STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Roger M. Young, Sr., Circuit Court Judge

THE STATE,

Respondent,

vs.

ROBERT HARVEY PAYNE,

Appellant.

Appellate Case No. 2013-000376

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

DID THE TRIAL COURT ERR IN FAILING TO DIRECT A VERDICT OF NOT GUILTY ON THE CHARGE OF INDECENT EXPOSURE?

DID THE TRIAL COURT ERR IN FAILING TO DIRECT A VERDICT OF NOT GUILTY ON THE CHARGE OF POINTING OR PRESENTING A FIREARM?

STATEMENT OF THE CASE

Defendant Payne was indicted for indecent exposure in violation of S.C. Code Ann. § 16-15-130; pointing or presenting a firearm in violation of S.C. Code Ann. § 16-23-410; and assault and battery in the first degree. Defendant was tried before a jury commencing on February 4, 2013. The jury found Defendant not guilty of assault and battery and its lesser included offenses. The jury convicted Defendant on the charges of indecent exposure and pointing or presenting a firearm. The Honorable Roger M. Young, Sr. sentenced Defendant to imprisonment for three years for indecent exposure with credit for time served and five years, imprisonment suspended to three years imprisonment and five years-probation, for pointing or presenting a firearm. The sentences run concurrently with credit for time served; and, Defendant is not to have any contact with the victims, cannot go within 500 feet of their homes, and cannot enter Bayview Subdivision ("Bayview") in Mount Pleasant, South Carolina by any means whatsoever. R. p.1; R. p. 6; R. p. 14, l. 3 – p.16, l.7; R. p. 448, ll. 1-14; R. p. 447, ll. 15-23; R. p. 472 l. 20 – p. 473, l. 2.

Judge Young denied Defendant's motions for directed verdict on all charges. R. p. 376, l. 4; R. p. 378, ll. 10-15; R. p. 390, ll. 20-25.

STATEMENT OF FACTS

Defendant lived on a leaking houseboat with no engine in the marshland adjacent to Shem Creek in Charleston County, South Carolina for approximately two years prior to May 29, 2011. Mr. Jerry Moore, a resident of the Mount Pleasant subdivision of Bayview, gave Defendant permission to moor the houseboat in front of Mr. Moore's house while Defendant repaired the houseboat so that it could be moved. Defendant testified that prior to the move, "Nobody could see it [the houseboat] unless they got out of their own home and came down to Mr. Moore's house." R. p. 294, l. 10; R. p. 337, ll. 5-6; R. p. 53, ll. 10-14; T. p. 336, ll. 22-25; R. p. 54, ll. 2-4; R. p. 314, ll. 2-7; R. p. 293, l. 25 – p. 294, l. 2; R. p. 301, ll. 19-24; R. p. 314, ll. 2-7.

Defendant attempted to move his houseboat on May 18, 2011. In the course of the move, the houseboat got stuck in the marsh and now was visible from the home of Bayview resident Graham Stone and others. Bayview residents began to complain, and the police were contacted. Former Mount Pleasant Chief of Police, Harry Sewell, testified that the neighborhood was "up in arms" after the failed attempt to move the houseboat because the houseboat and Defendant's activity on the houseboat were visible by residents in the subdivision. Chief Sewell further testified that after discussing the issue with Defendant, he and Defendant reached an agreement that Defendant could repair his boat and float it out on the expected high tide between June 1 and June 4, 2011. R. p. 93, ll. 20-23; R. p. 42, ll. 15-16; R. p. 53, ll. 10 – 23; R. p. 39, ll. 2-6; R. p. 276, ll. 4-6; R. p. 277, 1. 7; R. p. 277, l. 24 - p. 278, 1.10.

The specific events that gave rise to this case and Defendant's indictments occurred on May 29, 2011. Mr. Stone testified that on the afternoon of May 29, 2011, he

observed Defendant on his houseboat sunbathing, drinking, and "giving us [Mr. Stone and Mr. Stone's wife] the finger." Mr. Stone further testified that later in the day when Mr. Stone returned from an event in Charleston with his wife, Defendant removed his swim trunks and while "proffering his genitals," gave him "the double finger." Defendant testified that he also urinated from the roof of the houseboat. Another Bayview resident, Scott Anderson, testified that on a different day, Defendant emerged from his house boat and "[h]e faces me and Jessica and my son and urinates." Defendant testified that he occasionally urinated off the side of the boat. R. p. 56, 11. 11-13; R. p. 57, 1. 16 - p. 58, 1. 13; R. p. 58, 1. 22 - p. 59, 1. 12; R., p. 320, ll. 8-17; R. p. 162, ll. 10-14. R. p. 320, ll. 2-8.

Mrs. Stone testified that Defendant was drinking and making obscene gestures including "giving, what I felt like - - he was giving us, me, the house, the finger, every five minutes." She also testified that Defendant, "had a big camera, or a big lens on it. . . He would take - - it looks like - - I don't know if he was taking pictures or not, but he was looking through the big lens at the house." She also testified that: "He had cans and cans of beer that he would just drink and then throw into the marsh." R. p. 37, ll. 8-9; R. p. 40, 11. 4-8; R. p. 40, ll. 21-24.

Mr. Stone's testimony echoed his wife. He testified that Defendant "was staggering all over the boat. He appeared to be very intoxicated." Mr. Stone testified that they could see the houseboat from every room in their house. He also testified that between May 18 and May 29th, Defendant "would have a camera around his neck with a very extended tele lens on it" and "he would be pointing it all over the place, including our house." Mr. Stone also testified that Defendant "was giving us the finger constantly, I

mean at least every ten minutes, especially when he thought we were looking at him." R. p. 60, ll. 10-11; R., p. 53, ll. 17-23; T. p. 55, ll. 3-15.

On the afternoon of May 29, 2011, two gun shots were fired. There was no dispute that these two gun shots were fired by Defendant. As to the first shot, Defendant testified that he wanted to make sure no one saw him actually fire the shotgun, since he thought it might be illegal to do so within the city limits. He testified that he fired the first shot into the air from inside his boat through a hatch. As to the second shot, Defendant testified that about 30 minutes after he fired the first shot, he went into the woods on an island, and - hidden from view – fired another shot into the air. He testified that he did this with the goal of annoying Mr. Stone. R. p. 322, l. 22-p. 324, l. 13; R. p. 333, l. 24-p. 334, l. 12.

However, with regard to the second shot, two witnesses, Mr. Stone and another Bayview resident, Mr. Anderson, testified that they perceived that Defendant shot at them. Mr. Anderson testified that his two-and-a-half year old son Noah was with him. Mr. Anderson also testified, that he looked through a scope and determined that it was a pistol grip shotgun, then he grabbed his son and went inside and called 911. Mr. Stone testified that Defendant fired from approximately 525 feet (175 yards) away. An officer of the Mount Pleasant Police Department testified that the second shot was indeed fired 537 feet (179 yards) from Mr. Stone's property, and 812 feet (270 yards) from Mr. Anderson's property. R. p. 163, ll. 17-19; R. p. 169, l. 21 – p. 170, l. 3; R. p. 74, ll. 2-7; R. p. 67, ll. 2 – 25; R. p. 98, l. 21 – p. 99, l. 22; R. p. 225, l. 25; R. p. 226, l.13.

STANDARD OF REVIEW

"In ruling on a directed verdict motion, the trial court is concerned with the existence of evidence, not its weight." State v. Gaster, 349 S.C. 545, 555, 564 S.E. 2d 87,

92 (2002). "On appeal from the denial of a motion for directed verdict, this Court must view the evidence in a light most favorable to the State." State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury." State v. Harris, 351 S.C. 643, 653, 572 S.E. 2d 267, 273 (2002).

ARGUMENT

A. THE TRIAL COURT DID NOT ERR BY FAILING TO DIRECT A VERDICT OF NOT GUILTY ON THE CHARGE OF INDECENT EXPOSURE BECAUSE (1) EVIDENCE EXISTED TO SUBMIT THE CHARGED CRIME TO THE JURY, AND (2) THE DEFENDANT'S NUDITY WAS NOT CONSTITUTIONALLY PROTECTED "EXPRESSIVE SPEECH."

The trial court properly denied the defense motions for directed verdict because (1) evidence existed to submit the charged crime to the jury; and (2) the Defendant's actions simply did not rise to the level of constitutionally protected speech.

1. The Evidence Supports a Conclusion that Defendant's Actions Met the Statutory Elements of S.C. Code Ann. § 16-15-130

As noted above, Defendant was indicted for violation of S. C. Code Ann. § 16-15-130, which provides as follows:

> (A)(1) It is unlawful for a person to wilfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway.

Initially, there is direct evidence supporting the charged crime, and the trial court properly submitted this case to a jury. Mr. Stone testified that for ten days leading up to

and including the day of the Defendant's arrest, the Defendant harassed Mr. Stone, his wife, and other residents. Specifically, he testified:

> A. This was a ten-day period, and on many occasions, he would have a camera around his neck with a very extended tele lens on it, and I don't know whether he was taking pictures, but he would be pointing it all over the place, including our house.
> Q. Anything else you observed him doing?
> A. He was giving us the finger constantly, I mean at least every ten minutes, especially when he thought we were looking at him. It was hard not to look at him because we could clearly see him and the boat from every room of our house.

(R. p. 55, ll. 5-15.)

Mr. Stone further testified that on the day the Defendant was arrested, May 29th:

> Q. Now, once you returned home, did you see the defendant at all?
> A. Yes.
> Q. And what was he doing?
> A. He was still on the top deck on his chaise lounge and when he saw me, he stood up, took off his swim suit. He just had a swim suit on, stood on the top deck of his boat proffering his genitals, giving me the double finger, like this (indicating).

(R. p. 59, ll. 4-12.)

Defendant confirmed that he exposed himself to Mr. Stone, and that, when he saw Mr. Stone, he willfully gestured at Mr. and Mrs. Stone with an obscene hand gesture. The Defendant testified:

> Well, on the roof of the boat, I pulled my shorts down far enough to manage the process [urination], and then I was facing Mr. Stone's - - one of two houses that I thought was his, and I gave him the bird, in that general direction.

(R. p. 320, ll. 13-17.)

In addition, there is no dispute whatsoever that the Defendant exposed himself in a public place in view of others. As noted above, the Defendant testified that he was on

the roof of his boat in a public place, the Shem Creek Marsh, he lowered his pants, urinated in the direction of Mr. Stone's house, and "gave him [Mr. Stone] the bird."

The evidence and inferences drawn therefrom viewed in a light favorable to the State justified the trial judge's submission of the charge of indecent exposure as set forth in § 16-15-130 to the jury.

2. Defendant's Actions Do Not Constitute Constitutionally Protected Speech

Defendant claims his use of the middle finger and other actions are constitutionally protected speech. However, Defendant was not charged and convicted for the use of his gesture with his middle finger, and Defendant's indecent exposure was not protected communication under the United States or the State of South Carolina Constitutions.

The cases cited by Defendant do not support a constitutional defense to Defendant's actions based on either the United States or the South Carolina Constitution. Defendant was not engaging in constitutionally protected communication when he dropped his pants and urinated in the direction of Mr. and Ms. Stone's home from the roof of his boat in the marshes of Shem Creek after drinking beer. Defendant's reliance on a South Carolina cross burning case, State v. Ramsey, 311 S.C. 555, 430 S.E.2d 511 (1993) (Ramsey II) is misplaced. In Ramsey II, a cross was burned in the yard of the Chief of Police for the City of York. As summarized in Ramsey II, the South Carolina Supreme Court initially issued its opinion sustaining the conviction of the cross burners in State v. Ramsey, Op. No. 23760 (S.C. Sup. Ct. filed June 13, 1993) (Davis Adv.Sh. No. 15 at 24) (Ramsey I) (vacated on rehearing May 3, 1993). Subsequent to the issuance

of Ramsey I, the United States Supreme Court decided R.A.V. v. City of St. Paul, 505 U.S. 377, 112 S.Ct. 2538 (1992). In R.A.V., the United States Supreme Court protected a cross burner who burned a cross in the yard of a black family. The South Carolina Supreme Court reconsidered Ramsey I and vacated the conviction in light of R.A.V. In Ramsey II, the South Carolina Supreme Court characterized the R.A.V. decision as "the United State Supreme Court struck down a Minnesota statute outlawing the placement of bias-motivated symbols on public or private property on the grounds that the Minnesota statute impermissibly restricted the right to freedom of speech guaranteed by the First Amendment" 311 S.C. at 558, 430 S.E.2d at 514. Furthermore, "The government may not selectively limit speech that communicates, as does a burning cross, messages of racial or religious intolerance." Ramsey II, 311 S.C. at 559, 430 S.E.2d at 514. "A statute directed at conduct rather than speech may stand; and a statute reaching a proscribable class of speech, such as threats of violence, does not infringe on First Amendment rights." Id., 311 S.C. at 560, 430 S.E.2d at 514, referencing R.A.V., 505 U.S. at 389, 112 S.Ct. at 2546. The Supreme Court further explained:

> We have long held, for example, that nonverbal expressive activity can be banned because of the action it entails, but not because of the ideas it expresses - so that burning a flag in violation of an ordinance against outdoor fires could be punishable, where burning a flag in violation of an ordinance against dishonoring the flag is not.

R.A.V., 505 U.S. at 385, 112 S.Ct. at 2544.

Defendant's actions do not rise to the level of burning a cross on the yard of a black police chief. Defendant's actions were not protected communication. Consistent with R.A.V. and Ramsey II, it was the behavior of Defendant that was proscribed and punished, not a purported message. The United States Supreme Court "has held that

when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." United States v. O'Brien, 391 U.S. 367, 376, 88 S.Ct. 1673, 1678-1679 (1968). In O'Brien, the speech element associated with draft card burning was not sufficient to prevent a conviction of mutilating and then not possessing the draft card as required by the applicable statute.

Defendant relies on Diamonds v. Greenville County, 325 S.C. 154, 480 S.E.2d 718 (1997) (county ordinance banning public nudity stricken) and Texas v. Johnson, 491 U.S. 397, 109 S.Ct. 2533 (1989) for the general proposition that "[t]herefore, a display of nudity done as symbolic speech, is protected from punishment by enforcement of the Indecent Exposure statute." Appellant Brief at 9. Johnson is a flag burning case. The defendant burned a United States flag at the 1984 Republican National Convention and was exonerated. It would seem axiomatic that this is First Amendment protected speech at a political event. The case at hand is about proffering genitals and urinating from a boat in a marsh allegedly towards a private citizen after drinking beer. In Johnson, the Court recites a litany of examples where behavior has been given First Amendment protection. These include (1) displaying black armbands to protest the Vietnam War, (2) participating in sit-ins, (3) wearing military uniforms in a dramatic presentation criticizing involvement in the Vietnam War, and (4) picketing for various causes. *See* Johnson, 491 U.S., at 404, 109 S.Ct., at 2539. Of particular note, the Johnson Court stated:

> In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we have asked whether '[a]n intent to convey a particularized message was present, and [whether] the

> likelihood was great that the message would be understood by those who viewed it.'

Johnson, 491 U.S. at 404, 109 S.Ct. at 2539, *citing* Spence v. Washington, 418 U.S. at 410 – 411, 94 S.Ct. at 2730.

These cases show that some forms of communication or speech do not have unlimited protection when there are sufficient interests of government not related to restriction of speech.

These cases show that communication mixed with unacceptable behavior is not protected. The record shows that the jury could reasonably have found that no "intent to convey a particularized message was present" and also the likelihood was not "great that the message would be understood by those who viewed it." The following is some of Defendant's testimony on cross examination (1) "I did not know Mr. Stone was home," (2) "Never saw the man, and I didn't know which home his home was," and (3) in response to a question that "you wouldn't know where to direct your gesture would you?" Defendant responded "From 200 yards it didn't matter." R. p. 349, l. 20; R. p. 349, ll. 20-21; R. p. 349, l. 25 – p. 350, l. 2.

Defendant also testified with regard to Defendant's purpose: "He [Stone] caused me a lot of discomfort. I was just trying to cause him a lot discomfort." Defendant also testified that he wished his gesture on top of the boat to be seen as a sign of political contempt. However, the testimony elicits the facts that the message, if it were a message, was not directed to anyone who worked for the State of South Carolina or its subdivisions, the Town of Mount Pleasant, and that he did not protest to the Mount Pleasant police chief. At best, he testified that the purported message was directed to Mr.

and Ms. Stone as living in Mount Pleasant and Bayview. R. p. 355, l. 25 – p. 356 l. 1; R. p. 350, ll. 21-24; R. p. 350, l. 21 – p. 352, l. 13.

Indecency statutes are constitutional and do not proscribe all communication. Even if flipping the middle finger and proffering genitals while urinating is a message, the behavior and not the message is what is regulated by the South Carolina statute. The trial court's denial of the motion for directed verdict was proper.

B. THE TRIAL COURT DID NOT ERR BY FAILING TO DIRECT A VERDICT OF NOT GUILTY ON THE CHARGE OF POINTING OR PRESENTING A FIREARM WHERE TWO DIFFERENT VICTIMS TESTIFIED THAT DEFENDANT POINTED A SHOTGUN AT THEM AND DEFENDANT FIRED IT.

As noted above, Defendant was also indicted for violation of S. C. Code Ann. § 16-23-410, which provides as follows:

> **It is unlawful for a person to present or point at another person a loaded or unloaded firearm.**

The trial court properly denied the defense motion for directed verdict on the charge of presenting or pointing a firearm because evidence existed to submit this charged crime to the jury. Two witnesses testified that the gun was pointed at them and fired. One witness, Mr. Scott Anderson testified:

> So there is the island. There are a couple of openings in there. I see him [Defendant] come out of the island, which is unusual, because he's not got a shirt on, and I hadn't seen - - you don't usually see people on that side, and I usually recognize them, so I picked up the scope and got a quick look at him, and saw that it was Robert Payne and I didn't think anything of it.
>
> Came back out, and he picked up - - I realized he had - - he came back out, he aimed a shotgun directly at us [Mr. Anderson and his two-and-a-half year old son Noah], and fired the gun. And -- sorry. So a split second I - -
>
> THE COURT: Take your time.

> THE WITNESS: So -- I couldn't believe it. I was -- I mean, holy cow. I quickly picked up the scope, as I couldn't believe it, and went like this and saw that it was a pistol grip shotgun and -- black shotgun. I grabbed my son. I didn't have the phone on me, so I tried to get Noah to come with me, grab him without making him scream, and we went inside to get the phone
> and I called 911, and -- to get them to come out, and went back out.

(R. p. 169, l. 8 – p. 170, l. 3.)

In addition, Mr. Stone testified:

> A. Yeah. He [Defendant] came out of the woods on the island with the thing in his hand like this, and then he saw me on the deck, and he went like this (indicating.)
> Q. And that's how he was holding it?
> A. Yeah, fired.

(R. p. 67, ll. 2 – 25.)

> Q. And just to clarify, you're 100 percent sure to your perception this defendant pointed and fired a gun at you in your direction?
> A. 100 percent sure.
> Q. Did you believe at the time he could shoot you?
> A. Yes.

(R. p. 74, ll. 2-7.)

Defendant asserts State v. Cabrera-Pena, 361 S.C. 372, 605 S.E.2d 522 (2004), and State v. Reese, 370 S.C. 31, 633 S.E.2d 898 (2006) (*overruled on other grounds*, State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009)) imply "that a defendant must 'present' a firearm in close enough proximity to a victim such that it constitutes a threat." Appellant Brief at 12. However, a review of these cases shows that the presentment in these cases was in close proximity and the cases appear to be handgun cases. In Cabrera-Pena, the court specifically references a handgun. Id., 361 S.C. at 381, 605 S.E.2d at 526. Though the Reese opinion only refers to a gun, it appears to have been a handgun from

the facts. The opinion states that "According to Reese, he was upset and crying while talking to Teresa. He pulled the gun out and told Teresa he was going to kill himself." Reese, 370 S.C. at 35, 633 S.E.2d at 900 and "there is no doubt Reese was presenting a firearm when he took the gun out and began waving it around." Id., 370 S.C. at 36, 633 S.E.2d at 901. These cases do not make holdings about any distance requirements related to presenting a firearm. These are cases where the presentment was factually close. Defendant also asserts that: "Completely missing from the State's case was any evidence that Defendant intended to point or present a firearm at Stone or Anderson." Appellant Brief at 13. Defendant cites In re: Spencer R., 387 S.C. 517, 692 S.E.2d 569 (Ct. App. 2010) for the proposition that the State "must offer direct or circumstantial evidence that a person specifically intended to present a firearm at someone before a conviction may be sustained under Section 16-23-410." Appellant Brief at 14.

In Spencer R. (standing in front of his house threatening people at a school bus stop with an assault rifle), this Court sustained Spencer R.'s conviction for pointing or presenting a firearm and stated:

> Taken as a whole, Spencer R.'s actions as to Angela B. were not that of an ordinary citizen engaged in the lawful use of a firearm on his property. Instead, the evidence demonstrates Spencer R. deliberately intended to show his rifle at Angela B. in a threatening manner. Even though Spencer R. did not waive or point the assault rifle directly at Angela B., his decision to sit in view of the school bus stop for an extended period of time while displaying his assault rifle, combined with the events occurring that day and Rodney T.'s and Brett C.'s testimony that Spencer R. said he wanted to shoot Angela B., constitute sufficient evidence to uphold Spencer R.'s conviction.

Id., 387 S.C. at 524, 692 S.E.2d at 573.

In this case sub judice, Defendant's activities were not those of an ordinary citizen engaged in the lawful use of a firearm on his property. As to the second shot, he was not even on his property. Two witnesses perceived that Defendant was aiming his shotgun at them. Spencer R. was convicted even though he "did not waive or point the assault rifle directly at Angela B." Id. The court in Spencer R. recognized that a trial court should examine the overall circumstances "combined with the events occurring during the day." Id. In this case, Defendant testified that he shot the second shot "to annoy Stone. He had been on my case for two years. I hadn't done anything." R. p. 334, ll. 11-12.

It does not matter that facts are disputed as to where the gun was aimed. It does not matter that there is testimony that the gun was fired far enough away not to cause injury. There is no question that when the record is viewed in the light most favorable to the State there is direct evidence in the record to confirm the shotgun was pointed or presented. The trial court properly submitted the case to the jury and denied Defendant's request for a directed verdict on the charge of pointing or presenting a firearm. The testimony from two witnesses is that they perceived the gun was pointed at them and fired. In Spencer R., the court notes:

> We note the State charged Spencer R. with pointing or presenting a firearm at Mrs. L., Angela B., and Brett C. in a single petition. Because the State did not charge Spencer R. with separate counts as to each individual, we hold there is sufficient evidence to affirm Spencer R.'s conviction as a whole because testimony establishes Spencer R. presented a firearm at Angela B. See Rule 220(c), SCAR (The appellate court may affirm any ruling, order, decision or judgment upon any grounds(s) appearing in the Record on Appeal.)

387 S.C. at 524, 692 S.E. 2d at 573 (footnote 4).

Accordingly, the convictions and sentences should be affirmed.

CONCLUSION

For the reasons set forth herein, the court should find that both motions for directed verdict were properly denied by Judge Young and the conviction of the lower court should be affirmed.

Respectfully submitted,

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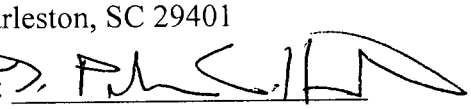
BY: 
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December 29, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Roger M. Young, Sr., Circuit Court Judge

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ROBERT HARVEY PAYNE,

Appellant.

CERTIFIATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
December 29, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Roger M. Young, Sr., Circuit Court Judge

Appellate Case No: 2013-000376

THE STATE,

Respondent,

vs.

ROBERT HARVEY PAYNE,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated December 29, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record: Robert Dedek, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211 and Ginger D. Goforth, Esquire P.O. Box 6099, Spartanburg, SC 29304

I further certified that all parties required by Rule to be served have been served. This 29th, day of December, 2014.

Angela Bennett
Administrative Assistant

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(5)

ALAN WILSON
ATTORNEY GENERAL

December 29, 2014

Ginger D. Goforth, Esquire
P.O. Box 6099
Spartanburg, South Carolina 29304

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

Re: The State v. Robert Harvey Payne
Appellate Case No. 2013-000376

Dear Counsel:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

T. Parkin C. Hunter
Assistant Attorney General
S.C. Bar No. 2827

TPH/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original & 9 enclosed)
Victim Services