

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Laurens County

Eugene C. Griffith, Jr., Circuit Court Judge

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APR 20 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RICKY DALE PACE,

APPELLANT

COURT OF APPEALS APPELLATE CASE NO. 2014-001106

RETURN TO MOTION TO CERTIFY APPEAL
TO THE SUPREME COURT AND TO HOLD
APPEAL IN ABEYANCE

On April 16, 2015, Respondent moved pursuant to Rule 204, SCACR, for this Court to certify the above-captioned appeal for review by the South Carolina Supreme Court, and to hold this appeal in abeyance pending a decision in The State v. Isaac Antonio Anderson, Appellate Case No. 2012-212905.

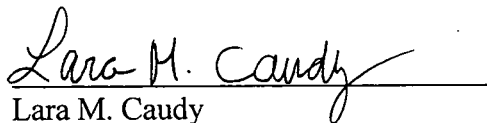
Appellant has no objection to certifying this appeal for review by this Court pursuant to S.C. Code Ann. § 14-8-200(b)(3) since Appellant is challenging the constitutionality of S.C. Code Ann. § 17-23-175, which allows for the admission of out-of-court statements of a child given during an investigative interview.

However, Appellant objects to holding this appeal in abeyance until a decision is reached in Anderson because a decision in this case does not depend on a decision in Anderson as Anderson presents a different issue. Anderson challenged the constitutionality of S.C. Code Ann. § 17-23-175 *as applied in his case* and argued that the recording of the prior out-of-court statements of the child witness must have been published before Anderson cross-examined the child. Anderson argued at oral argument that he had no objection to the admissibility of the recording of the out-of-court statements, rather he objected to the timing of when the recording was published to the jury because it denied him his right to contemporaneous cross-examination.

Appellant, on the other hand, challenges the constitutionality of the statute on its face and argues that recordings of unsworn out-of-court statements of an available child witness without the opportunity for contemporaneous cross-examination by the defendant are not admissible and violate a defendant's rights under the Confrontation Clause of the Sixth Amendment.

WHEREFORE, Appellant respectfully requests this Court deny Respondent's motion to hold this appeal in abeyance pending a decision in Anderson. However, Appellant as no objection to certifying this appeal to the Supreme Court.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

April 20, 2015

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IN THE SUPREME COURT

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Eugene C. Griffith, Jr., Circuit Court Judge

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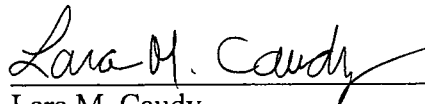
V.

RICKY DALE PACE,

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CERTIFICATE OF SERVICE

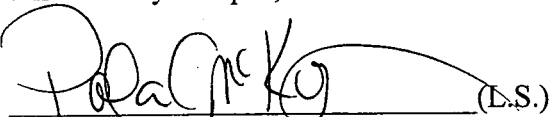
The undersigned attorney hereby certifies that a true copy of the Return to Motion to Certify Appeal to The Supreme Court and to Hold Appeal in Abeyance in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of April, 2015.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of April, 2015.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.