

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

**RECEIVED**

JAN 19 2017

S.C. SUPREME COURT

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

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THE STATE,

Respondent,

v.

MICHAEL VERNON BEATY, JR.,

Appellant.

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Opinion No. 27693 (Filed December 29, 2016)

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**RESPONSE TO APPELLANT'S PETITION FOR REHEARING**

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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. Pursuant to Rule 221, SCAR, Appellant petitioned the Court for rehearing on January 10, 2017. Respondent also petitioned for rehearing on January 13, 2017.

The State now makes its response to Appellant's Petition for Rehearing. Respondent agrees with Appellant that the Court may have misapprehended, overlooked, or failed to address

several crucial points raised by the parties that bear directly upon this Court's conclusions in *State v. Beaty*, Opinion No. 27693 (filed December 29, 2016). However, Respondent believes the Court ultimately reached the correct decision to affirm Beaty's conviction for the murder of Ms. Asbill. The State incorporates by reference the arguments put forth in its Petition for Rehearing filed January 13, 2017, to rebut Appellant's claim his due process rights were violated by the content of the solicitor's closing argument or the opening remarks by the trial court. As discussed more thoroughly in the State's Petition, the evidence developed at trial supported the solicitor's arguments, and more significantly, the defense failed to object contemporaneously to any alleged improper comments. Further, 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, because the trial court properly charged the law on the State's burden of proof. *See Sections IV and V, Respondent's Petition for Rehearing*, filed January 13, 2017. Contrary to Appellant's assertions, no violation of Appellant's Constitutional rights occurred.

As to Appellant's argument the Court erred in finding the trial court properly denied Appellant's request for an involuntary manslaughter instruction, Appellant continues to misdirect the Court's attention to the cause of Ms. Asbill's death. The alleged reckless behavior of driving an automobile while intoxicated did not cause the Victim's death, even in the light most favorable to the defense. Assuming her death was the result of positional asphyxiation following Appellant's efforts to pull her into the car, which was the defense's sole theory of the case, nothing about his actions in saving her was reckless. Appellant's intoxication did not interfere with his prevention of Ms. Asbill's jumping from the car, as his efforts presumably prevented her from falling onto the road. Despite Appellant's claim in his Petition for Rehearing that he "position[ed] her onto the front floor board of the automobile," (Petition for Rehearing at p. 8.)

no evidence in the record suggested he purposefully placed the victim into the cross-legged, seated position in the floorboard.

Instead, if defense's theory of the case is to be believed, to justify an involuntary manslaughter charge, Appellant must have shown reckless disregard for the victim's safety when he failed to prevent her death from positional asphyxiation. Considering the State's pathologist testified she did not believe someone could die from positional asphyxiation in such a manner, it is not likely Appellant would have known the victim was at risk -- intoxicated or not. Thus, as the trial court correctly pointed out, this was either murder or an accident. The Court's reliance on *State v. Scott*, 414 S.C. 482, 779 S.E.2d 529 (2015), was entirely on point. The Court should not grant Appellant's Petition for Rehearing on this issue.

The remaining arguments submitted by Appellant have previously been addressed at great length in the appellate record of this case by Respondent, and further addressed at oral argument, such that Respondent deems it unnecessary to submit any further response in this regard unless invited to do so by this Court.

Although the State agrees with Appellant the Court should grant rehearing on the two issues addressed in its opinion, Respondent believes the Court should limit its rehearing to only those issues and deny Appellant's request to rehear the appeal on the remaining grounds. Further, Respondent respectfully acknowledges the Court reached the correct conclusion in affirming Appellant's conviction, and asks the Court, should it elect to rehear the appeal, to again uphold the conviction of Appellant for the murder of Ms. Asbill.

## 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 only these limited issues in rehearing this matter and deny Appellant's request to rehear the appeal on the remaining grounds.

WHEREFORE, based on the foregoing argument and the arguments raised in the Final Brief of Respondent and Respondent's Petition for Rehearing, the State respectfully requests this Court either grant the limited petition for rehearing on the two issues addressed in its opinion, or deny Appellant's Petition for Rehearing in its entirety.

Respectfully submitted,

ALAN WILSON  
Attorney General

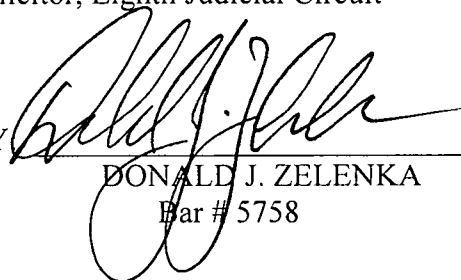
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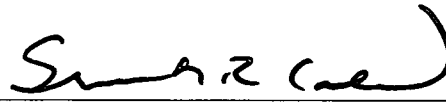
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**PROOF OF SERVICE**

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I, Susannah Cole, counsel for the Respondent, certify that I have served the within Response to Appellant's 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  
Greenwood, SC 29646

E. Charles Grose, Jr., Esquire  
404 Main Street  
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.

This 19th day of January, 2017.



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Susannah R. Cole  
Assistant Attorney General  
SC Bar No. 68383