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Jul 16 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

NEVELLE JOSHUA EBERHART,

APPELLANT

APPELLATE CASE NO. 2023-000234

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

Opinion No. 6150

PETITION FOR REHEARING

On July 1, 2026, this Court issued a decision in connection with the above referenced matter, finding error in the lower court's decision not to suppress the warrantless search of petitioner's location data but finding the admission of such evidence harmless. Pursuant to Rule 221(a), SCACR, petitioner requests that this Court grant rehearing regarding the alleged "harmless" error of admitting improperly obtained location data.

"An error is harmless when it could not have reasonably affected the result of the trial."

Matter of Hyman, 447 S.C. 573, 597, 930 S.E.2d 1, 13 (2026). Here, the victim in the armed robbery not only failed to pick petitioner out of a photographic lineup shortly after the crime occurred, but he also actively selected someone other than petitioner. R. 147, ll. 8-25. While some of victim's personal items were found on petitioner during his arrest and petitioner was connected to the moped shown in the armed robbery as noted by this Court's opinion, those connections were circumstantial evidence of petitioner's guilt. The only evidence that placed petitioner at the scene of the armed robbery, other than the improperly admitted GPS data, was the in court identification of the victim, an identification hopelessly tainted by his earlier failure to select petitioner during a photographic lineup.

"We do not doubt either the importance or the fallibility of eyewitness identifications. Indeed, in recognizing that defendants have a constitutional right to counsel at postindictment police lineups, we observed that 'the annals of criminal law are rife with instances of mistaken identification.'" Perry v. New Hampshire, 565 U.S. 228, 245 (2012).

An eyewitness identification in Court with all eyes solely on the accused, tainted by an earlier failure of that witness to select the accused from a photographic lineup, would not support a finding of harmless error. The other pieces of circumstantial evidence supporting guilt noted by this Court would not remove the impact on the jury of placing petitioner in physical proximity to the crime scene when the armed robbery occurred.

As the state argued in closing, the GPS data was proof of petitioner's guilt.

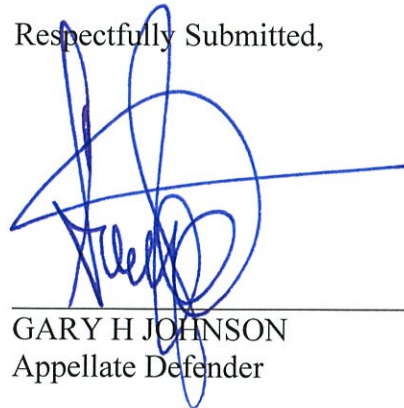
The person there was Nevelle Eberhart. The investigator ran his information. And when he ran his information, he had a GPS device attached to his person, and where did it show that he was? His answer to law enforcement in the interview, when they asked him where he was at the time of the robbery, the day of the robbery, his answer was, "Everywhere." He was not everywhere, he was on Devine Street and King Street where the robbery happened. That's where the GPS puts him. That's not everywhere,

that's specific. Is that a coincidence? It's not a coincidence. These are all not coincidences. This is proof.

R. 276, ll. 2 – 14.

This Court should not hold "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." State v. Liverman, 398 S.C. 130, 144, 727 S.E.2d 422, 429 (2012). Petitioner respectfully requests that this Court reconsider its harmless error analysis and, in light of this Court's proper finding of error in the admission of the GPS data, remand this matter for a new trial.

Respectfully Submitted,



GARY H JOHNSON
Appellate Defender

This 16th day of July, 2026.

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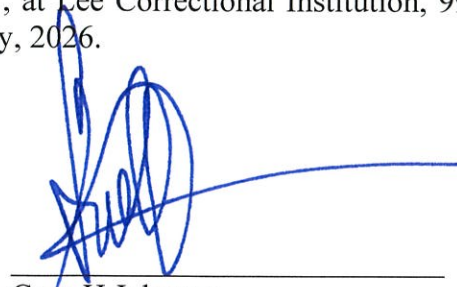
NEVELLE JOSHUA EBERHART,

APPELLANT

APPELLATE CASE NO. 2023-000234

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 Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Nevelle Joshua Eberhart, #363531, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 16th day of July, 2026.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

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Leverett, Scott

SC Court of Appeals

From: Leverett, Scott
Sent: Thursday, July 16, 2026 2:34 PM
To: Josh Edwards
Cc: Grace Sommer; Johnson, Gary
Subject: 2023-000234 - State v. Nevelle J. Eberhart - Petition for Rehearing
Attachments: 2023-000234 - State v. Nevelle J. Eberhart - Petition for Rehearing.pdf

Dear Mr. Edwards,

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 Gary Johnson
Appellate Defense