

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

CAROLYN POE,

APPELLANT

APPELLATE CASE NO. 2013-000356

Appeal from Aiken County

J. Derham Cole, Circuit Court Judge

Opinion No. 2014-UP-447

PETITION FOR REHEARING

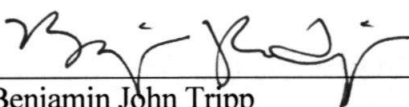
Appellant respectfully petitions the Court for a rehearing of its Unpublished Opinion No. 2014-UP-447 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court.

The Opinion cites *Burgess v. State*, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998), for the proposition that pitting constitutes reversible error only if unfair prejudice results and *State v. Pradubsri*, 403 S.C. 270, 280, 743 S.E.2d 98, 104 (Ct. App. 2013) for the proposition that the prejudicial character of pitting must be determined from its relationship to the entire case.

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The South Carolina Supreme Court has held that unfair prejudice results when the credibility of a pitted witness is a critical issue in the case. *State v. Sapps*, 295 S.C. 484, 486, 369 S.E.2d 145, 146 (1988); *State v. Bryant*, 316 S.C. 216, 221, 447 S.E.2d 852, 855 (1994). In this case, Appellant's credibility was a critical issue. The State's evidence consisted of Lawrence's testimony that he saw Appellant put the DVDs on her person and leave the store and Corporal Priester's testimony that he observed in Appellant's truck the same eight DVDs that the store reported missing. Appellant testified that although she did pick up the DVDs, she later put them away. Thus, the issue Appellant's credibility was material to one-half of the State's evidence in the case. The other half of the evidence was circumstantial. Furthermore, the wording of the solicitor's pitting of Appellant added a second layer of prejudice because the solicitor impliedly asserted that Appellant was claiming the witnesses intentionally gave false accounts in order to frame her. The wording constituted a measured attempt to negatively portray Appellant to the jury as dissident and unscrupulous. Accordingly, unfair prejudice resulted from the pitting, and this Court should reverse Appellant's conviction and remand for a new trial.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

This 11th day of December, 2014.

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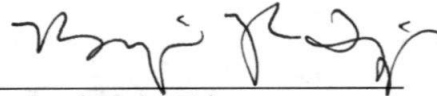
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CERTIFICATE OF SERVICE

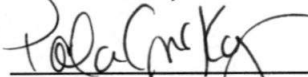
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of December, 2014.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 11th day
of December, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.