STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS



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Appeal from Oconee County
Alexander S. Macaulay, Circuit Court Judge

---

THE STATE,

Respondent,

vs.

LAQUAVIUS T. CLEVELAND,

Appellant.

---

**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUE ON APPEAL

The trial court did not err in admitting Appellant's two statements to law enforcement under the totality of circumstances. The issue is not preserved for review because the objection was not renewed before the jury and the in limine ruling was not final. Appellant admitted he was not coerced or promised anything in exchange for his statements.

## STATEMENT OF THE CASE

Appellant Cleveland was indicted for attempted murder and possession of a weapon during the commission of a violent crime. Cleveland proceeded to jury trial on July 21, 2014, before the Honorable Alexander S. Macaulay. The jury found Cleveland guilty as charged on July 24, 2014. Judge Macaulay sentenced Cleveland to twenty-two years imprisonment for attempted murder and five years consecutive imprisonment for the weapons conviction.

## STATEMENT OF FACTS

Cleveland stabbed his second cousin, Hakeem Kirkland, eleven times while Cleveland was under house arrest. Prior to the jury trial, the trial court held a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964).

### The Jackson v. Denno hearing

The first witness in the Jackson v. Denno hearing was Sergeant Margaret Tinsley. She testified that Cleveland's Aunt Patrice brought Cleveland to Corporal Robertson, who in turn brought Cleveland to the Sheriff's Office in his patrol car. Sergeant Tinsley testified that Cleveland was not under arrest. Sergeant Tinsley spoke to Cleveland at 5:48 p.m. Sergeant Tinsley testified that Cleveland was not in handcuffs, he was not denied anything,

he appeared to be in the right frame of mind and was not under the influence of anything. He was very polite. ROA. pp. 9-11. Sergeant Tinsley testified Cleveland was read his rights and signed and initialed the Miranda[1] rights form. ROA. p. 11. Sergeant Tinsley testified he was not threatened or promised anything. Cleveland agreed to talk. ROA. p. 15. Sergeant Tinsley explained it was early in the investigation; she knew little about the crime. She knew there was a stabbing but did not know how many times the victim was stabbed or the extent of the injuries. ROA. p. 12.

The essence of Cleveland's first statement was that Kirkland was trying to collect a debt and presented a gun. Cleveland was scared and stabbed Kirkland a couple of times. Cleveland signed this statement. ROA. p. 15. Cleveland also told Sergeant Tinsley the house had a security camera and probably the whole incident was recorded. Sergeant Tinsley called Cleveland's mother to ask her to get a copy of the video. ROA. p. 24.

Sergeant Tinsley testified that at this point, they watched television while they waited for several hours for more information. Other officers were out at Greenville Memorial where Kirkland was being treated. Sergeant Tinsley testified Cleveland was offered both food and drink. Cleveland declined food but took up the offer for iced tea, so Cleveland and Sergeant Tinsley both drank tea while watching television and waiting for more information. ROA. p. 16. Sergeant Tinsley testified on redirect that Cleveland never complained about being tired or asked to leave during this time. Instead, he appeared to be patiently waiting to find out about the video he told Sergeant Tinsley about. It took a while because his mother needed to wait for a break at work to call her ex-boyfriend who had the software application

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

on his phone to retrieve the video. ROA. p. 33.

Sergeant Tinsley found out Kirkland was stabbed eleven times, not two times. She also found out that Kirkland provided text messages arranging a transaction between Kirkland and Cleveland. She started interviewing Cleveland again at 1:15 a.m. Accompanying her in the interview room was Captain Reed. ROA. pp. 16-18. Sergeant Tinsley testified she did not threaten or coerce Cleveland. She did, however, confront Cleveland on the point "that it just wasn't adding up." Cleveland agreed to talk some more. ROA. p. 19.

Cleveland admitted in his second statement that he arranged by text messages to buy a gun and some marijuana from Kirkland. Cleveland did not actually have the money for the purchase, and he intended to rob Kirkland and take the gun and marijuana. He admitted stabbing Kirkland with a butcher knife. ROA. p. 20.

Sergeant Tinsley testified they asked him if he would provide a written statement and Cleveland said he was tired. They asked Cleveland to instead sign Sergeant Tinsley's notes, and Cleveland agreed. So Sergeant Tinsley read her notes back to him, and he signed the notes. ROA. p. 21. Sergeant Tinsley explained to him, "You let me know if I left anything out. You let me know if there's something in here that I have incorrect, that I need to change. If you need to change anything, just point it out, let me know." ROA. p. 21, lines 20-24.

On cross-examination, Sergeant Tinsley explained that Corporal Robertson initially asked Cleveland's mother if she minded if they spoke with Cleveland and she said she did not. ROA. p. 24. Cleveland agreed to a polygraph test. When he took the polygraph test, he showed signs of deception. ROA. pp. 24-26.

Sergeant Tinsley testified Cleveland was willfully staying and was cooperative. Sergeant Tinsley explained, "I thought that there may be video. He was telling us the truth." ROA. p. 31, lines 7-14.

Captain Reed testified he was present for the second interview. He confirmed that Cleveland was not promised anything or threatened when he gave his second statement. He testified Cleveland was told he did not do well on his polygraph test. Captain Reed testified Cleveland appeared to understand what was going on and was in his right frame of mind. ROA. pp. 38-39.

Cleveland testified on his own behalf during the hearing. He claimed his aunt told him to write a statement and he would then go home. Cleveland testified he did not feel free to leave. Cleveland claimed he thought they could use the polygraph examination in court and the examiner told him he was lying. ROA. pp. 44-46.

On cross-examination, Cleveland testified he remembered Sergeant Tinsley going over his rights with him. He agreed he initialed the form after she went through it line by line with him. ROA. pp. 48-49. Cleveland testified he can read and write. He confirmed he knew what Sergeant Tinsley was asking him and he understood his rights. He admitted he signed the waiver form. ROA. p. 49, lines 10-18.

Cleveland agreed Sergeant Tinsley did not threaten him or promise him anything. ROA. p. 49. Cleveland agreed he came to the station of his own free will. ROA. p. 50. Cleveland agreed he gave his first statement freely and voluntarily and he was not promised anything or threatened when he gave the first statement. ROA. pp. 50-51.

Cleveland testified he agreed to take the polygraph examination. He admitted the

examiner was nice to him. ROA. p. 52. Cleveland testified he agreed to talk with law enforcement the second time. He claimed he was tired, but previously agreed he woke up around lunchtime that day. ROA. p. 49, line 24 – p. 50, line 5; pp. 52-53.

Cleveland testified as follows about the second statement:

> Q: Do you remember telling her and her taking down notes?
>
> A: I remember her taking down notes, yes, sir.
>
> Q: Now, you changed your story quite a bit the second go-round. You kind of told what really happened didn't you?
>
> A: Yes, sir.
>
> Q: And then at the end, did she ever promise you anything, did she ever threaten you in any manner to make you talk to her the second time?
>
> A: No, sir.
>
> Q: Did Captain Reed? They were nice to you, weren't they?
>
> A: Yes, sir.

ROA. p. 53, lines 11-24.

The prosecution asked Cleveland, "Do you remember Sergeant Tinsely reading that back to you and saying, 'Was that what happened?' and you signed it?" Cleveland answered, "I can honestly say yes, sir."

Cleveland's mother, Yashica Cleveland, was at work when her sister called her and said the house was surrounded by police and she needed to get off work. Yashica asked why she needed to get off work, and the sister told her that the police were looking for her son. This caused Yashica a lot of consternation, because Cleveland was supposed to be on house

arrest. Yashica signed a consent sheet agreeing to let Cleveland take a polygraph examination. Yashica testified that Cleveland was sixteen years old at the time of the stabbing. She explained Cleveland had average grades, ranging from A's to C's. ROA. pp. 55-59. Although the testimony is not completely clear, Yashica seems to have agreed she spoke to an investigator and agreed they could talk to Cleveland. ROA. p. 61, lines 4-18.

Defense counsel argued the statement should be suppressed. ROA. pp. 64-75. He agreed law enforcement did not tell Cleveland that the results of the polygraph examination could be used against him in court. ROA. p. 75.

**Jury trial**

Cindy Blackwell runs a produce stand next to a tire shop and is also a certified nurse's assistant. On July 8, 2013, she was in the back of the produce shop when the mechanic told her to call 911 because someone was stabbed. She found Kirkland, whose white shirt was soaked with blood. Blood was squirting out of his head. The flesh in the back of his ears was hanging off. She provided assistance while someone called 911. She testified she needed five gallons of Clorox and a hose to clean the front of the store afterwards. ROA. pp. 85-90. Although he was initially able to talk, Kirkland was no longer able to do so by the time the ambulance arrived. ROA. p. 92.

Hakeem Kirkland testified he is twenty-two years old. Cleveland is his second cousin. Cleveland's street name is Quay. The State admitted exhibits 35-42 into evidence, which were text messages between Cleveland and Kirkland arranging for Kirkland to sell Cleveland a gun and some marijuana. ROA. p. 99-100. The exchange started with Cleveland asking, "You got sum [sic] 380 shells you wanna sell." ROA. p. 102, lines 7-9.

The agreement was to sell the gun, shells, and marijuana for $150. ROA. pp. 103-105.

Kirkland met Cleveland at Cleveland's house. He let Cleveland take the gun and test it out behind the house. Cleveland returned with the gun. Kirkland took it back when Cleveland was playing with it. Cleveland went back in the house, came outside, and said "All right Cuzzo" before he started stabbing Kirkland. ROA. p. 107. Kirkland was stabbed eleven times. Cleveland ran away. ROA. pp. 107-108.

Kirkland testified he was stabbed with a long knife. Kirkland did not know why Cleveland stabbed him. Cleveland did not take the gun or the marijuana. Kirkland explained that he rolled out of the car to get away and that is when Cleveland ran away. ROA. p. 109. Kirkland jumped back in his car and drove away; he called 911, although he was hesitant to do so because Cleveland was family. He ended up driving to Seneca Tires, which is where he received help. ROA. pp. 109-110. Kirkland needed to stay in the hospital for four days. ROA. p. 114.

Kirkland verified on cross-examination he had sold guns and marijuana to Cleveland before. Kirkland agreed he wanted to cover up for the gun and the marijuana, but testified that he also initially did not want to get his cousin in trouble. ROA. pp. 115-116. Kirkland testified Cleveland never owed him $200. ROA. p. 120.

Joseph Anderson, a paramedic, responded to the scene and found Kirkland, who had stab wounds. Anderson explained Kirkland needed to go to the trauma center in Greenville: Oconee was not equipped to provide sufficient medical attention. ROA. pp. 123-126. Anderson explained Kirkland's injuries were life-threatening. ROA. p. 127.

Investigator McMahan responded to the shop where Kirkland was found. Victim was

no longer there, he was already transported for medical attention. There was a lot of blood on the front steps. Investigator McMahan went to Greenville Memorial and interviewed Kirkland. Kirkland identified the perpetrator but was reluctant to say what happened because of the gun and marijuana. Investigator McMahan identified the photographs for the jury that showed the stab wounds on the arms, chest, and back. One of the injuries was a knife wound where the knife went completely though the arm. ROA. pp. 130-137.

Sergeant Margaret Tinsley testified that when Cleveland was brought to the law center, she went through the Miranda warnings with Cleveland; he initialed and signed the waiver form. Cleveland was not under the influence of alcohol, he was not denied any comforts, he was not promised anything or threatened. Cleveland agreed to waive his rights and speak with Tinsley. ROA. pp. 146-150.

In his first statement, Cleveland claimed Kirkland demanded $200 that Cleveland owed him and pulled out a gun. Cleveland claimed he stabbed Kirkland with a pocket knife two times and ran – Kirkland fired a shot as Cleveland ran. After Cleveland provided Sergeant Tinsley with this statement, they watched television while they waited around several hours for more information. Cleveland was offered food, but declined. Sergeant Tinsley and Cleveland drank ice tea together. ROA. pp. 151-154.

Sergeant Tinsley testified she did not know the extent of Kirkland's injuries at the time. However, Sergeant Tinsley found out there were eleven stab wounds, not two. Further, she was shown pictures of Kirkland's injuries, and the stab wounds were too large to be made by a pocket knife. She was also advised about the texts arranging a transaction for a gun and marijuana. So Sergeant Tinsley interviewed Cleveland again. ROA. pp. 155-156.

Sergeant Tinsley and Captain Reed interviewed Cleveland this second time from 1:15 a.m. until 1:58 a.m. Although that was a late hour, Sergeant Tinsley testified that Cleveland indicated he had slept until noon that day. After Cleveland confessed, she asked him to prepare a written statement, but Cleveland said he did not want to because he was tired. Cleveland agreed to sign her notes from the conversation instead. Cleveland gave the second statement after he was confronted with the new information law enforcement learned since he gave his initial statement. ROA. pp. 156-160.

Sergeant Tinsley published the notes for the jury. Cleveland told the investigators that he bought guns from Kirkland before. Cleveland contacted Kirkland about purchasing a gun and marijuana. Cleveland intended to take the gun and marijuana and run without paying Kirkland. Kirkland gave Cleveland the gun so Cleveland could go behind the house and fire it. Cleveland brought the gun back to Kirkland and told him he was going back inside the house to get the money. Cleveland fetched the knife from the kitchen "because a gun can do all kinds of damage." Cleveland returned and while Kirkland was looking away, began to lean in the car for the gun and marijuana when Kirkland looked at him with a "what the fuck" look. Cleveland stabbed Kirkland twice because he thought he was caught, but Cleveland maintained he did not intend to hurt Kirkland bad, just enough to run away. Cleveland told the investigators that at this point he was in an adrenaline rush: he thought he only stabbed Kirkland twice. Cleveland ran into the woods. Cleveland claimed he did not use the full force of his strength because he did not mean for the blade to penetrate too deeply. Cleveland indicated he was regretful. ROA. pp. 160-162 (direct quote p. 161, line 12).

Sergeant Tinsley asked Cleveland to write out a statement, but he said he was tired and did not feel like it. ROA. p. 168. Sergeant Tinsley noted Cleveland did not have any injuries. ROA. p. 171.

Captain Greg Reed testified they did not use threats or coercion during the second interview. Tr. pp. 257-258. He testified the first interview lasted an hour and the second interview lasted forty-five minutes. In between, everyone was simply waiting on information. Captain Reed testified Cleveland was free to leave between interviews. ROA. pp. 176-177.

The only defense witness was Cleveland's mother, Yashica Cleveland. She claimed she was never told that Cleveland was taken to the law enforcement center in Oconee. She found out that Cleveland was under arrest around two to three a.m. She admitted that law enforcement brought her papers to sign to consent to the polygraph examination. She said until that time she was calling around to find Cleveland because at the time he was under house arrest and she was in charge of him. ROA. pp. 186-191.

## ARGUMENT

I.

**The trial court did not err in admitting Appellant's two statements to law enforcement under the totality of circumstances. The issue is not preserved for review because the objection was not renewed before the jury and the in limine ruling was not final. Appellant admitted he was not coerced or promised anything in exchange for his statements.**

Cleveland argues that his statements should have been suppressed by the trial court based on his age and that he was advised that his polygraph test showed signs of deception. However, Cleveland admitted he was not coerced or promised anything. He admitted everyone was nice to him. Under the totality of circumstances, the trial court's ruling is amply supported by evidence. Further, Cleveland did not renew his motion to suppress when the statements were presented to the jury, and the trial court's initial in limine ruling was not final.

First, the issue is not remotely preserved for review. Counsel argued for suppression of the statements at the conclusion of the Jackson v. Denno hearing, but never renewed the motion before the jury. A ruling in limine is not a final ruling on the admissibility of evidence. State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000); State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999). Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. See State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). A pre-trial ruling on the admissibility of evidence is preliminary and subject to change based on developments at trial. Id. Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not

preserved for review. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993).

Cleveland argues the trial court's comments that the statements "will be admitted" coupled with the court reporter's notation in the transcript that the two exhibits were admitted into evidence is proof the ruling was actually final. Cleveland does not cite any authority for this proposition. Instead, Cleveland claims: "Because the court had already admitted the statements into evidence during the pretrial Jackson v. Denno hearing, trial counsel did not renew his objection when the statements were later discussed before the jury nor did the assistant solicitor later seek to admit the two exhibits into evidence." Br. of App. p. 10. However, the record fails to indicate any discussion between defense counsel and the court relinquishing the requirement for an objection before the jury – there is no evidence that defense counsel did not renew the objection because he thought the ruling was final. The substantive issue is extremely weak, and the likely reason defense counsel did not object was because defense counsel felt it lacked sufficient merit to make an objection before the jury. Moreover, the assistant solicitor sought to admit the exhibits into evidence before the jury, without objection, and the court reporter noted in the index that the exhibits were admitted into evidence afterwards. The trial court then provided the jury with instructions regarding the statement. ROA. pp. 164-166. Accordingly, the record fails to support Cleveland's claim that the pre-trial ruling was a final ruling.

Further, Cleveland's statements were voluntarily made as the record demonstrates Cleveland understood his rights, agreed to cooperate with law enforcement, and was not coerced or promised anything by law enforcement. Cleveland's will was not overborne.

Due process requires the suppression of an involuntary confession, regardless of the

truth or falsity of the confession. Jackson v. Denno, 378 U.S. 368, 376 (1964). Further, "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards. . . ." Miranda v. Arizona, 384 U.S. 436, 444 (1966). Accordingly, before the accused is subjected to custodial interrogation, he or she must be informed of the right to remain silent; any statement made may be used as evidence against him or her; the right to the presence of an attorney; and if he or she cannot afford an attorney one will be appointed prior to questioning. State v. Kennedy, 325 S.C. 295, 303, 479 S.E.2d 838, 842 (Ct. App. 1996) *aff'd as modified* 333 S.C. 426, 510 S.E.2d 714 (1998).

"In order to introduce into evidence a confession arising from custodial interrogation, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda . . ." State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010). "In order to determine whether a statement is voluntary, the trial court must inquire whether under the totality of the circumstances the suspect's will was overborne." State v. Carmack, 388 S.C. 190, 199, 694 S.E.2d 224, 228 (Ct. App. 2010). "Our courts have recognized that the appropriate factors to consider in the totality of circumstances analysis include: background, experience, conduct of the accused, age, length of custody, police misrepresentations, isolation of a minor from his or her parent, threats of violence, and promises of leniency." State v. Dye, 384 S.C. 42, 47, 681 S.E.2d 23, 26 (Ct. App. 2009) (citations omitted).

While age is a valid factor in the determination of voluntariness, both minors and juveniles have the capacity to make voluntary confessions without the presence or consent of

counsel or other responsible adult. In re Williams, 265 S.C. 295, 300, 217 S.E.2d 719, 722 (1979). "[T]he admissibility of such a confession depends not on [the minor's] age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement." Id. The heart of the inquiry is "the ability or capacity to comprehend the meaning and effect of the waiver or statement." Id. "Courts generally do not find a juvenile's confession involuntary where there is no evidence of extended intimidating questioning or some other form of coercion." State v. Parker, 381 S.C. 68, 88, 671 S.E.2d 619, 629 (Ct. App. 2008).

In Moses, the defendant was a high school student who was only seventeen years old and enrolled in special education classes. This Court noted Moses could only read at a third grade level although he was able to earn an occupational diploma. Moses made a custodial statement to police at the police station without his mother present. In finding the statement was admissible, this Court noted the record did not indicate the officer threatened Moses, the officer carefully went through Miranda rights with Moses, and Moses testified that he understood his rights. Moses was not detained for an extended period of time. Although Moses' mother allegedly tried to be present during questioning, this Court noted that alone was not a dispositive factor in determining the voluntariness of the statement. Id. at 401-02, 702 S.E.2d at 514-15. This Court concluded "the record supports the trial court's conclusion that Moses' statement was freely, knowingly, and voluntarily made, regardless of his age, learning disability, and separation from his mother." Id. at 402, 702 S.E.2d at 515.

In State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007), the twelve year-old defendant was tried and convicted for the murder of his grandparents. Pittman shot his

grandparents, ran in the woods, and was found wandering in the woods by hunters. He told the hunters that someone shot his grandparents and kidnapped him. He told them he escaped when the kidnapper's vehicle became stuck in mud in the woods. Id. at 543-44, 647 S.E.2d at 152-53. Pittman was interviewed later by the responding Sheriff's investigator, McKellar, at the fire department where the hunters brought him. That interview was not custodial since McKellar was led to believe Pittman was a victim, rather than perpetrator of the crime when he gave the same version of events he had provided to the hunters. McKellar remained with Pittman, "essentially acting as a babysitter. They had lunch together and played 'go fish.'" Pittman also took several naps during the day. Id. at 568, 647 S.E.2d at 165.

Later in the afternoon, McKellar was instructed by her superior to bring Pittman to the sheriff's department because during the course of the investigation, Pittman became the suspect and not a victim. McKellar brought Pittman to the conference room and told him they needed to have an adult conversation. She read him his rights while Detective Williams was present. The opinion described the interrogation as follows:

> Williams then told Appellant that things were not adding up. McKellar asked Appellant about the Bible verse he mentioned earlier, however, Appellant did not respond. Williams next asked Appellant what his grandparents would think about him not being truthful. At that point Appellant gave the officers a third statement in which he confessed to the murders and detailed the events of the night. McKellar wrote the statement and appellant read and signed it.

Id. at 568, 647 S.E.2d at 165. The Supreme Court found Pittman failed to offer any evidence other than his age to support his claim that his confession was involuntary. The Supreme Court concluded the following:

> The record contains no evidence that [Pittman] was not advised of his constitutional rights. Furthermore, the record contains no indication that [Pittman] was subjected to prolonged detention as a suspect, required to withstand repeated and lengthy questioning sessions, or deprived in any way of sleep or food. In fact, [Pittman] has presented no evidence whatsoever of coercive or improper police conduct in this investigation. The record on appeal is simply void of the type of coercive action under which courts have previously found a juvenile's statement involuntary.

Id. at 570, 647 S.E.2d at 166.

In the instant case, as in Pittman and Moses, the record establishes that Cleveland was read his rights and understood them. As in Pittman, Cleveland provided an initial statement and remained in a relaxed atmosphere while law enforcement gathered additional information. Tinsley even explained she initially thought Cleveland might be telling the truth and expected there would be a video to support his claim. Tinsley's role in between interviews was similar to McKellar's babysitting role. Tinsley and Cleveland watched television and drank iced tea, which hardly suggests coercion.

Like Pittman, the record is completely devoid of coercive action by law enforcement. Instead, the record shows Cleveland was read his rights and understood them, was not promised anything or threatened, was treated nicely by law enforcement, and willingly provided them a statement. The trial court's ruling regarding the voluntariness of the statement will be upheld when it is supported by **any evidence**. Parker, 381 S.C. at 75, 671 S.E.2d at 622. In the instant case, the trial court's findings are amply supported by evidence.

## CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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**PROOF OF SERVICE**

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I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Lara M. Caudy, Esquire, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 6th day of November, 2015.

NORMA BIGBEE
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