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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY  
D. Garrison Hill, Circuit Court Judge

S.C. Sup. Ct. Opinion No. 27607  
Heard December 3, 2015 – Filed February 17, 2016

Appellate Case No: 2015-000351

The State, ..... Petitioner,

v.

Donna Lynn Phillips, ..... Respondent.

**PETITION FOR REHEARING**

Petitioner, the State of South Carolina, respectfully petitions this Court for rehearing pursuant to Rule 221(a), SCACR, and submits there is an important reason for the Court to exercise its discretion to grant rehearing in this matter. The State hereby seeks rehearing solely on the grounds that the Court may have misapprehended or overlooked a crucial factual issue in affirming the opinion of the Court of Appeals, as modified.

In discussing a previously published opinion, State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013), the Court properly notes that in Hepburn, “The State sought to augment the evidence

presented in its case-in-chief with evidence offered by a co-defendant and with evidence offered by [Hepburn] in opposition to the co-defendant's evidence." However, the Court then incorrectly identifies the relative positions taken by the parties in Hepburn by making the following characterization:

Accordingly, the **State** requested we overrule the decision in State v. Harry, 321 S.C. 273, 468 S.E.2d 76 (Ct. App. 1996), wherein the court of appeals held that when a defendant presents evidence in his own defense, he waives the right to limit the appellate court's consideration of the denial of his motion for directed verdict to only the evidence presented in the State's case-in-chief. Declining the **State's** invitation, we expressly adopted the reasoning in Harry and the waiver rule propounded therein.

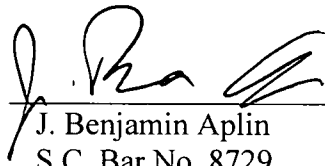
State v. Phillips, Op. No. 27607 (S.C. Sup. Ct. filed February 17, 2016) (Shearouse Adv. Sh. No. 7 at 46) (emphasis added). Clearly, where the State was seeking to augment the evidence presented in its case-in-chief with evidence offered by Hepburn and her co-defendant, it was relying on the waiver rule described in Harry, and was NOT requesting that Harry be overruled. Indeed, as indicated in the November 26, 2012 letter from Hepburn's appellate attorney to Daniel E. Shearouse, which is attached to this Petition as Exhibit #1, it was Hepburn who sought to argue against the court of appeals' decision in Harry. By way of this Petition for Rehearing, the State is respectfully asking that this Court correct this mischaracterization to explain that **Hepburn** requested that the Court overrule Harry, and that the Court declined **Hepburn's** invitation.

For this reason, the State respectfully asks this Court to grant this petition for rehearing and issue an opinion that correctly describes the position taken by the State in State v. Hepburn in regard to the court of appeals opinion in Harry.

Respectfully submitted,

ALAN WILSON  
Attorney General

J. BENJAMIN APLIN  
Interim Senior Assistant Deputy Attorney General

BY:   
\_\_\_\_\_  
J. Benjamin Aplin  
S.C. Bar No. 8729

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-3727

ATTORNEYS FOR PETITIONER

Columbia, South Carolina  
February 23, 2016

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NEXSEN | PRUET

Andrew A. Mathias  
Attorney

November 26, 2012

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*Via Hand Delivery*

ATTORNEY GENERAL'S  
OFFICE

The Honorable Daniel E. Shearouse  
Clerk of Court  
ATTN: Barbara Shealy  
Supreme Court of South Carolina  
1231 Gervais Street  
Columbia, South Carolina 29201

Re: *State of South Carolina v. Ashley N. Hepburn*  
Appellate No. 2011-190695

Dear Mr. Shearouse:

Pursuant to Rule 217, SCACR, Appellant Ashley N. Hepburn hereby moves to argue against the precedent of the South Carolina Court of Appeals. Specifically, Appellant would like to argue against the Court of Appeals decision in *State v. Harry*, 321 S.C. 273 (Ct. App. 1996). The argument is scheduled to be heard on December 4, 2012. Enclosed please find a check in the amount of \$25.00 to cover the filing fee.

Thank you for your assistance in this matter.

Sincerely,



Andrew A. Mathias

AAM:gb  
Enclosure

cc: Salley W. Elliott, Esquire ✓  
S.C. Attorney General's Office

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55 East Camperdown Way  
Suite 400 (29601)  
PO Drawer 10648  
Greenville, SC 29603-0648  
www.nexsenpruet.com

T 864.282.1195  
F 864.477.2697  
E AMathias@nexsenpruet.com  
Nexsen Pruet, LLC  
Attorneys and Counselors at Law

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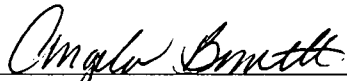
**PROOF OF SERVICE**

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I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Petition for Rehearing* dated February 23, 2016, on Respondent by depositing two copies of the brief in the United States mail, postage prepaid, addressed to his attorney of record:

E. Charles Grose, Esquire  
The Grose Law Firm. LLC  
404 Main Street  
Greenwood, SC 29646

I further certified that all parties required by Rule to be served have been served.  
This 23<sup>rd</sup> day of February, 2016.

  
\_\_\_\_\_  
Angela Bennett  
Legal Assistant

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211-1549  
(803) 734-3727