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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
J.C. Nicholson, Jr., Circuit Court Judge

The State, Respondent,

v.

Torren Marquize Eady, Appellant.

Appellate Case No. 2014-000375

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

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting Street, 4th Floor
Charleston, South Carolina 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

Whether the court erred by refusing to charge "mere presence" and "mere association" are insufficient to convict where there were allegedly two men present at the time of the shooting, it was undisputed several eye witnesses were unable to identify which one was the shooter, and where there was also evidence the shooter acted spontaneously since this instruction was necessary given the facts of this case?

II.

Whether the court erred by allowing witness Teresa Jenkins to speculate that something "bad had happened" based on the way the appellant and the other man "were acting" when she dropped them off in Charleston on the day of the incident, since it was improper for the solicitor to elicit such improper speculation?

(FBOA, p. 1).

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge abused his discretion in declining to charge mere presence where the judge neither charged accomplice liability nor did the State rely upon accomplice liability to prove guilt.

II.

Whether the trial judge abuse his discretion in allowing Jenkins to testify as to her impression that something "bad" had happened as the testimony described her own impressions from observed actions and events after the shooting and was not mere speculation.

RESPONDENT'S STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant, Torren Marquize Eady in August 2012 for murder, three counts of attempted murder and possession of a firearm during the commission of a violent crime. (R. pp. 286–293). A jury trial was held February 18 – 20, 2014, before the Honorable J.C. Nicholson, Jr. The jury convicted as charged. (R. p. 281, line 9 – p. 282, line 7). The judge sentenced Appellant to forty-five (45) years for murder, ten (10) years, concurrent, on each attempted murder, and five (5) years, concurrent, for the weapon charge. (R. p. 283, line 16 – p. 284, line 2). This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

The jury convicted Appellant of murder, three counts of attempted murder, and possession of a weapon during the commission of a violent crime. All charges stemmed from one incident that occurred at a residence in North Charleston on April 6, 2012. The evidence showed Appellant became upset over a former girlfriend's confrontation at his home earlier the same day, rounded up three individuals and at least two guns, went to the nearby home where the friends were and opened fire. One individual – who was not a part of the earlier confrontation – was killed on the porch. Three others individuals were also on the porch. One received a gunshot to the leg, while the other two escaped physical injury. The following facts support the instant summary:

Teresa Jenkins testified that she was dating Appellant at the time of the shooting. She went to Appellant's home on the afternoon of April 6, 2012. While there, Appellant's former girlfriend and "baby mama," Rochelle Grant, approached the house, banged on the door, and shouted. Jenkins testified she saw a text to Appellant from Grant that she was "coming to slap him." (R. p. 10, line 14 – p. 11, line 9; p. 13, line 11 – p. 14, line 8). She was not alone. Jenkins testified that Appellant confronted Grant and stated: "You bringing these n*****s to my mama house." (R. p. 15, lines 5-7). Grant slapped Appellant's phone from his hand then left. (R. p. 15, lines 12-17). Jenkins testified that after the incident, Appellant left for a period of time only to come back with brother Da'Quan, TJ and Jigg. TJ referenced that "they" had been "messing with Tezo," another name for Appellant. TJ had a long gun at his side. (R. p. 18, line 5 – p. 19, line 24). The group left, and, shortly after, Jenkins heard gunshots. (R. p. 20, lines 14-15; p. 22, lines 16-24). Jenkins testified that Appellant came to the back door of his home and asked to be let in. (R. p. 23, lines 5-14).

She would later take him and Da'Quan downtown at Appellant's request. Da'Quan said to Jenkins: "I hope you don't think Torren did this, man." (R. p. 25, line 1 – p. 28, line 17).

In describing the precursor event to the shooting, attempted murder victim Gabrielle McCulley testified that several individuals left the house where the murder would later occur and walked the short distance to the Eady home along with Grant. She understood they were going to "retrieve a child," but they later dispersed after the yelling, and walked the short – less than two blocks – distance back to the home were the murder occurred. (R. p. 143, line 6 – p. 46, line 24). Later that same evening, while she was on the porch with others, she saw "[t]wo individuals" approach the house from around the corner. They were dressed in black and one wore "a black fisherman's hat." (R. p. 48, lines 13-24). McCulley testified that the one with the hat was in front and asked about being "ganged." (R. p. 49, line 6 – p. 50, line 3). They were then fired upon. (R. p. 49, line 8 – p. 50, line 7). McCulley, along with Antione Foster, and Martel Brown, went into the house. Brown had been shot in the leg. Adrian King was shot and believed dead on the porch. (R. p. 51, line 16 – p. 53, line1). She could not identify Appellant from a photographic lineup, but recognized his voice when she attended a bond hearing. (R. p. 53, lines 7-11; p. 56, line 14 – p. 60, line 4).

Antione Foster, another attempted murder victim, also testified as to the prior confrontation by Grant at the Eady home. (R. p. 77, line 6 – p. 79, line 24). He was familiar with Appellant as he had previously kept Appellant's young son, being friends with Grant. (R. p. 71, lines 3-18). Foster testified that after his return from the Eady home, murder victim Adrian King had called and arranged to come over. (R. p. 80, lines 15-24). While on the porch with King and others, Foster saw Appellant approach with another individual. (R.

p. 81, lines 3-19; p. 83, line 22 – p. 84, line 4). Appellant asked about the people who tried to "gang" him. (R. p. 81, lines 21 – 25). Martel Brown walked outside on the porch, after having gotten a haircut from Foster's mother, and asked who Appellant was, but Appellant stated, "It don't matter, and he started shooting." Foster testified Brown was shot in the leg and King was shot in the head. (R. p. 81, line 25 – p. 82, line 4). Foster identified the gun as a revolver. (R. p. 83, lines 7-8). Foster testified that he went directly to the police station and identified Appellant for the officers, having viewed a prepared six photograph array. (R. p. 86, line 10 – p. 89, line 24; p. 102, line 19 – p. 104, line 2). He testified that Appellant was the one who shot at him and the others on the porch. (R. p. 90, lines 13-21). Foster testified that he only saw Appellant with one gun, and that was the only gun that he witnessed being fired. (R. p. 95, lines 2-9).

Forensic pathologist Dr. Lee Marie Tormos testified King died from the gunshot wound to his head, the bullet having entered his left temple, went to the base of his skull, fractured the bones and bounced into his brain. (R. p. 127, lines 4-25).

Investigators retrieved 9mm rounds, a "projectile … not fired," and a shotgun from the Eady home. (R. p. 118, lines 4-25). The parties stipulated that "four complete bullets and one bullet fragment" were recovered from the scene. Three bullets and the fragment were fired by one gun, either a .38 special or a .357 Magnum. The remaining bullet was fired by a .38 special or a .357 Magnum, but not the same one. (R. p. 166, line 21 – p. 167, line 20).

After several interviews, officers prepared warrants for Appellant's arrest. (R. p. 133, lines 14-18). The arrest warrants were prepared the same night and were completed the next morning, on April 7, 2012; however, Appellant could not be located and arrested until

April 17, 2012. (R. p. 140, lines 10-24). He was apprehended at an aunt's home. When officer initially arrived at the home the aunt denied that any males were present. Appellant was found attempting to hide behind a shower curtain. (R. p. 198, line 4 – p. 200, line 13).

Appellant spoke to officers the day after his arrest, but merely stated he had no involvement with the shooting; rather, he simply stated he went downtown with Jenkins after the Grant altercation. (R. p. 139, lines 1-7).

Appellant's cell phones were recovered after his arrest. (R. p. 139, line 23- p. 140, line 9; p. 206, line 14 – p. 208, line 21). Cell phone records to the phone Appellant admitted was his were consistent with the general location and times recounted by the witnesses rather than his statement to police. (R. p. 184, line 3 – p. 186, line 8). Appellant confirmed to officers that his cell phone was with him during the "activities of that night." (R. p. 139, lines 15-22). Another phone that was retrieved with his admitted cell phone at the aunt's residence showed not only an email addressed to him but also a search of interest made on April 16, 2012, after the shooting and prior to Appellant's arrest: "how long does gun powder stay on the skin." (R. p. 220, line 11 – p. 223, line 6). At the same time the phones were recovered, officers also found a black hat which was admitted as State's Exhibit 35. (R. p. 210, line 22 – p. 211, line 17). Attempted murder victim McCulley testified the hat was the one she saw on the individual in front who spoke before the shooting. (R. p. 149, lines 1-12).

ARGUMENT

I.

> The trial judge did not abuse his discretion in declining to charge mere presence where the judge neither charged accomplice liability nor did the State rely upon accomplice liability to prove guilt.

Relevant Facts:

Counsel apparently requested a mere presence charge, and, upon prompting by the trial judge, asked that the request to charge (along with a request for a "longer" identification charge) be made a court exhibit. There was no argument on the specific necessity, nor an actual objection. (R. p. 277, line 11 – p. 278, line 14). Even so, Appellant argues in this appeal that his request to charge on mere presence, Court Exhibit 3, was a correct statement of law and "the judge had an obligation to instruct it in this case." (FBOA, p. 9). Appellant is generally correct that mere presence is not sufficient proof of a crime, but that principle is irrelevant to the case.[1]

Discussion:

As a first matter, it appears that challenge to the failure to charge may well be waived as Appellant failed to place a specific objection on the record. Rule 20 (b), SCRCrimP provides that the objection to the failure to charge "shall state distinctly the matter objected to and the grounds for the objection." Further, Section (b) also provides that the "[f]ailure to object in accordance with this rule shall constitute a waiver of objection." The basis for the charge and its relevance to the case was not sufficiently set out to preserve the issue. *See general State v. Patterson*, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997)

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[1] Appellant's request to charge actually cites to a case that does not address mere presence but criminal intent for bribery and distribution of cocaine. The text of the request, though, references mere presence and mere association.

("general objection which does not specify the particular ground on which the objection is based is insufficient to preserve a question for review.") (citations and internal quotation marks omitted). At any rate, it is clear the request was made and the argument presented in this appeal does not show that the charge was warranted.

"The purpose of a jury instruction is 'to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury.'" *State v. Blurton*, 352 S.C. 203, 207-208, 573 S.E.2d 802, 804 (2002) (*quoting State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). Specifically, "[p]roviding instructions to the jury which do not fit the facts of the case may tend to confuse the jury." *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989). "It is error to give instructions which are calculated to confuse or mislead the jury." *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987).

Simply, the requested charge was not necessary. However, several factually inaccuracies in Appellant's argument should be addressed at the outset of the discussion. Appellant is incorrect to suggest that the evidence presented at trial reflected one shooter. (FBOA, p. 9, "There was evidence two men were present and one of them was the shooter."). The stipulation indicated at least two guns were fired at the scene. (See R. p. 166, line 21 – p. 167, line 20). Foster did not testify there was only one gun; rather, he testified that he only saw the one Appellant was firing. (R. p. 95, lines 2-9). In fact, defense counsel relied upon same in his closing. (See R. p. 256, line 16 – p. 257, line 10). Appellant then argues that only one witness identified him as "the" shooter. (FBOA, p. 9). This is also incorrect. Two witnesses identified Appellant as a participant – one as an actual shooter, his recognition of Appellant based on knowing Appellant prior to the shooting, (R. p. 81, lines

7-19, Testimony of Antione Foster), and one as a participant, the individual who spoke, by voice identification at a subsequent bond hearing, (R. p. 53, lines 7-11; p. 56, line 14 – p. 60, line 4, Testimony of Gabrielle McCulley). Thus, the only issue was the reliability of the identification. The trial judge instructed the jury on credibility of the witnesses, and specifically identification and the State's burden of proof in showing beyond a reasonable doubt that the defendant committed the crime. (See R. p. 263, line 17 – p. 265, line 2; p. 272, line 11 – p. 273, line 12). There was no charge on accomplice liability, nor did the State seek conviction by accomplice liability.

The State argued, consistent with the eyewitness testimony, that Appellant approached the home where the murder occurred, initially engaged in conversation, then began to fire. Further, and in circumstantial support of the fact Appellant did at least some of the shooting, the State also noted Appellant fled the scene, hid downtown and searched how long gun powder stays on the skin. (See R. p. 242, line 8 – p. 244, line 21). Critically, defense counsel did not argue Appellant was merely there, but argued that the eyewitness was incorrect in his identification of Appellant as the shooter. (See R. p. 250, lines 4-18; p. 252, line 7 – p. 255, line 6; p. 257, lines 7-10; p. 260, lines 20-24). In fact, Appellant's statement did not reflect that he was at the home where the murder occurred at all. (See Tr. p. 139, lines 1-7).[2] The charge of mere presence was not warranted. *State v. Lee*, 298 S.C. at 365, 380 S.E.2d at 836 ("State below tended to show Lee exercised actual possession and control over the cocaine. Thus, 'mere presence' was not an instruction supported by the evidence presented by the State at trial."); *State v. James*, 386 S.C. 650, 654, 689 S.E.2d

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[2] Appellant did not present witnesses; however, his statement was admitted in the State's case.

643, 645 (Ct. App. 2010) ("A charge of mere presence was not warranted under an accomplice liability theory for two reasons. First, the State's theory of the case did not involve accomplice liability. ... Second, we find James's position that he was merely present at the scene of a crime but did not commit the crime untenable considering the fact that defense counsel conceded there was no evidence that anyone other than James was present at the scene."); *State v. Stokes*, 339 S.C. 154, 164, 528 S.E.2d 430, 435 (Ct.App. 2000) ("Under the State's view of the evidence, Stokes was the sole person present and committed the assault himself. Conversely, Stokes maintained he was not present at the commission of the assault upon the child.").

A judge's refusal to give a requested charge will not be reversed unless appellant shows an abuse of discretion. *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." *State v. Austin*, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989). "'If there is any evidence to support a charge, the trial court should grant the request.'" *State v. Brandt*, 393 S.C. 526, 549-550, 713 S.E.2d 591, 603 (2011) (*quoting State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct.App. 2005)). Here, there was no abuse of discretion, and no error in rejecting the request to charge, as the request was not warranted on the facts.

If, however, any error did occur, such error would be harmless in light of the remainder of the charge and specifically the carefully crafted charge on identification. *See, e.g., State v. Logan*, 405 S.C. 83, 94, 747 S.E.2d 444, 449 (2013) ("erroneous jury instructions are subject to a harmless error analysis"); *Mattison*, 388 S.C. at 478, 697 S.E.2d at 583 ("'A jury charge is correct if, when the charge is read as a whole, it contains the

correct definition and adequately covers the law.'") (*quoting State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct.App. 2003)). *Cf. Gibbs v. State*, 403 S.C. 484, 496, 744 S.E.2d 170, 176 (2013) (finding no prejudice in counsel's failure to request an alibi charge "[g]iven the clarity of the jury charge requiring the State to prove identity beyond a reasonable doubt"). Yet, the record is most comfortably read as not requiring the requested charge. Therefore, there was no error. Appellant's argument to the contrary should be rejected.

II.

> The trial judge did not abuse his discretion in allowing Jenkins to testify as to her impression that something "bad" had happened as the testimony described her own impressions from observed actions and events after the shooting and was not mere speculation.

Relevant Facts:

During Teresa Jenkins testimony concerning the drive downtown after the shooting, the solicitor asked if she had "any ideas based on the way people were acting in the car" whether something good or bad had happened. (R. p. 27, lines 23-24). Defense counsel objected and argued the question "call[ed] for speculation." (R. p. 27, line 25 – p. 28, line 1). The trial judge overruled the objection without comment. (R. p. 28, line 2). Jenkins answered merely "bad." (R. p. 28, line 7).

In the appeal, Appellant argues that trial judge erred as Jenkins testimony was improper speculation. (FBOA, p. 11).

Discussion:

"[E]vidential rulings of the trial court will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant." *State v. Mansfield*, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct.App. 2000). Here, Appellant can show neither error nor prejudice.

"A witness may not testify to a matter unless evidence is introduced sufficient to a finding that the witness has personal knowledge of the matter." Rule 602, SCRE. Purely speculative testimony does not satisfy the requirement. *State v. Frazier*, 357 S.C. 161, 167, 592 S.E.2d 621, 624 (2004)(witness testimony disallowed where witness did not known when statement attributed to defendant was made, or to whom the defendant was speaking,

or exactly what was said). However, there is a difference between inferences from one's own observations and mere speculation. "The opinion or inference of a lay witness is admissible if it is a) rationally based on the perception of the witness, b) helpful to the determination of a fact in issue, and c) does not require special knowledge." *State v. Williams*, 321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) (citing Rule 701, SCRE). *See also State v. Bottoms*, 260 S.C. 187, 196, 195 S.E.2d 116, 119 - 120 (1973) (lay opinion admissible where based on personal observation of facts). Simply, "impressions drawn from collected, observed facts" are not properly categorized as speculation. *Williams*, 321 S.C. 464, 469 S.E.2d at 54. *Williams* is on point and controlling.

In *Williams*, a surviving victim was allowed to testify to her belief that the murder victim may have stolen drugs which may have been a motive for the murder. The Court noted the belief "was reasonably based upon her observation of the transaction which had just occurred, and the fact that she had previously known Victim to do such things." 321 S.C. at 464, 469 S.E.2d at 54. The Court reasoned "her opinion was rationally based upon the events which had transpired and was helpful to the jury's determination as to why Williams chased and shot at them." *Id.* Thus, it concluded there was no abuse of discretion in admission of this testimony. [3]

Likewise, in the instant case, based on the behavior of the individuals, along with what she had previously testified to (*i.e.* the confrontation with Grant, the amassing of

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[3] Appellant relies upon *State v. Stokes*, 279 S.C. 191, 304, S.E.2d 814 (1983). (FBOA, p. 10). Williams similarly relied upon *Stokes.* 321 S.C. at 463, 469 S.E.2d at 54. The Supreme Court found "*Stokes* is inapplicable" as it involved the offer of proof to show "'common scheme or plan' under *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923)" and the testimony in *Williams* was not offered in proof of "common scheme or plan." *Id* at n. 3. *Stokes* is likewise not applicable in the instant case.

confederates, the shooting heard from the house, the quick return and need to flee to the downtown area), Jenkins testimony she believed something "bad" had happened was reasonably based on her discrete knowledge and observations. Thus, the testimony was not speculative and was admissible.

Further, Respondent notes in contrast that earlier in Jenkin's testimony, there was an objection to speculation that was sustained. In response to the solicitor's question as to why Jenkins had sent a text to Appellant after he left the Eady home after the Grant confrontation, part of her answer veered to "guessing" what may have been occurring. (R. p. 16, lines 10-12). The trial judge sustained the objection and cautioned: "Just testify to your own knowledge; don't speculate, okay?" (R. p. 16, lines 17-18). *See Frazier*, 357 S.C. at 167, 592 S.E.2d at 624 (finding testimony witness "guessed" defendant spoke to a specific person and "believed" the overheard threats "too speculative to be admitted"). Critically, the opinion at issue here based on Jenkins personal observation of the people in the situation differs dramatically from the "guess" previously overruled. Moreover, the record supports the opinion, which required no "special knowledge, skill, experience or training," could assist the jury specifically in considering the testimony as to whether Appellant simply left for downtown (as he alleged in his statement), or if there was flight from the murder scene. Thus, the evidence meets the admissibility standard in Rule 701. *See also State v. McClinton*, 265 S.C. 171, 176-177, 217 S.E.2d 584, 586 (1975) ("Both McCormick and Wigmore reason that conclusions or opinions of laymen should be rejected only when they are superfluous in the sense that they will be of no value to the jury."). Again, the evidence was properly admitted.

Finally, any error in the admission of this brief, non-specific opinion that something "bad" had occurred, would be harmless beyond a reasonable doubt. "[A]n insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." *State v. Price*, 368 S.C. 494, 500, 629 S.E.2d 363, 366 (2006) (*citing State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)); *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." *Price*, 368 S.C. at 499, 629 S.E.2d at 366 (*citing State v. Pickens*, 320 S.C. 528, 531, 466 S.E.2d 364, 366 (1996)). Here, there is substantial and solid evidence of guilt. The eyewitness identification by an individual who knew Appellant in a social sense, and a surviving witness who recognized Appellant's voice, along with evidence of opportunity, motive, subsequent flight, inconsistent statement, and an internet search for how long gun powder stays on skin, demonstrates overwhelming evidence of guilt as a principal such that any error in the admission of the limited and vague opinion testimony would be harmless.

However, the testimony was admissible under *Williams* and Rule 701, SCRE. The trial judge did not abuse his discretion in allowing the testimony. 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,

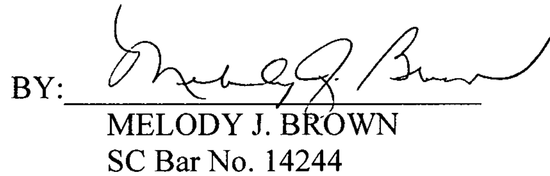
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth 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

June 29, 2015.
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APPEAL FROM CHARLESTON COUNTY
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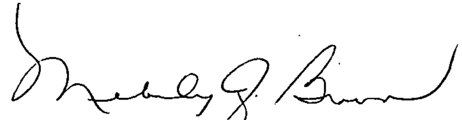
v.

Torren Marquize Eady, Appellant.

Appellate Case No. 2014-000375

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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

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

ATTORNEYS FOR RESPONDENT

June 29, 2015.
Columbia, South Carolina.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
J.C. Nicholson, Jr., Circuit Court Judge

The State, Respondent,

v.

Torren Marquize Eady, Appellant.

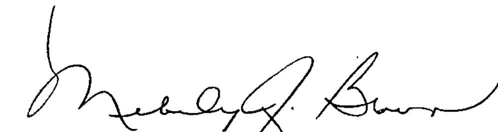
Appellate Case No. 2014-000375

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Final Brief of Respondent* and *Certificate of Compliance* on Appellant by depositing copies in the United States mail, postage prepaid, to his attorney of record, addressed as follows:

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 29th day of June, 2015.



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