ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case Tracking No. 2012-213215

The State, Respondent,

vs.

Darrell Lee Birch, Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court properly refused to suppress the drug evidence as there was no unlawful search and seizure of Appellant.

II. The trial court did not err in denying Appellant's motion for a continuance.

III. The trial court properly denied Appellant's motion for a mistrial and any error was cured by the trial court's curative instruction.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

The Marion County Grand Jury indicted Appellant on charges of possession of cocaine base (crack cocaine) with intent to distribute and possession of ecstasy. Prior to trial, Appellant's counsel moved for a continuance. Appellant believed he would be represented by private counsel and then found out counsel did not intend to represent him. (T.4-6; R. 4-6). The public defender's office had Appellant's file as well as all discovery for Appellant. Further, the office had indicated it would be representing Appellant. (T.6-7; R. 6-7). Appellant's counsel indicated Appellant provided him with the names of some potential witnesses that counsel was not able to contact. (T.6; R. 6).

The trial court denied the motion for a continuance, but in effect granted a continuance. Specifically, he indicated he would start the trial the following day, thereby giving Appellant's counsel the afternoon and evening to get the witnesses. (T.9; R. 9). The trial court also contacted the private counsel Appellant believed he retained, and private counsel verified he was not representing Appellant on the current charges. (T.14; R. 14). Trial was recessed at 12:57 P.M. and resumed at 9:30 the following morning. (T.34; R. 34).

When trial resumed the following morning, counsel did not mention the witnesses, his search for the witnesses, the need for more time to find the witnesses, or the need for a further continuance. Appellant's counsel proceeded directly into a suppression hearing in which he moved to suppress the drugs found on Appellant. (T.34; R.34).

During the hearing, the State presented the testimony of Officer Grice, Agent Cribb and Agent Collins. Officer Grice observed Byron Horne and knew the Marion

County Drug Unit had outstanding narcotics warrants on him. Officer Grice contacted Agent Cribb and Agent Collins and they came to the scene and arrested Horne based on the warrants. (T.35-36; 41; R. 35-36). After he was arrested, Horne gave Agent Cribb consent to search his residence. (T.36; 41-42; R. 36; 41-42). Agent Cribb wanted to search the residence to locate drugs and Appellant. (T.44-45; R. 36; 44-45). Agent Cribb knew Appellant lived at or frequented the residence with Horne. Horne indicated his cousin (Appellant) was home and Agent Cribb had outstanding warrants on Appellant. (T.41-42; R. 41-42).

Officer Grice assisted with the search of Horne's residence. When they arrived, they found four people in the residence even though Horne had indicated only one person would be there. (T.49; R. 50). As a result, the officers conducted a security sweep prior to searching the residence.

Upon entering, Officer Grice made contact with Appellant in the front room. Appellant had a ball cap on his head and his hand in his pocket. Officer Grice told Appellant to remove his hand from his pocket for officer safety. Appellant refused to remove his hand. Officer Grice asked three or more times for Appellant to remove his hand from his pocket. For the safety of himself and other officers, Officer Grice forcibly removed Appellant's hand from his pocket. (T.39-40; R. 39-40). When he removed his hand, an object fell to the floor. Officer Grice also removed Appellant's ball cap, recognized Appellant, and knew the drug unit had narcotics warrants for Appellant. (T.39; R. 39).

Officer Grice placed Appellant in custody on the outstanding warrants. During a search incident to the arrest, an Icebreaker's can was found containing pills consistent

with narcotics. The pills later tested positive as ecstasy. (T.126-130; R. 127-131). The object that fell to the floor when Appellant's hand was removed from his pocket was a pill bottle and later determined to contain crack cocaine. (T.123-125; R. 124-126).

Appellant failed to return to court for the remainder of trial on November 29 or 30, 2011. The jury found Appellant guilty of both charges. His sentence was sealed and subsequently read on October 17, 2012. Judge Seals sentenced Appellant to thirty years for possession of cocaine base with intent to distribute and one year consecutive for possession of ecstasy.

ARGUMENT

I. The trial court properly refused to suppress the drug evidence as there was no unlawful search and seizure of Appellant.

Appellant contends the trial court erred in denying his motion to suppress the drugs found on his person because they were located as a result of an unconstitutional search and seizure. The officers had the clear authority to detain Appellant during the search of the home, had reasonable suspicion to believe he had a weapon or other danger to the officer's safety when he refused to remove his hand from his pocket, and had the right to remove his hand from his pocket in order to ensure their security and to exercise control of the situation during the search.

In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see also, State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004) ("On appeal from a suppression hearing, this court is bound by the circuit court's factual findings if any evidence supports the findings."). A trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence, and an appellate court may reverse only when there is clear error. State v. Groome, 378 S.C. 615, 618, 664 S.E.2d 460, 461 (2008). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. "The right of the people to be secure in their persons, houses,

papers, and effects, against unreasonable searches and seizures, shall not be violated, ..." U.S. Const. amend. IV. The ultimate touchstone of the Fourth Amendment is "reasonableness," and the warrant requirement is subject to certain exceptions. State v. Herring, 387 S.C. 201, 210, 692 S.E.2d 490, 494 (2009). One notable and relevant exception is a search for the protection of officers. Id.; Maryland v. Buie, 494 U.S. 325, 337 (1990). "An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively, justify [the] action.'" Herring, 387 S.C. at 210, 692 S.E.2d at 494 (quoting Scott v. United States, 436 U.S. 128, 138 (1978)).

In Michigan v. Summers, 452 U.S. 692 (1981), the United States Supreme Court held that officers executing a search warrant for contraband may "detain the occupants of the premises while a proper search is conducted." Id., at 705. A similar conclusion should apply to a search of the home pursuant to consent of the owner when others are found to be present during the search. The Supreme Court "posited three legitimate law enforcement interests that provide substantial justification for detaining an occupant: 'preventing flight in the event that incriminating evidence is found'; 'minimizing the risk of harm to the officers'; and facilitating 'the orderly completion of the search,' as detainees' 'self-interest may induce them to open locked doors or locked containers to avoid the use of force.'" Muehler v. Mena, 544 U.S. 93, 98 (2005) (quoting Summers, 452 U.S. at 702–703). An officer's authority to detain incident to a search is categorical; it does not depend on the "quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure." Summers, 452 U.S. at 705, n. 19.

"Inherent in Summers' authorization to detain an occupant of the place to be searched is the authority to use reasonable force to effectuate the detention. Indeed, Summers itself stressed that the risk of harm to officers and occupants is minimized 'if the officers routinely exercise unquestioned command of the situation.'" Muehler, 544 U.S. at 98-99 (quoting Summers, 452 U.S., at 703.). In Muehler, the officers effectuated the detention by placing the occupants in handcuffs during the duration of the search. The United States Supreme Court found this was a proper detention and exercise of authority during the search.

In the instant case, in order to properly exercise unquestioned command of the situation, Officer Grice was entitled to gain compliance from Appellant. Appellant refused after multiple commands to remove his hand from his pocket. In removing Appellant's hand, Officer Grice was merely using reasonable force to effectuate the detention allowed under Summers and Muehler. The removal of Appellant's hand is certainly less intrusive, and less a detention, than placing someone in handcuffs as in Muehler. Accordingly, the trial court properly refused to suppress the drugs found when Officer Grice removed Appellant's hand from his pocket when Appellant refused to comply with several valid commands based on officer safety.

Further, once properly detained, a protective frisk is constitutionally reasonable when a police officer "observes unusual conduct which leads him **reasonably** to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous." Terry v. Ohio, 392 U.S. 1, 30 (1968) (emphasis added). "The purpose of this limited search is not to discover evidence of a crime, but to allow the officer to pursue his investigation without

fear of violence." Minnesota v. Dickerson, 508 U.S. 366, 372 (1993). "In assessing whether a suspect is armed and dangerous, the officer **need not be absolutely certain** the individual is armed." State v. Blassingame, 338 S.C. 240, 248-249, 525 S.E.2d 535, 540 (Ct. App. 1999) (emphasis added). "There exists an indisputable nexus between drugs and guns, and where an officer has reasonable suspicion that drugs are present, there is an appropriate level of suspicion of criminal activity and apprehension of danger to justify a frisk." State v. Taylor, 401 S.C. 104, 119, 736 S.E.2d 663, 671 (2013) (citing State v. Banda, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006)).

In the instant case, Officer Grice entered Horne's home in order to conduct the search. The search was being conducted to look for drugs or narcotic activity. The home was a known drug house. Further, it was suspected Appellant would be present at the house, and the officers knew Appellant had outstanding drug warrants.

Officer Grice came into contact with Appellant in the front room of the home. Appellant had a ball cap pulled down over his face like he was concealing his identity. Appellant also had his hand in his pocket. Officer Grice told him more than three times to remove his hand because Officer Grice believed Appellant could have a weapon or something to harm him or the other officers. Officer Grice had reasonable suspicion based on the totality of the circumstance—the search being of a known drug house, officers were looking for drugs and an individual known to have outstanding drug warrants, Appellant refusing to remove his hand from his pocket where he could have concealed a weapon—to conduct a pat-down of Appellant's person, which would include

the removal of his hand from his pocket to ensure there was nothing dangerous in Appellant's reach.[1]

Appellant cites Ybarra v. Illinois, 444 U.S. 85 (1979) and State v. Broadnax, 654 P.2d 96 (Wash. 1982), as authority indicating the officers did not have the right to search Appellant. Both cases are clearly distinguishable from the facts of this case.

In Ybarra, the officers had a warrant to search a tavern. They conducted a search and pat-down of a patron merely on site. The United States Supreme Court found the pat-down of the patron to be unconstitutional. In describing the facts relied on by the State to allow the search of Ybarra, the Court explained:

> When the police entered the Aurora Tap Tavern on March 1, 1976, the lighting was sufficient for them to observe the customers. Upon seeing Ybarra, they neither recognized him as a person with a criminal history nor had any particular reason to believe that he might be inclined to assault them. Moreover, as Police Agent Johnson later testified, **Ybarra, whose hands were empty, gave no indication of possessing a weapon, made no gestures or other actions indicative of an intent to commit an assault, and acted generally in a manner that was not threatening**. At the suppression hearing, the most Agent Johnson could point to was that Ybarra was wearing a 3/4-length lumber jacket, clothing which the State admits could be expected on almost any tavern patron in Illinois in early March. In short, **the State is unable to articulate any specific fact that would have justified a police officer at the scene in even suspecting that Ybarra was armed and dangerous.**

Ybarra, 444 U.S. at 93 (emphasis added). The Court stated: "The 'narrow scope' of the Terry exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though that person happens to be on

[1] To the extent Appellant argues the pat-down or search of his person exceeded the scope of that allowed under a Terry stop, this issue was never raised to the trial court and is not properly preserved for review on appeal.

premises where an authorized narcotics search is taking place." Id. at 94. In Ybarra, unlike the instant case, the defendant took no action which gave rise to the reasonable suspicion to believe the individual armed. Appellant, on the other hand, refused multiple times when asked by an officer to remove his hand from his pocket which could easily contain a weapon.

In State v. Broadnax, the police were executing a search warrant at a residence. The officers were met at the door by petitioner's father and, once inside the house, the officers encountered petitioner. Detective Roesler instructed petitioner's father and petitioner each to put their hands on their heads. The two men complied. Petitioner was searched by an officer who testified he did not believe petitioner was armed and even after doing a pat-down of his clothing did not believe the bulge he felt was a weapon. Broadnax, 654 P.2d at 99. The Court found the search was not based on reasonable suspicion of weapons, but instead the officer was searching for and found narcotics. Id. at 100-101. The officer in the instant case, however, always maintained the search of Appellant was based on concerns for officer safety and the fact he could have a weapon in his pocket. Appellant refused to remove his hand and so the removal by the officer was clearly reasonable and can be distinguished from the unconstitutional search in Broadnax.

Finally, the evidence would have been inevitably discovered during a search incident to Appellant's arrest based on the outstanding warrants. The inevitable discovery doctrine has been adopted as an exception to the exclusionary rule. Nix v. Williams, 467 U.S. 431, 444 (1984). If the prosecution can establish by a preponderance of the evidence that information or evidence would have inevitably been discovered by lawful

means, then the discovered evidence, even if obtained by unlawful means, is admissible. Id. "Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial." Id. at 446.

In this particular case, the officers had outstanding arrest warrants on Appellant. Officers testified they believed he would be present and they were looking for him at the residence. (T.41; 44-45; 49-50; R. 41; 44-45; 50-51). Appellant was ultimately arrested on the outstanding warrants. As a result of the arrest, he was searched and it turned up the pills for which he was charged. (T.39; R. 39). During the same search, the crack cocaine would have been located had it not previously been found based on Appellant's failure to comply with a reasonable officer demand. State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005) (when an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape); State v. Ferrell, 274 S.C. 401, 409, 266 S.E.2d 869, 873 (1980) (in the case of a lawful custodial arrest, the full search of a person does not require a search warrant and is considered reasonable under the Fourth Amendment).

Accordingly, the trial court did not err in refusing to suppress the drug evidence.

II. The trial court did not err in denying Appellant's motion for a continuance.

Appellant maintains the trial court erred in denying his motion for a continuance. Appellant's counsel maintained he had not had sufficient time to locate and speak to witnesses Appellant wished to call on his behalf because he spoke with Appellant right before trial. The Court properly denied the continuance because Appellant was aware of his representation by the public defender's office. Further, Appellant's counsel was given until the next day to find and speak to witnesses. The following morning when trial began, he never renewed his motion for a continuance, and there is nothing in the record indicating a need for a continuance.

The trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion. State v. McKennedy, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002). Our appellate courts have shown great deference to trial judges in this matter. State v. Colden, 372 S.C. 428, 437, 641 S.E.2d 912, 917 (Ct. App. 2007). Further, reversals of refusal of a continuance are about as rare as the proverbial hens' teeth. McKennedy, 348 S.C. at 280, 559 S.E.2d at 855.

The South Carolina Supreme Court has "repeatedly upheld denials of motions for continuances where there is no showing that any other evidence on behalf of the defendant could have been introduced, or that any other points could have been raised, if more time had been granted to prepare for trial." Id.; see also, State v. Motley, 251 S.C. 568, 571, 164 S.E.2d 569, 570 (1968) ("When a motion for a continuance is based upon the contention that counsel for the defendant has not had time to prepare his case its denial by the trial court has rarely been disturbed on appeal.").

Pursuant to Rule 7(a), SCRCrimP, the presiding judge may grant a motion for continuance "only upon a showing of good and sufficient legal cause." Further, if the continuance is based on the absence of witnesses, Rule 7(b), SCRCrimP, requires:

> No motion for continuance of trial shall be granted on account of the absence of a witness without the oath of the party, his counsel, or agent to the following effect: the testimony of the witness is material to the support of the action or defense of the party moving; the motion is not intended for delay, but is made solely because he cannot go safely to trial without such testimony; and has made use of due diligence to procure the testimony of the witness or of such other circumstances as will satisfy the court that his motion is not intended for delay.

No such attestation was made or offered in this case. Specifically, Appellant's counsel indicated Appellant had several witnesses he wanted called. The witnesses were not named, the nature of their testimony was not provided, and their materiality to the trial was not explained. (T.6; R. 6).

Additionally, "[i]t is paramount that the party asking for the continuance show 'due diligence' was used in trying to procure the absent witness." Colden, 372 S.C. at 439, 641 S.E.2d at 919. In the instant case, the court provided Appellant and his counsel the remainder of a day to locate any desired witnesses. He never informed the court of his progress or success in talking with the witnesses provided by Appellant.

At the start of trial the next day, neither Appellant nor his counsel raised any issue related to the witnesses or the need for a further continuance to secure witnesses. As a result, there is no evidence the continuance was necessary for Appellant or Appellant's counsel and he has failed to demonstrate anything further he could have done had a continuance been granted. "Where there is no showing that any other evidence on behalf of the appellant could have been produced, or that any other points could have been

raised had more time been granted for the purpose of preparing the case for trial, the denial of a motion for continuance is not an abuse of discretion." State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51-52 (1996) (citing State v. Squires, 248 S.C. 239, 149 S.E.2d 601 (1966)).

III. The trial court properly denied Appellant's motion for a mistrial and any error was cured by the trial court's curative instruction.

Appellant contends the trial court erred in denying his motion for a mistrial when Officer Grice testified he knew the Marion County Combined Drug Unit was looking for Appellant. The comment was a fleeting and single reference to Appellant's prior drug activity. The trial court properly offered and gave a curative instruction requiring the jury to ignore and not consider the testimony. As a result, any error in the testimony was cured. Further, Appellant cannot demonstrate the prejudice necessary to warrant the grant of a mistrial.

In this case, Officer Grice made a single comment regarding the fact he knew Appellant and knew the Marion County Combined Drug Unit was looking for him. The comment did not specify any particular reason or explain that it was because of outstanding arrest warrants for narcotics. It was merely a single comment that can be construed as referencing a prior bad act. (T.87; R. 88). The trial court immediately sustained an objection and issued a curative instruction. (T.89; R. 90).

"Generally, a curative instruction is deemed to have cured any alleged error." State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999); State v. Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996); see also, State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998) (instruction to disregard inadmissible evidence is usually viewed as having cured the error in its admission); State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996) (if trial judge sustains timely objection to testimony and gives jury curative instruction to disregard testimony, error is deemed to be cured); State v. White, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) ("A curative instruction to

disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission.").

The curative instruction in the instant case sufficiently cured any possible prejudice from the testimony even if it were inadmissible as improper prior bad act testimony. The trial court instructed:

> I want to instruct you that the testimony this officer gave when he said that when the individual's hat was removed he recognized him as Darrell Birch and that the officer had knowledge that the Marion County Drug Unit was looking for him, I want to instruct you that that is improper and is not evidence and is irrelevant, thus you should not consider that portion of this testimony for any purpose whatsoever during this trial and in your deliberations at the end of this case.

(T.89; R. 90). The jury is expected to follow the instructions given to it, and in this case the jury was to strike the question and answer. See Conner v. City of Forest Acres, 363 S.C. 460, 471, 611 S.E.2d 905, 910 (2005) (finding the case should be analyzed "in light of the presumption the jury followed the trial courts instructions to ignore any evidence" excluded by the court); Foye v. State, 335 S.C. 586, 590 n.1, 518 S.E.2d 265, 267 n.1 (1999) (jury is presumed to follow instructions).

Further, a trial judge's ruling on a motion for a mistrial will not be disturbed absent an abuse of discretion amounting to an error of law. State v. Sparkman, 358 S.C. 491, 495, 596 S.E.2d 375, 377 (2004); State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). This Court favors the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. See State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 851 (Ct. App. 1999).

A mistrial should be declared only when absolutely necessary. In order to receive a mistrial, the defendant must show error and resulting prejudice. Harris, 340 S.C. at 63, 530 S.E.2d at 628; State v. Ward, 374 S.C. 606, 612, 649 S.E.2d 145, 148 (Ct. App. 2007). "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." Patterson, 337 S.C. at 227, 522 S.E.2d at 851 (citing State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989); State v. Kirby, 269 S.C. 25, 236 S.E.2d 33 (1977) (power of court to declare mistrial ought to be used with greatest caution under urgent circumstances, and for very plain and obvious causes)). Granting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007) (citing State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 455, 460 (Ct. App. 2005)).

Any prejudice possibly created from the vague comment by the officer was not of the sort of urgent circumstances warranting the drastic measure of a mistrial. See State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999) (finding no prejudice resulted from the admission of testimony establishing that law enforcement already had Council's fingerprints on record at the time of his arrest for the charged offense); State v. Singleton, 284 S.C. 388, 392, 326 S.E.2d 153, 156 (1985) (finding an arresting officer's vague references to prior crimes in the jury's presence did not warrant the granting of a mistrial), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Robinson, 238 S.C. 140, 150-151, 119 S.E.2d 671, 676 (1961) (finding testimony by a witness that Robinson told him that he was on the way to the "probation office" did not create an inference that Robinson had been convicted of another crime),

overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) ("[A] vague reference to a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes."). As a result, the trial court did not err in denying Appellant's motion for a mistrial.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY:____________________
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 3, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case Tracking No. 2012-213215

The State, Respondent,

vs.

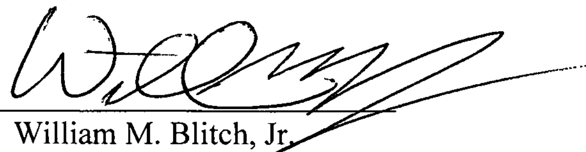
Darrell Lee Birch, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final 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."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 
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PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 3rd day of March, 2014.

SALLY ELLISON
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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SC Court of Appeals