STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Horry County
Steven H. John, Circuit Court Judge
Appellate Case No. 2012-212800

THE STATE,

Respondent,

vs.

LARRY T. CHESTNUT,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other

STATEMENT OF ISSUES ON APPEAL

I. The circuit court properly applied the long-standing practice in South Carolina giving the State final closing argument when joint defendants are tried together and one defendant introduces evidence, and there is no constitutional issue requiring modification of that practice.

II. Denial of Appellant's motion to allow Co-Defendant the final argument even if Appellant presented evidence did not preclude Appellant from testifying or otherwise presenting a defense.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On July 27, 2006, the Horry County Grand Jury indicted Appellant Larry T. Chestnut on one count of murder in connection with the stabbing death of Joesph Hucks ("Victim") on May 21, 2006. (Indictment No. 2006-GS-26-2998; Record on Appeal [R.], pp. _____). Appellant's cousin, Kendrick Chestnut ("Co-Defendant"), was also indicted for murder in connection with Victim's death.

The cases against Appellant and Co-Defendant were called for a joint jury trial on August 13, 2012, before the Honorable Steven H. John, Circuit Court Judge. Neither Appellant nor Co-Defendant moved to sever the cases.

During pre-trial proceedings, Appellant moved to redact significant portions of a statement Co-Defendant gave to police on May 22, 2006, which contained details of the incident that incriminated Appellant. The circuit court granted the vast majority of Appellant's requested redactions. (TT, pp. 98-132, Court's Exhibit 3 (Transcript); R., pp. _____).

Several witnesses who were present when the stabbing occurred testified at trial. They all testified the altercation between Appellant and Victim began after Appellant physically assaulted his seven months pregnant girlfriend, who was Victim's sister, and then assaulted another of Victim's sisters when she tried to assist the girlfriend. They also testified about Co-Defendant's involvement in the incident. (Trial Transcript, pp. 185-209, 259-263, 275-300, 321-325, 341-378, 480-493; R., pp. _____).

One witness testified Victim did have a small knife in his hand by his side, and cut Appellant's chest as he fell backward when Appellant punched him. She later saw

Appellant standing in the kitchen with Victim and holding a pair of kitchen scissors. (TT, pp. 354-361, 499-502; R., pp. _____). Another witness testified he saw Appellant come outside bleeding from a stab wound in the shoulder area. When he ran off to get a truck to take Victim to the hospital, he heard shouting and turned around to see Appellant standing over Victim and making a stabbing motion. (TT, pp. 199-206; R., pp. _____).

Victim had ten stab wounds, including one in his back and the fatal one that pierced his heart. (TT, pp. 650-659; R., pp. _____). A pair of kitchen scissors with Victim's blood on it was found at the scene. (TT, pp. 546-551, 600-603; R., pp. _____).

Counsel for both Appellant and Co-Defendant vigorously cross-examined the State's witnesses. (TT, pp. 209-255, 300-321, 381-480, 494-503; R., pp. _____). Appellant's counsel got one witness to testify Appellant was in the hospital for a while after the incident, and had internal injuries. (TT, pp. 410-411; R., pp. _____).

When the State rested its case, counsel for Appellant and Co-Defendant requested an *ex parte* conference with the court. Appellant's counsel stated "both Defendants have kind of reached an inconsistent position with how we move forward in the trial," and indicated that if he proceeded the way he wanted to proceed, he would prejudice Co-Defendant. (TT, pp. 745-748; R., pp. ____).

During the *ex parte* conference, Appellant's counsel stated Appellant wanted to present evidence regarding the injuries he sustained in the incident, but doing so would take away both his and Co-Defendant's right to the last closing argument. Co-Defendant's counsel stated if Appellant presented evidence, Co-Defendant would testify,

and the full content of the May 22, 2006, statement he gave to police, which was damaging to Appellant, would then be admissible on cross-examination. (Court's Exhibit 3; R., pp. _____). Counsel conceded well established law in South Carolina provides that when defendants are tried together, if one defendant puts up any evidence, all defendants lose the right to make the final closing argument, but argued the prior cases did not contemplate "this exact situation." (TT, pp. 749-754; R., pp. ____).

The circuit court called the solicitors back to the courtroom so the issue could be discussed on the record. Co-Defendant's counsel again acknowledged existing case law, and again argued it did not "contemplate this scenario right here." He stated if Appellant put up any evidence, Co-Defendant would lose the right to final closing argument, and therefore, Co-Defendant would testify on his own behalf, which would make the full content of his May 22, 2006, statement admissible for cross-examination purposes. (TT, pp. 755-756; R., pp. _____).

The solicitor argued the case law precedent "contemplates absolutely this situation." She noted each counsel had an obligation to do what was best for their respective clients, regardless of the impact on the other defendant, and if the defendants had inconsistent positions, they could have moved for severance of their cases. (TT, pp. 756-758; R., pp. ____).

The circuit court denied the request that Co-Defendant be afforded the final closing argument even if Appellant offered evidence, finding Appellant's reasons and arguments were not "sufficient to go against this longstanding and established procedure." The court further found it was not "proper or necessary in this particular

case," and it was not "a proper thing to do under the facts and circumstances of this particular case." (TT, pp. 758-760; R., pp. _____).

After discussion with his counsel, Appellant informed the court he did not want to present evidence. Counsel stated Appellant's "sole reason for not presenting evidence is based on the discussion we had with the Court earlier, with Mr. Long and with the Solicitor, about the last argument and the conflict that it caused between Defense counsel." The court responded: "your job is to represent your client and Mr. Long's job is to represent his client, and the two of them have to do what they think is in their own best selfish interest." (TT, pp. 761-763; R., pp. ____).

The court then questioned Appellant directly about the decision not to present evidence, and asked him if he wanted to present evidence or keep the last closing argument. Appellant responded he wanted to keep the last closing argument. (TT, pp. 763-764; R., pp. _____).

The State gave the first closing argument, followed by Appellant, and Co-Defendant made the final closing argument. During Appellant's closing argument, counsel repeatedly stated Victim cut Appellant, and implied law enforcement did not take pictures of Appellant's "wounds" because they were trying to "hide" the truth about the incident from the jury, rather than be fair. Co-Defendant's counsel also stated Appellant was cut "at least one major time." (TT, pp. 840-869; R., pp. _____).

The jury convicted Appellant of voluntary manslaughter, and the circuit court sentenced him to twenty years incarceration. (TT, pp. 904-905, 912; R., pp. _____). This appeal followed.[1]

[1]Co-Defendant was acquitted, and is not a party to this appeal.

ARGUMENT

I. The circuit court properly applied the long-standing practice in South Carolina giving the State final closing argument when joint defendants are tried together and one defendant introduces evidence, and there is no constitutional issue requiring modification of that practice.

Appellant contends South Carolina's long-standing practice regarding order of closing arguments in joint trials should be modified to permit co-defendants to retain the final closing argument when another co-defendant presents evidence. He argues "modern" jurisprudence regarding the Confrontation Clause and the right to present a defense mandate such a change.[2]

A. South Carolina's Closing Argument Practice

"The right to open and close the argument to the jury is a substantial right, the denial of which is reversible error." State v. Pinkard, 365 S.C. 541, 617 S.E.2d 397, 398 (Ct. App. 2005), *quoting* State v. Rodgers, 269 S.C. 22, 235 S.E.2d 808, 809 (1977). Historically, the right to final closing argument follows the party with the burden of proof. Stein Closing Arguments § 1:6: *Right to open and close; order of argument* (2011-2012 ed.) ("Generally, the right to make opening and closing follows the person having the burden of proof"); Nicole Velasco, Taking the "Sandwich" Off of the Menu: Should Florida Depart from Over 150 years of Its Criminal Procedure and Let Prosecutors Have the Last Word?, 29 Nova L.Rev. 99, 112 (2004) ("At common law, the

---

[2]Appellant refers to the current closing argument practice as "the Huckie Rule" because it was first applied to joint defendants in State v. Huckie, 22 S.C. 298 (1885). This allows Appellant to gloss over "modern" case law applying the practice.

widely accepted rule in the United States is that the party with the burden of proof has the right to open and conclude final argument before the jury."). As Appellant acknowledges, in keeping with the traditional doctrine of allowing the party with the burden of proof to make the final closing argument, forty-eight states, the District of Columbia, and the federal courts give the prosecution the right to final closing argument in criminal cases, regardless of the number of defendants, or whether any defendant introduces evidence.

In contrast to the vast majority of jurisdictions, current South Carolina practice sets the order of closing arguments in criminal cases according to the evidence received at trial. *See* State v. Brisbane, 2 Bay 451 (S.C. 1802) (As a matter of practice, when a criminal defendant calls no witnesses, he has "the privilege of concluding to the jury.") (emphasis added); *see also* State v. Gellis, 155 S.E. 849, 855 (1930) ("It is evident from the more recent decisions of this court that the rule is that if a defendant offers any evidence on trial of the case, the state is not deprived of its general right to the opening and concluding arguments."); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379, 384 (1972) (same); State v. Mouzon, 321 S.C. 27, 467 S.E.2d 122, 125 (Ct. App. 1995) (same). In a joint trial of multiple defendants, if any co-defendant offers evidence, the State is entitled to the final closing argument. *See* State v. Smith, 387 S.C. 619, 693 S.E.2d 415, 418 (Ct.App. 2010), *citing* Crowe. Under current South Carolina practice, a defendant never loses the right to make a closing argument, but may lose the right to make the final closing argument if he, or any co-defendant in a joint trial, introduces evidence.

B. Viability of South Carolina's Current Practice

Appellant argues South Carolina's long-standing practice should be "modified" for joint trials in light of "modern" Confrontation Clause and joint trial jurisprudence. As support for his contention, Appellant engages in an exceptionally convoluted and tortured analysis of the practice's origins, while glossing over more recent cases affirming it.

As recognized above, totally denying a criminal defendant the opportunity for closing argument constitutes a denial of the defendant's basic right to make his defense. Herring v. New York, 422 U.S. 853, 858-859 (1975); *see also* Pinkard, 617 S.E.2d at 398. While the right to make a closing argument cannot be circumvented, the order of argument is vastly different, particularly since argument is **not** evidence. *See, e.g.,* Ex parte Morris, 367 S.C. 56, 624 S.E.2d 649, 653 (2006), *quoting* S.C. Dept. of Transp. v. Thompson, 357 S.C. 101, 590 S.E.2d 511, 513 (Ct.App.2003) ("'[a]rguments made by counsel are not evidence'"); Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22, 24 (1987) ("the solicitor's closing argument is not evidence"). There is no constitutional **right** to a certain order or scope of argument.

The order of closing arguments is a matter of state procedural rule or practice rather than substantive law. Huckie, 22 S.C. at 299 (alleged error in denying defendant final closing argument was "not a matter of error as to express law, but of practice"). The United States Supreme Court has consistently held the States are free to shape their own rules of procedure. *See, e.g.,* United States v. Scheffer, 523 U.S. 303, 316 (1998), *quoting* Chambers v. Mississippi, 410 U.S. 284, 302 (1973) ("we thus stressed that the

ruling did not 'signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures.'").

Appellant's reliance on the viability of the holding in State v. Sims, 16 S.C. 486 (1882), as a basis for modifying the current practice is misplaced, and he incorrectly states the basis for the Huckie court's reference to it. In Sims, the trial court limited cross-examination of the State's witnesses to one defense counsel, even though there were two defendants represented by different counsel. In affirming the trial court's ruling, the Supreme Court referenced the limited scope of appellate review of a trial court's discretionary determinations regarding the conduct of a trial, and held the appellate court had no power to interfere in the absence of a legal right that was infringed or refused. *Id.* at 495.[3]

In Huckie, the trial court denied a defendant's motion for final closing argument when the defendant did not introduce any evidence, but his co-defendant did. In affirming, the Supreme Court, citing Sims, held "for the same reasons" it could not declare error in the trial court's discretionary ruling regarding the right to final closing argument in a trial involving multiple defendants. 22 S.C. at 301. In short, the ruling at issue was a discretionary ruling by the trial court regarding the conduct of trial, and under the limited scope of appellate review, the appellate court had no power to interfere absent

---

[3] In light of subsequent case law, only allowing one defense counsel to make a closing argument would constitute infringement of a co-defendant's right to make a closing argument. As discussed below, Appellant was not denied the right to make a closing argument.

infringement of a legal right. As discussed above, there is no legal right to a particular order of closing arguments, even under "modern" jurisprudence.

Appellant does not contend he was denied the right to cross-examine witnesses, or ever faced with the possibility of losing his right to make a closing argument, but asserts South Carolina's well-established practice regarding the order of closing arguments should be radically altered for trials involving multiple defendants. While generally stating "modern" joint trial jurisprudence mandates changing the current practice, he cites **no** specific constitutional or statutory basis for this assertion. *See* State v. Porter, 389 S.C. 27, 35, 698 S.E.2d 237, 241 (Ct. App. 2010) (requiring an appellant to cite authority in "specific support of his assertion"). Indeed, as noted above, his assertion is directly **contrary** to the accepted, or mandated, practice in every United States jurisdiction except South Carolina and North Carolina.[4]

In the course of his "modern" jurisprudence argument, Appellant conveniently glosses over the fact the joint trial/closing argument practice was upheld by our appellate courts as recently as 2010. In Smith, the Court of Appeals reiterated the practice regarding the order of closing arguments when joint defendants are tried together, and held the possibility of losing the right to final closing argument was not sufficient to require separate trials. 693 S.E.2d at 418, *citing* Crowe. If the potential loss of final

---

[4]Ironically, Appellant asks the Court to adopt Florida's former practice, which Florida changed to the majority rule in 2007. *See* In Re: Amendments to the Florida Rules of Criminal Procedure - Final Arguments, 957 So.2d 1164 (2007).

closing argument is not a sufficient infringement of a constitutionally protected right as to warrant severance, the order of closing argument is not such a fundamental right as to require revision of the current practice.

Appellant contends the current practice improperly treats a joint trial as an "entirety" rather than individual trials for each defendant, and as support, he cites the well-established jury instruction, properly given in this case, that the jury must "separately and individually" consider the evidence and law concerning each defendant. The fact that a jury must determine the guilt or innocence of joint defendants individually does not constitute a legitimate basis for changing the current practice. The jury's substantive consideration of the evidence and the law as they relate to each individual defendant does not transform the trial from an "entirety" to multiple trials that just happen to be taking place at the same time.

Appellant's scenario of how closing arguments would proceed under the practice he proposes - Appellant, State, Co-Defendant - has a glaring omission. If Appellant presented evidence, the State would have the right to **open and close** final arguments as to him. Under his proposal, however, the State loses its general right to the first argument if any defendant in a joint trial does not introduce evidence.

The practical result of Appellant's proposal would be a nightmare for the orderly administration of a trial, particularly in cases with many defendants. As to any defendant who introduced evidence, the State would have the right to open and close final arguments, but would not have the right to final argument as to any defendant who did

not introduce evidence.

By way of example, Defendants 1 & 3 introduce evidence in a case with five defendants. As to those defendants, the State has the right to open and close final arguments - State, Defendant 1, State & State, Defendant 3, State. Defendants 2, 4 & 5 did not present evidence, and they have the right to the final argument - State, Defendant 2, Defendant 4, Defendant 5. Even if the State's open argument as to Defendant 1 and Defendant 3 is combined, the end result is still multiple layers of closing arguments.

The circumstances of this case also reveal the potential abuse of Appellant's proposal. While Appellant contends his "sole" motivation for not presenting evidence in his defense was protecting Co-Defendant's right to the final closing argument, the record reveals Appellant's motive was not so pure. The reality is Appellant absolutely had to keep Co-Defendant from testifying.

Co-Defendant's counsel made it clear Co-Defendant would testify on his own behalf if Appellant put up any evidence. Appellant knew if Co-Defendant testified, the May 22, 2006, statement that was very damaging to Appellant would be a subject for cross-examination, which would seriously undermine Appellant's self-defense claim. (Court's Exhibit 3; R., pp. _____). Strategically, keeping Co-Defendant off the witness stand was **much** more important to Appellant than maintaining Co-Defendant's ability to make the final closing argument. If the circuit court allowed Appellant to put up evidence without impact on the order of closing arguments, in the course of presenting his evidence, Appellant could put up virtually any evidence Co-Defendant wanted

introduced, and Co-Defendant would then still be able to make the final closing argument, even as to issues involving Appellant.

The purpose of a trial is to determine the truth of a matter. State v. Furtick, 147 S.C. 82, 144 S.E. 839 (1928). Joint defendants should not be able to circumvent that purpose by undertaking a strategy specifically designed to keep relevant evidence from the fact-finder while maintaining the "privilege" to make final closing argument. The current practice requires each defendant to assess his own individual interests, and make trial decisions accordingly. Joint defendants can certainly agree on a joint strategy, but they must then bear the consequences of the agreed upon strategy, such as losing final closing argument.

The possibility of a conflict regarding the introduction of evidence and the impact on closing arguments could not have been a complete surprise to Appellant and Co-Defendant. Significantly, both knew the State's evidence well before trial commenced, and neither moved for severance. Appellant knew he wanted to present evidence, and Co-Defendant knew the State's evidence against him was not as strong as the evidence against Appellant. Thus, there was always a possibility Co-Defendant may not need, or want, to present any evidence at trial.

Appellant's assertions regarding the underlying premise of Brisbane are inaccurate, and his reliance on State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), as support for changing South Carolina's long-standing practice is misplaced. Rather than emphasizing "the individuality of the defendant" as the primary reason for adopting the

closing argument practice, the Brisbane court considered the disparity between the existing closing argument practices in **civil** and **criminal** courts. At that time, a civil defendant was entitled to final closing argument if he put up no evidence, and the court found no valid basis for civil litigants having an advantage not available to criminal defendants, particularly since the State is the opposing party in criminal cases. Thus, the "individual" the court focused on was the individual civil and criminal litigants, not the individual parties in a particular case.

Significantly, the prevailing practice in civil cases relied on in Brisbane, and cited in Huckie, gave the plaintiff, who had the burden of proof, the right to open and close final arguments, unless the defendant called no witnesses. The practice had been in effect since 1796, and was incorporated in the Circuit Court Rules. Huckie, 22 S.C. at 299. "Modern" jurisprudence continues the practice in the South Carolina Rules of Civil Procedure, with one modification. Rule 43(j), SCRCP, gives a civil plaintiff the right to open and close final arguments, **unless** a party **assumes the burden of proof** by admitting the adverse party's claim. Thus, South Carolina's current civil rules follow the general rule giving the party bearing the burden of proof the right to open and close final arguments, and the rule only changes when a defendant assumes the burden of proof via an admission of the plaintiff's claim.

Similarly, South Carolina's appellate court procedures follow the burden of proof model. The appellant bears the burden of showing error in the lower court, and at the briefing and oral argument stages of the appellate process, the appellant has the right to open and close the argument.

"Modern" jurisprudence provides ample support for the constitutionality of South Carolina's current practice, and the Court need look no further than the federal system. In 1974, the United States Supreme Court promulgated Rule 29.1, Closing Argument, of the Federal Rules of Criminal Procedure, which gives the government the right to open and close final arguments in criminal trials, and was intended to create a uniform federal practice. Fed. R. Crim. P. 29.1 Advisory Committee Notes. It defies reason to argue a rule promulgated by the highest court in the nation, which is less advantageous to criminal defendants than South Carolina's current practice, leads to the conclusion that South Carolina's practice violates a criminal defendant's constitutional rights.

If the current practice is changed at all, the State submits it should be modified to join the vast majority of jurisdictions that provide the prosecution has the first and last closing argument. Such a modification would provide clarity and uniformity, and defendants would no longer have to struggle with the strategic decisions Appellant faced. *See* Taking the "Sandwich" Off of the Menu, 29 Nova L.Rev. at 116 ("Without the pressure weighing upon their shoulders to reserve the rebuttal argument at closing, defense attorneys can devote true zeal to the representation of their clients by presenting as much defensive evidence as may be appropriate for the particular case.")

In this case, the circuit court had the right to rely on well-established precedent and long-standing practice, which never deprives any criminal defendant, including Appellant, of the opportunity to present evidence and make a closing argument. There

was no error, and Appellant's conviction should be affirmed.[5]

[5] Appellant also argues the purported error regarding closing arguments was not harmless because it deprived him of his right to testify and present a defense. (See Issue II below). The State submits there was no error, and therefore, no harmless error analysis is necessary. In any event, the overwhelming evidence supports the jury's voluntary manslaughter conviction. Appellant's self-defense claim was unsustainable in light of the undisputed evidence he was at fault in bringing on the difficulty, or at a minimum, he and Victim were engaged in mutual combat.

II. Denial of Appellant's motion to allow Co-Defendant the final argument even if Appellant presented evidence did not preclude Appellant from testifying or otherwise presenting a defense.

Appellant also asserts the denial of his motion to allow Co-Defendant to make final closing argument violated Appellant's right to testify and present a defense. The premise for this argument is his claim that protection of Co-Defendant's right to final closing argument was the "sole" basis for Appellant's decision not to present evidence in his defense. Assuming for purposes of argument only that Appellant had standing to assert Co-Defendant's right as a basis for his strategic decision, as discussed above, the reality is Appellant's decision was motivated by his need to keep Co-Defendant from testifying rather than any altruistic effort to protect Co-Defendant's rights.

Appellant acknowledges the "danger" of Co-Defendant's testimony, but claims that "danger" demonstrates the current practice's damper on a defendant's exercise of constitutional rights. Defendants in a joint trial always face the possibility that one defendant's evidence will be damaging to the other, and they must make strategic decisions in light of that possibility. *See* Preston v. State, 260 So.2d 501, 504 (Fla. 1972). (decision whether to present evidence or not is a basic choice every defendant will always face). The strategic decision Appellant had to make in this case was whether to put up evidence, which would result in the admission of a damaging statement he had successfully excluded during the State's case, or not put up evidence and make a final argument the State could not rebut.

In Crowe, the Supreme Court considered the joint trial/closing argument issue in the context of a severance motion, but the same analysis applies in this case. In holding

one co-defendant's loss of the right to final closing argument because another co-defendant introduced evidence was not a basis for severance, the Court noted a defendant's decision whether to offer testimony or not is "intrinsically entwined with trial strategy, development of the State's case, and the basic right of the defendant." 188 S.E.2d at 384; *see also* Smith, 693 S.E.2d at 418 (possibility of losing right to final argument not a basis for severance).

If the prospect of having to choose between presenting evidence or maintaining the right to final closing argument is not sufficient to warrant severance, it simply does not constitute a basis for finding a violation of fundamental constitutional rights. This is particularly true when, as in this case, a defendant claims he wanted to protect a co-defendant's right to final argument rather than his own. Followed to its logical conclusion, Appellant's argument would virtually mandate severance in every multiple defendant case.

The circuit court made it abundantly clear to Appellant he had the right to present evidence and testify, and advised him the decision should be based on his own self-interest rather than any impact his decision may have on Co-Defendant. In the face of the court's statements, Appellant made the knowing and voluntary strategic decision not to present evidence. He cannot now claim reversible error on the ground his knowing and voluntary choice deprived him of constitutional rights he purposely chose not to exercise. There was no error in this case.

CONCLUSION

Based on the foregoing, Respondent respectfully submits Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

BY: Deborah R.J. Shupe
DEBORAH R.J. SHUPE

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 22, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
OCT 22 2013
SC Court of Appeals

Appeal From Horry County
Steven H. John, Circuit Court Judge
Appellate Case No. 2012-212800

THE STATE,

Respondent,

vs.

LARRY T. CHESTNUT,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following to be included in the Record on Appeal:

1. Trial Transcript, pp. 1, 93-133, 184-678, 721-732, 744-774, 839-857, 878, 888-890, 904-905, 912
2. Court's Exhibit 1 (Statement Transcript)

To facilitate preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers. Additionally, Respondent notes personal data identifiers and other sensitive information should be redacted from the transcript or other documents pursuant to the South Carolina Supreme Court Order dated August 13, 2007.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

By: Deborah R.J. Shupe
DEBORAH R.J. SHUPE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 22, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Horry County
Steven H. John, Circuit Court Judge
Appellate Case No. 2012-212800

THE STATE,

Respondent,

vs.

LARRY T. CHESTNUT,

Appellant.

PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
PO Box 12891
Columbia, SC 29211-2891

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

This 22st day of October, 2013.

Sally B. Ellison

SALLY B. ELLISON
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

October 22, 2013

Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
PO Box 12891
Columbia, SC 29211-2891

Re: State v. Larry T. Chestnut
Appellate Case No. 2012-212800

Dear Mr. Thompson:

Enclosed herewith and served upon you are two (2) copies of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

DRJS/sbe

Enclosures

cc: The Honorable Jenny A. Kitchings (original and 1 copy enclosed)