STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

Appellate Case No. 2011-199366 – Court of Appeals

THE STATE,

Respondent,

v.

DANIEL D'ANGELO JACKSON,

Appellant

RESPONDENT'S MOTION TO TRANSFER OR CERTIFY THE CASE TO THE SOUTH CAROLINA SUPREME COURT PURSUANT TO RULE 204 IN LIGHT OF STATE v. HENSON AND STATE V. MCDONALD

The Respondent State of South Carolina, through the Attorney General hereby moves that the pending appeal in State v. Daniel DeAngelo Jackson, Appellate Case No. 2011-199366 be transferred or certified for consideration by the South Carolina Supreme Court pursuant to SCACR Rule 204 (a) and 204 (b). Respondent submits that the issues raised in Jackson concerning the admission of a non-testifying co-defendant's confessions against the co-defendant and the complete redaction of Jackson's name by the use of the neutral pronoun "another person" involve a legal principle of major importance concerning the manner that joint trials are handled in South Carolina and it is therefore proper for certification under SCACR Rule 204.

The South Carolina Supreme Court recently addressed a similar but distinguishable issue in State v. Henson (Davontay), Op. No. 27354, _ S.C. _, _ S.E.2d _, 2014 Westlaw 229891 (January 22, 2014).[1] However, the factual scenarios in Jackson reveal the correctness of the trial judge's conclusions that the statements which did not implicate Jackson "on their face" did not violate the Confrontation Clause. The Jackson case reveals the correctness of the practice of using neutral pronouns, supported by prior decisions of South Carolina appellate courts and

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[1] In Henson, the Court recently relied upon a 3rd Circuit case in United States v. Richards, 241 F.3d 335 (3rd Cir. 2001) to suggest that any use of a neutral pronoun replacement was error. However, subsequent to Richards, the Third Circuit rejected that reading of Richards in Priester v. Vaughn, 382 F.3d 394 (3rd Cir. 2004). The Third Circuit had relied upon 3rd Circuit cases in Richards, 241 F.3d 335 to suggest that any use of a neutral pronoun replacement was error. In Priester, the Third Circuit found replacing "other guy" in the statements for the other defendants made the roles unclear and the statement difficult to follow, but did not violate Bruton. The Third Circuit limited its holding in Richards where the use of the word "friend" combined with the testimony unequivocally limited it to the defendant. In Priester, where there were numerous alleged perpetrators involved in the shooting, "the phrases 'the other guy' or 'another guy' are bereft of any innuendo that ties then unavoidably to Priester." The Court found: "In Richards, the replacement was tantamount to an explicit reference to the co-defendant; the same cannot be said for the redaction in the instant case." Priester, 382 F.3d at 400-401. Similar to Priester, the use of the neutral pronouns here do not contain nicknames or descriptions that directly implicate Jackson.

In the Sixth Circuit case relied upon in Henson, Stanford v. Parker, 266 F.3d 442 (6th Cir. 2001), the Sixth Circuit concluded that the redacted phrase "the other person" implicated the defendant. The Court found that where the statement referred to three participants in the crime - the declarant co-defendant, the "inside man" and "my friend," the reference to "my friend" sharply incriminated Richards the only other person involved in the case and Richard's mother identified in her testimony that Richards and the declarant were friends. However, the Sixth Circuit found the "my friend" reference harmless Bruton error where the defendant had made admissions and forensic evidence supported the conviction. The Sixth Circuit felt the "other person" reference in the statement was unlikely to be seen as other than the Appellant rather than a named third party where the State was pushing for the conviction of the defendant as the shooter. Subequently, the Sixth Circuit in United States v. Vasilakos, 508 F.3d 401 (6th Cir. 2007), limited the holding Stanford and reached an opposite result concluding that *"the government may avoid a Bruton violation by replacing the name with a neutral term such as "another person", "another individual", or "the person"*, relying upon Akinkove, 185 F.3d 192 in its rejection of Stanford.[1] As the various Courts have held, the admission of the statement should be viewed in isolation from the other evidence at the trial. Unlike Gray, the redaction of the word "deleted" which pointed directly to the defendant, these neutral references were without an indication that there was a redaction of Jackson's name.

The possible reliance upon Jefferson v. State, 359 Ark. 454, 198 S.W.3d 527 (2004) is also misplaced. In Jefferson, three were involved in a crime and one defendant pled guilty and two were jointly tried. Similar to Holder, the neutral references from the co-defendant's statement made it clear that a third person was involved and it was obviously directed to the appellant. However, the court distinguished United States v. Edwards, 159 F.3d 1117 (8th Cir. 1998) which concluded that referring to joint activity by neutral pronouns or indefinite words such as someone did not draw attention and in most situations not incriminating. In Edwards, there was a large cast of characters and some of the admission inculpated nondefendants weakening any inference that the use of "they" or "someone" referred to the declarant's co-defendant. Here, in Jackson , there are many references within the multiple statements by Canty to an indefinite number of other persons weakening the inference. The present situation is more akin to Edwards than Jefferson.

various federal circuit courts relied upon by the state trial judges and prosecutors in making decisions to jointly try co-defendants in compliance with the federal constitution.

At the time of this filing, Respondent anticipates that a petition for rehearing will be done in the Henson. In addition, the South Carolina Supreme Court presently has pending on certiorari State v. McDonald, 400 S.C. 272, 734 S.E.2d 167 (Ct. App. 2012), reh'g denied (Nov. 30, 2012) , certiorari pending (Appellate Case No.: 2012-213686) in which the South Carolina Court of Appeals found that the use of the neutral term "another person" was acceptable in a redaction. The McDonald case involves a strikingly similar issue to the issues presented in State v. Daniel DeAngelo Jackson.

Respondent submit that certification would be appropriate to insure compliance with the requirements of the federal constitution and to avoid unnecessary litigation in this particular case. This matter is of further legal significance because joint trials of co-defendants support an efficient court system of having all defendants in the courtroom at the same time, the benefits of not having to introduce the same evidence or call the same witnesses multiple times, the evidentiary rules in conspiracy trials, the desire to preserve the efficiency of the courts, and America's increased focus on prosecuting group crime, particularly addressing the outbreak of criminal gang activity. By upholding a practice within this State and the Fourth Circuit allowing the admission of confessions redacted using neutral pronouns would be consistent with the Bruton-Richardson-Gray line of cases in light of the differences between neutral pronouns and symbols, as well as the tenuous inferential connection suggested by neutral pronoun redaction. It would also avoid unnecessary separate trials when they are not required by the federal constitution due to and overly broad reading of the constitutional requirements and precedent of the United States Supreme Court.

I.

This appeal is presently pending in the South Carolina Court of Appeals, the Respondent made its Initial Brief of Respondent on Friday January 31, 2014, subsequent to the issuance of the decision in State v. Henson.

In Henson, the Court stated:

> Gray did not directly address confessions redacted through the use of neutral pronouns as was done here. However, following Gray, in State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009), **this Court held, consistent with many other courts considering the issue, that even a confession redacted through the use of neutral pronouns violates the Confrontation Clause if it facially incriminates a nonconfessing codefendant.** Id. at 285–86, 676 S.E.2d at 694. This follows directly from Gray where the holding turned on the fact that despite redaction the statements were "directly accusatory" and "obviously refer[ed] directly to someone, often obviously the defendant." Gray, 523 U.S. at 194, 196. **In short, where redacted confessions use neutral pronouns which facially refer to a codefendant, they violate the Confrontation Clause.**

Henson.

In the Appellant's Statement of the Case, the Appellant raised the following issues which are similar to the Henson and McDonald issues pending before this Court:

> I. Did the trial court err in admitting into evidence five statements made by Appellant's non-testifying co-defendant without adequately redacting the portions implicating Appellant in violation of his Sixth and Fourteenth Amendment rights to confront and cross-examine witnesses against him, as interpreted by Bruton v. United States, 391 U.S. 123 (1968) and its progeny?
>
> II. Did the trial court violate Appellant's Sixth and Fourteenth Amendment rights to confront and cross-examine witnesses pursuant to Crawford v. Washington, 541 U.S. 36 (2004), by allowing five statements by Appellant's non-testifying co-defendant into evidence, which implicated Appellant in the murder and armed robbery?
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> III. Did the trial court err in refusing to grant Appellant's motion for severance where Appellant's joint trial compromised his right to confront and cross-examine his accuser by admitting five inculpating statements from his non-testifying co-defendant?

IV. Did the trial court err in denying Appellant's motion for a mistrial when the non-testifying co-defendant's statements were not adequately redacted and a State's witness committed a *Bruton*-type error?

As set forth in the Initial Brief of Respondent, filed in the South Carolina Court of Appeals on January 31, 2014, the actions of the Honorable William Seals and the Third Circuit Solicitor's Office were entirely consistent with the precedent of the South Carolina appellate courts concerning the use of neutral pronouns, particularly "another person" in the redaction. See State v. McDonald, 400 S.C. 272, 734 S.E.2d 167 (Ct. App. 2012), reh'g denied (Nov. 30, 2012), (finding that the use of the neutral term "another person" was acceptable in a redaction); State v. Garrett, 350 S.C. 613, 620-21, 567 S.E.2d 523, 526 (Ct. App. 2002)(finding the admission of a redacted statement made by Garrett's non-testifying co-defendant, Davis, in Davis and Garrett's joint trial did not violate Garrett's Confrontation Rights despite the fact the redacted statement used the phrase "the other guy" and Garrett was the only other male on trial); State v. Holder, 382 S.C. 278, 284, 676 S.E.2d 690, 693 (2009) (statements that connect the defendant "only when linked to other evidence introduced at trial," do not offend the Bruton rule). Rather, as was the case in Gray, a redacted statement violates Bruton and its' progeny only when the inferences flowing from the redactions contained within the statement "obviously refer . . . [to] the defendant" such that "were the confession the very first item introduced at trial" the jury could "immediately" construe the statement against the accused.

The actions of the trial court in Jackson were also consistent with the actions of the Fourth Circuit and other circuits concerning the use of "another person" and other neutral pronouns to replace defendant's names and are consistent with actions by many South Carolina trial judges. The Fourth Circuit has specifically held that a "neutral phrase" such as "another person" or "another individual" does not directly implicate the co-defendant in violation of

Bruton. United States v. Akinkoye, 185 F.3d 192, 198 (4th Cir. 1999). See, e.g., United States v. Lighty, 606 F.3d 321, 376–77 (4th Cir.2010) (redacted statement of codefendant that he was accompanied by "three other people" did not violate Bruton); United States v. Jass, 569 F.3d 47, 61–63 (2nd Cir.2009) (substitution of "another person" in place of defendant's name did not violate Bruton); Ky Minh Pham v. Hickman, 262 F. App'x 35, 37 (9th Cir. 2007)(use of "friends," "people," "men," "they," "guys," and "someone" did not violate Bruton). Many circuits, like the Tenth Circuit in United States v. Verduzco-Martinez, 186 F.3d 1208, 1213–14 (10th Cir. 1999) (use of "another person" did not violate confrontation clause) have permitted admission of a redacted statement using a neutral pronoun, even if other evidence would link the co-defendant to the redacted confession, so long as the redacted statement is not facially incriminatory with respect to the non-testifying co-defendant. See, e.g., United States v. Vega Molina, 407 F.3d 511, 519-21 (1st Cir.2005) (holding that non-testifying co-defendant's redacted confession, describing crimes in detail, acknowledging his participation in them, but using terms such as "other individuals" or "another person" when mentioning his co-defendants, was not so powerfully incriminating to bring Bruton proscription to bear); United States v. Logan, 210 F.3d 820, 822 (8th Cir.2000) (determining there was no Sixth Amendment violation where officer testified that co-defendant said that he and "another individual" had planned and committed robbery); United States v. Akinkoye, 185 F.3d 192, 198 (4th Cir.1999) (affirming denial of motion to sever because retyped versions of confessions replaced defendants' respective names with phrases "another person" or "another individual"); United States v. Vejar-Urias, 165 F.3d 337, 339 (5th Cir.1999) ("[T]his court has found on several occasions that admitting redacted confessions in which a pronoun was substituted for the defendant's name did not violate Bruton."); United States v. Hoac, 990 F.2d 1099, 1106-07 (9th Cir. 1993)(holding there was no

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Bruton error in admitting redacted confession in which "individuals" substituted for defendant's name where jury was aware that several people were involved in conspiracy, including one who was not tried jointly); United States v. Williams, 936 F.2d 698, 699 (2nd Cir. 1991)(determining that co-defendant's confession may be admitted with limiting instruction where redaction replaces reference to defendant with neutral pronoun); United States v. Briscoe, 896 F.2d 1476, 1502 (7th Cir. 1990)(holding that co-defendant's statement that "we" concealed packages did not violate defendant's confrontation rights because "we" did not directly implicate defendant in knowing possession of heroin). See also, State v. Smith, 162 Wash. App. 833, 851, 262 P.3d 72, 81 (2011) (approving use of neutral pronoun "other' and "another" in redaction did not violate Bruton); Com. v. McGlone, 716 A.2d 1280 (Pa. Super. Ct. 1998) (The redaction "used non-obvious substitutions that nonetheless acknowledged the defendant's existence such as 'other person' or 'another man,' was not Bruton error").[2]

Following Gray, the Fourth Circuit Court of Appeals applied this reasoning to general references to "another person" or "another individual" in Akinkove v. United States, 185 F.3d 192, 198 (4th Cir. 1999). Specifically, the Fourth Circuit said that redacted statements taken from Akinkove, a male, and Afolabi, a female, each of which utilized the redaction mentioned above, and were offered only against themselves in their joint trial, did not violate either of their

[2] Many courts, however, have also recognized that there are circumstances where no redaction or neutral pronoun substitution will suffice to eliminate a Sixth Amendment violation. See Stanford v. Parker, 266 F.3d 442, 456-57 (6th Cir. 2001)(concluding that Confrontation Clause was violated because "other person" in confession would not prevent jury from inferring confession referred to defendant); United States v. Hoover, 246 F.3d 1054, 1059 (7th Cir. 2001)(holding that "incarcerated leader" clearly referred to defendant in violation of Bruton because it was no more than obvious pseudonym and that to "adopt a four-corners rule would be to undo Bruton in practical effect"); Richards, 241 F.3d, 341(determining that Confrontation Clause was violated by admission of co-defendant's confession that referred to "friend" and "inside man"); United States v. Gonzalez, 183 F.3d 1315, 1321-22 (11th Cir.1999) (concluding that there was a Confrontation Clause violation because prosecutor's presentation of redacted confession implicated precise number (four) of confessor's co-defendants), overruled on other grounds, United States v. Diaz, 248 F.3d 1065 (11th Cir.2001); United States v. Payne, 923 F.2d 595, 597 (8th Cir. 1991)(holding that confession indicating plan to help "someone" escape from prison violated Confrontation Clause because everyone at trial knew that "someone" meant defendant).

rights under the Confrontation Clause, despite the fact their statements said that another person aided them in committing the charged offenses. Id. In so holding, the Fourth Circuit said, "[t]he Supreme Court has strongly implied that such statements do not offend the Sixth Amendment." Id. Thus, the proposition from Gray, that redactions which are not readily apparent to a juror and do not ask them to speculate whose identity is being concealed, but are instead, accepted at face value, do not violate one's Confrontation Right's under Bruton.

In U.S. v. Lighty, 616 F.3d 321, 376 -377 (4th Cir. 2010), the Court found no constitutional violation in Flood's case. CW's testimony concerning the statements made by Lighty were found to be like those in Akinkoye and unlike the offending statements in Gray. In Gray, the defendants' names were redacted in response to the direct question of who beat the victim. It was clear to the jury upon hearing the non-testifying codefendant's response that the statement had been altered by the deletion of two names. Gray, 523 U.S. at 196, 118 S.Ct. 1151. There, as in Akinkoye, there was no way to facially identify the three other people without more information. Also, unlike in Gray, the 4th Circuit determined that it would have been unclear to the jury that the statements had been altered at all. Indeed, only when Lighty's out-of-court statement to CW is linked with in-court testimony, which Flood had an opportunity to challenge through cross-examination, might one infer that the out-of-court statement refers to Flood.

The Fourth Circuit has recently relied upon Akinkoye in United States v. Cone, 714 F.3d 197 (4th Cir. 2013). In Cone, the Court held that the substitution of the name "another individual" sufficient to protect the defendant's rights. Id. 714 F.3d at 218. As the Court therein stated: "**only reference to other evidence could the jury arrived at the conclusion that [the defendant] was the subject of Cone's out of court statement. In such circumstances , we have concluded that the Confrontation Clause is not offended.**"

In Jackson's case, the trial judge admitted five (5) statements of a non-testifying co-defendant after specific reference to Jackson's name was replaced by the phrase "another person." Further, in some of the original unredacted statements, references were made to other or another individuals and had additionally referred to "other persons" other than Jackson. Unlike State v. Holder, the roles of the defendant did not spring from the statements without reference to other evidence and that was tenuous at best concerning some of the statements.[3]

II.

The Appellant contends that he is entitled to a new trial under Bruton v. United States, 391 U.S. 123 (1968), and its progeny because co-defendant Reginald Canty's statements were inadequately redacted. Within his argument, he claims that the state failed to redact "gender and race" and failed to redact information of familiarity by Canty with the other person." Initial Brief of Appellant, p. 13. He further contends – apparently for the first time - that the Solicitor failed to redact the terms "James or j-boy" or "j-boy" from an earlier statement contending that this was the Appellant's nickname, *although that argument was never named below and there was no showing in the trial record that that this was the Appellant's nickname or even a reference to the Appellant.* See Tr. p, 159, l. 9, p. 904, l. 9-10, p, 944, l. 13. (references to "James or J-boy"). He contends that the admission of evidence that connected the Appellant with the some of the statement of Canty concerning the earlier purchase of a Little Debbie cake removed the effect of the redaction and therefore violating Bruton.

[3] It should be noted that the defense approach to the numerous statements presented at trial were to suggest that Canty's statements were self-serving, inconsistent and therefore not credible.

The State submits neither Bruton nor its progeny require gender-neutral redaction nor forbid the use of neutral pronouns.[4] See e.g. Gray v. Maryland, 523 U.S. 185, 196 (1998) (suggesting the substitution of the phrase "some other guys" for "deletion, deletion" did not violate Gray's Confrontation Rights under Bruton).

First, was no specific reference to Jackson "on the face" of any of the statements.[5] Second, the fact that a non-testifying co-defendant's statement limits the amount of potential participants involved does not create a *per se* Bruton violation. This is evident from the salient facts in this case. In Jackson's case, there was no evident limitation within the redacted statements, which varied from one participant to three additional actors to an ambiguous unidentified number of other persons.[6] In fact, South Carolina appellate courts had previously

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[4] The Appellant complains that one of the statements referred to the Appellant's gender when it referred to "3 males with hoodies, another person was one of the males." State Exhibit 5. Unlike Holder, the reference to "male" was not a limiting reference that a juror could infer facially referred only to Jackson. Similarly, any reference to "black male" would not be inferred to be solely identifying Jackson on the face of the statement. Both were ambiguous references in the redactions. In fact, reviewing the unredacted State Exhibits 3 and 5 , this reference to "black man" was to an unnamed individual other than Jackson. Compare Tr.p. 120, l. 11-23 (unredacted Exhibit 3) with Tr.p. 617, l. 14-25. Compare Tr.p. 129, l. 19 – 25 (unredacted Exhibit 5); Tr.p. 631. L. 9-14.

[5] Within his brief, for the first time, the Appellant claims that reference in the second statement that Canty made on January 13, 2008 [State Exhibit 9] to "James or J-boy" was a direct reference to Appellant Jackson. Initial Brief of Appellant, p.13. However, at no time was Appellant Jackson equated with the identity of "James or J-boy" reflected in State Exhibit 9. At no time did Jackson's counsel specifically object to the particular inclusion of "J-boy" in the redacted version of Exhibit 9. At no time did the State ever assert that "James or J-boy" referred to in Exhibit 9 was Appellant or the person with "a black hoodie with a dragon the back." Contrary to the assertion, this was not a direct facial reference to the Appellant.

[6] The number of other unidentified participants was unclear and inconsistent from the various statements. Concerning the crime scene, the number of involved participants were either one person [(State Exhibit 9, Tr. p. 904, ll. 9-10)("looked like it could be James or J-boy")], [State Exhibit 8, Tr. p. 902, ll. 1-8 ("I see two people fighting and I hear someone said no, stop, then I hear gunfire ... and the person that was holding the gun had a hoodie")], two persons [(State Exhibit 9, Tr. p. 904, ll. 17-18)("I hear more than one footsteps running)], [State Exhibit 3, Tr. p. 14-21, ("I saw a white man wrestling with a tall black man over a gun, the black man told him to stop, and then I heard a gunshot. The other person was standing next to the van looking at the guys wrestle. The other guy had a handgun that looked like a revolver. After the gunfire everyone ran ...")], (Tr. p. 631, ll. 9-13)(he "stood in his yard by the gate and saw a black male struggling with the pizza man and another black male holding a revolver ..."), three males with hoodies, (State Exhibit 5, Tr. p. 638, ll. 1-8)("The pizza man was met by three males with hoodies. Another person was one of the males, and I didn't - - and I don't know who the other two were. The pizza man was trying to take the gun rifle away from the black male, and the black male told the pizza man to stop and then the gun fired.") or an unclear amount of perpetrators due to the ambiguity in the Canty's written usage of "another person." See (State Exhibit 7, Tr. p. 643, l. 25 – p. 644, l. 9)("another person went to the back of the trailer, and he wait for

rejected both of these contentions. See State v. McDonald, 400 S.C. 272, 734 S.E.2d 167 (Ct. App. 2012), reh'g denied (Nov. 30, 2012), (finding that the use of the neutral term "another person" was acceptable in a redaction); State v. Garrett, 350 S.C. 613, 620-21, 567 S.E.2d 523, 526 (Ct. App. 2002)(finding the admission of a redacted statement made by Garrett's non-testifying co-defendant, Davis, in Davis and Garrett's joint trial did not violate Garrett's Confrontation Rights despite the fact the redacted statement used the phrase "the other guy" and Garrett was the only other male on trial). Rather, as was the case in Gray, a redacted statement violates Bruton and its' progeny only when the inferences flowing from the redactions contained within the statement "obviously refer . . . [to] the defendant" such that "were the confession the very first item introduced at trial" the jury could "immediately" construe the statement against the accused. E.g. Gray, 523 U.S. at 196("The inferences at issue here involve statements that, despite redaction, obviously refer to someone, often obviously the defendant, and which involve inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial."). Therefore, in a case such as this where there are no obvious redactions in Canty's statements, the redacted statements do not facially incriminate Appellant. Respondent submits that the trial judge did not err in admitting the properly redacted statements of Canty that removed any specific reference to Jackson by the reasonable use of the terms "another person" or "other person."

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the pizza man to come, they started to rob the man. The pizza man was trying to take the gun away from another person, and this person said stop. And after he said stop, he shot the pizza man ... he stayed there for a second. Then he ran. It looked like another person running away with the other person around the car."). The use of neutral pronouns in each of the co-defendant's statements removed the jury's speculation that a redaction had occurred. Rather, it enhanced Jackson's own argument that Canty's statements were inconsistent and lacked credibility. A reasonable juror looking only at each of the "confessions" themselves would not be able to reasonably infer that Jackson was the trigger person or another person identified at the crime scene from any of the statements.

Certification under SCACR Rule 204 is warranted for clarification and consistency in the principles at issue concerning redaction in joint trial and Bruton situations. This case is distinguishable from State v. Henson (Davontey), Op. No. 27354, _ S.C. _, _ S.E.2d _, 2014 Westlaw 229891 (January 22, 2014) since the redaction would not be seen to obviously refer to Jackson. Respondent submits that State Exhibits 3, 5, 7, 8, and 9, as redacted were properly admitted against Canty and not against Jackson. There was no Confrontation Clause problem.

III.

Respondent submits that certification from the Court of Appeals to the South Carolina Supreme Court is appropriate.

Respectfully Submitted,

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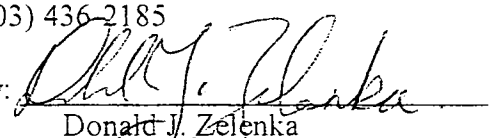
By: 
Donald J. Zelenka

February 4, 2014

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served the RESPONDENT'S MOTION TO TRANSFER OR CERTIFY THE CASE TO THE SOUTH CAROLINA SUPREME COURT PURSUANT TO RULE 204 IN LIGHT OF STATE v. HENSON AND STATE V. MCDONALD in the foregoing action by depositing copies in the United States Mail, postage prepaid, to Carmen V. Ganjehsani Appellant Defender, Division of Appellate Defense, P. O. Box 11589, Columbia, SC 29211 this 4th day of February, 2014.

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ALAN WILSON
ATTORNEY GENERAL

February 4, 2014

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina 29211

Re: The State v. Daniel D'Angelo Jackson
Court of Appeals Appellate Case No. 2011-199366
Respondent's Motion to Transfer or Certify the Case to the South Carolina Supreme Court

Dear Mr. Shearouse:

Please find the Respondent State of South Carolina Motion to Transfer or Certify the appeal pending before the South Carolina Court of Appeals. I am providing the original and six (6) copies for the Court. In addition, I am serving a copy upon Carmen V. Ganjehsani of the South Carolina Office of Appellant Defense and providing a copy to the Clerk of the South Carolina Court of Appeals.

If you have any questions, please contact me.

Sincerely,

Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/mv
Enclosure

cc: Honorable Jenny Kitchings, SC Court of Appeals (with enclosure)
Carmen V. Ganjehsani, Esq. (with enclosure)
Honorable Chip Finney, Solicitor (with enclosure)