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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EDWARD M. DUNN,

APPELLANT

APPELLATE CASE NO 2012-212242

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

At no point in its brief did the Attorney General contend that the DNA database maintained by the Richland County Sheriff's Office is authorized by state law. The Attorney General only argued that that this illegal invasion of our citizens' privacy is not preserved for appeal. Since the Attorney General addressed the merits of all of the other issues it contended were unpreserved, the logical conclusion is that South Carolina's top law enforcement official believes that Richland County's database is illegal. This Court should not allow an issue of this magnitude to escape its attention because of the State's issue preservation smokescreen.

The issue of the illegal database is preserved for appeal. The scope of Appellant's consent was the primary issue in the trial of this case. Appellant argued that the retention of his DNA sample exceeded the scope of any alleged consent. R. 88, ll. 7 – 97, l. 9; R. 103, l. 69 – 115, l. 12; R. 343. Whether the retention of appellant's DNA was legal cannot be decided without reference to the State DNA Database Act. See S.C. Code Ann. § 23-3-600 *et seq.* Appellant argued that the scope of his consent was violated and retention of his DNA was unconstitutional. The idea that this Court cannot consider what appears to be an admittedly illegal database when determining the consent issue construes error preservation's specificity requirement too narrowly.

Finally, the State attempts to avoid the logic of appellant's contract argument. Appellant's arguments concerning contract law principles certainly bear on the issue of the scope of consent under the Fourth Amendment. In State v. McCord, 349 S.C. 477, 483-84, 562 S.E.2d 689, 692-93 (Ct. App. 2002), this Court analyzed and interpreted the language of the document at issue. Under the totality of the circumstances test, the State has given no compelling reason why the greatest sphere of law for interpreting parties' intentions with respect to written

documents—contract law—has no bearing in this analysis. Since it is admitted that individuals are free to limit the scope of consent given to searches, utilizing contract law principles in analyzing the agreement between the State and the suspect will help the Court reach correct decisions.

CONCLUSION

It is clear that Appellant's rights under the South Carolina Constitution, United States Constitution, and state law were violated in this case. This Court should reverse.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

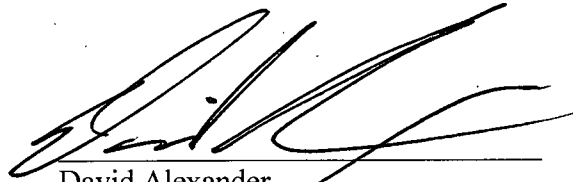
ATTORNEY FOR APPELLANT

This 18th day of November, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Reply Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 18th 2013



David Alexander
Appellate Defender

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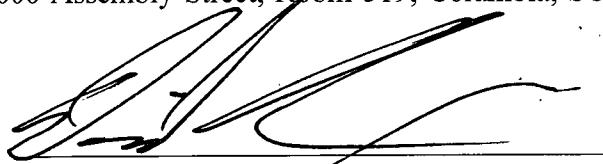
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APPELLATE CASE NO 2012-212242

CERTIFICATE OF SERVICE

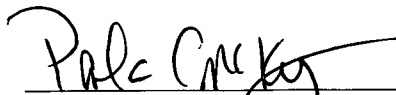
The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above-referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of November, 2013.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of November, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

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