

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 01 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN FITZGERALD KENNEDY,

APPELLANT

APPELLATE CASE NO. 2013-002621

Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 2015-UP-256

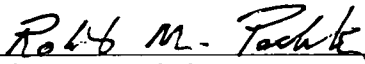
PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, petitioner petitions this Court for rehearing concerning the following point that may have been overlooked or misapprehended. Detective Bearden testified that she put together a photo lineup with petitioner in it. She explained that when she put together the display, she used a program called the "Mug Web" where you can put in a suspect's name, and you can pick a picture out of a lineup if they have been arrested before. (R. p. 208, l. 21- R. p.210, l. 19)

Defense counsel objected to the introduction of the photo lineup because it was obvious after Detective Bearden's testimony that the photos were mug shots of people who had been arrested before. This was prejudicial. This Court even cites State v. Traylon, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004) for the proposition that the "introduction of a 'mug-shot' of a defendant is reversible error." There was no demonstrable need to introduce the photo lineup because the witness already knew who petitioner was since she lived near him. The photograph shown to the jury did suggest that petitioner had a criminal record because Detective Bearden told the jury he did. Defense counsel also objected to detective Bearden testimony in this regard and the trial court said he was protected for the record.

The petition for rehearing should be granted.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

This 1st day of June, 2015.

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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 Kaycie S. Timmons, Esquire, this 1st day of June, 2015.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 1st day
of June, 2015.

Deanz Pineda (L.S.)
Notary Public for South Carolina

My Commission Expires: July, 3 2023.