STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001960

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JAMES TYTIL WRIGHT,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's right to due process was not violated where, although the State admittedly lost a surveillance tape of three men using the victim's stolen debit card some time after the armed robbery, the State did not destroy the tape in bad faith, the tape had no apparent exculpatory value at the time it was lost, and comparable evidence was available.

STATEMENT OF THE CASE

Appellant was indicted in October 2010 for armed robbery and kidnapping. On August 25-27, 2014, Appellant was tried in his absence before the Honorable Carmen T. Mullen and a jury. The jury found Appellant guilty of both offenses, and Judge Mullen sealed the sentences. On September 16, 2014, after Appellant was apprehended, the sealed sentences of twenty years for each offense, concurrent, were opened and read. This appeal follows.

ARGUMENT

Appellant's right to due process was not violated where, although the State admittedly lost a surveillance tape of three men using the victim's stolen debit card some time after the armed robbery, the State did not destroy the tape in bad faith, the tape had no apparent exculpatory value at the time it was lost, and comparable evidence was available.

Background Facts

On May 10, 2007, around 9:00 am, two men with guns robbed Chavis Moving Company on Bay Pines Road in Beaufort County. (R. p. 114; p. 122-24). The first man to enter was a young black male without a mask wearing a black and red jogging suit. (R. p. 141; p. 147-48). The second man was a black male with a ski mask wearing a black and yellow jogging suit. (R. p. 147-49). The robbers forced the five employees to get on the floor and later moved them to a storage room. (R. p. 141). During this time one of the robbers located a purse belonging to Nancy Hill, one of the victims, and, after rifling through it, found a debit card. (R. p. 141-43; p. 151). In this same purse was an unopened pack of cigarettes Ms. Hill purchased earlier that morning. (R. p. 140). Ms. Hill had purchased an entire carton of cigarettes before going to work that morning and then removed a single pack and placed it in her purse. (R. p. 140). No one touched the unopened pack of cigarettes except Ms. Hill and the robber who went through her purse. (R. p. 153). Police later determined that Appellant's fingerprints were on the cigarette pack. (R. p. 166; p. 263-65).

One of the robbers ordered Ms. Hill to provide them with her PIN number for the debit card and told her they would shoot her if she gave them the wrong PIN number. (R. p. 141). Ms. Hill gave them her correct PIN number, and after collecting some money, the robbers exited by way of the front door. (R. p. 124; p. 141). Ms. Hill learned a few

hours later that her debit card had been used at a nearby Food Lion store after the robbery. (R. p. 151-52). Detective John Foskey of the Beaufort County Sheriff's Office subsequently obtained a videotape from this Food Lion store and watched the tape. (R. p. 164-66). He was able to determine that there were three black males present at the ATM machine when the vicitm's debit card was used but was unable to definitively identify the men due to the poor quality of the tape. (R. p. 164-65; p. 182). Detective Foskey intended to send the tape to SLED to see if SLED's technicians could enhance it, but the tape was lost or misplaced at some point and he did not know what happened to it.[1] (R. p. 165-66).

During the investigation of the robbery, Tyshon Barnes was developed as a suspect. (R. p. 163). Police created a lineup including Barnes, and two of the five vicitms identified him as the first robber to enter Chavis Moving Company. (R. p. 163; p. 171). After Barnes confessed to his part in the crime and informed police that Appellant was the second robber, police created a lineup including Appellant. (See R. p. 170; p. 238-39). However, since Appellant had been wearing a mask, no one was able to identify him. (R. p. 170; p. 207). At trial, the State relied on Barnes' testimony identifying Appellant as the second robber and the fact that Appellant's fingerprints were found on the unopened pack of cigarettes in Nancy Hill's purse. (See R. p. 304-306). After deliberating for a little over an hour, the jury found Appellant guilty of both armed robbery and kidnapping. (R. p. 347-50). Since Appellant did not appear for trial, the judge sealed the sentences. (R. p. 361-63). The sentence of twenty years for each

[1] Between the time of the armed robbery and the time of Appellant's trial, Mr. Foskey retired from law enforcement. (R. p. 156-57).

offense, concurrent, was later read on September 16, 2014, after Appellant was apprehended. (See 9/16/14 Sentencing Transcript, p. 4-7).

Appellant's Motion to Dismiss

Prior to trial, Appellant made a motion to dismiss the case based upon the State's "failure to produce exculpatory evidence." (R. p. 56-58). Appellant's counsel stated that the police obtained a videotape from a Food Lion store which was less a mile away from where the armed robbery occurred. (R. p. 56). In the videotape, three men could be seen using an ATM card which was stolen during the armed robbery. (R. p. 56-57). Appellant's counsel stated that after looking at the video, the police sent the tape to SLED for enhancement, but "the trail kind of seems to end" there. (R. p. 56, lines 19-22). He argued that the tape "may contain exculpatory evidence" since two of the people in the video using the stolen ATM card "had on identical clothing," some type of "work outfit," and the defense was "unable to look into that to see if it may be something that may be helpful to [Appellant]." (R. p. 56-57). Appellant's counsel made it clear that "we certainly are not alleging any bad faith on the part of law enforcement or the State or anybody else." (R. p. 57, lines 10-12). However, he stated, "I think we also can show that it may have exculpatory value." (R. p. 57, lines 12-13). Counsel then requested to have testimony regarding this issue and moved for dismiss the case. (R. p. 57-58).

In response, the State agreed with the general situation described by defense counsel but added that Investigator Foskey viewed the videotape and was unable to identify any of the individuals using the ATM card because the footage was "too grainy." (R. p. 58, lines 9-14). The State noted that SLED does not have the videotape or any records pertaining to the tape. (R. p. 58, lines 16-21). Counsel for the State also noted

that the co-defendant, Mr. Barnes, denied going to Food Lion after the robbery, stated that he and Appellant - who did have possession of the ATM card - split up after they "got to the house," and that he did not know who went to Food Lion to use the ATM card. (R. p. 58, line 22 – p. 59, line 10). At that point, Appellant's counsel chimed in, pointing out that "if Mr. Barnes is on the tape, it would certainly be good impeachment, if he's lying about going to Food Lion." (R. p. 59, lines 11-13). Counsel for the State then concluded by arguing there was no evidence the tape was lost or destroyed in bad faith and that "even if we found it, we would not be able to determine the identity of the people on it." (R. p. 59, lines 15-19).

The State then called Investigator John Foskey to the stand. Investigator Foskey testified that he came into possession of a surveillance VHS tape from the Food Lion on Highway 116 on Lady's Island. (R. p. 61, lines 15-25). He reviewed the tape, but because the camera was at a distance, and because the area was not well-lit, he was unable to distinguish any facial features of the three individuals using the stolen debit card. (R. p. 62, lines 8-11). He also noted it was his belief the tape was not very clear because it was created on older equipment. (R. p. 65, lines 15-19). He was able to discern that the individuals using the stolen card were three black males, and two of them were wearing what appeared to be "work shirts" with a patch on the front. (R. p. 62, lines 6-15). Investigator Foskey was unable to identify or read the patch. (R. p. 62, lines 16-17). He stated it had been his intention to send the tape to SLED to have it enhanced, and his report written on May 25, 2007, indicated the tape had already been sent to SLED. (R. p. 62-64; see Court's Exhibit # 1, Report). However, Investigator Foskey never saw the tape again, and the paper trail for the tape ended with the property receipt from Food

Lion and his report indicating the tape had been sent to SLED. (R. p. 62-63). He did not know whether or not SLED would have been able to enhance the video and he did not receive a report back from SLED regarding the video. (R. p. 67-68).

After Investigator Foskey testified, defense counsel again argued that the videotape "could be very, very important" in light of the current methods for enhancing videotapes, and that it could "at least be some very favorable circumstantial evidence if [Appellant] is not one of the three guys walking around the Food Lion with this card that was taken from the robbery." (R. p. 70, lines 12-20). He noted it "also would be very helpful to [Appellant] if [co-defendant Tyshon Barnes] is one of the guys that is – it certainly would be very helpful if we could read the name tag on the people's shirts, that, you know." (R. p. 70, lines 21-24). He stated that it was very unfortunate for [Appellant] that he could not obtain the videotape "in an attempt to show the exculpatory nature of the evidence." (R. p. 71, lines 3-5). He also again made clear that he was not suggesting "for a second" that Investigator Foskey or anyone else purposely lost the tape or was trying to hide it from the defense. (R. p. 71, lines 6-8). The proper question, he contended, was whether or not the tape "has exculpatory value." (R. p. 71, lines 8-9). He argued that because the Food Lion was "a mile away" from the armed robbery location, and because the stolen card was used "very shortly thereafter," coupled with the fact that the only evidence tying Appellant to the crime was a "fingerprint from a pack of cigarettes and a lady's pocketbook" and "testimony from a co-defendant," there was exculpatory value in the videotape. (R. p. 71, lines 9-25). He asserted that the fact that law enforcement was sending the take to SLED "would suggest to me that there would be some exculpatory nature to that video." (R. p. 72, lines 3-5). Accordingly, defense

counsel again moved for dismissal of the charges "for failure to turn over exculpatory evidence." (R. p. 72, lines 5-7).

The State responded by pointing out that defense counsel used the terms "could" and "might" a lot and that speculation about whether or not something has exculpatory value is insufficient under Arizona v. Youngblood, 488 U.S. 51 (1988) and State v. Adams, 304 S.C. 302, 403 S.E.2d 678 (Ct. App. 1991). Counsel for the State pointed out that the exculpatory value must be apparent *before* the State loses the evidence. (R. p. 72, lines 14-17). In other words, counsel argued, there must be a definite, clear exculpatory value present before the evidence is destroyed. (R. p. 72, lines 18-21). Counsel argued there was no such definitive apparent exculpatory value in Appellant's case because Investigator Foskey testified that he was unable to positively identify anyone in the tape – other than race and gender – and speculation about the tape containing exculpatory evidence is insufficient under Youngblood and Adams. (R. p. 72, line 21 – p. 73, line 4). The State also pointed out that the videotape in question was not a recording of the actual armed robbery, but instead, merely a recording of the stolen card being used some time later at another location. (R. p. 73, lines 6-14).

The trial judge first ruled that "obviously" there was no bad faith surrounding the loss of the videotape in question. (R. p. 73, line 23 – p. 74, line 1). The question, the judge stated, was whether or not there was any apparent exculpatory value to the tape, and the fact that there "might" have been exculpatory value is not enough. (R. p. 74, lines 1-4). The judge pointed out that the tape pertained to an event that occurred after the armed robbery and not to the armed robbery itself. (R. p. 74, lines 7-8). She also stated that, while she understood defense counsel's argument that the tape might

potentially be used to impeach the co-defendant, "we don't know that." (R. p. 74, lines 8-11). She also noted that "we don't even know if SLED could have done anything with it," regardless of whether they received the tape or not. (R. p. 74, lines 12-14). Because the tape did not possess apparent exculpatory value at the time it was lost, the judge denied Appellant's motion to dismiss. (R. p. 74, lines 15-16). After some discussion, however, the judge ruled that defense counsel would be permitted to elicit testimony regarding the tape, if he chose to do so, in order to impeach the investigation. (R. p. 74-76).

Defense counsel did subsequently decide to use the lost tape to impeach the investigation and to try to create reasonable doubt. In his opening statement, defense counsel repeatedly warned the jurors to take into account all of the "stuff missing" and all of the "things that were lost." (R. p. 117-118). Defense counsel later raised issues related to the lost videotape during the testimony of three of the State's witnesses. First, during cross-examination of victim Nancy Hill, he established that the second robber (the one alleged by the State to have been Appellant) was wearing a black and yellow two-toned jogging suit. (R. p. 147-49). He also elicited testimony that $600.00 was stolen from her bank account shortly after the robbery when her stolen debit card was used at a nearby Food Lion ATM machine. (R. p. 151-52). Second, during the cross-examination of Detective Foskey, defense counsel established that the stolen debit card was used "fairly shortly" after the robbery at the nearby Food Lion; that the surveillance tape from the Food Lion had been obtained; that the tape depicted three black males – two of whom were wearing dark blue work shirts with a patch – using the card and that Detective Foskey could not testify that Appellant was the third man on the tape or that the third

man in the tape was wearing what Appellant was alleged to have been wearing during the robbery. (R. p. 180-82; p. 200-201; p. 206). Third, during the cross-examination of the co-defendant, Tyshon Barnes, defense counsel elicited testimony that Barnes and Appellant left the scene of the robbery and went straight back to Barnes' residence rather than going to Food Lion. (R. p. 236-37). Barnes testified that Appellant left his house at some point thereafter but also stated, "I don't think [Appellant] went to Food Lion." (R. p. 237, lines 2-5). Barnes stated he was not aware the debit card had been used at Food Lion, that he never had possession of the card, and that he did not see Appellant give the card to anyone else. (R. p. 237-38; p. 245).

After the State rested its case, defense counsel renewed his motion to dismiss for the State's failure to produce the Food Lion tape. (R. p. 285). Counsel reaffirmed that he was not alleging the tape was lost in bad faith, but stated he believed that "the exculpatory value and the prejudice to the defendant has bumped up a few notches" based on some of the testimony elicted at trial. (R. p. 287). He pointed out that the co-defendant testified that neither he nor Appellant went to Food Lion immediately after the robbery; that Nancy Hill had provided a detailed description of the clothing Appellant was alleged to have worn during the armed robbery and that Detective Foskey could not testify that the third man in the tape was wearing such attire; and that since the card was used "within minutes" of the robbery Appellant would have likely been wearing the same clothes if he was one of the men using the debit card at Food Lion. (R. p. 286). Defense counsel stated that "without that tape, you know, again, we're not able to show these things that could have exculpatory value, because if we can say, look, we know the card was used, no question, in Bilo (sic) shortly after; and we know that ain't [Appellant], that

is hugely exculpatory for [Appellant], and certainly circumstantial evidence that he wasn't there when the robbery happened, contrary to Mr. Barnes' testimony." (R. p. 287, lines 3-11).

The State responded that Detective Foskey's testimony did not contradict the notion that Appellant was the third man at Food Lion because he could not say the third man in the tape wasn't wearing the clothes Appellant was alleged to have been wearing, and that the co-defendant's testimony also did not contradict the notion that Appellant was the third man at Food Lion because he said Appellant left his house after they returned there following the robbery. (R. p. 288, lines 2-18). The State argued that nothing had changed since defense counsel initially made the motion to dismiss and that "we're still speculating" that the Food Lion tape contained exculpatory evidence and none of the trial testimony changed that. (R. p. 288, lines 19-23). The trial judge agreed with the State and again denied the motion to dismiss, stating it was still speculation that the tape contained "anything exculpatory" and noting that everyone was in agreement that there was "no bad faith" in the loss of the tape. (R. p. 288-289).

In closing argument, the State argued the missing Food Lion tape was a red herring since there was no information on the tape definitively identifying the black males who used the stolen debit card. (R. p. 306-307). The State argued that while Appellant could have been one of the men who subsequently used the debit card at Food Lion, it did not necessarily matter because "we know who stole it" since Appellant's fingerprints were on the victim's unopened pack of cigarettes. (R. p. 308-309). Defense counsel argued that the tape, which was "lost in the shuffle," created reasonable doubt because Detective Foskey did not testify the third person in the tape was wearing the

clothes the second robber was wearing; because the co-defendant said he and Appellant did not go to Food Lion after the robbery but instead went back to his house; and that speculation about whether or not Appellant was one of the men at Food Lion using the stolen card created doubt about whether or not Appellant committed the armed robbery in the first place. (R. p. 314-15; p. 326; p. 328; p. 330).

Applicable Law

"Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness." California v. Trombetta, 467 U.S. 479, 485 (1984). The fundamental fairness standard requires criminal defendants to be given a meaningful opportunity to present a complete defense. Id.; see State v. Harris, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct. App. 1993) ("Due process requires that a criminal defendant be given a reasonable opportunity to present a complete defense."). However, "[t]he State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant." State v. Cheeseboro, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001). In order to warrant the dismissal of a case based on the loss or destruction of evidence, the defendant must show either: (1) the State destroyed the evidence in bad faith; or (2) the State destroyed evidence possessing an exculpatory value apparent before the evidence was destroyed and no other evidence of comparable value can be obtained by other means. State v. Mabe, 306 S.C. 355, 358-359, 412 S.E.2d 386, 388 (1991). "Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense." Trombetta, 467 U.S. at 488. Critically, "[t]he mere possibility that an item of undisclosed information might have helped the defense,

or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." United States v. Agurs, 427 U.S. 97, 109-110 (1976); see Arizona v. Youngblood, 488 U.S. 51, 57 (1988) ("[W]e think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.").

Discussion

Appellant contends the trial judge erred in denying his motion to dismiss the case for failure to produce exculpatory evidence. Specifically, Appellant argues the State lost the Food Lion surveillance video which "contained critical evidence" and had apparent exculpatory value based upon the "clothing descriptions, time frame and location," and that Appellant could not acquire the evidence contained on the videotape by any other means. (See Brief of Appellant, p. 14). He argues that due process requires dismissal under these circumstances. To the contrary, the trial judge properly denied Appellant's motion to dismiss because the lost surveillance tape was – as Appellant admitted at trial – not lost in bad faith, and the videotape did not possess any apparent exculpatory value at the time it was lost. Additionally, comparable evidence was available where Appellant was cross-examined several witnesses regarding issues related to the tape and argued to the jury that the State's loss of the tape created a reasonable doubt about Appellant's guilt. Accordingly, the loss of the surveillance tape did not warrant the extreme measure of dismissal of Appellant's charges, and the trial judge properly denied Appellant's motion.

First, admittedly, the State lost the Food Lion surveillance tape that captured three men using one of the victims' stolen debit card a short time after the armed robbery of Chavis Moving Company. However, as Appellant conceded at trial, the tape was not lost or destroyed by law enforcement officers in an act of bad faith; therefore, Appellant was required to show the tape possessed apparent exculpatory value at the time it was lost. Appellant cannot make such a showing. As the trial judge properly found – and as evidenced by the very language used by defense counsel when arguing his motion to dismiss – it was pure speculation that Appellant was not the third man on the Food Lion videotape. The mere possibility the lost evidence might have potentially possessed exculpatory value was not sufficient to entitle Appellant to the extreme measure of the dismissal of his case. See Youngblood, 488 U.S. at 56, n. 4 ("Trombetta speaks of evidence whose exculpatory value is 'apparent.' The possibility that the semen samples could have exculpated respondent if preserved or tested is not enough to satisfy the standard of constitutional materiality in Trombetta." (citations omitted)); see also State v. Adams, 304 S.C. 302, 304-305, 403 S.E.2d 678, 680 (Ct. App. 1991) ("If, on the other hand, Adams' purpose was to exploit any exculpatory potential the document might have had, he falls short of meeting the standard of constitutional materiality because he failed to make some showing that the document in fact possessed an 'exculpatory value that was apparent' before the State lost it. . . . Speculation about such things, our Supreme Court has held, will not do." (citations omitted)); State v. Moses, 390 S.C. 502, 519, 702 S.E.2d 395, 404 (Ct. App. 2010) ("The defense asserts the tape 'would most likely' have allowed it to identify witnesses who *may reasonably* have presented favorable evidence or evidence which could have lead the defense to impeachment evidence. Standing

alone, this assertion is insufficient."); State v. Bland, 399 S.C. 220, 226, 730 S.E.2d 909, 912 (Ct. App. 2012) ("[O]ur holding that Bland failed to demonstrate that the lineup had exculpatory value is sufficient to uphold his convictions[.]"); cf. State v. Jackson, 302 S.C. 313, 316, 396 S.E.2d 101, 102 (1990) (the exculpatory value of a videotape of the defendant performing field sobriety tests was apparent before its destruction because the prosecutor dropped the charges against the defendant after watching the tape).

In fact, under the facts presented at trial, it was just as likely that Appellant **was** the third man on the videotape as it was that he was **not** the third man.[2] Cf. State v. Breeze, 379 S.C. 538, 546, 665 S.E.2d 247, 252 (Ct. App. 2008) ("Here, the destroyed evidence [the appellant] complains of was inculpatory rather than exculpatory."). Moreover - speculating further – even if Appellant was **not** depicted in the Food Lion videotape, this did not mean that he was not involved in the earlier armed robbery, as his fingerprints at the scene clearly proved. See, e.g., State v. Jenkins, 412 S.C. 643, 653, 773 S.E.2d 906, 910-11 (2015) (noting that fingerprint evidence is "compelling" evidence and is similar to DNA evidence and blood-typing evidence); State v. Pearson, 410 S.C. 392, 398-403, 764 S.E.2d 706, 710-12 (Ct. App. 2014) (pointing out that fingerprint evidence can be "damaging evidence" when the facts show the fingerprint could have only been placed in a particular location during the crime in question). Appellant could have given the stolen debit card to friends or could have dropped the card and a third party picked it up and used it at Food Lion. Because the excursion to Food Lion to use the card was removed from the actual crime itself, the tape held much less significance on the issue of Appellant's guilt of the charged crimes. See State v. Hutton, 358 S.C. 622,

[2] Of course, Appellant also could have been one of the two men wearing work shirts.

632, 595 S.E.2d 876, 882 (Ct. App. 2004) ("Exculpatory evidence is evidence which creates a reasonable doubt about the defendant's guilt." (citation omitted)).

Furthermore, evidence of comparable value was available by virtue of the fact that Appellant was able to cross-examine the witnesses about the contents of the lost tape and was able to use the facts surrounding the lost tape in closing argument to attempt to establish reasonable doubt about Appellant's guilt. Cf. State v. Reaves, Op. No. 27569 (S.C. Sup. Ct. filed Sept. 2, 2015) (Shearouse Adv. Sh. No. 34 at 26) ("Further, to the extent Reaves was disadvantaged by the State's loss of evidence, Reaves' attorney was allowed to forcefully cross-examine the police officers on the deficiencies in their investigation."); Hutton, 358 S.C. at 632, 595 S.E.2d at 882 (Ct. App. 2004) ("Nor can we find appellant could not obtain other evidence of comparable value by other means. The trial court allowed trial counsel to thoroughly cross-examine Bellinger about the first statement he gave and its contents."); Youngblood, 488 U.S. at 59-60 (Stevens, J., concurring) ("[A]lthough it is not possible to know whether the lost evidence would have revealed any relevant information, it is unlikely that the defendant was prejudiced by the State's omission. In examining witnesses and in her summation, defense counsel impressed upon the jury the fact that the State failed to preserve the evidence and that the State could have conducted tests that might well have exonerated defendant.").

The Food Lion tape was not lost in bad faith and did not possess any apparent exculpatory value at the time it was lost. Evidence comparable to the lost tape was available. Therefore, the fact the Food Lion tape was lost at the time of trial did not deprive Appellant of a fair trial or prevent him from presenting a complete defense. See, e.g., State v. Greene, 255 S.C. 548, 558, 180 S.E.2d 178, 184 (1971) ("[The appellant]

was not entitled to a perfect trial, only a fair one."). Accordingly, the trial judge properly declined to grant Appellant the extreme remedy of dismissing his charges. Appellant's convictions should be affirmed.

CONCLUSION

For the reasons discussed above, the State requests that this Court affirm Appellant's convictions and sentences.

Respectfully submitted,

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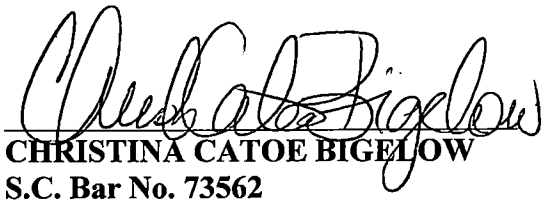

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October 13, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Carmen T. Mullen, Circuit Court Judge

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THE STATE OF SOUTH CAROLINA,

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v.

JAMES TYTIL WRIGHT,

APPELLANT.

PROOF OF SERVICE

The undersigned attorney hereby certifies that the **Initial Brief of Respondent** and **Designation of Matter** in the above-referenced case has been served upon **Kathrine H. Hudgins**, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina, 29211-1589, this **13th** day of **October, 2015.**

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October 13, 2015

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
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RE: **State of South Carolina v. James Tytil Wright**
Appellate Case No. 2014-001960

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent,** along with the **Designation of Matter** and **Proof of Service,** in the above-referenced appeal, which I am serving on opposing counsel today.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

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