

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
The Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

V.

RONNIE MARTIN,

APPELLANT

APPELLATE CASE NO. 2015-001065

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court erred in excluding third-party guilt evidence.
2. Whether the trial court erred in admitting recorded jail calls between Appellant and his girlfriend.
3. Whether the trial court erred in denying a jury instruction on the lesser offense of second degree burglary.
4. Whether the solicitor's statements so infected the trial with unfairness as to make Appellant's resulting conviction a denial of due process.
5. Whether these errors and statements, individually or in aggregate, require reversal of Appellant's conviction.

STATEMENT OF THE CASE

Appellant Ronnie Martin was convicted of burglary in the first degree after a trial by jury on May 6 and 7, 2015. Based on prior convictions from 1996, nearly twenty years earlier, Martin was sentenced to mandatory life without parole. ROA 2.

There was no forensic or physical evidence linking Ronnie Martin to the burglary; rather, the only evidence against Ronnie Martin was the victim's identification. The victim, whose vision was admittedly impacted by diabetes, described the burglar as a black male wearing a "hoodie" sweatshirt and khaki pants. Despite that the burglar was wearing the hood of the sweatshirt over his head the "whole time" and a hat, the victim identified Ronnie Martin as the perpetrator. ROA 5-8; 10; 46-49; 74; 93; 89-96; 102-103.

At trial, Ronnie Martin testified unequivocally that he did not commit the burglary and sought to introduce evidence that another person, Quinton Samuels, was the guilty party. In an offer of proof, Ronnie Martin testified that he saw Quinton Samuels, a black male who lived in the same neighborhood, twice the night of the burglary. The first time, Quinton Samuels asked Ronnie Martin if he wanted to do a "lick" (slang for robbery) with him. The second time, Quinton Samuels stopped to speak with Ronnie Martin and indicated that he had just stolen a pocketbook but had thrown the pocketbook in a nearby field after being chased by police. According to Ronnie Martin, Quinton Samuels was wearing a "hoodie" during these conversations. ROA 76; 120; 136; 164; 166-168. The trial court excluded the evidence of third-party guilt.

The exclusion of the third-party guilt evidence and its impact on Ronnie Martin's ability to have a fair trial and zealous defense was exacerbated by the trial court's admission of jail house calls between Ronnie Martin and his girlfriend, wherein Quinton Samuels was mentioned. ROA 13-14; State's Ex. 21(a) (on file). Not only was the admission of these calls constitutionally improper, but Ronnie Martin was placed in untenable position of not being able to explain the context of the references to Quinton Samuels given the trial court's ruling on third party guilt evidence.

At trial, Ronnie Martin's girlfriend recanted an earlier written statement to law enforcement wherein she indicated that Quinton Samuels admitted to the burglary and lead her to the location of the stolen pocketbook. In direct contradiction of her prior statement, Ronnie Martin's girlfriend testified that he intended to frame Quinton Samuels for the burglary. ROA 125-127; 133. Again, the exclusion of the third party guilt evidence effectively precluded Ronnie Martin from challenging and impeaching this testimony at trial. Importantly, the Solicitor seized on the purported conspiracy to frame Quinton Samuels in both his opening and closing arguments further prejudicing Ronnie Martin's defense. ROA 29-30; 302-303.

These errors and statements, along with the trial court's refusal to instruct the jury to a lesser defense despite supporting evidence, materially and prejudicially affected the outcome of the trial of Ronnie Martin. Accordingly, his conviction should be reversed.

STATEMENT OF FACTS

On December 13, 2013, shortly after 8:00 p.m., Diane Williams ("Williams" or "victim") reported a stolen pocketbook to the Saluda County Sheriff's Office. ROA 4; 50; 69. Williams told officers that a black male wearing a "hoodie" sweatshirt and khaki pants kicked in her front door, entered her home, and proceeded to rummage through her pocketbook. ROA 7-8; 10; 46-49; 74. Despite that the burglar's hoodie "was over his head" the entire time and he was wearing a hat, Williams indicated that she believed him to be "Ronnie Moe," the nickname of Appellant Ronnie Martin. ROA 5; 10; 46-48; 57.

Williams knew Ronnie Martin because he was an acquaintance of her daughter, and he had been at the Williams' house with her daughter earlier the day of the burglary. ROA 5-6; 9; 46. Williams was the only eyewitness of the crime as her husband was in another room and did not see the burglar. ROA 11-12; 54. Believing the burglar to be Ronnie Martin, Williams shouted: "Ronnie Moe, give me my pocketbook. What you doing with my pocketbook?" ROA 8; 48. The burglar fled the house with the pocketbook. ROA 8; 48-49.

A few days later, Ronnie Martin's girlfriend, Kimberly Gantt, returned the pocketbook to Williams after she located it in the woods near a path used by "a lot of people...to cut across the street." ROA 77; 130-131. There was nothing missing from the pocketbook. ROA 88. In a written statement to the Saluda County Sheriff's Office, Gantt indicated that she learned of the location of the pocketbook from Quinton Samuels who indicated he had stolen the pocketbook. ROA 126-127; 132-134.

During the time frame of the burglary, Ronnie Martin reported that he was walking to and from the grocery store near the home on Quattlebaum Avenue that he shared with Gantt. ROA 76; 120. According to Ronnie Martin, he was approached on his way to the store by Quinton Samuels, who lived two houses down on Quattlebaum Avenue. ROA 136; 164; 166. Quinton Samuels asked Ronnie Martin if he wanted to take part in a “lick,” a slang term for a robbery. ROA 164; 167. Subsequently, Ronnie Martin testified that he saw Quinton Samuels, who admitted to stealing a pocketbook and then throwing the pocketbook in the field after being chased by police. ROA 164; 166-167; 169-170. Ronnie Martin indicated that Quinton Samuels, a black male, was wearing a “hoodie” during these conversations. ROA 168.

At trial, it was conceded that the only evidence linking Ronnie Martin to the burglary was the identification by Williams, whose diabetes admittedly affected her eyesight. ROA 55-56; 93. There was no physical or forensic evidence linking Ronnie Martin to the burglary, nor did he have any of Williams’ belongings in his possession at the time of his arrest. ROA 89 (no fingerprint or forensic testing on pocketbook); 90-91; 94; 96 (could not get “evidentiary value” from footprint on door given “smeared condition” and could not be compared to Ronnie Martin’s boot print); 101 (no DNA evidence at crime scene or recovered pocketbook); 102-103. Further, the “hoodie” that Williams described the burglar as wearing was not part of Ronnie Martin’s inventoried property at the jail, purportedly because it was subsequently released to Gantt. ROA 122. The jury’s request to see the inventory log and any sign-out sheet for inventoried property was denied. ROA 350; 324-325.

At trial, Gantt testified that Ronnie Martin wanted her to “get [Williams] to say that it wasn’t him and that Quinton was the one that came into the house and got the pocketbook.” ROA 126. According to Gantt, this discussion occurred during an unrecorded in-person visit with Ronnie Martin at jail. ROA 125-126. Gantt’s trial testimony contradicted her earlier written statement to the Sherriff’s Office wherein she indicated that Quinton Samuels had stolen the pocketbook and showed her its location. ROA 126-127; 133.

Over the objection of the defense, the trial court admitted recorded jail house calls between Ronnie Martin and Gantt, wherein Quinton Samuels is mentioned. Specifically, on one recording, Ronnie Martin stated that, “Quinton [Samuels] gonna wear those charges.” Due to the evidentiary rulings, Ronnie Martin could not explain to the jury what this statement meant nor the multiple references to Quinton Samuels throughout the trial.

In both closing and opening argument, the Solicitor emphasized the purported conspiracy to frame Quinton Samuels, who was repeatedly described as “mentally challenged,” a “slow person” and disabled. ROA 29-30; 304-305. There was no testimony from a qualified witness that Quinton Samuels was actually diagnosed as mentally disabled. During his own testimony, Quinton Samuels was not asked about his purported mental disability, and he testified to completing an eleventh grade education. ROA 194.

Following closing argument, defense counsel requested the jury be charged on the lesser offense of burglary in the second degree based on the testimony of the victim (and the only eyewitness) that it was still light out when the burglary occurred. The trial court denied this request. ROA 45; 53; 93; 259-261. Ultimately, the jury convicted Ronnie Martin of

burglary in the first degree, which resulted in him being sentenced to life in prison without parole. ROA 330-331; 349.

ARGUMENT

I. THE TRIAL COURT COMMITTED REVERSIBLE ERRORS.

Ronnie Martin's conviction and sentence should be reversed because, respectfully, the trial court committed serious errors of law, that individually and in aggregate, were material, prejudicial and affected the outcome of the trial. State v. Byers, 392 S.C. 438, 448 (S.C. 2011); State v. Rice, 375 S.C. 302, 316 (S.C. 2007) ("For the error to be harmless, we must determine 'beyond a reasonable doubt the error complained of did not contribute to the verdict obtained.'") (quoting Taylor v. State, 312 S.C. 179, 181 (S.C. 1993)). Each of these errors is addressed in turn.

A. The Trial Court Erred in Excluding Third-Party Guilt Evidence.

The trial court's most prejudicial error was the exclusion of evidence of third-party guilt,¹ which evidentiary ruling tainted the entire trial. This error alone constitutes reversal of Ronnie Martin's conviction.

A defendant is permitted "to introduce evidence of third-party guilt regardless of the strength of the state's case if the evidence offered by the accused as to the commission of the crime by another person is limited to such facts as are inconsistent with his own guilt and that raise a reasonable inference or presumption as to his own innocence." Miller v. State, 379 S.C. 108, 114 (S.C. 2008) (citing Holmes v. South Carolina, 547 U.S. 319 (2006)).

¹ The issue of third-party guilt was preserved for this Court's review. Defense counsel made a proffer of evidence as to third-party guilt through Ronnie Martin's testimony. ROA 164-177. Defense counsel renewed the objection to the exclusion of third-party exculpatory evidence throughout the course of trial. ROA 250-251; 263; 334.

Here, Ronnie Martin sought to introduce evidence that his neighbor, Quinton Samuels, approached him on the way to the grocery store about participating in a “lick” (slang for a robbery) shortly before the burglary at issue occurred. ROA 167. Ronnie Martin testified during the offer of proof that Quinton Samuels was wearing a “hoodie,” the same attire that Williams indicated the burglar was wearing. ROA 168. On his way back from the store and shortly after the burglary was reported to police, Ronnie Martin again encountered Quinton Samuels, who was running. ROA 169. Quinton Samuels indicated that he was running from the police because he “made the lick,” but that he had to throw the stolen pocketbook in his attempt to flee. ROA 169-170. According to Ronnie Martin, Quinton Samuels told him that “[Samuels] had come across a field that I’m familiar with and he said that he threw it up there behind the Wedding House on the edge of the field.” ROA 170.

As a threshold matter, this third-party guilt evidence was otherwise admissible. See State v. Mercer, 381 S.C. 149, 167 (2008) (“Provided threshold admissibility is met, third-party guilt evidence may not be excluded based on the trial court’s view of the evidence or the perceived ‘strength’ of the State’s case.”) (emphasis added). While the trial court characterized the statements that Ronnie Martin attributed to Quinton Samuels as improper hearsay evidence, Quinton Samuels, the declarant, was present in the courtroom subject to a subpoena and was available to and did testify at trial. Thus, the statements are non-hearsay pursuant to South Carolina Rule of Evidence 801(d)(1). Further, the circumstances in which the latter statement was allegedly made except it from the hearsay rule as an excited utterance and/or present sense impression. SCRE 803(1)-(2).

The proffered evidence regarding Quinton Samuels' guilt was not so remote or conjectural to warrant exclusion. Based on the testimony, Quinton Samuels lived "two houses" from Ronnie Martin in close proximity to where the pocketbook was ultimately found. ROA 136. The location of the pocketbook was near a shortcut path that experienced significant foot traffic from those living in the neighborhood. ROA 77. Ronnie Martin and Quinton Samuels were neighbors who had been acquainted for many years; thus, the alleged statements were not part of a highly improbable conversation occurring between two random strangers. ROA 166; 199.

Importantly, the case against Ronnie Martin was highly circumstantial and there was no forensic evidence linking him to the crime. Indeed, the only direct evidence was the victim's identification of Ronnie Martin as the burglar. The identification was subject to scrutiny given Williams' admitted vision problems and various inconsistencies and deficiencies in the victim's testimony. However, the trial court's exclusion of the third-party guilt evidence made it difficult, if not impossible, for defense counsel to utilize these inconsistencies. For example, defense counsel was effectively precluded from comparing Ronnie Martin's physical characteristics to those of Quinton Samuels in order to challenge the validity of the identification.

Further, the trial court's exclusion of the third-party evidence effectively removed an essential credibility determination from the jury; namely, whether to believe Kimberly Gantt's first statement to investigators that Quinton Samuels was the burglar or her subsequent trial testimony re-canting the prior statement and asserting a conspiracy to frame Quinton Samuels. Without the third-party guilt evidence, there was simply no context for the jury to weigh the first statement against the second. See, e.g., State v. Page, 406 S.C.

272, 290 (2013) (“Accordingly, the trial judge essentially determined that Curtice’s later claim (statement and testimony) was truthful and that his earlier, contradictory statements in the voicemail message were untruthful. Thus, the trial judge ostensibly made a credibility determination, which was within the exclusive province of the jury, and, consequently, impermissibly precluded the jury from considering evidence that would have ‘assisted the jury at arriving at the truth.’”).

Moreover, the exclusion of the third-party guilt evidence precluded a defense to the State’s argument that Ronnie Martin’s statements in the recorded jail calls (discussed *infra*) evidenced a conspiracy to frame Quinton Samuels, which was highly prejudicial. Had Ronnie Martin been permitted to present the third-party guilt evidence, he would have been able explain that his references to Quinton Samuels in the calls were not part of a conspiracy but rather to exculpate himself as a suspect based on the pre- and post-burglary conversations with Quinton Samuels. Absent such explanation, the only inference the jury could make from Ronnie Martin’s statements that “Quinton [Samuels] gonna wear those charges” was an intent to frame Quinton Samuels. ROA 172. In actuality, Ronnie Martin testified in the offer of proof that this statement meant that, “I ain’t fixing to go down for something that [Samuels] did.” ROA 172-173.

B. The Trial Court Erred in Admitting Recorded Jail Calls.

The trial court also erred in admitting recorded jail calls between Ronnie Martin and Gantt, which compounded the prejudicial impact of excluding third-party guilt evidence addressed *infra*.²

² This issue was preserved for appeal based on defense counsel’s objection to the admission of the calls during trial. ROA 13-14; 155; 157; 334.

First, the admission of the jail calls violated 18 U.S.C. §§ 2511 and 2516, which prohibits the interception of telephone conversations in the absence of a court order. As courts have recognized, these “protections extend to prisoners’ conversations over institutional telephones.” U.S. v. Lanoue, 71 F.3d 966, 981 (1st Cir. 1995) (citing Campiti v. Walonis, 611 F.2d 387 (1st Cir. 1979), and U.S. v. Amen, 831 F.2d 373, 387 (2d Cir. 1987), cert. denied 485 U.S. 1021 (1988)). The limited exceptions to the prohibition include consent and use by an “investigative or law enforcement officer in the ordinary course of his duties.” 18 U.S.C. §§ 2511(2), 2510(5). “Investigative or law enforcement officer” is statutorily defined as “any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for the offenses enumerated in this chapter...” 18 U.S.C. § 2510(7).

Here, the State failed to establish either exception to the prohibition, offering only the testimony of a jail administrator who does not fall within the definition of “investigative or law enforcement officer.” ROA 152-153; Lanoue, 71 F.3d at 981 (“The trial court did not rely on the law enforcement exception because the government offered no evidence or legal authority to show that the employees of the Wyatt Detention Center who intercepted Lanoue’s conversations were ‘officers of the United States or of a State or political subdivision thereof...empowered by law to conduct investigations of or make arrests for offenses enumerated in section 2516.’”). Further, the jail administrator’s ordinary duties relate to jail security and the “periodic” monitoring of jail calls is for “security purposes” rather than investigative or law enforcement activities. ROA 153.

Further, a notification that a jail call “possibly could be monitored” is insufficient notice that the contents of the call could be later utilized as evidence in a criminal

proceeding.³ ROA 153. As such, a detainee's use of the jail telephone system after hearing this recorded message does not equate to implied consent. Lanoue, 71 F.3d at 981 ("Deficient notice will almost always defeat a claim of implied consent."). Because the State did not prove either exception to the prohibition against intercepting telephone conversations, the jail calls were improperly admitted into evidence. See 18 U.S.C. § 2515 ("Whenever any wire or oral communication has been intercepted, no part of the contents may be received in evidence in any trial, hearing, or other proceeding in or before any court...if the disclosure of that information would be in violation of this chapter.").

Second, the admission of the jail calls at a criminal trial violates constitutional protections against unreasonable search and seizure and invasions of privacy. U.S. Const. amend. IV and XIV; S.C. Const., art. 1, § 10. As the jail calls revealed, Ronnie Martin paid for the use of the jail telephone and therefore reasonably expected that the contents of his calls, although monitored, would not be used against him in a criminal proceeding. Given that the stated purpose of monitoring calls is for "security measures," the use of recorded calls as incriminating evidence is constitutionally unreasonable.

C. The Trial Court Erred in Denying an Instruction on the Lesser Offense.

Ronnie Martin was convicted of burglary in the first degree, which is punishable by life in prison. S.C. § 16-11-311(B). The basis for the indictment for first degree burglary was that Ronnie Martin entered into the dwelling during the nighttime. ROA 3. The trial court erred in denying defense counsel's request for a jury instruction on the lesser offense

³ By analogy, this would be the equivalent of arguing that notification that premises are monitored by security cameras means that a person on the premises impliedly consents to the video footage being used to run a criminal background check or warrant search on that person.

of burglary in the second degree because there was evidence to support that it was not “nighttime” at the time of the alleged unlawful entry. ROA 259-261.

Specifically, Williams, the victim and only eyewitness to the crime, testified that “[i]t wasn’t quite dark” at the time the perpetrator entered the house. ROA 45; 54; 93. Upon further questioning by the Solicitor, Williams twice confirmed that “[i]t wasn’t dark.” She described that, “[i]t was like middle daylight look a little bit. You know how the evening go down?” Id. This evidence is susceptible of the inference that Ronnie Martin committed the lesser offense of second degree burglary; accordingly, the trial court erred in not so charging the jury. State v. Kornahrens, 290 S.C. 281, 296 (S.C. 1986) (recognizing that charge on lesser offense is proper when the evidence is susceptible of the inference the defendant committed the lesser offense); State v. Dingle, 279 S.C. 278 (1983) (“It is well settled in this state that the law to be charged is determined from the evidence presented at trial.”).

While the Solicitor focused on the 8:00 p.m. time frame, this was the time that the 911-call came through dispatch. ROA 69-70. As Chief Goldman testified, the dispatcher did not indicate that it was an emergency situation, just that a larceny or “something happened.” Id. Given that Williams was guessing as to the time of day, and the non-emergency nature of the call, it is reasonable to infer that the actual incident occurred well before 8:00 p.m. Accordingly, it was error not to instruct the jury as to the lesser offense.

II. APPELLANT WAS PREJUDICED BY PROSECUTORIAL STATEMENTS.

The reversible errors discussed *infra* were compounded by, and cannot be divorced from, highly prejudicial statements made by the Solicitor that were unsupported by the evidence. These statements further prevented Ronnie Martin from receiving a fair trial.

“The relevant question is whether the prosecutor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” State v. Rice, 375 S.C. 302, 315 (S.C. App. 2007). Reversal is warranted if the appellant proves he did not receive a fair trial because of the improper statements. Id. The solicitor’s arguments must be confined to evidence in the record and reliance on statements not supported by the evidence can warrant reversal. State v. Webb, 389 S.C. 174, 181 (S.C. App. 2010).

Here, the Solicitor’s opening and closing arguments were peppered with prejudicial statements, such as: (1) “You’re going to hear that once he [Ronnie Martin] gets into custody in this case the scheming and conniving starts. He gets a hold of Kimberly Gantt and starts talking to her and basically decides he’s gonna get in front of this thing and he’s gonna frame somebody else for doing this. You’re going to hear the name Quinton Samuels. You will hear that Mr. Samuels is a little bit slow and has some disability...”; (2) “And because he [Ronnie Martin] knows her [Gantt], that he can get her to recant her statement and say it wasn’t me, it was Quinton Samuels, the slow person there in Ridge Spring. He’s gonna hang it on him” and (3) “You can hear him [Ronnie Martin] scheming. Get her pocketbook back. Get these charges dropped and let’s frame a mentally challenged person in the town of Ridge Spring, with all deference to Mr. Samuels who is sitting here, he was practically talking to himself when he got up here on the stand, wanted to pick someone

that was defenseless that couldn't defend themselves, that's the Ronnie Martin that's up here." ROA 29-30; 303.

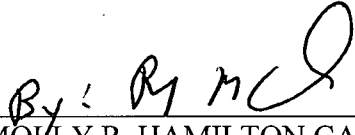
As these statements reflect, the State's argument was focused not on the validity of the victim identification, the only evidence against Ronnie Martin, but rather on portraying him as a conspirator preying on a mentally challenged person. Not only were the Solicitor's statements inflammatory, they were made knowing that the exclusion of third-party guilt evidence precluded Ronnie Martin and his defense counsel from substantively defending against the statements.

Moreover, these references to Quinton Samuels as "mentally challenged" and "disabled" denote a medically established diagnosis, a fact not in evidence. Instead of properly allowing the jury to observe Quinton Samuels' demeanor and intelligence during his testimony, the Solicitor effectively advised the jurors that Quinton Samuels was legally incompetent. Thus, not only was Ronnie Martin prevented from directly defending against the statements about framing Quinton Samuels with third-party guilt evidence, but any inferences the jury might have made about Quinton Samuels' possible involvement in the burglary (based on Gantt's original statement to police) were tainted by the implication that he should or could not be held responsible for the burglary given his mental condition.

CONCLUSION

Ronnie Martin was convicted of burglary in the first degree and sentenced to life in prison without parole after a jury trial. As set forth above, that jury trial was fundamentally unfair based on the trial court's errors and the statements by the Solicitor, which individually or in aggregate, materially and prejudicially affected the outcome. Accordingly, Ronnie Martin's conviction should be reversed.

Respectfully submitted,



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Attorney

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ATTORNEYS FOR APPELLANT

This 1st day of June, 2016.

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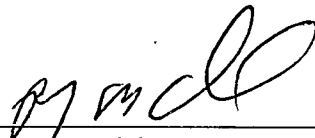
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 1st, 2016



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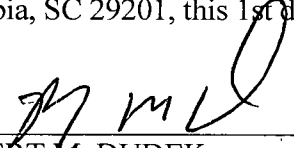
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APPELLANT

APPELLATE CASE NO. 2015-001065

CERTIFICATE OF SERVICE

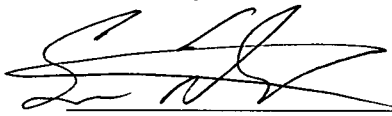
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of June, 2016.



ROBERT M. DUDEK
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of June, 2016.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.