STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM JARRELL ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2014-002207

INITIAL BRIEF OF APPELLANT

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Whether the trial court erred in admitting statements made by appellant to the police when the officers testified they knew he was heavily intoxicated, having drunk twenty-six beers, snorted cocaine, and used MDMA?

2.

Whether the trial court erred in admitting appellant's statements made after the police threatened appellant and told him that he would be charged with murder "if we don't get anything today"?

STATEMENT OF THE CASE

On September 6, 2013, a Laurens County grand jury indicted appellant for accessory after the fact to murder. R. ___. On September 8, 2014, appellant was tried before the Honorable Eugene Griffith, Jr. and a jury. Tr. 1. The State was represented by David M. Stumbo, C. Dale Scott, and Demetrious G.Andrews. Tr. 1. Chelsea McNeill, Kate Kendall, and Claude H. Howe, III, represented appellant. Tr. 1. The jury convicted appellant. Tr. 766, ll. 7 – 15. On October 10, 2014, Judge Griffith sentenced appellant to seven years' imprisonment suspended upon the service of three years' imprisonment and three years' probation. October 10, 2014, Tr. 22, ll. 1 – 14. This appeal follows.

ARGUMENT

1.

The trial court erred in admitting statements made by appellant to the police when the officers testified they knew he was heavily intoxicated, having drunk twenty-six beers, snorted cocaine, and used MDMA.

The entire prosecution of appellant rested on two sets of statements he gave to the police in the span of less than twenty-four hours. These statements all dealt with what appellant knew about the death of Emily Anna Asbill ("Asbill").[1] The State's theory of the case was that appellant lied in his earlier statements in an attempt to cover up a murder committed by his best friend.

Late on the night of June 29, 2013, Henry Simmons ("Simmons") called 911. Tr. 317, ll. 10 – 21. Tr. 312, l. 19 – 313, l. 2. Simmons' stepson, Michael Beaty ("Beaty") and appellant had just rung his doorbell telling him that Asbill was hurt and might be dead. Tr. 317, ll. 10 – 21. Simmons checked her pulse and, finding none, called 911. Tr. 317, ll. 10 – 21.

Beaty and appellant were lifelong friends. Tr. 318, ll. 3 – 5. Beaty and Asbill were dating. Tr. 318, ll. 11 – 15. Beaty, appellant, and Asbill had been at a wake that day. Tr. 422, ll. 8 – 12. The wake was "an all day thing" according to its host. Tr. 422, ll. 20 – 24. "Everyone but a pregnant woman" was drinking alcohol at the party. Tr. 439, ll. 6 – 11. The autopsy report showed that Asbill's BAC was .23. Tr. 660, ll. 19 – 24. Asbill had been strangled. Tr. 647, ll. 5 – 9. She had ligature marks around her neck. Tr. 647, l. 14 – 648, l. 4. Asbill also had serious abrasions to her right forearm. Tr. 649, ll. 19 – 25.

Multiple police officers testified at the lengthy pretrial Jackson v. Denno, 378 U.S. 368 (1964), hearing regarding statements made by appellant. Appellant made two sets of statements. Three of the statements were made in the immediate aftermath of Asbill's death, in the early morning hours of July 30, 2013, while appellant was grossly intoxicated. The first was made to Officer Tyrone Goggins ("Goggins") at the scene. Tr. 107, ll. 10 – 17. Goggins recalled that appellant was "swaying back and forth like he was intoxicated." Tr. 105, ll. 2 – 3. Goggins smelled alcohol on appellant's person. Transcript 105, ll. 4 – 5. Appellant told Goggins that he been intoxicated and blacked out. Tr. 107, ll. 8 – 17. While Goggins maintained that appellant understood what he was saying, he added that appellant "just seemed to be highly intoxicated and swaying back and forth as he was – he was having a hard time remaining on his feet." Tr. 108, ll. 7 – 13. Goggins admitted that appellant would have been arrested for DUI had he been driving a vehicle. Tr. 111, l. 23 – 112, l. 2. Appellant later told Goggins that he had taken cocaine and "a drug called Molly" at the party. Tr. 155, ll. 9 – 19. The police did not arrest appellant, but transported him to the police department. Tr. 109, ll. 17 – 22.

In this first statement, appellant told Goggins that he had been at a party, had left with Beaty and Asbill, and had blacked out. Tr. 107, ll. 8 – 17. He remembered arriving at the Simmons' house, going inside, and laying down. Tr. 107, ll. 8 – 17. He remembered Beaty later coming to the door stating that he needed help for Asbill. Tr. 107, ll. 8 – 17. Appellant also told Goggins that Asbill was "a cutter." Tr. 111, ll. 6 – 10.

The next police officer to interview appellant was Officer Crystal Roberts ("Roberts"). When she arrived at the police station, she found appellant "just sitting in a chair sleeping." Tr. 115, ll. 16 – 17. Roberts admitted that appellant was "passed out."

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[1] Asbill is frequently referred to in the transcript as "[illegible]A."

Tr. 124, ll. 2 – 4. Appellant smelled of alcohol. Tr. 125, l. 25 – 126, l. 1. Appellant's eyes were "incredibly bloodshot." Tr. 126, ll. 5 – 7. She gave appellant his Miranda warnings. Tr. 116, ll. 7 – 119, l. 2. Robert stated, "in my personal opinion, [appellant] was intoxicated. He smelled of alcohol. He was sleeping prior to me getting there and you could just tell he was intoxicated." Tr. 119, ll. 3 – 8. Appellant later told Roberts that he drank "twenty-six or so beers." Tr. 178, l. 17 – 25. Despite his obvious intoxication, Roberts testified that appellant understood his rights. Tr. 119, ll. 9 – 11.

In his oral statement to Roberts, appellant told her that he "drank a lot that night" and that "he blacked out basically in the back seat of the car." Tr. 120, ll. 7 – 16. Appellant told Roberts he did not remember anything until waking up and seeing crime scene tape around Asbill's car at the Simmons' residence. Tr. 120, ll. 7 – 16.

The next officer to interview appellant said appellant did not appear to be intoxicated. Tr. 131, l. 22 – 132, l. 2. SLED agent Michael Collins ("Collins"), when asked if he could tell whether appellant had been drinking, responded, "A little." Tr. 131, ll. 11 – 19. Collins stated that appellant did not appear to be drunk. Tr. 131, l. 22 – 132, l. 2. When Collins first saw appellant, he had a blanket pulled over his legs and arms. Tr. 131, ll. 3 – 8. Appellant told Collins that he had been drinking all day. Tr. 133, ll. 12 – 14. Collins admitted that he could smell alcohol on appellant. Tr. 136, ll. 16 – 18.

Appellant again described the party and leaving with Beaty and Asbill. Tr. 132, ll. 6 – 133, l. 23. Beaty drove, Asbill sat in the front passenger seat, and appellant sat in the back seat. Tr. 133, ll. 15 – 23. Appellant noticed "some tension in the car." Tr. 134, ll. 1 – 8. Beaty, Asbill, and appellant all went inside the Simmons' house and appellant tried to sleep. Tr. 134, ll. 11 – 21. Appellant could not sleep because Asbill and Beaty

were talking loudly. Tr. 134, ll. 11 – 22. He also told Collins that Asbill and Beaty had an abusive relationship and that Asbill would sometimes bite Beaty. Tr. 135, ll. 14 – 21.

Another SLED agent, Harvey Owens ("Owens"), also claimed that appellant was not inebriated. Tr. 145, ll. 2 – 9. He did admit that he could tell appellant had been drinking. Tr. 145, ll. 10 – 12. He could smell alcohol on appellant. Tr. 147, ll. 9 – 10. Owens stated that he would not have been comfortable allowing appellant to drive him in a car. Tr. 148, ll. 3 – 5. Owens denied this was because appellant was intoxicated, clarifying that he was "very particular who I ride with." Tr. 148, ll. 6 – 10.

Appellant argued that his level of intoxication rendered his statements involuntary. Tr. 252, l. 22 – 253, l. 11. The trial judge, in summary fashion, ruled the statements were admissible. Tr. 260, l. 20 – 261, l. 13.

The trial court erred in not excluding appellant's statements because of his extreme intoxication. In Denno, the United States Supreme Court confronted statements made by a wounded suspect who had been given demerol and scopolamine. Denno, 378 U.S. at 370-72. The Court used this as a factor as to whether the accused's will had been "overborne" and ultimately ruled that the trial court erred in not granting him an evidentiary hearing on the voluntariness of his statements. Id. at 391-95.

The determination of voluntariness is based on the totality of the circumstances. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007). Among the factors to consider is the defendant's physical condition. Greenwald v. Wisconsin, 390 U.S. 519 (1968). While statements made under the influence are not per se inadmissible, "at some point the degree of intoxication may prohibit one from acting rationally or voluntarily." United States v. Cellemme, 431 F.Supp. 731, 734 (D. Mass. 1977).

In this case, both Goggins and Roberts testified that appellant was intoxicated when he made his statements. The SLED agents, while claiming appellant was not intoxicated, admitted appellant smelled of alcohol and they could tell he had been drinking. Appellant told the officers he blacked out. He had consumed over two cases of beer, cocaine, and MDMA. Under this high degree of intoxication, appellant's statements could not have been voluntary and the trial court erred in admitting them.

2.

The trial court erred in admitting appellant's statements made after the police threatened appellant and told him that he would be charged with murder "if we don't get anything today."

Appellant's next set of statements were given the next day. Tr. 151, ll. 3 – 6. Appellant left the police station after giving the statements described in Issue One. Tr. 151, ll. 3 – 6. Appellant returned to the police station the next day at approximately 2:00 PM. Tr. 150, l. 19 – 151, l. 19. Goggins gave appellant his Miranda warnings. Tr. 152, ll. 19 – 25. Appellant repeated his earlier version of events Goggins. Tr. 155, ll. 3 – 24.

Appellant was then interviewed by Roberts and Collins. Tr. 173, ll. 13 – 15. Roberts recorded a portion of this statement. Tr. 182, l. 22 – 183, l. 4. Roberts used her iPhone to record the interview, but her phone quit recording when she received a call. Tr. 194, l. 18 – 195, l. 2. The recording was introduced as an exhibit and played for the trial judge. Tr. 200, ll. 17 – 18. Def. Ex. 1.

During the interview, the police threatened appellant. Def. Ex. 1. Collins told appellant that, "If we don't get the absolute truth from either of you, it's going to be both of you." Def. Ex. 1. He told appellant "And the charges are going to read the same:

murder." Def. Ex. 1. Roberts told appellant, "Your arrest warrant is going to say William Jarrell Alexander is charged with the murder of Emily Asbill." Def. Ex. 1. Appellant then asked if he was being arrested. Def. Ex. 1. Roberts responded, "Tell us something!" Def. Ex. 1. Appellant said, "I wish I could." Def. Ex. 1.

Collins then told appellant that he could tell he was scared. Def. Ex. 1. He said, "Fear is a good thing. Fear keeps people alive. Fear keeps people out of jail. Fear minimizes jail time." Def. Ex. 1. After further confronting appellant with supposed facts of the crime, Roberts told him, "We really need you to tell us today." Def. Ex. 1. She said, "Because if we don't get anything today, before you walk out that door, I'm telling you, you're going to be charged with murder. For killing Emily Asbill." Def. Ex. 1. Appellant then told the police to go ahead and charge him. Def. Ex. 1. Shortly thereafter, the recording stops mid-questioning. Def. Ex. 1.

After these threats, the questioning continued and appellant eventually gave police a written statement that Beaty told him, "I think I messed up, I might have ended her life." Tr. 179, ll. 12 – 25. State's Ex. 5. Appellant was then immediately given a polygraph and after its conclusion, gave a more detailed statement implicating Beaty. Tr. 218, ll. 2 – 6. Tr. 226, ll. 7 – 24. Tr. 235, l. 14 – 237, l. 2. State's Ex. 7. In this statement, appellant wrote that Beaty was upset because Asbill had been flirting with appellant. State's Ex. 7. They stopped on a country road and Beaty drug Asbill down the road. State's Ex. 7. When they arrived at the Simmons' house, appellant stayed in the garage smoking cigarettes. State's Ex. 7. He saw Beaty on top of Asbill in the car with his hands around her throat. State's Ex. 7. Beaty then told appellant that he "messed up"

and "may have taken her life." State's Ex. 7. Beaty asked appellant not to tell anyone because of their friendship. State's Ex. 7.

In order to introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona, 384 U.S. 426 (1966). See also State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010). "Further, the confession may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of improper influence." State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (internal quotations omitted).

In State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990), the Court held that law enforcement's admission that the defendant would be charged with withholding information or giving the police officer a false statement if she was not forthcoming mandated suppression of her confession. The defendant was told "you don't have to say anything, but if you withhold evidence, you can be charged with a crime." Osborne, at 366, 392 S.E.2d at 179.

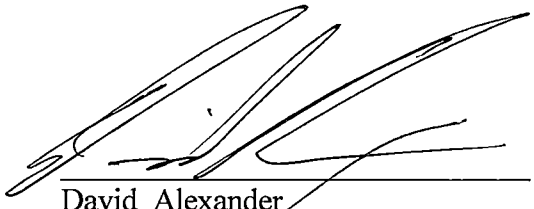
In State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (Ct. App. 2001) this Court held that a defendant's statement to his probation officer was inadmissible because his agent expressly threatened to revoke Hook's probationary sentence unless he told the truth. This Court noted that statements given pursuant to threats or under inherently coercive circumstances are not admissible. See Mincey v. Arizona 437 U.S. 385, 398, 399 (1978); Minnesota v. Murphy 465 U.S. 420, 427 (1984).

In State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 487 (1987), the Supreme Court reversed a conviction because the investigating officer told the defendant that he could guarantee he would not get the death penalty if he confessed. Here, appellant was threatened with a murder charge if he did not give the police a statement that day. Appellant was also impliedly promised less time by Collins when he told appellant that fear minimizes jail time. These threats rendered all of appellant's subsequent statements inadmissible. Therefore, appellant's conviction should be reversed and appellant should be granted a new trial.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2015.

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APPELLATE CASE NO. 2014-002207

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, via U.S. First Class Mail with the appropriate postage affixed thereto, on this 27th day of July, 2015.

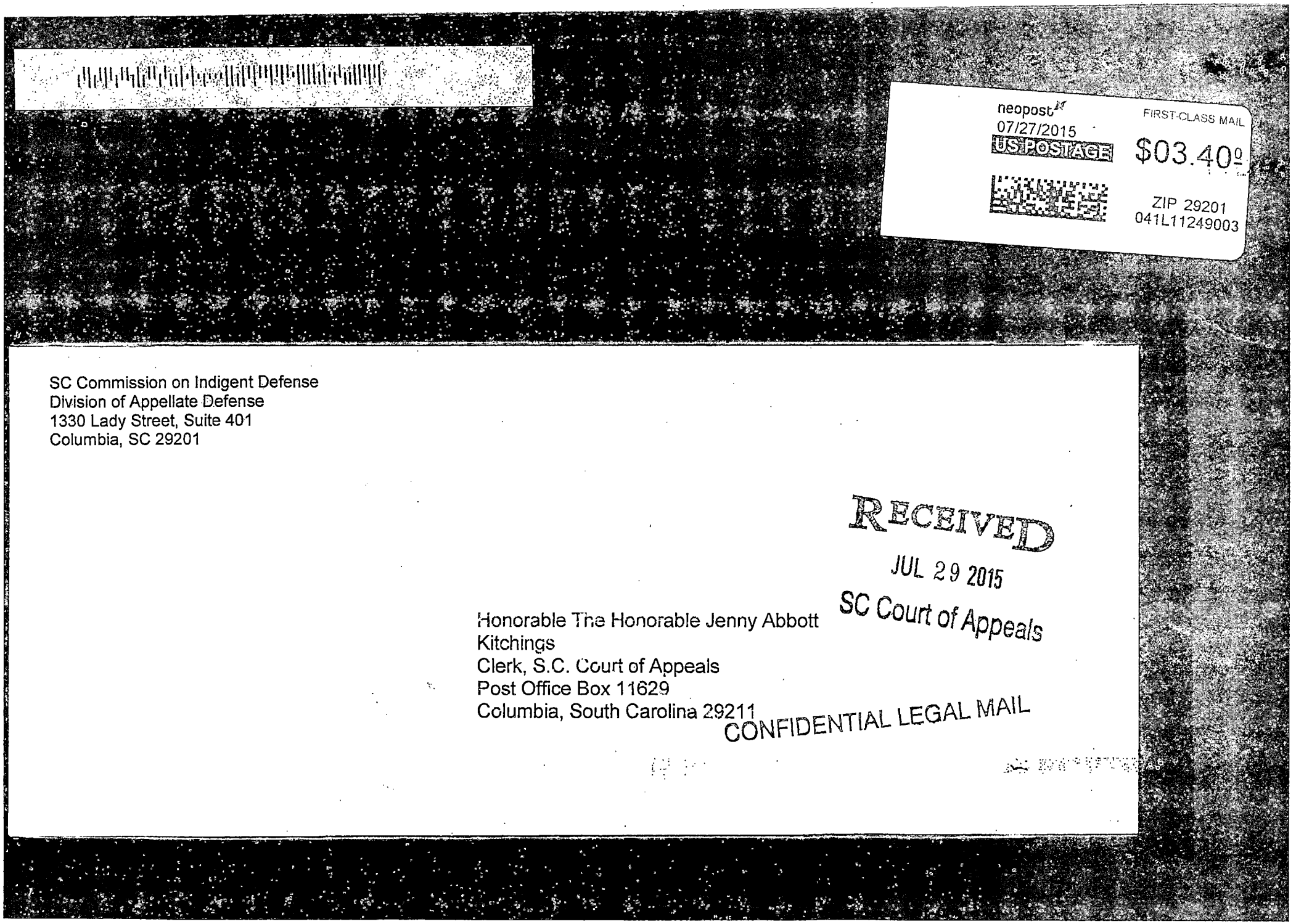
David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2015.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: July 3, 2023.



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