STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions
R. Knox McMahon, Circuit Court Judge

Memorandum Opinion No. 2016-MO-029

The State, Respondent,

v.

Julio Angelo Hunsberger, Petitioner.

Appellate Case No. 2015-000085

PETITION FOR REHEARING

In its October 12, 2016 opinion, a three member majority of this Court summarily reversed the South Carolina Court of Appeals which had affirmed the trial judge's decision to deny the motion to dismiss for violation of the right to a speedy trial. Absent revision or a remand, the Court's opinion has the effect of granting the defense motion to dismiss and bars retrial in two murder cases.[1] However, the majority's opinion fails to consider the individual facts of this case pursuant to mandate in *Barker v. Wingo*, 407 U.S. 514 (1972), thus is legally insufficient as a matter of law to support relief under the Sixth Amendment. Therefore, pursuant to Rule 221(a), SCACR, Respondent, State of South Carolina, seeks rehearing and revision of the erroneous opinion.

[1] The majority also granted relief to Alexander L. Hunsberger. *State v. Hunsberger*, Opinion No. 27671 (S.C.Sup.Ct.filed Oct.12, 2016).

Summary of Argument

The majority committed legal error in summarily reversing the instant case based on factual findings and conclusions made in a separate case, *State v. Alexander L. Hunsberger.*[2] Supreme Court precedent is clear that courts reviewing speedy trial claims must engage in fact specific, case specific analysis. *Barker v. Wingo*, 407 U.S. at 522 ("any inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case"). The majority opinion fails to abide by this directive. Thus, the opinion is insufficient as a matter of law to support reversal. Further, the discrete factual findings made in connection with Petitioner Alexander L. Hunsberger's case are not applicable here as each case is separate and presents differing procedure history and factual basis for the claim. In particular, the summary opinion wholly fails to analyze Petitioner's actions and/or inaction. This is especially critical as Petitioner never made a demand prior to requesting dismissal at the beginning of his trial in January of 2012. Moreover, the evidence in Petitioner's case indicates that the lack of demand was strategic. Respondent requests the Court reconsider the facts of this case and issue a ruling on those facts consistent with the mandated *Barker* "case-by-case" review.

(1) The Majority Failed to Acknowledge the Factual Differences Between the Two Cases Which Affect Speedy Trial Analysis.

Like Alexander L. Hunsberger, Petitioner was arrested on January 25, 2002, for his part in the murder of Samuel Sturrup. (R. p. 34, line 23– p. 35, line 6). The procedural history differs from this point forward in critical ways. Petitioner complained about appointed counsel but did not seek bond or a speedy trial. (See R. pp. 38; pp. 564-567; p. 572). On February 16, 2005, apparently in connection with the relief granted on his brother's demand, Petitioner was released to Georgia to stand trial for the kidnapping. (R. p. 37, lines 2-3). On September 12, 2006,

[2] Petitioner is a brother and co-defendant to Alexander L. Hunsberger.

Petitioner was convicted after a jury trial in Georgia and sentenced to life imprisonment. He thereafter began service of that sentence in Georgia. (R. p. 38, line 12 – p. 39, line 1).

Co-defendant Steven Barnes was tried and convicted in capital proceedings in November 2010. Judge McMahon presided. (R. p. 27, lines 2-13). The solicitor determined that the capital proceedings should proceed first; however, there were marked delays in capital proceedings which were eventually resolved when Judge McMahon was assigned. (R. p. 28, lines 5-11). The prosecution noted they were "waiting certainly to prosecute that case prior to dealing with any of the co-defendants' case[s]." (R. p. 28, lines 11-13). The State offered Petitioner the opportunity to be a witness against Mr. Barnes. (R. p. 25, lines 6-16). (See also R. p. 558). [3]

On or about August 12, 2011, the State requested custody under the Interstate Agreement on Detainers ("IAD"). (R. p. 40, line 11 – p. 41, line 3). Pursuant to the State's request, Petitioner was returned to the State on September 30, 2011. (R. p. 41, lines 17-19). The State stood ready to call the case for the week of October 3, 2011 and/or the week of October 10, 2011. Defense counsel moved for a continuance for each date. The continuances were granted over the State's objection. (R. p. 28, line 25 – p. 29, line 13; p. 41, line 13 – p. 42, line 20). In granting the continuance, Judge Keesley noted that counsel had little time to consult with Petitioner due to Petitioner's incarceration in Georgia. He also noted that there was no motion for a speedy trial, though the Order for continuance was "not intended to prejudice any future right the defendant may have to make such a motion." (R. pp. 560 - 561). The judge found, though, that the request tolled the 180 day time period in which the State was required to try Petitioner pursuant to the terms of the IAD. (R. p. 561).

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[3] Contrary to the inference in the Alexander L. Hunsberger opinion, this is not evidence of an intentional act to delay in Petitioner's case to create disadvantage to the defense, but compliance with a neutral prosecution plan, evidencing even handed treatment extended to witnesses.

On January 9, 2012, the State called the case to trial. In pre-trial motions, Petitioner moved to dismiss the murder charge for failure to bring the charge to trial in a timely fashion. Defense counsel for Petitioner admitted there was a "hurdle" to his motion to dismiss based on a violation of the right to a speedy trial in that Petitioner never demanded a trial. (R. p. 22, line 8 – p. 23, line 4). Defense counsel argued, though, that the passage of time should prompt review. (R. p. 23, lines 5-8). Defense counsel also suggested that, due to the length of time at issue, "the Court could, on its own motion, find that that is a violation of his right to a speedy trial." (R. p. 23, lines 5-8). Counsel further argued that the failure to request a trial should not be weighed heavily against Petitioner when there was fluctuation in representation, and where there was a question of whether Petitioner may decide to be a witness against co-defendant Steven Barnes in the capital case. (R. p. 25, lines 6 – p. 26, line 1). Defense counsel also asserted that prejudice would be shown "by the conflicting evidence that will come from the varying witnesses based on prior testimonies they've given over the last six, seven years and last week." (R. p. 26, lines 6-9). Counsel asserted "that the State's own role in failing to bring him to trial is solely on the State and its not on him" and "the fact that he failed to assert it, I don't think should necessarily defeat our claim" regarding delay. (R. p. 26, lines 12-18). The solicitor asserted in response:

> There's just a lot of circumstances that went into this. There certainly was no intentional delay of this case on the part of the State. ... they were given over to Georgia, a separate sovereign, who initiated a prosecution. They have been serving time over there.

(R. p. 30, line 20 – p. 31, line 1).

The solicitor argued it was the consistent intent of the State to try the capital case against Barnes before turning to the other defendants. (R. p. 27, line 21-p. 28, line 1). The solicitor asserted that the State moved to prosecute the Hunsbergers after the Barnes conviction.

However, the matter was then delayed when Alexander Hunsberger contested extradition and Petitioner moved for a continuance. (R. p. 28, line 17- p. 30, line 10).

The trial judge, considering the facts presented and the argument of counsel, found that neither the failure to assert the right previously nor defense counsel's motion for continuance would be a bar to asserting the motion to dismiss; however, the fact that Petitioner did not request a trial may be a factor to consider. Further, he reasoned the entire period of approximately ten (10) years should not be assessed against the State, as Petitioner was held in Georgia, tried, convicted and sentenced in Georgia, then began service of his sentence in Georgia. This distinguished the matter from one of pre-trial detainment alone. Lastly, the judge found that "the fact that years have passed may be to [Petitioner's] advantage, or at least not to his disadvantage." He noted the witnesses may be impeached with any inconsistent statements, and there was no allegation of a missing or unavailable witness. (R. p. 44, line 11– p. 48, line 13).

In regard to the State's determination to try Barnes first, the trial judge noted that Petitioner's "due process rights are separate and distinct from the State's prosecutorial plan," but "given the fact that he was a sentenced prisoner in Georgia and that he was, for that length of time, that he would not have been released, that it was not unreasonable for the State to take the position that they wanted to try the one defendant that they sought the death penalty on in the case first and disposed of that case first." (R. p. 48, line 24 – p. 49, line 12).

Considering all the facts and upon finding a lack of prejudice, the judge denied the motion. (R. p. 49, lines 13-18).

Counsel renewed his motion to dismiss at the close of the State's case, adding that cross-examination demonstrated the "inconsistencies of the memories of the witnesses" and the

prejudice to Petitioner. (R. p. 455, lines 12-24). The judge again denied the motion referencing his prior ruling. (R. p. 455, line 25 – p. 456, line 1).

On appeal in the South Carolina Court of Appeals, Petitioner complained that the trial judge erred in that the State was at fault in failing to bring the case to trial for nearly ten (10) years. (FBOA, p. 9). The Court of Appeals rejected his argument, concluding:

> ... looking at the *Barker* factors and the case as a whole, we find the trial court did not abuse its discretion in finding Hunsberger's constitutional right to a speedy trial was not violated and denying his motion to dismiss.

(App. p. 8).

Multiple errors in the opinion in Alexander L. Hunsberger's case skewed the majority's view. Some may relate here (though it is far from certain what the majority meant by the summary reversal), and Respondent attempts to address at least some of those errors. For instance, as a first point of error, the majority starts a listing of their "important dates" at arrest. (See Opinion, p. 4). [4] The most important date is the date of the murder. This matter remained unsolved for several months and at the outset shows the complication of multiple witnesses, the development of information and separate jurisdiction charges. (See Opinion, pp. 5-6). Further, the majority simply finds the murder change was not complicated,[5] (See Opinion, p. 8), even

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[4] Reference to "Opinion" designate the Opinion in the Alexander L. Hunsberger case.

[5] This is also contrary to settled opinion across multiple jurisdictions. It cannot be avoided that the facts support capital proceedings – these facts resulted in a death sentence for co-defendant Barnes. Such cases, though based on the charge of murder, are hardly considered "simple." In fact, reams of paper have produced scores of recommended fail safes and funding demands premised upon the complex capital case. *See, e.g.*, Ira P. Robbins, *Toward A More Just and Effective System of Review in State Death Penalty Cases*, 40 Am. U. L. Rev. 1 (1990) ("Many have complained about delay in the review of capital cases. Delay is a pejorative term, however, frequently connoting procrastination or abuse. This is not necessarily the case in capital litigation, for some fair time period is both necessary and desirable to ensure adequate and deliberate review of complex cases."); *White v. Bd. of Cty. Comm'rs of Pinellas Cty.*, 537 So. 2d 1376, 1378 (Fla. 1989) ("We find that all capital cases by their very nature can be considered extraordinary and unusual and arguably justify an award of attorney's fees in excess of the

though proof of the charge would entail multiple witnesses, two crime sites, multiple statements of co-conspirators, and circumstances of aggravation warranting capital proceedings, (See Opinion, p. 2). This is far too narrow a view of the case driven by singular review of the charge without consideration of the multiple co-defendants, development of the case and charges, and potential for capital proceedings. Additional factual findings and conclusions based on those facts mentioned in the Opinion relate to the ruling by Judge Newman in that separate case, not Judge McMahon in this case, and are not applicable.

(2) The Record Supports the Trial Judge Did Not Abuse His Discretion in Denying the Motion to Dismiss.

"A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion." *State v. Langford*, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012). In essence, "the court is bound by the findings of the trial court unless they are unsupported by the evidence, clearly wrong, or controlled by an error of law." *State v. Cooper*, 386 S.C. 210, 216, 687 S.E.2d 62, 66 (Ct. App. 2009). The record here fully and fairly supports Judge McMahon's finding that, in these discrete circumstances, the delay did not offend the right to a speedy trial nor prejudice Petitioner to the extent dismissal was warranted. There was no demand for a speedy trial, and there was no allegation of lost witnesses or other prejudice to Petitioner. The trial judge carefully balanced the competing factors under the appropriate legal framework and denied the defense motion. Thus, the Court of Appeals properly affirmed.

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current statutory maximum fee cap."). *Cf. State-Record Co. v. State*, 332 S.C. 346, 362, 504 S.E.2d 592, 600 (1998) (Toal, J., concurring) ("A standard must be formulated that adequately addresses the pressures and complex constitutional concerns that accompany a high-profile murder case."). Complexity is not limited to financial matters or conspiracies or any certain type of case. The majority's interpretation would essentially read-out this consideration of complexity for any crime of murder – regardless of crime sites or multiple involvement or circumstances of aggravation to consider. This simply cannot be.

"The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense." *Langford,* 400 S.C. at 440, 735 S.E.2d at 481. As the trial judge found, pre-trial detention in South Carolina was limited to the period of January 25, 2002 to February 16, 2005. Petitioner was then released to Georgia and subsequently stood trial, was convicted and sentenced *for the kidnapping of the murder victim.* In light of that incarceration, and the beginning of service of the life sentence in Georgia, it was not unreasonable for the State to pursue a capital case against co-defendant Steven Barnes first before trying Petitioner. [6] The "main goals" of preventing "undue pretrial incarceration," concerning over accusation of crime, and unduly limited the ability to gather evidence by incarceration are not offended in these circumstances. *See United States v. Grimmond*, 137 F.3d 823, 830 (4th Cir. 1998) (when "incarcerated for reasons not related to the pending charges and [defendant] makes no credible showing that either his present or potential sentence will be substantially affected by the delay... there is simply no way the pretrial incarceration can be deemed oppressive.") (internal citation omitted).

The majority in the Alexander L. Hunsberger opinion misconstrues Supreme Court precedent to opine that the fact of incarceration in another jurisdiction did not make minimal the anxiety concerns in this case. (Opinion, p. 6 at n. 4). However, the precedent relied upon, *Smith v. Hooey*, 393 U.S. 374 (1969), is factually distinguishable in two ways both in this case and in the Alexander L. Hunsberger case. First, the defendant in *Hooey* made repeated attempts in

[6] There is no disagreement that Barnes was the most culpable actor. It was Barnes that the State initially sought capital proceedings against. Had the State not obtained a death sentence for Barnes, it would be less likely to seek death for the Hunsbergers. The reason, though clearly the majority disagrees with the decision, was not malicious nor evidenced any intent to harm the Petitioner's defense in any sense. Ultimately, though, the prosecution's decision worked to Petitioner's benefit as the State decided not to seek the death penalty against Petitioner.

order to force a return to the state. *See Smith v. Hooey*, 393 U.S. 374, 375 (1969) (cataloguing multiple demands and attempts to resolve the pending charge over six years). That is not the case here. Further, the charge was unrelated. *Betterman v. Montana*, 136 S. Ct. 1609, 1615 n. 5 (2016) (describing the ruling in Hooey: "There we concluded that a defendant, though already convicted and imprisoned on one charge, nevertheless has a right to be speedily brought to trial on an unrelated charge."). In this case, Petitioner was convicted in Georgia for kidnapping the murder victim— the same series of criminal acts, with the same actors, at the same time – with separate sovereigns allowed to seek separate convictions for those same acts. Whether Petitioner would be convicted of at least some of the crimes against Samuel Sturrup was already settled – he was there, he participated. That was settled. The majority misconstrued the impact of Supreme Court precedent in the Alexander L. Hunsberger case. To the extent it wishes to impose such logic here, it is similarly wrong in these particular circumstances.

Further, the prominence of the repeated attempts in the *Hooey* opinion necessarily limits applicability to this case as it cannot be said that case and the instant case are on the same procedural footing. Further still, *Hooey* did not concern a possible capital case. Additionally, the defendant in *Hooey* did not have the Interstate Detainer Act which could force return to the jurisdiction. Petitioner's decision not to ask for a speedy trial or demand return is understandable where the State was still considering the possibility of capital proceedings. It is, however, inconsistent with pursuing his right to a speedy trial. It is likewise relevant to assessment of personal prejudice. *Barker v. Wingo*, 407 U.S. at 531 ("Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he

experiences. The more serious the deprivation, the more likely a defendant is to complain."). Again, to the extent the logic in the Opinion is meant to be applied here, the majority erred in relying on *Hooey* to conclude the contrary.

Even so, the right to allege a speedy trial is still preserved, and any alleged violation is resolved by balancing a number of factors. The trial judge properly considered various factors as announced in the *Barker* case. However, different from the factual scenario in the Alexander L. Hunsberger case, defense counsel in Petitioner's case moved for a continuance in October 2011. Though not a bar to making his claim, the fact of this delay is directly attributable to Petitioner and should be weighed against Petitioner in a speedy trial analysis. *Vermont v. Brillon,* 556 U.S. 81 (2009) ("Delays occasioned by the defendant ... weigh against him."). The trial judge properly treated this fact as such within the balancing of competing interests and weight. (See R. p. 47, lines 1-13). Further, there is a significant matter of the strategy apparent on the instant record, which counsel admitted, and that is not shared with the facts in the Alexander L. Hunsberger case.

Essentially, counsel for Petitioner expressed that he specifically did not request a trial because he did not want a trial. He hoped that the State may not prosecute Petitioner at all depending on how the prosecution of co-defendant Barnes would resolve. (R. p. 25, line 12 – p. 26, line 1). In fact, Petitioner failed to ever demand a speedy trial. Further, and unlike his co-defendant Steven Barnes, he did not seek return and prosecution under the IAD. Though Petitioner cites the Order Upon Motion for Continuance as noting the motion for continuance should not apply to the matter of a speedy trial, (see FBOA, p. 12; BOP, p. 13), the Order also specifically includes a finding that the IAD compact terms were tolled *due directly to Petitioner's request for continuance.* (R. p. 561). Thus, in assessing the delay, the fact that

Petitioner failed to assert his right to a speedy trial is significant, especially where he never attempted to force a trial by any means, and actually waived his right to force trial within 180 days under the interstate compact. *See Weems v. State*, 714 S.E.2d 119, 124 (Ga.App. 2011) (considering defendant's failure to file "a statutory demand for speedy trial" and that he only asserted "his constitutional right to a speedy trial until 38 months after his arrest, waiting to do so on the day of his trial's calendar call" weighed against him). Moreover, the facts here closely track the facts of the *Barker* case where the United States Supreme Court found the defendant "was not deprived of his due process right to a speedy trial." *Barker v. Wingo*, 407 U.S. at 536.

In *Barker,* the defendant failed to object to a series of continuances in a probable gamble that a co-defendant would be acquitted in a separate trial that was likewise delayed. The Supreme Court explained the basis for this thought:

> ... an elderly couple was beaten to death by intruders wielding an iron tire tool. Two suspects, Silas Manning and Willie Barker, the petitioner, were arrested shortly thereafter. The grand jury indicted them on September 15. Counsel was appointed on September 17, and Barker's trial was set for October 21. The Commonwealth had a stronger case against Manning, and it believed that Barker could not be convicted unless Manning testified against him. Manning was naturally unwilling to incriminate himself. Accordingly, on October 23, the day Silas Manning was brought to trial, the Commonwealth sought and obtained the first of what was to be a series of 16 continuances of Barker's trial. Barker made no objection. By first convicting Manning, the Commonwealth would remove possible problems of self-incrimination and would be able to assure his testimony against Barker.

Id, 407 U.S. at 516. The Supreme Court found that "barring extraordinary circumstances, we would be reluctant indeed to rule that a defendant was denied this constitutional right on a record that strongly indicates, as does this one, that the defendant did not want a speedy trial." *Id* at 536. The situation is much the same here.

The State indicated a desire to try Barnes first, and that capital prosecution was delayed for various reasons. During that time, Petitioner apparently considered whether he, like other co-

defendants, would testify against Barnes. (See R. p. 25, lines 12-16; R. p. 558). Counsel, admittedly, did not move for a trial as he might have "gotten what he asked for," and he did not want to secure a trial. (R. p. 25, lines 17-25). Like *Barker*, the record supports Petitioner did not want a trial. And, also like *Barker*, a reviewing court should be "reluctant indeed to rule" there is a violation of his constitutional right. *Id.* *See also State v. Foster*, 260 S.C. 511, 197 S.E.2d 280 (1973) (finding no violation where during five of the seven year delay at issue, neither the State nor defendants "pursued the matter" and a "failure to assert the right will make it difficult for the defendants to prove that they were denied a speedy trial"). *See also United States v. Wanigasinghe*, 545 F.3d 595, 599 (7th Cir. 2008) (in review of eleven year delay after indictment but before arrest: "Wanigasinghe did not request a speedy trial during the time he was out of the country ... His failure to request a speedy trial is also a factor which weighs against him."). At bottom, this must weigh heavily against Petitioner. *Barker v. Wingo*, 407 U.S. at 536 ("barring extraordinary circumstances, we would be reluctant indeed to rule that a defendant was denied this constitutional right on a record that strongly indicates, as does this one, that the defendant did not want a speedy trial.").

As to possible prejudice, the trial judge correctly noted that Petitioner would have the opportunity to test and challenge memories in his cross-examination. (R. p. 47, lines 14-19). The record well demonstrates that, in fact, Petitioner did have ample opportunity for full and effective cross-examination, including making use of prior sworn testimony – testimony that was available as a result of multiple actions both in South Carolina and Georgia. (See, for example, R. p. 260, line 8 – p. 264, line 15; p. 276, lines 2-25; p. 327, lines 20-25; p. 356, line 22 – p. 358,

line 17; p. 362, line 10; p. 442, line 14 – p. 445, line 1). The multiple trials in essence preserved testimony for this Petitioner's use to his benefit.[7]

Further, the trial judge correctly found that Petitioner does not contend any exculpatory witness or testimony is not unavailable. "Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect ... (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Barker v. Wingo*, 407 U.S. at 532. "[T]he most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id.* The complete failure here to show any impairment in the defense could not support a finding of actual trial or defense prejudice. *Id. Compare State v. Buckner*, 738 S.E.2d 65 (Ga. 2013) (affirming finding of prejudice and dismissal where defendant '"was in the unique position of not just speculating, but knowing there was tampering with the evidence at the ... crime scene, but being prevented from identifying and showing what aspects of the scene and what specific pieces of evidence, have been altered or manipulated'" due to dimming memories and lack of recorded statements). Respondent notes that, quite contrary to showing any exculpatory evidence was previously available, the record supports that Petitioner has twice been convicted (once in Georgia in 2006, and once here in 2012) on evidence of participation in the events that led to Samuel Sturrup's murder. At any rate, Petitioner did not allege there was any lost evidence or testimony.

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[7] In fact, defense counsel noted not only having the transcripts, but also that he had observed some of the prior proceeding (it would appear he was referencing the trial against Alexander L. Hunsberger, but the record is not clear). (See R. p. 536, lines 8-17). At any rate counsel was familiar with the development of the case against Petitioner and the multiple co-defendants. (Id. See also R. p. 25, lines 12-16).

Lastly, the passage of time alone evidences one further benefit to Petitioner. The State ultimately decided only to seek the death penalty for Barnes. As such, the length of the delay in this aspect certainly holds no prejudice to Petitioner. *See Cooper*, 386 S.C. at 218, 687 S.E.2d at 67 ("Judge Pieper noted the State withdrew its notice to seek the death penalty; thus, the withdrawal could be construed as a benefit to Cooper"). Again, Petitioner is not entitled to any relief.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits the majority opinion's is insufficient as a matter of law as the opinion does not account for the specific facts of this case as required in a proper review under *Barker v. Wingo*. Moreover, Respondent maintains that the Court of Appeals properly affirmed on the facts of this record. The record well supports Judge McMahon's factual findings which he correctly analyzed in the appropriate legal framework. Therefore, his ruling was properly upheld on appeal. *Cooper*, 386 S.C. at 218, 687 S.E.2d at 67 (affirming denial of motion to dismiss where appellate court found trial judge's "decision was supported by the evidence"). This Court should grant rehearing, and modify the decision to affirm the Court of Appeals' well-reasoned decision or dismiss as improvidently granted.

Respectfully submitted,

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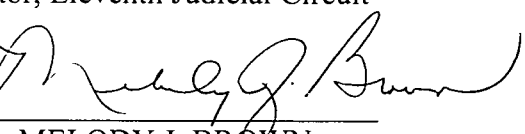
BY: 

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STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the Petition for Rehearing on Petitioner by depositing a copy of same in the United States mail, postage prepaid, addressed to his attorney of record:

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This 10th day of November, 2016.

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