ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Edward Cottingham, Circuit Court Judge

Case Nos. 2011-GS-32-1255
2011-GS-32-1257

The State of South Carolina, ... Respondent,

v.

William Mark Brockmeyer, ... Appellant.

INITIAL REPLY BRIEF OF APPELLANT

Nelson Mullins Riley & Scarborough, LLP
Miles E. Coleman
A. Mattison Bogan
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
(803) 799-2000

Chief Appellate Defender
Robert M. Dudek
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1343

ATTORNEYS FOR APPELLANT

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INTRODUCTION

Appellant's initial brief challenged numerous errors of law that occurred during the prosecution and conviction of William Mark Brockmeyer. The State's responsive brief, filed on November 8, 2012, does little to dispel these concerns or to justify the errors committed by the trial court. This reply brief rebuts the State's arguments and clarifies the legal issues and governing authorities.

CLARIFICATION OF THE FACTS[1]

As an initial matter, several factual errors in the State's brief demand correction. The State's recitation of facts attempts to portray Mr. Brockmeyer as a dangerous fellow in an erroneous and thinly veiled attempt to imply his guilt. First, the State incorrectly asserts that Mr. Brockmeyer and the decedent, Mr. Rae, "had met each other while in prison." Resp. Brief at 2. This is simply incorrect. Mr. Brockmeyer and Mr. Rae met as coworkers. (Tr. 740.) In any event, the fact that Mr. Brockmeyer has a prior record for petty larceny and theft cannot be used to imply his guilt here, nor does it excuse the fact that he was denied a fair trial.

Second, the State asserts that Mr. Brockmeyer arrived at Jager's bar on the night in question armed with a pistol. Resp. Brief at 2. Yet again, this assertion goes beyond what is contained the record. Mr. Brockmeyer—the only person with knowledge of his accoutrements on that night and the only person to testify on the issue—stated that it was *Mr. Rae* who brought that weapon to the bar and later asked Mr. Brockmeyer to hold it. (Tr. 753:7-12.) Any speculation to the contrary is only that—speculation, not fact.

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[1] A full recitation of the facts is contained in Mr. Brockmeyer's initial brief and will not be repeated here.

Finally, the State asserts that Mr. Brockmeyer was seen "shoving the victim" shortly after the weapon discharged. Resp. Brief at 2. The State fails to mention, however, that this is a disputed fact, and that the majority of witnesses agree that Mr. Brockmeyer did *not* touch the decedent after the weapon discharged. (*See, e.g.,* Tr. 193:5-9, 252:8-15). In sum, these factual assertions all deviate from the Record in an unsupported attempt to paint Mr. Brockmeyer in a negative light.

PROPER STANDARD OF REVIEW

This appeal raises issues regarding the enforcement of a subpoena, the Confrontation Clause of the United States Constitution, and the admissibility of evidence. On most of the issues, the State agrees with the standards of review set out in Mr. Brockmeyer's initial brief.[2] On the issue of the Confrontation Clause, however, the State is mistaken as to the appropriate standard. Specifically, the State conflates this constitutional issue with the mere admission of evidence and thus argues that the issue is reviewed merely for abuse of discretion. *See* Resp. Brief at 17. This is incorrect. As explained in Mr. Brockmeyer's initial brief, the appropriate standard of review for this issue is *de novo*. *See* Initial Brief of App. at 7-8 and n.8 (citing cases from South Carolina and the federal courts of the 1st, 4th, 5th, 8th, 9th, and D.C. Circuits). Other states' courts agree that the standard is *de novo*, not some more deferential standard.[3]

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[2] Regarding the subpoena, Mr. Brockmeyer's initial brief noted that if the trial court had relied on incorrect analysis, reasoning, and authority, this would constitute a reversible error. Likewise, regarding the two evidentiary issues, both parties agree the rulings are reviewed for an abuse of discretion.

[3] *See, e.g., Hughes v. State*, __ S.W.3d __, 2012 Ark. App. Lexis 710 (Ark. Ct. App. 2012) ("Constitutional issues, such as those concerning the Confrontation Clause, are reviewed under a *de novo* standard."); *People v. Burney*, 963 N.E.2d 430, 440 (Ill. Ct. App. 2011) ("A claim alleging a violation of the confrontation clause involves a question

This staggering weight of authority confirms the rule indicated by South Carolina precedent. This court should apply a *de novo* standard to the Confrontation Clause issue.

ARGUMENT

I. The Trial Court erred by denying Mr. Brockmeyer's pre-trial subpoena to discover the identity of a witness.

Before trial, Mr. Brockmeyer's counsel served a subpoena on a local television station seeking the identity of a potential witness who had posted a pseudonymous comment on the station's website. The posted comment indicated that its author had witnessed Mr. Rae's accidental death. (Tr. 14:5-15:5.) The trial court orally denied Mr. Brockmeyer's motion to enforce the subpoena. (Tr. 28:13-14.) This ruling was never

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of law that is reviewed *de novo*.") (citing *People v. Williams*, 939 N.E.2d 268, 277, 345 (Ill. 2010)); *State v. Lee-Riveras*, 23 A.3d 1269, 1279-80 (Conn. Ct. App. 2011) (noting that whether a trial court's ruling is "'so severe as to violate the confrontation clause of the sixth amendment is a question of law reviewed *de novo*.'") (quoting *State v. Abernathy*, 806 A.2d 1139 (Conn. Ct. App. 2002); *State v. Rainsong*, 807 N.W.2d 283, 286 (Iowa 2011) ("[W]e review claims brought under the Confrontation Clause *de novo*.") (citation omitted); *State v. Snelling*, 236 P.3d 409, 414 (Ariz. 2010) ("'Evidentiary rulings that implicate the Confrontation Clause, however, are reviewed *de novo*.'") (quoting *State v. Ellison*, 140 P.3d 899, 912 (Ariz. 2006)); *McWaters v. State*, 36 So.3d 613, 637 (Fla. 2010) ("'In considering a trial court's ruling on admissibility of evidence over an objection based on the Confrontation Clause, our standard of review is *de novo*.'") (quoting *Milton v. State*, 993 So. 2d 1047, 1048 (Fla. Ct. App. 2008)); *State v. Swaney*, 787 N.W.2d 541, 551-52 (Minn. 2010) ("We have said that 'whether the admission of evidence violates a criminal defendant's rights under the Confrontation Clause is a question of law this court reviews *de novo*.'") (quoting *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006)); *State v. Brown*, 173 P.3d 612, 628 (Kan. 2007) ("Issues related to confrontation under the Sixth Amendment to the United States Constitution . . . raise questions of law over which this court exercises *de novo* review.") (citation omitted); *Pena v. People*, 173 P.3d 1107, 1111 (Colo. 2007) ("'Appellate review of a possible Confrontation Clause violation is *de novo*.'") (citation omitted); *Snowden v. State*, 846 A.2d 36, 39 n.4 (Md. 2004) ("We . . . apply the *de novo* standard of review to the issue of whether the Confrontation Clause was violated in this case.").

formalized in a written order.[4] As explained in Mr. Brockmeyer's initial brief, this ruling was legally incorrect. In response, the State argues that the issue is not preserved for appeal, that the information was protected by the First Amendment and the "Reporter's Shield" law, and that the information was unnecessary and cumulative. As explained in detail below, each of these contentions is incorrect.

A. The issue was preserved for appeal.

The State questions whether this issue was preserved for appellate review. The controlling law, however, makes clear that the issue is preserved and is properly before this court. The South Carolina Supreme Court has held that a pre-trial ruling is preserved if it is a final ruling and if the defendant renews his objection at the appropriate time. *See State v. Wiles*, 383 S.C. 151, 156-57, 679 S.E.2d 172, 175 (2009). These conditions are unquestionably met here.

In *Wiles*, the defendant made a pre-trial motion to exclude certain testimony. *Id.* The judge denied the motion. *Id.* The defendant did not renew his objection at the beginning of trial, but he did renew his objection at the appropriate time, namely during trial when the testimony was introduced. *Id.* On appeal, the Court of Appeals held that the issue was not preserved. *Id.* The Supreme Court reversed. *Id.* The court noted that "when the trial court's ruling is not preliminary, but instead is clearly a final ruling, there is no need to renew the objection." *Id.* (citing *State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001)); *see also Staubes v. City of Folly Beach*, 339 S.C. 406, 415, 529

[4] After its oral ruling, the court directed Mr. Bender—counsel for the news station—to prepare and submit an order memorializing the decision. No such order was ever forthcoming.

S.E.2d 543, 547 (2000) ("This Court does not require parties to engage in futile actions in order to preserve issues for appellate review.").

Here, the trial court's pre-trial ruling on the subpoena fits neatly within the rule set out in *Wiles*. It was clearly a final ruling. Furthermore, at the time of the ruling, Mr. Brockmeyer's counsel expressed their objection to it. (Tr. 28:15-18) His counsel renewed their objections and motions during trial before beginning the defense case. (Tr. 689:14-15.) As in *Wiles*, this was the appropriate time to renew the objection because it is the point at which the wrongly excluded testimony would have appeared. In short, where a pre-trial ruling is final and the defense counsel renews their objection at the point the evidence should have appeared, "this issue is preserved." *Wiles*, 383 S.C. at 156, 679 S.E.2d at 175; *see also State v. Atieh*, 397 S.C. 641, 647, 725 S.E.2d 730, 733 (Ct. App. 2012) ("[I]f the trial court clearly indicates its [pre-trial] ruling is final, rather than preliminary, the issue is preserved for appellate review.") (citation omitted).

Additionally, the State argues that the defense failed to make a showing of what the excluded testimony would have been, and that this supposed failure affects both preservation and the denial of his constitutionally guarantee compulsory process to obtain witnesses. The State's argument falls flat. The content of the testimony sought was glaringly obvious in the context of the subpoena: that Mr. Rae's death was accidental and that Mr. Brockmeyer was genuinely sorrowful in its aftermath. In light of the trial court's ruling, the defense could hardly have made a more explicit showing of what the unknown witness might say. This contextual showing was sufficient. *See* S.C. R. Ev. 103(a)(2) (noting that an offer of proof is unnecessary where the substance of the evidence excluded was apparent from the context).

B. The information sought is not protected by the First Amendment.

In his initial brief, Mr. Brockmeyer set out the proper legal rule to apply to this issue of first impression in South Carolina and explained the inapplicability of the First Amendment of the United States Constitution. Nevertheless, as it did before the trial court, the State again raises this theory in its responsive brief. Much of the State's argument is preemptively rebutted in Mr. Brockmeyer's prior brief. Other notable aspects of the State's arguments are briefly rebutted here.

The First Amendment cases cited by the State are easily distinguishable. Specifically, the State relies on *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995) and *Reno v. ACLU*, 521 U.S. 844 (1997). Both of these cases consider the constitutionality of statutes prohibiting anonymous speech and held that the government may not criminalize or penalize anonymous speech.[5] Clearly, these two cases are significantly different from the situation presented here. In this case, no government actor seeks to prevent free speech, and no punitive fate awaits the anonymous commenter. Rather, the defense counsel merely wishes to ascertain his identity and seek his testimony. Thus, the cases relied on by the State are inapplicable here.

Incidentally, even if the First Amendment is relevant here, the anonymous commenter waived any expectation of privacy when he agreed to the terms and conditions of the news website on which he commented. Indeed, the State's brief concedes that the anonymous commenter was informed prior to posting his comment that WLTX could disclose his identity in its discretion, if required by law, or if necessary to

[5] Specifically, in *McIntyre*, an Ohio statute prohibited the distribution of anonymous political literature. In *Reno*, a federal statute criminalized the transmission of obscene or indecent messages to anyone under age 18.

comply with legal process. *See* Resp. Brief at 11-12; *see also* WLTX "Terms of Service" and "Privacy Notice," R. __. These warnings removed any expectation of privacy for the commenter who agreed to the terms.

C. The information sought is not protected by the "Reporter's Shield" law.

Mr. Brockmeyer's initial brief explained the inapplicability of the "Reporter's Shield" law, S.C. Code. Ann. § 19-11-100. The State, however, relies on this statute to argue that the anonymous commenter's identity was protected. The anonymous comment at issue here was voluntarily posted on a publicly-viewable internet forum, does not fall within the statute's scope and,[6] even if it did, a statutory exception applies.

The State essentially argues that the Reporter's Shield protects the news station from disclosing the commenter's identity because the information sought was otherwise available. The truth, however, is that the information was *not* otherwise available. The bar's sign-in sheet consisted primarily of illegible signatures. (Tr. 24:14-21.) In addition, there is no guarantee that everyone present at the bar signed the sheet or used their given name to do so.[7] Furthermore, various people present at the bar slipped away immediately and surreptitiously after the shot. (*See* Tr. 184:8-184:13 (testimony that Ms. Kabar and her associates quickly exited through the bar's back door after the shot despite the proprietor's attempt to stop them).) Even the prosecutor admitted he had doubts as to the lists accuracy and noted that "[a] lot of these people obviously . . . did not want to talk

[6] The trial court noted that "I don't think the shield law is applicable in this case because this is not a source of information. This was a voluntary expression by an anonymous person." (Tr. 21:2-5.)

[7] The State admits that there was "no guarantee that it listed all who were present." Resp. Brief at 13.

to law enforcement." (Tr. 26:14-17.) In short, the information sought by the subpoena was not reasonably available by other means, and the trial court erred in denying Mr. Brockmeyer's attempt to locate witnesses in his defense.

D. Even if the First Amendment and "Reporter's Shield" law applied, enforcement of the subpoena is nonetheless warranted.

As explained above, the First Amendment and "Reporter's Shield" are inapplicable here. However, even if they were applicable, enforcement of the subpoena is nonetheless warranted. Very recently, a Kansas state court considered an issue that is in some respects similar to the one presented here and held that the news website was required to disclose the identity of an anonymous commenter.[8]

The Kansas case arose from a prosecution for murder and robbery. During jury deliberations, a person believed to be a juror accessed and anonymously commented on an online news story about the murder. The prosecutor subpoenaed the new organization to uncover the identifying information of the anonymous commenter. The Kansas trial court found that because a punitive government sanction possibly awaited the juror, the First Amendment and state "Reporter's Shield" law applied.[9] Nevertheless, the court enforced the subpoena, holding that the information sought was material and relevant, was necessary, was unavailable from any other source, and that the disclosure would prevent a miscarriage of justice. *See In re Inquisition* at 5-6, 9-10. The court noted that

[8] A copy of the Kansas state court's Oct. 26, 2012 order, titled *In re Inquisition*, is being submitted via a supplemental citation letter filed concurrently with this brief. *See also* http://stlouis.cbslocal.com/2012/10/31/judge-orders-kan-newspaper-to-reveal-name-of-commenter/ (providing background and summary of the facts of the case) (last visited November 19, 2012).

[9] As explained above, in Mr. Brockmeyer's case no punitive fate awaited the anonymous commenter, and thus these protections are inapplicable here. Even if they did apply, however, the Kansas case indicates that the subpoena should have been enforced.

"'a news reporter's privilege is more tenuous in a criminal proceeding than in a civil case.'" *Id.* at 9 (quoting *In re Pennington*, 581 P.2d 812 (Kan. 1978)). Accordingly, the court enforced the subpoena and required the news station to disclose the commenter's identity.

Likewise, here, even if the First Amendment and "Reporter's Shield" law apply, the information sought by Mr. Brockmeyer is material, necessary, otherwise unavailable, and will avoid a miscarriage of justice by allowing him to mount an adequate defense and receive a fair trial.

E. The information sought is not cumulative.

Finally, the State argues that the information sought in the subpoena was cumulative to other evidence at trial. This simply is not so. The anonymous commenter indicated that the fateful shot was accidental and that Mr. Brockmeyer wept in response. The potential testimony stands in stark contrast to the State's evidence and arguments at trial. Specifically, the prosecutors alleged that the shooting was intentional; they presented witnesses who repeatedly denigrated the genuineness of Mr. Brockmeyer's grief—some discussing the absence of tears—(Tr. 108:17-18, 262:15-16, 277:23-24, 290:7); and their closing argument reiterated this theme (Tr. 873:16-874:3, 875:19-22). Obviously, the anonymous commenter's testimony was completely the *opposite* of all this.[10] To now argue that his testimony would have been cumulative is simply incorrect.

[10] The fact that one witness testified that Mr. Brockmeyer was "frantic, like weeping" (Tr. 146:19) hardly makes the anonymous witness' testimony cumulative. The Record is replete with the State's emphasis on the lack of tears and the supposedly intentional nature of the shot. The anonymous witness could have testified to the contrary.

II. The Trial Court erred and violated the Confrontation Clause by permitting the State to use a mere computer log to establish the chain of custody.

At trial, the State relied on numerous pieces of evidence, the authenticity of which was established primarily by having witnesses read aloud from computer generated logs documenting who had handled the evidence and what had been done with it. Mr. Brockmeyer's counsel objected because various people listed in the log did not appear at trial, thus he was unable to cross-examine them. The trial court overruled this objection. On appeal, Mr. Brockmeyer argues that this ruling violated the guarantee of the Confrontation Clause of the Sixth Amendment to the United States Constitution.

The State's brief discusses the issue at great length. The issue, however, is a relatively simple one. The Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. The United States Supreme Court has made clear that the Confrontation Clause applies to testimony used to establish a chain of custody. *Melendez-Diaz v. Massachusetts,* 557 U.S. 305 (2009). Specifically, where the government elects to introduce testimony to establish the chain of custody, that testimony *must* be live:

> It is up to the prosecution to decide what steps in the chain of custody are so crucial as to require evidence; *but what testimony is introduced must (if the defendant objects) be introduced live.*

Melendez-Diaz, 557 U.S. at 322 n.1 (emphasis added). Here, the computer log purported to prove that each piece of evidence was untainted and properly transferred and handled. It was thus testimonial—"functionally identical to live, in-court testimony, doing 'precisely what a witness does on direct examination.'" *Melendez-Diaz*, 557 U.S. at 321

(citation omitted);[11] *see also State v. Cribb*, 310 S.C. 518, 522, 426 S.E.2d 306, 309 (1992) ("Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had the substance and what was done with it between the taking and the analysis.") (citation omitted).

Nearly all of the cases relied on by the State predate the High Court's ruling in *Melendez-Diaz*, and thus cannot overcome the clear rule enunciated in that case. The only post-*Melendez-Diaz* case from South Carolina cited by the State is *State v. Hatcher*, 392 S.C. 86, 708 S.E.2d 750 (2011). In *Hatcher*, however, the issue of the Confrontation Clause was neither raised nor ruled upon. Thus it cannot dispose of the issue.

Additionally, the State argues that any Confrontation Clause violation was harmless because it did not contribute to the jury's verdict. This is not the case. The cumulative effect of this evidence was to give the impression that the State had presented a substantial body of evidence. In fact, however, in the absence of the ability to cross-examine the custodians and technicians, all that this evidence did was violate the Constitution. Ultimately, because Mr. Brockmeyer was denied the right to confront and cross-examine these absentee witnesses, the Constitution demands that his conviction be overturned.

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[11] The recent case of *Williams v. Illinois*, __ U.S. __, 132 S. Ct. 2221 (2012), does not affect this rule and it provides little guidance here. First, that case was a bench trial, which "makes a big difference in evaluating the likelihood that the factfinder mistakenly based its decision on inadmissible evidence." *Id.* at 2237 n.4. Second, the Court's holding—that an expert witness' explanation of the assumptions underlying her opinion fell outside the scope of the Confrontation Clause—does not apply here. *Id.* at 2228.

III. The Trial Court erred by permitting the State to introduce an unnecessary and prejudicial photograph of the defendant.

At trial, the State introduced an unnecessary photo of Mr. Brockmeyer to imply that he was cold, heartless, and, ultimately, guilty. The law is clear that such photos should be excluded. *See State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997) ("Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions."). The State's brief concedes as much. *See* Resp. Brief at 35 ("A photograph should be excluded if it is calculated to arouse the sympathy or prejudice of the jury or is irrelevant or unnecessary to substantiate the facts.") (citing *State v. Johnson*, 338 S.C. 160, 169, 727 S.E.2d 740, 745 (2012)). Here, as explained in Mr. Brockmeyer's initial brief, the photo was unnecessary and prejudicial, and should have been excluded.

Both at trial and in its appellate brief, the State argues that the photo is relevant to show "how he was acting." *See* Tr. 309:15-18; Resp. Brief at 36. A photograph of someone's face, however, cannot show his actions. It can merely show what he looks like, which, in this case, the State exploited for illicit purposes.[12] The State also claims that the photo corroborated other testimony and evidence. Resp. Brief at 36-38. In other words, the photo was cumulative and unnecessary. In light of the risk for unfair prejudice, it should have been excluded.

[12] The State's motivation in introducing the photograph was revealed by its repeated use (*see, e.g.*, Tr. 803:3-6), including in closing arguments (Tr.875:19-22), to imply Mr. Brockmeyer's guilt and to prejudice the minds of the jury.

IV. The Trial Court erred by allowing the State to introduce hearsay taken from the decedent's cell phone.

At trial, the State introduced a photograph from Mr. Rae's cell phone, including a caption—written by an unknown author—purporting to identify the ownership of two firearms pictured. (*See* Tr. 497:19-25, 506:18-19.) The State could not establish when this photograph was taken, by whom, or who captioned it. Despite the defense's objection on hearsay grounds, the trial court admitted the photo without addressing the rule prohibiting hearsay or explaining why it did not apply. The Trial Court thus permitted hearsay evidence to establish a disputed issue: the ownership of the weapon that shot Mr. Rae.

The State's responsive brief reviews much of the record evidence as to a single undisputed and unrelated point, namely that Mr. Brockmeyer had temporary possession of the firearm at some points during the evening. *See* Resp. Brief at 43-48. Mr. Brockmeyer acknowledged this fact, both at trial (Tr. 753:9-12) and in his initial brief to this court. The hearsay caption, however, addressed a different question: the ownership of the weapon. Clearly, the prosecutor thought it was a significant issue. His closing argument emphasized both the ownership of the weapon and the content of the photo caption. (Tr. 859:12-15.) The inclusion of hearsay evidence in the prosecutor's closing argument indicates that this issue was "a crucial piece of evidence" that "almost certainly affected the result of the trial and therefore could not be harmless." *State v. Davis*, 371 S.C. 170, 182, 638 S.E.2d 57, 63 (2006).

The State's responsive brief concedes the uncertainty as to the caption's author,[13] and acknowledges that it is subject to the hearsay rule, but argues that the error was harmless. Resp. Brief at 49. The record, however, indicates otherwise. As noted above, the prosecutor thought the issue was significant enough to merit discussion in his closing argument. Furthermore, if the hearsay evidence was cumulative, as the state claims, then it was not harmless. *State v. Jennings*, 394 S.C. 473, 478-79, 716 S.E.2d 91, 94 (2011) ("'[I]t is precisely this cumulative effect which enhances the devastating impact of improper corroboration.'") (quoting *Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994)). Because the title of the photograph was prejudicial, inadmissible hearsay admitted to prove the truth of a substantial issue in the case, its admission into evidence was error and warrants reversal.

CONCLUSION

The trial court erred by denying Mr. Brockmeyer the ability to identify a witness in his favor, by permitting a violation of the Confrontation Clause, by admitting an unnecessary and improperly used photo, and by admitting hearsay. For the foregoing reasons, Appellant requests that this court reverse and remand for a new trial.

[SIGNATURE PAGE ATTACHED]

[13] "The caption . . . was *presumably* placed there by someone other than the defendant (Will) and *probably* the victim." Resp. Brief at 49 (emphasis added).

Respectfully submitted,

Nelson Mullins Riley & Scarborough, LLP

By: _____

Miles E. Coleman
SC Bar No. 78264
E-Mail: miles.coleman@nelsonmullins.com
A. Mattison Bogan
SC Bar No. 72629
E-Mail: matt.bogan@nelsonmullins.com
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
(803) 799-2000

South Carolina Commission on Indigent Defense
Robert M. Dudek
E-Mail: rdudek@sccid.sc.gov
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1343

ATTORNEYS FOR APPELLANT

Columbia, South Carolina
November 19, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM MARK BROCKMEYER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of November, 2012.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 19th day of November, 2012.

_____(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013 .