STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge
2011-GS-42-5626

Appellate Case No. 2012-213672

THE STATE,

RESPONDENT,

v.

KEITH LETMON,

APPELLANT.

INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the court erred by allowing the in-court identifications of Appellant where the photographic array impermissibly highlighted Appellant's photograph and the patently suggestive line-ups presented a legally unacceptable likelihood of misidentification under Neil v. Biggers?

ARGUMENT

I. The trial judge did not abuse his discretion in concluding that the photographic line-up were not unduly suggestive and admitting the identification of the Appellant by three witnesses. The witnesses had identified the assailant as a person named "Slow" who they had met and known before, but did not know his real name. The mere fact that the Appellant's photograph had a slight glare compared to others was not enough to undermine the identification procedure nor create a substantial likelihood of irreparable misidentification.

Four witnesses had come into contact with the shooter at the scene hours before the shooting of Cedric Moss. Before the shooting, four witnesses were aware that the person that they were with earlier that evening went by the street name "Slow." Three witnesses to the shooting went to participate in questioning and ultimately the presentation of 6 person sequential photographic line-ups that included a person known to use the street name "Slow" = Keith Letmon. Two of those individuals – Crystal Ross (who had met "Slow" for the first time earlier that evening) and Anthony Copeland (who had known "Slow" for six to seven years) identified Letmon as the person named "Slow" and the person who returned that morning and shot Moss before their eyes. Further, Copeland's cousin Jesse Worthy, who had known "Slow" "his entire life" identified Letmon in court as the person he knew to be known as "Slow" who had come to Copeland's home with him earlier that date and also that he had seen at the shooting. Another witness, Brittney Robinson - who had been unable to identify Letmon in the photographic array line-up after the incident was able to identify Appellant in court as the person she saw earlier that evening making an odd look at the victim and known as "Slow" and the person she saw firing that morning.

The Appellant asserts in his brief that a slight glare on the Appellant's photograph when compared to the other five photographs make the identification tainted. He refers to the photograph as spotlighted. However, he ignores that the photographs were presented in a

sequential one on one line-up where any effect of the glare would be minimized and the line-up was to resolve a person known as "Slow" to aid the officers to know which person named "Slow" was the person these witnesses already knew. The Appellant fails to argue in his brief the prior contact with the person known as Slow that morning, limiting his alleged exposure to the actual shooting. Contrary to the brief, the witnesses did know the suspect and they were identifying them for the police which removes any risk of misidentification. One of the witnesses had known him for around seven years and another for his entire life. Although she knew him as Slow, Crystal Ross had only met him earlier that date, but was reported to be decisive in her identification. As shown below, under the totality of the circumstances, there was no substantial likelihood of irreparable misidentification. The trial court used its proper discretion in admitting the identifications of Copeland, Ross and Robinson.

STANDARD OF REVIEW

The decision to admit eyewitness identifications is within the trial judge's discretion and will not be disturbed on appeal absent an abuse of that discretion or the commission of prejudicial legal error. State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000). An out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification. State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012). A witness's subsequent in-court identification is inadmissible "if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (emphasis added); see also Neil v. Biggers, 409 U.S. 188, 198, 93 S.Ct. 375, 381, 34 L.Ed.2d 401, 410 (1972) ("While the phrase ['a very substantial likelihood of irreparable misidentification'] was

coined as a standard for determining whether an in-court identification would be admissible ..., with the deletion of 'irreparable' it serves equally well as a standard for the admissibility of testimony concerning the out-of-court identification itself.").

Trial courts employ a two-pronged inquiry to determine whether due process requires suppression of an out-of-court eyewitness identification. Liverman, 398 S.C. at 138, 727 S.E.2d at 426. First, the court must determine whether the identification resulted from "unnecessarily suggestive" police procedures. Biggers, 409 U.S. at 198–99, 93 S.Ct. at 381–82, 34 L.Ed.2d at 410–11; see also Perry v. New Hampshire, _ U.S. _, _ n. 1, 132 S.Ct. 716, 721 n. 1, 181 L.Ed.2d 694, 703 n. 1 (2012) (stating "what triggers due process concerns is police use of an unnecessarily suggestive identification procedure"); Liverman, 398 S.C. at 138, 727 S.E.2d at 426 (stating the standard for impermissible suggestiveness as whether the police procedures were "unnecessary and unduly suggestive"); Traylor, 360 S.C. at 81, 600 S.E.2d at 526 (stating the standard as whether the police procedures were "unduly suggestive").[1] If the court finds the

[1] The Court has not addressed who has the burden on this matter. The Fourth Circuit, whose decisions regarding federal constitutional law has held the defendant bears the burden of proving the identification procedure was impermissibly suggestive. See United States v. Saunders, 501 F.3d 384, 389 (4th Cir.2007) ("[T]he defendant must show that the photo identification procedure was impermissibly suggestive."). Other courts have also addressed that this burden rests upon the defendant. Accord Perry, _ U.S. at _, 132 S.Ct. at 733, 181 L.Ed.2d at 716 (Sotomayor, J., dissenting) ("[T]he defendant has the burden of showing that the eyewitness identification was derived through impermissibly suggestive means." (citation and internal quotation marks omitted)); United States v. Martin, 391 F.3d 949, 952 (8th Cir.2004) ("[The defendant] must first establish that the photographic spreads shown to [the witnesses] were impermissibly suggestive." (quotations omitted)); United States v. Lawrence, 349 F.3d 109, 115 (3d Cir.2003) ("[T]he defendant has the burden of proving that the identification procedure was impermissibly suggestive."); English v. Cody, 241 F.3d 1279, 1282 (10th Cir.2001) ("[A] defendant has the initial burden of proving that the identification procedure was impermissibly suggestive."); United States v. Hill, 967 F.2d 226, 230 (6th Cir.1992) ("[A] defendant bears the burden of proving the identification procedure was impermissibly suggestive."); Bernal v.

identification did not result from impermissibly suggestive police procedures, the inquiry ends there and the court does not need to consider the second prong. See United States v. Sanders, 708 F.3d 976, 984 (7th Cir.2013) (citing Perry for the proposition that "courts will only consider the second prong if a challenged procedure does not pass muster under the first"). If the court finds, however, that the police used an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless " so reliable that no substantial likelihood of misidentification existed." Liverman, 398 S.C. at 138, 727 S.E.2d at 426 (citing Biggers, 409 U.S. at 199, 93 S.Ct. at 382, 34 L.Ed.2d at 411).

People, 44 P.3d 184, 191 (Colo.2002) ("[A] court must determine whether the photo array was impermissibly suggestive, which the defendant has the burden of proving."); State v. Fullwood, 193 Conn. 238, 476 A.2d 550, 554 (1984) ("A defendant ... bears the initial burden of proving that the identification resulted from an unconstitutional procedure."); State v. Araki, 82 Hawai'i 474, 923 P.2d 891, 901 (1996) (stating the defendant has the burden to prove the pretrial identification procedure was "impermissibly suggestive" (citation omitted)); State v. Kelly, 752 A.2d 188, 192 (Me.2000) ("Initially the defendant must prove ... the identification procedure was suggestive."); Commonwealth v. Correia, 381 Mass. 65, 407 N.E.2d 1216, 1225 (1980) (stating the defendant has the burden of proving the procedures were "unnecessarily suggestive"); State v. LaRose, 127 N.H. 146, 497 A.2d 1224, 1229 (1985) (stating the defendant has the initial burden of proving "the identification procedure was impermissibly or unnecessarily suggestive"); State v. Norrid, 611 N.W.2d 866, 871 (N.D.2000) ("The defendant has the burden of proving the identification procedure is impermissibly suggestive...."); State v. Mosley, 102 Wis.2d 636, 307 N.W.2d 200, 210 (1981) ("The first inquiry is whether the out-of-court photographic identification was impermissibly suggestive, as to which the defendant has the burden."); 22A C.J.S. Criminal Law § 1104 (2006) ("[T]he defendant has the initial burden to show an improper or unreliable procedure or identification...."). C.f. People v. Jackson, 98 N.Y.2d 555, 750 N.Y.S.2d 561, 780 N.E.2d 162, 165 (2002) ("Although the [State] ha [s] the initial burden of establishing the reasonableness of the police conduct in a pretrial identification procedure, the defendant bears the ultimate burden of proving that the procedure was unduly suggestive."). But see Commonwealth v. Moore, 534 Pa. 527, 633 A.2d 1119, 1125 (1993) (placing on the State "the burden of establishing that any identification testimony to be offered at trial is free from taint of initial illegality," though not clearly on constitutional grounds).

Whether an identification procedure was unduly suggestive is a fact-specific determination, which may involve consideration of the size of the array, the manner of its presentation by the officers, and the details of the photographs themselves. The Ninth Circuit has consistently found that a photo array is not unduly suggestive merely because there are differences among the photographs. See, e.g., United States v. Burdeau, 168 F.3d 352, 357 (9th Cir.1999) (stating that "insubstantial differences between the defendant's photograph and others do not in themselves create an impermissible suggestion ..."); Mitchell v. Goldsmith, 878 F.2d 319, 323 (9th Cir.1989). For example, in Burdeau, the Ninth Circuit held that a photo array was not suggestive where the defendant's picture was placed in the center of the array and was "darker than the rest." 168 F.3d at 357. Consistent with these decisions, Respondent submits that any "corrupting effect" caused by the differences between Petitioner's photograph and the others pictured in the array was minimal. See United States v. Knight, 382 Fed. Appx. 905, 907 (11th Cir. June 15, 2010) (finding that "[a]lthough Knight was of a lighter complexion than four of the other individuals in the array and the background lighting in his photograph was slightly different from some of the other photographs, neither of these differences were [sic] stark enough so as to be unduly suggestive," and distinguishing Marsden v. Moore, 847 F.2d 1536, 1545 (11th Cir.1988) (procedure unduly suggestive where defendant was the only male in the photographs shown to the eyewitness), and O'Brien v. Wainwright, 738 F.2d 1139, 1140–41 (11th Cir.1984) (procedure unduly suggestive where witness was shown all black-and-white mug shots except for one color photograph, which was a photograph of the defendant)); United States v. Ricks, 817 F.2d 692, 697 (11th Cir.1987) (line up depicting defendant as only individual wearing glasses held appropriate); Blanco v. Dugger, 691 F.Supp. 308, 312 (S.D.Fla.1988), aff'd sub nom. Blanco v. Singletary, 943 F.2d 1477 (11th Cir.1991) (defendant's facial hair and dress

differences not " 'unnecessarily suggestive and conducive to irreparable mistaken identification.' " (quoting Foster, 394 U.S. at 442)); United States v. Ullrich, 580 F.2d 765, 773 (5th Cir.1978) ("[T]he disparate physical appearances of the lineup participants is not alone sufficient to warrant a finding of suggestiveness." (citations omitted)); see also United States v. McComb, 249 Fed. Appx. 429, 440 (6th Cir. Oct.3, 2007) ("A darker hue or different colored background does not 'in [itself] create an impermissible suggestion that the defendant is the offender.' " (alteration in original) (citations omitted)); United States v. Traeger, 289 F.3d 461, 474 (7th Cir.2002) (noting that law enforcement is not required "to search for identical twins in age, height, weight, or facial features"); United States v. Mathis, 264 F.3d 321, 333 (3d Cir.2001) (holding that "slightly darker" background of defendant's picture "did not significantly contribute to the array's unnecessary suggestiveness"); United States v. Burdeau, 168 F.3d 352, 357 (9th Cir.1999) (holding that a photographic array was not impermissibly suggestive even though the defendant's picture "was placed in the center of the array, was darker than the rest, and was the only one in which the eyes were closed"); United States v. Espinoza, 26 F.3d 133 (9th Cir.1994) (unpublished table decision) ("In light of the totality of the surrounding circumstances, the fact that Espinoza's image was smaller does not in and of itself render the procedure impermissibly suggestive."); United States v. Bautista, 23 F.3d 726, 731 (2d Cir.1994) ("While it is true that the photograph of [the defendant] is slightly brighter and slightly more close-up than the others, we find that these differences did not render the array suggestive.").

The fact of a glare or difference in lighting may alone not create suggestiveness. Mitchell v. Goldsmith, 878 F.2d 319, 323 (9th Cir.1989) (holding that "[t]he various background colors among ... photographs and the 1981 date on [defendant's] photo [did] not make the line-up unduly suggestive"); United States v. Marchand, 564 F.2d 983, 995 (2d Cir.1977) (differences in

sizes of pictures and fact that defendant's photograph "was somewhat marred by glare" did not render photo array impermissibly suggestive). But see United States v. Wiseman, 172 F.3d 1196, 1209 (10th Cir.1999) ("[D]ifferences such as background color can make a picture stand out, and can act to repeatedly draw a witness's eye to that picture.") (citation omitted). See State v. Phillips, 202 Ariz. 427, 433–34, SI 20, 46 P.3d 1048, 1054–55 (2002) ("[A] photographic lineup may contain differences in lighting between the defendant's photograph and other photographs." (citation omitted)), supplemented by 205 Ariz. 145, 67 P.3d 1228 (2003); see also State v. Gonzales, 181 Ariz. 502, 509, 892 P.2d 838, 845 (1995) (finding that an "almost imperceptible" difference in lighting did not render a lineup impermissibly suggestive); State v. Hopkins, 774 So.2d 1178, 34,119 (La.App. 2 Cir.,2000) (Photographic identification was not suggestive; although defendant's photograph was the only photo that did not have glare, glare was not so significant as to draw one's attention to particular photograph).

Similarly, differences in background may not create suggestiveness. See United States v. Harris, 636 F.3d 1023, 1026 (8th Cir.2011) (holding that a variation in color between the defendant's background and the other photographs did not render the photo array suggestive); United States v. Brennick, 405 F.3d 96, 99–100 (1st Cir.2005) (holding that a photo identification was not suggestive although the defendant's photo had a darker background than the other photos); United States v. Burdeau, 168 F.3d 352, 357 (9th Cir.1999) (holding that a photo was not suggestive even though it was "darker than the rest" and the defendant had his eyes closed); United States v. Gay, 423 F. App'x 873, 877 (11th Cir.2011) (finding that a photo array was not unduly suggestive even though the defendant's photo and complexion were darker than the other photos and the defendant was wearing a different type of shirt); United States v.

Knight, 382 F. App'x 905, 907 (11th Cir.2010) (holding an array was not unduly suggestive where the background differed slightly and the defendant had a slightly different complexion).

However, in O'Brien v. Wainwright, 738 F.2d 1139 (11th Cir.1984), a case in which the defendant's photograph was the only one in color, the Eleventh Circuit Court of Appeals stated, "A photographic lineup similar to the one in this case was held impermissibly suggestive ..." by the Former Fifth Circuit Court of Appeals. Id. at 1141 (citing Passman v. Blackburn, 652 F.2d 559, 570 (5th Cir.1981)). The court in O'Brien likewise found the lineup in that case unduly suggestive. And see United States v. Crozier, 259 F.3d 503, 510–11 (6th Cir.2001) (finding that including a single color photograph, that of the defendant, in an array of black and white photographs was unduly suggestive). The photographic array in this case is not simply a situation where Defendant's photograph stands out from the other two photographs. See United States v. Smith, 148 Fed. Appx. 867, 874 (11th Cir.2005) ("A lineup is not unduly suggestive merely because the defendant's photograph can be distinguished from the others.").

Relatively minor variances within a photo array, like those noted here, are unavoidable and do not make an identification procedure unduly suggestive so as to implicate due process concerns. See United States v. Burdeau, 168 F.3d 352, 357 (9th Cir.1999) ("We do not agree that the dark hue, facial expression, or placement of the photograph suggested that the witnesses should choose [defendant's] photograph. Such insubstantial differences between the defendant's photograph and the others do not in themselves create an impermissible suggestion that the defendant is the offender."); United States v. Nash, 946 F.2d 679, 681 (9th Cir.1991) (finding photographic line-up was "a balanced presentation that was not suggestive" despite defendant's criticism that only he and two others had light complexions and only one other had afro hairstyle); Mitchell v. Goldsmith, 878 F.2d 319, 323 (9th Cir.1989) (rejecting claim that

identification procedure was unduly suggestive because petitioner's photograph impermissibly "stood out" due to background color, recent date stamp, and fact that others had lighter complexions). Likewise, courts have found lineups were not unduly suggestive despite differences in the suspects' complexions or the photographs' lighting. (People v. West (1984) 154 Cal.App.3d 100, 105 [differing color characteristics; defendant's photo had "red cast" while others had "yellow cast" or "orange cast"]; People v. Guillebeau (1980) 107 Cal.App.3d 531, 557 [defendant's picture darker complected than others].); United States v. Bautista, 23 F.3d at 731 ("[w]hile it is true that the photograph of [the defendant] is brighter and slightly more close-up from the others, we find that these differences did not render the array suggestive"); United States v. Stanley, 2009 WL 5066864, *6 (E.D.N.Y.2009) ("the difference in background colors did not place undue focus on [the defendant] because the filler backgrounds were not all uniform either") with United States v. Saunders, 501 F.3d 384, 390 (4th Cir.2007) ("[the defendant's] photo stood out sharply from the others in the array [as a result of] ... [t]he dark background and lack of overhead lighting"), cert. denied, 552 U.S. 1157, 128 S.Ct. 1107, 169 L.Ed.2d 836 (2008); United States v. Sanchez, 24 F.3d 1259, 1262 (10th Cir.) ("differences such as background color can make a picture stand out, and can act to repeatedly draw a witness's eye to that picture"), cert. denied, 513 U.S. 1007, 115 S.Ct. 526, 130 L.Ed.2d 430 (1994); United States v. Friedman, 1996 WL 612456, *27 (E.D.N.Y.1996) (array suggestive because "[w]hen [the defendant's] pale complexion and the background are viewed in conjunction, the effect is quite striking [, ... making the defendant's] photograph stand[ ] out in both arrays in a manner that is extremely distinctive"), aff'd in part and rev'd in part on other grounds, 300 F.3d 111 (2d Cir.2002), cert. denied, 538 U.S. 981, 123 S.Ct. 1785, 155 L.Ed.2d 672 (2003).

Moreover, even if a pretrial identification procedure is unduly suggestive, due process does not require the exclusion of resulting evidence if the totality of surrounding circumstances indicates that an identification is nonetheless reliable. Perry, 132 S.Ct. at 724–25; Braithwaite, 432 U.S. at 114; Biggers, 409 U.S. at 198–99. "Where the indicators of a witness' ability to make an accurate identification are outweighed by the corrupting effect of law enforcement suggestion, the identification should be suppressed. Otherwise, the evidence (if admissible in all other respects) should be submitted to the jury." Perry, 132 S.Ct. at 725 (internal quotation and alteration marks and citation omitted). Factors to be considered in evaluating the reliability of an identification after a suggestive confrontation or other identification procedure include " 'the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation.' " Id. at n. 5 (quoting Braithwaite, 432 U.S. at 114).

Under this standard, the identification evidence Petitioner challenges here was reliable and therefore constitutionally admissible regardless of any defect in the photo array.

How the Issue Was Raised at Trial

A. The In Camera Proceeding

Prior to jury selection, the trial court held an in camera motion hearing concerning the admissibility of the identification procedures. Tr. 9-48. Counsel for the Appellant asserted that the photographic lineup was unduly suggestive and taints the in-court identification. Tr. p. 9, ll. 10-17. The prosecution called two (2) law enforcement officers who participated in the photographic lineups with three eventual court witnesses, Anthony Copeland, Brittany Robinson, and Crystal Ross.

Investigator Russell Porter of the Spartanburg Public Safety Department, was the lead investigator in the death of Cedric Moss on July 25, 2011. Tr. 10. He verified that he interviewed Copeland, Robinson, and Ross. Tr. 11. He stated that during interviews Ms. Ross and Mr. Copeland gave him the street name of "Slow" as the shooter in the case. Tr. p. 11, ll. 17-25. Investigator Porter stated that he was already aware of two individuals known as "Slow" from his work – one from the North Side and another from the South Side (Highland) area. Tr. p. 12, ll. 1-9. Investigator Porter stated that he knew that Keith Letmon was known by the street name of "Slow." Tr. p. 12, ll. 1012.

Investigator Porter stated he compiled a photographic array of six (6) individuals and included Letmon in the array. State Exhibit 1. Tr. p. 12, ll. 16-17. He identified photo number 5 as Letmon in his prepaid line-up. Tr. p. 13, l. 1.

Investigator Porter declared that he showed the individual the six person array and then had Investigator Nelson meet with them for the actual identification part. Tr. p. 13, ll. 2025. Investigator Porter stated he was present while Investigator Nelson did the identification. Tr. p. 14, ll. 13-21. He stated they use an independent person that did not put the lineup together or know who the suspect was to do the presentation "so that there won't be any bias or hints." Tr. p. 14, ll. 13-21. He stated Investigator Nelson did not know who the person was.

Investigator Porter stated that when Investigator Nelson met with the three witnesses, he went in with the same set of pictures as State Exhibit 1, but they were cut out. Tr. 15. He stated that Copeland and Ross were able to pick someone out of the array, but Robinson was not 100% sure. Tr. p. 15, ll. 8-22. Investigator Nelson stated that he did not indicate to any of them which photograph he thought was "Slow."

Investigator Porter stated that he went in first to try to figure out a name for the person they knew to be "Slow" and then had Investigator Nelson go in and confirm it with a separate procedure. Tr. p. 17, ll. 3-12.

On cross-examination, Investigator Porter was questioned about a supplemental report dated 7/28/2011. He confirmed that he had shown the photo arrays to them, although his report only indicated that Investigator Louis Nelson showed the photographic arrays that Porter had compiled of the subject he knew to be Slow. Tr. p. 19, ll. 3-18. The defense noted there was no other showing on the videotape. Tr. 19.

On re-direct, Investigator Porter confirmed that his report only confirmed that he presented a different line-up to Ms. Ross which included Mr. Shundall Holmes, but not another set. Tr. 22-23. See also, Tr. 21-22. Similarly, his report only documents the showing of the 6-person array by Investigator Nelson, not him. Tr. 22.

Investigator Louis Nelson of the Spartanburg Public Safety Department testified that Investigator Porter called him and informed him he had three witnesses that he wanted to present a photo lineup. He stated he met with them at the City Hall and the interviews were recorded. Tr. 30.

Investigator Nelson stated that he received an admonition form and a supplemental form to record the information he received from the witnesses about the "target" and the "fillers." Tr. 30-31.

Investigator Nelson stated that at the time he gave the line-ups to the witnesses, he did not know who the "target" was. Tr. p. 31, ll. 7-11. He stated when he received the information,

the photographs were already cut into 6 individual photographs. He stated he went through the process with each of them individually. Tr. p. 31, ll. 12-22.

Investigator Nelson described the admonition form as instructions that he will read to a witness as to how the lineup will be conducted, the eyewitness lineup supplemental is to record information about the time of the line-up and who it was presented to and the envelopes [State Exhibit 2A, 3A, 4A] contain the six individual photos that were presented. Tr. 32. He stated that the photographs are presented one photograph at a time,[2] and they state either yes or continue. If they state "yes, this is the person that committed the crime", he asks them to affix their signature on the photograph, the date and time, and then he continues to show the rest of the 6 photographs. He then asks the witness to put their initials on the remaining photographs that were not selected. Tr. 32-33.

Investigator Nelson stated that Mr. Copeland was the most decisive out of either one he spoke with. Tr. p. 33, ll. 4-7.[3] He stated Cynthia Ross was able to identify Letmon and affixed her signature on the back of his photographs and then Investigator Nelson completed the Supplemental.[4] Investigator Nelson stated Brittney Robinson was unable to select anyone with 100% certainty. Tr. p. 33, ll. 23-25. State Exhibit 4, 4A. ROA__. She initialed each of the pictures. Tr. p. 34, p. 35, ll. 18-24.

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[2] This is referred to as a sequential lineup.

[3] In State Exhibit 2, Supplemental, Copeland's identification is described as "100" percent certain and "witness was extremely decisive and direct and selected the target without hesitation." ROA__. This was reported on July 25, 2011@07:50.

[4] Crystal Ross's Supplement stated: "I am 100% sure the person I identified in the line-up is the person who shot Cedric Moss on Norris Street." State Exhibit 3. ROA__. Investigator Nelson reported that she was "very decisive" in selecting. This was completed on July 25, 2011 at 7:25a.m.. ROA__.

Investigator nelson denied that he made any suggestions on who to pick. Tr. 36. He stated that Copeland was really quick, Ross was "just a little bit longer", and Robinson was a little longer. Tr. p. 36, ll. 5-11.

On cross-examination, Investigator Nelson stated he arrived at 6:40 a.m. that morning and was initially briefed by Investigator McClure. He stated he then interviewed Copeland about what he saw happen, but did not do the line-up at that point. Tr. p. 37, ll. 1-7. He stated he showed Copeland the line-up after Ross and Robinson. Tr. 37-38. He stated he had spoken with Copeland before the line-ups. Tr. 38, 41.

Investigator Nelson clarified that he put the times on when he gave the admonition form to the witness when that was done. Tr. 39. However, when he recorded his impressions of the line-up, such as "witness was decisive when selecting the target", it was possible he did not do that until he returned to the desk after he found out who the "target" was. Tr. p. 41, ll. 2-16.

Investigator Nelson stated that he knew who Ross had picked out prior to the Robinson display of the line-up. Tr. p. 42, ll. 1-12. However, he stated when he read the admonition, including the statement that he did not know the identity of the person being investigated, he did not know all of the information. Tr. p. 42, l. 18 – p. 43, l. 4.

When questioning about the timing of his preparation of his impression in State Exhibit 2 and 4, counsel noted that he must not have completed the form entirely in the interview room because there was ink from a jail pen in one area and a ballpoint pen in another area. Tr. p. 44, ll. 3-12.

Concerning Copeland, he stated that during his interview, Copeland did not appear intoxicated. Tr. p. 45, ll. 1-7. ("he wasn't intoxicated").

No further witnesses were presented at the hearing by either side.

The defense asserted that the line-ups were not properly presented to the witnesses according to city procedures. He noted that Investigator Porter indicated that he showed the lineup to the witnesses initially and then it was shown by Investigator Nelson in a confirmatory procedure. He asserted the proper procedure would have been for the independent administrator to only do the line-up procedure. The defense asserted this was not done. Tr. 46-47.

As a second basis, the defense asserted that Mr. Letmon's picture "has it spotlighted compared to the others." He asserted that if the photographs were not similar enough it was an improper lineup. Tr. p. 47, ll. 11-17.

The prosecution urged that the standard was whether there was suggestiveness in the line-up to render a misidentification of the suspect. He stated that the testimony about the process may appear duplicative, but does not appear suggestive into the witness's identification of the person they knew to be "Slow." Tr. 48-49. As the State noted, this is not a case where they did not know the person, they just did not know his real name. Tr. p. 48, ll. 2-5. The officers were trying to put a name with a face. He urged that there was no suggestiveness. Tr. p. 48, ll. 5-6.

Judge Cole denied the motion to exclude any in-court or out-of-court identification. He found:

> Based on the evidence presented I find there is no unduly suggestive procedure used and that the procedure that was used is not in any way conducive toward an irreparable misidentification of the defendant by a witness picking out a photograph.

Tr. p. 48, ll. 8-13.

B. How the Identification was raised at trial before the jury.

Anthony Copeland

Anthony Copeland testified that he was present on Norris Street when Cedric Moss was killed in the front yard. He stated that he was with Crystal Ross, Brittney Robinson and his cousin Jesse Worthy. Tr.p. 102. He stated that it was around 5 a.m. when the shooting occurred. He said that they had been drinking and having a good time since 11 p.m. Tr.p. 103-104. Copeland stated that he knew the appellant, Kevin Letmon "on and off," but that this was the first time Letmon, who he knew as "Slow" had been to his house. Tr.p. 105-106. He stated that appellant had come to his house by himself around 11 p.m. "just to drink" and it did not bother him and he let him stay. Tr.p. 105. He stated that Cedric Moss was there. He said that he knew the appellant from other parts of town, not the neighborhood. He stated he did not have problems with him before. Copeland recalled that appellant had a couple of drinks and then he left with Copeland's brother in law Antoine Bogan. Tr.p. 106. Antoine was driving when appellant left in Antoine's car. He stated that the next time Letmon came back was when he shot Ced. Tr.p. 107. Copeland said that he pulled up by his mailbox in a grey car got out and went by my tree, raised up and started shooting. Tr.p. 107-108. He stated he was about 10 feet from him. Copeland stated that he was sitting in a chair on his porch with the victim sitting beside him and the girls were standing. Unlike some other witnesses, he did not recall hearing Letmon say anything. Tr.p. 110. He stated that Ced tried to stand up when appellant was shooting and he messed around and fell on the porch and could not get back up because he was still shooting. Tr.p. 113. Copeland stated that he fell off the porch when the shooting happened, knocked the chair over, and ran around the side of the house. Tr.p. 114. He was still able to see everything. He said everyone was scared. Tr.p. 114. He said after the shots stopped,

appellant jumped back into the car and pulled off. Tr.p. 115. Copeland stated the shooter had white gloves on, surgery like gloves. Tr.p. 15-17.

He said he tried to help the victim breathe and Crystal was calling the police. Tr.p. 115-116. He recalled the shooter had a chrome revolver. Tr.p. 115. He said it took about 10-15 minutes for the ambulance to arrive. Id. He said that his cousin went down the street. When the police came, they took Copeland to City Hall where he said he identified the shooter because "I just know him" and told police his name was "Slow." Tr.p. 116-117. He stated he did not know his real name. He stated that police showed him some photographs to try to figure out his name and that he picked him out. Tr.p. 117. He stated that he had not seen Letmon since. He pointed out Letmon to the jury as the man he knew to be "Slow." Tr.p. 117, l. 13-15. The defense counsel made an objection that was overruled. Tr.p. 117, l. 16-17.

On cross-examination, Copeland confirmed that he saw Letmon there a little after 11 p.m. and that he left about 2:30 to 3:00 because they were still drinking. Tr.p. 118. He stated that he came back later about 5:00 or "like 30 minutes or something like that." Tr.p. 118. Copeland stated that he was drinking Burnett vodka, that he referred to as "blue top." Tr.p. 119. He stated it was a 210 bottle and stated that he had about four (4) of those. And that they were sharing the bottles. Tr.p. 119. He stated that he probably had a "blunt or two" of marijuana that night also. Tr.p. 120. Although the defense claimed the victim had crack cocaine in his system, Copeland stated that the victim did not do that around him. Tr.p. 120-121. He stated it was still dark around 5 A.M. Tr.p. 121. He stated that the car was grey, but that he was not sure what kind of car it was. Tr.p. 121-122.

Concerning his knowledge of appellant, Copeland stated that while he had never been over to his house before, Copeland had known appellant on and off "**at least about six or seven years**." Tr.p. 122, l. 16-20. He stated he had not known him to drive a car before. Tr.p. 122. He stated that appellant had two white gloves on when he shot. Tr.p. 123. Copeland said that Appellant had been there for 30 or 45 minutes before and that there had been no trouble, no one had said anything, and no one was confronted. Tr.p. 123. He stated that appellant was the only person named "Slow" that he knew. Tr.p. 123. He stated that he knew appellant used to be Prince Hall on the south side and that he had seen him on north side also. Tr.p. 124. He stated that he told the police where he knew him from .

Copeland stated that Appellant walked up and was talking to his cousin Jesse, but he did not know what they were talking about. Tr.p. 124-125. He stated that appellant left with Antoine Bogan in a gold Lincoln. Tr.p. 125-126.

On re-direct, Copeland said that the TV was on then and claimed that he could see pretty good out there that morning. Tr.p. 127. He said he had never had problems with appellant before. He stated he did not go up to the car, because Appellant was shooting. He stated the shooting surprised him causing him to fall off the porch. Tr.p. 127. Copeland stated" "I just know who did it- I seen him." Tr.p. 128, l. 4.

Brittney Robinson

Brittney Robinson testified that she was there that night. Tr.p. 142. She stated that the victim was a friend of the family. She stated that she, Cynthia Ross and Cedric Moss were hanging out the night before and eventually walked up to Copeland – known to her as "Boot's " house. She stated they were all out drinking and she noticed the man named "Slow" was looking

at Cedric kind of strange and she asked Ced why. Tr.p. 143, l. 20-23. She said that she, Crystal and Ced walked back and walked around for about an hour and went back to Copeland's house. Tr.p. 144. She said that they were sitting out there talking and what she described as a brownish tan car with tinted windows pulls up, the man gets out, rolled down the windows and said: N_____ don't fight no more. They shoot." Tr.p. 144, l. 24-25, p. 145, l. 20-21. She stated that he got out of the car and it was the person she knew as "Slow", and started shooting after he said it. Tr.p. 145, l. 22. She stated the first shot went by her ear and she jumped and ran through Boot's house. Tr.p. 145-146. She said she saw Ced fall down after the shots. She said she then saw Cynthia Ross asking the man to stop shooting and prayed. She described that at that time the shooter was standing over the victim still trying to shoot but the gun jammed up. Tr.p. 146. She described him walking back pointing his gun and then got into his car and left. Tr.p. 146. She stated the police arrived shortly after. Tr.p. 146.

Robinson stated that she met with police that day, but was not able to identify anyone because "I was in a state of shock." Tr.p. 146, l. 18-21. She described the first shot going past her ear and noted that if she would not have moved so quickly, it would have hit her. Tr.p. 146. She said that she was certain, however, that the shooter was the same man that had been there earlier that date. Tr.p. 146-147. She stated that the whole time they were walking down Norris Street they saw Slow and Jesse in the Lincoln with a Family Auto tag and kept going back and forth to the liquor house getting drinks and they would end up at Copeland's house. Tr.p. 147. She stated that she could identify the man whose name was Slow in court because "now that I'm here now that I see him, it's that man right there." Tr.p. 147, l. 8-15.

On cross-examination, she admitted that after the incident she was taken to City Hall for an interview and spoke with the police. She admitted that Officer Nelson showed her pictures

"one at a time" and did not pick anyone out. Tr.p. 148-149. She stated that she was frightened about what had happened , confused and could not do it. Tr.p. 149. She stated that she had been sitting in a chair and that the victim was sitting next to her when the firing began. Tr.p. 149-150. She and Anthony was sitting on the other side of the door and Jesse was sitting next to him. Tr.p. 150. She stated that there was no porch light on, but that there was a street light across the street and the television was on inside the house. Tr.p. 151.

As to the event, she again described that she saw him roll down his window where you could see his forehead to his chin. Tr.p. 152, l. 13-15. She thought he was going to do a drive-by, but he got out of the car and walked up to by the tree, pulled out a gun, made the comment, and started shooting. Tr.p. 152, l. 13-19. She stated that after he started shooting she could not picture his face and had told the police that . Tr.p. 153. She stated she knew what happened and she knew it was him and not because he's sitting at the defendant's table. Tr.p. 154, l. 6-8.

Crystal Ross

Crystal Ross testified that she now lived at the place where this happened. Tr.p. 157. She stated that the victim was a close friend. She stated that she was sitting on the porch with Brittney Robinson, Ced Moss , Anthony Copeland and Jesse Worthy :laughing and tripping.: Tr.p. 158, l. 11-14. She stated she saw a brown 2-door Honda with tinted windows pull up on the street, then make a U-turn cruising back slow to Anthony's house and stopped at Copeland's mailbox. Tr.p. 158. He "tipped the window down and was told to get out and chill with them. The man got out of the car, walked into the yard, and then stated "N_____ don't fight no more. We shoot" and started firing from the left side of the tree. Tr.p. 158-159. She stated the first two bullets passed her and Brittney and she got up and ran into the house, but

the dogs scared Brittney and she ran back out and stood in the door screaming. Tr.p. 159. She said the first two bullets went off Ced who was sitting with her. She said Anthony and Jesse fell off the porch. She said that Ced got up and tried to run, but the third bullet caught him and he fell off the right side of the porch on his back, with his shoes still on the porch. Crystal said she got up and started screaming with Ced a few steps away when he fell to the ground. Tr.p. 159. She said "Slow " continued to keep shooting, while she begged for him to stop. She said she closed her eyes and said a prayer. When she opened them. He was backing back from Ced getting into the car and took off down Highland Avenue. Tr.p. 159-160.

She said that she had never seen the shooter before that date, but earlier that day they had "bumped heads" with him on Copeland's porch. Tr.p. 159, l. 23-25. She pointed out the person that she had seen that day as the Appellant. Tr.p. 160. An objection to the identification was overruled. Tr.p. 160, l. 8-10. She stated she was certain that it was him and stated that she had also identified him to the police that night. Tr.p. 160, l. 16-20.

She described the questioning that night after the police arrived and the statements she gave. Tr.p. 161-162. She stated that Jesse refused to give a statement because he said he was too intoxicated at that time. Tr.p. 162.

On cross-examination, Crystal Ross described the earlier meeting with Slow that night. She stated she sat down with Brittney and Ced and "Slow looked at Ced, gave him a look like he could have went through him then, but Brittney did not understand why so she asked Ced why he was looking at him like that. She recalled that she got down there they went back down Norris Street and then went down and sat waiting for the Beacon to open up. Tr.p. 164. They had not stayed at the Copeland house long because of Brittney asking Ced why Slow was

looking at him like that and Ced then got up and they left at that point. Tr.p. 164. She thought that they had been gone a couple of hours before they returned. Tr.p. 165. She recalled that the Appellant was wearing all black with a black stocking cap with nothing on his face and white gloves on his hands when he pulled up in the car. Tr.p. 166.

She said that the street light across the street was bright. She said that the TV was on inside the house. Tr.p. 166-167. She stated her recollection how they were sitting before the shooting. Tr.p. 167-168. She described the shootings again with the two shots missing her and Brittney and the third shot sticking the victim. She said that Ced appeared to be covering his wound and the Appellant walks up to Ced and move's Ced's hand and said: "it ain't going down like that" and stood over him and starts shooting. She suggests it was about 5 or 6 shots and the gun jammed two times while he was over him. Tr.p. 169. At that point, Ross stated she closed her eyes and begged him to stop shooting. Tr.p. 169-170. See also , 171-172. She said she saw white socks over the gun and it looked like silver. Tr.p. 173.

She said when asked by the police if she could identify the shooter, she told him that she couldn't because she had never seen him before unless she lined up the scene all over from the beginning. When he showed her the picture she stated that she "could never forget that face because he pointed a gun at me after I told him to stop shooting." Tr.p. 174, l. 13-15. She said when she opened her eyes after the line-up was displayed she pointed out the picture. Tr.p. 174-175. She confirmed that when initially asked if she could do a line-up, she said "it's hard to say because I didn't get to see his face good." Tr.p. 175.

She stated that while she may not have thought she could pick someone out, she acknowledged that she was able to do so. Tr.p. 176. She affirmed that there was no doubt that

the man she identified in the courtroom is the man she saw shooting. She stated "that was the right one." Tr.p. 176, l. 15-20.

Jesse Worthy

Jesse Worthy, Anthony Copeland's cousin testified that he was with them that night He confirmed that Cedric Moss was a friend of his. Tr.p. 178. He also admitted that he was presently incarcerated. Tr.p. 178. He stated that he had seen a car which appeared to him to be turquoise bluish pull around and that somebody then got out. Tr.p. 179. When asked who it was, Jesse stated that it was a person he knew – Keith Letmon. He stated that he grew up with Letmon and knew him by sight. Tr.p. 180-181. He said that he had seen him walk across the street into the yard and because he was so full of alcohol, claimed he passed out a little. Tr.p. 180-181. He said he was on the porch with Anthony, two females and Moss. Tr.p. 181. He said he saw fire from a gun and the next thing he recalled was seeing the car drive off. He said at that point he woke up and left after he saw that Moss was hurt, claiming he called 9-1-1. Tr.p. 183. He stated that he did not talk with the police He stated that he recalled Slow getting out of the car. Tr.p. 184.

On cross-examination, he confirmed that he had been there a couple of hours and had been drinking at other places before he got there. Tr.p. 185-186. He stated when he arrived no one else was there drinking and smoking marijuana with Copeland. Tr.p. 186. He said that Cedric with the two females arrived shortly after he got there. Tr.p. 187. He recalled that Letmon had come up the street with him and left before. Tr.p. 188-189. He recalled at some point after he had arrived with Letmon earlier that night that Letmon had left. Tr.p. 191-192. He stated that after the shooting Worthy went to his aunt's house. Tr.p. 192. He admitted that he felt he was too intoxicated to give a statement then. Tr.p. 192. He confirmed that he was presently incarcerated

for trafficking of crack cocaine and related drug offenses and serving a 12 year sentence. Tr.p. 193-194. In addition, he had two convictions for giving false information in 1997 and 2001.

Worthy stated that he was certain that the person he saw was Keith Letmon: "If it wasn't him, it appeared to be him. It looked exactly like him." Tr.p. 201, l. 11-14.

On re-direct, Worthy confirmed that Letmon was a person that he had known for quite some time. Tr.p. 201. In fact, he confirmed that he had come to Copeland's earlier that evening with Letmon. Tr.p. 201-202. He stated that he had known Letmon for about 20 years and "all of his adult life." Tr.p. 202-203.

The Officers

Investigator Russell Porter testified that he arrived that morning at the crime scene and directed potential witnesses to be taken to City Hall, including Anthony Copeland, Crystal Ross and Brittney Robinson. Tr.p. 221. He stated that he had spoken to Jesse Worthy at the scene and found him to be intoxicated and he refused to be transported to City Hall. Tr.p. 221. He state that he met with them at City Hall to hopefully establish a suspect and find out what happened. Tr.p. 222. He stated that they were giving him the name "Slow." He stated that he knew of two individuals named "Slow" and that he compiled photographic lineups of each and then presented those individuals. He stated he showed those photographs. He stated Crystal Identified Slow and Anthony Copeland was shown the photos by Investigator Nelson. Tr.p. 222. He stated that they eventually located a brown Honda . Tr.p. 228.

Investigator Louis Nelson testified that that he meet with witnesses that morning of the crime after he was called in to assist. Tr.p. 261-262. He stated he spoke with Crystal Ross , showed her a photographic line-up and she was able to identify one individual who was Keith

Letmon as the shooter. Tr.p. 262, l. 4-22. Similar, he stated that he showed the same line-up to Copeland and he was very quick and decisive in pointing out the person he saw commit the crime. He stated that Brittney Robinson was hung up on three pictures and she couldn't with certainty select an individual. On cross-examination, Investigator Nelson stated that Investigator Porter brought the line-up to him to administer. He did not tell him if he had administered it previously . Tr.p. 273-274. According to Investigator Nelson, he was just brought the line-up and asked to present it to the witnesses. He said that was all he knew at that point. Tr.p. 274.

Counsel for the defense at the conclusion of the case argued that evidence was insufficient that his client had committed the crim. Tr.p. 351, l. 3-15. The motion was denied by Judge Cole. Tr.p. 351, l. 8-14.

ANALYSIS

The Appellant contends that the mere glare on the photograph used by law enforcement in the sequential photographic showings to Copeland, Ross and Robinson were unduly suggestive because it arguably highlighted the appellant's face whereas the others were not highlighted. This assessment ignores that the photographs were individually shown to the witnesses by Investigator Nelson not in a single array as he appears to suggest. The individual showing of each photograph lets the particular photograph stand on its on not in comparison to the rest of the group. Further, there is support by Brittney Robinson's assertion in being unable to select one from the grouping suggests that the alleged suggestiveness was not as great since she was able to decisively pick out the Appellant in court. The fact of a glare or difference in lighting may alone not create suggestiveness. Mitchell v. Goldsmith, 878 F.2d 319, 323 (9th

Cir.1989) (holding that "[t]he various background colors among ... photographs and the 1981 date on [defendant's] photo [did] not make the line-up unduly suggestive"); United States v. Marchand, 564 F.2d 983, 995 (2d Cir.1977) (differences in sizes of pictures and fact that defendant's photograph "was somewhat marred by glare" did not render photo array impermissibly suggestive). But see United States v. Wiseman, 172 F.3d 1196, 1209 (10th Cir.1999) ("[D]ifferences such as background color can make a picture stand out, and can act to repeatedly draw a witness's eye to that picture.") (citation omitted). See State v. Phillips, 202 Ariz. 427, 433–34, SI 20, 46 P.3d 1048, 1054–55 (2002) ("[A] photographic lineup may contain differences in lighting between the defendant's photograph and other photographs." (citation omitted)), supplemented by 205 Ariz. 145, 67 P.3d 1228 (2003); see also State v. Gonzales, 181 Ariz. 502, 509, 892 P.2d 838, 845 (1995) (finding that an "almost imperceptible" difference in lighting did not render a lineup impermissibly suggestive); State v. Hopkins, 774 So.2d 1178, 34,119 (La.App. 2 Cir.,2000) (Photographic identification was not suggestive; although defendant's photograph was the only photo that did not have glare, glare was not so significant as to draw one's attention to particular photograph).

Further, the Appellant ignores that one witness, Anthony Copeland had known "Slow" for six to seven years. Tr.p. 105-106. 122, There was no question in his mind that Slow had been with him earlier that night and returned to shoot Moss. Tr.p. 105-106, 118. He had seen the Appellant leave with his cousin Antoine Bogan. Tr.p. 106. At the time of the shooting when he returned, he stated that Slow was within 10 feet of the porch. Tr.p. 109-110. He declared he was able to see everything. The issue was, who was the person named Slow which he was resolving in the line-up. Thus, the lighting had no suggestive effect on him due to his prior knowledge of the person. The line-up was not to identify an unknown person, but to learn the

name of a known person. Contrary to the claims in the brief, Copeland did not see Slow very briefly. His identification of him as Slow through the use of the photograph was neither sunduly suggestive. Even if it was, the identification by Copeland is so reliable based upon the prior knowledge of him before and on that date that no substantial liklihood of misidentification existed.

Similarly, although not as strong is the identification of Slow by Crystal Ross. Her first meeting with Slow was on that date when he came up to the Copeland's porch. Tr.p. 159-160. She confirmed that that at that meeting with Slow, he caught her attention when he gave the victim an odd look and she asked Moss why Slow was looking at him in that manner. Tr.p. 160, 164. The look was enough to cause them to briefly leave. When they returned she saw the same person exit the car and come toward them shooting. She described the shooter as Slow. Tr.p. 158-159, She described begging Slow to stop shooting. Tr.p. 159-160. She also described that there was a street light on across the street that aided in her visuals that night. Tr.p. 166-167. Her identification of Slow as Letmon at the photo line-up was decisive. Her identifying of Letmon at trial was similarly decisive. While she had earlier indicated that she had not seen the assailant's face real good before the line-up her selection of Letmon was without much hesitation and consistent with Copeland's later identification of the known person.

Although Brittney Robinson was unsure about identifying Slow from the photographs, it reflects that the process was not unduly suggestive, She stood in similarly shoes with Ross and had was only been exposed to Slow at the two occasions that date when Slows made a strong impression on her by his initial glaring at the victim and later return when he shot at the victim while she viewed. Tr.p. 143, 145. She identified the person as the same person who was there earlier and was then the shooter. Tr.p. 145. Her explanation about the lineup hesitation to

select a particular photograph because she was frightened at the time due to the event , confused and could not do it which was not unreasonable. Tr.p. 148-151. However, her ability to pick the person out at trial based upon her exposure to him on the two occasions on July 25 was sound based upon her ability her viewing on him on July 25. Her shown attention to the Appellant that earlier time supports the identification and remove the risk of any misidentification. .

Respondent submits that that one salient factor exists to defeat the claim. All the witnesses were consistent prior to the identifications and during the trial that the person known as Slow was the person who visited Copeland earlier that day and returned as the shooter. The question resolved by the identification was whether Letmon was Slow or whether there was another person known as Slow. To Copeland, it was clear because he had known Slow for six to seven years, but not his true name. Similar, it was clear to Jesse Worthy who Slow was because he had known him for twenty years. Under these circumstances, the slight glare on Letmon's photograph did not require an exclusion of the identifications at trial or a new trial in this appeal. His exception must be denied.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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June 23, 2014
Columbia, South Carolina.

(5)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213672

THE STATE,

RESPONDENT,

v.

KEITH LETMON,

APPELLANT

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following portions of the trial transcript and exhibits to be included in the Record on Appeal:

Tr. p. 351 (motion and denial of directed verdict).

I certify that this Designation contains no matter which is irrelevant to this appeal.

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

June 23, 2014

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served the ***Initial Brief of Respondent and Designation of Matter*** in the foregoing action by depositing copies in the United States mail, postage prepaid to Robert M. Dudek, Chief Attorney, Division of Appellate Defense, P. O. Box 11589, Columbia, SC 29211 this 23rd day of June, 2014.

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ALAN WILSON
ATTORNEY GENERAL

June 23, 2014

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: State v. Keith Letmon
Appellate Case No. 2012-213672

Dear Ms. Kitchings:

Enclosed please find the Initial Brief of Respondent and Designation of Matter in the above-captioned matter for filing in your office. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/lbb
Enclosure

cc: Robert M. Dudek, Esquire
Barry J. Barnette, Solicitor
Trisha Allen, Victims Assistance