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JAN 15 2016  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
General Sessions Court

The Honorable D. Craig Brown, Circuit Court Judge

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Indictment Numbers: 2011-GS-07-1398, 1399, 1423, & 1496  
Appellate Case Number: 2014-002176  
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The State, .....Respondent

v.

Juwan Habersham, .....Appellant

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INITIAL REPLY BRIEF OF APPELLANT  
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**STATEMENT OF THE ISSUE ON APPEAL**

**DID THE TRIAL COURT ERR BY FAILING TO DISMISS THE PROSECUTION OF THE APPELLANT DUE TO THE SUPPRESSION AND SPOILIATION OF EXCULPATORY IDENTIFICATION EVIDENCE?**

## STATEMENT OF THE FACTS AND THE CASE

During the early morning hours of June 19, 2011, two young adults were robbed at gun point as they left a food and beverage establishment in the waterfront park area of the City of Beaufort. Tr, p. 157, l. 5- p. 158, l. 21. Testimony indicated that they were approached by three males as the male victim escorted the female victim to her car. One of these males had a gun. The female victim handed over her purse with credit cards and five dollars (\$5.00). The male victim did not have any items taken.

The Appellant was arrested on June 21, 2011. Tr., p. 39, l. 16. He was indicted for four charges: Armed Robbery, Attempted Armed Robbery, Possession of a Weapon During the Commission of a Violent Crime, and Unlawful Possession of a Firearm by a Person Convicted of a Crime of Violence. Indictments.

The Appellant was represented by the Fourteenth Circuit Public Defender Office. Appellant's trial counsel was his second attorney on the case. Tr, p. 107, l. 14-22. The assistant solicitor was the second prosecutor on the case. Tr, p. 107, l. 23- p. 108, l. 5.

The case had been previously noticed for trial. Tr, p. 121, l. 15- p. 122, l. 24. The second public defender prepped for both of these trial dates. The assistant solicitor handling the case during the first notice changed jobs and the trial was conducted by an assistant solicitor who only had the case for a small number of months.

Appellant's counsel raised four significant issues. First, he argued for the suppression of the statement the Appellant made to the detective. Tr, p. 37, l. 115-17. Second, he argued that a desired stipulation as to Appellant's prior conviction for a "crime of violence" rendered testimony regarding the details of that conviction inadmissible. Tr., p. 86, l. 10-14. Third, he argued for dismissal based upon the suppression, destruction, and late provision of exculpatory evidence related to identification evidence and missing photo lineups. Tr., p. 90-123. Finally, he argued to exclude a convenience store surveillance video and credit card purchase receipt on authentication grounds. Tr, p. 124, l. 1-2.

The trial court denied all of these motions.

Four witnesses testified for the State. Tr, p. 164-261. Two witnesses were

victims of the robbery, one was a responding officer and one was the detective who worked the case. The issue at trial was one of identity. Tr, p. 296, l. 21- p. 297, l. 18.

The two victims could not identify the Appellant. Tr, p. 90, l. 20- 91, l. 8. However, the State introduced a statement of the Appellant admitting involvement in the crime. Tr, p. 239, l. 11- p. 243, l. 19. Further, the State also introduced a convenience store video and a credit card receipt arguing that the Appellant used the female victim's credit card the day after the robbery in neighboring Jasper County. Tr, p. 229, l. 13-p. 233, l. 19.

During cross examination, the Appellant's counsel brought out the fact that the detective lied to the Appellant to induce him to confess. Tr, p. 254, l. 3-9. During interrogation, the detective told the Appellant that the victims picked him out of a photo lineup. In contrast, the detective testified at trial that neither victim picked the Appellant out of a lineup. Tr, p. 101, l. 8-16.

The detective testified he did not memorialize any reference to the lineup in his reports and did not preserve or enter any lineup cards into evidence. Tr, p. 117, l. 19-25. The detective was not clear as to what procedure he used, what warnings were provided or whether both victims were presented two different line up cards (one of Caucasian lineage and one of African lineage). Tr, p. 247, l. 5- p. 253, l. 23. He testified on direct that no one was picked from the lineups but on cross examination that he had no memory to dispute whether the male victim chose two or three people from the lineups. Tr, p. 234, l 18-20 & Tr, p. 252, l. 25- p. 253, l. 18.

In contrast, both victims recalled the lineup presentation differently. The female victim did not recall picking anyone from the lineup. Tr , p. 205, l. 5-21. The male victim indicated he picked "a few" subjects out of the lineup containing suspects of African descent. Tr, p. 183, l. 22- p. 184, l. 6.

The parties stipulated that the Appellant had been convicted of a crime of violence for purposes of one of the gun charges. Tr, p. 279, l. 22- p. 281, l. 3

The Appellant did not testify or present any evidence.

The jury returned guilty verdicts as to all charges on December 11, 2014. The

Appellant received concurrent sentences of 30 years, 20 years, 5 years and 5 years. Sentencing Sheets & Tr, p. 344, l. 1- p. 345, l. 9. The Notice of Appeal was filed on December 16, 2014 and this brief follows. Notice of Appeal.

### STANDARD OF REVIEW

In criminal cases, “the appellate court sits to review errors of law only.” State v Bland, 730 SE2d, 909, 911 (SC Ct App 2012)(internal citations omitted). The reviewing court is bound by the trial court's findings of fact unless they are clearly erroneous. *Id.*

### ARGUMENT

BECAUSE THE TRIAL COURT ERRED BY FAILING TO DISMISS THE PROSECUTION OF THE APPELLANT DUE TO THE SUPPRESSION AND SPOILIATION OF EXCULPATORY IDENTIFICATION EVIDENCE, THIS COURT SHOULD REVERSE THE CONVICTIONS AND DISMISS THIS CASE WITH PREJUDICE.

Even though the Respondent’s Brief asserts that the Appellant failed to properly preserve the Appellant’s issue for appeal, this matter was clearly raised and ruled upon by the trial judge.

South Carolina appellate courts do not recognize the plain error rule. State v Sheppard, 706 SE2d 16 (SC 2011). To be properly preserved for an appeal, an issue must be raised in a timely fashion to the trial court and a ruling issued such that an appellate court can properly review the ruling. *Id.* The basis for the objection must specify the grounds for the objection sufficiently for the “judge to be informed of the point being urged by the objector.” State v Byers, 710 SE2d 55 (SC 2011).

Concerning the due process violation at issue in this appeal, South Carolina law recognizes that the concerns raised by suppressed evidence, destroyed or lost evidence,

and the presentation of or failure to correct false testimony all fall under the ambit of the due process protections provided by the Fifth and Fourteenth Amendments. State v Jackson, 396 SE2d 101 (SC 1990). The US Supreme Court considers these protections: “... the area of constitutionally guaranteed access to evidence.” Jackson, 101-102 quoting US v Valenzuela-Bernal, 458 US 858, at 867 (1982). As stated in Jackson, all of these due process concerns dovetail to provide a “meaningful opportunity to present a complete defense.” Jackson, at 101<sup>1</sup>.

In the case at bar, the court was clearly presented with the due process concern that defense counsel was unable to adequately present Mr. Habersham’s defense due to the deprivation of the due process rights related to the line-up presentation made to the victims. Trial counsel presented this issue to the Court as a “...Brady violation...when spoliation is an issue.” Tr. p. 95, l. 13-19. Trial counsel for the Appellant clearly told the court he was unclear as to what had not been provided. Tr. p. 95, l. 19- 23. When the court ruled on the issue at that time, the ruling was based on the fact that the lineup had been provided and that no one had been identified.

This motion was renewed at the close of the State’s case. By that time the evidence regarding the due process violations had changed. It was clear at that time that two lineups had been presented to the victims even though only one had been provided to

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<sup>1</sup>The Respondent also argues in footnote 8 of his brief that Appellant’s counsel is arguing prosecutorial misconduct which is different than the arguments made at trial. In fact, the South Carolina Supreme Court has unequivocally held that a violation of the Brady line of cases constitutes prosecutorial misconduct irrespective of the good or bad faith of the prosecutor’s actions. Gibson v State, 514 SE2d 320, at 326 (SC 1999)(“A Brady violation is one type of prosecutorial misconduct.”)

trial counsel the Monday of the term in which the case was tried. Tr, p. 247, l. 25- p. 248, l. 9.

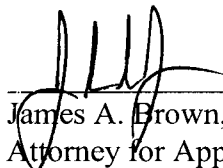
At that point, the due process violation touched all three of the concerns addressed by Brady and its progeny. The existence of a second lineup was suppressed and only revealed by the victims. The investigator's testimony that no one was selected from the lineups was false in light of the victims' testimony and the actual lineups marked by the victims picking out these third parties were destroyed and unable to be replaced. This represents the trifecta of due process violations discussed in the Brady line of cases.

Therefore, the issue concerning the violation of the Appellant's due process rights was presented to the trial court. The trial court ruled upon this motion. This motion was renewed after the close of the State's case and the matter should have been dismissed.

### CONCLUSION

Thus, this Court should find the trial court's rulings erroneous and reverse the Appellant's convictions.

Respectfully submitted by:

  
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The State.....Respondent

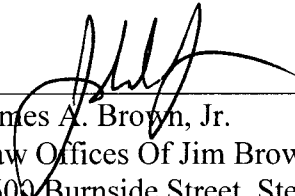
v.

Jujuan Habersham.....Appellant

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PROOF OF SERVICE  
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Counsel for Jujuan Habersham hereby certifies that he has prepared and served an Initial Reply Brief of Appellant on this 13<sup>th</sup> day of January, 2016, upon the State, by depositing a copy, postage pre-paid, in the United States Mail, addressed to Mark R. Farthing, South Carolina Office of the Attorney General, PO Box 11549, Columbia, South Carolina, 29211.

January 13, 2016

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SC Court of Appeals

January 13, 2016

The Honorable Jenny Abbott Kitchings

Court of Appeals

PO Box 11629

Columbia, South Carolina 29211

RE: State of South Carolina v. Jajuan Habersham  
Appellate Case No. 2014-002176

Ms. Kitchings:

I have enclosed for filing Appellant's Initial Reply Brief. Also enclosed is a Proof of Service regarding the same. Please contact me if you have any questions or concerns. Thank you for your assistance.

Sincerely,



Jessica Roper

Paralegal to Jim Brown

with enclosures as indicated above

cc: Mark R. Farthing, Assistant Attorney General, w/enclosures  
Jajuan Habersham, w/enclosures

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