

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Appeal from Laurens County
The Honorable W. Jeffrey Young, Circuit Court Judge
Appellate Case No. 2015-000718

JAN 13 2017

S.C. SUPREME COURT

THE STATE,

Respondent,

v.

MICHAEL VERNON BEATY, JR.,

Appellant.

Opinion No. 27693 (Filed December 29, 2016)

PETITION FOR REHEARING

On December 29, 2016, this Court issued an opinion affirming Appellant Michael Beaty's conviction for the murder of his girlfriend, Emily Anna Asbill. *State v. Beaty*, Opinion No. 27693 (filed December 29, 2016). Within its opinion, this Court affirmed Appellant's conviction, but cautioned trial judges to avoid terms such as "search for the truth" in the future and adopted a rule requiring the party with the right to open and close to open in full on the law and the facts and limit its reply to only those matters addressing the other party's argument. Respondent (the State) respectfully petitions the Court for rehearing pursuant to Rule 221(a), SCACR. The State hereby seeks rehearing on the grounds the Court may have misapprehended, overlooked, or failed to address several crucial points raised by the parties that bear directly upon this Court's conclusion to adopt the new "rule governing the contents of closing arguments."

Specifically, the State submits this Court failed to address the Constitutional mandate of Article V, Section 4A of the South Carolina Constitution requiring procedural court rules promulgated by the Supreme Court be submitted to the Judiciary Committee of each house of the General Assembly. The State respectfully requests this Court to revisit its conclusion on this procedural change and instead propose this rule to the General Assembly to accept or reject, which, as noted in the Court's Footnote 4, "is its prerogative under the Constitution." Furthermore, the State disagrees with the Court's conclusion the trial judge's opening remarks to the jury was error. For these reasons, the State respectfully asks this Court to grant this petition for rehearing on these limited issues, affirm Appellant's conviction, but re-examine its conclusion on the rule governing the content of closing arguments and the opening remarks to the jury.

ARGUMENT

I. The Court overlooked or misapprehended its power under Article V, Section 4.A, of the Constitution of South Carolina to make and amend rules governing practice and procedure in the courts of South Carolina.

Prior to 1973, the Constitution of South Carolina provided as follows in regard to the power or jurisdiction of the Supreme Court.

The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus and other original and remedial writs. And said Court shall have appellate jurisdiction only in cases of chancery, and in such appeals they shall review the findings of fact as well as the law, except in chancery cases where the facts are settled by a jury and the verdict not set aside, and shall constitute a Court for the correction of errors at law under such regulations as the General Assembly may be law prescribe.

Article V, Section 4, S.C. Const (1962). The Constitution did not provide for, or address in any manner, the power of the Supreme Court to make or amend rules of practice and procedure in the courts.

On July 14, 1972, the South Carolina General Assembly ratified a Joint Resolution to, *inter alia*, amend Article V, Section 4 of the Constitution to provide for the power of the Court to amend and make rules governing practice and procedure in the courts of this state. 1972 S.C. Act No. 1629. As a result of this Joint Resolution, the question of the proposed amendment was placed on the ballot for the general election of 1972. A favorable vote having been received at that election, the amendment was ratified by the General Assembly on April 4, 1973 and became effective that date. As so amended, the Constitution provided for the power of the Supreme Court to make and amend rules of practice and procedure as follows:

The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. He shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State. The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system. *Provided*, each county shall be entitled to four weeks of court each and such terms therefor shall be provided for by the General Assembly. *Provided, further*, that he shall set a term of at least one week in any court in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State. **Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts.** The Supreme Court shall have jurisdiction over the admission to the practice of law and discipline of persons admitted.

(Emphasis added.) Article V, Section 4, S.C. Const. (1973). As a result of this amendment, the Supreme Court was given the constitutional power to make and amend rules of court procedure subject only to any limitations or restrictions imposed by statute.

On June 28, 1984, the South Carolina General Assembly enacted a Joint Resolution to amend Article V of the Constitution by adding Section 4A so as to provide that all rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court must be submitted by the Supreme Court to the General Assembly. 1984 S.C. Act No. 517; <http://www.scstatehouse.gov/billsearch.php?billnumbers=1047&session=105&summary=B> (last viewed on January 4, 2017). As a result of this Joint Resolution, the question of the proposed amendment was placed on the ballot for the general election of 1984. A favorable vote having been received at that election, the amendment was ratified by the General Assembly on February 26, 1985 and became effective that date. 1985 S.C. Act No. 8; <http://www.scstatehouse.gov/billsearch.php?billnumbers=2073&session=106&summary=B> (last viewed on January 4, 2017). As so amended, Section 4.A of Article V – entitled “Submission of Supreme Court rules to judiciary committees; disapproval by General Assembly” – currently reads as follows:

All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court must be submitted by the Supreme Court to the Judiciary Committee of each House of the General Assembly during a regular session, but not later than the first day of February during each session. Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly, with the concurrence of three-fifths of the members of each House present and voting.

(Emphasis added.)

The constitutional submission requirement as written applies to any rule or amendment to any rule governing practice or procedure that is promulgated by the Court. Promulgate means “1. To declare or announce publicly; to proclaim. 2. To put (a law or decree) into force or effect.” Brian A. Garner, *Black’s Law Dictionary*, 7th ed. (1999) at 1231. See also *Neil v. Cheves*, 1 Bail.

537, 17 S.C.L. 537, 538 (Ct. App. L. & Eq. 1830) (Court referred to one of its opinions as having been “promulgated during the present term”). The definition of “promulgate” establishes that an act of promulgation, for purposes of this constitutional provision, is not limited to the pronouncement of a law by legislative means, *i.e.*, either enactment of statute, constitutional provision, or submission to the General Assembly. This conclusion is supported by prior opinions of this Court in which it has recognized that the announcement of new law by a court in a court decision constitutes an act of promulgation. See, *e.g.*, *State v. Perry*, 278 S.C. 490, 493, 299 S.E.2d 324, 326 (1983) (recognition of promulgation of rule by court decision by other court and recognition that Court should not promulgate rule with which it is not in accord); *State v. Jordan*, 258 S.C. 340, 344, 188 S.E. 780, 783 (1972) (Supreme Court of the United States in *Miranda v. Arizona*, 384 U.S. 436 (1966), promulgate principles governing custodial interrogation). The language of this constitutional provision is plain and unambiguous, and this Court is bound by its long established rules of interpretation – which are the same for both constitutions and statutes – to apply those terms according to their literal meaning **without resort to subtle or forced construction to limit or expand its operation.**¹ See *State v. Gordon*,

¹ As this Court has repeatedly noted, the General Assembly is presumed to know the law – both its own prior enactments and the common law – when acting. See, *e.g.*, *Grier v. AMISUB of South Carolina, Inc.*, 397 S.C. 725 S.E.2d 693 (2012) (appellate court presumes legislature is aware of the common law); *Graham v. State*, 109 S.C. 301, 96 S.E. 138 (1918) (rules of statutory construction require appellate court to presume legislature knew the law). Thus, it can only be presumed that the General Assembly was aware at the time it enacted its joint resolution in 1984 that the rules of practice and procedure for the courts of this state were established by both codified rule and common law – both of which, at the time, were the product of this Court with no input or review by the legislative branch. Understanding this, and looking to the plain and ordinary meaning of the words used in both the resolution and the constitutional provision itself, it can only be reasonably concluded that the provisions of Section 4.A of Article V were intended to apply to **any** action of this Court to amend **any** existing rule of practice or procedure, whether set out in a codified rule or in the common law. To conclude otherwise, which requires a disregard for both the language used, would mean that the Court is free to avoid the submission requirement by choosing to amend the rule in an opinion. This is a result so plainly absurd that it

414 S.C. 94, 98, 777 S.E.2d 376, 378 (2015) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.”... “When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” ...In interpreting a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.”); *Holley v. Mount Vernon Mills, Inc.*, 312 S.C. 320, 323, 440 S.E.2d 373, 374 (1994); *Homestead Bldg. & Loan Ass'n v. Enslow*, 7 S.C. 1, 6 (1876) (“The rules of interpretation, both of constitutions and statutes, are the same.”).

The effect of the 1985 amendment was to clearly remove the power of this Court to make or amend **any** rule – codified or common law – related to practice or procedure in the courts of this state without first submitting any amendments or proposed rules to the General Assembly. *See Stokes v. Denmark Emergency Medical Services*, 315 S.C. 263, 266-267, 433 S.E.2d 850, 851-852 (1993) (interpreted Section 4.A of Article V as setting forth procedure for Court to follow when it promulgates rules and amendments, but not restricting promulgation only to Court, and upheld S.C. Code Section 15-33-125, which amended Rule 59, SCRCP, as constitutional). This Court misapprehended, ignored or misapplied this constitutional provision in reaching its decision.

II. The Court overlooked or misapprehended its power under Article V, Section 4.A, of the South Carolina Constitution in amending the current closing argument procedural rule through its opinion in this case rather than by submitting a proposed amendment to the South Carolina Legislature.

could not have been intended by the General Assembly and would defeat the plain legislative intention behind the constitutional amendment.

In its opinion, this Court unequivocally changes the existing common law rule of practice and procedure governing closing arguments in criminal cases. In fact, it clearly states that it is doing such.

With the adoption of this rule governing the contents of closing arguments, we restore what had been, largely by court rule, the practice in this state for many years until 1971.

(Emphasis added.) *Beaty* at p. 5. Because, as discussed in Section I above, the Court does not have the authority to amend rules of practice or procedure in the courts of this state without submitting such amendments to the General Assembly, it should withdraw this portion of the opinion and submit any proposed amendment to the rule to the General Assembly.

In its opinion, the majority acknowledges in Footnote 4 that it did, earlier in 2016, submit a change to the common rule governing closing arguments to the General Assembly – one that would have required the State to open and close in every case – but that the General Assembly rejected it. Then, in response to Justice Few’s position in his dissent that the Court did not have the authority to amend the common rule governing closing arguments without submitting such to the General Assembly, the majority says that because the change to the pre-1971 version of the common law of the rule was distinct from Proposed Rule 21, it was acting within its authority. This Court cited to two cases for the proposition that it has the authority to alter common law rules of procedure.

Moreover, in restoring the requirement that the party with the first argument open in full and raise no new matters in reply we exercise our **authority** and our **duty** to alter, and in this case restore, the common law rule. *E.g.*, *Marcum v. Bowden*, 372 S.C. 452, 643 S.E.2d 85 (2007); *State v. Huckie*, *supra*.

(Emphasis in original.) *Beaty* at p. 4, n. 4.

This Court misapprehended and misapplied these cases as they do not provide any support for the Court's proposition or action. *Marcum v. Bowden*, *supra*, did not involve a common law procedural rule, but rather a matter of substantive law – whether the law should change so as to provide for tort liability for adult social hosts who knowingly and intentionally serve alcoholic beverages to an underage person injured as a proximate result of the host's service of alcohol. *State v. Huckie*, 22 S.C. 298 (1885), did involve the amendment of a common law rule of procedure, but one that occurred a century before the Constitution of South Carolina was amended to remove the power of this Court to enact or change rules of practice and procedure on its own. As this Court recognized in *Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993), “[t]he common law remains in full force and effect in South Carolina *unless* changed by clear and unambiguous legislative enactment.” (Emphasis added.) Because the Constitution was amended in 1985 to provide that any new rule or amendment to an existing rule of practice or procedure must be submitted to the General Assembly, the Court's 1885 opinion in *Huckie* does not support this Court's proposition that it has the authority to change common law rules of practice or procedure without submitting such changes to the General Assembly, and it was error for this Court to rely upon it.

Moreover, there is nothing in the Constitutional provision that exempts from the submission requirement changes to rules of practice or procedure that return practice or procedure to prior versions of the rules. Any decision by the Court to read such an exemption into the Constitution can only result from a forced and unnatural construction of the provision, which is clearly prohibited by this Court's prior decisions. *See, e.g., State v. Gordon, supra; CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) (In ascertaining the intent of the legislature, “[the Supreme Court] must give the words found in the statute their

“plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.”); *see also* Section I, *supra*.

With its holding in *State v. Beaty* (Op. No. 27693), this Court oversteps its judicial authority to enact a rule change without the approval of the South Carolina General Assembly, as mandated by the South Carolina Constitution.

III. Although the Court was without authority to amend the closing argument procedural rule, the Court's holding now requires that if requested by the solicitor, the defense must open in full on the law and facts and limit its close in reply to matters addressed by the State's middle argument.

The court distinguishes its holding in *State v. Beaty* from proposed Rule 21 by pointing out that while Rule 21 would govern the content of closing argument order in every case, the *Beaty* holding instead preserves the common law privilege to the defense to open and close if the defense offers no evidence. The Court's holding in *Beaty* departs from Proposed Rule 21 in another significant manner – requiring the defense to adhere to the same rule.

In Proposed Rule 21, the proposed language provided, “Closing arguments in all non-capital cases shall proceed in the following order: (a) the **prosecution** shall open the argument in full; (b) the **defense** shall be permitted to reply; and (c) the **prosecution** shall then be permitted to reply in rebuttal.” *Re: Amendments to the S.C. Rules of Criminal Procedure, 2014-002673* (S.C. Sup. Ct. Order dated Jan. 28, 2016). As an initial matter, Respondent is concerned the rule the Court seeks to adopt in *Beaty* is not the same proposed rule submitted to the General Assembly. Indeed, the Court's unilateral action to reject its earlier submission is confusing. The opinion is unclear why the Court does not adopt the same proposed change to the status quo it

submitted to the General Assembly, which chose to reject it.² The Court suggests the rule change is merely a restoration of older common law, but the Court cannot deny the holding in *Beaty* is also a departure from the more current common law of *State v. Lee*, 255 S.C. 309, 178 S.E.2d 652 (1971) and *State v. Rogers*, 269 S.C. 22, 25, 235 S.E. 2d 808, 809 (1977) (finding the circuit court rules did not require the solicitor to argue issue of fact in the initial opening, but allowed the solicitor to do so at his discretion).

Regardless, the Court's holding in *Beaty* carefully avoided the specific use of "prosecution" and "defense." Instead, the Court said numerous times the "**party**" with the right to the first and last closing argument may be limited, upon the request of the other "**party**," in its reply to only those arguments addressed by the "**party**" with the middle argument. The Court further clarifies this distinction in its Footnote 4 by preserving the "common law rule that the defendant has the right to open **and** close if he presents no evidence. *Beaty*, Footnote 4, at p. 4. As the note suggests, the defense is still entitled to the right to the last word to the jury if the defense presents no evidence, but that last word is limited upon request by the solicitor to only a reply to the middle argument. Although as a practical matter the defense has previously enjoyed the privilege of closing in full on the law and the facts if its presents no case, the holding in

² Perhaps a more appropriate discussion of the merits of the rule change should be first addressed by the Judicial Council, which was created for to study the practice, rules, and operations of the courts of the State in accordance with S.C. Code Ann. § 14-27-70. The obligation of the judicial council includes the duty:

(4) To recommend to the General Assembly or to the courts of the State or to any officer or department of the State, either upon request or upon the Council's own motion, such changes in the law or in the rules, organization, operation or methods of conducting the business of the courts, and of each and all of the agencies, boards, commissions, bodies and offices of the State having and exercising quasi-judicial functions and powers, or with respect to any other matter pertaining to the administration of justice, as it may deem desirable.

S.C. Code Ann. § 14-27-70.

Beatty constrains that privilege and evens the playing field for all “parties.” Should the Court’s decision become final without rehearing, the prosecution may now require the defense open in full on the law and facts and close only in reply.

IV. No due process violation occurred in this case because the evidence developed at trial supported the solicitor’s arguments and because the defense failed to object contemporaneously to any alleged improper comments.

As for the Court’s agreement, in part, with Appellant that his procedural due process rights were offended by the solicitor’s closing comments on the facts, the record does not support this contention. Appellant contends the solicitor “sandbagged” him by referring to unsupported theories of its case to which they were denied an opportunity to respond. However, Appellant failed to object to these comments during closing arguments, instead choosing to sit on his hands during the argument and then quibble with insignificant discrepancies between their theory of the case and the state’s at the conclusion of closing arguments. The proper sequence of events for such an allegation is an immediate objection and request for a curative instruction. *Greer v. Miller*, 483 U.S. 756, 766 (1987); *see also State v. Gardner*, 332 S.C. 389, 393, 505 S.E.2d 338, 340 (1998) (failure to contemporaneously object to closing waives right to challenge it on appeal). Any concern for Appellant’s right to due process in this case, or in any other case, should have been properly addressed with this procedure.

Further, Appellant accuses the solicitor of arguing facts outside the record, yet Appellant’s own statements to police supported the State’s theory of the case. The solicitor theorized the murder occurred in the driveway of Appellant’s parents because Appellant told the police they made no other stops on the way home. Moreover, Appellant told police that Emily Anna was screaming at him after she threatened to jump out of the car. (R. p. 868-869.) The

solicitor made no improper argument when relying on this evidence for his closing. Yet despite Appellant's contention this theory was unsupported by the evidence, Appellant failed to object when the solicitor made the argument. Appellant cannot claim, and this Court cannot find, any due process violation when the solicitor said nothing of "sufficient significance to result in the denial of the defendant's right to a fair trial." *United States v. Bagley*, 473 U.S. 667 (1985).

To the extent the Court suggests the State's right to last closing argument on the facts violates due process, state and federal case law does not support this contention. The order of closing arguments is a matter of state procedural rule or practice rather than substantive law. *State v. Huckie*, 22 S.C. 298, 299 (1885) (alleged error in denying defendant final closing argument was "not a matter of error as to express law, but of practice"). The United States Supreme Court has consistently held the States are free to shape their own rules of procedure. See, e.g., *United States v. Scheffer*, 523 U.S. 303, 316 (1998), quoting *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) ("we thus stressed that the ruling did not 'signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures.'").

Historically, the right to the final closing argument has followed the party with the burden of proof. *Stein Closing Arguments § 1:6: Right to open and close; order of argument* (2011-2012 ed.) ("Generally, the right to make opening and closing follows the person having the burden of proof."); Nicole Velasco, *Taking the "Sandwich" Off of the Menu: Should Florida Depart from Over 150 years of Its Criminal Procedure and Let Prosecutors Have the Last Word?*, 29 Nova L.Rev. 99, 112 (2004) ("At common law, the widely accepted rule in the United States is that the party with the burden of proof has the right to open and conclude final argument before the jury.").

The Court seems to suggest the adherence to the longstanding practice in South Carolina could be violative of due process, although there is little explanation for this claim. However, only a deprivation as egregious as totally denying a criminal defendant the opportunity for closing argument constitutes a denial of the defendant's basic right to make his defense. *Herring v. New York*, 422 U.S. 853, 858-859 (1975). While the right to make a closing argument cannot be circumvented, the order of argument is vastly different, particularly since argument is not evidence. *See, e.g., Ex parte Morris*, 367 S.C. 56, 624 S.E.2d 649, 653 (2006), quoting *S.C. Dept. of Transp. v. Thompson*, 357 S.C. 101, 590 S.E.2d 511, 513 (Ct. App. 2003) (“[a]rguments made by counsel are not evidence”); *Sosebee v. Leeke*, 293 S.C. 531, 362 S.E.2d 22, 24 (1987) (“the solicitor's closing argument is not evidence”). There is no constitutional right to a certain order or scope of argument.

Lastly, with this ruling, the Court has traded one due process violation argument for another, as the claims of “sandbagging” will undoubtedly continue as long as the defense disagrees with what constitutes reply. For example, Appellant cites *United States v. Maloney*, 755 F.3d 1044 (9th Cir. 2014), to argue a factual scenario raised for the first time in closing argument by the prosecutor was cause for reversible error. In *Maloney*, the unsupported facts argued by the U.S. Attorney were central to the issue of the defendant's knowledge he was transporting drugs in the cab of his tractor-trailer across the United States border. The error in the *Maloney* case occurred in the government's rebuttal argument, pursuant to the federal rule requiring the government to limit its last closing argument to reply. The due process violation was not the content or order of the closing arguments, but the purposeful misstatement of the evidence by the prosecutor. Maloney's counsel moved for a surrebuttal to counter the new argument and the trial court denied the motion. *Id.* at 1046. A divided court of appeals affirmed,

then voted to rehear the appeal en banc. While the appeal was under submission, the U.S. Attorney filed to summarily reverse the conviction, informing the Court it agreed that no reference should have been made to the luggage in closing argument. *Id.* The case at hand is entirely distinct from *Maloney*. Unlike the knowledge element the United States was required to prove in possession with intent to distribute, in this case neither the particular location of the crime in the driveway, nor the specific reason Appellant killed Emily Anna, was a central element of the offense charged. Thus, even if the solicitor's theory of the case were unsupported, the comments certainly did not deny Appellant the right to a fair trial.

In sum, the order of closing arguments is a matter of state procedural preference that does not offend equal protection or any other constitutional right. As such, any change to procedural law governing the content of closing arguments is subject to the provisions of the South Carolina Constitution. As Article V, Section 4A mandates, rules must be promulgated by the Supreme Court and submitted to the General Assembly. **All** rules and amendments to rules governing practice and procedure from the Supreme Court are subject to this provision. The State respectfully submits the Court's holding in this case is in contravention of the South Carolina Constitution. Further, the Court's holding has no impact on the preservation of due process, as a violation may arise any time the Court were to find willful and significant misconduct by the parties.

V. The trial court's opening remarks to the jury that a trial is a search for the truth did not impermissibly shift the burden of proof when read in context and did not constitute "error."

Ultimately, "[a] trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." *State v. Rye*, 375 S.C. 119, 123,

651 S.E.2d 321, 323 (2007); *see State v. Ezell*, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) (“A jury charge which is substantially correct and covers the law does not require reversal.”). The Supreme Court has found language instructing the jury to seek the truth could **potentially** shift the burden of proof. *State v. Aleksey*, 343 S.C. 20, 27-28, 538 S.E.2d 248, 251 (2000); *State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998). However, the Court misapprehended the holding in *Aleksey* and *Needs* by finding the language in the opening remarks was error when the judge otherwise properly instructed the jury following the close of evidence on the State’s burden of proof. The State respectfully requests the Court reconsider its finding on this issue.

CONCLUSION

For all of these reasons, the State submits this Court failed to address several crucial points raised by the Respondent that bear directly upon this Court’s ultimate decision to adopt a new rule governing the content of closing arguments and finding error in the trial court’s opening remarks. The State respectfully asks this Court to reconsider its position considering these limited issues in rehearing this matter.

WHEREFORE, based on the foregoing argument and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue an order affirming Appellant’s convictions and sentence without adopting any procedural changes to the content of closing arguments or finding error in the opening remarks to the jury.

Respectfully submitted,

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January 13, 2017

STATE OF SOUTH CAROLINA
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W. Jeffrey Young, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

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MICHAEL VERNON BEATY,

APPELLANT,

Appellate Case No. 2015-000718.

PROOF OF SERVICE


I, Susannah Cole, counsel for the Respondent, certify that I have served the within Petition for Rehearing on Appellant by depositing copies of the same in the United States mail, first class, postage prepaid, addressed to his attorneys of record:

C. Rauch Wise, Esquire
305 Main Street
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E. Charles Grose, Jr., Esquire
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I further certify that all parties required by Rule to be served have been served.

This 13th day of January, 2017.



Susannah R. Cole
Assistant Attorney General
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