

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Orangeburg County

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2012-211961  
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**RECEIVED**

FEB 25 2015

**S.C. Supreme Court**

The State,

Petitioner,

vs.

Henry Haygood,

Respondent.  
\_\_\_\_\_

PETITION FOR REHEARING  
\_\_\_\_\_

Comes now Petitioner, above named, by and through the Attorney General of South Carolina, and pursuant to Rule 221(a), SCACR, hereby respectfully petitions this Court to rehear this matter.

**I.**

Petitioner respectfully submits this Court correctly vacated the Court of Appeals opinion insofar as the Court of Appeals erred in “addressing whether the facts of this case demonstrated respondent’s rights under the Confrontation Clause were violated because the record before the court lacked the facts necessary to make such a determination,” as well as finding “the information contained in the magistrate’s summary is insufficient to conduct a Confrontation Clause analysis.” State v. Haygood, No. 2015-MO-005, 2015 WL 630991, at 1 (S.C. Feb. 11, 2015). However, Petitioner respectfully submits this Court erred in remanding Respondent’s case for a new trial because the record provided

by Respondent fails to offer sufficient evidence to overturn the rulings of both the magistrate court and the circuit court.

It is well founded that the burden is on the appellant to provide a sufficient record for review. See State v. Mitchell, 330 S.C. 189, 194, 498 S.E.2d 642, 644 (1998); State v. Hutto, 279 S.C. 131, 303 S.E.2d 90 (1983); State v. Williams, 321 S.C. 455, 464, 469 S.E.2d 49, 55 (1996). Furthermore, Appellant has the burden of presenting an adequate record that is sufficiently complete so that the appellate court is able to review the lower court's actions. State v. Knighton, 334 S.C. 125, 136, 512 S.E.2d 117, 123 (Ct. App. 1999). As such, Petitioner submits that because this Court found the Court of Appeals erred in addressing a Confrontation Clause analysis due to the insufficient record, this Court should affirm the lower court rulings, not remand for a new trial. In doing so, Petitioner submits this Court has incorrectly shifted the burden of providing a satisfactory record to the State, where all relevant jurisprudence denotes the burden is on the appellant. Because this Court correctly found the record is insufficient to determine whether the statements given by the victim were testimonial and therefore determine if the statements violated the Confrontation Clause, this Court should abide by the findings of the trial court and the circuit court and affirm their rulings.

## II.

Should this Court deny the petition for rehearing, Petitioner respectfully asks that this Court's opinion be published for the clarity of the Bench and the Bar. In the alternative, Petitioner asks this Court to direct the Court of Appeals to depublish its opinion and assign the matter an unpublished opinion number. See State v. Miller, 409 S.C. 47, 760 S.E.2d 802 (2014); State v. Fripp, 411 S.C. 93, 767 S.E.2d 202 (2014).

Because the Court of Appeals opinion remains published, the scope of its validity is unclear. Although this Court's opinion vacates the vast majority of the reasoning behind the Court of Appeals opinion, confusion may persist as to what extent the opinion can still be relied upon, as this Court's opinion currently has no precedential value. The result of this mixture of published and unpublished opinions is that a large amount of the Court of Appeals' Confrontation Clause analysis may appear to be good law and inadvertently be cited in the future, although all such analysis has been vacated by this Court. In short, it is uncertain to what extent this Court's opinion overrules the opinion of the Court of Appeals. Petitioner respectfully submits that to remand for a new trial, while vacating the entire argument put forth in favor of such a remand, through an unpublished opinion, will reasonably cause confusion and uncertainty.<sup>1</sup>

### CONCLUSION

For all of the foregoing reasons, the State requests this Court grant the petition for rehearing and affirm Appellant's conviction and sentence. In the alternative, the State requests this Court either publish its opinion in this matter, or direct the Court of Appeals to depublish its opinion, in an effort to provide clarity to the Bench and the Bar.


Respectfully submitted,

ALAN WILSON  
Attorney General

J. CROOM HUNTER  
Assistant Attorney General

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<sup>1</sup> Petitioner respectfully submits that Judge Thomas's use, in the Court of Appeals opinion, of State v. Ladson, 373 S.C. 320, 327-28, 644 S.E.2d 271, 275 (Ct. App. 2007) to support a reversal and remand for a new trial is inappropriate because that case dealt with an insufficiently reconstructed record. Respondent has made no attempt to reconstruct the record in this case.

BY:   
J. Croom Hunter  
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ATTORNEYS FOR RESPONDENT

February 25, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal From Orangeburg County

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2012-211961

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THE STATE,

Petitioner,

vs.

HENRY HAYGOOD,

Respondent.

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**PROOF OF SERVICE**

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I, J. Croom Hunter, certify that I have served the Petition For Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Breen R. Stevens, Esquire, First Circuit Public Defender, PO Box 1112, Orangeburg, SC 29116-1112.

I further certify that all parties required by Rule to be served have been served. This 25th day of February, 2015.



J. CROOM HUNTER

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ATTORNEY FOR PETITIONER



ALAN WILSON  
ATTORNEY GENERAL

February 25, 2015

Mr. Breen R. Stevens, Esquire  
First Circuit Public Defender  
PO Box 1112  
Orangeburg, SC 29116-1112

RE: State v. Henry Havgood  
Appellate Case No. 2014-001985

Dear Mr. Stevens:

Enclosed please find two copies of the Petition for Rehearing in the above case.

Sincerely,

J. Croom Hunter  
Assistant Attorney General

JCH/aam  
Enclosures

cc: The Honorable Daniel J. Shearouse (w/original and 6 copies enclosed)  
Ms. Trisha Allen

**RECEIVED**  
FEB 25 2015  
S.C. Supreme Court