable cause

The Fourth Amendment to the United States Constitution, as well as Article I, § 10 of the South Carolina Constitution, protects the people from unreasonable searches and seizures. Evidence seized in an unlawful search is excluded from use as evidence in both state and federal court. State v. Abdullah, 357 S.C. 344, 592 S.E.2d 344 (S.C.App., 2004), citing Mapp v. Ohio, 367 U.S. 643 (1961); State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001). However, there is an exception to this exclusionary rule referred to as the "good-faith" exception. In U.S. v. Leon, 468 U.S. 897, 922 (1984), the Supreme Court held that the exclusionary rule did not apply when police officers, acting in good faith, executed a legally defective search warrant. Id. at 913.

However, the South Carolina Supreme Court interprets the Leon holding as "precluding application of the good-faith exception when an affidavit fails to provide a magistrate with a substantial basis for finding probable cause." State v. Weston, 329 S.C.

287, 293, 494 S.E.2d 801, 804 (1997), citing State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990). Where a finding for probable cause is based off of an affidavit that is supported with hearsay, including double and triple hearsay, it must be shown that there is a "substantial basis for crediting hearsay at each level," quoting State v. Dunbar, 361 S.C. 240, 603 S.E.2d 615 (Ct. App. 2004). The May 22, 2009 application for a search warrant and the accompanying affidavit does not provide probable cause because the documents do not establish personal knowledge by Investigator Croxton or a substantial basis for crediting each and every level of hearsay contained therein. Consequently, the executed search of Manning's residence violates his Fourth Amendment rights. See State v. Austin, 306 S.C. 9, 409 S.E.2d 811 (S.C. App. 1991) (holding that where the Magistrate could not have found probable cause from the affidavit, the Good Faith Exception does not apply and emphasizing that South Carolina's Constitution has more protections afforded to its citizens in the realm of privacy, than does the Federal Constitution.) Furthermore, because the unlawfulness of the warrant is based on the fact that probable cause was not shown since each of the multiple levels of hearsay were not credited with a showing of a substantial basis, the officers conducting the ensuing search of the residence cannot now cleanse the unlawfulness of the search through the "good-faith" exception. Accordingly, the "good-faith" exception does not apply to the May 22, 2009 search warrant and the Court should have suppressed the warrant and all of its fruits.

E. Any claim that Manning consented to a search of his home fails because valid consent cannot be given to search when confronted by law enforcement armed with a search warrant, whether defective or not.

The Fourth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, provides that "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." However, this prohibition does not apply to those circumstances where voluntary consent has been granted by a person having a privacy interest in the item to be searched. See Illinois v. Rodriguez, 497 U.S. 177, 181 (1990); see also Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973). In such situations, it is the Government's burden to prove that the consent was freely and voluntarily given. See Bumper v. North Carolina, 391 U.S. 543, 548 (1968); see also Bustamonte, 412 U.S. at 219. The Government must prove through "clear and positive testimony" that the consent to search was given voluntarily. See Bustamonte, 412 U.S. at 248.

However, the Government cannot meet its burden "by showing no more than acquiescence to a claim of lawful authority." Bumper, 391 U.S. at 548-549. The United States Supreme Court in Bumper goes on to hold:

> A search conducted in reliance upon a warrant cannot later be justified on the basis of consent if it turns out that the warrant was invalid. The result can be no different when it turns out that the State does not even attempt to rely upon the validity of the warrant, or fails to show that there was, in fact, any warrant at all. When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion-albeit colorably lawful coercion. Where there is coercion there cannot be consent.

391 U.S. at 549-550.

At trial the prosecution, upon realizing the staunch attack defense counsel was mounting against the validity of the search warrant, attempted to remedy this situation by claiming that Manning consented to the May 22, 2009 search of his residence. During the

suppression hearing the prosecution claimed through CMPD Detective Hopkins that Manning had consented. R. 480, ln 1 – R. 482, ln 7. However, upon cross examination by defense counsel Detective Hopkins admitted that she had made Manning aware upfront that law enforcement was standing by with a search warrant "in hand" for his residence should he not grant consent. R. 483, ll 5-6, R. 487, ln 1 – R. 488, ln 21. Applying Bumper, Manning could not have provided voluntary consent while confronted with law enforcement armed with a search warrant. Furthermore, the state detracts from their consent argument when Detective Hopkins admits that after allegedly obtaining consent from Manning that RCSD Investigator Robinson decides to "trump" her and execute the search warrant anyway. She also admits that given RCSD's decision to execute the search warrant no consent form was obtained from Manning to memorialize his alleged consent. R. 489, ln 22 - R. 491, ln 5, R. 522, ll 20-23. Therefore, even though the state detracts from its claim that the search was consensual, no consensual search can be given by Manning while confronted by law enforcement armed with a warrant; accordingly, the defective search warrant and its fruits should have been suppressed at trial.

III. The trial court erred in refusing to hold an evidentiary hearing on whether Manning was entitled to immunity under the Protection of Persons and Property Act, South Carolina Code Sections 16-11-410 though 450

At the onset of the case, before the jury was sworn, defense counsel moved for an immunity hearing to determine if Manning was entitled to immunity under the Protection of Persons and Property Act, South Carolina Code Sections 16-11-410 though 450 (hereinafter referred to as the Castle Doctrine). R. 192, ll 5-24 The motion was continued until later in pretrial. Defense counsel made a formal motion requesting the Trial Court to hold a hearing to determine if Manning was entitled to immunity under the Castle

Doctrine. The Trial Court did not allow for an evidentiary hearing and declared that due to the fact that McPhatter was not an intruder the Castle Doctrine did not apply and no evidentiary hearing would be allowed. R. 462-471, ln 10. The Defense argued that when McPhatter pulled the gun on Mr. Manning she transformed legally from guest to intruder and trespasser, thus affording Mr. Manning the protections of the Castle Doctrine R. 466, ln 2 – R. 467, ln 9.

Approximately one year after the conclusion of Manning's trial the South Carolina Supreme Court has issued the opinion of State v. Duncan, 392 S.C. 404, 709 S.E.2d 402 (S.C. 2011). In Duncan, the South Carolina Supreme Court examined the Castle Doctrine and its implications on trials such as Mr. Manning's. The Court found a pre-trial determination is required as immunity granted by the statute is designed to prevent prosecution. The Court found that the Duncan Trial Court properly conducted a pre-trial determination.

In Manning's case, the Defense specifically requested that an evidentiary hearing be conducted. R. 463, ln 25 – R. 464, ln 3. The fact that Mr. Manning did not receive this hearing constitutes reversible error, as the Trial Court refused to apply the protections afforded by Castle Doctrine as to Manning's case. The refusal to grant the hearing is not harmless error as Manning was deprived of the added protections of the Castle Doctrine, which fundamentally changed the self defense law in South Carolina by adding further protections such as immunity. Therefore, pursuant to Duncan and the Castle Doctrine this case should be reversed.

IV. The trial court erred in failing to give a Castle Doctrine jury charge.

At the conclusion of the evidence defense counsel requested a Castle Doctrine jury charge based on South Carolina Code Section 16-11-440:

> (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person: (see South Carolina Code Section 16-11-440.)

The Trial Court denied the request to charge over Defense Counsel's objection. R. 1646, ll 9-15, R. 1646, ln 25.

The law to be charged to the jury is determined by the evidence presented at trial. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (S.C. 2008). If there is any evidence to support a jury charge, the trial judge should give a requested charge on the matter. State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (S.C. 1999). To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. Gaines, 380 S.C. at 31, 667 S.E.2d at 732. The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand constitutes an error of law. State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (S.C. 2007).

When any evidence in the record entitles the accused to a jury charge on self-defense, a Trial Judge's refusal to give the charge is reversible error. State v. Muller, 282 S.C. 10, 316 S.E.2d 409, (S.C. 1984). Analogously, when any evidence in the record entitles the accused to a jury charge on the Castle Doctrine, a Trial Court's refusal to give the charge constitutes reversible error. There was evidence presented at trial that the killing occurred in the second story hallway of the Defendant's home where McPhatter did not live. Manning's testimony at trial was that McPhatter armed herself inside

Manning's house and leveled a firearm against him. Manning was in fear for his life but successfully wrestled the firearm away and he demanded that she leave his home. However, Manning's testimony was that McPhatter continued to advance towards him, finally lunging for the firearm, and he shoots causing her death. R. 1493, ln 7 – R. 1496, ln 6. This is evidence that falls within the protections of the Castle Doctrine.

S.C. Code 16-11-420(a) states that it is the intent of the legislature to codify the common law Castle Doctrine. Castle Doctrine and the defense of habitation are often times interchangeable terms in South Carolina case law, see: State v. Petit, 144 S.C. 452, 142 S.E. 725 (S.C. 1928), State v. Rogers, 130 S.C. 426, 126 S.E. 329 (S.C. 1925), State v. Bradley, 126 S.C. 528, 120 S.E. 240 (S.C. 1923)

Examining defense of habitation cases as the common law precursor to the statutory Castle Doctrine, the Court clearly erred in not giving Manning the Castle Doctrine charge. In State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (S.C. App. 2010), the case was reversed for failing to give a defense of habitation charge where the defendant got into a fight with the victim in his hotel room, arguably never trying to eject him. The defense of habitation provides that defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). "One defending himself from imminent attack on his own premises is entitled to a charge of defense of habitation." State v. Lee, 293 S.C. 536, 537, 362 S.E.2d 24, 25 (1987). Lee, supra, states that when one is attacked on his own premises, he is entitled to a defense of habitation charge. McPhatter clearly attacked Mr. Manning on his own premises, by brandishing a firearm, refusing to leave after she has been disarmed, and then finally lunging for the firearm. As

the Legislature's clear and unequivocal intent was to codify the common law, Mr. Manning is entitled to the Castle Doctrine charge as he was attacked in his home.

Moreover, the language of 16-11-420(b) states "it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear..." Defense argued that the moment that McPhatter drew the gun on Manning she became an attacker; however, the Court stated that the Castle Doctrine only applied to repel intruders. R. 1645, ll 19-25. The very language of 16-11-420(b) belays the fact that it was the General Assembly's intent for citizens to be protected from not only intruders, but also attackers – the two not necessarily being the same.

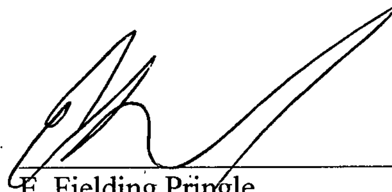
Although the trial court did not find it appropriate to submit the Castle Doctrine jury charge, it did however find there was evidence to support a self defense charge. "Although self-defense and defense of habitation are analogous, it is insufficient to charge only self-defense when a charge on defense of habitation is warranted." State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (S.C. App. 2010). Just as it is insufficient to only charge self defense in a defense of habitation case, it is insufficient to only charge self defense in a case where evidence has been presented to sustain a Castle Doctrine charge.

Furthermore, the denial of the Castle Doctrine charge denied Manning a valid defense as codified under the laws of South Carolina. The Castle Doctrine fundamentally changed self defense law in South Carolina, allowing for enhanced protections for South Carolina citizens. When a Trial Court effectively deprives a Defendant of an entire defense, the error cannot be harmless. State v. Bryant, 391 S.C. at 236, 716 S.E.2d at 472. The denial of the Castle Doctrine charge by the trial court is error of law and requires reversal.

CONCLUSION

For the foregoing reasons, Theodore Manning respectfully requests this Court to reverse his conviction, and remand his case for a new trial.

Respectfully submitted,



E. Fielding Pringle
Luke A Shealey
Assistant Public Defender
Richland County Public Defender's Office

ATTORNEYS FOR APPELLANT

This 5th day of March, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

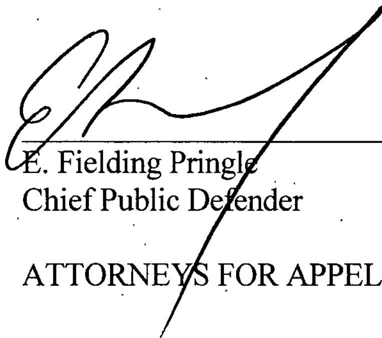
V.

THEODORE MANNING,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William Blitch, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Theodore Manning, #343245, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 6th day of March, 2013.



E. Fielding Pringle
Chief Public Defender

ATTORNEYS FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6 day of March, 2013.

Teresa Grissom (L.S.)

Notary Public for South Carolina My Commission Expires: 6-22-19

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SC Court of Appeals

STATE OF SOUTH CAROLINA
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Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THEODORE MANNING,

APPELLANT

CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies that the Final Brief of Appellant in the above referenced case has been prepared in compliance with Rule 211(b) of the South Carolina Appellate Court Rules.

E. Fielding Pringle
Luke Shealey

ATTORNEYS FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6 day of March, 2013.

(L.S.)

Notary Public for South Carolina My Commission Expires: 8-22-19

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