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Jan 23 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

Opinion No. 2025-UP-009

THE STATE,

RESPONDENT,

V.

TERRY GERRARD GRIDINE,

APPELLANT

APPELLATE CASE NO. 2021-001188

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Terry Gerrard Gridine respectfully requests this Court rehear this matter, as to Issues 1 – 3 and Issue 5, based upon the significant points overlooked and/or misapprehended by this Court. Appellant was tried for third-degree criminal sexual conduct. Appellant had information that went directly to Complainant’s motive to misrepresent—that one week before she accused Appellant of sexual assault, Complainant called Appellant from jail to get his help making bond on a shoplifting charge, but Appellant did not answer the call and did not assist her. Instead, Complainant was forced to call her sister. R. 165, l. 19 – 169, l. 5.

Appellant attempted to cross-examine Complainant about this fact, but the solicitor objected, making the wholly unsupportable argument that because the defense had not given the State notice that it intended to question the complainant about this, it should be limited to generically questioning Complainant whether he had refused to help her with an unspecified matter. R. 156, l. 2 – 170, l. 3.

Q Do you recall telling [Appellant] that you had tried to reach out to him because you needed help?

A No.

Q So you did not call him?

A No.

Q Because you had been arrested?

MS. SAMPSON: Objection, Your Honor.

A That was some weeks—

R. 156, ll. 2-10. The testimony was proffered. R. 168, l. 5 – 169, l. 5. *In camera*, Complainant was defensive and tried to minimize her attempt to reach Appellant.

BY MS. PINNOCK:

Q Ms. [Complainant], you were arrested—you called [Appellant] for help with posting your bond because you had been arrested, is that right?

A No.

Q You were not arrested?

A Yes.

Q Okay. And that was October 21st of 2017?

A I didn't—

...

A I didn't call him. I was trying to get in touch with him to get in touch with my daughter.

Q Okay. But you never talked to [Appellant] on the phone, did you?

A No.

Q Okay. And you had to find somebody else to come assist you?

A I couldn't get him, so I called my sister.

Q Okay.

A It had nothing to do with him.

R. 168, l. 5 – 169, l. 5.

The defense argued the testimony went to motive and bias. R. 166, ll. 3-6. The court ruled the cross-examination was inadmissible as “inflammatory” “bad character evidence” and limited Appellant to asking Complainant generically whether Appellant was unresponsive when she reached out to him for help. The court cited to Rules 403, 404, and 608, SCRE. R. 171, l. 14 – 175, l. 17. The court gave the jury a curative instruction ordering it to disregard the last question and answer it had heard. R. 174, ll. 2-16. Thus, Complainant's initial, deceptive response that the arrest was “some weeks” rather than six days before this accusation was struck. Respectfully, this Court's ruling that the trial judge committed no error, misapprehends or overlooks the significant diminution of Appellant's right to confront his accuser through cross-examination on bias and motive to misrepresent.

Once the State learned Appellant intended to testify in his defense, the solicitor preemptively objected to him testifying that Complainant tried to reach him for help bonding out on the shoplifting charge. The State argued this testimony was hearsay since Appellant had been

told this information by the complainant. R. 247, l. 16 – 249, l. 6. The defense responded that this would not be hearsay had it been allowed to cross-examine Complainant about it, and argued Appellant’s right to present a defense and right to due process should override a hearsay objection. The court sustained the objection. R. 249, l. 8 – 251, l. 15.

In closing argument, the solicitor asked the jury repeatedly why Complainant would lie about this. “[W]hat reason would she have to tell the same truth if it is a lie over and over and over?” R. 330, ll. 8-9. “Why does she need to come and make up a lie?” R. 330, ll. 10-11. “One of the things you get to think about is what bias does she have, what motivation would she have? And what is it? Other than it happened.” R. 331, ll. 2-5. Appellant had an answer to this question. He attempted to answer it two ways. He had the right to put his answer to this question for the jury. It was completely unfair for the solicitor to capitalize on the trial judge’s erroneous rulings in this way. This Court’s ruling that the trial court permissibly limited Appellant’s testimony about this matter, respectfully, misapprehends or overlooks the impropriety of the restriction on Appellant’s right to testify in his own defense.

Additionally, the State correctly conceded, and this Court found, that the trial court erred in preventing Appellant from impeaching Complainant with her prior inconsistent statements to law enforcement. Respectfully, however, this Court misapprehended the record when it concluded the error was harmless. On direct examination, Complainant claimed that: 1) she was sitting in her recliner when Appellant came up behind her and *hugged her* and said he loved her before he went back outside, then Appellant came back inside and got on his hands and knees in front of her and made crude sexual comments; 2) Complainant pushed Appellant away and *got up from her recliner*, whereupon Appellant grabbed her and put his finger in her vagina; and 3) Complainant’s son was home when Appellant arrived but he left before the alleged assault. R.

123, l. 11 – 127, l. 5; R. 119, ll. 17-23. However, Complainant told Officer Christian, the responding officer, who was equipped with body-worn camera,¹ that: 1) she was sitting in her recliner when Appellant came up behind her and *put her in a choke hold so she pushed him away*; 2) Complainant *got up from the recliner and moved to the couch*, then moved back to the recliner before Appellant sexually assaulted her; and 3) Appellant *repeatedly asked Complainant if her son was home*.

On cross-examination, defense counsel questioned Complainant about these details. At that time, Complainant claimed 1) she *did not push Appellant's arms off her* when he came up behind her recliner; 2) *she did not move from her recliner to her couch*, and did not get up from her recliner until Appellant initiated the sexual assault; and 3) *that she had not told Officer Christian that Appellant kept asking if her son was home*. Defense counsel reminded Complainant that Officer Christian's body-camera had captured her statements and Complainant listened to the audio through headphones. After listening to the audio, Complainant still claimed she had not said those things to Officer Christian. R. 183, l. 4 – 188, l. 4; R. 193, l. 12 – 194, l. 22. After the State rested, the defense recalled Officer Christian in its case-in-chief. Officer Christian confirmed that Defense Exhibit #1 was the recording from his body-camera (the footage had not previously been introduced), and the defense attempted to play the relevant portions of the footage to impeach Complainant's testimony. The solicitor objected to hearsay and argued Appellant could not use the footage for impeachment because Officer Christian "can't impeach her statement." Defense counsel argued she had complied with Rule 613(b), SCRE. The court sustained the objection. R. 256, l. 6 – 265, l. 7. The jury did not hear the impeachment evidence. Respectfully, this Court misapprehended or overlooked the content of

¹ Officer Christian's body-worn camera footage was offered for identification as Defendant's Exhibit #1 and is on file with this Court.

the inconsistent statements in the context of this case when it concluded the statements “did not have any bearing on the actual allegations of sexual assault.” These inconsistent statements related directly to the alleged sexual assault.

This Court also concluded the error was harmless given text messages² between Appellant and Complainant, which this Court found served as a “pseudo confession.” However, respectfully, the text messages were capable of two interpretations. The jury could have viewed the messages as corroborating either Complainant’s account of events or as corroborating Appellant’s account of events. They were not conclusive as to guilt. Appellant sent Complainant messages on October 27th stating he was sorry and he “f.... Up.” Complainant responded with a message containing detailed accusations about Appellant having tried “to have sex with your own Aunt.” Appellant responded the next day saying: “I don’t understand,” and “Can you call me for a second?” Complainant messaged Appellant asking where he was. Appellant responded, “Just want to say something to you,” and “I can’t live with this.” State’s Exhibit #9 – 15. While these messages were suspicious, Appellant provided an explanation for them that was not utterly implausible. Appellant testified he had confided to Complainant that he had been contemplating suicide and that his apology text and the “I f’d up” text were regarding telling her about his suicidal thoughts. Appellant stated his texts responding to Complainant’s sexual assault accusation of “I don’t understand,” and “can you call me for a second” were because he did not understand what she was talking about because there was no basis for the accusation. R. 280, l. 1 – 293, l. 6.

Finally, at the conclusion of the trial, Appellant moved for a new trial based on the cumulative error doctrine. The trial court denied the motion. R. 379, l. 23 – 380, l. 24. This

² The text messages were admitted as State’s Exhibit #9 – 15 and are on file with this Court.

Court concluded “no prejudicial errors combined to affect Appellant’s right to a fair trial,” and that even if errors were made, “they did not prejudice Appellant in light of other evidence.” Because of the errors noted above, and discussed in more detail below, respectfully, this Court misapprehended or overlooked the propriety of applying the cumulative error doctrine to this case, since the cumulative effect of the errors was such as to deny Appellant a fair trial.

1.

The court erred where it prohibited Appellant from cross-examining Complainant on whether she was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week before she alleged that Appellant sexually assaulted her, since Appellant was entitled to considerable latitude in cross-examining his accuser on her bias or motive to misrepresent.

Respectfully, this Court’s conclusion there was no error—that the trial court permissibly limited Appellant’s cross-examination of Complainant—misapprehends or overlooks the considerable latitude to which Appellant was entitled on cross-examination. Appellant was entitled to explore Complainant’s potential bias and motive for falsely accusing him of sexual misconduct—that he did not help her bond out of jail a week before, a matter which Complainant confronted Appellant about for the first time the same night that she alleged he sexually assaulted her. “The Confrontation Clause guarantees a defendant the opportunity to cross-examine a witness concerning bias.” *State v. Brown*, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991) (citing *Davis v. Alaska*, 415 U.S. 308 (1974)). “Considerable latitude is allowed in the cross-examination of an adverse witness for the purpose of testing bias.” *State v. Brown*, 303 S.C. at 171, 399 S.E.2d at 594 (citing *State v. McFarlane*, 279 S.C. 327, 306 S.E.2d 611 (1983); *State v. Collins*, 235 S.C. 65, 110 S.E.2d 270 (1959)). It was error to deny Appellant the ability to present to the jury the complainant’s attempts to minimize the fact that she reached out to

Appellant for help with her arrest (as shown during the proffer), and her stricken, deceptive response about the timing of the arrest and timing of the accusation. Any juror would want to know if and why a complainant in a he-said/she-said sexual misconduct case such as this one had a motive to lie. Appellant had an answer to that question, and he should have been able to present it to the jury through cross-examination. The solicitor took advantage of the erroneous ruling by repeatedly asking the jury during closing argument what motive could the complainant have to lie.

Moreover, respectfully, the evidentiary rules cited as a basis for the trial court's rulings did not support limiting Appellant's cross-examination. The State would not have been unfairly prejudiced by this cross-examination. The complainant was not on trial facing imprisonment. This evidence was highly probative since it provided an explanation for Complainant's bias against Appellant and provided a motive for falsely accusing Appellant of this crime, and since the case turned on the credibility of Complainant. Rule 403, SCRE provided a basis for permitting the testimony rather than excluding it. The evidence was not offered to show bad character, and it met one of the exceptions listed in 404(b), SCRE and *State v. Lyle*, 125 S.C. 406, 118 S.E. 803, 807 (1923), because it went to the complainant's motive to fabricate the alleged assault. Rule 608(c), SCRE provides that, "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." The testimony had a legitimate tendency to throw light on Complainant's bias and motive to misrepresent.

The limitation imposed by the trial court, that Appellant could only generically ask if Appellant had failed to help her, rendered Appellant's cross-examination toothless. Moreover, the trial court struck the complainant's initial, deceptive response to counsel's question about the

timing of the arrest as it related to the timing of the accusation. Respectfully, the complainant's testimony cannot fairly be said to have been subjected to the crucible of cross-examination. Complainant's bias or motive to misrepresent was a key fact in issue. *See, e.g., State v. Gracely*, 399 S.C. 363, 373-74, 731 S.E.2d 880, 885-86 (2012) ("The trial court allowed defense counsel to cross-examine the witnesses regarding possible bias, but improperly prevented questioning which would have examined *the extent of that bias and the witnesses' possible motivations for testifying against Appellant.*" "The trial court's instruction improperly prevented Appellant from demonstrating the possible bias arising from these plea deals through an examination reaching the requisite degree of granularity.") (emphasis added); *State v. Grace*, 350 S.C. 19, 33, 564 S.E.2d 331, 338 (Ct. App. 2002) (where there was no physical evidence to support the victim's claims of sexual abuse and the State relied primarily on the credibility of the witnesses, "Appellant's right to present a defense mandates that he be permitted to freely cross examine the witnesses about the credibility issues relevant to his defense.") Appellant should have been permitted to cross-examine Complainant about the extent of her bias with granularity. U.S. Const. amend. VI; *Davis v. Alaska*, 415 U.S. at 316-17.

2.

The court erred where it prohibited Appellant from testifying that Complainant was arrested and unsuccessfully attempted to reach Appellant to help her obtain bail a week before she alleged Appellant sexually assaulted her, since the testimony was admissible, and since the ruling improperly restricted Appellant's right to testify in his defense.

As seen, the trial court ruled that Appellant himself could not testify that Complainant had unsuccessfully tried to call him from jail the week before to get his help making bail. The trial court excluded this testimony as hearsay since Appellant learned the information from

Complainant, who did not testify before the jury about this (although she did admit this during her proffer).

Respectfully, this Court misapprehended or overlooked Appellant's arguments regarding the right to testify in his defense. Although this Court ruled the restrictions on Appellant's testimony did not rise "to the exceptional level required to show a due process violation," Appellant's argument was not based solely on due process grounds, but is based also on Fifth and Sixth Amendment grounds. "The right to testify on one's own behalf at a criminal trial has sources in *several provisions* of the Constitution. It is one of the rights that 'are essential to due process of law in a fair adversary process.'" *Rock v. Arkansas*, 483 U.S. 44, 51 (1987) (quoting *Faretta v. California*, 422 U.S. 806, 819, n. 15 (1975) (emphasis added)). The Fourteenth Amendment's guarantee that no one shall be deprived of liberty without due process of law includes "a right to be heard and to offer testimony." *Id.* (citing *In re Oliver*, 333 U.S. 257, 273 (1948)). "*The right to testify is also found in the Compulsory Process Clause of the Sixth Amendment*, which grants a defendant the right to call 'witnesses in his favor,' a right that is guaranteed in the criminal courts of the States by the Fourteenth Amendment." *Id.*, 483 U.S. at 52 (citing *Washington v. Texas*, 388 U.S. 14, 17-19 (1967) (emphasis added)). "*Logically included in the accused's right to call witnesses whose testimony is 'material and favorable to his defense,' . . . is a right to testify himself*, should he decide it is in his favor to do so." *Id.* (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982) (internal citation omitted) (emphasis added)). "*The opportunity to testify is also a necessary corollary to the Fifth Amendment's guarantee against compelled testimony.*" *Id.*, 483 U.S. at 52 (citing *Harris v. New York*, 401 U.S. 222, 225 (1971)) (emphasis added). Although Appellant asserts he has shown a due process violation pursuant to the Fourteenth Amendment, he *also* asserts he has shown a

violation of his Sixth Amendment right to call witnesses in his favor, and his opportunity to testify as a corollary to the Fifth Amendment's guarantee against compelled testimony. Appellant's argument is that he was denied his right to testify and to present a complete defense. He does not have to meet the high bar of a due process violation to show reversible error. U.S. Const. amend. V; U.S. Const. amend. VI.

“[R]estrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve.” *Rock*, 483 U.S. at 55-56 (quoting *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973)). A State “may not apply a rule of evidence that permits a witness to take the stand, but arbitrarily excludes material portions of his testimony.” *Rock*, 483 U.S. at 55. “In applying its evidentiary rules a State must evaluate whether the interests served by a rule justify the limitation imposed on the defendant's constitutional right to testify.” *Id.*, 483 U.S. at 55-56. Although Appellant was permitted to testify, he was not permitted to testify about Complainant's potential motive for falsely accusing him of sexual assault. Hearsay rules were insufficient to override Appellant's right to testify in his defense on this critical matter of motive to misrepresent. *See Rock*, 483 U.S. at 55-56. Moreover, the hearsay problem only existed because the court improperly foreclosed Appellant from cross-examining Complainant about the arrest in the first place. The purpose of hearsay rules is to guarantee the reliability of evidence and to preserve the right of confrontation for the defendant in a criminal case. U.S. Const. am. VI; *Crawford v. Washington*, 541 U.S. 36, 61 (2004). Appellant was the defendant in this case; he was the party with the right to confrontation. There was no reliability problem with this evidence: it was undisputed that Complainant had been arrested shortly and tried to call Appellant for help with bail just before she accused Appellant of sexually assaulting her. As seen, a State “may not apply a rule of evidence that permits a witness to take the stand, but

arbitrarily excludes material portions of his testimony,” *Rock*, 483 U.S. at 55, but that is what happened. Under these circumstances, the trial court’s ruling here impermissibly restricted Appellant’s right to testify on his own behalf, such that it did rise to the high level of a due process violation. It also violated his Fifth and Sixth Amendment rights to testify in his defense. *Rock*, 483 U.S. at 62; U.S. Const. amend. V; U.S. Const. am. VI; U.S. Const. am. XIV.

3.

The court erred where it prohibited Appellant from impeaching Complainant with her prior inconsistent statements about the alleged sexual assault, where Complainant continued to deny making the statements even after being presented with the statements, since Appellant was entitled to confront his accuser, and since extrinsic evidence of such statements is admissible for impeachment under Rule 613(b), SCRE.

The State correctly conceded the court’s ruling prohibiting Appellant from introducing extrinsic evidence of Complainant’s prior inconsistent statements about the alleged assault was error, but this Court, respectfully, misapprehended or overlooked the content of the inconsistent statements when it concluded they “did not have any bearing on the actual allegations of sexual assault,” as they dealt with “minor, collateral statements.” These statements related directly to the alleged sexual assault—they were about what Appellant was doing and saying just prior to and during the alleged assault. They were not minor or collateral. Complainant told Officer Christian that Appellant put her in a choke hold so she pushed his arms away, but she stated on direct that Appellant hugged her just prior to the assault. On cross-examination, Complainant denied pushing Appellant’s arms away. Complainant told Officer Christian she moved from the recliner to the couch to the recliner after Appellant had her in the choke hold, but she stated on direct that she had just gotten up from the recliner when the assault happened. On cross-

examination, Complainant denied that she had moved from the recliner to the couch. Complainant told Officer Christian that Appellant kept asking if her son was home. On cross-examination Complainant denied telling Officer Christian that Appellant kept asking if her son was home. These inconsistent statements bore directly on the allegations. They also bore directly on whether Complainant was lying about them. Appellant was prejudiced by the exclusion.

This Court also concluded the error was harmless given text messages between Appellant and Complainant, which this Court found served as a “pseudo confession.” Respectfully, this Court misapprehended or overlooked that the record showed the text messages were capable of two interpretations. The jury could have viewed the messages as corroborating either Complainant’s account of events or as corroborating Appellant’s account of events. They were not conclusive as to guilt. Appellant provided an explanation for the messages that was not utterly implausible. Appellant testified he had confided to Complainant that he had been contemplating suicide and that his apology text and the “I f’d up” text were regarding telling her about his suicidal thoughts. Appellant stated his texts responding to Complainant’s sexual assault accusation with “I don’t understand,” and “can you call me for a second” were because he did not understand what she was talking about because there was no basis for the accusation. R. 280, l. 1 – 293, l. 6.

“In determining harmless error regarding any issue of witness credibility, we will consider the importance of the witness’s testimony to the prosecution’s case, whether the witness’s testimony was cumulative, whether other evidence corroborates or contradicts the witness’s testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State’s case.” *Fossick*, 333 S.C. at 70, 508 S.E.2d at 34 (citing *State v. Holmes*,

320 S.C. 259, 464 S.E.2d 334 (1995); *Delaware v. Van Arsdall*, 475 U.S. 673 (1986)). In this case, Complainant's testimony was of utmost importance to the prosecution and it was not cumulative to any other witness. Appellant's cross-examination of Complainant was curtailed in another important way, as argued above in Issue 1. The corroborating evidence was minimal and subject to interpretation. It was up to the jury to decide whether to believe Appellant's explanation for the text messages. *E.g.*, *State v. Blurton*, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002) (where defendant admitted underlying facts of armed robbery and kidnapping, but maintained he did not have the requisite mens rea because he believed he was involved in a complicated CIA operation which required him to commit a staged robbery, improper jury instruction on "orders of another" required new trial). Notably, the jury deliberated for three hours. The error was not harmless.

5.

The court erred where it denied Appellant's motion for a new trial based on cumulative error, since the cumulative effect of the errors was so prejudicial as to deprive Appellant of a fair trial.

"The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013) (citing *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999)). "An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." *Beekman*. 405 S.C. at 237, 746 S.E.2d at 490. The following rights are among the minimum essentials of a fair trial: "a

right to examine the witnesses against him, to offer testimony, and to be represented by counsel.” *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) (quoting *In re Oliver*, 333 U.S. 257, 273 (1948)). As argued in the issues above, Appellant was erroneously prohibited from meaningfully challenging the State’s case on multiple fronts. Respectfully, this Court misapprehended or overlooked the propriety of applying the cumulative error doctrine to this case, since the cumulative effect of the errors was such as to deny Appellant a fair trial. These errors were not harmless, as discussed above. Given the constitutional gravity of the errors, Appellant was denied a fair trial, and this Court should apply the cumulative error doctrine. U.S. Const. amend. V; U.S. Const. amend. VI; U.S. Const. amend. XIV.

Rehearing should be granted to Appellant Terry Gerrard Gridine.

Respectfully submitted,



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ATTORNEY FOR APPELLANT

This 23rd day of January, 2025.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

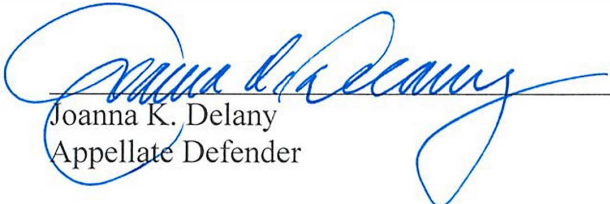
TERRY GERRARD GRIDINE,

APPELLANT

APPELLATE CASE NO. 2021-001188

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Terry Gerrard Gridine, #386329, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 23rd day of January, 2025.



Joanna K. Delany
Appellate Defender

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ATTORNEY FOR APPELLANT

From: [Mcinnis, Sara](#)
To: [Josh Edwards](#)
Cc: [Susan Spencer](#); [Delany, Joanna](#)
Subject: 2021-001188 The State v. Terry G. Gridine Petition for Rehearing
Date: Thursday, January 23, 2025 5:00:00 PM
Attachments: [AG Cover Letter - PFR.pdf](#)
[2021-001188 The State v. Terry G. Gridine Petition for Rehearing.pdf](#)

Good Afternoon Mr. Edwards,

Attached for service in the above-referenced case is the Petition for Rehearing, which will be filed with the Court of Appeals today, January 23, 2025, via email filing.

Thank you,

Sara McInnis

Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330