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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER LONGSHORE, JR.,

APPELLANT

APPELLATE CASE NO. 2025-000219

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to suppress jail calls that were obtained automatically in the course of jail business, not subject to any particularized suspicion?

STATEMENT OF THE CASE

The Greenwood County grand jury returned indictments against Appellant for murder and possession of a weapon during the commission of a violent crime on August 25, 2023. On January 27, 2025, Appellant was tried before the Honorable Eugene C. Griffith and a jury. Tr. 1. Appellant was represented by Tristan Shaffer and Elizabeth Thomas. Tr. 2. David Stumbo, Demetri Andrews, and Mary Madison represented the state. Tr. 2.

The jury convicted Longshore as charged, and Judge Griffth sentenced him to forty (40) years' imprisonment on the murder charge and five (5) years on the weapons charge, to run consecutively. Tr. 926. This appeal follows.

STANDARD OF REVIEW

When reviewing a trial court's ruling on a motion to suppress evidence, this Court reviews for clear error. *State v. Davis*, 438 S.C. 444, 450, 884 S.E.2d 185, 188 (Ct. App. 2022). "However, this deference does not bar this Court from conducting its own review of the record to determine whether the trial judge's decision is supported by the evidence." *Id.* (quoting *State v. Alston*, 422 S.C. 270, 279, 811 S.E.2d 747, 751 (2018)).

To the extent that the Fourth Amendment is implicated, this Court will sustain the trial court's factual findings if there is any evidence to support them but reviews the trial court's legal conclusions *de novo*. *State v. Frasier*, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022).

ARGUMENT

The court erred in refusing to suppress the jail calls that were obtained automatically in the course of jail business, and without any particularized suspicion.

Relevant Facts

On July 8, 2022, Keyiona Hill was killed after a bullet fired at the Uptown Grill in Greenwood, South Carolina, struck her in the head. Tr. 201. David Dearman testified that he saw shots coming from the passenger side of a red or burgundy sedan. Tr. 257, 261. Several other witnesses reported to law enforcement that they saw a red sedan leaving the area immediately after the shooting. Tr. 722. Using Flock cameras, law enforcement located a burgundy 2015 Nissan Altima which was in the area of the shooting immediately before its occurrence. Tr. 722. The Flock cameras read the Altima's license plate and determined that it was registered to Annbrell Jackson. Tr. 722.

Annbrell Jackson told law enforcement—and later testified at trial—that she, Appellant, and A.J. White went to Walmart on the night of July 8, 2022. Tr. 627. On the way to Walmart, they passed by the Uptown Grill. Tr. 628. When they passed the Uptown Grill, Appellant rolled down the passenger side window and fired several shots at the restaurant. Tr. 628.

After he was arrested, Appellant placed several recorded calls on the jail telephones. Tr. 801. Four of these calls were identified as relevant by the state, and three of them were ultimately played for the jury at trial. Tr. 801-13; 821-27.

Appellant moved pre-trial to suppress all four jail calls. Appellant asserted that the calls were inadmissible, citing "a case involving letters from the '70s." Tr. 140-41.[1] Appellant asserted that the phone calls of inmates at the Greenwood County jail were scrolled through

[1] While Mr. Shaffer did not say the name of the case, it is almost certain that he was referring to *State v. Ellefson*, 266 S.C. 494, 224 S.E.2d 666 (1976).

"indiscriminately" by the Solicitor's office "whenever they have free time," rather than being connected to any particular security concerns. Tr. 141. Further, Appellant asserted that "nobody communicates through letters anymore" forcing inmates into the impossible position of either not communicating with the outside world at all or communicating through a medium that would be reviewed by the state. Tr. 142-43. Later in the trial, Kathy Tucker, the administrator of the Greenwood County jail, would testify similarly, saying that all calls were monitored "for the safety of the jail," and in the regular course of running the jail. Tr. 800.

The trial court denied the motion to suppress. Tr. 144. It distinguished *Ellefson* on the basis that sealing a letter gives a greater expectation of privacy than speaking on a recorded line. Tr. 142. The trial court compared jail calls to "put[ting] stuff on Facebook," and found that if an inmate was "dumb enough to put it out there," he had no expectation of privacy. Tr. 144.

Discussion

The introduction of Appellant's phone conversations against him violated his rights under the First, Fourth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, § 10 of the South Carolina Constitution. This Court should reverse.

The federal constitution prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. The South Carolina Constitution prohibits "unreasonable invasions of privacy," with protections wider than those of the Fourth Amendment. S.C. Const. art. I, § 10; *State v. Counts*, 413 S.C. 153, 168, 776 S.E.2d 59, 68 (2015). The Fourth Amendment "was crafted as a response to the reviled general warrants and writs of assistance of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Carpenter v. United States*, 585 U.S. 296, 303 (2018) (internal quotation marks omitted).

"Prisons are not beyond the reach of the Constitution." *Hudson v. Palmer*, 468 U.S. 517, 523 (1984). Nonetheless, prisoners have significantly diminished rights, including to privacy. *Id.* at 526. And prisoners have no expectation to privacy in their prison cells. *Id.* The reason for this, however, is that *prisoners* "have a demonstrated proclivity for antisocial criminal, and often violent, conduct." *Id.*

The same is not automatically true for pretrial detainees. "The only legitimate purpose for confining" a pretrial detainee is to ensure his presence in court. *Ellefson*, 266 S.C. at 500, 224 S.E.2d at 669 (citing *Stack v. Boyle*, 342 U.S. 1 (1951)).[2] A pretrial detainee is still presumed innocent, and "is not disrobed of his constitutional rights and laid bare for the zealous investigation of his case." *Id.* The rights of the pretrial detainee must be curtailed "only to the extent justified by the considerations underlying our penal system." *Id.*

The *Ellefson* Court addressed whether a pretrial detainee's handwritten letters were admissible. *Id.* at 498, 224 S.E.2d at 668. The defendant there had written "very incriminating letters" which were obtained by the state through the efforts of an investigator "who was not connected with the operation of the jail." *Id.* The Court reversed Ellefson's conviction. *Id.* at 497, 224 S.E.2d at 667. The Court found that the reading of inmate mail for investigative purposes violated a host of constitutional rights. *See generally, id.* The Court first found that the reading of the letters was "entirely exploratory" since it was made without any exigent circumstances and lacked probable cause. *Id.* at 501, 224 S.E.2d at 670. The Court further found that the indiscriminate reading of Ellefson's mail violated his right to "communicate without the

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2 As pointed out by one commentator on the subject, the practice of eavesdropping on jail or prison phone calls is likely aimed at pretrial detainees significantly more so than prisoners, even though the former has been convicted of no crime. Hope L. Demer, *Can You Hear Me Now? The Impacts of Prosecutorial Call Monitoring on Defendants' Access to Justice*, 70 S.C. L. Rev. 977, 983 (2019) ("solicitors are unlikely to put much, if any, time into listening to jail phone calls to build a case against someone they have already convicted").

uninvited ears and eyes of the government," violating the First Amendment. *Id.* (citing *Milwaukee Social Democratic Publishing Co. v. Burleson*, 255 U.S. 407, 437 (1921) (Holmes, J., dissenting)). Further, the Court found that Ellefson's right to communicate privately with associates to develop defenses at trial had been violated. *Id.* at 502, 224 S.E.2d at 670.

As it is here, consent was an issue in *Ellefson*. *Id.* Ellefson, like all other inmates in the Greenville County jail, had signed a card authorizing jail officials to read his mail. *Id.* However, the Supreme Court held that this consent was not voluntary. *Id.* All inmates were required to sign the card, and it was not clear what the jail officials would have done had Ellefson refused. *Id.* In holding that Ellefson's consent was involuntary, and therefore invalid, the Court stated: "If we were to hold the appellant consented to waive his constitutional rights here, the doctrine of consent would be effectively emasculated." *Id.* at 502-03, 224 S.E.2d at 670.

Appellant did have a reasonable expectation of privacy in the contents of his phone calls, and the state searched and seized them without particularized suspicion. Further, any "consent" given by Appellant for the eavesdropping on his calls was involuntary and invalid. Finally, eavesdropping on Appellant's calls violated his First, Sixth, and Fourteenth Amendment rights to speak in private and prepare his defense, as recognized in *Ellefson*.

A. Appellant Had a Reasonable Expectation of Privacy.

The trial court ruled that Appellant did not have a reasonable expectation of privacy because he was "dumb enough" to talk using the jails telephones. This was error.

The Fourth Amendment applies only when a person has a reasonable expectation of privacy in what will be searched. "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz v. United States*, 389 U.S. 347, 351 (1967). "But what he seeks to preserve as private, even in an area accessible

to the public, may be constitutionally protected." *Id. Katz*, the first in a line of cases that make up modern Fourth Amendment jurisprudence, also involved the interception of a personal phone calls. *Id.* at 347. Though the government asserted that the phone calls had been made in a public phone booth, where any passerby could have easily observed him, the Supreme Court held that Katz had a reasonable expectation of privacy in the contents of his call. *Id.* at 351. After all, "the Fourth Amendment protects people, not places." *Id.* Concurring, Justice Harlan articulated what would become the rule for determining when an expectation of privacy was reasonable: a person must have a subjective expectation of privacy which society is prepared to deem reasonable. *Id.* at 361 (Harlan, J., concurring); *Hudson*, 468 U.S. at 525-26 (adopting Justice Harlan's analysis).

Whether "society is prepared to recognize as reasonable" a particular interest in privacy is a vague question which often turns on policy rationale rather than law. *See, e.g., Hudson*, 468 U.S. at 526-27 (using statistics regarding prison violence to justify ruling that safety considerations justify random, suspicionless searches of prison cells). Inmates lose a large amount of the privacy protections of private citizens, but not all. "Prisons are not beyond the reach of the Constitution." *Id.* at 523; *cf., Houchins v. KQED, Inc.*, 438 U.S. 1, 5 n.2 (1978) ("Inmates in jails, prisons, or mental institutions retain certain fundamental rights of privacy; they are not like animals in a zoo to be filmed and photographed at will by the public or by media reporters, however 'educational' the process may be for others").

Here, Appellant had a reasonable expectation of privacy in the contents of his calls. Appellant was speaking with his mother and another associate in the phone calls that the state played for the jury at his trial. To allow jail eavesdropping to go so far as to allow assistant solicitors and police investigators not even employed by the jail to listen in on calls between a pretrial detainee—convicted of no crime—and his mother, would be to allow "permeating police

surveillance," precisely what the Fourth Amendment was designed to avoid. *See Boyd v. United States*, 116 U.S. 616, 630 (1886). Today's society is so enthralled with telephones that carrying a mobile version of one in one's pocket is "indispensable to participation" in that same society. *Carpenter*, 585 U.S. at 315.[3] And Appellant's "ability to avoid use of the prison phone for the [two years] of his incarceration is far less realistic than Mr. Carpenter's ability to avoid carrying his cellphone when engaging in criminal activity." *People v. Diaz*, 33 N.Y.3d 92, 118-19, 122 N.E.3d 61, 79 (N.Y. 2019) (Wilson, J., dissenting).

It is true that other courts have held that a pretrial detainee lacks a reasonable expectation of privacy in jail calls, typically reasoning that an inmate making a phone call knowingly undertakes the risk that the contents of those calls will be handed over to law enforcement. *See, e.g., State v. Brantley*, 321 Ga. 370, 374, 914 S.E.2d 807, 810 (2025). Those courts point to jail safety as a "legitimate security measure," and stop their analysis there. *See id.* This ignores the fact that a pretrial detainee, who wants to exercise one of several constitutional rights, *see generally, Ellefson, supra*, including those so important as preparing his defense for trial,[4] has no real choice but to use the recorded jail telephone. It also ignores that the Supreme Court, in holding that prisoners generally have no expectation of privacy in their prison cells, held

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3 So concerned were they with the potential for the interception of electronic communications, the drafters of the operative version of South Carolina's Constitution added the "Privacy Clause" of Article I, § 10, to combat specifically that. Committee to Make a Study of the Constitution of South Carolina of 1895, *West Committee Meeting Minutes* 3-7 (Oct. 6, 1967) ("the Attorney General...very much agreed that this matter of secrecy is very grave, not only from electronic devices, but also he requests that a wording be wide enough to take care of data processing banks"); *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 202, 882 S.E.2d 770, 778 (2023) ("there was...much discussion in the Committee notes of the burgeoning considerations of electronic surveillance and its progeny").

4 *Ellefson*, 266 S.C. at 501, 224 S.E.2d at 670 ("To allow an independent prosecution team the right to indiscriminately inspect letters written by the accused is to hack at the roots of any defense").

expressly that searches and seizures in prison must "disserve *legitimate institutional interests*." *Hudson*, 468 U.S. at 528, n. 8 (emphasis added). It is of no real consequence that the jail telephone notified Appellant he would be recorded, his lack of real options to exercise deeply rooted constitutional rights must create some limited expectation of privacy, lest those rights become nullities for those who cannot afford bond.

Since the stated aim of jail call monitoring is "jail safety," Appellant and others can reasonably expect their calls will be listened to for only that purpose. However, the current regime of monitoring is not about safety at all. It creates a "detailed chronicle" of inmates' lives, *see Carpenter*, 585 U.S. at 315, for purely investigative purposes. *Cf., Riley v. California*, 573 U.S. 373, 387 (2014) ("Digital data on a cell phone cannot itself be used as a weapon...or to effectuate the arrestee's escape"). This places Appellant and similarly situated pretrial detainees in an impossible position that the South Carolina Supreme Court has called "particularly disturbing." *Ellefson*, 266 S.C. at 501, 224 S.E.2d at 670. For these reasons, Appellant had a reasonable expectation of privacy in the contents of his phone calls.

B. The Search of Appellant's Phone Calls was Done Without Particularized Suspicion and was Thus Invalid.

Appellant's calls were intercepted as a matter of course, without any particularized suspicion that he was committing any crime. This renders the search invalid.

A search is generally unreasonable in the absence of "individualized suspicion of wrongdoing." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000). This general rule applies unless a particular program of suspicionless searches serves "special needs, beyond the normal need for law enforcement." *Id.* (citing, *inter alia*, *Vernonia Sch. Dist. 47K v. Acton*, 515 U.S. 646 (1995)). For example, a sobriety checkpoint is a search, and stopping every driver on the road is far from particularized, but the United States Supreme Court has upheld them as necessary to

remove drunk drivers from the road. *See generally, Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990); *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (suggesting a similar checkpoint for the purpose of verifying drivers' licenses may be permissible).

Jail call monitoring has been observed to be "a telephonic roadblock-style checkpoint." Demer, *supra* at 997. The difference, however, is that roadblocks are almost always temporary, while jail call monitoring is permanent, lasting the entire duration of every single phone call. *Id.* at 997-98 (citing, *inter alia*, *Sitz*, 496 U.S. at 448).

Here, the jail call monitoring was not a temporary checkpoint, it was a permanent drag net. As Ms. Tucker testified, all calls are recorded in the regular course of jail business. Tr. 800. And these recordings can be accessed by investigators, even those who do not work for the Sheriff's Office. Tr. 800. The indiscriminate eavesdropping on the phone calls of pretrial detainees by various investigators and assistant solicitors does nothing to advance the state's stated goal of vague "jail security;" it is wholly investigative.[5] *See Ellefson*, 266 S.C. at 498, 224 S.E.2d at 668 ("The letters were obtained by...a detective who was not connected with the operation of the jail. His efforts were entirely investigatory and in pursuit of securing a conviction"); *see also, Diaz*, 33 N.Y.3d at 110, 122 N.E.3d at 73 (Wilson, J., dissenting ("It is simply implausible that the wholesale disclosure of phone call recordings to the District Attorney advances jail security")).[6] Wholly, investigative call monitoring does not further a legitimate interest of the *jail*. *Cf., Hudson*, 468 U.S. at 528, n. 8.

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5 Ms. Tucker did not say how call recording advanced jail security. Rather, she made a conclusory statement that monitoring the jail calls was for the purpose of jail security. Tr. 800.

6 Further, the record suggests that the solicitor's office simply listens to the jail calls of various defendants whom they prosecute "indiscriminately" and "whenever they have time." Tr. 141.

No effort was made by the state below to justify the recording of Appellant's calls in particular. Nor could there be. There is no evidence in the record that Appellant engaged in any behavior that suggested to law enforcement there may be evidence of a crime to be found within his phone calls. These recordings were not made based on any particularized suspicion. Accordingly, the search of the contents of Appellant's calls was unlawful.

C. Appellant Did Not Consent.

Further, Appellant did not consent to the calls being recorded.

To the extent the state asserts a search was consensual, it bears the burden of proving the voluntariness of that consent. *Ellefson*, 266 S.C. at 502, 224 S.E.2d at 670 (citing *Bumper v. North Carolina*, 391 U.S. 543 (1968)). In *Ellefson*, the state asserted that Mr. Ellefson had consented to the reading of his mail, because jail staff required every inmate to sign a card authorizing jail staff to read his mail. *Id.* However, this was a routine process that was done with every inmate, and the state "conceded that [it] did not know what the jail officials would have done had the appellant refused to sign the card." *Id.* The Supreme Court held that this was not consent, stating: "If we were to hold the appellant consented to waive his constitutional rights here, the doctrine of consent would be effectively emasculated." *Id.* at 503, 224 S.E.2d at 670.

Again, Appellant had no real choice but to use the jail's telephones. In the absence of any viable alternative, Appellant's supposed consent to the eavesdropping on his personal conversations is hardly voluntary; "the functional necessity of telephone calls and the absence of meaningful alternatives...undermine the validity of pretrial detainees' consent." Demer, *supra* at 1007. Accordingly, Appellant did not validly consent to the recording of his phone calls.

D. Even if Appellant Did Not Have a Reasonable Expectation of Privacy, the Admission of His Phone Calls Still Violated the First, Sixth, and Fourteenth Amendments.

Even if Appellant had no reasonable expectation of privacy in the contents of his jail calls such that the Fourth Amendment and Article I, § 10 do not apply, the use of those calls against him at trial violated his rights under the First, Sixth, and Fourteenth Amendments. This Court should reverse.

As recognized in *Ellefson*, searching through the private communications of a pretrial detainee impinges upon the inmate's First Amendment right "to be able to communicate without the uninvited ears and eyes of the government." 266 S.C. at 501, 224 S.E.2d at 670. The same searching also clashes with an inmate's right to communicate privately with associates to develop a defense. *Id.* at 502, 224 S.E.2d at 670.[7]

Here, recording all jail phone calls and using them as evidence violates the Constitution in two ways. First, Appellant's rights under the First Amendment were violated because he has a right to speak in private, and the overly broad policy of recording jail calls has a substantial chilling effect on speech. Second, Appellant's rights to develop a defense under the Sixth and Fourteenth Amendments were violated because the state used, as evidence against him, recordings of him attempting to investigate his case and prepare his defense at trial.

The First Amendment provides that the government shall not "abridg[e] the freedom of speech." Within that freedom of speech is the right to "communicate without the uninvited ears and eyes of the government." *Ellefson*, 266 S.C. at 501, 224 S.E.2d at 670. The freedom of speech, while not unlimited, may not lightly be restricted; it is "susceptible of restriction only to

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[7] While *Ellefson* did not directly cite to any constitutional provisions in its discussion of this right, it is generally understood that the right to develop a defense is found within the Sixth Amendment or Fourteenth Amendment Due Process Clause. *See, e.g., State v. Lyles*, 379 S.C. 328, 341, 665 S.E.2d 201, 208 (Ct. App. 2008).

prevent grave and *immediate* danger to interests which the state may lawfully protect." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 639 (1943) (emphasis added).

When a jail or prison "impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). In making this determination, there are four factors that the Court must consider. First is whether there is a "valid, rational connection" between the regulation and the interest put forth to justify it. *Id.* A regulation should not be sustained if the logical connection between it and the asserted goal is so remote as to render the policy arbitrary or irrational. *Id.* at 89-90. Second is whether there are other available avenues for the inmate to assert the right at issue. *Id.* at 90. Next is the impact that accommodation of the right will have on other inmates and guards. *Id.* Finally, the Court should look to whether there are ready alternatives. *Id.* The "existence of obvious, easy alternatives may be evidence that the regulation is not reasonable." *Id.*

Here, recording every single phone call going out of the jail, and sharing those calls as a matter of course with the Solicitor's office and other unrelated law enforcement officers, is not rationally related to the stated goal of jail safety. First, it is not immediately obvious how law enforcement officials not connected to the jail and the Solicitor's office having access to the jail calls advances jail safety at all. At the trial of this case, the state's witness did not attempt to explain this either. Rather, she testified simply that the calls were monitored for "jail safety." Tr. 800. Yet, Appellant's phone calls "cannot itself be used as a weapon...or to effectuate the arrestee's escape." *Riley*, 573 U.S. at 387. Any danger that Appellant poses on the jail telephones is not immediate. *Barnette*, 319 U.S. at 639. There is such a disconnect between the goal, jail safety, and the process, allowing Solicitor's and unrelated law enforcement unfettered access to the calls, that the policy of recording all calls is so remote that it is arbitrary and irrational. *Id.* at

89-90.[8] Secondly, there are no other adequate avenues for pretrial detainees such as Appellant to exercise the rights at issue here. *See id.* at 90. Even if Appellant had his family travel to the jail and visit him in person, these conversations would also likely have been monitored and recorded. Simply by nature of Appellant being a pretrial detainee, there were no avenues through which he could communicate with anyone other than his attorney without surveillance by the state.

Combining the last two factors, there is a readily available alternative available to the jail that would have little impact on safety and would in fact change almost nothing: they could simply not share the recorded phone calls with the Solicitor's office. The Solicitor's office's access to the jail calls is wholly divorced from the rationale behind the jail call recording anyway. If the purpose of recording the jail calls is jail safety, then only the jailers need access to the same.

By eavesdropping on Appellant's calls, the Greenville County jail transformed from "a body responsible for detaining individuals to assure their presence in court...into an evidence gathering arm" of the state. Demer, *supra* at 1003. Because constant surveillance of pretrial detainees for the purpose of evidence gathering is invalid as a matter of constitutional law, *see Ellefson,* 266 S.C. at 500, 224 S.E.2d at 670, and because the manner in which Appellant's calls were intercepted and used is not rationally related to the state's stated interest of jail security, the interception and use of his jail calls violated the First, Sixth, and Fourteenth Amendments. His conviction should be reversed.

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8 Of course, the policy is not arbitrary when the state's real goal—additional investigative work—is considered. In fact, recording all jail calls furthers this goal to a large degree, as seen in this case as in many others. However, this is not a valid, legitimate interest, *see Ellefson*, 266 S.C. at 500, 224 S.E.2d at 670, so the state instead asserts that the recording of the jail calls is for a nebulously defined "jail security."

CONCLUSION

For the foregoing reasons, Appellant's conviction should be reversed, and this case should be remanded for a new trial.

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ATTORNEY FOR APPELLANT

This 19th day of August, 2025.