STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAURI DANIELLE HOLLIS,

APPELLANT

APPELLATE CASE NO. 2012-213139

INITIAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUES ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT

The court erred by refusing to direct a verdict of acquittal where the state's best evidence was that appellant remarked to someone in the common grounds of the apartment complex that the decedent was a "snitch," since this statement, even if heard and acted on, did not make appellant an aider and abettor and therefore responsible for the decedent's death or his robbery where another man shot the decedent 5

Relevant facts 5
Discussion 12

CONCLUSION 18

TABLE OF AUTHORITIES

Cases

Sandstrom v. Montana, 442 U.S. 510 (1979) 16, 17

State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004) 15

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) 13

State v. Lane, Op. No. 5175 (filed October 9, 2013) 15, 16

State v. Legette, 282 S.C. 11, 316 S.E.2d 411 (1984) 17

State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) 13

State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) 14

State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010) 17

State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002) 13

State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) 14

State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002) 13

State v. Washington, 220 S.C. 442, 68 S.E.2d 400 (1951) 16

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict of acquittal where the state's best evidence was that appellant remarked to someone in the common grounds of the apartment complex that the decedent was a "snitch," since this statement, even if heard and acted on, did not make appellant an aider and abettor and therefore responsible for the decedent's death where another man shot the decedent?

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County Grand Jury for the offenses of murder and armed robbery. Her case came on for trial on October 1, 2012 before the Honorable Roger L. Couch, and a jury. Appellant Hollis was tried together with Charles L. Anderson, Jr., who faced the same charges in the decedent's death. Ryan McCarty represented appellant. Christopher Thompson represented co-defendant Anderson. Tr. 1.

At the conclusion of the trial on October 4, 2012, the jury found co-defendant Anderson and appellant guilty of murder and armed robbery. Supp. Tr. 247, l. 20 – 248, l. 10. Judge Couch sentenced appellant to thirty years imprisonment concurrent for both murder and armed robbery. Supp. Tr. 256, ll. 1-6. Judge Couch sentenced co-defendant Anderson to life imprisonment for murder and thirty years imprisonment for armed robbery. Supp. Tr. 260, l. 24 – 261, l. 7.

This appeal follows.

ARGUMENT

The court erred by refusing to direct a verdict of acquittal where the state's best evidence was that appellant remarked to someone in the common grounds of the apartment complex that the decedent was a "snitch," since this statement, even if heard and acted on, did not make appellant an aider and abettor and therefore responsible for the decedent's death or his robbery where another man shot the decedent.

Relevant Facts

In his opening statement, Defense Counsel McCarty addressed Assistant Solicitor Gray's opening remarks urging Appellant Lauri Hollis was guilty under "the hand of one is the hand of all." Tr. 116, ll.10-13. Counsel McMarty said: "Now, when Mr. Gray was up here, he referred to 'they,' [and] 'somebody.' It's more than that. It's more than just a carte blanche statement of the hand of one is the hand of all." McCarty told the jurors at "none of the evidence" would prove Appellant Hollis participated in the murder and robbery of the decedent. Tr. 119, l. 5 – 120, l. 20.

Spartanburg police officer William Foster responded to a "shots fired" dispatch on April 7, 2011 at the Oakview Apartments in Spartanburg. Foster testified that there was "a lot of people floating around," but maintained the police got better control as "we got more officers on the scene." Tr. 122, ll. 5-9; Tr. 129, ll. 23..

Officer Shane Morrow also responded to Oakview Apartment shooting. He remembered: "A large group of people standing around, milling around the area. I backed up everybody. I had to tell them a couple of times 'this is a crime scene. You need to back away,' as we were rendering aid to the individual." Morrow said he had to tell the crowd of people "to back up a couple of times." The decedent, Means, was shot in the area near

Apartment 208 and was laying face down. Tr. 140, ll. 18-21. No suspects were developed at the time. Tr. 141, ll. 7-11. Morrow said people were just "saying they didn't see anything." Tr. 141, ll. 8-11.

The state's evidence in their attempt to convict Appellant Hollis of being responsible for the decedent's death was the often contradictory testimony of seventeen-year- old Molly B. Molly B. originally told the police that: "I went into the apartment. I did not see anyone standing in front of her apartment or see anyone arguing. I was on the downstairs couch holding a baby. Latrica [her friend] was upstairs and I think the other girl named Tara and Tiera was in the kitchen. I heard something that sounded like a gunshot. I did not think that it was a gun. I went to the door and opened it to look outside. That is when I saw the guy on the grass bent over." Tr. 206, ll. 2-13.

When defense counsel later moved for a directed verdict, he reminded the judge of the evidence that appellant was a resident of Oakview Apartments, and of testimony appellant was seen outside the apartment complex, her home, that day two hours before the shooting. Supp. Tr. 139, l. 13 – 140, l. 3.

Molly B. drove a black Mercedes SUV. She went over to the Oakview Apartments because her friend Latrica Martin lived there. Molly B. acknowledged she did not "live anywhere near Oakview Apartments." Tr. 179, l. 23 – 181, l. 5.

On the day the decedent was shot, Molly B. was at the apartment complex. She remembered that she took Latrica to the Little Cricket store down the road "and some guy needed a ride, Mr. Gaze, who wanted to get dropped off. And we took him." Tr. 181, l. 3 – 182, l. 21.

Molly B. testified that there were about four people standing near her car when they returned to the apartment complex. She named three of them as being "Dee, Danielle [Appellant Hollis], and J. P." Tr. 183, ll. 1-10. In contrast to what she had told the police Molly B. testified at trial:

> She [Appellant Hollis] had asked why I didn't get her anything to eat because we had a McDonald's bag. And then she started talking about some dude and was talking about how -- **I didn't really catch on to it**; she was just like something about they were about to get somebody because somebody **had snitched** on somebody.
>
> And I was like, "What are you talking about?" And, then, like she just walked away from the car.

Tr. 183, ll. 16-23.

Molly B continued:

> I saw a guy walking from another apartment down towards the fence. And like she was smacking at her face. And, then, the guys over here were kind of -- they were ganging up in front of my car. They were coming together with her.
>
> And she was acting like a bug was flying around or something. I'm not sure. Then, I looked down at -- because I had a touchscreen navigation system and I looked down at it.
>
> And, then, I looked back up and saw those guys. They were getting closer together. And I didn't really know what was going on.
>
> I look back down at my radio. And, then, I heard a gunshot. And I looked up and he was falling to the ground and everybody was just kind of moving, like running away.

Tr. 184, l. 14 – 185, l. 2.

When asked how close appellant was to the man who got shot, Molly B. did not give a specific answer. She said there were at least four people around the decedent as he fell to

the ground. "They were just all like in a circle. And then they scattered, like a circle around him." Tr. 185, ll. 3-15. Upon questioning by the solicitor the following occurred:

> Q. And do you recall what she said before this gentleman was shot?
>
> A. She was talking about getting somebody, said that they been looking for somebody because he snitched and -- on somebody. I'm not really sure.
>
> Q. Was she talking or was she yelling?
>
> A. **No, she was just telling me and Latrica.**
>
> Q. All right. Did she say anything that this gentleman might be the snitch or whatever?
>
> A. No. I mean, but I guess that's who she was talking about obviously.

Tr. 185, l. 16 – 186, l. 1. (emphasis added)

Molly B. said appellant did not have a gun but she pointed to Charles Anderson in the courtroom, whom she did not know, as a man she saw with a gun in his hand. Molly B. said no one else out there that day had a gun other than Anderson. Tr. 186, l. 10 – 187, l. 16. Molly B. said people ran after the shooting but she could not say they all ran in the same direction. Tr. 187, l. 20 – 188, l. 3.

The solicitor also questioned Molly B. about appellant's hairstyle and Molly B. answered appellant had "dreads I think - - yeah, they were dreads." Tr. 188, ll. 17-19. The import of this was that appellant's change of her hairstyle at some time after the shooting was evidence of guilty knowledge. However, as will be seen infra, appellant voluntarily went to the police station to talk with the police when she found out the police considered her a possible suspect in this case. Supp. Tr. 90, ll. 12-20; Supp. Tr. 108, l. 17 – 109, l. 2; Supp. Tr. 118, l. 9 – 119, l. 7.

As to her trial version of what she witnessed, Molly B. admitted she was looking down at the time of the shooting and that when she looked back up "everybody was scattering away." Molly B. acknowledged she did not witness the shooting. Tr. 208, l. 19 – 209, l. 15.

Investigator Brian Stokes admitted that Molly B.'s statements "changed from the time you initially spoke with her." Supp. Tr. 116, ll. 2-5. In response to one question on cross-examination Stokes said he thought Molly B may have been "under the influence" when she first talked to the police. However, Stokes was cut off for speculating before he could continue trying to explain her inconsistencies. Supp. Tr. 115, ll. 19-24.

Anthony Kelly was the decedent's cousin. Tr. 224, ll. 22-25. Kelly said the decedent wore a gold necklace "that he had bought specially made for him. It was Stewie from the The Family Guy TV show. And it had different colored rubies in it . . ." Kelly said the decedent wore this necklace every day. Tr. 226, ll. 16-24.

Kelly said he knew Appellant Hollis and saw her on a regular basis. "And she used to play with my cousins and my little boy. And, you know, played basketball for a while or whatever. She seemed like she was a decent person." Tr. 227, ll. 11-18.

Kelly claimed he saw appellant at a large party the next weekend. He maintained she was wearing the "Stewie" necklace. Tr. 230, l. 25 – 232, l. 3.

On cross-examination Kelly was asked: "Why did you wait 544 days to come in here and tell what you just told here regarding Ms. Hollis?" Kelly said: "I wasn't around when it actually happened. So the police, I guess why they didn't get in contact with me or whatever." Tr. 232, ll. 19-24. Kelly then claimed he had talked to the solicitor and said: "I've been coming up ever since this started." Tr. 233, ll. 6-7.

Investigator Brian Stokes acknowledged that appellant "came and turned herself in once . . . the information was put out to the news media who we were seeking for the - - for the crime. And Ms. Hollis was the first to turn herself in." Conversely "Mr. Anderson was arrested and brought to City Hall." Supp. Tr. 90, ll. 12-20; Supp. Tr. 108, l. 17 – 109, l. 2; Supp. Tr. 118, l. 9 – 119, l. 7.

Officer Christopher Layton testified that appellant's mother gave him a shirt when he executed a search warrant of her house. The shirt was taken from a Ford Expedition outside of the house, and he "assumed" she got the shirt from appellant. Layton also said he took "a pair of Khaki shorts and a belt." Tr. 312, l. 13 – 314, l. 21.

SLED analyst Ila Simmons testified that gunshot residue was found on the shirt. Simmons admitted that gunshot residue could be found on clothing from being near the "cloud of smoke" when a gun was fired. Simmons stated that she could not tell how long the residue had been on the shirt, or from what gun, or whether from the crime scene in this case, and she acknowledged such residue would remain on the shirt until it was washed. Supp. Tr. 28, 10 – 31, l. 17.

Defense counsel moved for a directed verdict of acquittal on murder and armed robbery counts. Defense Counsel McCarty argued: "The only testimony relating to what occurred around this supposed robbery was that of Molly [B.]'s. And she said she looked down at her GPS unit in her car, heard the shot, and looked back up." McCarty also noted the testimony of the witness that appellant was supposedly wearing the decedent's necklace three or four days later. The evidence was circumstantial since there was no direct evidence linking appellant to the shooting. Supp. Tr. 132, l. 13 – 134, l. 9.

McCarty further attacked the state's theory on the "hand of one is the hand of all." McCarty argued that Molly B. had said something to them about the victim being a snitch, but even that did not denote the prior agreement or her being part of a common scheme or plan to rob or kill the decedent. McCarty said even if a person had prior knowledge that someone else may commit a crime and they are present at the time a crime is committed that that was not sufficient to convict them as a principal. Supp. Tr. 131, l. 1 – 133, l. 23. McCarty argued the state's alleged theory that this was a "hand of one hand of all" case was hopelessly faulty. Supp. Tr. 132, l. 13 – 134, l. 9.

The solicitor said the common scheme or plan "intention" could have been formed one minute beforehand or twenty four hours beforehand. The solicitor argued that appellant talked to Molly B. and said the decedent was a snitch. He claimed: "She sets things in motion," and he argued Anderson shot the decedent and appellant took the jewelry from the decedent. Supp. Tr. 134, l. 11 – 135, l. 14.

The judge said his recollection was the statement about a snitch was made to Molly B. He said he did not recall anyone else hearing that comment. The solicitor confirmed that the judge was correct. The judge also observed that even if a person knew a crime was about to be committed they had to do some overt act in furtherance of the crime. The solicitor again agreed. Supp. Tr. 135, l. 15 – 136, l. 9.

McCarty repeated that "mere presence" at the crime scene and even knowledge that a crime might occur were both insufficient basis on which to convict Appellant Hollis in the murder and armed robbery. Supp. Tr. 136, l. 12 – 137, l. 22. As stated above, defense counsel noted that appellant was as resident of Oakview Apartments. Defense counsel said that to argue her presence there proved some scheme "to get" the decedent was incorrect.

Appellant. Supp. Tr. 139, l. 10 – 140, l. 3. The judge stated the fact that there was testimony appellant was in possession of recently stolen good was enough to take the armed robbery charge to the jury. The judge said he was very concerned about the murder charge and he took it under advisement. Supp. Tr. 140, ll. 4-19.

When court resumed the judge said he had reviewed the testimony of Molly B. and found it sufficient to get beyond a directed verdict motion on whether Appellant Hollis may have participated in limiting "the movements of the victim allegedly. And there is sufficient evidence or circumstantial evidence to justify the case going to trial - - or going to the jury both on the charge of murder and armed robbery in both cases." Supp. Tr. 141, ll. 6-15.

After appellant was convicted the solicitor again focused on appellant allegedly calling the decedent a "snitch," stating: "I understand she is less culpable than Mr. Anderson, but I also understand if - - if she had not did what she did, **Mr. Means may still be here today**." Supp. Tr. 255, ll. 4-6. (emphasis added)

Discussion

The judge erred by refusing to direct a verdict since there was no direct evidence or substantial circumstantial evidence appellant aided and abetted in the murder and robbery of the decedent. Molly B's trial testimony was that she was outside and appellant approached her and her friend and asked her why she did not get appellant a hamburger from McDonald's. Molly B. allegedly heard appellant, apparently when seeing the decedent outside, state that the decedent was a snitch. After that Molly B. stated appellant walked away and "like she was smacking at her face . . . she was acting like a bug flying around or something. I'm not sure." After these vague statements Molly B. stated she was looking down at her phone when she heard a gunshot." Tr. 183, l. 11 – 185, l. 20. She did not

remember how much time passed between appellant "swatting her hand" and hearing a gunshot. Tr. 198, ll. 16-23.

This is the evidence in the light most favorable to the state. It did not provide the direct or substantial circumstantial evidence required to overcome a motion for a directed verdict.

The state's case was that because appellant stated to Molly B. that the decedent was a snitch, and walked away "smacking at her face" that this was substantial circumstantial evidence appellant was aiding and abetting in the armed robbery and murder of the decedent. It was not. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). The state's case on the robbery was that because appellant allegedly was wearing the decedent's stolen necklace three or four days later that was substantial circumstantial evidence she was guilty of armed robbery. It was not. State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002). "Mere suspicion" of guilt is insufficient to take the case to the jury, and beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the Supreme Court held the state failed to produce substantial circumstantial evidence Bostick killed his neighbor, Ms. Polite, and set her house on fire. The state's case was that Ms. Polite worked at her church and always brought the collection proceeds home on Sunday afternoon. The state presented evidence that investigators found personal items, burned by an accelerant, including a watch and two sets of car keys belonging to Ms. Polite in a burn pile on Bostick's next door property. Bostick's mother testified she never used accelerants in the burn pile.

The Supreme Court noted that the evidence above as well as the fact Bostick had a pattern of gasoline on his shoes and gasoline was the accelerant used to start the fire at the Polite home. The Court held this evidence raised a suspicion that Bostick may have been guilty but it was not sufficient for the case to have gone to the jury.

Earlier, and similarly, in State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) the Supreme Court held that the state's circumstantial evidence against Martin was insufficient to take the case to the jury. In Martin the defendant borrowed his girlfriend's car which was later placed near the scene of the murder.

On the morning after the murder the manager of a restaurant found several bags of garbage near the bar where defendant Martin and co-defendant Wilson picked up Martin's girlfriend late the prior night. Inside the trash were items belonging to the victim. Also found were inside were latex gloves similar to those Martin's girlfriend used to clean her dogs.

When Martin girlfriend's asked him why he and co-defendant Wilson were so late in picking her up from the bar, defendant Martin replied "some shit happened" and co-defendant Wilson added "someone may have died tonight."

The Supreme Court held that this circumstantial evidence was not substantial circumstantial evidence, and it was insufficient to take the case to the jury. The Court in Martin cited State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) which was a case which provided a strong suspicion of the defendant's guilt.

In State v. Schrock, Schrock admitted to the police that he smoked Marlboro brand cigarettes – the same brand as the cigarette butts found at the murder scene. However, a saliva test could not match a cigarette butt to the defendant. A similar footprint to Schrock's

was found at the scene and nearby the scene. Schrock apparently later disposed of the clothes and shoes he had been wearing and he did not present an alibi. This Court held this evidence only raised a suspicion of Schrock's guilt and that he was entitled to a directed verdict.

In State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), the Supreme Court affirmed the holding of the Court of Appeals that a directed verdict should have been issued. The victim, Cox, was shot, and his body found off of a road in Colleton County. On the last day Cox was seen alive he borrowed a friend's BMW Z3 to go to the dentist's office. The car was found in a parking lot in Johnson City, Tennessee and there was evidence the defendant telephoned a friend from 10 miles away from the car. The defendant's fingerprints were found inside the car. This Court reasoned the state only proved that the defendant was in the BMW on the last day that Cox was seen alive, and that was insufficient evidence to make this a jury question.

In State v. Lane, Op. No. 5175, Shearouse's Adv. Sh. #43, at 17-22 (filed October 9, 2013), this Court held a directed verdict of acquittal should have been issued in a burglary case. This Court found the evidence against Lane was: (1) a burgundy/red "Mitsubishi Gallant-type car" was in the victim's driveway the day of the theft; (2) At times Lane drove a red/burgundy Mitsubishi Gallant belonging to his girlfriend; (3) Lane drove the Gallant the day of the theft; (4) a folded pieced of paper belonging to Lane was found in the victim's driveway that was not found by the police search, but was found later; (5) Lane did not want to talk to the police on the day after the theft; and, (6) Lane asked his girlfriend's mother to lie to the police about his whereabouts.

Again, the Court held a directed verdict should have been issued based on this evidence. State v. Lane, Op. No. 5175, Shearouse's Adv. Sh. #43, at 17-22 (filed October 9, 2013. Here, evidence that appellant said to Molly B. that the decedent was a snitch, and walked away making a "strange" gesture before someone (Anderson) shot the decedent was not substantial evidence of her guilt. Neither was it substantial circumstantial evidence when coupled with evidence appellant allegedly was in possession of the decedent's stolen necklace at a party three or four days later, and the fact she had gunshot residue on her shirt.

Appellant was undoubtedly at the crime scene in the apartment complex where the decedent was shot. The state's theory of the case was not that appellant shot the decedent so gunshot residue, even if it is assumed it came from this shooting, proved next to nothing since being near the "cloud of smoke" of the gunshot explained the gunshot residue.

Further, the judge erred by ruling that this evidence appellant was in possession of stolen goods was sufficient to take the case beyond the directed verdict stage on the charge of **armed robbery**, and to the jury. While an inference that appellant was in possession of stolen goods might create an inference she knowingly was in possession of stolen goods that same should not be applicable to **armed robbery** or burglary.

Appellant respectfully submits that although he and trial counsel cannot cite to a specific case that pre-Sandstrom[1] cases such as State v. Washington, 220 S.C. 442, 68 S.E.2d 400 (1951) that hold that the fact a defendant was in possession of "recently" stolen goods "**can be used as evidence that the defendant stole the goods**, "should no longer pass the test of time. It is essentially a presumption that the defendant stole the goods because she was in possession of them. To stretch that it can be essentially "presumed"

[1] Sandstrom v. Montana, 442 U.S. 510 (1979)

appellant participated in an armed robbery because she allegedly came to possess a necklace is anathema to our post-Sandstrom jurisprudence, and it was fundamentally unfair to this appellant. See State v. Legette, 282 S.C. 11, 316 S.E.2d 411 (1984) (jury instruction is impermissible where it can be interpreted by the jury as requiring the defendant to explain possession of recently stolen goods).

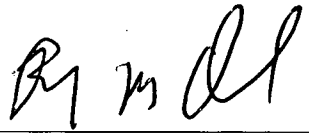
The state did not present substantial circumstantial evidence or probative direct evidence appellant aided and abetted the commission of this murder and armed robbery. Even if appellant knew "they" -- meaning others -- were going to harm the decedent because he was a snitch, this apartment complex was her home, she had a right to be there, and "mere knowledge" that a crime was going to be committed did not make her a principal in the murder as defense counsel argued. See State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010).

The solicitor stated that the decedent might still be alive if appellant had not said he was a snitch. Even if that is accepted as being true, that is not the legal standard for aiding and abetting to be guilty under the legal doctrine of the "hand of one is the hand of all," and the trial judge therefore erred by refusing to direct a verdict of acquittal on both the murder and armed robbery charges.

CONCLUSION

By the reason of the foregoing argument appellant is entitled to a verdict of acquittal on the charges of murder and armed robbery.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of November, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

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V.

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APPELLANT

APPELLATE CASE NO. 2012-213139

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

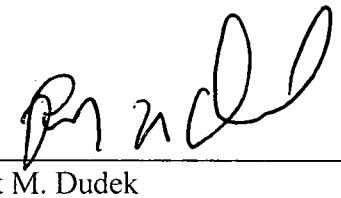
Appellant proposes the following be included in the Record on Appeal:

(1) True–billed indictments;
(2) Transcript Volume I:
Cover page;
Tr. 58-65;
Tr. 93;
Tr. 114-149;
Tr. 162-261;
Tr. 264-279;
Tr. 282-299;
Tr. 303-334;
(3) Transcript Volume II:
Cover page;
Tr. 20-126;
Tr. 130-141;
Tr. 148-157;
Tr. 163-164;
Tr. 168-249;

Tr. 256;
Tr. 261.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 4th, 2013



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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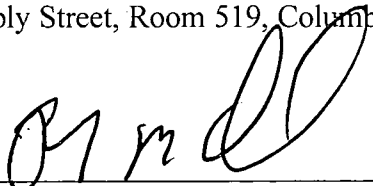
APPELLATE CASE NO. 2012-213139

CERTIFICATE OF SERVICE

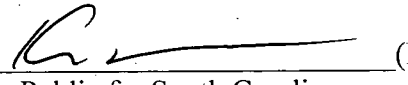
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of November, 2013.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of November, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: August 21, 2023 .