THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes III, Circuit Court Judge

Case Nos. 2012-GS-46-03888, 2012-GS-46-03889, 2012-GS-46-03890

The State, Respondent,

v.

Kairon Brenton Maldonado, Appellant.

Appellate Case No. 2013-000684

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. In-court identifications of accused criminals are inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. Vipul Patel was able to view a portion of the face of a man who attempted to rob his store for just a few seconds, but identified Kairon Maldonado, who was familiar to Patel as a customer of the store, as the would-be robber in a photo lineup nearly a week after the robbery at a time when Patel was in pain and on medication. Should the trial court have suppressed Patel's identification of Maldonado?

2. Rule 801(c) of the South Carolina Rules of Evidence defines hearsay an out-of-court statement offered in evidence to prove the truth of the matter asserted. At trial, Maldonado was not permitted ask the police officer who took Maldonado's statements whether Maldonado's statements were consistent without divulging the contents of the statement or asking the officer about the truth of the statements. Should the trial court have allowed this testimony as non-hearsay?

3. Rule 702 of the South Carolina Rules of Evidence imposes an affirmative and meaningful gatekeeping duty on trial courts to exclude unreliable expert testimony and allows dog-tracking evidence to be offered through an expert only when the dog is of a breed with acute smell and has demonstrated reliability. The trial court allowed testimony from Officer Jonathan Moreno as an expert on canine tracking even though the State did not demonstrate that his canine was of a breed characterized by an acute power of scent and had only successfully tracked two suspects. Should the trial court have excluded Officer Moreno's expert testimony?

STATEMENT OF THE CASE

On November 15, 2012, at a Court of General Sessions, the Grand Jurors of York County returned true bills on indictments against Kairon Brenton Maldonado ("Maldonado") for Attempted Murder (Case No. 2012-GS-46-3888), Attempted Armed Robbery (Case No. 2012-GS-46-3890), and Criminal Conspiracy (Case No. 2012-GS-46-3889), all of which were alleged to have occurred on July 25, 2012. (Indictments pp. 1-6). On March 18, 2013, Maldonado made an oral motion to suppress identification evidence. (Tr. pp. 9-60). On March 18, 2013, Maldonado's motion was denied and he was put on trial before the Honorable John C. Hayes III and a jury in York County. (Tr. p. 62). On March 20, 2013, after deliberation following a three-day trial, the jury

returned a verdict of guilty with respect to the indictments for Attempted Armed Robbery and Criminal Conspiracy and not guilty with respect to the indictment for Attempted Murder. (Tr. p. 300). On March 20, 2013, the trial court sentenced Maldonado to concurrent sentences of twenty years and five years for attempted armed robbery and criminal conspiracy, respectively. (Tr. p. 307). On March 29, 2013, Maldonado filed and served notice of appeal. (Notice of Appeal p. 1).

FACTS

On July 25, 2012, Kadeem Sanders ("Sanders") and another man attempted to rob Cherry Road Discount Food and Beverage (the "Store") and shot its owner Vipul Patel ("Patel"). (Tr. p. 9.) Sanders confessed to the crime and pled guilty. (Tr. p. 190.) The State alleges that Maldonado was the other man, and charged him with attempted armed robbery, attempted murder, and criminal conspiracy. (Indictments p. 1-6.) Maldonado denies involvement and pled not guilty. (Tr. p. 9.)

Patel owns and frequently works at the Store. (Tr. p. 28.) Many teenagers who live in the nearby neighborhood frequently shop at the Store. (Tr. p. 29.) Just before 11:00 PM on July 25, Patel prepared to close the Store for the evening when two "young kids," whom Patel believed to be teenagers, rushed into the Store. (Tr. p. 11.) One of the teenagers—later revealed to be Sanders—stayed near the front door of the Store while the other—alleged to be Maldonado—approached a swinging door that separated the area behind the counter from the rest of the Store and told Patel to "give [him] the money." (Tr. p. 31.) The teenager who approached the counter wore a hoodie, and his face was partially obstructed such that Patel testified that he could only see "almost most of his face." (Tr. p. 32.)

Between five and seven seconds after the teenagers entered the Store, Sanders fired three shots from a rifle he carried, hitting Patel twice. (Tr. p. 29, 188.) Both teenagers then fled the Store on foot. (Tr. p. 101.) Police arrived at the Store shortly thereafter, and Officer Larry Vandermolen pursued and apprehended Sanders. (Tr. p. 101.) Officer Jonathan Moreno used a tracking canine to track the teenagers' scent from the Store. (Tr. pp. 121-126.) Officer Moreno's tracking canine Molly located a rifle, a t-shirt, and a red bandana, but did not locate either suspect. (Tr. pp. 125.)

Patel was seriously injured. (Tr. p. 143.) He was airlifted to Carolinas Medical Center in Charlotte, North Carolina, where he remained for several days. (Tr. p. 143.) Patel was first able to speak with police on July 31, when Rock Hill police officers visited his home to take his statement. (Tr. p. 44.) At the time, Patel was in pain and taking high doses of pain medication. (Tr. pp. 44-45.) He was also scared and stressed. (T. p. 46.) Patel was shown a photographic lineup that day. (Tr. p. 40.) Maldonado's photograph was included in the lineup. (Tr. Exh. 9.) Patel identified Maldonado as the teenager who stayed near the counter door. (Tr. p. 40, Exh. 9.) Patel told Officer Allen Cantey that he recognized Maldonado as a customer of the store. (Tr. p. 52.) No other customer of the Store was included in the lineup. (Tr. p. 42.)

On August 3, 2012, an article appeared in the Rock Hill Herald that identified Maldonado as a suspect in the robbery and contained Maldonado's photograph. (Tr. pp. 41-42.) Patel viewed the article and Maldonado's accompanying photograph. (Tr. pp. 41-42.) One week later, on August 10, Patel was able to go to the police station to meet with police officers. (Tr. pp. 42-45.) Patel described the teenager who stayed near the counter door, telling police that that the teenager was approximately 5 feet 5 inches tall

and wore a dark-colored hooded sweatshirt and glasses. (Tr. p. 45.) Maldonado is 5 feet 10 inches tall. (Tr. p. 61.) Still photos from video surveillance of the Store show that the teenager alleged to be Maldonado was not wearing glasses. (Tr. p. 47, Exh. 9.)

Maldonado and Sanders were each indicted for attempted armed robbery, attempted murder, and criminal conspiracy. (Indictments pp. 1-6; Tr. pp. 191-94.) Maldonado and Sanders each gave statements to police. (Tr. pp. 191-94, 215.) Maldonado gave statements on July 26 and August 2, 2012. (Tr. p. 215.) In each statement, Maldonado consistently told officers that he had not been at the Store on July 25, but rather had been at Innsbrook Commons apartments with two friends named Marcus and David. (Tr. p. 215.)

Sanders, on the other hand, gave several conflicting statements to police. First, immediately after he was caught, he told police that he knew nothing about the robbery. (Tr. p. 193.) The second time Sanders spoke with police he apparently refused to cooperate, telling police officers that one officer "was a dog" and the other "was an alien," so the interview was concluded. (Tr. p. 194.) The third time he spoke with police agreed to a plea with prosecutors under which he would serve fourteen to seventeen years in prison—rather than the sixty years he was facing—in exchange for a guilty plea and his testimony against Maldonado. (Tr. p. 196.) Afterwards, he spoke with the solicitor and told the solicitor that Sanders went to the Store with the intention of "discussing some problems" he had with Patel rather than to rob him, and that he only shot Patel because he believed he was reaching for a gun. (Tr. p. 199.) Sanders also wrote a letter to Maldonado in which he said, ". . . they told me they was going to drop your [charges]

if I gave myself up so I told them I made you go in the store and got you high and drunk on four locals [sic] and coke so you should be good." (Tr. pp. 199, 205, Def. Exh. 1.)

Maldonado was tried before a jury March 18-20, 2013. (Tr. p. 1.) The jury returned verdicts of guilty on the indictments for attempted armed robbery and criminal conspiracy. (Tr. p. 300.) At trial, Maldonado sought to suppress Patel's identification of him. (Tr. p. 61.) Maldonado's motion to suppress Patel's identification of him was denied. (Tr. p. 61.) Maldonado also sought to elicit testimony that he gave two consistent statements to police in contrast to Sanders' many conflicting statements. (Tr. p. 215.) The State objected to such testimony as inadmissible hearsay, and the objection was sustained. (Tr. p. 215.) Maldonado also objected to the trial court's certification of Officer Moreno as a canine-tracking expert, and his objection was overruled. (Tr. p. 216.) Maldonado seeks to cure these three errors in this appeal.

ARGUMENTS

Maldonado seeks a new trial as a result of an accumulation of errors. First, Patel's identification of Maldonado should have been suppressed because Patel made it after an unduly suggestive identification procedure and it is not otherwise reliable. Next, Maldonado should have been permitted to elicit testimony that his two statements to police were consistent with one another. Finally, the jury should not have heard expert testimony from Officer Jonathan Moreno and his tracking canine Molly because the State did not demonstrate that Molly is reliable before tendering Officer Moreno as an expert.

I. THE TRIAL COURT ERRED BY ALLOWING ADMISSION OF PATEL'S OUT-OF-COURT IDENTIFICATION OF MALDONADO.

Patel's identification of Maldonado is plagued by unreliability. Patel was asked to identify the would-be robber of his Store six days after he suffered grievous injuries

while he was stressed, scared, in pain, and heavily medicated. (Tr. pp. 44-45.) Afterwards, Patel's unreliable identification continued to gain traction as Patel was exposed to Maldonado's photograph in the media. Patel's out-of-court identification should have been suppressed because his pre-identification encounter with police was unduly suggestive and, considering the totality of the circumstances, there are not sufficient indicia of reliability in Patel's identification of Maldonado. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).

A. **Patel's identification of Maldonado while he was injured and on pain medication was impermissibly suggestive**.

An out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was unduly suggestive and conducive to a substantial likelihood of misidentification. *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012). "Reliability is the linchpin in determining the admissibility of identification testimony . . . ." *Manson v. Breathwaite*, 432 U.S. 98, 114 (1977). It is critically important that suggestive or unreliable identification procedures are suppressed; indeed, "[t]here is almost nothing more convincing [to a jury] than a live human being who takes the stand, points a finger at the defendant, and says 'That's the one!'" *Watkins v. Sowders*, 449 U.S. 341, 352 (Brennan, J., dissenting) (1979).

The purpose of barring evidence of unnecessarily suggestive confrontations is to deter police from using unreliable identification procedures. *Neil*, 409 U.S. at 199. To that end, the South Carolina Court of Appeals has explained that identification evidence should be suppressed when doing so would achieve police deterrence. *State v. Tisdale*, 338 S.C. 607, 612, 527 S.E.2d 389 (Ct. App. 2000).

Here, Patel was asked to identify the perpetrator of the robbery at a time when he likely would not have been permitted to testify in court because of his use of pain medication. *See, e.g.*, Am.Jur.2d Witnesses § 181 (2013) ("Persons intoxicated at the time they are offered as witnesses are excluded from testifying.").[1] Patel was heavily medicated and suffering from pain, stress, and fear. (Tr. pp. 45-46.) Patel, in his groggy state, selected the only person in the photographic lineup who looked familiar to him: Maldonado, a customer of the Store. (Tr. p. 45.) No other customers of the Store were included in the lineup. (Tr. p. 45.) Applying the Court of Appeals' reasoning in *Tisdale*, police should be deterred from obtaining identification evidence from witnesses who are under the influence of intoxicating substances, including pain medication, such that they could not even competently testify when the identification is made. Under the circumstances, the photographic lineup presented to Patel was thus unduly suggestive.

Making things worse, Patel's first identification of Maldonado was cemented when Maldonado's image was published in news articles linking Maldonado to the robbery of the Store. (Tr. pp. 41-42.) Although media identifications of an accused do not constitute identification procedures for analysis under *Neil*, the South Carolina Court of Appeals recognized the possibility of a case "where the mind of a witness is so clouded by suggestions from nongovernment sources that a conviction based principally on the testimony of that witness violates due process." *Tisdale*, 338 S.C. at 613, 527 S.E.2d at 392 (citations omitted). Studies have shown that once witnesses identify an

[1] Indeed, the Supreme Court of New Jersey recently appointed a special master to undertake a thorough analysis of the reliability of eyewitness identifications and concluded, among other things, that it was "undisputed" that alcohol intoxication can promote false identifications. *State v. Henderson*, 208 N.J. 208, 27 A.3d 872 (2011) (citing Jennifer E. Dysart et al., *The Intoxicated Witness: Effects of Alcohol on Identification Accuracy from Showups*, 87 J. Applied Psychol. 170, 174 (2002))

innocent person from a mug shot, "a significant number" then "reaffirm their false identification" in a late lineup—even if the actual target is present. *Henderson*, 208 N.J. at 255 (citing Gunter Koehnken et al., *Forensic Applications of Line-Up Research, in Psychological Issues in Eyewitness Identification* 205, 208 (Sigfried L. Sporer et al. eds. 1996). As a result, even if Patel was no longer taking pain medication and groggy in subsequent interviews or identifications, the taint of unreliability lingered, and all identification evidence following Patel's initial identification of Maldonado is unreliable and should be suppressed. *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (a witness's subsequent in-court identification is inadmissible "if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.").

B. **There were not sufficient independent indicia of reliability in Patel's identification of Maldonado**.

An identification under suggestive circumstances can be rescued if there are sufficient independent indicia that the identification was reliable. *Neil*, 409 U.S. at 199. Patel's identification of Maldonado was not, however, independently reliable. To determine whether an out-of-court identification is nonetheless independently reliable despite a suggestive identification process, courts look to: the witness' opportunity to view the suspect at the time of the crime, the witness' degree of attention, the accuracy of any prior description, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation. *Neil*, 409 U.S. 199-200. Each of these factors weighs against the reliability of Patel's identification:

- Witness' opportunity to view the suspect at the time of the crime: Patel had only five to seven seconds to view the teenager who approached the counter door. (Tr.

37-38.) In a dissent cited favorably by the South Carolina Supreme Court, the Court of Appeals found that when a witness only viewed suspects for a few seconds, this factor weighed against reliability. *State v. Moore*, 334 S.C. 411, 421, 513 S.E.2d 626, 631 (1999). Not only was Patel's exposure to Maldonado brief, but Maldonado's face was partially obscured. (Tr. p. 32.) This factor thus weighs against the reliability of Patel's identification of Maldonado.

- Witness' degree of attention: Patel testified that he looked directly at the teenager who he later identified as Maldonado, but still photographs from surveillance video taken at the Store shows that Patel was looking directly at Sanders, not the teenager who approached the counter. (Tr. p. 149.) Patel thus had divided attention for the mere five to seven seconds that the teenagers were in the Store, and this factor weighs against Patel's reliability.
- Accuracy of prior description: Patel's prior descriptions of Maldonado were inaccurate. Patel described Maldonado as being about 5 feet 5 inches tall, when in fact Maldonado is 5 feet 10 inches tall. (Tr. pp. 45, 61.) Patel told police that Maldonado was wearing glasses and no bandana when in fact still photos from the surveillance video show that the teenager near the counter was not wearing glasses and was wearing a red bandana. (Tr. pp. 47.) This factor thus weighs against the reliability of Patel's identification.
- Level of certainty demonstrated at the confrontation: The record is not clear whether Patel indicated that he was especially certain or unsure of his identification of Maldonado in the photographic lineup, but Patel's medicated

state and pain cast doubt on his ability to correctly identify the teenager near the counter door.

- The time between the crime and the confrontation: Six days passed between the crime and the confrontation. (Tr. p. 44.) Although there does not appear to be a bright-line rule as to how much time is too much time between the crime and the confrontation, South Carolina courts have found that gaps of one to two weeks are satisfactory. *See, e.g., State v. Gambrell*, 274 S.C. 587, 266 S.E.2d 78 (1980) (two weeks); *State v. Johnson*, 318 S.C. 372, 375, 458 S.E.2d 49, 50-51 (Ct. App. 1995) (one week). This factor thus does not weigh against the reliability of Patel's identification.

Nearly every *Neil* factor weighs in Maldonado's favor. Patel's identification of Maldonado is thus not independently reliable, and Maldonado's motion to suppress should have been granted. Maldonado thus respectfully requests that this matter be remanded for a new trial.

II. MALDONADO SHOULD HAVE BEEN PERMITTED TO ELICIT TESTIMONY THAT BOTH OF HIS STATEMENTS TO POLICE WERE CONSISTENT WITH ONE ANOTHER.

Maldonado gave two consistent statements to police. (Tr. pp. 212, 218.) Sanders gave several statements to law enforcement, none of which was consistent with any other statement. (Tr. pp. 190-95.) At trial, after Sanders implicated Maldonado, Maldonado sought to ask Officer Allen Cantey to confirm that Maldonado's two statements were consistent with each other, in contrast to Sanders' various inconsistent statements. (Tr. p. 218.) The State objected that such testimony was hearsay that was not subject to any exception, and the trial court sustained the objection. (Tr. p. 218.)

Maldonado's question did not, however, elicit hearsay. Rule 801 of the South Carolina Rules of Evidence defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Here, Maldonado asked:

Q: You talked to Mr. Maldonado a short time after [the robbery] did you not?

A: . . . I talked to [Maldonado] a few days after his—I believe it was the day after his arrest.

Q: August 2nd or 3rd?

A: I believe it was. Yes, sir.

Q: And subsequent of the news he's maintained the same story—

(Tr. p. 212.) Maldonado then made the following proffer:

Q: Have [Maldonado's] statements been consistent?

A: To the best of my knowledge.

(Tr. p. 218.) The State objected on the grounds that the question elicited hearsay and its objection was sustained. (Tr. p. 218.)

Maldonado merely asked Officer Cantey if Maldonado had consistently told Officer Cantey the same information; he did not ask Officer Cantey to disclose the information itself. The question did not, therefore, ask Officer Cantey to testify about Maldonado's statement to prove the truth of its contents. *See, e.g., Bocook Outdoor Media, Inc. v. Summey Outdoor Advertising, Inc.*, 294 S.C. 169, 363 S.E.2d 390 (1987) (determining that testimony that a conversation took place was not hearsay when it was not offered to prove the truth of the statements made during the conversation).

At trial, the State relied on *State v. Terry* to argue that Maldonado could not ask Officer Cantey whether his statements had been consistent with one another. (Tr. p. 216.)

In *Terry*, the Court evaluated the issue of whether a statement against penal interest may be admitted by a non-testifying defendant pursuant to Rule 804(b)(3) of the South Carolina Rules of Evidence. 339 S.C. 352, 355, 529 S.E.2d 274, 276 (2000). The Supreme Court held that Terry, who elected not to testify, could not thereafter admit the self-serving statement he made to the police. *Id.* at 356-57, 529 S.E.2d at 277. The rationale for this holding was that a defendant may not claim "unavailability" as a witness by virtue of exercising his Fifth Amendment privilege against self-incrimination. *Id.* *Terry* is inapplicable; it stands only for the proposition that a criminal defendant is not "unavailable" when he chooses not to testify pursuant to the Fifth Amendment, and an exculpatory statement may not be admitted by a non-testifying defendant pursuant to the hearsay exception for witnesses who are unavailable. And most importantly, *Terry* has no bearing when the evidence sought to be admitted is not hearsay. *Terry* thus does not preclude Maldonado's introduction of non-hearsay evidence, and the trial court erred in refusing to allow Maldonado to ask Officer Cantey if Maldonado's statements were consistent with one another.

III. THE TRIAL COURT ERRED WHEN IT ALLOWED THE STATE TO TENDER OFFICER JONATHAN MORENO AS AN EXPERT ON CANINE TRACKING.

Rule 702 of the South Carolina Rules of Evidence imposes an "affirmative and meaningful gatekeeping duty" on trial courts: it must determine that all expert testimony consists of knowledge that will assist the trier of fact to understand evidence or to determine a fact in issue. *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 687 (2009). Sufficient foundation for the admission of dog tracking evidence through expert testimony is established if (1) the evidence shows the dog handler satisfies the

qualifications of an expert under Rule 702; (2) the evidence shows that the dog is a breed characterized by an acute power of scent; (3) the dog has been trained to follow a trail by scent; (4) by experience the dog is found to be reliable; (5) the dog was placed on the trail where the suspect was known to have been within a reasonable time; and (6) the trail was not otherwise contaminated. *Id.*

The State offered Officer Jonathan Moreno as an expert in canine tracking. Before the state offered Officer Moreno as an expert, Officer Moreno testified on voir dire that he began training as a canine handler in 2011, approximately a year before trial. (Tr. p. 115.) On cross examination, he testified that his tracking canine Molly had "run down" just two suspects as of July 2012. (Tr. p. 116.) The State did not offer any other evidence of the qualifications of Officer Moreno or his dog Molly. The trial court allowed Moreno to testify as an expert over Maldonado's objection. (Tr. p. 116.).

The State's tender—which only established that Officer Moreno had been a canine handler for approximately a year and that Molly had had two successful tracks—was insufficient to establish Officer Moreno as an expert under Rule 702. *See, e.g., White*, 382 S.C. at 271, 676 S.E.2d at 687 (finding that dog tracking evidence was reliable when the State demonstrated that the dog was a German Shepherd who had been tracking for more than 7 years and had more than 750 tracks); *State v. Childs*, 299 S.C. 471, 476-77, 385 S.E.2d 839, 842-43 (1989) (finding no abuse of discretion when a trial court admitted doc tracking testimony from a sheriff who had "run" bloodhounds for eleven years and testimony was offered about the dog's power of discrimination between human and other scents). For example, the State did not establish that Molly is a breed characterized by an acute power of scent or offer any evidence as to Molly's reliability

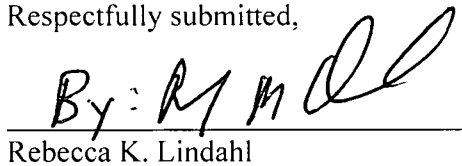
other than her two successful tracks. The trial court thus abused its discretion by allowing Officer Moreno to testify about Molly's track and the evidence she located. *State v. Jones*, 343 S.C. 562, 572, 541 S.E.2d 813, 818 (2001)(finding error in the trial court's decision to admit unreliable expert evidence); *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999).

CONCLUSION

Errors accumulated in Maldonado's trial. First, the State was permitted to put on evidence about Patel's unreliable identification of Maldonado. Next, Maldonado was not permitted to set up a stark contrast to Sanders' wildly inconsistent statements to law enforcement by showing that his statements were consistent. Finally, the trial court accepted Officer Jonathan Moreno as an expert even though the State did not prove the reliability of his tracking dog Molly—who ultimately found the rifle that the jury later determined was used in the armed robbery—as it is required to do. These errors are not harmless. *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 ("Error is only harmless when it could not reasonably have affected the result of the trial."). Patel's identification of Patel, Maldonado's consistent statements, and the evidence found by Molly are crucial pieces of evidence. Because the trial court incorrectly ruled on several crucial pieces of evidence, this matter should be remanded for a few trial. *State v. Davis*, 371 S.C. 170, 182, 638 S.E.2d 57, 64 (2006).

Respectfully submitted,

December 2, 2013

By: 

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DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant Kairon Brenton Maldonado proposes the following be included in the Record on Appeal:

1. The True Billed Indictments returned on November 25, 2012;
2. Transcript of Proceedings pp. 1-9, 28-54, 95-106, 114-129, 141-170, 187-206, 210-225, and 300-07;
3. State's Exhibits 2, 9;
4. Defendant's Exhibit 1; and
5. The Notice of Appeal filed on March 29, 2013.

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

December 2, 2013

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CERTIFICATE OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to Be Included in the Record on Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on December 2, 2013, addressed to the State's attorney of record, Salley Elliot, South Carolina Attorney General's Office, 1000 Assembly Street, Room 519, Columbia, S.C., 29201.

December 2, 2013

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