

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 15 2017

SC Court of Appeals

Appeal from Chester County
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2016-000193

The State,

Respondent,

v.

Charles Hayes,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

Douglas A. Barfield, Jr.
Solicitor, Sixth Judicial Circuit

Post Office Box 607
Lancaster, SC 29721
(803) 283-3855

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

ARGUMENT7

I. There is ample evidence in the record to support the circuit court’s finding Appellant’s mother (the homeowner) voluntarily consented to the search of her home.7

II. The officers did not exceed the scope of the consensual search for the firearm used in the North Carolina armed robbery.9

III. The issue of whether the search warrant was invalid because the sheriff’s wife issued it in her capacity as a magistrate was not preserved for appellate review.12

IV. There is ample evidence in the record to support the circuit court's finding that Appellant's statements to law enforcement were freely and voluntarily given after the officers advised him of his Miranda rights.14

CONCLUSION.....17

TABLE OF AUTHORITIES

Cases

Miranda v. Arizona, 384 U.S. 436 (1966) 4

Schneckloth v. Bustamonte, 412 U.S. 218 (1973)..... 14

State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015)..... 7

State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 [2001]..... 9

State v. Funderburk, 367 S.C. 236, 625 S.E.2d 248 (Ct. App. 2006)..... 9

State v. Kennedy, 333 S.C. 426, 510 S.E.2d 714 (1998)..... 14

State v. Linnen, 278 S.C. 175, 293 S.E.2d 851 (1982)..... 14

State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003) 9

State v. Moore, 377 S.C. 299, 659 S.E.2d 256 (Ct. App. 2008)..... 7

State v. Morris, 395 S.C. 600, 720 S.E.2d 468 (Ct. App. 2011)..... 10

State v. Perez, 311 S.C. 542, 430 S.E.2d 503 [1993] 10

State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001) 14

State v. Sheppard, 391 S.C. 415, 706 S.E.2d 16 (2011) 12

State v. Wallace, 269 S.C. 547, 238 S.E.2d 675 (1977) 7

State v. Washington, 296 S.C. 54, 370 S.E.2d 611 (1988)..... 14

STATEMENT OF ISSUES ON APPEAL

I. There is ample evidence in the record to support the circuit court's finding Appellant's mother (the homeowner) voluntarily consented to the search of her home.

II. The officers did not exceed the scope of the consensual search for the firearm used in the North Carolina armed robbery.

III. The issue of whether the search warrant was invalid because the sheriff's wife issued it in her capacity as a magistrate was not preserved for appellate review.

IV. There is ample evidence in the record to support the circuit court's finding that Appellant's statements to law enforcement were freely and voluntarily given after the officers advised him of his Miranda rights.

STATEMENT OF THE CASE

The Chester Grand Jury indicted Appellant Charles Hayes on one count of possession with intent to distribute crack cocaine, one count of possession with intent to distribute marijuana, and one count of possession of a stolen pistol. The case was called for a jury trial on January 25, 2016, before the Honorable Roger E. Henderson, Circuit Court Judge.

The jury convicted Appellant on all charges, and the circuit court sentenced him to concurrent sentences of twenty years, five years and three years respectively. This appeal followed.

STATEMENT OF FACTS

On August 27, 2014, the Chester County Sheriff's Office ("CCSO") received notice from North Carolina law enforcement that an individual wanted on a fugitive warrant in North Carolina was at a location in Chester County. In the process of apprehending the fugitive, officers discovered crack cocaine, marijuana and a pistol in a bedroom occupied by Appellant, who was arrested and indicted for possession with intent to distribute crack cocaine, possession with intent to distribute marijuana, and possession of a stolen pistol. The case was called for a jury trial on January 25, 2016.

Appellant moved pre-trial to suppress evidence seized from the bedroom and statements he gave to police the day of his arrest. In opposition to the motions, the State presented testimony from Lieutenant Johnny Neal, Agent Alford Crawford and Lieutenant Brad Bower of the CCSO, which indicated the CCSO received information from North Carolina indicating Patrick Simpson, who was wanted for armed robbery in North Carolina, was at his grandmother's home in Chester. (Trial Transcript [TT], pp. 12-14; Record on Appeal [R.], pp. _____).

Police officers went to the home of Pauline Hayes, Simpson's grandmother, and spoke with Mrs. Hayes, who told them Simpson had been at her house, but she believed he was gone. Based on her statement, the officers returned to the CCSO, but went back to the house ten to fifteen minutes later to speak with Mrs. Hayes again. When they arrived at the house, officers saw Simpson standing in the house's backyard and immediately placed him under arrest. When they searched him incident to arrest, officers found a bag of marijuana, but did not locate a weapon. (TT, pp. 14-16; R., pp. _____).

Officers then asked Mrs. Hayes for permission to search her house for the weapon Simpson used in the armed robbery, and she completed and signed a Permission to Search form, which expressly stated officers advised her of her right to refuse the search, and indicated she signed the form “voluntarily without threats or promises of any kind.” When officers walked into the house, they immediately detected a strong odor of marijuana. (TT, pp. 16-19, 39-42, 52, 60-61, Permission to Search, dated August 27, 2014 [State’s Exhibit 1]; R., p. ____).

During the consensual search, officers entered a bedroom Mrs. Hayes identified as Appellant’s room. In plain view, they saw two glass jars, one containing crack cocaine and the other containing marijuana. (TT, pp. 19-21, 52-56; R., pp. ____). At that point, officers suspended the search and waited until an officer arrived with a search warrant. (State’s Exhibit 41 [Search Warrant]; R., pp. ____). During the subsequent search, officers located a stolen handgun in addition to the drugs. (TT, pp. 64-65; R., pp. ____).

While officers were executing the search warrant, Mrs. Hayes’ boyfriend arrived at the house, and Appellant arrived after Mrs. Hayes contacted him by telephone. Mrs. Hayes, her boyfriend and Appellant were seated on the porch, and an officer advised them of their Miranda¹ rights. All three denied the drugs and gun belonged to them, but after officers advised them all three would be arrested and charged if no one claimed ownership of the drugs and gun, Mrs. Hayes told Appellant he needed to admit the stuff belonged to him. Appellant then admitted ownership of the drugs and gun, and he was arrested. (TT, pp. 22-25, State’s Exhibit 2 [Miranda Form]; R., pp. ____).

Appellant was transported to the CCSO and again advised of his Miranda rights. He gave a voluntary written statement indicating he claimed the drugs and gun “in order to keep my

¹Miranda v. Arizona, 384 U.S. 436 (1966).

parents from going to jail.” He then answered written questions indicating the marijuana was in his bedroom, how much marijuana he had, and he had possessed the pistol for several years, but denied knowing where the crack cocaine was located or how much was there. (TT, pp. 26-37, State’s Exhibit 3 [CCSO Rights Form], State’s Exhibit 4 [Voluntary Statement], State’s Exhibit 5 [Voluntary Statement Supplement]; R., pp. ____).

After hearing the testimony and argument from counsel, the circuit court denied Appellant’s motions to suppress the evidence and his statements, finding the police acted reasonably in obtaining Mrs. Hayes’ written consent to search the house for any weapon Simpson may have used in the North Carolina armed robbery. Thus, the initial search was lawful, and after seeing contraband, the officers acted cautiously by obtaining a search warrant before searching further. The court also found Appellant’s statements at the house and after his arrest were voluntary after he was properly advised on his Miranda rights, and he voluntarily waived them. (TT, pp. 78-79; R., pp. ____).

The State then presented testimony before the jury from the police officers regarding the events leading up to the seizure of the drugs and pistol, and Appellant’s arrest, including the consensual search and the subsequent warrant search. (TT, pp. 153-306, 379-436; R., pp. ____). After the State rested, Appellant moved for a directed verdict, which the court denied. (TT, pp. 437-438; R., pp. ____).

Appellant presented testimony from a friend and his mother, and testified on his own behalf. His friend testified she gave Appellant a ride home from school after his mother called him, and he was immediately arrested and handcuffed. (TT, pp. 451-456; R., ____). His mother testified the officers threatened to arrest her to make her sign the voluntary consent to

search form, and did not tell her she had the right to refuse the search. (TT, pp. 453-481; R., pp. _____).

Appellant testified he claimed the drugs only to keep his parents out of jail, and otherwise denied any involvement with them.² In fact, he denied any contact with the drugs even though they were found in his bedroom. (TT, pp. 483-506; R., _____).

The jury convicted Appellant on all charges, and the circuit court sentenced Appellant to concurrent terms of twenty years incarceration on the possession with intent to distribute crack cocaine, five years on the possession with intent to distribute marijuana, and three years on the possession of a stolen pistol. (TT, pp. 571-576; R., pp. _____). This appeal followed.

²He did not deny possessing the stolen pistol.

ARGUMENT

I. **There is ample evidence in the record to support the circuit court's finding Appellant's mother (the homeowner) voluntarily consented to the search of her home.**

Appellant contends the circuit court erred in denying his motion to suppress the evidence seized from his bedroom because Mrs. Hayes' consent to search was not voluntary. The record actually supports the opposite conclusion.

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. State v. Brewer, 411 S.C. 401, 768 S.E.2d 656, 658 (2015). Whether a consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the "totality of the circumstances." State v. Wallace, 269 S.C. 547, 238 S.E.2d 675, 676 (1977). In criminal cases, the appellate court reviews errors of law only, and on appeal from denial of a motion to suppress evidence, appellate review is limited to determining whether there is any evidence supporting the circuit court's decision. State v. Moore, 377 S.C. 299, 659 S.E.2d 256, 259-60 (Ct. App. 2008).

In this case, Appellant presented **no** evidence or testimony during the suppression hearing, relying solely on cross-examination of the police officers. The officers present at the home testified no one threatened Mrs. Hayes in order to gain her consent to search the house. (TT, pp. 16-17, 42, 51-52, 60, 157-159, 185-188, 218-219, 229-230, 383-384; R., pp. ____). Further, it is **undisputed** Mrs. Hayes personally completed and signed the Permission to Search form, which expressly stated she had the right to refuse permission, and her consent was not the result of threats or coercion. (Permission to Search dated August 27, 2014; R., p. ____).

In the face of the officers' testimony and the signed consent form, Appellant relies on Mrs. Hayes' unsubstantiated trial testimony in the defense's case, during which she claimed the sheriff told her she would be arrested if officers obtained a search warrant and found a gun inside the house. (TT, p. 462; R., p. ____). Significantly, Mrs. Hayes did **not** testify during the suppression hearing. At most, her subsequent trial testimony created a credibility issue for the jury.

Applying the "totality of the circumstances" standard, the overwhelming evidence presented at the suppression hearing and at trial provides ample support for the circuit court's finding Mrs. Hayes voluntarily consented to the initial search of her house. Accordingly, the denial of Appellant's motion to suppress the evidence located in his bedroom should be affirmed.

II. The officers did not exceed the scope of the consensual search allowing them to search for the firearm used in the North Carolina armed robbery.

Appellant also contends his motion to suppress should have been granted because even if Mrs. Hayes voluntarily consented to the initial search, officers exceeded the scope of her consent when they entered Appellant's bedroom. He argues Mrs. Hayes' consent for officers to search for a firearm Simpson used in the North Carolina armed robbery was limited to the living room where Simpson's clothes were located. His argument is based on an incomplete and inaccurate representation of the evidence.

Suspects are free to limit the scope of the searches to which they consent, and a consensual search must not exceed the scope of the consent. State v. Funderburk, 367 S.C. 236, 625 S.E.2d 248, 250 (Ct. App. 2006) (*citing* State v. Forrester, 343 S.C. 637, 541 S.E.2d 837, 843 [2001]). The scope of consent is measured by what a typical reasonable person would have understood by the discussions with the police officer leading to the consent. State v. Mattison, 352 S.C. 577, 575 S.E.2d 852, 856 (Ct. App. 2003).

Appellant acknowledges Mrs. Hayes knew the officers were searching for a firearm used in the armed robbery. An objectively reasonable person would understand the search would include any areas and containers in which a firearm could be hidden. There is no evidence Mrs. Hayes limited the scope of the search in any way. In fact, she followed the officers to the back bedroom and told them it was Appellant's bedroom.

As support for his argument, Appellant cites to a very limited portion of Agent Crawford's trial testimony, contending it established the officers knew the clothes in the living room belonged to Simpson before they initiated the consensual search. (Appellant's Initial Brief, pp. 16-17). When considered in context, however, it is clear Agent Crawford and other officers

at the scene did not know where Simpson had stayed in the house when they initiated the consensual search. Rather, after they suspended the consensual search and got a search warrant, they learned he had stayed on the couch in the living room, but Mrs. Hayes told them Simpson ran out of the back bedroom when the officers arrived the second time, and she put his clothes in the living room. (TT, pp. 42-43, 157-161, 186-190, 218-219, 229-234, 288-289, 296-298, 383-385; R., pp. _____).

Further, even assuming for purposes of argument only that the officers knew Simpson had slept in the living room, there was nothing indicating his access to other parts of the house was restricted in any way, and if he was attempting to hide a firearm, he may well have put it in a part of the house other than where he slept.³ See State v. Morris, 395 S.C. 600, 720 S.E.2d 468, 472-73 (Ct. App. 2011), aff'd, 411 S.C. 571, 769 S.E.2d 854 (2015) (scope of an automobile warrantless search is defined by the object of the search, and places in which there is probable cause to believe it may be found) (*citing* State v. Perez, 311 S.C. 542, 430 S.E.2d 503, 505 [1993]). Thus, in light of Simpson's presence in the house, the consent to search for the firearm used in the armed robbery, regardless of what kind of firearm was involved, encompassed any area of the house in which a firearm might be located. Contrary to Appellant's contentions, the fact the officers did not know the specific type of firearm used did not invalid the scope of the search.

Finally, the officers suspended the consensual search fairly quickly and went to get a search warrant. During the subsequent execution of the search warrant, officers did locate a firearm in Appellant's bedroom, but determined it belonged to Appellant rather than Simpson.

³They did know Mrs. Hayes originally lied about Simpson being in the house, so any statements she made were suspect.

The circuit court found the officers acted reasonably during the consensual search, and were “overly cautious” in suspending the search to get a search warrant when the drugs were found in plain view. (TT, p. 78; R., p. _____). As laid out above and in Issue I, the court’s findings are amply supported by the record, and the court’s ruling on the motion to suppress the evidence should be affirmed.

III. The issue of whether the search warrant was invalid because the sheriff's wife issued it in her capacity as a magistrate was not preserved for appellate review.

Appellant contends the search warrant obtained after the drugs were discovered in plain view was invalid because the magistrate who issued it is married to the Chester County Sheriff, and thus, she was not impartial. This issue is not preserved for appellate review.

South Carolina law requires a party to raise an issue and obtain a ruling from the trial judge to preserve an issue for appellate review. State v. Sheppard, 391 S.C. 415, 706 S.E.2d 16, 19 (2011). This rule also applies to constitutional arguments. *Id.*

Appellant filed two written motions to suppress, one regarding the evidence and one regarding his statements. The motion to suppress the evidence, supported by an attached legal memorandum, challenged the validity of Mrs. Hayes' consent and argued the officers did not have a reasonable suspicion or probable cause to support searching the house at all. Nothing in the written motion challenged the validity of the subsequent search warrant because the Sheriff's magistrate wife issued the warrant. (Motion to Suppress Evidence Pursuant to Unlawful Search, dated January 25, 2016, with Memorandum in Support; R., pp. _____).

At the suppression hearing, Appellant asked Lt. Neal if the magistrate who signed the search warrant was married to the Sheriff. The State objected on the ground that question was not relevant to the issues before the court via Appellant's written motions. When the court sustained the State's objection, Appellant stated the questions went to the legal requirement of a fair and impartial magistrate, and the State responded that issue could be argued later. Appellant did not raise the issue in the subsequent arguments prior to the court's ruling, even after the court asked if he had any other matters. (TT, pp. 45-46, 71-79; R., pp. _____).

During trial, Appellant asked the officer who obtained the warrant the name of the magistrate who signed the warrant. The State objected, and after a bench conference (not on the record), Appellant moved on to another issue. (TT, pp. 421; R., pp. ____). Appellant never attempted to make a record of what was discussed during the bench conference, and the magistrate's relationship with the Sheriff was not mentioned the rest of the trial.⁴

Appellant's argument on the issue in this appeal is based on certain assumptions and rank speculation, which would require the State to respond with counter-assumptions and more speculation. This starkly demonstrates the overarching reason for the preservation requirement. If Appellant had properly raised the issue before the circuit court, the information necessary to adequately rule on the issue, as well as the circuit court's findings and conclusions, would be gathered during a hearing, and be in the appellate record to afford this Court the opportunity to properly to consider it.⁵

While Appellant may have considered raising the issue at some point, the record conclusively establishes he did not do so on the record, and the circuit court never ruled on it. Therefore, the issue is not properly before this Court for review.

⁴The failure to raise this issue in the circuit court is amply demonstrated by the fact Appellant cites to no portion of the record where the issue was discussed and ruled on by the circuit court.

⁵The most Appellant asserts are ethical considerations, which do not automatically rise to the level of prejudice requiring reversal. In fact, the Affidavit on which the Search Warrant was issued contained more than ample information to support the magistrate's finding of probable cause to issue the warrant. (State's Exhibit 41 [Search Warrant]; R., pp. ____).

IV. There is ample evidence in the record to support the circuit court's finding that Appellant's statements to law enforcement were freely and voluntarily given after the officers advised him of his Miranda rights.

Finally, Appellant argues the circuit court erred in admitting the verbal and written statements Appellant gave law enforcement the day he was arrested. He asserts law enforcement coerced him into claiming ownership of the drugs and weapon by threatening to arrest his parents if he did not admit the drugs and gun belonged to him.

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his Miranda rights. If a defendant is advised of his Miranda rights, and chooses to make a statement, the State bears the burden to prove by a preponderance of the evidence the waiver was voluntary. State v. Washington, 296 S.C. 54, 370 S.E.2d 611 (1988). The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience, and conduct of the accused. Schneckloth v. Bustamonte, 412 U.S. 218 (1973); State v. Linnen, 278 S.C. 175, 293 S.E.2d 851 (1982). If a suspect's will is overborne and his capacity for self-determination critically impaired, using the resulting confession violates due process. Schneckloth, 412 U.S. at 225.

The trial court's factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Kennedy, 333 S.C. 426, 510 S.E.2d 714, 715 (1998). When reviewing a trial court's ruling concerning voluntariness, the appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 135-36, 551 S.E.2d 240, 252 (2001).

The circumstances surrounding Appellant's two statements in this case are essentially undisputed. When Appellant, Mrs. Hayes and her boyfriend were seated on the front porch, the police officers read their Miranda rights to them, and they each indicated they understood their rights and were willing to talk to the officers. The officers asked each of them individually if the drugs and gun belonged to them, and all three denied any connection with them.

The officers then **truthfully** explained to them the law of constructive possession, and advised that since all of them had equal access to the house, if no one claimed ownership of the contraband, they would all be arrested and charged. This was not stated in a threatening manner, and was intended to be a simple explanation of what would happen if no one claimed the contraband. At that point, Mrs. Hayes looked at Appellant and told him he needed to claim his stuff because it was not hers, and Appellant finally admitted the drugs belonged to him and there was no reason to arrest anyone else. (TT, pp. 47-48,169; R., pp. _____).

Appellant was then arrested and transported to the CCSO, where officers advised him of his Miranda rights again. This time, the rights were written on a CCSO Rights Form, and he acknowledged each right by initialing next to each one. He also signed the waiver of rights at the bottom of the form. Then he gave a written statement indicating he claimed the drugs in order to keep his parents out of jail, but at the bottom of the statement he said he did have in his possession a gun and some marijuana. He subsequently gave a Voluntary Statement Supplemental consisting of answers to some written questions, again admitting possession of the pistol and a small amount of marijuana, but denying any knowledge of the crack cocaine. (State's Exhibit 3 [CCSO Rights Form], State's Exhibit 4 [Voluntary Statement], and State's Exhibit 5 [Voluntary Statement Supplemental]; R., pp. _____).

Appellant is an educated college student, and there is no evidence he has any mental disabilities. There was no long, drawn out interrogation, either at the house or at the CCSO. He was intelligent enough to make his voluntary statements essentially non-confessions. He made sure to include a disclaimer in both his verbal and written statement that he was only claiming the contraband to keep his parents out of jail. If the police so overbore Appellant's will as to coerce him into confessing, they clearly did not get the confession they wanted.

In short, Appellant attempted to have his cake (keeping his parents out of jail) and eat it too (put a disclaimer in his statements that he hoped would get him out of the charges eventually). The totality of the circumstances indicate Appellant knew very well what he was doing, and he voluntarily waived his Miranda rights thinking he could manipulate the situation to his benefit. Therefore, the circuit court properly denied Appellant's motion to suppress the statements he gave to police, and the ruling should be affirmed.

CONCLUSION

Based on the foregoing reasons, the State respectfully submits the judgment and conviction of the circuit court should be affirmed.

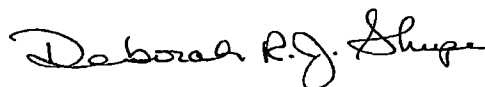
Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

Douglas A. Barfield, Jr.
Solicitor, Sixth Judicial Circuit

Post Office Box 607
Lancaster, SC 29721
(803) 283-3855



By: _____
Deborah R.J. Shupe

Office of the Attorney General
Post Office Box 11549
Columbia, SC 2921109
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 15, 2017

RECEIVED

MAR 15 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
The Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case No. 2016-000193

The State,

Respondent,

v.

Charles Hayes,

Appellant.

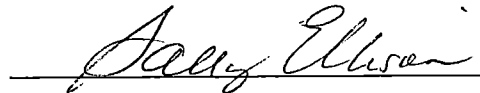
PROOF OF SERVICE

I, Sally Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

William G. Yarborough, III
522 N. Church Street
Greenville, SC 29601

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

This 15th day of March, 2017.



SALLY ELLISON
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

March 15, 2017

William G. Yarborough, III, Esquire
522 North Church Street
Greenville, SC 29601

RECEIVED

MAR 15 2017

SC Court of Appeals

RE: State v. Charles Hayes
Appellate Case No. 2016-000193

Dear Mr. Yarborough:

Enclosed are two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case, with proof of service. If you have any questions, please do not hesitate to contact me.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services (w/enclosure)