THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

THEODORE MANNING,

APPELLANT

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 5228

RECEIVED

MAY 20 2014

SC Court of Appeals

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Theodore Manning petitions the Court for rehearing. Counsel respectfully submits that the Court overlooked the clear legislative intent contained within the Protection of Persons and Property Act in its narrow construction of 16-11-440(A) and (C). In the present case, the trial judge committed reversible error in denying Manning a pretrial evidentiary hearing regarding whether he was entitled to immunity under the Act. The trial judge additionally refused to provide a Castle Doctrine Jury charge under the Act. These errors cannot be harmless when they deprive Manning immunity and an entire defense respectively. Additionally, counsel respectfully submits that the Court misapprehended the trial court's error of

allowing into evidence the non-material and highly prejudicial photo of the victim's charred skeletal remains and by not suppressing the flawed search warrant of Manning's home.

I. Protection of Persons and Property Act

Set forth in Section 16-11-420(A) of the Act, South Carolina's legislature made it clear that it was their intent to "***codify the common law Castle Doctrine*** which recognizes that a person's home is his castle and to ***extend the doctrine*** to include an occupied vehicle and the person's place of business." Section 16-11-420(D) finds that persons have the right to "remain unmolested and safe within their homes, business, and vehicles" and Section (E) provides that "no person or victim of crime should be required to surrender his personal safety to a criminal, not should a person or victim be required to needlessly retreat in the face of intrusion or ***attack*** (emphasis added). The legislature clearly enacted this statue to codify long standing common law giving citizens the right to protect themselves in their homes, but also to extend those same protections to other places. Section 16-11-450 contains the immunity provision of the Act where Section (A) states "A person who uses deadly force as permitted by the provisions of this article or ***another applicable provision of law*** is justified in using deadly force and is immune from criminal prosecution..."(emphasis added). The plain meaning of this language of the Act shows the legislature's intent for the Act to work in conjunction with established self-defense and defense of habitation law, not for the Act to replace or supersede the common law.

The Court's narrow construction of Section 16-11-440(A) to only allow for immunity when using force against someone who is unlawfully and forcefully "entering" or who has "entered" overlooks the clear legislative intent of the Act. Such narrow construction bars the door to immunity for long standing justifiable use of force in defending one's home, which is specifically meant to be protected by the "another applicable provision of law" language referenced above. Under the

Court's reading, if a would be attacker is invited into a citizen's home because he is a particularly clever brand of criminal, and he uses some ploy or trick to mask his true purpose and only begins to attack once inside, it stands to reason that our legislature intended for the Act to provide immunity for a citizen's use of deadly force against that type of attacker. It is clear from the language contained within 16-11-420 of the Act that our legislature did not intend to leave citizens only immune from action against an intruder who breaks down his door but not against one who attacks only once he's already inside. The purpose of the Act was to expand and codify the common law, providing immunity under the Act and other applicable provisions of law; the Court's interpretation diminishes long established self-defense and defense of habitation law. Nikki McPhatter was a social guest of Mr. Manning's at his home until there was a heated argument where she picked up his loaded gun and brandished it at him. He was able to disarm her after a brief struggle and screamed for her to leave his home. She refused and charged him, ultimately being shot in the head during the struggle. The actions Manning took in defending himself against an attacker in his own home have long been deemed justified through the common law, which was explicitly intended to be included within the immunity provision of the Act. Cases such as State v. Bradley, 126 S.C. 528 (1923), State v. Sparks, 179 S.C. 135 (1936), State v. Rye, 375 S.C. 119(2007) and State v. Bryant, 391 S.C. 225 (2010) articulate the law of defense of habitation which makes Manning's actions against McPhatter justified. The Court indicates it is not persuaded by Manning's argument that although McPhatter was a social guest she was "transformed" into a trespasser when she refuses to leave after brandishing a gun. The Court's narrow application of 16-11-440(A) to apply only when using force against one "entering" or who has "entered" unlawfully and forcibly overlooks the cases *supra*, which the clear language of the Act would include as "other applicable provisions of law."

For over ninety years our common law has protected the actions taken by Manning, as the Supreme Court in Bradley stated:

> A man who attempts to force himself into another's dwelling, or who, ***being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.***

Id. at 533 (emphasis added). Respectfully, the Court's misapprehension and narrow construction of 16-11-440(A) is not in harmony with long established common law which was meant to be expanded upon by the Act, not diminished.

The Court relies on State v. Curry, 406 S.C. 364 (2013) in determining, that in addition to the previously discussed narrow construction of 16-11-440(A), Manning is not entitled to immunity per Curry because McPhatter was a "social guest." In Curry both the appellant and the victim were social guests in Curry's mother house; therefore, they both had an equal right to be there in relation to each other. Neither party had a superior right; accordingly, it made sense that Curry would seek immunity under 16-11-440(C) of the Act regarding being "attacked in another place where he has a right to be..." The Court in Curry performed an analysis of Curry's potential immunity claim under 16-11-440(A) of the Act, although it appears Curry only raised immunity under 16-11-440(C) in his appeal. The Court reasoned that because Curry had only an "equal right" to be in the residence or dwelling as the victim that his potential immunity claim would fail under 16-11-440(B) of the Act. Section (B) is an exclusion provision of the Act listing circumstances when the presumption of reasonable fear of imminent peril when using deadly force would not apply. The pertinent part of that list includes someone that "has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder." The plain intention of that provision is to prevent immunity in situations where one spouse kills the other

in the marital home, or where one roommate kills another roommate and both are on the lease...etc. The Court in Curry goes on to say that because immunity under 16-11-440(A) is inapplicable then the immunity analysis "defaults" to 16-11-440(C). The Court went on to analyze Curry's immunity claim under Section (C), holding that Curry's immunity claim failed under that provision after performing an analysis that included application of self-defense common law elements but for the duty to retreat, claiming that Curry's claim for immunity presented a "quintessential jury question...not warranting immunity from prosecution" Curry at 372.

The factual situation in Curry is highly distinguishable from what's at hand in Manning's case, and the Court overlooks this distinction in ruling that immunity under 16-11-440(C) does not apply because McPhatter, just like the victim in Curry, was a social guest. Curry's immunity claim ultimately failed because Curry needed to prove that he was "attacked in another place where he had a right to be..." The Supreme Court ruled that the victim had just as much right to be there as Curry, both guests in another's house, and that coupled with the application of common law self-defense elements (but for the duty to retreat) left a quintessential jury question. In the case at hand, no person has a superior or even equal right to be in Mr. Manning's home. He was the title holder and McPhatter was a social guest up until she pulled his gun on him during the heated argument and refused to leave. At that point, per the common law defense of habitation cases *supra*, which were specifically incorporated into the Act's immunity provision through the language "or another applicable provision of law," McPhatter was not a social guest and Manning should be immune for the force he was compelled to take to end her obtrusion into his home.

The Court's strict and narrow construction of the Act under 16-11-440(C) also overlooks the intent of the General Assembly discussed above when it reasons Section (C) is inapplicable. This reasoning hinges on the interpretation of the word "another" under Section (C), with the Court

construing the section to describe immunity only in places not provided for in Section (A), i.e., "dwelling, residence, or occupied vehicle." Although the statute is silent on what it means by "another place," when read in conjunction with the clear legislative intent it seems most likely that Section (C) is a "catch-all" section meant to provide immunity to a number of places and scenarios as long as the citizen was acting lawfully and in a place where he had a right to be prior to the attack. It names "his place of business" specifically as an example of a place where one has a right to be, "but not limited to" just that one place. It stands to reason that if the language of Section (C) purposefully refuses to make a finite list of where it applies that it would also include one's home, particularly if a citizen was "attacked" there while acting lawfully. Additionally, rules of statutory construction require that any ambiguity in the statute is always construed to favor the Defendant and against the drafter; however, the Court's narrow interpretation of both section (A) and (C) of 16-11-440 disfavors the Defendant and bars the door to countless claims of immunity by citizens of South Carolina.

II. Castle Doctrine Jury Charge

The Court again relies heavily upon the Supreme Court's decision in Curry in affirming the denial of Manning's request for a jury instruction based on 16-11-440(A) of the Act. The Court overlooks the fact that the rationale in Curry for stating that a jury charge under the Act was error is that the trial court considered the immunity request after hearing evidence but denied the claim; therefore, giving a jury charge under the Act would be inappropriate. This is distinguishable from the case at hand because the Court agrees that the trial court committed error by not holding a pretrial evidentiary hearing on the issue of immunity. The required pretrial evidentiary hearing regarding immunity never took place, and unlike in Curry, the trial judge never denied the immunity claim after considering the evidence. Accordingly, since there was evidence

presented at trial consistent with the Act a charge under the Act should have been given. The law to be charged to the jury is determined by the evidence presented at trial. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (S.C. 2008). If there is any evidence to support a jury charge, the trial judge should give a requested charge on the matter. State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (S.C. 1999). The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand constitutes an error of law. State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (S.C. 2007). There was evidence presented at trial that the killing occurred in the second story hallway of the Defendant's home where McPhatter did not live. Manning's testimony at trial was that McPhatter armed herself inside Manning's house and leveled a firearm against him. Manning was in fear for his life but successfully wrestled the firearm away and he demanded that she leave his home. However, Manning's testimony was that McPhatter continued to advance towards him, finally lunging for the firearm, and he shoots causing her death. Tr. 1505, ln 7 - 1508, ln 6. This is evidence that falls within the protections of the Castle Doctrine. Although the trial court did not find it appropriate to submit the Castle Doctrine jury charge, it did however find there was evidence to support a self-defense charge.

"Although self-defense and defense of habitation are analogous, it is insufficient to charge only self-defense when a charge on defense of habitation is warranted." State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (S.C. App. 2010). Just as it is insufficient to only charge self-defense in a defense of habitation case, it is insufficient to only charge self-defense in a case where evidence has been presented to sustain a Castle Doctrine charge.

III. Photographs

Manning also raised the issue of whether or not the trial court abused its discretion by refusing to exclude a photograph of McPhatter's skeletal remains. The Court dismissed this issue pursuant to 220(b) and cited State v. Moses, 390 S.C. 502, 511, 702 S.E.2d 395, 399 (Ct. App. 2010) ("[R]ulings on the admission of evidence are within the trial court's discretion and will not be reversed absent an abuse of discretion."). Moses does not address the issue of admissibility of photographs but rather stands for the general proposition that rulings on admission of evidence are rulings that will not be disturbed absence an abuse of discretion by the trial court. Because the trial court abused its discretion in admitting the gruesome, inflammatory photo at issue here the Court should reconsider its affirmance of this issue.

"Although photographs may be used to corroborate other evidence, it is well established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial." State v. Collins, 398 S.C. 197, 727 S.E.2d 751 (S.C. Ct. App. 2012) (gruesome photos of a deceased child should not have been admitted at trial even though they corroborated other witnesses' testimony where the photos were not necessary to substantiate any material fact at issue in the trial); State v. Torres, 390 S.C 618, 703 S.E.2d 226 (2010) (photos calculated to arouse the sympathy or prejudice of the jury should be excluded if they are not necessary to substantiate material facts or conditions); State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (internal citations omitted) (reversing and remanding where the information contained in the photographs was not really at issue, and other testimony negated any arguable evidentiary value of the photographs); see State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997) (agreeing with the same evidentiary principles, but factually different); State v. Waitus, 224 S.C. 12, 77 S.E.2d 256, 263 (1953); State v. Elders, 386 S.C. 474, 483, 688 S.E.2d 857, 862

(Ct. App. 2010) (agreeing with the same evidentiary principles, but factually different); see also Rule 401, SCRE (defining relevant evidence); Rule 402, SCRE (prohibiting admission of irrelevant evidence).

Additionally, Rule 403 of the South Carolina Rules of Evidence allows for relevant evidence to be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE; see also State v. Kelley, 319 S.C. 173, 177, 460 S.E.2d 370 (1995) ("It is well settled that evidence should be excluded when its probative value is outweighed by its prejudicial effect."). In order to constitute unfair prejudice, "the photographs must create a tendency to suggest a decision on an improper basis, commonly, although not necessarily, an emotional one." Kelley, 319 S.C. at 178, 460 S.E.2d at 370-71 (quoting State v. Alexander, 303 S.C. 377, 401 S.E.2d 146, 149 (1991)). Probative means tending to prove or disprove a fact in issue at trial. Probative value is "the measure of the importance of "that tendency to the outcome of a case." Collins, at 4. "It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. 'The more essential the evidence, the greater its probative value.'" Collins, 398 S.C. at 202, 727 S.E.2d at 754 quoting United States v. Stout, 509 F.3d 796, 804 (6th Cir. 2007). Thus, the trial court must determine the probative value of a particular piece of evidence, not in a vacuum, but in the context of the specific issues present at trial.

In the present case, the inflammatory information contained in the admitted photograph was neither relevant nor necessary to the disputed issues at Manning's trial. McPhatter's skeletal remains were not at the place of the shooting. The ghastly photograph depicts the scorched remains of McPhatter's skull, spine, and pelvis curled across the spare tire well of the trunk of her burned car located in the woods of Fairfield County, yet the shooting occurred inside the hallway of Manning's house miles away in Richland County. Moreover, the picture did not even indicate the cause of

McPhatter's death—the bullet wound to her head was located on the back right side, which is not visible in the photograph. In fact at the time the photograph was entered into evidence, the cause of death had already been proven at trial by Dr. Marcus' testimony using x-rays to show the damage to McPhatter from the bullet. Additionally, Manning never contested how McPhatter was killed; from opening statement to closing argument, Manning's position throughout trial was that he indeed shot McPhatter in self defense. The admission of this photograph was purely gratuitous and designed to evoke an emotional response.

Further, while the issue of malice was contested, the picture of McPhatter's charred remains does not show malice at the time she was killed. The element of malice must be present at the time McPhatter was killed in order to prove murder, not after. As Manning's counsel repeatedly emphasized at trial, the State's case focused primarily on what occurred before or after McPhatter's death rather than the events that occurred inside Manning's home on the afternoon of May 6, 2009. Counsel's concerns were proven correct, as the State's attempt to justify admission of the photograph of McPhatter's burned skill, spine, and pelvis in the trunk of her car was thinly premised on showing malice. However, if anything, the fact that McPhatter's remains were burned in her car at a remote location in Fairfield County indicates Manning's attempt to hide or cover up the crime, not whether he harbored malice at the earlier time McPhatter was shot in Gadsden. Thus, the grotesque imagery of McPhatter's partial remains was irrelevant to even the contested issue of the case, and created a tendency to suggest a decision on an improper, emotional basis. See, e.g., Rules 401 and 402, SCRE; Middleton, 288 S.C. at 24, 339 S.E.2d at 693.

Moreover, the information contained in the photograph was already established by the State. As indicated above, the cause of death was already proven at trial by Dr. Marcus' testimony and McPhatter's x-rays well before the inflammatory picture was admitted. Also, testimony from

multiple officers indicated where and in what conditions McPhatter's partial remains were found. Tr. 722, ll. 7-14; Tr. 967, ll. 10-15; Tr. 1123, ll. 11-15. Therefore, although the photograph corroborates other testimony, its probative evidentiary value was nonexistent as the facts it could prove were both repetitive and uncontested. Accordingly, the only value of the gruesome photograph devolves to the one reason expressly forbidden by law: to arouse the sympathies and prejudices of the jury. See, e.g., Rules 401, 402, and 403, SCRE; Middleton, 288 S.C. at 24, 339 S.E.2d at 693 (reversing conviction where the information contained in prejudicial photographs "was not really at issue," and where testimony from the forensic pathologist negated any arguable evidentiary value of the photographs."); Waitus, 224 S.C. at 27; 77 S.E.2d at 263.

Finally, the photograph of McPhatter's partial remains served to prejudice Manning. The State was permitted to enter a photograph into evidence displaying the scorched and twisted spine, pelvis, and skull of the victim inside the trunk of her burned out car. As in Waitus, the information contained in these photos was not disputed and was already established by testimony. Id. (reversing where four pictures of the victim at the crime scene that showed marks, bruises and abrasions, and the condition of the victim's clothes, were admitted into evidence even though those facts were not disputed and were already established by testimony). Therefore, the only remaining value of the photographs of McPhatter's partial remains was to arouse the sympathies and the prejudices of the jury, thus creating a tendency to suggest a decision on an improper basis. Middleton, 288 S.C. at 24, 339 S.E.2d at 693; Kelley, 319 S.C. at 178, 460 S.E.2d at 370-71. Less inflammatory photographs of autopsy pictures have been described as being at the outer limits of what the law permits a jury to consider in a death penalty case. Torres, 390 S.C. at 624, 703 S.E.2d at 229. In Torres the South Carolina Supreme Court specifically cautions "all solicitors to refrain from pushing the envelope on admissibility in order to gain a victory..." Id. In Torres the Court

ultimately found that the gruesome photographs were admissible to show the circumstances of the crime and the nature of the defendant but it is important to note that Torres was a capital case in which other factors are at issue. That is not the case here. In this case the central issue was whether or not Manning killed Ms. McPhatter in self defense. Admitting into evidence this harrowing photograph served no purpose other than to cloud the solitary issue of the trial with emotion rendering the jury incapable of cool reflection and analysis.

Accordingly, the trial court erred in admitting the photographs in Manning's trial and Manning was prejudiced by the erroneous admission, as "[t]he prejudice created by the photographs clearly outweighed any evidentiary value." Id. (emphasis in original) (citing Waitus, 224 S.C. 12, 77 S.E.2d 256, and State v. Edwards, 194 S.C. 410, 10 S.E.2d 587 (1940)); see also Rule 403, SCRE. Therefore, Manning respectfully seeks rehearing of this issue by the Court of Appeals.

IV. Search Warrant Issue

Appellant appealed the trial court's failure to suppress the search warrant. This Court affirmed this issue pursuant to Rule 220(b) SCACR citing State v. Wright, 706 S.E.2d 324 (2011) for the proposition that an appellate court must affirm a Fourth Amendment Search and Seizure issue where there is any evidence to support the ruling. In this case there was no evidence to support the ruling and this Court should grant the petition for rehearing. The Court went on to cite several additional cases in support of affirming the trial court's ruling in addressing specific issues raised by Appellant.

As an initial matter the Court cited State v. Sullivan, 267 S.C. 610, 614-15, 230 S.E.2d 621, 623-624 (1976) for the proposition that "it is not unusual for an affidavit of a law enforcement officer to contain hearsay information" gathered by another officer, and that the magistrate is called to evaluate the information in the affidavit to determine whether the affiant gained it in a reliable

way. However, the affidavit was based on multiple levels of hearsay which the State could not establish was gained in a reliable way. RCSD Investigator Tommy Croxton did not have personal knowledge of the facts stated by him in the affidavit and did not provide a substantial basis for crediting hearsay at each level. Upon questioning by the Court at trial Croxton admits that he does not know who typed up the probable cause used in the affidavit to obtain the search warrant. Tr. 513, ln 21 – Tr. 514, ln 7. The information provided in the affidavit by Croxton appears to be hearsay statements of RCSD Sergeant D. Robinson. The record is replete with the fact that Detective Fitch of CMPD constructed the probable cause for the search warrant prior to ever entering Richland County, and Sergeant Robinson confirms that he obtained Fitch's probable cause from a flash drive and entered it into a RCSD form. Tr. 521 ll2-10. Robinson admits on cross examination that he essentially cut and pasted Fitch's probable cause into a RCSD form and that his affidavit was virtually identical to what Fitch had previously prepared. When pressed on the subject Robinson claims that he did author the final conclusory phrase "[b]ased on these facts, it is believed that there is probable cause to believe that evidence of murder contained within the residence located at 8047 Bluff Road, Gasden, South Carolina 29052." Tr. 525-526, Tr. 526, ln 11 – Tr. 528, ln 8. The trial judge even goes as far as to describe Robinson as a "transmitter of someone else's written form." Tr, 518, ln 16 – Tr. 519, ln 7. As it is clear from the record that Robinson had no personal knowledge of this case at this point, and only obtained his probable cause from an out of state agency, he could not have provided Croxton with a substantial basis to obtain the search warrant on his behalf.

Here, it is evident that Croxton has no personal knowledge and a level of hearsay exists, as he is signing on behalf of Robinson. Consequently, the affiant is tasked with the responsibility of establishing a substantial basis for crediting the hearsay. At no point in the affidavit, however, does

Croxton explain the circumstances on how the information was provided to him by Robinson. The affiant failed to establish a substantial basis for crediting the hearsay received by Robinson. Moreover, the affidavit, which appears to contain double and even triple hearsay, fails to establish a substantial basis for crediting the hearsay at each level as is required by Dunbar. At no point in the affidavit signed by Croxton, does the affiant indicate who Robinson is and where he stands in the chain of custody of hearsay information that was ultimately relayed before the magistrate judge on May 22, 2009. The affidavit mentions an "Officer Pickler" and generically refers to "Detectives," but the affidavit does not indicate who the detectives were, nor does it even attempt to provide a substantial basis for the multiple levels of hearsay statements by crediting the appropriate declarant at each step of the chain of custody.

The Court also cites State v. Dunbar, 361 S.C. 240, 246, 603 S.E.2d 615, 618 (Ct. App. 2004) for the proposition that the magistrate's task in determining whether to issue a search warrant is to make a practical, common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in the particular place to be searched. The Court further cites Dunbar for the proposition that the appellate court should give great deference to the magistrate's determination of probable cause. The search warrant at issue is plainly insufficient. It sets forth no facts to establish probable cause that (1) McPhatter is dead, (2) that Manning killed McPhatter, or (3) that a crime occurred in Manning's residence or car, which the police searched pursuant to the warrant. Indeed, there is not even a single allegation that a crime occurred in the body of the affidavit. Thus the magistrate had insufficient information upon which to make a determination of probable cause and this Court should reconsider its affirmance of this issue.

An examination of the Search Warrant provides no basis to believe that a crime has been committed or that such items would constitute evidence of a crime or would be found at the residence of Manning, his car, or that the seizing of DNA material could prove evidence of an enumerated crime from. From CMPD's first arrival in Columbia, SC on May 21st, 2009 to May 22nd, 2009 when they searched the house, they learned nothing in their investigation that would have risen to the level of probable case. "Mere suspicion, rumor, or strong reason to suspect [wrongdoing] are not sufficient." United States v. Han, 74 F.3d 537, 541 (4th Cir.1996)

Defense counsel argued extensively during the pretrial suppression motion that RCSD and CMPD only had probable cause to believe this was a missing person case at the time they obtained the murder search warrant. Tr. 498, ln 16 – Tr. 501, ln 11. This argument was supported by the May 22, 2009 search warrant return stating case type as "Missing Person," and more telling was that RCSD Captain Stan Smith's report described how only on May 28th, 2010 had the investigation turned into a homicide investigation. It took six days of additional investigation into the information that was obtained from the search of Manning's residence for the investigation to transform from a Missing Persons case into a homicide investigation. Furthermore, when Manning's uncle arrived on scene during the execution of search warrant he was informed this was a missing person's investigation per police reports. Defense counsel's complaint that this search warrant lacked probable cause is confirmed by the testimony of Investigator Robinson when he admits that at the time he prepared the affidavit for the warrant law enforcement did not have evidence that McPhatter was even deceased. Tr. 528, ll 11-14. Upon inquiry by the trial Court as to how probable cause can exist for a murder search warrant when a crime is not even alleged to have been committed, the prosecution responded that "the fact that there is no evidence leads to a conclusion of murder." Tr. 532, ln 15 – Tr. 533, ln, 13. This assertion by the state is not supported by the caselaw supra and

underscores the fact that at the time of the search probable cause did not exist for a murder search warrant. Accordingly the search warrant and all of its fruits should have been suppressed by the Court.

The affidavit provided on May 22, 2009 ultimately fails to meet the probable cause requirement of the Fourth Amendment to the U.S. Constitution. Accordingly, the trial Court erred by not suppressing this search warrant and all the fruits of the search.

Respectfully submitted,

Luke Shealey, The Shealey Law Firm
E. Fielding Pringle, Chief Public Defender
for Richland County

Date: 5/20/14

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

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APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William Blitch, Esquire, this 20th day of May, 2012.

Luke a Shealey

Luke Shealey, The Shealey Law Firm
E. Fielding Pringle, Chief Public Defender
for Richland County

ATTORNEYS FOR APPELLANT

SWORN TO BEFORE ME this 20th day
of May, 2014.

Brittany Arnold (L.S.)
Notary Public for South Carolina
My Commission Expires: April 4th, 2014