

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

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Opinion No. 2014-UP-42-1933

Appellate Case No. 2011-201326

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S. C. Supreme Court

THE STATE, .....RESPONDENT

v.

MICHAEL ANTHONY ROGERS, ..... PETITIONER.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENT

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## RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

The issue Petitioner presents on appeal is not available for appellate review because it was not raised to and ruled upon by the trial court; nevertheless, the Court of Appeals properly affirmed the trial court's determination that S.C. Code Ann. § 16-11-450 did not provide Petitioner immunity from prosecution when the victim was not unlawfully or forcibly entering Petitioner's home, when Petitioner was not removing or attempting to remove the victim from his home, and when Petitioner was not acting lawfully but was engaged in an unlawful assault and battery.

## STATEMENT OF THE CASE

In March 2011, Petitioner was indicted in Spartanburg County for murder. By motion dated August 18, 2011, Petitioner moved to dismiss the murder charge asserting that he was immune from prosecution pursuant to S.C. Code Ann. Section 16-11-450 and State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). A pre-trial hearing on the motion was convened before the Honorable J. Durham Cole on September 2, 2011, during which testimony was presented on the issue of Petitioner's motion to dismiss the murder charge on the ground he was immune from prosecution. The motion was denied by written order and the matter proceeded to trial on October 4 – 6, 2011, before the Honorable J. Durham Cole, and a jury. Petitioner was found guilty of voluntary manslaughter. He was sentenced by Judge Cole to imprisonment for twenty-one (21) years.

Petitioner filed and served notice of appeal after the conviction and sentence. After full briefing and oral argument, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Michael Rogers, 2014-UP-332 (Filed September 17, 2014). Petitioner filed and served a petition for rehearing which was denied by the Court of Appeals by order filed October 23, 2014. Petitioner submitted a Petition for Writ of Certiorari on December 4, 2014. This Return follows.

## ARGUMENT

**The issue Petitioner presents on appeal is not available for appellate review because it was not raised to and ruled upon by the trial court; nevertheless, the Court of Appeals properly affirmed the trial court's determination that S.C. Code Ann. § 16-11-450 did not provide Petitioner immunity from prosecution when the victim was not unlawfully or forcibly entering Petitioner's home, when Petitioner was not removing or attempting to remove the victim from his home, and when Petitioner was not acting lawfully but was engaged in an unlawful assault and battery.**

By written motion, Petitioner moved pursuant to S.C. Code Ann. § 16-11-450 and State v. Duncan, 392 S.C. 404, 709, S.E.2d 662 (2011), for a pre-trial determination of immunity from prosecution and dismissal of the charge on the grounds that he was in his dwelling, asked the victim to leave, was at all times engaged in lawful activity, was attempting to remove the deceased from his home, had reason to believe an unlawful and forcible act had or was occurring, was attacked by the victim, had no duty to retreat, had the right to stand his ground, had the right to meet force with force, and believed his actions were necessary to prevent death or serious bodily injury or to prevent the commission of a crime. (R. p. 1). A pre-trial hearing regarding Petitioner's motion was held on September 2, 2011 during which witness testimony and documentary evidence were presented. Following the hearing, the trial judge issued an order denying Petitioner's motion to dismiss, finding that immunity created by S.C. Code Ann. Section 16-11-450 was not applicable. (R. p.126).

Relying on State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007), Petitioner argued to the Court of Appeals that he was permitted to use deadly force pursuant to the defense of habitation and, therefore, was not required to reasonably believe that he was in eminent danger of sustaining serious bodily injury or that his property was in danger of damage. The State submits that the Court of Appeals properly declined to consider this

argument and this Court need not consider the issue of defense of habitation because the issue was not preserved for appellate review.

The State submits that Petitioner failed to properly preserve the issue he now offers on appeal in support of immunity from prosecution because the issue was not presented to and ruled upon by the trial court. See State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388 (1995) (stating issues not presented to and ruled upon by the trial court will not be considered on appeal). Petitioner may not argue one ground in support of a motion to the trial court and then present a different ground on appeal. See Creech v. S.C. Wildlife and Marine Resources Dep't., 328 S.C. 24, 49 S.E.2d 571 (1977) (a defendant cannot argue on appeal an issue in support of a motion when the issue was not presented to the trial court). Petitioner argued to the trial court that he should be immune from prosecution pursuant to S.C. Code Ann. section 16-11-450 because he was in his dwelling, asked the victim to leave, was at all times engaged in lawful activity, had no duty to retreat, had the right to stand his ground, and believed his actions were necessary to prevent death or serious bodily injury or to prevent the commission of a crime. (R. p.1). The trial court denied the request for immunity by written order. (R. p.126). On appeal, Petitioner now argues that he was permitted to use deadly force under the defense of habitation, that he was not required to establish that he reasonably believed he and/or his property were in imminent danger of sustaining injury or damage and that the trial judge abused his discretion in ruling otherwise. Petitioner did not present this issue to the trial judge in support of his motion to dismiss and, in fact, argued that he believed his actions were necessary to prevent death or serious bodily injury or to prevent the commission of a crime. Petitioner may not present a new legal theory and position on

appeal contrary to that argued to the trial judge. Id.; see also State v. Lee, 293 S.C. 536, 362 S.E.2d 24 (1987) (stating that although the defense of habitation and self-defense are analogous, the defenses are not identical); State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2010) (same). Accordingly, the Court of Appeals correctly declined to consider the argument. This Court should also decline to consider the issue on the same ground.

Alternatively, the State submits that the trial court properly determined Petitioner was not entitled to immunity from prosecution under Protection of Persons and Property Act. See S.C. Code Ann. section 16-11-410 et seq. (Supp.2012). As noted by our Supreme Court in State v. Duncan, our General Assembly intended to codify the common law Castle Doctrine which recognizes that “a person’s home is his castle” and determined that it is proper for law-abiding citizens to protect themselves from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves or others. Duncan at 407, 709 S.E. 2d at 64; see also Section 16-11-420 (B) (Supp. 2012). Additionally, section 16-11-440 of the Protection of Persons and Property Act provides in pertinent part that:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection A does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling . . . ;

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(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling . . . to further an unlawful activity . . .

Additionally, the immunity provision offered by Appellant in support of his motion provides:

(A) 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 and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer . . . .

The record before this Court reflects that Tonya Lowery was called as a witness at the hearing in support of Petitioner's motion to dismiss the murder indictment. Ms. Lowery testified that she and Petitioner were romantically involved and that she and the victim were close friends. (R. p.13, line 18- p. 17, line 24; p. 26, lines 8 - 15). She testified that the victim had been with Petitioner since the previous day drinking and that the victim spent the previous night at Petitioner's home but did not live with Petitioner. (R. p. 26, line 16 – p. 27, line 14). Lowery testified that she was present at Petitioner's mobile home on November 12 and that Petitioner, the victim, and Jackie Lance were present and had been drinking alcohol when she arrived at approximately 11:00 p.m. (R. p.15, line 2-p. 16, line 15). Lowery testified that the victim approached her from behind as she spoke with Petitioner over the kitchen bar. Lowery stated that the victim put his arms around her below her chest and she asked the victim to remove his hands. (R. p.18, lines 4-15). She testified that Petitioner said "get your hands off my woman" and then

pushed the victim causing the victim to fall into Petitioner's stereo. Petitioner got on top of the victim and began punching the victim in the face. Lowery asked them to stop and Petitioner did. (R. p. 18, lines 11- p. 19, line 6; p. 28, lines 3 - 20). Lowery stated that this fight lasted a few minutes. (R. p. 29, lines 2-14). However, the victim then kicked Petitioner between the legs and they began fighting again. (R. p.18, lines 11- p. 19, line 6; p. 28, lines 3 - 20). Lowery and Jackie were able to separate Petitioner and the victim, and Lowery walked Petitioner to the bathroom to remove blood and for Petitioner to cool down. (R. p. 19, lines 4 – 20; p. 29, line 18 – p. 30, line 18). Lowery testified that this second fight was really a continuation of the first fight. (R. p. 30, lines 3 – 5). Lowery also testified that she did not see any cuts on Petitioner when she took him to the bathroom after the second fight and that Petitioner did not complain of cuts. (R. p. 29, line 18 – p. 30, line 16).

Lowery testified that Jackie then left for the store in the victim's truck. (R. p.19, line 15-p. 20, line 6; p. 30, line 17 - 25). She stated that Petitioner had the keys. (R. p. 31, lines 4-11). When Lowery and Petitioner exited the bathroom and returned to the kitchen, Petitioner asked the victim three times to leave the home. (R. p. 20, lines 9-14; p. 32, line 18 – p. 33, line 14). The victim was in the kitchen at the time. (R. p. 32, lines 7 – 25). Lowery informed Petitioner that the victim could not leave because Jackie had the victim's truck. (R. p. 20, lines 9-14). Lowery testified that the victim hit Petitioner in the face with his fist and the two began fist fighting. Lowery left the home through the back door. Lowery circled the home and returned through the front door. (R. p.20, line 15 - p. 22, line 4; p. 25, lines 6 –12; p. 33, lines 6 – 22; p.34, lines 16 - 35). When she entered the front door of the home, she found the victim on the floor in a pool of blood with

Petitioner standing over him. Petitioner directed Lowery to dial 911 and advised her that he “accidentally stabbed” the victim (R. p. 20, line 25 - p. 21, line 3; p.22, lines 4-10; p. 34, lines 6 – 12; p. 35, line 25 – p. 36, line 4). Lowery did not see a knife. (R. p. 36, lines 5 – 6). After Lowery dialed 911, the victim stood up and walked toward the bar but fell. Lowery observed stab wounds on the victim and a lot of blood. (R. p. 22, lines 7 – p. 23, line 11; p. 25, line 3). She stated that Petitioner placed a towel over the victim’s wounds and attempted to resuscitate the victim. (R. p. 24, lines 1-7).

Petitioner testified during the pre-trial hearing that he was renting the mobile home in which the incident occurred and that he lived alone (R. p. 37, lines 1-6). He testified that the victim had been in his home for twenty-four hours, having spent the previous night because the victim was too intoxicated to drive. (R. p. 40, lines 7-25; p. 57, line 7 – p. 58, line 18). Petitioner stated that he met the victim through Lowery the day before the incident. He also stated that he had a romantic relationship with Lowery. (R. p. 41, lines 1-17). Pertaining to the day of the incident, Petitioner testified that he and the victim had been drinking since that morning and that Lowery and Jackie were present in the home that evening when the events in question began. (R. p. 41, line 8-p. 42, line 16). Petitioner testified that he saw the victim lean against Lowery from behind and place his arms around her waist, pressing against Lowery. Petitioner stated that the victim’s actions made him angry and that he asked the victim what he was doing and pushed the victim, causing the victim to fall against the stereo speakers. (R. p. 42, line 19 - p.43, line 19). Petitioner testified that he became angry about the stereo speakers and tried to get the victim off and the victim swung at Petitioner. Petitioner testified that he and the victim “got into it.” (R. p. 43, lines 18-22). Lowery asked them to stop,

Petitioner thought it was over, and allowed the victim to get up. The victim then “came back at [Petitioner]” and Petitioner protected himself and “went back” at the victim. (R. p.44, lines 1-25). He stated that this second altercation lasted 40-60 seconds. (R. p.44, line 16- p. 45, line 10). Petitioner stated that his lip was bleeding when he went to the bathroom with Lowery and that he was upset. (R. p.45, lines 10-14; p. 46, lines 1-12). Petitioner testified that he asked the victim to leave but the victim did not respond. (R. p.46, lines 9-21). He testified that when he came out of the bathroom, he repeatedly asked the victim to leave even though he knew Jackie had the victim’s truck. Petitioner said he wanted the victim to wait somewhere else. (R. p.46, lines 1-12; p. 48, lines 1-9; p.52, line 23- p. 43, line 3). Petitioner testified that the victim then “sockered” him in the jaw with his fist. Petitioner hit the victim with his hand because he wanted the victim to stop. He testified that they started fighting, the victim kept coming at him and Petitioner stated that he was fighting to get the victim to stop. (R. p.48, line 17-p. 49, line 1). Petitioner testified that he did not know how the knife was introduced into the fight but stated he noticed it in the victim’s hand and they fought over it. (R. p. 49, lines 3-6). Petitioner stated that the next thing he knew, there was blood and the victim was wounded. He did not remember cutting the victim. He removed the knife from the victim’s hand. (R. p. 49, lines 7-18). Petitioner also stated that his left forearm was cut and that he suffered other injuries including bruises and cuts on his knuckles as well a broken tooth. (R. p. 49, lines 6-24; p. 50, lines 1-11; p. 51, lines 1-14;, p. 51, lines 18-20). Petitioner testified that the knife in question belonged to him and he thought the knife was in his pocket. He testified that he uses it to open mail and stated that there was mail on the kitchen table. (R. p.52, lines 12-22). He testified that the victim kicked him in the groin after Petitioner pushed

the victim into the stereo and that the kick was painful because he was recovering from prostate surgery. (R. p.53, lines 4-19). He also testified that the victim is a larger and younger individual. (R. p. 53, line 18- p. 54, line 7; p. 55, line 8-12).

On cross-examination Petitioner testified that he did not remember stabbing the victim. Petitioner stated that the stabbing was not intentional. (R. p. 54, lines 19-24). Petitioner admitted that the victim had wounds and assumed it was the result of the altercation and fight with the knife; however, Petitioner denied he purposely had the knife in his hand to stab the victim. (R. p.55, lines 1-24). He testified that the only time he had the knife in his hand was when he could overpower the victim and take the knife. (R. p. 55, line 22- p. 56, line 3). Petitioner denied that the victim put his hand in Petitioner's pocket for the knife and stated that he thought he put the knife on the table. (R. p. 56, line 23- p.57, line 6). Petitioner admitted that he does not own an automobile or possess a driver's license and that he struck the victim with his fist. (R. p. 60, line 3- p. 61, line 14). He testified that the first fight lasted only a couple of minutes and that the victim stopped fighting when Petitioner let him up. (R. p. 61, lines 6-21). Petitioner testified that after the victim stood up, words were exchanged and another altercation ensued with the victim kicking Petitioner. (R. p. 62, line 11 - p.63, line 12). He denied telling law enforcement officers that he had the knife in his hands when he exited the bathroom to confront the victim. (R. p. 65, lines 13-25). He also denied that he washed the blade but admitted the blade was not covered with blood when found under the dryer. (R. p. 65, line 13- p.69, line 7; p. 60, lines 12 – 25; p. 67, lines 16 - 17). He denied that he put the knife under the dryer. (R. p. 60, line 12 – p. 69, line 7). Petitioner admitted the victim had been drinking all day and was unsteady on his feet at times. (R. p. 69- lines 14 - 25). He also stated that

he “got the best of” the victim in the first altercation but also stated that he feared for his safety. He could not explain how the victim received knife wounds but admitted he still had the knife in his hand when Lowery re-entered the home through the front door. (R. p.70, lines 1-24; p.72, lines 7 - 12). Petitioner admitted the victim was cut in the altercation with Petitioner and that the knife belonged to Petitioner. (R. p.72, line 7- p. 73, line 10).

Jackie Lance was called as a witness by the State and testified that she was in Petitioner’s home when the altercation began. She stated that Petitioner and the victim were drinking, that she was seated at the kitchen table and did not see a knife. (R. p.77, lines 20-23; p. 97, line 23 – p. 98, line 22). She testified that she knew Lowery but only knew who Petitioner was “from the neighborhood.” (R. p.77, line 24- p. 78, line 19). She stated that the altercation between Petitioner and the victim began 10-15 minutes after her arrival and that Lowery was present at the time. (R. p.79, lines 12-16). She testified that the victim was “too messed up” to defend himself and described Petitioner as being in a rage. (R. p.79, lines 17-20). She stated that she saw the victim lean on Lowery to catch his balance. Jackie did not believe the victim was trying to touch Lowery. (R. p. 80, lines 1-13). She described that Petitioner was in a rage and jumped on and threw the victim to the ground causing the victim’s head to bounce off the stereo. (R. p.80, lines 4-7; see also p. 91, lines 10 - 20). Thereafter, Jackie observed Petitioner jump on top of the victim and repeatedly hit the victim causing the victim’s head to bounce from the impact. She stated that Lowery grabbed Petitioner’s pants to stop him. She described Petitioner as violent and stated that the victim did not fight back. (R. p.80, lines 8-25; p.81, lines, 6-11; p. 92, lines 10 - 15 ). She testified that when the victim was permitted to get up, the victim

kicked Petitioner in the groin and Petitioner jumped on the victim again and was “steady beating” the victim and calling the victim names. (R. p. 81, lines 12-25). Thereafter, Petitioner and Lowery went down the hall. However, Petitioner returned with “force and rage” and jumped on the victim again. Jackie stated that the victim was not “swinging” and or attempting to defend himself because he was too intoxicated. She described the victim as staggering. (R. p. 82, line 1-19). Jackie stated that the victim provided the keys to his truck and asked her to return in 10-15 minutes. (R. p. 82, line 22- p.83, line 4). When Jackie returned, law enforcement officers were present and motioned her around. (R. p. 83, lines 11-17). Jackie never saw a knife and, stated there was a “break” in the action when she left. (R. p. 84, lines 3-16). She testified that Petitioner became angry when the victim provided his keys to Jackie and she did not observe the victim make any contact with Petitioner except the kick to the groin. (R. p. 84, line 17- p.85, lines 15). Lowery testified on cross-examination that she believed that Petitioner had the knife and killed the victim in cold blood and that Lowery was an accessory. (R. p. 103, lines 1-7). She also testified that she never heard Petitioner ask the victim to leave. (R. p. 103, lines 23 – 24).

Officer Nix was asked to search for a second knife but only found knives stored in a kitchen drawer without the appearance of blood or recent washing. He also recalled seeing papers like mail on the kitchen table. (R. p. 105, line 16 – p. 106, line 13; p. 107, lines 1 – 6).

The victim’s mother also testified that she tried to locate the victim and his truck the night before the incident but that Lowery and Petitioner refused to provide the location so that she could pick up the victim and his truck. (R. p. 108, line 4 – p.109, line

7). She stated that the victim was an alcoholic and used alcohol to calm tremors. (R. p. 109, line 23 – p.110, line 15).

Officer Gary testified that Petitioner gave verbal statements with three different versions of events. In the first statement, Petitioner said he saw the victim put his arms around Lowery and Petitioner did not like it so he pushed the victim down, got on top of the victim and “got the best of him.” Petitioner related that he got up but the victim hit Petitioner twice. Petitioner then realized he had a cut on his arm and he had no choice but to pull the knife out of his pocket and stab the victim. Petitioner said he then asked Lowery to call 911. (R. p. 116, line 4 – p. 117, line 9). When questioned about going into the bathroom, Petitioner said he went into the bathroom after the first fight to clean up and that the victim hit his face as Petitioner returned to the kitchen, Petitioner saw that he was cut and pulled out the knife and stabbed the victim. (R. p.117, line 10 - p. 118, line 1). When asked how he was cut, Petitioner admitted he never saw the victim with a knife or anything that could have cut him. He then stated that he saw the cut on his arm when he went into the bathroom and not when he entered the kitchen but still admitted he did not see the victim with anything that could be used to administer the cut. Petitioner said that he pulled the knife out of his pocket while in the bathroom, concealed the blade in his hand, and confronted the victim with it. (R. p. 114, line 23 – p.120, line 12). Petitioner did not respond when asked why he confronted the victim with the knife. (R. p. 119, line 13 – 19).

The trial judge in this case determined that the victim was an invited guest in Petitioner’s home and was physically assaulted by Petitioner without lawful basis and that the victim’s physical response was provoked by Petitioner’s assault. The trial judge

concluded that Petitioner failed to establish that he reasonably believed the use of deadly force was necessary to prevent death or great bodily harm and, in fact, admitted he did not know how the victim was injured. The trial court concluded Petitioner failed to establish by a preponderance of the evidence that he was acting lawfully but, instead, was engaged in an unlawful assault upon the victim.

The testimony presented during the pre-trial hearing as outlined above supports the trial court's denial of immunity and the Court of Appeals opinion affirming the conviction and sentence. The victim was an invited guest in Petitioner's home and was not and had not unlawfully or forcibly entered Petitioner's home. In fact, Petitioner and Lowery prevented the victim's mother from locating the victim and taking him home the night before. Although Petitioner testified that he asked the victim to leave, Petitioner was told that the victim could not leave because Jackie had his truck. Petitioner also asked the victim to leave as he was engaged in an unlawful attack upon the victim and out of anger because the victim put his arms around Petitioner's girlfriend and not because Petitioner reasonably feared for his safety or was attempting to eject the victim from the premises. Instead, the evidence reflects that Petitioner physically attacked the greatly intoxicated victim in a rage over Petitioner's girlfriend and stereo. The victim was merely defending against Petitioner's unlawful physical attacks. Petitioner admitted he got "the best" of the victim in the altercation and never testified that he stabbed the victim to defend himself against intrusion, to force the victim from the home or because the victim posed a danger. In fact, Petitioner stated he never saw the victim with a weapon, claimed he did not know where the knife came from, and stated that the stabbing of the victim was unintentional or accidental. Petitioner clearly was not without fault in

bringing about the altercation that led to the victim's stabbing death. Petitioner's immunity claim is simply not supported by the evidence, constituted an effort to improperly apply the statute, and was properly denied.

Although the defense of habitation is not preserved for appellate review because it was not raised to or ruled upon by the trial court, the State submits that the defense of habitation is not applicable to the issue of Petitioner's immunity. Immunity is statutorily created and governed. The defense of habitation cannot be relied upon to require dismissal of a charge before trial on the ground of immunity from prosecution. Nevertheless, defense of habitation does not provide immunity because Petitioner was not without fault in bringing on the incident and never claimed that he was attempting to remove the deceased from his home. He stated that he did not know how the deceased was stabbed and also claimed the stabbing was accidental. The defense of habitation is simply inapplicable to the facts of the case. See State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct.App. 2010); State v. Sullivan, 345 S.C. 169, 547 S.e.2d 183 (2001); State v. Rye, 375 S.C. 119, 651 S.E.2d 321(2007); State v. Lee, 293 S.C. 536, 362 S.E.2d 24 (1987); State v. Moultrie, 273 S.C. 532, 257 S.E.2d 730 (1979); State v. Bradley, 126 S.C. 528, 120 S.E. 240 (1923).

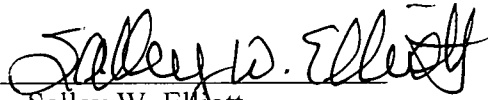
**CONCLUSION**

For all of the foregoing reasons, the State respectfully requests that this Court exercise its discretion to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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Attorney General

SALLEY W. ELLIOTT  
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BY:   
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ATTORNEYS FOR RESPONDENT

January 5, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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J. Derham Cole, Circuit Court Judge

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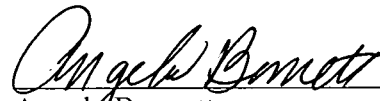
MICHAEL ANTHONY ROGERS, ..... PETITIONER.

\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, Angela Bennett, Legal Assistant, hereby certify that I have served the within Return to Petition for Writ of Certiorari dated January 5, 2015, on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Robert M. Dudek, Appellate Defender  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 5th day of January, 2015.

  
\_\_\_\_\_  
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ALAN WILSON  
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Columbia, SC 29211-1589

State v. Michael Anthony Rogers  
Appellate Case No. 2011-201326

Dear Mr. Dudek:

I am enclosing two (2) copies of the Return to Petition for Writ of Certiorari in the above-referenced case.

Sincerely,

Salley W. Elliott  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 1871

SWE/ab  
Enclosures

cc: Honorable Daniel Shearouse  
(original & 6 enclosed)  
Victim Services