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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Williamsburg County
John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2016-001335

THE STATE,

Respondent,

vs.

JUSTIN MCBRIDE,

Petitioner.

RETURN TO AMENDED PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court did not err in declining a spoliation charge, and Petitioner was not entitled to dismissal based on lost evidence where no evidence indicates law enforcement acted in bad faith or the lost evidence had exculpatory value.

II.

Since no discovery violation occurred, the subject photographs were available for inspection, and there was no prejudice from the purported violation, the trial court did not err in allowing the photographs to be admitted into evidence and in declining to grant a mistrial.

III.

Petitioner was not prejudiced by the no-corroboration instruction. Any error was harmless due to the corroborating evidence and admissions by Petitioner to a relative.

STATEMENT OF THE CASE

Petitioner McBride was indicted for first-degree criminal sexual conduct with a minor and assault with intent to commit first-degree criminal sexual conduct with a minor in December 2010. McBride was tried by jury before the Honorable John C. Hayes, III, on October 28-30, 2013. McBride was found guilty of criminal sexual conduct with a minor in the first degree and acquitted of assault with intent to commit criminal sexual conduct with a minor in the first degree. Judge Hayes sentenced McBride to twenty-five years' imprisonment.

McBride appealed and was represented by Wendy Keefer, Esquire, and Adam Owensby, Esquire, on briefs and Joshua Stokes, Esquire, on argument. Following briefs and oral argument, the Court of Appeals affirmed the conviction and sentence in an opinion dated February 17, 2016. In particular, relying on then-existing precedent, the Court of Appeals found no error by the trial court charging the no-corroboration instruction found in S.C. Code § 16-3-657.

McBride's counsel petitioned for rehearing on February 23, 2016, on only two of the seven issues raised: (1) McBride was denied due process due to evidence, victim's shirt, lost by the Kingstree Police Department; and (2) McBride's statement to law enforcement was involuntary due to his age. At the Court of Appeals' request, the State addressed these two issues in a return dated April 25, 2016.

On May 4, 2016, this Court issued its opinion in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). On May 25, 2016, the Court of Appeals withdrew its opinion and substituted a new opinion finding error for the no-corroboration instruction based on Stukes, but finding error harmless. No petition for rehearing was filed as to the substituted opinion.

McBride's various attorneys were relieved and McBride proceeded pro se, filing an

amended petition for writ of certiorari. The State's return follows.

STATEMENT OF FACTS

Victim was just shy of her tenth birthday when she was sexually assaulted by Petitioner McBride, her cousin. ROA. p. 81. Victim was attending summer school. For the first time, she was riding the bus, which she was excited about. It was her second day of summer school and her second day riding the bus. The other children on her bus told Victim that her mom was not home, which made Victim upset. She went to a neighbor's house, but when she saw the neighbor with company, she went to her Aunt Tina's house instead. Aunt Tina is McBride's mother. She knocked on the door and McBride answered and let her in.[1] Victim commented that it was a show with bad words, so they should turn the television off. That prompted McBride to begin a violent sexual assault. ROA. pp. 82-86.

McBride took out his penis and told Victim to "jerk it." ROA. p. 87, lines 5-6. He grabbed Victim's hand and put it on his penis. McBride grabbed Victim's head and pulled her toward his penis. ROA. pp. 87-88. Victim testified as follows on this point:

> Q: He grabbed your head hard?
>
> A: Yes, ma'am.
>
> Q: And pulled it down to his manhood; is that right?
>
> A: Yes, Ma'am.
>
> Q: And then did what?
>
> A: He then he grabbed my head. Then he told put . . . my mouth on his manhood. And I put – I had my hand on his stomach and then pushed him away from me. And that's when the white stuff

[1] Detective Trena Hamlet noted that McBride's and Victim's houses were side by side with nothing but a small patch of grass between them. ROA. p. 171, lines 4-6.

and clear stuff came out his manhood. It was in my mouth and on my shirt. And I ran in the bathroom.

Q: You said you saw and white and clear stuff come out of his manhood?

A: Yes, ma'am.

Q: And it went in your mouth?

A: Yes, ma'am, on my shirt.

Q: What did that taste like?

A: Nasty.

Q: And it went on your shirt. Is that a yes?

A: Yes, ma'am.

Q: Okay. And then you did what?

A: Then I ran into the bathroom and wipe it off, and spit it out of my mouth.

ROA. p. 89, lines 5-16. Victim testified she spit out in the bathroom sink and wiped the semen off her shirt with a tissue. She put the tissue in a trash can. ROA. pp. 89-90.

When Victim came out of the bathroom, McBride was spraying perfume all around the living room. ROA. p. 92. McBride tried to pull down her pants; he would pull them down, and Victim would pull them back up. ROA. p. 92. Victim testified that McBride tried to put his penis in her butt. Victim testified it hurt. ROA. p. 92, line 25 – p. 93, line 8.

Victim pushed McBride off her and ran to the front door. McBride blocked her and "sucked" his teeth. She instead ran for the back door and ran out of the house. She went home and kicked on the door. Her mother (Mother) was there. When Mother asked what was wrong, Victim did not reply. She was scared McBride would come over to the house. But Mother

smelled "man perfume" and went next door. Victim testified she had deodorant on her shirt. She testified it was from when McBride had his arm around her neck. She hurt the next day when she was making a bowel movement. ROA. pp. 93-100. Specifically, Victim testified she yelled to her mother she could not use the bathroom because "[h]e put his manhood in the back of my butt." ROA. p. 99, lines 3-8.

Detective Trena Hamlet responded to a call regarding a female victim at Victim's residence. Several other officers and family members were already present. While speaking with Victim and her family, Detective Hamlet noticed a white smear on the shoulder of Victim's shirt. After she spoke with Victim, Detective Hamlet spoke with McBride to hear his side of the story. ROA. pp. 168-171.

Detective Hamlet testified that McBride gave the following statement:

> He opened the door and asked why was she over there. Stated that her mom was not at home. She sat on the couch and they were watching TV. He stated that at one point he got up to go to the restroom. And while he was in there, she came in on him. He concealed, tried to conceal himself from her, because he was in the midst of using the restroom. Yelled at her to get out. And she went back in the living room and sat down. And shortly thereafter, she wanted to leave. He said that she didn't want to go to front door because a bug was on the door, so she went to go out the back. The back door was locked. So he had to unlock it. She couldn't unlock it, he had to unlock it for her to leave.

ROA. p. 173, line 13 – p. 174, line 2.

Mother testified she arrived at home on time for the bus, or at least she thought so. However, Mother did not hear the bus. She became agitated when her daughter did not come home – more so when the middle school and then high school buses came (Victim's bus should have arrived first). But after a while, she was startled by Victim kicking and beating on the door.

Mother became concerned because Victim was not talking, even after she asked Victim where she had been. Victim was excited to ride the bus the day before. But now Victim walked by Mother without discussion. Mother grabbed Victim and smelled the cologne. Victim pointed to her Aunt's house when Mother inquired about where she had been. Mother testified Victim also had a stain on her shirt that smelled like deodorant. ROA. pp. 217-224.

Mother went next door and asked McBride what happened. McBride claimed Victim walked in the bathroom on him. Mother told McBride she did not believe him. Mother decided it was best to leave since McBride's mother was not home. Another of Mother's sisters (not McBride's mother) called police. ROA. pp. 226-229.

Later that night, Mother was trying to finish her school work – she was having trouble due to the stress of the day – when she heard Victim scream from the bathroom. Victim told Mother it hurt when she was trying to go to the bathroom. Victim said, "It hurt Mama." ROA. pp. 229-230; p. 235, lines 17-22.

Law enforcement failed to take Victim's clothing during the interview. Mother and her sister put Victim's clothing in a bag and were told to bring the bag with them to the Durant Center in Florence when they brought Victim for her appointment. The Durant Center told them to take the bag of clothes to the police. She left the clothes with an officer at the Kingstree police station. ROA. pp. 237-240; p. 250.

Lieutenant Thomas Dean McCrea testified the officer described by Mother as the officer receiving the clothes must have been Sergeant Grant Huckabee, who was an investigator, K-9 handler, and evidence custodian at the time. The only other person with access to the evidence room was Chief Ford. Both Huckabee and Ford are no longer employed with the Kingstree

Police Department. Lieutenant McCrea was under the impression the clothing was sent to SLED for testing, but no record of this exists, and the clothing was lost. This was not the first instance of Huckabee losing evidence. No evidence intake sheet was located. ROA. pp. 261-26.

Samantha Cooper, Victim's aunt, testified she confronted McBride with Victim's allegations, and he told her he did not mean to do it. Cooper testified McBride attempted to "compromise" with her. Cooper was enraged. She went running after McBride, and he ran inside his house. She yelled at McBride through the door. ROA. pp. 290-92. She testified, "I was asking him why did he do it. And he said, I didn't mean to do it. We need to talk, just calm down, Sam." ROA. p. 292, lines 7-9. Cooper collected herself sufficiently enough to walk away rather than act on violent urges. Thereafter, she called the police. ROA. pp. 267-274.

ARGUMENT

I.

The trial court did not err in declining a spoliation charge, and Appellant was not entitled to dismissal based on lost evidence where no evidence indicates law enforcement acted in bad faith or the lost evidence had exculpatory value.

McBride argues his due process rights were violated because the Victim's shirt was lost by law enforcement and he was entitled to a spoliation instruction. McBride does not allege bad faith on the part of law enforcement and no evidence of bad faith exists. Further, the lost evidence did not have apparent exculpatory value. Finally, the requested charge is an unconstitutional charge on the facts and was improper.

McBride was not entitled to dismissal of the charge or exclusion of the photograph of the shirt. The State does not have an absolute duty to preserve potentially useful evidence, and a defendant must demonstrate either: 1) the State destroyed evidence in bad faith; or 2) the evidence's exculpatory value was readily apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. State v. Moses, 390 S.C. 502, 702 S.E.2d 395, 404 (Ct. App. 2010) (citing State v. Mabe, 306 S.C. 355, 412 S.E.2d 386 (1991)). The bad faith requirement limits the extent of the State's obligation to preserve evidence to reasonable bounds, and confines it to cases in which the police conduct indicates the evidence could form a basis for exonerating the defendant. Arizona v. Youngblood, 488 U.S. 51, 58 (1988); Moses, 702 S.E.2d at 403.

Youngblood is factually on point with this matter. In Youngblood, clothes from the child-victim in a sexual assault case were not properly refrigerated. Id. at 53. Experts for Arizona and the defendant confirmed that semen on the clothes could have been tested if

refrigerated properly. Id. at 54. In that case, unlike the present case, identity was an issue. The Arizona Court of Appeals reversed, finding, "when identity is an issue at trial and the police permit the destruction of evidence that could eliminate the defendant as the perpetrator, such loss is material to the defense and is a denial of due process." Id. (citation and internal quotation marks omitted). Note the Arizona Court of Appeals holding closely tracks McBride's argument. Further note, as explained below, the Arizona Court of Appeals decision was reversed.

Youngblood held as follows:

> We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interest of justice most clearly requires it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant. We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of the law.

Id. at 58.

In the instant case, no evidence suggests law enforcement acted in bad faith. Additionally, it is speculative at best that the shirt contained exculpatory evidence. See United States v. Agurs, 427 U.S. 97, 109-10 (1976) ("The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense."). Accordingly, the issue lacks merit.

Additionally, McBride sought a spoliation instruction. Such an instruction is tantamount to a prohibited charge on the facts. S.C. Const. Art. V, §21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."). In that vein, the trial court properly refused to charge the jury on "adverse inference." South Carolina case law indicates that in

criminal cases, jury charges of this nature, on behalf of the State or the defense, are "not warranted except in the most unusual of circumstances." State v. Batson, 261 S.C. 128, 138, 198 S.E.2d 517, 522 (1973) ("[W]e entertain grave doubt as to the propriety, in a criminal case, of the rule of an adverse inference from the failure to produce a material witness."); see also State v. Simmons, 267 S.C. 479, 482, 229 S.E.2d 597, 598 (1976) ("Even greater caution should be exercised by the courts in permitting an adverse inference comment in criminal proceedings than in civil proceedings.") (citations omitted); see also State v. Breeze, 379 S.C. 538, 547, 665 S.E.2d 247, 252 (Ct. App. 2008) (citing Simmons favorably but declining to decide whether a spoliation charge was warranted; instead this Court found no prejudice from any error in declining spoliation charge). Accordingly, the trial court did not err in declining to instruct the jury as McBride requested.

II.

Since no discovery violation occurred, the subject photographs were available for inspection, and there was no prejudice from the imagined violation, the trial court did not err in allowing the photographs to be admitted into evidence and in declining to grant a mistrial.

McBride complains the prosecution violated Rule 5, SCRCrimP, by not making a better copy of the photographs depicting Victim wearing the shirt bearing the deodorant stain. McBride also makes a vague due process claim. The prosecution complied with Rule 5, McBride was not denied due process, and further, McBride was not prejudiced by the perceived violation.

First, though, this Court should not review the issue because although vaguely referenced in the petition for rehearing, it was not actually raised as an issue to the Court of Appeals that the Court of Appeals overlooked or misapprehended. Kleckley v. Northwestern National Casualty Company, 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000) (quoting Rule 226(d)(2), SCACR as follows: "Only those questions raised in the Court of Appeals *and* in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." (emphasis in the opinion)).

Even if reviewable, by this Court, the trial court correctly found no violation occurred. Prior to the photographs' admission and out of the presence of the jury, McBride objected to the photographs. McBride remonstrated: "we were provided with a document that was black – blank. Well it wasn't blank, excuse me. It was black. It was a no color photo. The one that they're looking to place into evidence is a colored photo." ROA. p. 141, lines 9-13. McBride's counsel confirmed his law firm received discovery: "The law firm was able to acquire documents

in regards to the case itself, which included these dark photographic images which you cannot make out." ROA. p. 141, lines 22-25.

McBride's counsel provided further explanation making clear he was aware of the existence of photographs he needed to inspect: "We have never been provided the colored photos in this particular case that we can actually view. We knew there was an image there. We didn't know what it was." ROA. p. 142, lines 16-19. Despite the fact counsel knew there were photographic images that were apparently difficult to make out, counsel never attempted to contact the prosecution or law enforcement to seek information about the photographs or arrange an opportunity to view the photographs.

McBride's counsel was candid that he did not believe the perceived violation was intentional on the prosecution's part. McBride's counsel refreshingly noted the prosecutor's "high professional standards." ROA. p. 143, lines 1-13. McBride's counsel did not complain he needed further preparation due to his belated viewing of the photographs. Instead he complained the photographs might have helped him work out a plea deal with the prosecution. ROA. p. 143, lines 13-23.

The prosecutor noted in both a discovery response to McBride's first attorney, and then to the present counsel, there was reference both to a disk and pictures available for inspection and duplication. ROA. p. 145. Further, the incident report provided to counsel also indicated a white stain on Victim's shirt. ROA. p. 146, lines 8-13. As the prosecutor noted: "It's not as if they had no idea that there were photographs in the case, then all of a sudden in the morning of trial, I spring photographs on them. Judge, we gave them notice two years ago that there were photographs in this case." ROA. p. 152, lines 19-24.

Rule 5 was complied with. Under Rule 5(a)(1)(C):

> (C) Documents and Tangible Objects. Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

In the instant case, it is apparent that McBride's counsel was made aware there were photographs available for inspection. It is further clear McBride was aware he was in possession of less than perfect copies of photographs and yet made no attempt to attain better copies or see the originals. Accordingly, the trial court correctly found the State complied with Rule 5. State v. Newell, 303 S.C. 471, 401 S.E.2d 420 (Ct. App. 1991) (where solicitor had open file policy, the defense attorney was allowed to inspect the file, and the defense attorney admitted that he probably inspected the file, the solicitor substantially complied with Rule 5).

Further, the trial court has discretion to determine what remedy, if any, is necessary to protect the defendant's rights. Rule 5(d)(2), SCRCrimP, states that if a party fails to comply with Rule 5, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing the undisclosed evidence, or it may enter such other order as it deems just under the circumstances. Rule 5(d)(2), SCRCrimP; State v. Trotter, 322 S.C. 537, 473 S.E.2d 452 (1996).

The remedy, or determination that no remedy is required, will not be reversed absent an abuse of discretion. See Newell, 303 S.C. at 476, 401 S.E.2d at 423 (citing 2 C. WRIGHT, FEDERAL PRACTICE AND PROCEDURE: CRIMINAL § 261 at 16 (2d ed. 1982) (adverse orders regarding discovery may be reviewed on appeal but they must be affirmed unless the trial

court abused its discretion)).

In the instant case, McBride was unable to demonstrate actual prejudice from the purported violation. "A violation of Rule 5 is not reversible unless prejudice is shown." State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006). McBride did not seek a continuance, did not state the need for further investigation or preparation, and failed to note the need for any additional witnesses. Indeed, McBride failed to indicate how the time he already had prior to the photograph being admitted was not sufficient to view the photographs. It was just two photographs, all counsel had to do was look at them. See State v. Lunsford, 318 S.C. 241, 456 S.E.2d 918 (Ct. App. 1995) (finding no reversible error where defense counsel did not seek additional time to study materials and prepare for further cross-examination); State v. Davis, 309 S.C. 56, 419 S.E.2d 820 (Ct. App. 1992) (finding no abuse of discretion in trial court's denial of motion to suppress following late disclosure where defendant was permitted to view and copy the State's file and defendant never requested a recess in order to review the file); State v. Patterson, 290 S.C. 523, 351 S.E.2d 853 (1986) (subsequent history omitted) (finding the state's failure to produce discovery material consisting of a taped interview with the prosecution witness until the morning jury selection began did not warrant a dismissal or a mistrial where the trial court allowed defense counsel to listen to the tape before the witness took the witness stand and the trial court delayed cross-examination until the next day); Gorham v. Wainwright, 588 F.2d 178 (5th Cir.1979) (denying the defendant's mistrial motion and holding the defendant was not prejudiced by the prosecution's failure to turn over certain reports prior to trial because, although defense counsel requested and received a ten minute recess to review the new evidence, he did not request a continuance); 2 WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL

PROCEDURE § 19.5, at 545-46 (1984) (a defendant's failure to request a continuance when a disclosure of exculpatory evidence is first made at trial "is often viewed as automatically negating any claim of actual prejudice.").

As to McBride's ambiguous Brady or due process argument, it simply lacks substance. The evidence is not exculpatory. See State v. Anderson, 407 S.C. 278, 287, 754 S.E.2d 905, 909 (Ct. App. 2014) ("Favorable evidence is either favorable exculpatory evidence or favorable impeachment evidence."); State v. Carlson, 363 S.C. 586, 609, 611 S.E.2d 283, 295 (Ct. App. 2005) ("Exculpatory evidence is that which creates a reasonable doubt about the defendant's guilt.") (citation omitted). The "violation" did not leave McBride with inadequate time to prepare. State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998) ("In a Brady analysis, information is not deemed 'material' if the defense discovers the information in time to adequately use it at trial.").

In the instant case, there was no Rule 5 violation, the trial court did not err in denying the motion for mistrial, and there is no prejudice accruing from the perceived Rule 5 violation. Further, no due process violation occurred. Rule 5 was available as a matter of procedural due process, and a remedy short of dismissal or suppression of the photographs might have been available if McBride sought anything other than a windfall.

III.

Petitioner was not prejudiced by the no-corroboration instruction. Any error was harmless due to the corroborating evidence and admissions by Petitioner to a relative.

The trial court, pursuant to this Court's decision in State v. Rayfield, 369 S.C. 106, 117-18, 631 S.E.2d 244, 250 (2006), instructed the jury that a rape victim's testimony need not be corroborated.[2] While McBride's petition for rehearing was pending, this instruction was found improper by this Court in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). McBride never petitioned for rehearing on this issue, even after the Court of Appeals issued a substituted opinion finding the instruction was harmless based on the new authority of Stukes.

Accordingly, this Court should not review the issue since McBride failed to petition for rehearing on the issue as required by our appellate court rules. Kleckley v. Northwestern National Casualty Company, 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000) (quoting Rule 226(d)(2), SCACR as follows: "Only those questions raised in the Court of Appeals *and* in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." (emphasis in the opinion)).

Further, the error in this case is harmless. The facts of this case stand in stark contrast to the prosecution in Stukes. In Stukes, the trial court instructed the jury on the no-corroboration requirement. While deliberating, the jury sent the trial court a note, asking: "[T]he South Carolina law that the victim's testimony in CSC . . . does not need to be corroborated, . . . does that law imply that the victim's testimony must be accepted as being true?" Rather than respond

[2] S.C. Code Ann. § 16-3-657 provides: "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." McBride was charged under S.C. Code Ann. §§ 16-3-655 and 656.

directly to the jury's question, the trial court recharged the general law on credibility. The jury immediately returned a guilty verdict. Stukes, 787 S.E.2d at 482. This Court observed "it is inescapable that this charge confused the jury" as "illustrated by the jury's query as to whether our law implies a victim's testimony must be accepted as being true." Id. at 483.

Turning to the trial court's reaction to the jury note, this Court lamented, "In our view the trial court's decision to merely recharge credibility, as opposed to answer the question in the negative, did nothing to inform the jury on this issue." Id. Reviewing for harmless error, this Court found the instruction was prejudicial because the case hinged on credibility: the victim claimed to be raped, the defendant claimed it was consensual. Id.

In contrast to Stukes, in which the defendant testified and claimed a consensual sexual encounter, the instant case did not involve a consent defense and Victim's testimony was corroborated. The Court of Appeals found:

> Here, although we find the jury charge was error, we find it was harmless beyond a reasonable doubt. Unlike the situation in Stukes, there was corroborating evidence in this case. The victim's mother testified she smelled men's cologne and saw the stain on victim's shirt. The mother's sister testified she confronted McBride and he said he did not mean to do it, and "tr[ied] to compromise with [her]." The sister described it as McBride's confession. Thus, although the jury erroneously charged section 16-3-657, we find the error was harmless beyond a reasonable doubt.

State v. McBride, 416 S.C. 379, 394, 786 S.E.2d 435, ___ (Ct. App. 2016).

Contrary to McBride's claims, this is not a so called she said/he said case. Instead, this is a she said, he apologized case. When confronted by his aunt, McBride claimed he did not intend to do it and shut himself away from the understandably mad relative. When interviewed by law enforcement, McBride gave a nonsensical explanation that victim walked in on him while he was

going to the bathroom and was compelled to explain why she went out the back door instead of the front door (there was a bug). Further, the evidence in this case far exceeded more than bare allegations of an assault. Mother smelled cologne on victim (Mother testified Victim reeked of men's cologne), who acted strangely. ROA. p. 240, lines 11-17. Mother also noticed the stain on Victim's shirt, smelled it, and noted it smelled like deodorant. A photograph of the shirt with a stain was introduced into evidence. ROA. pp. 233-34. Later victim cried out in pain when she had a bowel movement, which corroborated her allegation of anal penetration. Accordingly, the corroborations and McBride's admissions render any error harmless, as aptly noted by the Court of Appeals.

Accordingly, certiorari should be denied.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari should be denied. Should this Court see fit to grant the writ, Respondent respectfully requests this Court to allow Respondent to more fully brief the issues herein.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 11, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
In the Supreme Court

John C. Hayes, II, Circuit Court Judge

Appellate Case No. 2016-001335

THE STATE,

RESPONDENT,

v.

JUSTIN McBRIDE,

PETITIONER.

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that I have served a copy of the Return to Amended Petition for Writ of Certiorari on the Petitioner in the above-referenced case by depositing one copy of the same in the United States mail, postage prepaid, addressed to the Mr. Justin McBride, SCDC No. 357684, Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 11th day of October, 2016.

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