STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Abbeville County
The Honorable Thomas L. Hughston, Jr., Circuit Court Judge
Appellate Case No. 2013-000869

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

DWAYNE EDDIE STARKS,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly admitted testimony regarding the victim's identification of Appellant where the victim identified Appellant by name before the show-up took place; where the show-up was merely confirmatory; and where the victim's identification was reliable under the totality of the circumstances particularly considering her familiarity with Appellant as a regular and frequent customer in her store during the two years prior to the robbery. In any event, any possible error with respect to the identification issue was harmless beyond a reasonable doubt.

STATEMENT OF THE CASE

Appellant was indicted in Abbeville County in July 2012 for armed robbery and possession of a weapon during commission of a violent crime. On April 1-3, 2013, Appellant proceeded to trial before the Honorable Thomas L. Hughston, Jr., and a jury. The jury found Appellant guilty as indicted, and Judge Hughston sentenced Appellant to twenty-five years for armed robbery and five years, concurrent, for possession of a weapon. A timely notice of appeal was served and filed.

ARGUMENT

The trial judge properly admitted testimony regarding the victim's identification of Appellant where the victim identified Appellant by name before the show-up took place; where the show-up was merely confirmatory; and where the victim's identification was reliable under the totality of the circumstances particularly considering her familiarity with Appellant as a regular and frequent customer in her store during the two years prior to the robbery. In any event, any possible error with respect to the identification issue was harmless beyond a reasonable doubt.

Relevant Facts

On February 27, 2012, the victim was working the 6:00 pm to 1:30 am shift at the Shell Gas Station at 810 West Greenwood Street in Abbeville. (R. p. 116-117). Around 11:30 or 11:40 pm, she was coming up front from the cooler area when she noticed a man standing at the register wearing black pants, white tennis shoes, and a green jacket with a hood on his head. (R. p. 117; p. 126, lines 20-23; p. 128, lines 7-8). The victim greeted the man and asked him to take the hood off. (R. p. 117-18). When the man did not respond, the victim stated he would have to take the hood off or leave the store. (R. p. 118). The man then told the victim to give him the money out of the register. (R. p. 118, lines 6-8). The victim, a bit shocked, hesitated a moment, but then noticed that the man had a small black handgun pointed at her. (R. p. 118). The man also had on a grey ski mask. (R. p. 126, lines 20-21).

The man indicated he was not "playing" and that she had better get the money for him. (R. p. 118). At that point, the victim recognized the man as Appellant, Dwayne Starks, by his voice and by his body and build. (R. p. 120, line 19 – p. 121, line 6). Appellant had been coming into the gas station two or three times per week, every week, for the past two years that the victim had worked there. (R. p. 121, lines 4-13). The victim knew Appellant's last name because she went to school with Appellant's nephew, Dexter Starks, and had heard Appellant's first name when someone called out his name

in the store on a previous occasion. (R. p. 121, lines 19-23).

Appellant then pushed the victim around to the register and followed her there. (R. p. 119). The victim opened the register and gave Appellant the money, which was mostly ten, five, and one dollar bills since it was the victim's practice to place the twenty dollar bills in the safe every time she acquired two hundred dollars' worth. (R. p. 119-20; p. 140, lines 7-10). Appellant then forced the victim to come out from behind the register while he left the store. (R. p. 120). Appellant exited the gas station, heading left in the direction of another gas station called Cherokee Trail. (R. p. 130, lines 12-16).

When she was sure Appellant was gone, the victim grabbed her cell phone and called 911. (R. p. 128, lines 22-25). She told the dispatcher that she had been robbed and that she "knew who it was." (R. p. 129, lines 5-7). She stated that she told 911 that the robber was "Dwayne Starks" and described the jacket he was wearing.[1] (R. p. 129, lines 8-16). The victim was sure that Appellant, Dwayne Starks, was the robber. (R. p. 130, lines 2-8). After the 911 call, Lieutenant Wilkie came to the store to speak with the victim. (R. p. 130). Wilkie then left but returned shortly with Appellant in the police car. (R. p. 131). The victim was not comfortable making an identification up close but agreed to see if she could identify the suspect while he sat in the patrol car. (R. p. 131, lines 6-23). As the victim stood inside the store behind the register, Corporal Thomason pulled the patrol car up to the store's front window and turned on the dome light inside. (R. p. 67, lines 11-20; p. 132; p. 142, lines 1-7). The victim was able to get a good look at the man's face, and she immediately recognized him as Dwayne Starks, the man who robbed her less than an hour and a half earlier. (R. p. 69, lines 1-9; p. 132-33).

[1] The victim testified she had not been sure how to pronounce Appellant's first name. (R. p. 137, line 25 – p. 138, line 2). The 911 dispatcher reported the robber's name as "D'won Starks" rather than "Dwayne Starks." (R. p. 28-29; p. 41, lines 15-16).

Meanwhile, Corporal Thomason, who was working the 7:00 pm to 7:00 am shift on the evening in question, responded to the 911 dispatch within a couple of minutes. (R. p. 154-57). Dispatch informed him that the robber was running on foot toward the Cherokee Trail gas station, so Corporal Thomason scanned that area and ultimately pulled in at Sawmill Acres trailer park, which was located behind the Cherokee Trail gas station. (R. p. 157-58). He observed Appellant, with whom he was familiar, walking between the third and fourth trailers in the trailer park. (R. p. 158-59). Appellant was at that point wearing a red shirt, a pair of khaki slacks, and white Nike shoes. (R. p. 159-60). Notably, inasmuch as it was around midnight and it was "pouring rain," there was no one else in the area at the time. (R. p. 165). When Corporal Thomason asked Appellant to stop and come speak with him, Appellant turned around, put his hands up, and declared that he had not done anything wrong. (R. p. 160). Corporal Thomason performed a weapons frisk on Appellant and then placed him in investigative detention in his patrol car. (R. p. 160-61). Corporal Thomason did not find a weapon on Appellant's person but did find a large wad of cash in one of his pockets. (R. p. 161-62). The cash was later collected by Lieutenant Wilkie and was determined to be $146 dollars. (R. p. 214). Appellant's cash included three twenty dollar bills but the remainder was comprised of ten, five, and one dollar bills. (See State's Exhibit # 32; see also p. 306, lines 14-16).

After securing Appellant in the patrol car, Corporal Thomason proceeded to search the area for potential evidence of the crime. (R. p. 163). About ten feet from where Appellant had been initially located, Corporal Thomason found a green stocking cap, cash, rolled change, and loose change. (R. p. 163-64). In the same vicinity, police also found a gray ski mask in a trash can and a partially inside-out pair of black

"breakaway" pants, a type of pants that can be pulled on over other pants. (R. p. 164; p. 182, lines 2-14; p. 204, lines 6-12). Officers also backtracked the path they believed the suspect would have taken, and in doing so found a green jacket with a hood in a dirt path near the roadway. (R. p. 168; p. 206-208).

Appellant was the major contributor to a DNA mixture found on both the gray ski mask and the black pants, and he could not be excluded as being a contributor of DNA found on the green jacket. (R. p. 276-85).

A surveillance video from the gas station depicting the robbery was entered into evidence at trial and was played for the jury. (See R. p. 292-93; see State's Exhibit # 27). Also, the audio of the victim's 911 call was entered into evidence and played for the jury. (See R. p. 292-93; see State's Exhibit # 24). The jury reviewed both of these pieces of evidence again during deliberations, and, after approximately one hour, returned a verdict of guilty on the charges of armed robbery and possession of a weapon during commission of a violent crime. (See R. p. 333-34). After reviewing Appellant's extensive prior record dating back thirty years, the trial judge sentenced Appellant to twenty-five years for armed robbery and five years, concurrent, for possession of a weapon during commission of a violent crime. (See R. p. 339-46).

Applicable Law

"A criminal defendant may be deprived of due process of law by an identification procedure arranged by police which is unnecessarily suggestive and conducive to irreparable mistaken identification." State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012) (citation omitted). If a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification, an in-court identification is inadmissible. Id at 138, 727 S.E.2d at 425-26.

Under Neil v. Biggers, 409 U.S. 188 (1972), there is a two-prong inquiry used to determine the admissibility of out-of-court identifications. State v. Brown, 356 S.C. 496, 503, 589 S.E.2d 781, 784 (Ct. App. 2003). First, the court must determine if the identification process was unduly suggestive. Id. (citation omitted). If the court finds that a suggestive procedure has in fact been used, the court should then determine whether the identification was nonetheless reliable, and therefore admissible in evidence, under the totality of the circumstances. Id. (citations omitted). The following factors are normally considered to determine the reliability of an identification: "(1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the amount of time between the crime and the confrontation." Id. at 503, 589 S.E.2d at 784 (citation omitted).

A trial judge should only exclude identification evidence if there is "'a very substantial likelihood of irreparable misidentification.'" Perry v. New Hampshire, __ U.S. __, 132 S. Ct. 716, 720 (2012) (emphasis added and citation omitted). Indeed, the exclusion of evidence is a "drastic sanction" and should be "limited to identification testimony which is manifestly suspect." Harker v. Maryland, 800 F.2d 437, 443 (4th Cir. 1983). The decision to admit an eyewitness identification is within the trial judge's discretion and will not be disturbed on appeal absent an abuse of that discretion or the commission of prejudicial legal error. State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000).

Discussion

At issue in this case is a one-man show-up which took place shortly after the crime at the scene of the crime. In State v. Brown, this Court stated that, "[n]otwithstanding the inherent suggestiveness and general disfavoring of one-on-one show-up identifications, they may be proper where they occur shortly after the alleged crime, near the scene of the crime, as the witness' memory is still fresh, where the suspect has not had time to alter his looks or dispose of evidence, and the show-up may expedite the release of innocent suspects and enable the police to determine whether to continue searching." 356 S.C. 496, 503-504, 589 S.E.2d 781, 785 (Ct. App. 2003) (citing State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000)). This Court further stated that "[t]he closer in time and place to the scene of the crime, the less objectionable is a showup," and noted that a show-up may be proper despite the fact that the police refer to a suspect as a "suspect," and even though the suspect is handcuffed or is in the presence of the police. Id.

In State v. Govan, this Court held that a one-man show-up was not unduly suggestive where it occurred within forty-five minutes of the crime near the scene of the crime and where the defendant was still wearing clothing consistent with that described by the victim and was seen dropping evidence. 372 S.C. 552, 558-59, 643 S.E.2d 92, 95-96 (Ct. App. 2007).

Significantly, in Gibbs v. State, the South Carolina Supreme Court agreed with the reasoning in Brown, Govan, and Mansfield, and stated that "there is no bright line rule concerning show-ups, as the ultimate decision is controlled by the particular facts and circumstances." 403 S.C. 484, 494, 744 S.E.2d 170, 175 (2013).

State v. Liverman also involved a one-man show-up. 398 S.C. 130, 727 S.E.2d 422 (2012). In Liverman, the South Carolina Supreme Court stated as follows:

> [T[he fact that an identification witness knows the accused remains a significant factor in determining reliability. The suggestive nature of a show-up is mitigated by the witness's prior knowledge of the accused. **We concur with those jurisdictions that consider the show-up identification procedure, normally considered unduly suggestive, as merely confirmatory**. . . After conducting a pretrial hearing, the trial court was satisfied that Tyrone knew Petitioner before the shooting and Tyrone's identification was sufficiently reliable because he identified Petitioner by his nickname to Investigator Gray prior to the suggestive police orchestrated show-up. Further, a review of Tyrone's trial testimony indicates that his in-court identification of Petitioner as the shooter originated not from any taint associated with the suggestive show-up but from Tyrone's prior association with Petitioner and his observation of Petitioner at the time of the shooting. Thus, despite the lack of a full Neil v. Biggers hearing, Tyrone's in-court identification was nonetheless properly admitted as **it had an independent origin**.

Id. at 141-42, 727 S.E.2d at 427-28 (emphasis added and citations omitted). Similarly, in Gibbs, the Supreme Court held that because the two witnesses had previously identified the defendant from a photographic lineup, a subsequent one-man show-up "may be characterized as merely confirmatory and therefore reliable, despite the suggestive procedure." 403 S.C. at 494, 744 S.E.2d at 175.

In Appellant's case, the one-man show-up occurred within an hour and a half of the crime, at the scene of the crime, at a time when the victim's memory was still fresh. (See R. p. 68-69; p. 84, lines 17-18; p. 88-89). Although Appellant apparently had enough time to remove his hooded jacket, ski mask, and "breakaway" pants, these articles of clothing, along with other items of evidence, were found in the immediate proximity to where Appellant was initially seen, and cash matching the description of the money stolen was found in Appellant's pocket. (R. p. 158-68; p. 214). Moreover, had the victim not identified Appellant, the show-up would have expedited the release of an innocent person and enabled the police to continue their search for the perpetrator. Finally, and

most importantly, since the victim had already identified Appellant by name prior to the show-up, the show-up identification was merely confirmatory. In other words, the show-up was conducted merely to confirm that the Dwayne Starks the police had located in the vicinity was the same Dwayne Starks with whom the victim was familiar and had named as the robber. Based upon the foregoing, the show-up procedure was not unduly suggestive, and the trial judge needed not proceed to evaluate the reliability of the victim's identification. (R. p. 100-101). See State v. Moore, 343 S.C. 282, 287, 540 S.E.2d 445, 447-48 (2000) (the court need not consider the question of reliability if the procedure used was not suggestive).

However, even assuming the show-up in this case was unduly suggestive, the victim's identification was nevertheless reliable under the totality of the circumstances. As mentioned previously, the following five factors are to be considered: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention at that time; (3) the accuracy of the witness's description of the criminal; (4) the level of certainty demonstrated by the witness at the pre-trial confrontation; and (5) the amount of time between the crime and the pre-trial confrontation. Here, first, the victim had a good opportunity to observe Appellant at the time of the crime since she was in close proximity to him for at least a couple of minutes in a well-lit gas station.[2] (See R. p. 117-21; see State's Exhibit # 27). Second, as a victim of a crime, she had a high degree of attention focused on Appellant. (See R. p.

[2] Appellant spends much time in his brief asserting that the victim had an insufficient opportunity to view Appellant as he sat in the patrol car. (See Brief of Appellant, p. 5-7; p. 10-11; p. 13). Notably, the opportunity to view the criminal at the time of the pre-trial confrontation is not one of the five reliability factors. See State v. Brown, 356 S.C. at 503, 589 S.E.2d at 784. Nevertheless, the testimony presented established that the victim had a sufficient opportunity to see Appellant's face at the time of the pre-trial confrontation. (See R. p. 89, lines 1-23; p. 121; p. 132-33; p. 140-42; p. 171). Inasmuch as the victim was already familiar with Appellant, his face was all that she needed to see to confirm that the man in the car was the same Dwayne Starks whom she had already named as the robber.

133, lines 16-19). See e.g., State v. Blassingame, 338 S.C. 240, 252, 525 S.E.2d 535, 541-42 (Ct. App. 1999) (a victim in fear for his life has a heightened degree of attention). Third, she gave an accurate description of Appellant - including his name - to the 911 dispatcher,[3] which became clear when police discovered the items of clothing Appellant attempted to discard in the trailer park. (See R. p. 41, lines 11-17; p. 126-29; p. 157, line 18 – p. 158, line 2; p. 167, line 12-18; p. 158-68; p. 276-85). Fourth, the victim expressed a high degree of certainty at the time of the pre-trial confrontation. Almost immediately after seeing Appellant's face, the victim told Lieutenant Wilkie that the man she saw was Dwayne Starks, the man who robbed her. (R. p. 67-70; see also p. 89-90; p. 220-22). At trial, the victim testified that she was "positive" that the man she saw in the backseat of the patrol car was Dwayne Starks, the man who robbed her. (R. p. 132, line 15 – p. 133, line 2). Sergeant McAllister testified that as soon as Corporal Thomason turned on the interior light in the police car, the victim stated that the man in the back was the person who robbed her and she was "extremely" confident in her identification. (R. p. 188, line 15 – p. 189, line 13). Finally, the amount of time between the crime and the pre-trial confrontation was very brief, less than an hour and a half. (See R. p. 68-69; p. 84, lines 17-18; p. 88-89). See State v. Moore, 343 S.C. 282, 289, 540 S.E.2d 445, 449 (2000) (finding that a time of between one and a half and two hours from the time of the crime to the time of the confrontation would establish reliability if other reliability factors were present); see also State v. Washington, 323 S.C. 106, 112, 473 S.E.2d 479, 482 (Ct.

[3] Although the 911 dispatcher reported the robber's name as "D'won Starks" rather than "Dwayne Starks," the victim explained that she had not been sure how to pronounce Appellant's first name, since she had only heard it called out once in the store by someone speaking to Appellant. (R. p. 28-29; p. 41, lines 15-16; p. 88, lines 17-19; p. 121, lines 19-23; p. 137, line 25 – p. 138, line 2).

App. 1996) (describing a lineup that occurred approximately two days after the crime as occurring within a "short period of time"); State v. Patterson, 337 S.C. 215, 230-31, 522 S.E.2d 845, 853 (Ct. App. 1999) (noting that the identification took place "only two weeks" after the crime).

Again, most significantly, the victim identified Appellant based upon her regular and continuous observations and interactions with him in the two years prior to the robbery. (See R. p. 84-95; p. 120-40). See State v. Frazier, 394 S.C. 213, 222, 715 S.E.2d 650, 654 (Ct. App. 2011) (upholding an identification as reliable under the totality of the circumstances, "[p]lacing particular weight on [the witness's] acquaintance with [the defendant]); State v. Roach, 364 S.C. 422, 429-30, 613 S.E.2d 791, 794-95 (Ct. App. 2005) (upholding an identification as reliable where the witness had many previous encounters with the defendant and was familiar with him), *vacated in part on other grounds by* State v. Roach, 377 S.C. 2, 659 S.E.2d 107 (2008); cf. State v. Moore, 343 S.C. at 289, 540 S.E.2d at 449 (identification was not reliable where the witness, who was not a victim but instead a mere passerby, failed to recognize the defendant as a man she knew from the community at the time of the crime but later claimed to recognize the defendant at a show-up occurring at the police station). Indeed, the victim's memory of Appellant's voice, build, and mannerisms was especially fresh considering that he had visited the store as a customer the same evening prior to the robbery. (See R. p. 138, lines 16-24). The victim's identification of Appellant by name, even before the show-up took place, was clearly based upon her previous familiarity with Appellant and was not tainted by any suggestibility present in the show-up procedure. Since the victim had an independent basis for identifying Appellant, the show-up was merely confirmatory and the identification was reliable.

Harmless Error

Significantly, even assuming the pre-trial and in-court identifications should have been excluded, the jury would have still been privy to the testimony indicating that the victim was familiar with Appellant and that she identified Appellant by name as the robber at the time the crime occurred. (See R. p. 120-30). The jury would have also heard the victim provide Appellant's name as the perpetrator to the 911 dispatcher. (See State's Exhibit # 24). Consequently, evidence regarding the show-up identification was insignificant in the context of the entire case. The real issue for the jury to decide was whether the victim's ***pre***-show-up identification was credible and reliable in light of the other evidence against Appellant, including his proximity to the scene mere minutes after the crime, the cash found in his pocket, and the discarded clothing containing his DNA. (See R. p. 157-68; p. 276-85). Therefore, any error with respect to the pre-trial identification issue was harmless beyond a reasonable doubt. See, e.g., State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990) (an error is harmless if it could not reasonably have affected the outcome of the trial); State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result."); see also State v. Singleton, 395 S.C. 6, 14-15, 716 S.E.2d 332, 336 (Ct. App. 2011) (any error in allowing the victim's identification testimony was harmless in light of the overwhelming evidence of defendant's guilt).

Furthermore, notwithstanding the overwhelming nature of the evidence presented during trial, other procedural safeguards protected Appellant from suffering any undue prejudice from the admission of the pre-trial identification evidence. Specifically, the

trial judge thoroughly instructed the jury regarding the State's burden of proof, the defendant's presumed innocence, the necessity that the State prove the defendant's identity as the perpetrator beyond a reasonable doubt, and the factors to be considered in evaluating identification evidence. (R. p. 319-31; p. 326-37). See Perry v. New Hampshire, 132 S. Ct. at 728-729 ("We also take account of other safeguards built into our adversary system that caution juries against placing undue weight on the eyewitnesses testimony of questionable reliability. These protections include the defendant's Sixth Amendment right to confront the eyewitness. Another is the defendant's right to effective assistance of an attorney, who can expose the flaws in the eyewitness' testimony during cross-examination and focus the jury's attention on the fallibility of such testimony during opening and closing arguments. Eyewitness-specific jury instructions, which many federal and state courts haves adopted, likewise warn the jury to take care in appraising identification evidence. The constitutional requirement that the government prove the defendant's guilt beyond a reasonable doubt also impedes convictions based on dubious identification evidence." (citations and footnote omitted)). Beyond the trial judge's instructions, defense counsel was able to expose alleged deficiencies in the victims' identifications of Appellant through cross-examination of the witnesses and was able to call into question the reliability of the identification in closing argument. (See R. p. 133-40; p. 172-76; p. 190-91; p. 226-36; p. 287-89; p. 309-19). Cf. Liverman, 398 S.C. at 143-144, 727 S.E.2d at 428-429 (finding any error in the admission of identification evidence to be harmless where the reliability of the identification evidence was fully vetted at trial, the weaknesses in the evidence were exposed on cross-examination, and defense counsel reminded the jury of those weaknesses during closing arguments). In light of the procedural safeguards at work in

this case, and considering the insignificance of the pre-trial identification testimony as discussed above, any error with respect to the identification issue was harmless. Accordingly, the trial judge did not commit reversible error by admitting the victim's pre-trial and in-court identifications, and Appellant's convictions should be affirmed. (See R. p. 100-101).

CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant's convictions and sentences.

Respectfully submitted,

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Assistant Attorney General

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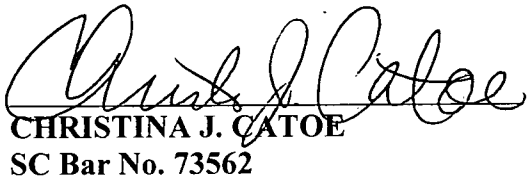
Solicitor, Eighth Judicial Circuit



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ATTORNEYS FOR RESPONDENT

January 17, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County
The Honorable Thomas L. Hughston, Jr., Circuit Court Judge
Appellate Case No. 2013-000869

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

DWAYNE EDDIE STARKS,

APPELLANT.

AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Initial Brief of Respondent** and **Designation of Matter** in the above-referenced case has been served upon **John Edward Robinson**, McDowell Law Offices, 36 Broad Street, Charleston, SC, 29401, and **Robert M. Dudek**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **17th** day of **January, 2014.**

CHRISTINA J. CATOE
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SWORN to before me this 17th day of January, 2014.

Notary Public for South Carolina.
My Commission Expires: 7/18/2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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THE STATE OF SOUTH CAROLINA,

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DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

The Respondent submits that the following should be included in the Record on Appeal:

(1) Trial Transcript, p. 1-346;
(2) True-billed indictments; and
(3) State's Exhibit # 24 (CD- 911 audio); # 25 (aerial view map); # 27 (CD- in-store video); # 32 (cash found on Appellant).

ALL DOCUMENTS DESIGNATED SHOULD BE REDACTED IN ACCORDANCE WITH THE SOUTH CAROLINA SUPREME COURT ORDER ON PERSONAL DATA IDENTIFIERS.

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.

CHRISTINA J. CATOE

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January 17, 2014

ALAN WILSON
ATTORNEY GENERAL

January 17, 2014

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State of South Carolina v. Dwayne Eddie Starks
Appellate Case No. 2013-000869

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent,** along with the **Designation of Matter** and **Affidavit of Service,** in the above-referenced appeal, which I am serving on opposing counsel today.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina J. Catoe
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