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Jul 15 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

POLO K. SALAZAR,

APPELLANT

APPELLATE CASE NO. 2022-001066

Appeal from Dorchester County before the Honorable Diane Shafer Goodstein, Judge

Opinion No. 2026-UP-328

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, counsel for appellant petitions for rehearing on this Court's holding that the Bruton rule was not violated on the ground that the "they" pronoun used in the co-defendant's exchanges constituted a neutral pronoun reference that did not implicate appellant because this Court might have overlooked the cases of State v. Holder¹ and State v. Henson² where the holdings were that pronouns used in redacted statements made by co-defendants clearly incriminated other co-defendants, as in this case where the use of the pronoun "they" by the co-defendant here tried jointly with appellant logically meant that the co-defendant referred to appellant. The denial of the Bruton severance motion was error as well.

¹ 382 S.C.278, 676 S.E.690 (2009).

² 407 S.C. 154, 754 S.E.2d 508 (2014).

BRUTON ERROR

Four men entered the home of Marcus Porter around midnight on January 27-28, 2019, and demanded marijuana. Porter was inside his residence at the time, and David Swibaker and Joseph Weaver were present inside the residence also when these events occurred. During the melee, Porter was shot by gunfire, and Weaver was shot and killed by gunfire. The state elected to try appellant together with co-defendant Fortune, and the case proceeded to trial on May 7, 2021, before the Honorable Diane S. Goodstein. Prior to trial, appellant raised the Bruton issue and also moved for a severance of the cases. R. 26, ll. 17-23; R. 32, ln 12—R. 35, l. 25; 25; R. 161, ll. 1-4. Appellant argued that the video clips from the co-defendant's two interrogations that resulted in a confession contained pronouns in both questions and answers which could implicate appellant since he was the only person on trial with the co-defendant in court. R. 160, ll. 3-25. As a result, appellant asserted that Bruton was at issue because he had a right to cross-examine the co-defendant on those matters, yet the co-defendant also had a right not to testify. R. 161, ll. 1-24. Accordingly, appellant argued the severance was necessary. R. 162, ln. 21—R. 164, ln. 18. The trial judge initially held such concerns during trial would be addressed as follows:

Once the—there will be a break between direct and cross-examination, and I will simply require you to tell me what it is that you want to put in additionally.

And with regards to that then if there's a Bruton concern, you need to let me know. . . . I think that's a manageable way to allow for you to get in what you need and for you to help me to be sure that your clients' rights are protected.

R. 167, ll. 12-22.

Appellant's case proceeded to jury trial with the co-defendant on May 11, 2019, wherein appellant acknowledged the motion to sever trials was denied. R. 177; R. 197, ln. 20—R. 198, ln.

2. At trial, Porter identified Green and Major as two of the four assailants from the home invasion; however, he could not identify appellant or the co-defendant as the remaining two intruders. R. 443, ln. 2—R. 444, ln. 19; R. 461, ln. 3—R. 462, ln. 15; R. 528, ll. 2-19; R. 793, ll. 15-17; R. 1108, ll. 1-4. Detective Phillip Moy (Det. Moy) also testified. Based upon documents from the Department of Motor Vehicles (DMV), he stated that Green, Major, the co-defendant, and appellant were all from the Seabrook/Beaufort area of South Carolina.³ R. 783, ln. 17—R. 784, ln. 18.

The state sought admission of video clips from the co-defendant's two interrogation sessions during trial as well, which the trial court allowed into evidence through Detective Jonathan Davis (Det. Davis).⁴ R. 1019, ln. 5—R. 1022, ln. 21. Clip 3a from the codefendant's

³ Jaquavious Washington (Washington) was likewise identified as a resident of Seabrook, South Carolina. R. 784, ll. 17-18.

⁴ Although appellant did not object at the introduction of State's Exhibit #191 as a whole when initially offered, objection was raised when a particular clip was played, and a bench conference was held. Appellant then stated, "for purposes of the record, we have a continuing objection to all of these under Bruton. Just to preserve the record, your Honor." The trial court responded, "That, I have no problem with. But if it's different, let me know." R. 1022, ll. 4-21; R. 1032, ll. 3-12. When time permitted, the matter was further placed on the record as follows:

APPELLANT: Your Honor, just for purposes of the record, again, as far as the clips go, I wanted to put on record my objection to Bruton. Obviously in one of the clips it says, Were you there when your buddy shot somebody? Later on we talk about whenever he said, They are going to kill me if I talk. Obviously he's saying that while my client is not only sitting in the room with him but while they've got him sitting in the booking room with my client and other people. It gives, I think, an unfair prejudicial effect on my client because my client is not allowed to cross-examine Mr. Fortune regarding who he is talking about when he says, They'll kill me, things of that nature. I think that it does bring in the Bruton issues that we discussed pretrial. And I just want to put on record that that is our continuing Bruton objections, based on the pretrial, based on—and I did wait until the clip actually came up that actually said, Your buddy—

first interrogation included an audible question from Det. Davis, asking “Were you there when your buddies shot [...] this guy?” St. Ex. #191, First Interview, Clip 3a at 3:34:36 am. This was again referenced by the co-defendant during his cross-examination of Det. Davis. R. 1082, ll. 8-12. Det. Davis also testified summarizing the co-defendant’s story after the first interrogation as follows:

Q. And what was his story again?

A. That he came back from the Beaufort-Seabrook area by himself—or, excuse me, with his girlfriend to go to see his friend, [Washington]. At that point, he visited [Washington]. He was told that he could not spend the night, so he left, walked, ended up at this Sunoco and miraculously found four other people from Beaufort and got a ride home.

Q. Or three other people?

A. Correct.

R. 1028, ll. 5-13.

COURT: Right.

APPELLANT: Any of those clips that had those pronouns in there, is where our objection on Bruton would come in. And that’s a continuing objection.

COURT: Okay. And you had said that the jury has been told that there is more than one other person, four people, it’s repeatedly been said, and there’s no way that, Your buddy, implicates anyone?

STATE: That’s correct, Your Honor. In fact, I’ve got a feeling we’re going to hear the name [Washington] quite a bit in closings by the defense.

COURT: Okay. Great.

R. 1040, ll. 18—R. 1041, ll. 21.

Approximately three hours after the first interrogation, Det. Davis indicated he saw the co-defendant in the booking area and described an exchange with the co-defendant as follows:

He was served with his paperwork, his booking paperwork, which was his charges. He was in the booking area. I looked at him, he looked at me, and we locked eyes. And I approached him and I said, Are you sure you don't want to talk? He put his head down and he said, If I talk, they're going to kill me. At that point, I invited him back for a second interview.

R. 1033, ll. 1-7.

The state elicited similar testimony after the trial court heard objections on the matter. The co-defendant likewise used the video clips extensively in cross-examination of Det. Davis, and Det. Davis again relayed what the co-defendant said in the booking area. R. 1040, ln. 18—R. 1041, ln. 22; R. 1046, ln. 24—R. 1047, ln. 5; R. 1081, ll. 17-23.

The state also played clips from the co-defendant's second interrogation, which included a statement from Det. Davis consoling the co-defendant that, "They're going to jail. They're not going to hurt you from there." R. 1033, ln. 6—R. 1037, ll. 17; St. Ex. #191, Second Interview, Clip 1b at 7:19:53 am. When asked where he found the gun, the co-defendant responded, "I found it in the car. They had it." St. Ex. #191, Second Interview, Clip 2b at 7:29:12—7:29:16 am. When questioned about what they were looking for, the co-defendant told police, "Stuff they just told me to get." When further pressed about what "they" told him to get, the codefendant stated, "Anything I could find." St. Ex. #191, Second Interview, Clip 3b at 7:36:48—7:36:56 am. Moreover, apparently to address matters regarding Washington's possible involvement as the fourth perpetrator in the offense, the state specifically inquired whether the co-defendant told police of Washington's involvement in the incident:

Q. At any point did [co-defendant] say that [Washington] was with him when he was in the Honda coming from Beaufort?

A. He did not.

Q. At any point did [co-defendant] say that [Washington] was with him when he went to [Porter's] home?

A. He did not.

Q. At any point did [co-defendant] say that [Washington] was with him when he broke into [Porter's] home?

A. He did not.

R. 1050, ll. 17-25.

On appeal, the following issue was raised:

The trial court reversibly erred by violating appellant's Sixth and Fourteenth Amendment rights pursuant to Bruton where appellant was prevented from cross-examining [the co-defendant] regarding his video statements to police admitted at trial, and where appellant was incriminated by these statements through obvious implication when coupled with evidence adduced at trial.

"The Confrontation Clause of the Sixth Amendment, which was extended to the states by the Fourteenth Amendment, guarantees the right of a criminal defendant to confront witnesses against him, and this includes the right to cross-examine witnesses." State v. Holder, 382 S.C. 278, 283, 676 S.E.2d 690, 693 (2009); see U.S. Const. amends. VI and XIV. "In a joint trial, the admission of a non-testifying codefendant's confession that incriminates another defendant violates the other defendant's right of confrontation." State v. Jackson, 410 S.C. 584, 592, 765 S.E.2d 841, 845 (Ct. App. 2014) (citing United States v. Bruton, 391 U.S. 123, 126, 88 S.Ct. 1620, 1622, 20 L.Ed.2d 476 (1968)).

In Bruton, the Court held that a non-testifying co-defendant's confession that inculcates another defendant is inadmissible at their joint trial, even if the jury is instructed that the confession can only be used as evidence against the confessor, because of the substantial risk that

the jury would look to the incriminating extrajudicial statements in determining the other's guilt. Id. 391 U.S. 123, 126-137, 88 S.Ct. at 1622-28, 20 L.Ed.2d 476. Additionally, the South Carolina Court of Appeals concisely explained that "[s]uch a confession may be admitted into evidence, with an appropriate limiting instruction, only if it is redacted so that it does not incriminate the other defendant on its face, either explicitly or by obvious and immediate implication." Jackson, 410 S.C. at 592, 765 S.E.2d at 845 (citing Gray v. Maryland, 523 U.S. 185, 192, 118 S. Ct. 1151, 1155, 140 L.Ed.2d 294, 301 (1998)); see also State v. Henson, 407 S.C. 154, 164, 754 S.E.2d 508, 513 (2014).

In the present case, the trial court violated appellant's Sixth and Fourteenth Amendment rights to confront his accusers as interpreted by Bruton and its progeny. Specifically, the trial court erred in admitting into evidence video statements made by the codefendant without adequately redacting the portions implicating appellant.

As discussed above, the state used clips from the co-defendant's interrogation to inculcate not only the co-defendant, but also appellant, who was the only other defendant tried with the codefendant. For example, Clip 3a from the co-defendant's first interrogation included an audible question from Det. Davis, asking "Were you there when your buddies shot... this guy?" St. Ex. #191, First Interview, Clip 3a at 3:34:36 am. This was again referenced by the co-defendant during his cross examination of Det. Davis. R. 1082, ll. 8-12. Det. Davis also testified summarizing the co-defendant's story after the first interrogation as follows:

Q. And what was his story again?

A. That he came back *from the Beaufort-Seabrook area* by himself—or, excuse me, with his girlfriend to go to see his friend, [Washington]. At that point, he visited [Washington]. He was told that he could not spend the night, so he left, walked, ended up at this Sunoco and

miraculously found four other people from Beaufort and got a ride home.

Q. Or *three* other people?

A. Correct.

R. 1028, ll. 5-13 (emphasis added). Davis further indicated he saw the co-defendant in the booking area and described an exchange with him as follows:

He was served with his paperwork, his booking paperwork, which was his charges. He was in the booking area. I looked at him, he looked at me, and we locked eyes. And I approached him and I said, Are you sure you don't want to talk? He put his head down and he said, *If I talk, they're going to kill me.*

R. 1033, ll. 1-7 (emphasis added). The state elicited similar testimony after the trial court heard objections on the matter.

Moreover, early in the second interrogation video, Det. Davis is heard telling the co-defendant, "*They're* going to jail. *They* can't hurt you from there." R. 1033, ln. 6—R. 1037, ll. 17; St. Ex. #191, Second Interview, Clip 1b at 7:19:53 am (emphasis added). When asked where he found the gun, the co-defendant responded, "I found it in the car. *They* had it." St. Ex. #191, Second Interview, Clip 2b at 7:29:12—7:29:16 am (emphasis added). When questioned about what they were looking for, the codefendant told police, "Stuff *they* just told me to get." When further pressed about what "they" told him to get, the co-defendant stated, "Anything I could find." St. Ex. #191, Second Interview, Clip 3b at 7:36:48—7:36:56 am (emphasis added). The codefendant likewise used the video clips extensively in cross examination of Det. Davis, and Det. Davis again relayed what the codefendant said in the booking area. R. 1040, ln. 18—R. 1041, ln. 22; R. 1046, ln. 24—R. 1047, ln. 5.

These statements during interrogation, coupled with DMV evidence the state put before the jury that Green, Major, the co-defendant, Washington, and appellant were all from the

Seabrook/Beaufort area, and were all the arrested suspects in the present case severely limited the pool of possible individuals to whom the co-defendant referred. Yet Green and Major had already been identified at trial by Porter as two of the four participants in the home invasion, and the codefendant's statements implicated himself as the third. Therefore, the only remaining question was the identity of the fourth assailant as being part of the "they" implied by the codefendant's statements.

However, in an attempt to nullify the theory of Washington as the fourth perpetrator in the offense, the State specifically addressed whether the codefendant told police of Washington's involvement in the incident:

Q. At any point did [the co-defendant] say that [Washington] was with him when he was in the Honda coming from Beaufort?

A. He did not.

Q. At any point did [the co-defendant] say that [Washington] was with him when he went to [Porter's] home?

A. He did not.

Q. At any point did [the co-defendant] say that [Washington] was with him when he broke into [Porter's] home?

A. He did not.

R. 1050, ll. 17-25. In other words, the state also used the co-defendant's statement to eliminate Washington from the pool of possible suspects, thereby leaving Appellant as the only remaining "they" from Seabrook/Beaufort who broke into Porter's home. Coincidentally, appellant was also the only "buddy" sitting with the co-defendant at trial. Simply stated, appellant was incriminated by these statements by obvious implication. Accordingly, the trial court violated appellant's Sixth and Fourteenth Amendment rights pursuant to Bruton and its progeny.

Appellant was also prejudiced by this error. As explained above, the state specifically argued to the jury that “[c]orroboration is the key.” R. 285, ln. 20. It went on to discuss the co-defendant’s statements to police, and how “he just happened to get into the most unfortunate car he could possibly get into, get into a car with some fellows that were from Seabrook and who had just committed murder.” R. 1147, ll. 12-15. The state also played multiple portions of the co-defendant’s video statements as well. R. 1148, ln. 3—R. 1149, ln. 9. In so doing, the State was able to take full advantage of the trial court’s erroneous ruling in arguing its case to the jury. Moreover, no fingerprints, DNA, or witness identification placed Appellant inside incident location at the time of the offense. R. 443, ln. 2—R. 444, ln. 19; R. 461, ln. 3—R. 462, ln. 15; R. 528, ll. 2-19; R. 793, ll. 15-24; R. 893, ln. 15—R. 894, ln. 2; R. 1108, ll. 1-4. Appellant’s defenses of third-party guilt for the incident inside the home, and mere presence for what occurred afterward, were severely weakened by being forced to sit next to the codefendant while the codefendant’s statements and interrogations played before the jury without being subjected to the crucible of appellant’s cross-examination. California v. Green, 399 U.S. 149, 158, 90 S. Ct. 1930, 1935, 26 L.Ed.2d 489 (1970) (describing cross-examination of witnesses as the “greatest legal engine ever invented for the discovery of truth.”) (internal quotations omitted). Accordingly, appellant was prejudiced.

The Court of Appeals held as follows regarding the Bruton issue:

As to issues one and two, we hold the trial court did not abuse its discretion. First, we hold the trial court did not abuse its discretion when it admitted the co-defendant’s statements because they were not protected by *Bruton*. See *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) (“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.”); *id.* (“An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.”). The co-defendant’s statements incorporating the neutral pronoun “they”—

“If I talk, they’re going to kill me,” “I found it in the car. They had it,” and “Stuff they just told me to get.”—do not violate *Bruton* because the statements do not directly implicate Salazar; instead, they reference a group of people rather than a particular individual and not directly implicate Salazar as a member of that group. See *State v. Henson*, 407 S.C. 154, 164, 754 S.E.2d 508, 513 (2014) (observing that in *Gray v. Maryland*,² the Supreme Court of the United States “brought within [*Bruton*’s] prohibition those confessions which facially incriminate through inference”); *Richardson v. Marsh*, 481 U.S. 200, 211 (1987) (“[T]he Confrontation Clause is not violated by the admission of a nontestifying codefendant’s confession with a proper limiting instruction when, . . . the confession is redacted to eliminate not only the defendant’s name, but any reference to his or her existence.”); *Gray*, 523 U.S. at 196 (explaining that a statement protected under *Bruton* would involve inferences “that, despite redaction, *obviously refer directly to someone*, often obviously the defendant” (emphasis added)). Further, to the extent that Salazar argues that the statements made by the officer who interviewed the co-defendant—“Were you there when your buddy shot the guy” and “They’re going to jail. They can’t hurt you from there”—implicate *Bruton*, the trial court did not abuse its discretion in admitting these because Davis testified at trial and was subject to cross-examination. See *Henson*, 407 S.C. at 161-62, 754 S.E.2d at 512 (“In a joint trial, the admission of a non-testifying codefendant’s confession that implicates a defendant violates the defendant’s Confrontation Clause rights.” (citing *Bruton*, 391 U.S. at 126)). Further, these statements would not incriminate Salazar if they were the first evidence introduced at trial. See *id.* At 164, 754 S.E.2d at 513 (explaining that a statement protected under *Bruton* would “involve inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial”); *Gray*, 523 U.S. at 196 (observing that “statements that did not refer directly to the defendant himself and...became incriminating ‘only when linked with evidence introduced later at trial’” were not protected by *Bruton* (quoting *Richardson*, 481 U.S. at 208)); *State v. Holder*, 382 S.C. 278, 283-85, 676 S.E.2d 690, 693-94 (2009) (finding the following oral statement a co-defendant told an investigator during an interrogation—“he felt like she had been inflicting [bruises on the victim],”—was protected under *Bruton* “because in such instances the defendant [wa]s implicated almost as if there was a direct reference, and the connection d[id] not depend on other evidence introduced at trial”).

In State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009), the Court held that where a male and female were on trial jointly for homicide by child abuse, and where said male's statement that "he felt like she had been inflicting [bruises on the child]," was published at trial, clearly, it was apparent that the pronoun "she" referred to the co-defendant, who was female; and the Court held that "the substitution of her name with the pronoun "she" as a redacted statement was insufficient to obscure her (female co-defendant's) identity." Similarly, in the case at bar, it was obvious to the jury that co-defendants Green and Major were not in the adjudication equation at appellant's and co-defendant's joint trial, and that the evidence presented at trial logically and understandably had relevance to the two people on trial, i.e. appellant and the co-defendant; and that logically speaking as a result, the pronoun "they" that surfaced in the co-defendant's exchanges in conversations with police directly implicated appellant as the only other party who was on trial with the codefendant. Thus, the pronoun "they" used in this case referred to appellant and subsequently implicated appellant thereof. Appellant's identity as the alleged member of the group to whom the co-defendant referenced in his conversation clearly pointed to appellant. The Holder Court held that even though the confession therein was redacted through the use of a pronoun (she), nonetheless Bruton was violated because it was apparent that the non-testifying co-defendant's reference to "she" pointed directing to Holder by implication.

See State v. Henson, 407 SC 154, 754 S.E.2d 508 (2014), where the co-defendant's references to Henson were clear where the redactions used in the statements were in the usage forms of pronouns "he" and "him," the Henson Court held that the pronouns were clearly incriminating against Henson because it was obvious that Henson was implicated where Henson was being tried jointly with said co-defendant and the remaining two co-defendants were females who ended up being state's witnesses at trial.

SEVERENCE ERROR

By the same reasoning, appellant argued that the trial judge erred also in denying his motion for a severance based on antagonistic defenses between him (appellant) and the co-defendant due to the Bruton violation in the case. Note the Henson Court's ruling on the severance matter in light of Bruton as follows:

“While severing trials certainly impacts judicial economy and state resonances, these factors should not take precedence over the protection of a defendant's constitutional rights...[and] here, unless co-defendant Reid's confession could be redacted in such a way that Henson was not implicated, the only alternatives were to not admit the confession or to grant Henson's motion to sever.

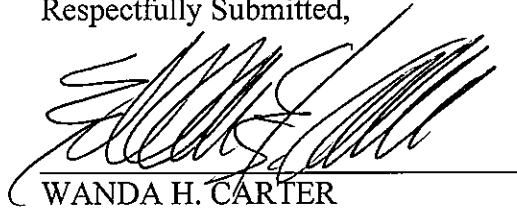
This Court held as follows on the severance issue:

Second, we hold the trial court did not abuse its discretion when it denied Salazar's motion for severance. Salazar bases his argument in support of severance on his Sixth Amendment right to cross-examine the co-defendant; however, as discussed above, the co-defendant's statements did not implicate Salazar. See *State v. Halcomb*, 382 S.C. 432, 439, 676 S.E.2d 149, 152-53 (Ct. App. 2009) (“A motion for severance is addressed to the sound discretion of the trial court.”); *id.* at 439, 676 S.E.2d at 153 (“The trial court's ruling will not be disturbed on appeal absent an abuse of that discretion.”); *id.* At 439-40, 676 S.E.2d at 153 (“An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.”) *id.* at 440, 676 S.E.2d at 153 (“A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgement about a codefendant's guilt.”); *id.* (“An appellate court should not reverse a conviction achieved at a joint trial in the absence of a reasonable probability that the defendant would have obtained a more favorable result at a separate trial.”); *id.* (“A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial.”).

Clearly, the Bruton and severance errors in the instant case were both errors that warrant a closer inspection of appellant's case on appeal.

WHEREFORE, based on the foregoing information presented, counsel for appellant would request that this Court grant the petition for rehearing in the case.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

WANDA H. CARTER
Chief Appellate Defender

This 15th day of July, 2026.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
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Appeal from Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

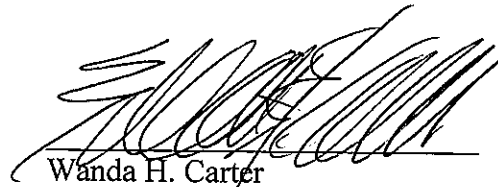
POLO K. SALAZAR,

APPELLANT

APPELLATE CASE NO. 2022-001066

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Polo K. Salazar, #385213, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 15th day of July, 2026.



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR APPELLANT

Leverett, Scott

From: Leverett, Scott
Sent: Wednesday, July 15, 2026 3:45 PM
To: Melody Brown
Cc: 'abennett@scag.gov'; Carter, Wanda
Subject: 2022-001066 - State v. Polo Salazar - Petition for Rehearing
Attachments: 2022-001066 - State v. Polo Salazar - Petition for Rehearing.pdf

Dear Ms. Brown,

Attached please find a copy of the Petition for Rehearing in the above referenced case, that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Wanda Carter
Appellate Defense

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SC Court of Appeals