STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
The Honorable R. Knox McMahon, Circuit Court Judge
Appeal Case No. 2014-000166

THE STATE

RESPONDENT,

V.

DAVID STALK

APPELLANT.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial court err in failing to suppress Appellant's confession because it was made involuntarily?

1) The Court should have suppressed the Appellant's statement as involuntary because it was elicited as a result of improper coercive tactics, including:

1. The confession was elicited following promises made by law enforcement to assist the Appellant in obtaining a bond on an unrelated charge;

2. Appellant made involuntary statement following repeated recitations of the amount of time he faced on an unrelated charge;

3. Law enforcement threatened Appellant's sister with the possibility of arrest and/or the removal of her children by the Department of Social Services.

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

1. Whether the trial court abused its discretion in admitting Appellant's February 6, 2013 statement in which he admitted to shooting the victim during an attempted robbery when the trial court's determination that the statement was voluntarily given is supported by the record because there is no evidence of police coercion and the totality of the circumstances supported the trial court's finding?

2. Whether the trial court abused its discretion in admitting Appellant's February 6, 2013 statement when Appellant's argument that the statement was rendered involuntary as a result of coercive pressure relating to Appellant's possible sentence on unrelated accessory after the fact charges was not preserved for appellate review and there is no evidence to support a finding that law enforcement attempted to use those charges coercively?

3. Whether the trial court abused its discretion in admitting Appellant's February 6, 2013 statement when Appellant's argument that the statement was rendered involuntary as a result of threats made by law enforcement against Appellant's sister and her children was not preserved for appellate review and there is no evidence to support a finding that those threats were made or that Appellant was aware of any such threat when he gave the statement?

STATEMENT OF THE CASE

On January 13-17, 2014, Appellant David Stalk ("Appellant") was tried by a jury for the murder of Kevivis Anthony, attempted armed robbery, and possession of a firearm during the commission of a violent crime. Appellant was tried in the Lancaster County Court of General Sessions before the Honorable R. Knox McMahon, Circuit Court Judge. Mark Grier represented Appellant. The State was represented by Solicitor Douglas Barfield of the Sixth Judicial Circuit Solicitor's Office.

On January 17, 2014, Appellant was convicted of murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime. (Tr. 766; R. p. 457). He was sentenced to forty-five years confinement for the murder conviction, twenty years confinement for the attempted armed robbery conviction, and five years confinement for the possession of a weapon during the commission of a violent crime conviction, all to be served concurrently. (Tr. 787; R. p. 458). Before this Court is Appellant's direct appeal of his convictions. Appellant requests this Court reverse his convictions and order a new trial. The State respectfully requests this Court deny Appellant's appeal and affirm his convictions.

STATEMENT OF FACTS

On January 26, 2013, Appellant shot the victim, Kevisis Anthony, in the head. The victim died two days later as a result of anoxic encephalopathy, brain death due to a laceration of the brain that was due to a gunshot wound to the head. (Tr. 250-51, 255, 265; R. pp. 148-49, 150, 158).

Eric Huddleston, one of Ketta Evans'[1] neighbors, testified that on January 26, two children came to his house and asked if their mother could use his phone. (Tr. 274-75; R. pp. 163-64). Huddleston testified that he went with the children and allowed their mother, who he later learned was Ms. Evans, to use his cell phone. (Tr. 275-76, 283-86; R. pp. 164-65, 172-75). He also testified that he received a return phone call around 8:15 p.m. (Tr. 280-81; R. pp. 169-170). He further identified the Evans' house as the one where he took his phone so the mother could use the phone. (Tr. 283, 286; R. pp. 172, 175).

Sylvia Stover, who also lived near Ketta Evans, testified that on January 26, three children came and asked to use her cordless house phone. (Tr. 287-88; R. pp. 176-77). She noted that she did not get the phone back until it was returned by law enforcement later. (Tr. 288; R. p. 177). Stover noted that she heard gunshots about five or ten minutes after she let the children take her phone. (Tr. 290; R. p. 179).

Quinshun Evans, Ketta's oldest son, testified he recalled Appellant being at the house on January 26. (Tr. 299; R. p. 186). Quinshun noted that his brothers and sisters were at the house, and other children were there. Id. One

[1] Ketta Evans and Appellant were dating at the time of the shooting. (See Tr. 529; Supp. R. p. 18).

of those other children was Appellant's daughter. Id. Quinshun testified that Appellant was at the house, and he was having a discussion with Ketta. (Tr. 297, 300; R. pp. 184, 187). Quinshun recalled Appellant went out the side door in the kitchen that leads out to the carport. (Tr. 301-02; R. pp. 188-89). A couple of minutes after Appellant left, Quinshun heard three gunshots. (Tr. 303; R. p. 190). Quinshun indicated the shots sounded like they were coming from under the carport. (Tr. 303; R. p. 190). Quinshun looked out the blinds after the shots, and he saw a man lying on the sidewalk in front of the yard. (Tr. 304; R. p. 191). When Quinshun went outside the help the victim, Quinshun saw the victim's car under the carport. (Tr. 305; R. p. 192). Quinshun testified that he and his mother helped the victim off the ground and brought him inside the house. (Tr. 305-08; R. pp. 192-95). Quinshun also gathered all of the victim's belongings that had scattered in the yard, and he placed them inside a knit cap. (Tr. 307-08; R. pp. 194-95). They also used a rag to help the victim clean up as he had a bump on his head that was bleeding. (Tr. 308-10; R. pp. 195, 196; Supp. R. p. 8). Ketta and Quinshun then took the victim to the hospital driving the victim's car. (Tr. 310-11; R. pp. 196-97)

The victim was later flown to the Carolinas Medical Center in Charlotte, NC. (Tr. 199, 248, 250; R. pp. 112, 147, 148).

Law Enforcement Investigation

A call from a cellphone number later associated with Appellant was received by 911 at approximately 9:41 p.m. on January 26. (Tr. 169, 406, 468, 553; R. pp. 92, 243, 300, 337). The caller indicated that someone had been

shot on Pleasant Hill Street. (Tr. 171; R. p. 93). Law enforcement was later dispatched to St. Paul Street in Lancaster. (Tr. 174-75; R. pp. 96-97). They were specifically dispatched to what was later determined to be Ketta Evans' house. (Tr. 175-76, 179; R. pp. 97-98, 101). At the house, they found five children. (Tr. 176-77; R. pp. 98-99).

Outside of the house, law enforcement found a can of Lime-A-Rita, a toboggan hat, a pack of Newport cigarettes, a red lighter, two silver Cigarillo packs, a metal watch, and a cellphone cover. a broken cellphone, vomit, and what appeared to be fresh blood in the driveway. (Tr. 186-87, 212-13, 225, 369-70; Supp. R. p. 4; R. pp. 104, 120-21, 133, 214-15). Six fired .380 caliber cartridge casings were found under the carport at Ketta Evans' house. (Tr. 217-22; R. pp. 125-30). Inside of Ketta Evans' house, law enforcement located a blue wash cloth with apparent blood on it. (Tr. 228; Supp. R. p. 5). A cordless phone that was later determined to belong to Sylvia Stover was also located inside the house. (Tr. 229, 287-91, 375; R. pp. 136, 176-80, 220).

A projectile jacket was recovered from the area near the windshield wiper of the victim's car. (Tr. 195, 202-03, 230; R. pp. 108, 115-16, 137). Also, there appeared to be other gunshot related defects to the vehicle. (See Tr. 195, 201-02, 229-31, 232-34; see R. pp. 108, 114-15, 136-38, 139-41). A fired projectile was recovered from a rear speaker in the victim's car. (Tr. 233-34; R. pp. 140-41). A fired projectile was also removed from the victim's head during the autopsy. (Tr. 272; Supp. R. p. 7).

Law enforcement was able to determine that the six .380 shell casings cartridge cases recovered from underneath the carport were fired by the same gun. (Tr. 350, 353; R. pp. 201, 204). It was also determined that the bullet jacket recovered from near the victim's vehicle's windshield wiper was consistent with having been loaded into a .380 caliber cartridge. (Tr. 356; R. p. 205). The projectile recovered from the speaker of the victim's car was too damaged to determine its caliber. (Tr. 233-34, 356-57; R. pp. 140-41, 205-06). The projectile recovered from the victim's head was consistent with bullets fired in some .380 cartridges. (Tr. 359-60; R. pp. 208-09). The SLED firearms analyst also determined that the general rifling characteristics of the projectile reflected that it was fired by a Hi-Point firearm. (Tr. 360; R. p. 209).

Appellant's Statements to Law Enforcement

Appellant was arrested on February 5, 2013 for charges relating to a home invasion that occurred on January 22, 2013. (Tr. 371; R. p. 216). Investigator Hall, the lead investigator in the case, testified that Appellant was interviewed on February 5. (Tr. 388; R. p. 233). Hall testified that he recalled there may have been some discussion with Appellant about a bond for the charge relating to the home invasion. (Tr. 386; R. p. 231). Hall noted that no promises were made to get Appellant to talk, and no threats of physical violence or legal problems were used. (Tr. 386; R. p. 231). He also indicated that no coercion was used against Appellant. (Tr. 386; R. p. 231). Hall testified Appellant denied having any involvement in the murder during the February 5 interview. (Tr. 400, 401-07; Supp. R. pp. 16; R. pp. 238-44).

Hall further testified that he was informed Appellant wanted to talk with officers again on February 6. (Tr. 390; R. p. 235). Hall noted that during this interview, Lynn Tucker, Appellant's employer and friend, was present at Appellant's request. (Tr. 397-98, 409; R. pp. 236-37; 246). During the interview on February 6, Appellant admitted that he was the one who shot the victim. (Tr. 411-16; State's Exhibit 69; R. pp. 248-53). Appellant indicated that his intention was to rob the victim. (Tr. 411; State's Exhibit 69; R. p. 248). Appellant stated that he was standing behind Evans' house when the victim came to the carport. (Tr. 411; see State's Exhibit 69; R. p. 248). He also testified that he did not know the victim, and he thought the victim was Evans' friend. (Tr. 411; see State's Exhibit 69; R. p. 248). Ms. Evans had used a neighbor's phone to call the victim to have him stop by her house. (Tr. 411; see State's Exhibit 67, 69; R. p. 248). Appellant asserted that he had only intended to rob the victim because he and Evans needed money, and he was advised by Evans that the victim had money because he was involved in selling marijuana. (Tr. 412; see State's Exhibit 67, 69; R. p. 249).

Hall stated that Appellant admitted that when the victim arrived, he parked under the carport. (Tr. 413; see State's Exhibit 69; R. p. 250). Once the victim made it to the side door of the house, Appellant came around from the back of the house wearing a black hoodie, a black mask, and black pants. Id. Appellant had a gun in his hand, and he looked at the victim and said "You know what time it is." (Tr. 413; see State's Exhibit 69; R. p. 250). He told the victim not to run, but the victim took off running anyway. Id. Appellant stated he shot at the victim

one time, and then he shot at him three more times. Id. The victim fell to the ground. Id. Appellant stated that he was trying to shoot the victim in the leg to get him to the ground so that he could rob him. Id. Appellant did not admit to robbing the victim; he did not complete the robbery because he did leave with any of the victim's property. Id. Appellant stated that after he fired the shots, he got scared and ran behind the house. (Tr. 413; see State's Exhibit 69; R. p. 250).

Hall further relayed that in the statement, Appellant stated he jumped over a creek, used his cell phone to call 911, informed the dispatcher that there was a shooting on Pleasant Hill Street, and requested the dispatcher send an ambulance. (Tr. 414; see State's Exhibit 69; R. p. 251). Appellant stated that he threw the phone down after the call and took off running again. Id. When he later realized he had the gun in his hand, he threw the gun into the woods. Id.

Hall testified that Appellant did take law enforcement to where he discarded the cell phone and the gun. (Tr. 415-16; R. pp. 251-53). They were unable to locate either item. (Tr. 416; R. p. 253). During the defense's case, Hall also indicated that Appellant told him that he had used a Hi Point .380 pistol. (Tr. 611; R. p. 361).

Appellant's Defense

Appellant presented testimony from several witnesses to support his defense. James Johnson testified Appellant was at his house sometime shortly after 9 p.m. on the day of the shooting. (Tr. 490; R. p. 307). Johnson indicated Appellant talked with Lynn Tucker and then later left. (Tr. 490; R. p. 307).

Johnson recalled seeing Appellant return ten to fifteen minutes later. Id. Johnson later noted Appellant stayed approximately ten to fifteen minutes the first time, and approximately twenty to thirty minutes the second time. (Tr. 495; R. p. 310). Crystal Johnson, James' wife, testified she saw Appellant at the house some time after 10 or 11 p.m. (Tr. 497; R. p. 312). She noted that Appellant was not at the house when she arrived home from a party. (Tr. 496; R. p. 311). She also indicated that she thought Appellant came to the house twice after she got home. (Tr. 499; R. p. 313).

Tawana Stalk, Appellant's sister, testified that she last saw Appellant on January 26 when he left her house to take his daughter to Ketta Evans' house. (Tr. 523; R. p. 320). She noted that was around 6 p.m. (Tr. 523; R. p. 320). Tawana testified that she did hear from Appellant later that evening when he told her to go get their children from Evans' house.[2] (Tr. 524; R. p. 321). Tawana stated that when she got home later that night, she found Appellant sleeping in the bed. (Tr. 524; R. p. 321). She indicated that she did not get home until around 1 a.m. or 1:30 a.m. (See Tr. 532, 535; R. pp. 328, 331).

Lynn Tucker, Appellant's friend and employer, testified he saw Appellant at the Johnsons' house on January 26. (Tr. 559; R. p. 338). Tucker thought Appellant had left the house after about thirty minutes, but he saw Appellant again later that evening. (Tr. 559, 561; R. pp. 338, 340). The second time he saw Appellant, he thought Appellant stayed around for about an hour. (Tr. 559, 562; R. pp. 338, 341). Tucker could not say that Appellant was at the house or

[2] Ketta Evans was watching Tawana's three children and Appellant's daughter that evening. (Tr. 521; Supp. R. p. 17).

had left the house because he did not know where Appellant was when he was not in the room with Tucker. (See Tr. 560-62; R. pp. 339-41).

Appellant also testified in his defense. He denied shooting the victim and denied knowing anything about shooting the victim. (Tr. 628, R. p. 376). Appellant also denied making the 911 call. (Tr. 622; R. p. 370). He also denied that he had the cell phone that was associated with the number that made the 911 call on January 26. (Tr. 619-21; Supp. R. pp. 19-20; R. p. 369). He claimed that the version of the story he gave police was what Ketta Evans told him her son did on the night of the shooting. (Tr. 626; R. p. 374). Appellant asserted that he gave law enforcement a false confession. Id.

ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING APPELLANT'S FEBRUARY 6, 2013 STATEMENT INTO EVIDENCE. THE TRIAL COURT'S DETERMINATION THAT THE STATEMENT WAS VOLUNTARILY GIVEN BY APPELLANT IS SUPPORTED BY THE RECORD; THERE WAS NO EVIDENCE TO SUPPORT A FINDING THE APPELLANT'S WILL WAS OVERBORNE BY ANY COERCIVE ACTIVITY BY LAW ENFORCEMENT; AND APPELLANT'S SECOND AND THIRD CONTENTIONS THAT THE STATEMENT WAS COERCED ARE UNPRESERVED AND UNSUPPORTED BY THE RECORD.

Discussion at the Pre-Trial Hearing

A Jackson v. Denno[3] hearing was held in this case on January 13, 2014. At issue was the admissibility of Appellant's statements to law enforcement given on February 5 and February 6, 2013. (See Tr. 63-124, 127-136; R. pp. 5-76).

At issue is Appellant's statement given on February 6, 2013.

During the Jackson v. Denno hearing, Investigator Phillip Hall of the City of Lancaster Police Department testified that Appellant was initially arrested on February 5, 2013 for accessory after the fact for a burglary that had been committed on January 22, 2013. (Tr. 66-69; R. pp. 8-11). Appellant gave two statements on February 5, 2013. The first statement related to the home invasion on January 22, and the second statement was in regards to the murder in this case. (Tr. 70; R. p. 12). During those interviews, Appellant did not admit to committing any crimes. (Tr. 77; R. p. 19).

Hall testified that he next saw Appellant on February 6, 2013. (Tr. 81; R. p. 23). Appellant had a bond hearing on the accessory after the fact charge, and after the bond hearing he had indicated to Sgt. Small that he wanted to talk about

[3] Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

his case while he was at the Municipal Justice Center for the bond hearing. (Tr. 81-2; R. pp. 23-24). Hall testified that Appellant was brought to the investigation section of the Lancaster Police Department on February 6. (Tr. 82; R. p. 24). He was wearing an orange jump suit at the time. (Tr. 82; R. p. 24). Hall also indicated that Appellant's employer, Lynn Tucker, was present at the interview. Hall testified that Appellant had asked for Tucker to be present for the interview. (Tr. 83; R. p. 25).

Hall testified that he reviewed the Miranda warnings with Appellant that morning. (Tr. 86; R. p. 28). He noted that he determined how old Appellant was and how far along he had progressed in school. Id. According to Hall, he started the review of the Miranda warnings at 11:54 a.m. Id. Appellant indicated that he understood his rights, initialed beside each right on the waiver form, and waived his rights at 11:58 a.m. (Tr. 87; R. p. 29). Hall testified that Appellant did not appear to not understand his rights, and he further did not appear to have any problems understanding Hall. (Tr. 87-88; R. pp. 29-30).

Hall further testified that Appellant had no physical injuries; he did not appear to be sick or complain of any physical maladies or discomfort. (Tr. 89; R. p. 31). No threats of violence were made against Appellant. (Tr. 89; R. p. 31). Hall testified that Appellant only asked that Tucker be present, and Hall did not recall Appellant asking to speak with either his mother or his child's mother. (Tr. 90; R. p. 32). Appellant did ask for a smoke break. (Tr. 90; R. p. 32). Hall indicated that Appellant did state that if he were allowed to smoke a cigarette, he would tell them what they wanted to know. (Tr. 91; R. p. 33). Appellant was

allowed to smoke, and after his smoke break, he did give a statement about the homicide. (Tr. 91; R. p. 33). Hall testified that no promises were made to get Appellant to talk, and no coercion was used to get Appellant talking about the homicide. (Tr. 91; R. p. 33). During this interview, Appellant admitted his involvement in the shooting. (Tr. 93; R. p. 35).

Hall noted that there was questioning about his co-defendant Ketta Evans, some questioning about a 911 call, a telephone Appellant had, and the gun that was used. (Tr. 96-7; R. pp. 38-39).

During cross-examination, Hall acknowledged that Appellant had given a false confession regarding the home invasion that was the basis for the accessory after the fact charge. (Tr. 98-99; R. pp. 40-41). Hall also noted that he did indicate that he would talk with the judge about bond on the accessory after the fact charge, but the decision on bond was left up to the judge. (Tr. 99; R. p. 41).

> I told him that we would talk with the Judge on the accessory part and that's left up to the Judge. All we can say is say, "Yeah, he came up here on his own free will and accord," or we had to do this, this and this to help him, and all of that is presented to the Judge and it's the Judge's decision at that time. We can't tell people, "Yeah, I am gonna talk to a judge and get you out of here." All we can say is we'll talk to the Judge for you.

(Tr. 99, l 23 – 100, l 5; R. p. 41, l 23 – 42, l 5). Hall further testified that he did talk with the judge on his behalf at the bond hearing. (Tr. 100; R. p. 42). He further indicated that he did not tell Appellant that he would get him a bond on the accessory charge. Id. Hall also noted that he and Appellant did not have a discussion about Appellant getting bond during the smoke break. (Tr. 104; R. p.

46). Hall noted that he would not have said anything that would have implied that he could get him bond, and that he would have only have said that it was up to the judge whether Appellant would get bond. (Tr. 104; R. p. 46).

Hall did not remember have any discussion with Appellant about bond on the murder charge. (Tr. 107; R. p. 49). Hall noted that he told Appellant that the city judge could not have done anything about a bond on the murder charge. (Tr. 107; R. p. 49). He also indicated that he could speak to the judge as far as the accessory charge. (Tr. 107; R. p. 49). Hall remembered saying good things about Appellant at the bond hearing, and saying that Appellant was a good fellow. (Tr. 107; R. p. 49). Hall also noted that his statements at the bond hearing was not the result of some obligation from the interview. (Tr. 108; R. p. 50).

During the Jackson v. Denno hearing, Appellant testified he remembered being taken into custody on February 5, he recalled giving statements about the home invasion. (Tr. 110-12; R. pp. 52-54). Appellant testified that he recalled there being a discussion during his first interview regarding the homicide about Hall seeing if Appellant could get a bond. (Tr. 112; R. p. 54). Appellant claimed that Hall stated he would make sure Appellant got a bond hearing, and that he would talk to the judge. (Tr. 112-13; R. pp. 54-55). Appellant testified that he took that as meaning he would get a bond hearing, Hall would talk with the judge, and Appellant would get a bond. (Tr. 113; R. p. 55). Appellant also claimed it was false that he requested to talk with Hall on February 6. (Tr. 113; R. p. 55). Appellant testified that he went to a bond hearing, bond was denied, and before

Appellant was taken back to the detention center, he told Smalls that he would like to talk with Hall. (Tr. 113; R. p. 55). Appellant also claimed that he asked Hall about getting bond before they started recording. (Tr. 115; R. p. 57). Appellant denied understanding his Miranda rights. (Tr. 115; R. p. 57). Appellant also testified that on February 11, he spoke with Hall again. (Tr. 117; R. p. 59). He told Hall that the statements he gave were false, and the only reason he gave those statements was because Hall had said he would help Appellant get a bond. (Tr. 117; R. p. 59).

During cross-examination, Appellant admitted that he did understand his Miranda rights. (Tr. 118-19; R. pp. 60-61). Appellant also acknowledged that everything he told law enforcement in the statements he wanted to say. (Tr. 120; R. p. 62).

Investigator Hall was recalled to the stand, and he testified Appellant did meet with him again on February 11, and Appellant did recant his statements. (Tr. 122; R. p. 64). Hall noted that after he said that, Appellant indicated he wanted his lawyer, so the discussions ceased. (Tr. 124; R. p. 66).

When the Jackson v. Denno hearing continued on January 14, Appellant argued that his statement was involuntary because it was induced by the prospect of receiving a bond.

> That's right. Your Honor, I think there's abundant evidence that Mr. Stalk's voluntariness was overcome by the prospect of receiving a bond in which he'd been presented, number one, as to the voluntariness of it. And I believe that would be the principle issue, he was -- if you heard in the very first video he asked is he going to be able to get out and the testimony from Officer Hall was that he had told him that he would say good things about him, not that he promised him, but I believe all in the totality of the

> circumstances created the prospective of Mr. Stalk receiving some assistance in getting a bond were he to make a statement. We know that he's -- and I think the State concedes that he did make an untruthful false confession previously on another matter, the matter was a very serious charge, likewise we are here today about an even more serious charge. And I think in the totality of the circumstances that his voluntariness was overcome and therefore that any Miranda statements would therefore not have been voluntary and therefore should be suppressed on that ground. And secondly I think you basically told me what my argument was, I think, yesterday, and the real issue is you had already apprehended what my argument would be and would anticipate it would be, that there is a break in the continuity between the first statement on February 6th and the second statement on February 6th, that the Miranda statement and the filling out the form and all of those procedures that had been in anticipation of the statement were accomplished in one phase of that sitting, and then there was a break in the continuity and there would have been another need for an additional Miranda warning before that second statement on February 6th was made. The mere saying you have been Mirandized doesn't mean that it has been done, and I submit that it wasn't done and therefore that second statement should be suppressed.

(Tr. 127, l 15 – 128, l 23; R. p. 67, l 15 – 68, l 23). In response, the State argued that no promises were made to Appellant, and the statement reflects that it was given voluntarily.

> Your Honor, first of all I would argue that there was certainly no promise by Lieutenant Hall to do anything for Mr. Stalk other than what he normally does for a defendant on a bond matter, tell the Judge whatever he knows about the case and the defendant. I would also argue that the general tenor and tone of the conversations that you saw on the clips that you put into evidence as Court's Exhibits yesterday clearly show a willing participant in Mr. Stalk to the conversations and questions and answers that were engaged in between him and the law enforcement officers. There's no great tension between them in anything that we have put up so far. There's no argument about whether he is going to talk or not going to talk. There's no -- it just doesn't get heated. It's basically a normal conversation although about an abnormal topic I would suppose. Concerning the break in the interrogation or the questioning or whatever we want to call it, I think if you look at the times on the tapes the best I recall it's a ten minute break from the

> end of the first segment on February 6th to the beginning of the second segment on February 6th. Also, Your Honor, the break was requested by the defendant, not something suggested by law enforcement. He said, "You let me have a smoke and I'll tell you everything you need to know." That's exactly what they did. They came back in, Lieutenant Hall or Captain Scott Grant, I can't recall which, basically talked about Miranda again and asked Mr. Stalk, as best I recall, if he understood that he still had those same rights and continued the questioning only after he affirmed that he was good to go and was willing to talk to them. I don't think there's anything on the statements -- anything about the statements that suggest they were involuntarily made, made on the promise, made on threat, made under coercion and I think they should be admitted.

(Tr. 128, l 25 – 130, l 8; R. p. 68, l 25 -70, l 18).

In regards to the statements made on February 6, 2013, the trial court stated as follows:

> The testimony then that -- on the 6th he was brought over for a bond hearing. The officer testified, Lieutenant Hall testified clearly, "I tell him I'll talk to the Judge," that's clearly not a promise, probably an officer can't go to a bond hearing without talking to the Judge. It doesn't say what he's going to say. But, you know, obviously you get that indication from the 5th, what little bit I saw on the 5th and the 6th and that there was no contention, there was no animosity so to speak, there was no high pressured – no pressure between the officer and Mr. Stalk, in that regard both of them on the 5th and the 6th. Now, on the 6th the testimony is that I believe the officer said he -- it was Officer Smalls indicated to him that Mr. Stalk wanted to see the officer, wanted to speak to him, then he wanted to speak to Mr. Lynn Tucker, and Mr. Tucker who he, Mr. Stalk, was employed by. The testimony is not clear to the Court as exactly who called Mr. Tucker, whether an officer called, Mr. Stalk called or they both called at different times, but at any rate Mr. Tucker is present in the interview room. The first part of the interview on there we see the officer readvising Mr. Stalk of his Miranda rights again, that would be Court's Exhibit Number 5, and Court's Exhibit Number 2. Number 2 is the written document entitled suspect's rights and Miranda warnings. First page, David Stalk, school, no alcohol, read and write, all the rights are initialed. Again, seven initials are to the left of each right. The waiver of right is signed by Mr. Stalk, signed by the lieutenant in the presence of Mr. Tucker. Mr. Stalk indicates I have read this statement of my rights, it was also stated to him verbally. I understand what my rights are. I am

willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me. Thereafter follows a two page written statement. First page of the written statement again has the advisement of rights at the top, it's initialed twice by Mr. Stalk. The third and final page of this document initialed twice, signed by Mr. Stalk, witnessed by Lieutenant Hall and Captain Grant, I believe it is. That Court's Exhibit 5, the first part of the statement of the 6th is about three minutes, it's a little over three minutes. Obviously it both speaks and views for itself, I guess, but Mr. Tucker and Mr. Stalk are in there for a few moments by themselves. The officer comes in, advises him of his rights and he initials and then he says something about smoking a cigarette, and the officer says, "Well, I don't smoke, I don't have cigarettes." And either Mr. Stalk indicates that Mr. Tucker smokes or Mr. Tucker indicated that Mr. Tucker smokes and he said, "Look, let me smoke a cigarette and I will tell you whatever I know," and they take a break. And if you follow the counter that's 16:50 -- or 6:58, I believe, and then they return back on camera at 7:08 and he then begins talking. And I don't see that as a break. The testimony is the officer goes out with him while he's smoking. I'm sure he's not allowing an individual that's in a jumpsuit, that is shackled, that's clear, to go out and just smoke a cigarette with a citizen non-law enforcement without maintaining custody and control of him that entire time, so I don't take that as a break. That's no more a break than if Mr. Stalk said, "I need to use the restroom," and the officer escorted him to the restroom and stood outside of the stall while he used the restroom, walked him back and then I don't know of any case that says you would have to re-Mirandize him at that point. So that is a continuation. And clearly after he gives the statement and the officer goes through and says, "Look, I want to make sure -- I tried to keep up with you typing, I want to go back through it and ask you specific questions." And Mr. Stalk answers him again. The officer presents the document to him and he says, "Look, read over it before, you know, make sure I got it right," and he reads over it. And there's no threat, there's no promises, clearly he is given Miranda. The standard that I must apply at this point - - and I would also address Court's Exhibit Number 7. Court's Exhibit Number 7, of course, is the video tape of the 11th. Again, you see the officer advising him of his rights, going through his rights. And after he advises him of his rights, initials it -- well, I don't see that document up here. He advised him of his rights and then the officer – and Mr. Stalk said, "Well, I don't want to sign my rights, I want a lawyer." And the officer says, "Well, I can't talk to you, I can't answer you." And he said, "Well, I just wanted to say something about the

> statement that I gave before." And I took that into consideration also. And I also take into consideration his age, his intelligence, I take into consideration that during the giving of the confession that he had a supportive friend in there with him. Law enforcement would not have been required to notify a third party, just a third party that is not an attorney. He never asked for an attorney on the 5th or on the 6th. He asked on the 11th and the officer immediately shut down the questioning at that time. And both the 6th and the 11th were both defendant initiated contacted, they were not initiated by the officer. So citing State versus Parker and the fact that I'm only looking at it based on the preponderance of the evidence, I think it was clear that he was properly mirandized and that the statement was given freely and voluntarily of his own free will and accord and it is thus admissible in this case.

(Tr. 131, l 21 – 135, l 21; R. p. 71, l 21 – 75, l 21).

The statements from February 6, 2013 were admitted into evidence as State's Exhibits 68 and 69 subject to Appellant's prior objections. (Tr. 418-19; R. pp. 255-56). The written statement was admitted as State's Exhibit 67, also subject to the prior objection. (Tr. 409; R. p. 246).

Standard of Review

The trial judge determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence. State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct.App.2007) (citing State v. Washington, 296 S.C. 54, 55, 370 S.E.2d 611, 612 (1988); State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977)). "If admitted, the jury determines whether the statement was freely and voluntarily given beyond a reasonable doubt." Arrowood, 375 S.C. at 365, 652 S.E.2d at 441.

> The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession. Dickerson v. U.S., 530 U.S. 428, 434, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000). When considering the voluntariness of a statement, the court and jury should consider "not only the crucial

> element of police coercion; the length of the interrogation; its location; its continuity; the defendant's maturity; education; physical condition; and mental health." Withrow v. Williams, 507 U.S. 680, 693, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993) (omitting internal citations). Misrepresentations of evidence by police, although a relevant factor, do not render an otherwise voluntary confession inadmissible. Frazier v. Cupp, 394 U.S. 731, 739, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969). "Coercion is determined from the perspective of the suspect." [State v.] Miller, 375 S.C. [370,] 386, 652 S.E.2d [444,] 452 [(Ct.App.2007)].

State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009). "A statement may be held involuntary if induced by threats or violence, or if obtained by any direct or implied promises, or if obtained by the exertion of improper influence." State v. Register, 323 S.C. 471, 478, 476 S.E.2d 153, 158 (1996) (citing State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990)). A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise. State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987).

Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Von Dohlen, 322 S.C. 234, 242, 471 S.E.2d 689, 695 (1996); Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct.App.1999). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." Arrowood, 375 S.C. at 366, 652 S.E.2d at 442; State v. Preslar, 364 S.C. 466, 472, 613 S.E.2d 381, 384 (Ct.App.2005). Accordingly, the appellate courts are "bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and

not clearly wrong or controlled by error of law." Reed, 333 S.C. at 685, 511 S.E.2d at 401 (citing State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). When reviewing a trial judge's ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

I. The trial court did not abuse its discretion in admitting Appellant's February 6, 2013 statement into evidence. The record supports the trial court's determination that the statement was freely and voluntarily given, and that it was not the result of any improper coercion.

Appellant asserts he was coerced into giving the February 6, 2013 statement by promises that he would receive bond if he cooperated with law enforcement. His argument is not supported by the record. Looking at the totality of the circumstances, the trial court's determination that Appellant's statement was voluntary is supported by the record.

First, the length of the interrogation supports a finding the statement was given voluntarily. On February 5, 2013, Appellant gave two interviews. The first interview, which was in regards to accessory after the fact to first degree burglary and to armed robbery charges, lasted approximately forty-five minutes. Appellant was also interviewed for two hours regarding the charges in this case. (Tr. 70; see Defense Exhibit 2; R. p. 12). On February 6, 2013, the interview lasted approximately an hour, including a ten minute smoke break. (Tr. 88, 93; see State's Exhibits 68, 69; R. pp. 30, 35). The briefness of the interviews

support a finding the statement given on February 6 was voluntary. See State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004) (finding interrogations that lasted no more than a few hours supported finding statement was voluntary); Saltz, 346 S.C. at 135, 551 S.E.2d at 252 (finding interrogation lasting six to seven hours did not render statement involuntary).

The interview location also supports a finding Appellant's statement was voluntary. Appellant was interviewed in Investigator Hall's office. He was not subjected to harsh conditions. During the interview, he was provided with a smoke break, and he was allowed to have a friend in the interview as support. Further, the interviews were not continuous. The interviews on February 5 began at approximately 3:18 p.m., and were over within three hours. (Tr. 71-74; R. pp. 13-16). Appellant was not interviewed again until 11:54 a.m. on February 6th, and that interview lasted only approximately an hour. (Tr. 86-88; R. pp. 28-30).

Appellant's maturity supports the trial court's finding that the statement was voluntary. At the time the statement was given, Appellant was twenty-three years old. (Tr. 73, 86; see State's Exhibits 66, 67; R. pp. 15, 28). He had a tenth grade education, and he indicated to the investigators that he could read and write the English language. (Tr. 73, 86, 383; State's Exhibit 68, Defense Exhibit 2; R. pp. 15, 28, 228). There was no testimony or evidence reflecting Appellant was not in good physical condition or mental health.

Finally, there was no evidence reflecting any police coercion overbore Appellant's ability to give a voluntary statement. First, there is no evidence there was coercive actions taken by law enforcement to induce Appellant's statement.

While Appellant contends there was an implicit promise of bond in exchange for the statement, that assertion is not supported by the record. During the Jackson v. Denno hearing, Investigator Hall testified that law enforcement did not promise Appellant anything in exchange for information about the homicide. (Tr. 76, 91; R. pp. 18, 33). The video of the interview from February 6 reflect that no promises were made regarding bond. Hall also testified that he never promised Appellant that he would receive bond, but Hall did indicate that he would talk speak on Appellant's behalf with the judge regarding bond on the accessory charge. (Tr. 100; R. p. 42). Hall noted that he never said that Appellant would get bond because that would be up to the judge to determine. (Tr. 99-100; R. pp. 41-42). Hall also stated that he did speak on Appellant's behalf at a bond hearing. (Tr. 100, 107-08; R. pp. 42, 49-50). In the video of the second part of the February 6 interview, Hall indicated that he wanted to be able to speak on Appellant's behalf and let a judge know that he was cooperative, forthcoming, and showed remorse. (See State's Exhibit 69).

Overall, there was no promise of leniency made in the form of a promise of bond. Respondent submits that the situation presented here is akin to that presented in Arrowood. In Arrowood, officers categorically denied they promised to assist the defendant by having some charges dropped, securing a low bond, and having other charges run concurrently. Arrowood, 375 S.C. at 368, 652 S.E.2d at 443. "Instead, the officers insist the only 'help' they offered Arrowood was to testify in court that he cooperated with the investigation." Id. The Court of Appeals found the statement was voluntarily given because offers to attest to

cooperation with law enforcement did not constitute promises of leniency. Id. The Court of Appeals noted the defendant "produced his statements in the mere 'hope' of leniency based on his cooperation, rather than as the consequence of promises." Id. at 369, 652 S.E.2d at 443. To the extent there was any conflict as it relates to Investigator Hall's testimony as to what was said and Appellant's testimony as to what was said regarding bond, it was within the trial court's purview to determine which version of the facts was correct. See Arrowood, 375 S.C. at 369, 652 S.E.2d at 443; State v. Howard, 296 S.C. 481, 492, 374 S.E.2d 284, 290 (1988). Appellant has not shown that the trial court's determination was not supported by the record. This argument should be denied and dismissed. His convictions should be affirmed.

II. Appellant's statement was not rendered involuntary by alleged repeated recitations of the amount of time he faced on an unrelated charge.

In his second argument on appeal, Appellant contends that his statement was rendered involuntary because it was induced by statements regarding the number of years he faced in prison on an unrelated accessory after the fact to burglary charge for which Appellant was arrested on February 5, 2013. Appellant is not entitled to relief upon this claim. First, this argument was not presented to the trial court, and is thus not preserved for appellate review. Second, this argument is without merit. There is no evidence to support the allegation asserted in this argument as law enforcement did not discuss potential sentences for the accessory after the fact charges with Appellant during the interviews regarding the charges stemming from this case.

A. Appellant's argument is not preserved for appellate review.

Appellant contends the trial court erred in finding Appellant's statement was voluntary because it was induced by "threats" regarding the time he faced on another charge. (Initial Brief of Appellant at p. 7-8; R. pp. 482-83). Respondent submits this argument was not made to the trial court. At the Jackson v. Denno hearing, Appellant presented two arguments regarding the voluntariness of the statement by Appellant. First, he argued that the statement was induced by a promise that Appellant would receive bond on the accessory after the fact charge for giving a statement. Second, Appellant contended that he should have been advised of his rights again after the smoke break between the first and second parts of the interview conducted on February 6, 2013. Appellant did not complain

that his statement was somehow induced by a fear regarding the amount of time he faced on the accessory after the fact charge. The trial court also never ruled on this argument. Since Appellant did not present this argument to the trial court, and it was not ruled upon by the trial court, it is not preserved for appellate review. See State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (stating an objection should be sufficiently specific to bring the exact error to the trial court's attention); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (S.C. Ct. App. 2003); see State v. Perez, 334 S.C. 563, 565-66, 514 S.E.2d 754, 755 (1999) (issue not raised and ruled upon by trial court is procedurally barred and not preserved for appeal); see also State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995) (party cannot argue one ground below and then another on appeal); see Goodwin, 384 S.C. at 603, 683 S.E.2d at 508 (issue regarding statement that was not raised at trial not preserved for appellate review); State v. Jones, 392 S.C. 647, 654, 709 S.E.2d 696, 700 (Ct. App. 2011) (finding argument regarding involuntary statement that was not made before lower court is not preserved for appellate review).

B. Appellant's argument is without merit.

Appellant contends his statement was rendered involuntary because he was repeatedly told about the amount of time he was facing on the accessory after the fact to burglary charge for which he was arrested on February 5, 2013.

This claim is wholly without merit. First, contrary to Appellant's assertions, his case is not similar to the facts outlined in State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990). In Osborne, the defendant challenged two of eleven

statements she gave over a two and one-half month period. The defendant claimed the statements were coerced because the officers threatened to charge her with "withholding evidence" if she did not make a statement. Id. at 365, 392 S.E.2d at 179. In regards to the first statement, she also asserted that she was told that the first statement she challenged did not "fit the facts" and therefore she must provide another statement or face charges for withholding evidence. Id. In Osborne, both the defendant and the sheriff testified that the defendant was essentially told that she did not have to talk, but if she withheld evidence, she could be charged with a crime. Id. at 365-67, 392 S.E.2d at 179-80. The Supreme Court concluded that the State failed to meet its burden by a preponderance of the evidence that the rights were voluntarily waived. Id. at 367, 392 S.E.2d at 180.

Appellant's case is distinguishable in several respects. First, Appellant was not threatened with being charged for the accessory after the fact if he did not cooperate. To the contrary, Appellant was already charged with accessory after the fact for burglary. He was arrested for that charge, and the first interview Appellant gave on February 5 was in reference to that charge. Second, during the course of the interview on February 6, there is no mention of the possible sentence for the accessory after the fact charge. In fact, the only time any discussion regarding a possible sentence for the accessory after the fact charges occurred was during the first interview that was specifically regarding those charges. Law enforcement never made a connection between Appellant's cooperation in this case with his possible sentence(s) on other charges.

Respondent would note that Appellant never even testified that the amount of time he faced for the accessory charges led him to give an incriminating statement.

Respondent submits that any alleged pressure Appellant may have felt regarding the possible sentences he faced for the accessory after the fact charges did not stem from pressure from law enforcement. As such, any such pressure did not render Appellant's statement involuntary under the Fifth Amendment. Colorado v. Connelly, 479 U.S. 157, 170, 107 S. Ct. 515, 523, 93 L. Ed. 2d 473 (1986)("The voluntariness of a waiver of this privilege has always depended on the absence of police overreaching, not on "free choice" in any broader sense of the word."). This argument should therefore be denied and dismissed, and Appellant's convictions should be affirmed.

III. Appellant's statement was not rendered involuntary by the alleged threats made against Appellant's sister regarding a possible arrest and removal of her children by the Department of Social Services.

In his third argument on appeal, Appellant contends that his statement was rendered involuntary because it was induced by threats made by law enforcement against Appellant's sister. Specifically, Appellant contends that law enforcement threatened to arrest his sister, and law enforcement threatened to have her children taken away by the Department of Social Services. (Initial Brief of Appellant, pp. 8-9; R. pp. 483-84). Appellant is not entitled to relief upon this claim. First, this argument was not presented to the trial court, and is thus not preserved for appellate review. Second, this argument is without merit. There is no evidence that Appellant was ever informed of a threat by law enforcement against his sister and her children.

A. Appellant's argument is not preserved for appellate review.

Appellant contends that law enforcement threatened to arrest his sister, and law enforcement threatened to have her children taken away by the Department of Social Services. (Initial Brief of Appellant at p. 8-9; R. pp. 483-84). Respondent submits this argument was not made to the trial court. At the Jackson v. Denno hearing, Appellant presented two arguments regarding the voluntariness of the statement by Appellant. First, he argued that the statement was induced by a promise that Appellant would receive bond on the accessory after the fact charge for giving a statement. Second, Appellant contended that he should have been advised of his rights again after the smoke break between the first and second parts of the interview conducted on February 6, 2013. Appellant

did not complain that his statement was somehow induced by a threat or threats made regarding his sisters. The trial court also never ruled on this argument. Since Appellant did not present this argument to the trial court, and it was not ruled upon by the trial court, it is not preserved for appellate review. See State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (stating an objection should be sufficiently specific to bring the exact error to the trial court's attention); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (S.C. Ct. App. 2003); see State v. Perez, 334 S.C. 563, 565-66, 514 S.E.2d 754, 755 (1999) (issue not raised and ruled upon by trial court is procedurally barred and not preserved for appeal); see also State v. Tucker, 319 S.C. 425, 428, 462 S.E.2d 263, 265 (1995) (party cannot argue one ground below and then another on appeal); see Goodwin, 384 S.C. at 603, 683 S.E.2d at 508 (issue regarding statement that was not raised at trial not preserved for appellate review); State v. Jones, 392 S.C. 647, 654, 709 S.E.2d 696, 700 (Ct. App. 2011) (finding argument regarding involuntary statement that was not made before lower court is not preserved for appellate review).

B. Appellant's contention is without merit.

Appellant's contention that his statement was rendered involuntary by threats made to his sister is without merit. First, there is no evidence that Appellant was ever made aware of any such threat.[4] This was not a matter raised during the Jackson v. Denno hearing.

[4] Respondent submits it is questionable whether such a threat was made based upon the record in this case. The only person who testifies to such a threat being made was Appellant's sister. (See Tr. 527; R. p. 324).

Contrary to Appellant's assertions, his case is not similar to the situation raised in State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (Ct.App.1992). In Corns, the Court of Appeals found the defendant's statement was involuntarily given. Specifically, the Court of Appeals noted, "[a] reading of the record as a whole with special consideration of the testimony of the officers who witnessed the oral statements leads us to the conclusion that, at the very least, the officers coerced Corns's confession on the marijuana by means of veiled threats against his family." Id. at 552, 426 S.E.2d at 327. The Court of Appeals also noted that during the interview in Corns, the defendant was told by law enforcement that "his wife could be arrested, that she could be "involved in the marijuana," and that their children could be taken from them." Id. The officers in Corns conceded they had made such threats.

The facts of Appellant's case are not analogous to those in Corns. First, the statements, the recordings of the statements, and the testimony of Investigator Hall all reflect that no threats were made against Appellant or against Appellant's sister. Appellant never testifies or indicates that he was aware of any threats made against his sister by law enforcement. The only person who testifies about the alleged threats were Appellant's sister. (See Tr. 527; R. p. 324). At no point during Appellant's interviews was there ever any mention that his sister could be arrested and her children could be taken by DSS. Since there was no testimony or evidence reflecting that Appellant was ever informed of such a threat, Appellant cannot show that his statement was improperly influenced by

such a threat. He has not shown that his statement was coerced. This claim for relief should be denied and dismissed.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court deny Appellant's appeal and affirm his convictions for murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime.

Respectfully submitted,

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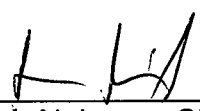
By: 
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January 19, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
The Honorable R. Knox McMahon, Circuit Court Judge
Appeal Case No. 2014-000166

THE STATE

RESPONDENT,

V.

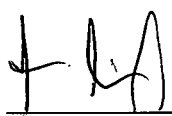
DAVID STALK

APPELLANT.

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 "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings"

This 19th day of January, 2016.



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STATE OF SOUTH CAROLINA
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Appeal from Lancaster County
The Honorable R. Knox McMahon, Circuit Court Judge
Appeal Case No. 2014-000166

THE STATE

RESPONDENT,

V.

DAVID STALK

APPELLANT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorneys of record, Raia Jane Hirsch, Esq., 1720 Main Street, Suite #301, Columbia, South Carolina 29201, and Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

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

This 19th day of January, 2016.

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