STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2014-0001630

THE STATE, ...RESPONDENT

v.

RALPHEAL L. ROBERTSON, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General
S.C. Bar No. 8729

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

J. STROM THURMOND
Solicitor, Second Judicial Circuit

P.O. Drawer 3368
Aiken, South Carolina 29802
(803) 642-1557

ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court properly denied Appellant's request to ask potential jurors whether they believed a person charged with child sexual abuse was "probably guilty" where the voir dire as a whole was sufficient to uncover bias or partiality and the limitation did not render the trial fundamentally unfair.

STATEMENT OF THE CASE

Ralpheal L. Robertson (Appellant) was indicted at the April 2014 term of the grand jury for Aiken County for two counts of first-degree criminal sexual conduct (CSC) with a minor (2014-GS-02-382 & -384) and two counts of lewd act upon a minor (2014-GS-02-385 & -386). He was represented by Assistant Public Defenders Michael Routzong and David Hayes of the Second Circuit Public Defender's Office. Respondent (the State) was represented by Assistant Solicitors Ashley Hammack and Sam Grimes of the Second Circuit Solicitor's Office. (Tr.p.1). On July 15-17, 2014, Appellant proceeded to trial by jury before the Honorable Eugene C. "Bubba" Griffith, Jr., pursuant to which he was found guilty as indicted. He was sentenced to two concurrent terms of thirty (30) years' imprisonment for the two counts of CSC, fifteen (15) years' concurrent imprisonment for one count of lewd act, and ten (10) years' consecutive imprisonment for the second count of lewd act, for an aggregate sentence of forty (40) years' imprisonment. (Indictments & Sentencing Sheets; Tr.p.216, line 21-p.217, line 20). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent now follows.

STATEMENT OF FACTS

In November of 2011, the Aiken County Sheriff's Office investigated a report that the eight-year-old victim was sexually abused by Appellant when she was five to seven years old. Based on an interview with the victim's mother, the Sheriff's Officer referred the victim to the Children's Advocacy Center of Aiken for a forensic interview. (Tr.p.103-p.112). Appellant was subsequently charged with two counts of criminal sexual conduct with a minor and two counts of lewd act upon a minor. According to the victim, Appellant engaged in sexual acts with her on several occasions which included performing oral sex on her, touching her anus with his penis, ejaculating onto her back, and putting his penis in her mouth. The victim testified she did not initially tell anyone about the abuse because she was scared of Appellant. (Tr.p.45-p.63).

Voir Dire and Jury Selection

Prior to trial, Appellant submitted a written request for four specific voir dire questions including question 2: "Does any member of the jury panel believe that anyone charged with crimes involving an allegation of sexual[ly] abusing a child is probably guilty?" (Court's Exhibit #1). On July 15, 2014, the case was called for trial and the solicitor recited the four charges listed on the indictments. The trial judge conducted general voir dire of the potential jurors in an effort to determine the existence of any bias or prejudice. He first asked if any member of the jury panel knew anything about the accusations in the indictments. After having the defense attorneys and solicitors introduce themselves, the judge asked if any member of the panel had ever been represented in any capacity by any of the four attorneys. He asked if anyone was related by blood, marriage or close personal friendship to any of the attorneys or Appellant, and after listing the names of potential witnesses, asked the same in regard to those witnesses.

The trial judge asked if any member of the jury panel had read or heard any news or talk about the case, and he asked if any member of the panel or anyone in their immediate family belonged to an organization focused on victims of violent crimes. (Tr.p.5, line 1-p.9, line 25).

The trial judge then asked:

> Any member of the jury panel – now, this is going to be a yes/no answer. I don't need any details, just kind of want to know your basic involvement with any type of situation such as this: Any member – and this is going to be – I'm not going to ask for an explanation. I'm going to ask, has it and would it affect your ability to be fair and impartial. This case involves accusations made by the State regarding sexual misconduct. It's going to contain materials of that sort. So to that end, is any member of this jury panel, close personal friend, or member of your immediate family ever been a victim of a sexual crime or sexual assault? If so, please stand. And like I said, this is a yes or no.

(Tr.p.10, lines 1-15) (emphasis added). The judge finally asked:

> Any member of the jury panel, member of your immediate family, or very close personal friend have any preconceived notion that the State does not bear the burden of proving a defendant's guilt beyond a reasonable doubt and cannot accept the law as I instruct you, which will be your jury oath. Please stand. No one is standing.

(Tr.p.11, lines 3-9). After a brief bench conference, the judge then repeated the substance of this question in the context of the following instruction:

> So what I want to ask is this: In South Carolina, a person accused of a crime is accused. They are presumed to be innocent until the State proves each and every element of the offense they're accusing a person of beyond a reasonable doubt. I define reasonable doubt at the very end of the case. Does any of the jury panel have any reason that they will not be able to accept the law as I instruct it to you during this case and listen to the witnesses who are going to testify? If you're going to have an issue with that, I need to know it, so please stand. No one is standing.

(Tr.p.11, line 24-p.12, line 10) (emphasis added). At the close of voir dire, the trial judge asked if there were any other questions from the defense or the State. Appellant asked

the court to ask the jury panel question 2 from his previously submitted request for voir dire (Court's Exhibit #1); however, the trial judge declined stating: "I think I've covered that in my explanation to the jury. And I'll allow you to make a record of that . . . as soon as we select the jury." (Tr.p.13, lines 14-25).

After the jury was selected and sworn, Appellant was given an opportunity to further explain his requested voir dire. He argued he felt his question was "very important in a case like this" because "people have prejudices about sexual crimes." Appellant argued that some people can have a prejudice or bias toward the fact that a child is making an allegation. The trial judge made the written request a court's exhibit and reiterated his prior decision declining to ask the additional question. He found that his questions in voir dire, although generally broad, were very specific in regard to the jurors understanding that they must take the instructions as given by the court, that the State has the burden of proof, and that the defendant is presumed innocent. The trial judge noted he would further instruct the jurors at the end of the case that even though a child's testimony in a CSC case need not be corroborated, they still must consider all of the witnesses' testimony and had the duty to determine the credibility of each witness. (Tr.p.30, line 18-p.34, line 4).

Trial

During his opening statement the solicitor presented the State's theory of the case, arguing the evidence would show that Appellant did some very "adult" things to the victim when she was five to seven years old. He explained there would be no physical evidence of the crimes but asked the jurors to pay close attention to the witnesses. The solicitor asked the jurors to listen to the victim and the other witnesses and, based on their

testimony, to find Appellant committed a sexual battery on the victim and touched her for his sexual pleasure. (Tr.p.40-p.43). In response, Appellant presented a theory of defense which consisted of his claim that the victim was either lying or mistaken about the sexual assault. He said the jurors were the ones who had to decide who was telling the truth and that if by the end of the trial they did not know, they had to come back with a verdict of not guilty. (Tr.p.43-p.45).

The State then called the victim as its first witness. Using a diagram of a girl to help explain her testimony, the victim gave a specific account of the sexual abuse she suffered at the hands of Appellant while he was dating her mother. Some of the abuse was committed at her mother's house and some was committed at her friend Lamaya's house. She described how Appellant performed oral sex on her, touched her anus with his penis before ejaculating onto her back, and put his penis in her mouth. The victim testified she did not tell anyone about the abuse when it was going on because she was scared of Appellant. (Tr.p.45-p.63).

Next, the State called the victim's mother, Santana Gonzalez, to the stand. She testified she first met Appellant when the victim was in kindergarten. Gonzalez and Appellant started out as friends, then they started dating, and eventually Appellant moved in with her. Gonzalez testified that at the beginning of their relationship the victim stayed with her family while she was at work, but eventually Appellant started keeping the victim for her instead. During the victim's first-grade year they all moved out of Ms. Gonzalez's house and into an apartment with her friend Michelle Williams and Williams' daughter Lamaya. Sometime before Christmas of 2010, Gonzalez was giving the victim and Lamaya a bath when she noticed some inappropriate touching. When she questioned

the girls, the victim disclosed for the first time that someone else had inappropriately touched her, both at their old house and at Williams' apartment. Gonzalez testified she believed the victim had been touched, but she did not believe it was the person she claimed had done it and decided not to go to the police. Instead, she chose to keep the victim away from that person and only talked to the police when they came to question her later. (Tr.p.69-p.80; p.102-p.103).

The State then called Investigator Kimberly Sievers of the Aiken County Sheriff's Office to the stand. She described her investigation of the alleged sexual assaults which included reviewing the initial incident report, interviewing Gonzalez, referring the victim for an interview at the Child Advocacy Center, and then talking to Michelle Williams and Appellant. She explained there was no need to attempt to collect evidence from either crime scene because the parties were no longer living there when the incidents were reported to the police. (Tr.p.103-p.112; p.115). Finally, Anne Laver, the program coordinator for the Child Advocacy Center in Aiken, took the stand. She interviewed the victim in 2011, when the victim was eight years old, and she video recorded that interview. The video was admitted into evidence without objection and was played for the jury. When Ms. Laver stepped down, the State rested. (Tr.p.125-p.129).

Appellant moved for a directed verdict, and that motion was denied. The trial judge then questioned Appellant in regard to his right to testify and he chose to present evidence in his defense. (Tr.p.129-p.135). Appellant first called Captain Eric Mohammed Addullah to the stand to explain his romantic relationship with Jessica Roberts, the officer who initially reported the allegations. He also explained Roberts' familial relationship to Gonzalez and her daughter. (Tr.p.135-p.141). Next, Appellant

testified on his own behalf. He described his romantic relationship with Gonzalez, claiming they had an active sex life which included watching pornography and video recording some of their sexual encounters. Appellant denied he ever molested the victim or touched her inappropriately in any way. On cross-examination Appellant admitted he had five prior convictions for forgery, a prior conviction for second-degree burglary, a prior conviction for giving false information to police, and a prior conviction for failing to stop for a blue light. (Tr.p.142-p.155).

At the conclusion of Appellant's testimony, the defense rested. The trial judge advised he would provide the parties with a printed copy of his jury instructions for review so they could raise any objections. Appellant renewed his motion for a directed verdict, and that motion was again denied. After a brief recess, the attorneys advised the trial court the proposed jury charges were sufficient. (Tr.p.155-p.159). The parties proceeded to make closing arguments. Appellant argued the victim could not be believed and that the State had not carried its burden of proof, while the solicitor argued the victim had no motive to lie and had provided sufficient details to make her testimony credible. (Tr.p.159-p.180).

The trial judge then charged the jury on the law, starting with an instruction on the State's burden of proof, the presumption of innocence, and the jurors' duty to accept the law and apply it exactly as stated by the court. The judge then charged the jurors on their exclusive role as the judges of the facts and the credibility of the witnesses, specifically listing appropriate factors to consider in passing on credibility. (Tr.p.180-p.185). He proceeded to charge the jury on direct evidence, circumstantial evidence, reasonable doubt in the context of the burden of proof, the elements of the crimes, and criminal

intent. Finally, the trial judge charged the jurors on their responsibility to apply the law as instructed when considering and weighing the evidence and testimony, and to decide the case without outside influence. (Tr.p.180-p.196). The jury deliberated for approximately six hours and ultimately returned guilty verdicts on all four charges. Appellant made a motion for a new trial, arguing no reasonable jury should have found him guilty and that the jury only reached this conclusion based on the fact that the victim was a child. The motion was denied and, after hearing from the parties, the trial judge sentenced Appellant to two concurrent terms of thirty (30) years' imprisonment for the two counts of CSC, fifteen (15) years' concurrent imprisonment for one count of lewd act, and ten (10) years' consecutive imprisonment for the second count of lewd act, for an aggregate sentence of forty (40) years' imprisonment. (Tr.p.197-p.217; Sentencing Sheets).

ARGUMENT

I.

The trial court properly denied Appellant's request to ask potential jurors whether they believed a person charged with child sexual abuse was "probably guilty" where the voir dire as a whole was sufficient to uncover bias or partiality and the limitation did not render the trial fundamentally unfair.

Appellant argues the trial judge erred in refusing to ask the potential jury members a proposed question during voir dire as to potential juror bias in regard to an allegation of child sexual abuse. Specifically, he contends the trial judge erred in not asking defense voir dire question number 2: "Does any member of the jury panel believe that anyone charged with crimes involving an allegation of sexual[ly] abusing a child is probably guilty?" Appellant argues his case presented special circumstances that warranted asking the requested question and that the general voir dire asked by the trial judge was not sufficient to determine potential bias of the jurors. The State disagrees and submits Appellant's argument is without merit. The questions asked by the trial judge provided a reasonable assurance that prejudice would be discovered if present, and the refusal to ask Appellant's question did not render the trial fundamentally unfair.

A litigant's right to an impartial jury is a fundamental principle of our legal system. Burke v. AnMed Health, 393 S.C. 48, 52, 710 S.E.2d 84, 86 (Ct. App. 2011). Voir dire plays an essential role in guaranteeing a criminal defendant's Sixth Amendment right to an impartial jury. Rosales-Lopez v. United States, 451 U.S. 182, 188 (1982). In general, the scope of voir dire and the manner in which it is conducted are within the trial judge's sound discretion. State v. Hill, 361 S.C. 297, 308, 604 S.E.2d 696, 702 (2004); see also United States v. Bakker, 925 F.2d 728, 733-34 (4th Cir. 1991) (finding a trial

court has broad discretion to control the scope of questions during voir dire). "Thus, as a general rule, the trial court is not required to ask all voir dire questions submitted by the attorneys." Wall v. Keels, 331 S.C. 310, 317, 501 S.E.2d 754, 757 (Ct. App. 1998); see, e.g., Ham v. South Carolina, 409 U.S. 524, 527-28 (1973) (upholding trial court's refusal to ask voir dire questions regarding prejudice against beards). Indeed, "the trial court retains great latitude in deciding what questions should be asked on voir dire." Mu'Min v. Virginia, 500 U.S. 415, 424 (1991). While that discretion is not infinite, "it is only a rare case in which a reviewing court will find error in the trial court's conduct." United States v. Hsu, 364 F.3d 192, 203 (4th Cir. 2004) (quotation omitted). The trial court need only question the venire so as to provide "a reasonable assurance that prejudice would be discovered if present." United States v. Lancaster, 96 F.3d 734, 740 (4th Cir. 1996) (en banc).

In regard to a challenge to the trial court's discretion to limit voir dire, the United States Supreme Court noted:

> Despite its importance, the adequacy of voir dire is not easily subject to appellate review. The trial judge's function at this point in the trial is not unlike that of the jurors later on in the trial. Both must reach conclusions as to impartiality and credibility by relying on their own evaluations of demeanor evidence and of responses to questions.

Rosales-Lopez, 451 U.S. at 188. To constitute reversible error, a limitation on questioning must render the trial "fundamentally unfair." State v. Hill, 331 S.C. 94, 104, 501 S.E.2d 122, 127 (1998).

In South Carolina, the trial court has the responsibility to focus the scope of voir dire examination as described in section 14-7-1020. State v. Vang, 353 S.C. 78, 89, 577 S.E.2d 225, 230 (2003); Wilson v. Childs, 315 S.C. 431, 438, 434 S.E.2d 286, 291 (Ct.

App. 1993); see S.C. Code Ann. § 14-7-1020 (Supp. 2014) ("The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror therein to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion or is sensible of any bias or prejudice therein."). "After the statutory questions have been asked and answered, any further examination of [the jury] on voir dire must be left to the discretion of the trial judge, which is subject to review only for abuse thereof." State v. Bethune, 93 S.C. 195, 199, 75 S.E. 281, 282 (1912). Thus, even under South Carolina's statute, the manner in which the voir dire questions are pursued and the scope of any additional voir dire is within the sound discretion of the trial court. State v. Lucas, 285 S.C. 37, 39, 328 S.E.2d 63, 64-65 (1985), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); Crosby v. Southeast Zayre, Inc., 274 S.C. 519, 521-22, 265 S.E.2d 517, 519 (1980) (finding the refusal to make any inquiry regarding the possible bias of jurors is reversible error).

Specific individual questions designed to reveal racial prejudices of the particular juror are required only when "special circumstances" exist. State v. Cason, 317 S.C. 430, 432, 454 S.E.2d 888, 889 (1995). A special circumstance exists when race is an integral part of the case. Id. However, "[a] special circumstance . . . does not exist . . . when the only racial fact in the case is that the defendant and the victim are of different races." Id. at 432, 454 S.E.2d at 889-90. In the absence of special circumstances, the questions asked pursuant to the statute during general voir dire are sufficient to determine the existence of bias or prejudice. Id. at 432, 454 S.E.2d 888 454 S.E.2d at 889.

In this case, the fact that the victim was a child rather than an adult was the only age-related fact before the trial court; therefore, no special circumstances existed

requiring the trial judge to ask the venire whether they would give heightened credibility to the testimony of a child. Age was only an integral part of the case to the extent it dictated the level of CSC. Otherwise, no issues regarding age were bound up with the facts at trial. The trial judge fulfilled his obligation to ensure an impartial jury with the questions that were asked, which included a question regarding whether any juror might be biased due to being a victim of a sexual assault or having a friend or family member who was a victim of a sexual assault. The trial judge repeatedly asked whether the jurors could accept and follow the law as charged by the court and, before deliberations began, he thoroughly charged the jury on the State's burden of proof, the presumption of innocence, and the jurors' exclusive role as the judges of the facts and the credibility of the witnesses. The trial judge specifically listed appropriate factors to consider in passing on credibility, and he charged the jurors that they must decide the case without outside influence. (Tr.p.180-p.193).

Here, it appears Appellant's proposed question was designed to establish a juror profile and to influence those jurors who would be selected rather than to uncover bias. Appellant does not argue that the court failed to ask the statutory questions and did not object on such grounds at trial. The State submits there was no abuse of discretion in the trial court's refusal to ask the additional question where it did not actually ask whether the jurors would give heightened credibility to the testimony of a child alleging sexual abuse. In any event, and as recognized by the Fourth Circuit Court of Appeals, even if the proposed question did focus on heightened credibility, a rule to the contrary would lead to an absurd result.

> If the [trial] court must, on pain of reversal, ask the venire whether they would give heightened credibility to the testimony of a police officer when

> the Government's case depends on law enforcement testimony, logic compels that a similar question be asked whenever the Government's case depends on the testimony of any identifiable class of witnesses that might conceivably be thought by jurors to be inherently credible, be they firefighters, priests, physicians, attorneys, butchers, bakers, or candlestick makers.

United States v. Lancaster, 96 F.3d 734 (4th Cir. 1996).

Appellant argues that, "As in Crosby, in the present case the trial judge's refusal to ask the requested voir dire and failure to follow the mandate of S.C. Code § 14-7-1020 in regard to potential bias constitutes reversible error." (Brief of Appellant, p.10). However, Appellant's case is easily distinguished. In Crosby, the trial judge only inquired as to any possible relationship between any juror and the parties, but made no further inquiry to determine any possible bias, prejudice, or interest that any juror might have in the cause. Crosby, 275 S.C. at 521, 265 S.E.2d at 518. Here, the trial judge asked a host of questions beyond those dealing with possible relationships between the jurors and the parties. The trial judge asked if there were any relationships between the jurors and possible witnesses, if any member of the jury panel had read or heard any news or talk about the case, and if any member of the panel or anyone in their immediate family belonged to an organization focused on victims of violent crimes. (Tr.p.5, line 1-p.9, line 25). The trial judge then asked if any member of this jury panel, close personal friend, or member of your immediate family has ever been a victim of a sexual crime or sexual assault? (Tr.p.10, lines 1-15). The judge finally asked if any juror had any preconceived notion that the State does not bear the burden of proving a defendant's guilt beyond a reasonable doubt and cannot accept the law as instructed. (Tr.p.11, lines 3-9). The judge then instructed the jury on the presumption of innocence and the burden of proof before asking: "Does any of the jury panel have any reason that they will not be

able to accept the law as I instruct it to you during this case and listen to the witnesses who are going to testify?" (Tr.p.11, line 24-p.12, line 10). Thus, unlike in Crosby, the trial judge here made a substantial inquiry to determine any possible bias, prejudice, or interest that any juror might have in the cause.

Appellant also relies upon North Carolina v. Hatfield[1] in support of his argument. Yet Hatfield, which has no direct application in South Carolina, is nevertheless distinguishable as well. In Hatfield, the North Carolina Court of Appeals concluded it was error, albeit harmless, for the trial court to deny Hatfield's request to ask prospective jurors if they thought that children were more likely to tell the truth when they made allegations of sexual abuse. This conclusion, however, was reached only after the court found the proposed question (1) did not fish for an answer to a legal question before the judge had instructed on applicable legal principles; (2) was not an attempt to establish a "rapport" with the prospective juror, nor did it ask the prospective jurors what kind of verdict they would render under certain circumstances; and (3) was not an argument, in that it did not assume facts and was not a hypothetical. Hatfield, 495 S.E.2d at 165. Here, Appellant did not limit his proposed question to what the North Carolina court called "a proper inquiry into the jurors' sympathies towards a molested child." Id. Instead, he asked if the jurors believed a person charged with sexually abusing a child was "probably guilty." This question both "fished for an answer to a legal question before the judge had instructed on applicable legal principles" and "asked the prospective jurors what kind of verdict they would render." This is precisely the kind of question

[1] North Carolina v. Hatfield, 495 S.E.2d 163 (1998), rev. denied, 505 S.E.2d 881, cert. denied, 525 U.S. 887 (1998).

which would NOT have been allowed in North Carolina and for the reasons set forth above, it was properly rejected by the trial judge in Appellant's South Carolina trial.

In Appellant's case, the trial judge's voir dire encompassed both the relevant scope of the statutory questions and the potential bias Appellant alleges he was trying to ferret out with his propounded question. Cason, 317 S.C. at 432, 454 S.E.2d at 889. Therefore, no harm resulted to Appellant from the trial judge's refusal to ask the specific voir dire question requested. Furthermore, as illustrated by Hatfield, asking the requested question as phrased by Appellant would have itself been improper. It was entirely within the trial judge's discretion to decide the manner and scope of the voir dire and there was simply no abuse of that discretion. See State v. Vang, 353 S.C. 78, 88-89, 577 S.E.2d 225, 230-31 (Ct. App. 2003) (finding no special circumstance existed that required the trial court to conduct individual questioning of jurors on matters of racial prejudice and bias). Appellant's convictions should be affirmed.

CONCLUSION

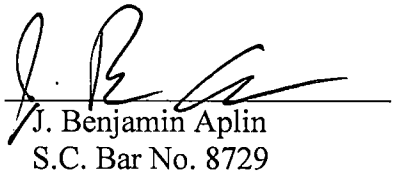
For all of the foregoing reasons, the State respectfully requests that the conviction and sentence of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

J. STROM THURMOND
Solicitor, Second Judicial Circuit

BY: 
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
September 3, 2015

STATE OF SOUTH CAROLINA
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APPEAL FROM AIKEN COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

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THE STATE, ...RESPONDENT

v.

RALPHEAL L. ROBERTSON, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Initial Brief of Respondent* and *Designation of Matter* , both dated September 3, 2015, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Kathrine H. Hudgins, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 3rd day of September, 2015.

Angela Bennett
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

September 3, 2015

Kathrine H. Hudgins, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

Re: The State v. Ralpheal L. Robertson
Appellate Case No. 2014-001630

Dear Ms. Hudgins:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Assistant Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

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