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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
Paul M. Burch, Circuit Court Judge

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FEB 06 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JULIUS CURRY,

APPELLANT

APPELLATE CASE NO. 2014-000569

Return to State's Motion to Hold Appeal in Abeyance

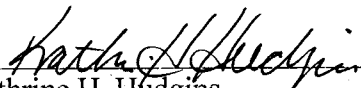
The State moves to hold the appeal in abeyance in order to obtain a transcript of the tape recording of a phone call Appellant made from the jail. The recording was played for the jury but was not admitted in evidence and not transcribed by the court reporter. The issue raised in the initial brief of Appellant is whether the trial judge erred in allowing the State to publish, over objection, recorded phone calls between Appellant, while he was in jail, and his then girlfriend, when the State did not introduce the recording in evidence and the judge failed to determine if any probative value of the recording was far out weighed by the prejudicial impact. The issue on appeal involves, not simply the admission of the recording, but the trial judge's failure to make any findings pursuant to Rule 403 before allowing the State to publish the recording. Appellant submits that the

issue presented on appeal can be decided without the content of the recording of the jail phone call. Regardless of the content, the judge failed to make the required findings. This Court cannot review the trial judge's determination that any probative value of the recordings was far outweighed by the prejudicial impact because the trial judge failed to make any determination as to probative value and prejudicial impact.

If this Court finds that the content of the recording is necessary for a determination of the issue on direct appeal, Appellant does not oppose the appeal being placed in abeyance in order for the State to obtain a transcript of the recording prepared by the original court reporter from her tapes from the trial. Counsel respectfully asks that opposing counsel request, in writing and in a timely manner, the transcript from the court reporter consistent with the intent of Rule 207 SCACR. As the recording was not introduced in evidence, Appellant opposes the recording being submitted to this Court through any means other than a transcription from the court reporter's original audio tape from the trial.

Additionally, if a transcript of the recording is obtained and made a part of the record in this direct appeal, counsel moves for leave, in the form of the reply brief, to address issues raised by the content of the recording.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of February, 2015.

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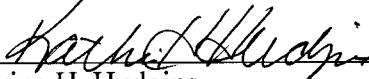
JULIUS CURRY,

APPELLANT

APPELLATE CASE NO. 2014-000569

CERTIFICATE OF SERVICE

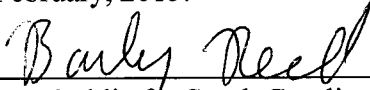
I certify that a true copy of the Return to State's motion to hold appeal in abeyance in this case have been served on Deborah Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 6th day of February, 2015.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 6th day
of February, 2015.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.