STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Benjamin H. Culbertson, Circuit Court Judge

The State, Respondent,

v.

Sandy Lee Locklear, Appellant.

Appellate Case No. 2014-001354

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General
S.C. Bar No. 14244
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit
Post Office Drawer 1276
Conway, South Carolina 29526
(843) 915-5460

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Benjamin H. Culbertson, Circuit Court Judge

The State, Respondent,

v.

Sandy Lee Locklear, Appellant.

Appellate Case No. 2014-001354

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General
S.C. Bar No. 14244
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit
Post Office Drawer 1276
Conway, South Carolina 29526
(843) 915-5460

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases:

State Cases:

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred in ruling that Appellant was not in custody prior to being read her Miranda rights and in allowing the Appellant's pre-Miranda statement to be admitted into evidence?

2.

Whether the court erred in ruling that the State did not violate the rule set forth in Missouri v. Seibert?

3.

Whether the court erred, thereby violating the Fourth Amendment and the Appellant's right to privacy, when it upheld a search warrant on the home at 509 Fair Bluff Road?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial judge abused his discretion in finding Appellant was not in custody for purposes of *Miranda* warnings for her first statement to detectives at the police station when she had previously voulteered to investigating officers at the murder scene that she was a victim of rape and a witness to the home invasion that resulted in a double murder; officers interviewed her as a surviving victim and witness concerning the murders, not as a suspect; the interview was during the course of the ongoing investigation, not as a result of the investigation; and, the statement given was inconsistent with the evidence and not directly indicative of guilt such that there is no basis for finding the *Miranda* warnings mandate was intentionally skirted by interrogative tactics.

[Appellant's Issues 1 and 2].

2.

Whether the trial judge erred in finding the search warrant affidavit supported the magistrate's finding of probable cause when the complained of "false information" and lack of information to determine reliability of the witness rested on a contest to the plural of statements from an unidentified witness instead of an allegation of a single written statement from an identified witness where the fact of receipt of the information was not contested; the plural designation did not necessarily affect the number of witnesses, but, at any rate, certainly did not affect the validity of the information admittedly received; and, the details and location provided evidence of personal, direct knowledge thus reliability.

RESPONDENT'S STATEMENT OF THE CASE

An Horry County Grand Jury indicted Appellant, Sandy Lee Locklear, on two counts of murder.[1] Pre-trial motions were held May 28-30, 2014, before the Honorable Benjamin H. Culbertson. A jury trial was held June 2-4 of the following week, and concluded June 9-12, 2014. The jury found Appellant guilty as charged. (R. p. 1424, lines 17-24). Judge Culbertson sentenced Appellant to life imprisonment on each conviction. (R. p. 1439, lines 9-14). This appeal follows.

---

[1] Appellant was also charged with filing of a false police report , but the State did not call that charge to trial with the murder charges. (R. p. 16, lines 11-19). On June 26, 2014, after conviction on the murder charges, the State *nolle prossed* the filing of a false police report charge. See http://publicindex.sccourts.org/Horry/PublicIndex (Case Number M974165; Indictment Number 2013-GS-26-303) (last checked July 25, 2015).

RESPONDENT'S STATEMENT OF FACTS

The jury convicted Appellant of the murder of her husband, Amos Hatfield, and stepson, Thomas Hatfield, in her husband's home in Horry County. Appellant was in the home when both husband and stepson were murdered. Appellant initially claimed to have witnessed masked men break into the home at the back door, that she was sexually assaulted, dragged down the hallway and that she heard gunshots. Upon the unraveling of her story to dectectives, Appellant ultimately confessed that she allowed her lawnman and a friend into the home but claimed it was suppose to be "only a robbery" and not one should have been hurt. (R. p. 917, lines 8-11). The jury heard the following evidence from the State's case in returning the guilty verdict.

On August 19, 2012, at 4:00 am, officers were called to the victims' home after Appellant, on a 911 call originating from the home, reported the murders and that she had been raped. (R. p. 331, line 21 – p. 333, line 18; p. 356, lines 12-14). Responding officers first noticed the back door was open and could see a body face down in the living room, and, upon entry saw another body face down on the kitchen floor. (R. p. 337, line 3 – p. 338, line 6). Each victim had been shot in the head through a pillow. (R. p.623, line 7 – p. 624, line 4; p. 631, line 17 – p. 632, line 22; p. 635, line 13 – p. 636, line 7; p. 1007, line 2-14).

Officers heard a female voice from elsewhere in the trailer and found Appellant in a bedroom. Officer Tindall testified he helped Appellant out of the residence. (R. p. 338, line 17- p. 339, line 4). She told him two males entered the home, one with a long gun, she was struck in the head with the gun, and raped in the kitchen. He testified he escorted her to a police car and asked if she was okay or needed medical treatment. (R. p. 341, line 20 – p. 343, line 8).

The lead detective, Detective Frebowitz, arrived around 4:30 am. He testified he also checked on the Appellant, still thinking her to be victim. He testified she told him that she had been raped, and he said they had to get her to the hospital "because [her] safety and welfare is ... most important...." (R. p. 432, lines 21-25; p. 434, line 15 – p. 437, line 23). She was taken to the hospital.

At the hospital, Appellant maintained she had been vaginally penetrated twice. (R. p. 770, lines 15-22). Further, she gave a similar statement to the rape crisis center representation at the hospital which was also admitted. (R. p. 364, line 13 – p. 366, line 22).

Dectective Frebowitz testified that later that same morning, he went to the hospital and spoke with Appellant. She again "reiterated that she was a victim of a sexual assault." (R. p. 24, lines 2-20).

Appellant was that same morning transported to the detention center. Detective Frebowitz testified she was still not handcuffed, or otherwise restrained, and was still considered a victim and a witness to the murders. (R. p. 25, line 19- p. 26, line 1). She was not given the *Miranda* warnings because "[s]he wasn't a suspect... she was a victim and witness at that time." (R. p. 26, lines 12-20; p. 91, lines 1-12).

During the interview, several of her statements were inconsistent with what she had previously stated, and no bruising had appeared to support her assertions of being hit. At the beginning of the interview, Appellant indicated once again that she had been raped by the two males who forced their way into the home. (R. p. 91, lines 13-24). However, the detective noted a lack of visible bruises and/or other injury from the horrific, multiple rapes and dragging that she described. (R. p. 490, line 11 – p. 491, line 17). After additional questions, at approximately 11:15 am, some twenty-four minutes after beginning the

interview, her story began to change. (R. p. 32, line 7 – p. 33, line 17; Court Exhibit 1). (R. p. 90, line 16 – p. 94, line 20; p. 99, line 16 – p. 100, line 21). When it became apparent "she was actively attempting to deflect the truth," the detective took a break from the interview. He returned and gave her the *Miranda* warnings at approximately 12:00 pm. (See also R. p. 92, line 1 – p. 99, line 25). After the *Miranda* warnings, Appellant prepared a written statement in which she maintained she was a victim. (R. p. 1448 [Court Exhibit 2]).

During the interview, Appellant gave permission for her cell phone records to be obtained. (See R. p. 139, line 23 – p. 140, line 5). The cell phone records revealed texts that she had received and sent shortly before 3:00 am the day of the murders, concerning the back door of the home, specifically, making sure the door was unlocked for someone. (R. p. 405, line 6 – p. 413, line 17). Moreover, the records placed usage in and round the area of the home. (R. p. 413, line 18 – p. 414, line 23; p. 959, line 14 – p. 962, line 1 – 23). The two phones identified, one of which was connected to Nehemiah James Evans, were also in the same general area of a burned rental loaned to Appellant around 5:30 that same morning. (R. p. 963, lines 1-5). Further, a search of Mr. Evans' home yielded a "piece of paper" with Appellant's name and phone number along with Evans' social security card and driver's permit. (R. p. 966, line 17 – p. 967, line 20).

Appellant herself would later repudiate her initial story, after being confronted with the records. She offered instead that it was planned to be a robbery where no one was hurt. She indicated that she let them tie her up, and she unlocked the door for them to enter the home. (See R. p. 568 lines 2-24; p. 914, line 5 – p. 919, line 21). She indicated "James" was at fault, and Odom Bryant was involved. (R. p. 512, line 6 – p. 513, line 6; p. 920, line 13 – p. 924, line 10).

During the investigation, Appellant's first cousin, Faye Hunt, came to the police station having heard through family members that she was being implicated. (R. p. 773, lines 2 – 6; p. 781, line 12 – p. 782, line 15). She spoke to officers and later gave a written statement on August 20, 2012. (See Court Exhibit 18). Ms. Hunt testified that she saw Appellant often during 2011, and would go out to clubs with her. (R. p. 777, line 15 – p. 778, line 10). Appellant lived in North Carolina in a home her husband had purchased for her. (R. p. 777, lines 4-14). Ms. Hunt testified that she had met Appellant's husband (victim Amos) at Appellant's house several time. Ms. Hunt testified that Appellant never wanted her husband to stay long – only long enough to drop off "food, cigarettes or beer." (R. p. 779, lines 12-23). She recalled one day that Amos gave Appellant some insurance policies to hold. She testified Appellant stated to her "it was a million dollar policy" and that if "that son of bitch died today I'd be a rich bitch tomorrow." (R. p. 789, lines 3-4). She also advised investigators that Appellant had a small caliber pistol. (R, p. 790, lines 22-4). She further told investigators that Appellant had two black males at her home for lawn work. Appellant had given her lawnmower to one of the black males. Ms. Hunt testified she didn't understand why Appellant would give away such a valuable item. She also testified, though, that one of the two individuals also went inside to take a shower. (R. p. 791, line 16 – p. 792, line 4).

Clayton Hatfield, a brother to Amos, uncle to Thomas, testified that, though he lived out of state, he had stayed in touch with his brother and would visit "at least 2 or 3 times a year." (R. p. 372, line 25 – p. 373, line 7). He testified that he was unaware that his brother had married Appellant and that he had never met Appellant. (R. p. 374, lines 1-16).

Further, the texts recovered from Appellant's phone records, in addition to showing a direct involvement with entry into the home, also showed Appellant's need for money. (R. p. 401, line 15 – p. 406, line 21). A search of Appellant's home yielded an accidental death policy, issued in Augsut 2011, that had a million dollar limit under limited circumstances only explained in "small print, buried in the middle of all that paperwork." (R. p. 837, line 24 – p. 841, line 17).

ARGUMENT

I.

The trial judge did not abuse his discretion in finding Applicant, who was initially thought to be a victim, was not in custody when taken from the hospital to the detention center for questioning as the surviving witness to a double homicide. Because the interview was initially started to obtain information for the continuing investigation, not as a result of investigation, and because the statement obtain was consistent with her volunteered statement at the murder scene and not inculpatory, there was no evidence of an attempt to skirt the *Miranda* warnings mandate through interrogation techniques.

Relevant Facts:

Applicant moved pre-trial for suppression of her statements to police officers. Judge Culbreath held a *Jackson v. Denno*[2] hearing.

Detective Neil Frebowitz testified that he was the lead detective in the matter. (R. p. 19, line 25). The detective testified he was called to the home at 4:00 am. At that time, "the crime scene had been established," and Appellant was "in the back of the police car." (R. p. 20, line 25 – p. 21, line 11). He testified that "[a]t the time ... we thought she was a victim," and she had told him "she was the victim of a home invasion, robbery and a sexual assault." (R. p. 21, lines 14-19; p. 83, lines 5-8). He testified that since she had told him she had been raped, "certain protocols are required to have victims treated, and I directed that she be transported to a - - the hospital." (R. p. 22, lines 18-25; p. 83, lines 8-13). The dective testified she was not restrained in any way. (R. p. 23, lines 1-4). He testified that they were simply trying to preserve evidence from her body, and that she was not being held or detained as a suspect at that time. (R. p. 23, lines 7-18).

---

2 378 U.S. 368, 84 S.Ct. 1774 (1964).

Dectective Frebowitz testified that later that same morning, he went to the hospital and spoke with Appellant. She again "reiterated that she was a victim of a sexual assault." (R. p. 24, lines 2-20).

Appellant was that same morning transported to the detention center. Detective Frebowitz testified she was still not handcuffed, or otherwise restrained, and was still considered a victim and a witness to the murders. (R. p. 25, line 19- p. 26, line 1). She was not given the *Miranda* warnings because "[s]he wasn't a suspect... she was a victim and witness at that time." (R. p. 26, lines 12-20; p. 91, lines 1-12). The detective testified as to the purpose of questioning at that time:

> To get the information she had. She was a victim. She saw who committed this horrific crime, and we needed to know what she saw.

(R. p. 26, lines 22-24).

He testified it was not uncommon to interview victims at the police department, and she was taken to a "standard interview room" with "soft chairs." He testified that interview room was "quiet" and using the room would prevent interruption and no one could see her, which "respected her privacy." (R. p. 27, lines 1-9). Again, she was not in handcuffs, and there were no locks on the door. He testified that she could have opened the door at anytime if she needed to do so. Further, he testified that he:

> ... asked her serveral times [if] she wanted something to eat, something to drink, use the restrooms if she needed to, smoke break if she needed to. Again, she was a victim and witness and was treated accordingly.

(R. p. 27, lines 13-23).

He testified she appeared to understand the questions and respond coherently. He testified that though she would occasionally "lower her voice or lower her head," he did not

considered that "to be unusual for someone who had just experienced such trauma." (R. p. 28, lines 4-18). The detective testified that had she asked to be taken home, she would have been taken home, but she did not ask. (R. p. 28, line 28 – p. 29, line 2). He testified there was no restriction on her movements. (R. p. 29, lines 19-20). The detective testified, again, as to the purpose of the interview:

> To develop the information she had, that we needed to catch the people who had committed this horrific crime.

(R. p. 29, lines 8-12).

The initial interview lasted approximate one hour. (R. p. 29, lines 13-15). Detective Frebowitz testified that he did not use "interrogation techniques at this point to pressure her" and interviewed her only as a witness and victim. (R. p. 30, lines 4-9). Detective Frebowitz testified that "it became clear that she was attempting to mislead our investigation," as her statements could not be verified. When it became apparent "she was actively attempting to deflect the truth," he took a break from the interview then gave her the *Miranda* warnings at approximately 12:00 pm. (R. p. 32, line 7 – p. 33, line 17; Court Exhibit 1). (See also R. p. 92, line 1 – p. 99, line 25). He testified this was because "she transitioned from a victim witness to, obviously, we were concerned that she had information, that she was more involved in the scenario than she was letting on." (R. p. 33, lines 20-23). The detective testified that though she appeared distressed, "after spending some time" with Appellant, he noticed "even though there appeared to be genuine crying there was an absence of tears." (R. p. 140, lines 18-25).

As to the process in general, though the interview in total was lengthy, the detective testified that Appellant "was given breaks," allowed use of the bathroom, offered food and

drink, and the opportunity for smoke breaks, if needed. (R. p. 35, line 17 – p. 36, line 1).[3] The interviews were recorded (audio and video) and were provided to the Court for review. (R. p. 30, lines 17 – p. 31, line 25).

As to substance, at the beginning of the interview, Appellant indicated once again that she had been raped by the two males who forced their way into the home. (R. p. 91, lines 13-24). She cooperated and gave consent to obtain her phone records. (R. p. 139, line 23 – p. 140, line 7). After additional questions, at approximately 11:15 am, some twenty-four minutes after beginning the interview, the tape reflects and the detective confirmed, that he indicated her story began to change. (R. p. 90, line 16 – p. 94, line 20; p. 99, line 16 – p. 100, line 21). After the *Miranda* warnings, Appellant prepared a written statement, which was entered at the pre-trial hearing as Court Exhibit 2. (R. p. 70, line 2 – p. 71, line 5). The statement reflects that she maintained her story at the time that she was a victim. (R. p. 91, lines 13-17; R. p. 1448 [Court Exhibit 2]).

Detective Frebowitz also testified that the day following the first written statement, he went to the jail about the warrants not to talk to Appellant, but was advised Appellant had requested to talk to someone. He then conducted another interview. (R. p. 71, lines 10-23; p. 133, lines 8-14; p. 134, lines 1-7). That interview was also recorded, but only as an audio

---

[3] Appellant complains of denial of a smoke break though she does not specify at what point or why that is important to her argument, (see FBOA, p. 10), however, a smoke break was noted during the Court's *in camera* review of the tapes. (See R. p. 62, lines 9-18). Further, immediately at the break before the *Miranda* rights were given, (see Recording Time Stamp at 11:42 to 11:43), the detective asked if she needed to use the restroom, to which Appellant replies to the effect she would like a cigarette if he had one. The detective responds they are not good for you, and Appellant acknowledges affirmatively, and she agrees. At 11:55, when the detective returns, he asked if she needed any more water (she had been provided water, and had been drinking from the white cup), or anything, and she appears to respond no and indicates she is okay. Thus, at the critical time, it does not appear to be any depriviation affecting the Appellant.

recording. (R. p. 72, lines 11-18). A copy of that recording was also submitted to the Court. (R. p. 72, line 23- p. 73, line 3). During the second interview, she admitted the involvement of Nehemiah James Evans and Odom Bryan Bryant. (R. p. 512, line 8 – p. 513, line 2).

The State argued the interview, though lengthy, should be viewed in two parts. The first fifty (50) minutes show an interview of a victim and possible witness, not an interrogation of a suspect. This perception was based in large part on the vicitm's volunteered statements to 911 and at the scene indicating she was brutally raped and her stepson and husband shot during a home invasion. (R. p. 144, line 6 – p. 149, line 20; p. 156, line 25 – p. 158, line 10). Further, she continued to be treated as a surviving victim and witness until her story unwound to the point actual firm suspicion arose and the detecitves at that point gave the the *Miranda* warnings and began treating her differently. (R. p. 152, line 24 – p. 153, line 14). Even during the second interview, though, she was not mistreated or threatened as to concerning the statements improper. (R. p. 158, line 11 – p. 165, line 25).

Appellant argued the entire time she was at the hospital should be included in considering the time of the interrogation as she was detained at the hospital for the sake of seeking evidence. (R. p. 166, line 22 – p. 168, line 15; p. 169, line 7 – p. 172, line 20). Appellant maintained the "results" of the rape kit were received then she was transported to the police station, (R. p. 167, lines 15-17), though, testimony during the pre-trial showed such testing would take weeks to process, (R. p. 87, lines 15-20; p. 89, lines 5-8).[4]

---

[4] During his trial testimony, Detective Frebowitz testified again that Appellant was initially treated as a surviving victim and witness. As to the rape, he testified in somewhat greater detail of the change in his perception of the validity of her story. He testified that she had stated that the door had been kicked in and she had been brutalized and sexually assaulted. However, it had then been twelve hours since the reported attack and the detective "didn't notice anything" though he was "waiting for the bruises to come up." He

Appellant argued the situation was analogous to *State v. Navy* and intentional avoidance of the *Miranda* warnings requriments. (R. p. 172, line 20- p. 177, line 1).

The trial judge carefully considered the facts of this case compared to the facts in *Navy*. The trial judge indicated the critical point was when the interview turned to seeking information on guilt, and if information was already known which tending to cast doubt on Appellant's version of events such that the pre-*Miranda* interview was not just questioning a surviving victim and witness. The trial judge again reviewed the tapes to determine the facts. (See R. p. 196, line 14 – p. 206, line 21; p. 297, line 17 – p. 301, line 10). After additional review of the tapes, the trial judge announced his ruling:

> ... I find that pre-Miranda it was still a fact investigation of someone thought to be a victim. When he came back in, he Mirandized her. She validly waived it, and then he went forward with the questioning. So I'm going to rule that the pre-Miranda statements were voluntarily give, that Miranda warnings were not required at the that time because she was being questioned by someone thought to be a victim for a fact investigation. The Officer Frebowitz, he left the room. It seems as though then is when he got some, or a preponderance of the evidence shows that he got some information that showed she was making contradictory statements. He came back in. He immediately Mirandized her, recognized that there wa s change in positions. She did a waiver. Then he went forward with questioning. So I find that the statements given after that are voluntarily made with a waiver of the rights.

---

noted the time it occasionally takes for bruises to appear, and testified: "So, initially, when she got into the interview she didn't portray any bruises. That didn't concern me. I believed her story, but as we spent more and more time together, she didn't seem to touch the bruises. She did't seem to favor anything. It became less and less credible that she was injured." (R. p. 490, line 11 – p. 491, line 8). Further, then the details of the sexual assault became to change, and the location of the assault became to change. The dective testified, "It wasn't consistent." (R. p. 491, lines 9-17). Even more inconsistencies would be shown as the interview continued after the *Miranda* rights were given and waived when specific interrogation techniques were used to elicit truthful information. (See R. p. 492, line 14 – p. 500, line 24).

> The next day statements, I'm following the, the case law that said she never requested an attorney, she never wanted to stop the questioning or anything of that nature. So additional rights at htat time were not required....

(R. p. 301, line 13 – p. 302, line 12).

In this appeal, Appellant challenges only the trial judge's finding that she was not in custody during the pre-*Miranda* interview at the police station. He argues the factual finding was incorrect as "there are many facts that would lead a reasonable person in the Appellant's position to believe they were in police custody as soon as they arrived at the sheriff's department" particularly, that she did not drive herself, and that sherrif's department stayed with her from arrival after she called 911 for help, to the hospital and later to the sherrif's department. (FBOA, pp. 9-10). Further, she argues "the fifty-minute pre-Miranda questioning" is supportive of custody as it went to details of the crime, not simply "background information." (FBOA, p. 11). Finally, she argues the facts are more like those in *State v. Navy* which found investigators used investigative techniques to obtain information without giving required *Miranda* warnings. (FBOA, pp. 17-18).

Discussion:

Appellant's position fails as there is ample factual support for the trial judge's ruling that she was not in custody during the initial interview at the police station. As there is support in the record for the trial judge's factual findings and his legal conclusions are sound, there is no abuse of discretion. His decision should be affirmed on appeal.

"Appellate review of whether a person is in custody is confined to a determination of whether the ruling by the trial judge is supported by the record." *State v. Evans*, 354 S.C. 579, 583, 582 S.E.2d 407, 409 (2003). "The trial court's determination of whether a defendant was deprived of his *Miranda* rights will be upheld unless unsupported by the

record." *State v. Kirton*, 381 S.C. 7, 38, 671 S.E.2d 107, 123 (Ct.App. 2008). In short, "the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion." *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990). In conducting the review, an appellate court will review for error of law. The appellate court "does not reevaluate the facts based on its own view of the preponderance of the evidence, but [will] simply determine whether the trial court's ruling is supported by any evidence." *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

"The purpose of the *Miranda* warnings is to apprise the defendant of her constitutional privilege to not incriminate herself while in the custody of law enforcement." *Id* (*citing Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612 (1966)). Custody for purposes of *Miranda* is more than questioning by officers at a detention center. *See, e.g., Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S.Ct. 711 (1977) ("police officers are not required to administer Miranda warnings to everyone whom they question" or "simply because the questioning takes place in the station house"). "As used in [Supreme Court] *Miranda* case law, 'custody' is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion." *Howes v. Fields*, ___ U.S. ___, ___, 132 S.Ct. 1181, 1189 (2012).

"In determining whether a person is in custody in this sense, the initial step is to ascertain whether, in light of the 'objective circumstances of the interrogation,' a 'reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.'" *Howes v. Fields*, 132 S.Ct. at 1189 (citations omitted). "To determine whether a suspect is in custody, the trial court must examine the totality of the

circumstances, which include factors such as the place, purpose, and length of interrogation, as well as whether the suspect was free to leave the place of questioning." *State v. Evans*, 354 S.C. at 583, 582 S.E.2d at 410. "The custodial determination is an objective analysis based on whether a reasonable person would have concluded that he was in police custody." *Evans*, 354 S.C. at 583, 582 S.E.2d at 410. *See also Illinois v. Perkins*, 496 U.S. 292, 296, 110 S.Ct. 2394 (1990) ("Coercion is determined from the perspective of the suspect."). Our Supreme Court has recognized: "It is an objective determination, that is, would a reasonable person have believed he was in custody." *State v. Navy*, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010).

Our Court has also recognized the "warnings requirement cannot be skirted by interrogative tactics that undermine the very purpose of *Miranda, i.e.*, unless and until such warnings and waiver are given, no evidence obtained as a result of interrogation can be used against a defendant at trial." *State v. White*, 410 S.C. 56, 57, 762 S.E.2d 726, 727 (Ct. App. 2014) (*citing Miranda v. Arizona,* 384 U.S. 436, 478-79, 86 S.Ct. 1602 (1966); *Missouri v. Seibert*, 542 U.S. 600, 617 124 S.Ct. 2601 (2004); *State v. Navy*, 386 S.C. 294, 303-04, 688 S.E.2d 838, 842 (2010)). However, not all statement issues fall neatly into on side or the other:

> It is an unwarranted extension of *Miranda* to hold that a simple failure to administer the warnings, unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will, so taints the investigatory process that a subsequent voluntary and informed waiver is ineffective for some indeterminate period. Though Miranda requires that the unwarned admission must be suppressed, the admissibility of any subsequent statement should turn in these circumstances solely on whether it is knowingly and voluntarily made.

Oregon v. Elstad, 470 U.S. 298, 309, 105 S.Ct. 1285 (1985).

In *Seibert,* the Supreme Court reconciled these seemingly different postions by direct analysis of the *Elstad* facts: " ... it is fair to read *Elstad* as treating the [the first, short] living room conversation as a good-faith *Miranda* mistake, not only open to correction by careful warnings before systematic questioning in that particular case, but posing no threat to warn-first practice generally." *Missouri v. Seibert*, 542 U.S. at 615.

In *Elstad,* the first statement that defendant "was there" during the crime at issue was obtained in response to the officer's explaining there was a robbery and the officer "felt [Elstad] was involved in that...." 470 U.S. at 301. This conversation transpired in Elstad's home during Elstad's arrest on burglary charge. *Id.* In guidance for determining the impermissible conduct from simple mistake, the Court set out the following factors to consider:

1) the completeness and detail of the question and answers in the first round of interrogation;

2) the timing and setting of the first questioning and the second;

3) the continuity of police personnel; and

4) the degree to which the interrogator's questions treated the second round as continuous with the first.

State v. Navy, 386 S.C. at 302, 688 S.E.2d at 841- 842 (*citing Seibert*).

Navy is instructive as it involves three statements, the first which the Court found admissible. Navy's first statement which was admissible is similar to the instant first statement which reflects an exculpatory statement consistent with the initial story previoulsy told to officers.

In *Navy*, at issue was "the suffocation death of [Navy's] almost two year old son...." 386 S.C. at 296, 688 S.E.2d at 838. Navy was questioned at the hospital on the day of the

child's death, but his statement was considered "incomplete" due to his emotional state. *Id*, 386 S.C. at 297, 688 S.E.2d at 839. The next day, an autopsy determined "there was no medical reason for the child to die" but found death was caused by suffocation, and noted "that the child had four older healing rib fractures in his back ...which had occurred at different times." *Id.* Investigators were advised of these findings and decided to approach Navy again. The officers questioned Navy at the police station. The first statement reflected that he "comforted" victim after victim awoke crying by "patting him on his back," eventually noticed breathing problems which he claim ended in the child's death. He claimed he attempted CPR and continued until emergency services personel arrived. The Court noted "[t]his statement is largely consistent with the statement respondent gave at the hospital after the child died." *Id*, 386 S.C. at 298, 688 S.E.2d at 839. The Court further noted "[t]he investigator testified [at the pre-trial hearing that] respondent was not in custody or under arrest, and agreed that respondent was free to tell the officers to take him home anytime he wanted." *Id*, 386 S.C. at 298, 688 S.E.2d at 839-40. The Court, agreeing with the trial judge who found the statement admissible, found on these facts that suppression was not warranted:

> In our opinion, it is debatable whether a reasonable person would have believed himself to be in custody at the time the first statement was given, and thus the trial court's finding that respondent was not in custody should have been upheld as it is supported by the record. *State v. Evans, supra.* In light of this, the Court of Appeals erred in finding the first statement should have been suppressed.

Id, 386 S.C. at 301, 688 S.E.2d at 841.

The first statement at issue here shares the same investigative reasoning, but with even less suspicion. In *Navy,* the questioning at the police station three days after the death

was instigated *after* officers received autopsy findings. Here, there was the immediate need to investigate the death of two individuals, and, after securing medical treatment, and the detective simply questioned the surviving victim as a witness. He was under the impression that the two individuals who had murdered two victims and raped the surviving victim during a home invasion were still loose in the community. Officers were actively investigating to address the immediate threat. That Appellant's story began to fall apart was less a product of coercion and more a product of fabrications that could not be supported by the forensic evidence.

In short, the fact that Appellant announced she herself was a victim of rape and witness to the home invasion makes this distinctively different than any case relied upon by Appellant to argue police aid in transportation from the hospital and timing of the interview suggests error. *See People v. Winchell*, 98 A.D.2d 838, 839 (N.Y.A.D. 3 Dept. 1983) ("defendant was considered a victim, not a suspect" thus "it is clear that the questioning by the police was investigatory rather than custodial in nature and constituted a proper discharge of their duty to investigate his complaint of an alleged assault"); *Caldwell v. Phelps*, 945 F.Supp.2d 520, 533 (D.Del. 2013) (finding no error in "application of clearly established federal law" where state court did not find *Miranda* warnings necessary when investigator had "interviewed petitioner as a witness to the home invasion, not as a suspect to a crime"). Appellant concedes she was told that she was considered a victim and that the investigators were seeking information about the crime. (FBOA, p. 12). The fact that she indeed believed this is supported by her repeated story of being a victim, and her willingness to answer questions and provide her phone records. (See R. p. 139, line 23 – p. 140, line 5). It is also supported by her responses which indicate she understood the investigation and

"appreciate[d] it." (See Recording Time Stamp at 11:14). The record reasonably supports an inference that her actual understanding was that she was not in custody at that point. But critically, these facts support that a reasonable person would not believe it was a custodial situation at that point – the relevant legal analysis.

Again, returning to *Navy*, it becomes sure that the instant factual situation may not be equated with the factual situation found to show improper questioning. As noted, the *Navy* Court found the first statement admissible, but also found two other statements taken should have been suppressed:

> After he gave this first statement, the crying and upset respondent was informed, for the first time, that the child had been suffocated and that there was evidence of broken ribs. According to Investigator Smith, respondent was shocked and surprised by this information. Respondent asked if he were under arrest, and was told "No, we are just trying to get some answers." The officers engaged in follow-up questioning, asking specifically how respondent had comforted the crying child. ***At this juncture, the nature of the interrogation and respondent's status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation.*** In response to these follow-up questions, respondent told the officers he had "popped" the child on the back rather than simply patted him, and that he may have "patted" the child on its mouth to stop the crying.

Id, 386 S.C. at 298-299, 688 S.E.2d at 839 (emphasis added).

Similarly, in *State v. Evans*, the Court noted the investigating officers identified a specific turning point in the intereview. Yet, the officers failed to give the required warnings.

In *Evans*, the defendant was first requested to answer questions as a surviving parent of children who perished in a home fire. *Evans*, 354 S.C. at 581, 582 S.E.2d at 408. She was questioned immediately after the fire by an arson investigator, but declined to give a written statement. *Id.* Later investigation testing revealed an accelerant was used in the

home fire. The investigator attempted to approach Evans ten days after the deaths at the home where she was staying. He wished to request a written statement; however, she was not at the home at that time and the investigator "left a message asking her to come to the ... police station," which she did that same day. *Id.* As the interview revealed various exculpatory, inconsistent stories, investigators began to challenge Evans. One investigator "repeatedly told Evans that he did not believe any of her explanations." *Id,* 354 S.C. at 581, 582 S.E.2d at 409. Investigators then changed directions and increased restrictions. *Id,* 354 S.C. at 581-582, 582 S.E.2d at 409. At that point, the interview was converted from permissible questioning to custodial interrogation. *Evans*, 354 S.C. at 584, 582 S.E.2d at 410. Evans ultimate gave a confession afterwhich she was given the *Miranda* warnings prior to writing the inculpatory statement on the same form as a prior exculpatory statement. *Id,* 354 S.C. at 582, 582 S.E.2d at 409. Only the exculpatory, however, was challenged on appeal. *Id.* The Supreme Court of South Carolina affirmed, crediting the trial judge's factual analysis, and concluding "the judge did not abuse his discretion in concluding that Evans was in police custody when she made the inclupatory statement." *Id* at 584.

In contrast to the inadmissible statements in both *Navy* and *Evans*, and consist with *Miranda*, the investigating officer here gave Appellant the warnings when it became apparent that her oft repeated story was not consistent with the evidence and details as they were coming in during the ongoing investigation. Further, the recording and the testimony at the pre-trial hearing, confirm a shift in tone and technique as the interview continued. (See, for example, R. p. 99, line 15 – p. 128, line 19 as compared to R. p. 139, line 16 – p. 140, line 5). Further still, the directly incriminating responses of participation only occurred *after* the warnings were given. There is no cause on this record to find the type of

intentional avoidance of the mandate. The trial judge appropriately found the statements admissible. However, even if error could be inferred from these facts, it does not follow that Appellant can show reversible error.

The improper admission of a statement in evidence is subject to a harmless error analysis. *State v. Easler*, 327 S.C. 121, 129, 489 S.E.2d 617, 621 (1997). This Court has found such possibility of error to be harmless both as cumulative to other admissible evidence, *State v. Whitner*, 380 S.C. 513, 518-519, 670 S.E.2d 655, 658-659 (Ct. App. 2008), and harmless in light of other evidence overwhelming supporting guilt, *State v. Lynch*, 375 S.C. 628, 636, 654 S.E.2d 292, 296 (Ct. App. 2007).

In this case, much like the first statement in *Navy*, Appellant's first formal statement was merely a repeat of her prior statements to law enforcement. Consequently, this first formal statement is necessarily harmlessly cumulative. Simply, the fact that she had called 911 for help and told officers that she had been raped during a home invasion, and her husband and stepson shot, would have been admitted and argued independent of her written statement as the detention center. (See R. p. 332, line 16-p. 333, line 18; p. 336, line 23 – p. 343, line 8; 356, lines 3-14; p. 434, line 15 – p. 438, line 1; p. 607, lines 9-20; p. 1375, line 25 – p. 1376, line 16). Further, she had given a similar statement to the rape crisis center representation at the hospital which was also admitted, (R. p. 364, line 13 – p. 366, line 22), and, during her medical examination, maintained she had been sexual assaulted, (R. p. 770, lines 15-22). Respondent would also note that the statement at issue was not inculpatory standing alone. (See R. p. 1448 [Court Exhibit 2]). It is the other facts of record that would demonstrate the non-credible assertions that Applicant herself would later repudiate, even admitting at one point that it was suppose to be robbery where no one was hurt. (See R. p.

568, lines 2-24; p. 914, line 5 – p. 919, line 21). Prejudice is not readily seen in light on this record.

Moreover, independent of her formal statements, there was substantial evidence of guilt that could be considered overwhelming, not the least of which are the texts gathered from Appellant's phone records showing both the need for money and direct involvement with the co-conspirator's entry into the home. (R. p. 401, line 15 – p. 406, line 21). Further, there is the lack of significant bruises and injury from the horrific, multiple rapes and draggin that she described (R. p. 490, line 21 – p. 491, line 17); the insurance policy payout motive evidence and Appellant's small caliber gun, (R. p. 837, line 18 - p. 839, line 16; p. 786, line 19 – p. 791, line 7); the burned car and telephone numbers and texts connecting Appellant and co-conspirators, (R. p. 959, lines 14- p.969, line 5); and, the murder details where each victim was shot directly in the head through a pillow execution style, (R. p. 623, line 7 – p. 624, line 4; p. 631, line 17 – p. 632, line 22; p. 635, line 13 – p. 636, line 7; p. 1007, lines 2-14), which is inferentially indicative of planned intent as opposed to random shooting during a home invasion. Thus, if error, Appellant could not show the prejudice necessary to warrant reversal.

However, the evidence well-supports the trial judge's ruling that there was no violation of *Miranda* as Appellant was not in custody at the time of her first statement. Appellant's argument to the contrary should be rejected.

II.

The trial judge did not err in finding the search warrant affidavit supported the magistrate's finding of probable cause when the complained of "false information" and lack of information to determine reliability of the witness rested merely on a contest to the reference to plural of statements from an unidentified witness instead of an allegation of a single written statement from an identified witness. The fact of receipt of the information is not contested. Further, the plural statements designation did not necessarily affect the number of witness, but certainly did not affect the validity of the information; and, the details and location provided evidence of personal, direct knowledge thus reliability.

Relevant Facts:

In a pre-trial hearing, Judge Culbertson heard a challenge to the search warrant for Appellant's home in North Carolina. The State presented Major Jerry Sarvis who testified that received the request to aid in obtaing the warrant in North Carolina. (R. p. 216, line 8 - p. 217, line 2). On August 20, 2012, Major Sarvis met with several investigators from this case, including Detective Vescovi and Detective Frebowitz. (R. p. 217, lines 14-22). He testified that they advised Appellant had obtained arrest warrants for Appellant for the murders and advised of evidence supporting a searching of the North Carolina home. (R. p. 218, lines 6-10). He testified the Horry County officers also "told the judge the same thing I told him." (R. p. 220, lines 9-18). Major Sarvis testified that insurance polices were found in the home, though not in the kitchen, but under a bed. (R. p. 223, lines 11-25). Appellant was a beneficiary on a policy insuring victim Amos Hatfield. (R. p. 224, lines 4-12).

On cross-examination, he confirmed the return referenced "two insurance polcies" were secured. (R. p. 232, lines 3-15). He also confirmed his understanding that multiple statements were obtained that insurance policy was in the home. (R. p. 232, lines 11-18).

The State also called Detective Damon Vescovi in the pre-trial hearing. Dectective Vescovi testified that prior to the search warrant, an individual by the name of Faye Hunt

voluntary came to the station and met with a Detective Wilson. (R. p. 234, line 18 – p. 235, line 2). Ms. Hunt provided information about insurance policies and a small caliber pistol in the residence, and it was that information conveyed to Major Sarvis for the warrant. (R. p. 235, lines 3-23).

The warrant request and affidavit was admitted in pre-trial as Court Exhibit 6, (R. p. 225, lines 5-6; R. pp. 1449 - 1453 [Court Exhibit 6]), and Ms Hunt's statement was admitted as Court Exhibit 18, (R. p. 245, lines 18-25; R. pp. 1454- 1455 [Court Exhibit 18]).

Applicant argued the assertion "statements," plural, was false and misled the magistrate judge. (R. p. 247, lines 8-19). Appellant also argued that Faye Hunt should not be assumed to be credible, and her assertions purportedly made to "clear her name" do not constitute probable cause. (R. p. 247, line 24 – p. 248, line 4). The trial judge summarily found the warrant valid. (R. p. 248, lines 23-24).

On appeal, Appellant argues the officer affiant did not have first hand knowledge of any of the investigative facts presented to the magistrate. (FBOA, p. 20). Appellant complains only, though, about the information from Faye Hunt. He argues there was no evaluation of her motive to mispresent information about the insurance policy, and the affidavit incorrectly reflected the plural of statement instead of reflecting one statement from Hunt. (FBOA, p. 22).

Discussion:

Appellant's argument fails as the record supports the trial judge's ruling. While the information in the affidavit reflects the plural of statements, it does not clearly reference a plural of witnesses or indicate the reference was to written statements only. The error is not as glaring as one would expect for this type of challenge. It is certainly not material. This is

especially so where the credibility or reliability portion of the argument is hampered by the unchallenged fact that Ms. Hunt did indeed speak with officers *and* gave a written statement concerning information on the insurance policy at issue, and information on a small caliber gun. As the trial judge correctly found, the magistrate was correct that there was probable cause to support the issuance of the search warrant.

The circuit court's review of the sufficiency of the warrant process "is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed." *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). Similarly, appellate courts reviewing a trial judge's determination will also look to whether the magistrate had a "substantial basis ... that probable cause existed." *State v. Kinloch*, 410 S.C. 612, 618, 767 S.E.2d 153, 156 (2014) (clarifying "standard applied to review the magistrate's probable cause determination"); *State v. Gore*, 408 S.C. 237, 247, 758 S.E.2d 717, 722 (Ct. App. 2014) ("An appellate court reviewing the decision to issue a search warrant should decide whether the magistrate had a substantial basis for concluding probable cause existed."). The judge here, after review of the warrant papers and testimony supporting the search warrant process, properly found the warrant valid. (R. p. 248, lines 23-24).

As a first matter, there is no bar to a magistrate considering hearsay as long as the probable casue standard is met by the information presented. In particular, our Supreme Court has found: "It is not unusual for an affidavit of a law enforcement officer to contain hearsay information from another, which, in turn, is based on other information gathered by that person." *State v. Sullivan*, 267 S.C. 610, 615, 230 S.E.2d 621, 623 (S.C. 1976) (*citing Spinelli v. United States*, 393 U.S. 410, 416, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969) *discussing Draper v. United States*, 358 U.S. 307, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959)). Further, this

Court has acknowledged that "[p]robable cause for a search warrant can be supported by information given to the affiant by other officers." *State v. Dunbar*, 361 S.C. 240, 249, 603 S.E.2d 615, 620 (Ct.App. 2004) (*citing United States v. Ventresca*, 380 U.S. 102, 108, 85 S.Ct. 741 (1965). Moreover not every error in the affidavit will present a circumstance of "reckless disregard" and police misconduct.

"There is ... a presumption of validity with respect to the affidavit supporting the search warrant." *Franks v. Delaware*, 438 U.S. 154, 171, 98 S.Ct. 2674 (1978). However, a defendant may challeng the sufficiency and correctness of the affidavit. *Id*, at 155-56. An incorrect statement must be shown to be material to the finding of probable cause to support error. *Id. See also State v. Robinson*, 408 S.C. 268, 758 S.E.2d 725 (Ct.App. 2014).

It is difficult to conclude that the plural of statements would be material to the determination of probable cause when the fact that only one eyewitness (not witnesses' statements) was relied upon to establish the likely presence of the insurance policies in the home. *See generally State v. Gore*, 408 S.C. at 247, 758 S.E.2d at 722 ("We are mindful on review that affidavits are not meticulously drawn by lawyers, but are normally drafted by non-lawyers in the haste of a criminal investigation, and should therefore be viewed in a common sense and realistic fashion.") (internal quotations marks) (*citing State v. Sullivan*, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976)). Further, the reliability of the information is inherent in the description made.

The detailed description of where the policy was seen, which agrees with the normal place of retention of papers in a home, *see United States v. Anderson*, 851 F.2d 727, 729 (4th Cir. 1988), *cert. denied* 488 U.S. 1031 (1989) ("the nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal

inferences of where one would likely keep such evidence"), supports the personal knowledge of the witness and the fact the eyewitness was actually present in the home to observe the policies. Again, there is no contest to the fact that Ms. Hunt actually spoke with an officer and detailed this information. Appellant's argument rests only on the much less persuasive plural of Ms. Hunt's statements argument. However, there is nothing on the face of the affidavit that would show a concern over reliability of the information such as would defeat probable cause. *See Illinois v. Gates*, 462 U.S. 213, 234, 103 S.Ct. 2317 (1983) ("even if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed first-hand, entitles his tip to greater weight than might otherwise be the case"); *State v. Bellamy*, 336 S.C. 140, 145, 519 S.E.2d 347, 349 (1999) ("Although the affidavit is weak on the element of the reliability of the informant, this deficiency is compensated for by the strong showing of specificity, first-hand observation, and partial corroboration").

Further, the statements are far from conclusory and tie the information back to possible motive for the double murder, (R. pp. 1449 - 1453 [Court Exhibit 6]). *State v. Weston*, 329 S.C. 287, 291-292, 494 S.E.2d 801, 803 (1997) (finding lack of probable cause where "the affidavit failed to set forth any facts as to why police believed Weston committed the Crumlin crime"); *State v. Smith*, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990) ("Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient."). Consequently, the affidavit supports a finding of probable cause. If, however, this Court should find error, the State would rely on the good faith exception *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405 (1984).

"Suppression is appropriate in only a few situations, including when an affidavit is

'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" *State v. Weston*, 329 S.C. at 293, 494 S.E.2d at 804 (*citing Leon*, 468 U.S. at 923). Because the affidavit language fairly supports there was only one "eye witness" with multiple statemetns, any error in failing to specify there was one written statement from that eyewitness, does not create a misleading of the magistrate as to the correctness of the information. Further, the officers had in fact obtained that statement from Ms. Hunt prior to obtaining the warrant. (See R. pp. 1454 - 1455 [Court Exhibit 18]). In essence, Appellant's argument is at most that the warrant could have been made better, but not that a fair reading could not support probable cause. As such, Appellant has failed to show that the "affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " Thus, if error at all, the good-faith exception should apply. *Compare State v. Weston*, 329 S.C. at 293, 494 S.E.2d at 804 (rejecting *Leon* exception upon "find[ing] the affidavit in this case lacked any indicia of probable cause.").

However, Appellant fails to show the trial judge erred in his ruling. The record supports a substantial basis upon which to find probable casue. Appellant's argument to the contrary should be rejected.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the lower court should be affirmed.

Respectfully submitted,

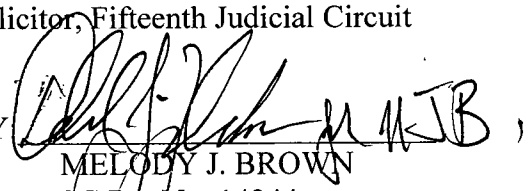
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY: 
MELODY J. BROWN
SC Bar No. 14244

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

December 2, 2015.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
DEC 02 2015
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Benjamin H. Culbertson, Circuit Court Judge

The State, Respondent,

v.

Sandy Lee Locklear, Appellant.

Appellate Case No. 2014-001354

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled " Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

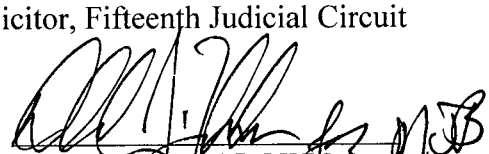
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY: 

MELODY J. BROWN
S.C. Bar No. 14244

Office of the Attorney General
Post office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

December 2, 2015.
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Benjamin H. Culbertson, Circuit Court Judge

The State, Respondent,

v.

Sandy Lee Locklear, Appellant.

Appellate Case No. 2014-001354

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Final Brief of Respondent* on Appellant by depositing one copy in the United States mail, postage prepaid, to each of his attorneys of record, addressed as follows:

Edwin Thompson Kinney, Esq.
Mullikin Law Firm
1308 Broad Street
Camden, SC 29020

Chief Appellate Defender Robert M. Dudek
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

This 2nd day of December, 2015.

MELODY J. BROWN
Senior Assistant Attorney General
S.C. Bar No. 14244