

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM HORRY COUNTY
Court of General Sessions
Michael G. Nettles, Circuit Court Judge

SC Court of Appeals

Opinion No. 2017-UP-017 (S.C. Ct. App. filed January 11, 2017)

Appellate Case No. 2017-000720

THE STATE,RESPONDENT

v.

QUARTIS NAQUAN HEMINGWAY, PETITIONER.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

	Page
Table of Contents.....	i
Respondent’s Statement of Issue on Appeal.....	1
Statement of the Case.....	2
Statement of Facts.....	3
Certiorari.....	8
 Argument:	
The Court of Appeals properly affirmed the trial judge’s admission of the victims’ out-of-court identifications from photo lineups because they were not unduly suggestive or the result of police procedures, did not create a substantial likelihood of irreparable misidentification, and did not deprive Petitioner of due process.....	10
Conclusion	18

STATEMENT OF ISSUE ON APPEAL

The Court of Appeals properly affirmed the trial judge's admission of the victims' out-of-court identifications from photo lineups because they were not unduly suggestive or the result of police procedures, did not create a substantial likelihood of irreparable misidentification, and did not deprive Petitioner of due process.

STATEMENT OF THE CASE

On October 16, 2014, Petitioner was indicted by the Horry County Grand Jury for two counts of armed robbery (2014-GS-26-4212–4213) and two counts of kidnapping (2014-GS-26-4214–4215). On May 27-29, 2015, Petitioner proceeded to a jury trial before the Honorable Michael Nettles. Buddy Long, Esquire, represented Petitioner; and Assistant Solicitor Austin Thomas, Esquire, represented the State. The jury found Petitioner guilty of all the charges as indicted, and the trial judge sentenced him to eighteen years' imprisonment on each count, with all sentences running concurrent. (R.p.152, line 1–R.p.153, line 9; R.p.162, lines 4–20).

Petitioner filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal and the State filed a brief in response. Petitioner's conviction and sentence were affirmed in an unpublished opinion from the Court of Appeals. State v. Hemingway, Op. No. 2017-UP-017 (S.C. Ct. App. filed January 11, 2017) (App.p.1–p.2). Petitioner submitted a timely Petition for Rehearing and by Order filed February 23, 2017, the Petition was denied. On March 22, 2017, Petitioner submitted a Petition for a Writ of Certiorari to this Court. This Return, filed on behalf of the State, follows.

STATEMENT OF FACTS

On January 17, 2014, Mario Aldan (Victim 1) received a phone call from an individual seeking to sell him two junk cars. Victim 1, who sold used cars and their parts as his profession, agreed to pay the person \$500 for both cars. They agreed to meet in a rural area of Horry County, near Loris. (R.p.41, line 7–R.p.42, line 16; R.p.72, line 4–R.p.73, line 12).

Victim 1 brought his wife, Alejandrina Morales-Gonzales (Victim 2), with him to the meeting. When they arrived, Petitioner was waiting for them near an abandoned trailer. He told Victim 1 to leave his car near the trailer, and to walk with him to the back area to inspect Petitioner's cars. When they arrived at the designated location, Victim 1 was unable to locate the purported cars. Petitioner then pulled out a revolver, grabbed Victim 1's neck, put the gun to his head, and threw him to the ground. Petitioner was joined by two masked men, and together all three bound Victim 1's arms with tape and searched him for money and valuables. One of the masked men went back to Victim 1's car, grabbed Victim 2, and brought her to the same area they were holding Victim 1. They then bound her arms with tape and began asking both Victims for all the money and valuables in their possession. Over the course of forty-five minutes, Petitioner and the masked men repeatedly threatened Victims: they held guns up to their heads, shot at the ground near them, and promised to kill them. The robbers also threatened to kill Victims if they reported the crime to police. After the men left with two cellular phones, \$1,600, and Victim 2's jewelry, Victims escaped and fled to the business of David Hatchell, a man to whom Victim 1 regularly sold scrap cars and parts. Hatchell urged Victim 1 to call the police but he refused, believing Petitioner or the masked men would kill him and his family. (R.p.42, line 16–R.p.45, line 15; R.p.51, lines 7–9; R.p.65, lines 21–24; R.p.94, line 3–R.p.96, line 9; R.p.97, lines 16–18).

Later that afternoon, Victim 1 and Hatchell went back to the scene of the robbery to try to locate evidence of the perpetrators' identities, but were unsuccessful. When Victims returned home that night, they called their cell phone company and, using the times that they received the calls from Petitioner as well as Victim 1's memory of the last four digits, obtained his telephone number. They called the number and heard Petitioner's voice. (R.p.50, lines 8-25; R.p.52, lines 4-8; R.p.53, lines 8-16; R.p.96, lines 10-14).

The following day, January 18, 2014, Victims returned to Hatchell's business. There, the three of them performed a Facebook search using Petitioner's phone number. The search took them to Petitioner's Facebook page, where they saw a picture of four people, including Petitioner, whom they immediately recognized as the unmasked robber. Still fearing retaliation from the robbers, Victims decided against reporting the crime and their discovery to police. (R.p.53, line 18-R.p.56, line 20; R.p.96, lines 14-23; State's Exhibit 5).

On January 21, 2014, Victims overcame their fear and contacted the police. They met with Officer Larry Williams and provided him with Petitioner's name, cell phone number, and his Facebook picture. After the meeting, Officer Williams performed his own Facebook search, using Petitioner's phone number. The search returned multiple results: specifically, two posts by Petitioner on his own Facebook page from December 31, 2013 and January 11, 2014, requesting people to contact him at the same number from which Victim 1 was called the day of the robbery. He also had the DMV search for Petitioner's home address, and found the robbery occurred "at [the] intersection" near the listed address.¹ Officer Williams used these discoveries as probable cause and obtained a search warrant for Petitioner's phone number. Officer Williams also requested SLED generate a photographic lineup using Petitioner's DMV picture.

¹ Officer Williams testified Petitioner's listed address was 2221 Blue Moon Court. He also noted the crime occurred on property located near the intersection of Blue Moon Drive and Blue Moon Court. (R.p.72, lines 4-15; R.p.79, lines 17-21).

(R.p.57, line 6–R.p.58, line 14; R.p.75, line 15–R.p.80, line 13; State’s Exhibits 6–7).

Accordingly, SLED generated a six-photograph lineup, including Petitioner’s DMV picture and five other photos of individuals possessing similar hair and facial features. (R.p.26, line 8–R.p.27, line 9; R.p.81, lines 12–24).

Approximately one month after their initial meeting, Officer Williams again met with Victims. During the meeting, Officer Williams separated the Victims and had Victim 1 look at the lineup while Victim 2 waited in their car about 5 yards away. Then, Officer Williams had Victim 2 look at the photographic lineup. Victims both immediately identified Petitioner as the unmasked robber. (R.p.58, line 24–R.p.61, line 16; R.p.82, line 12–R.p.85, line 13; R.p.99, line 15–R.p.101, line 10).

Moreover, Officer Jonathan Martin, another officer with Horry County, analyzed Petitioner’s phone records. Using the records received pursuant to the search warrant, and using Cell Hawk, a cell phone analysis program, Officer Martin confirmed Petitioner’s phone was used to call Victim 1 several times on January 17, 2014, and utilized the cell phone tower closest to the crime scene for all three calls. (R.p.87, line 13–R.p.88, line 11; R.p.102, line 16–R.p.106, line 2; R.p.108, line 12–R.p.111, lines 24; State’s Exhibit 8).

During pretrial motions, defense counsel moved to suppress the out-of-court identifications using the photographic lineups pursuant to Neil v. Biggers, 409 U.S. 188 (1972), claiming the identifications were tainted by Victims’ discovery of Petitioner’s Facebook page and his pictures therein; according to counsel, the use of this tainted information to obtain the photographic lineup was prejudicial and unconstitutional. He argued that Victims failed to provide a specific description of the unmasked robber to Officer Williams, other than his race and gender, and that the police generated the description of the robber based solely on the

Facebook photos discovered by Victims. He also alleged that because Victims had some difficulty in understanding English, they believed they were required to select one person out of the photo lineup, and thus gravitated towards Petitioner, the person of whom they had already seen a picture. Finally, defense counsel argued Victims were prejudiced towards picking Petitioner's picture out of the photo lineup because they had seen a picture of Petitioner holding three guns in one of his Facebook photographs.² (R.p.11, line 18–R.p.12, line 2; R.p.28, line 25–R.p.30, line 8).

The State argued against excluding the photographic lineup identifications, noting law enforcement was not present during Victims' initial Facebook search for Petitioner, and thus Neil v. Biggers was not applicable to the instant case: if law enforcement neither instigated nor ordered Victims to search for Petitioner on Facebook, no undue influence or other suggestive behavior from police affected their Facebook identification. The State also noted that SLED generated the photo lineup used by Officer Williams, and that it contained five other individuals with similar hair and facial features to those of Petitioner, which minimized any influence Victims' prior identifications may have had on their photo lineup selections. (R.p.12, lines 3–21; R.p.30, line 10–R.p.31, line 5).

After listening to testimony from Victims and Officer Williams and reviewing the parties' arguments, the trial judge reviewed the photo lineup. He noted all six photos were of young, African-American men with dreadlocks of a similar length, similar degrees of facial hair,

² On Facebook, individuals can set photos to their main page, so that anyone visiting the page will automatically see those "profile pictures." During the pretrial hearing, defense counsel argued against the admission of certain photographs from Petitioner's Facebook profile, at least one of which was a photograph of Petitioner in possession of a gun. The parties noted that State's Exhibit 5, a picture of Petitioner and three other men, was the profile picture set to Petitioner's main Facebook page at the time Victims found his page on January 18, 2014. However, sometime prior to trial, Petitioner changed his profile picture to one in which he is holding several guns. It appears that profile picture was the one on Petitioner's page when Officer Williams copied Petitioner's Facebook posts containing his cell phone number. The solicitor agreed to not use the gun photos, and they were redacted from State's Exhibits 6–7 prior to trial. (R.p.5, line 15–R.p.11, line 17).

very similar facial features such as strong chin lines and “virtually the same mouth and nose structure.” He noted the men had some slight variance in skin tone, but that he could not imagine “anyone could comprise a [photo lineup] that would be less suggestive than this,” and found the lineup was not unduly suggestive, and was thus admissible. He noted it was a “legitimate point” for the defense to argue the Facebook identification may have impacted their selections in the photo lineup, but such issue was a question of fact for the jury. (R.p.31, line 6–R.p.32, line 15).

CERTIORARI

Petitioner argues this Court should grant certiorari because the Court of Appeals “misapprehended” the issue on appeal by improperly relying on State v. Liverman, 398 S.C. 130, 727 S.E.2d 422 (2012); State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004); and State v. Dukes, 404 S.C. 553, 745 S.E.2d 137 (Ct. App. 2013). He contends the three cases, all of which involve the admissibility of eyewitness identifications, are distinguishable from the current case, because social media was not the source of the identification in the three cases and, without further explanation, asserts social media creates a substantial likelihood of irreparable misidentification by victims. The State disagrees and submits the Court of Appeals properly affirmed the trial judge’s admission of the out-of-court identifications because there was ample evidence supporting the trial judge’s finding that the out-of-court photographic lineup identifications did not result from unduly suggestive police procedures. Petitioner attempts to differentiate his situation from Liverman, Traylor, and Dukes by stating the current case involves a social media identification, but fails to provide any substantive reason why the analyses of these cases is inapplicable. Notably, the identification at issue was not the result of an unduly suggestive police procedure; rather, it was the result of research performed by the victims before they even contacted police. Moreover, Petitioner failed to demonstrate a substantial likelihood he was misidentified by the victims.

Pursuant to Rule 242(b), SCACR, there are no “special and important reasons” for this Court to exercise its discretion to grant review of the decision of the Court of Appeals in this matter. Indeed, the Court of Appeals decision was a straightforward exercise of reviewing and affirming the trial court’s application of established precedent, logic, and practical consideration

of the particular facts and circumstances of Petitioner's case. Thus, the State respectfully requests that Petitioner's petition for a writ of certiorari be denied and dismissed.

ARGUMENT

The Court of Appeals properly affirmed the trial judge's admission of the victims' out-of-court identifications from photo lineups because they were not unduly suggestive or the result of police procedures, did not create a substantial likelihood of irreparable misidentification, and did not deprive Petitioner of due process.

Petitioner argues the Court of Appeals erred in affirming the trial judge's admission the photo lineup identifications by Victims, alleging the identifications were tainted by Victims viewing Petitioner's Facebook page the month prior. He also argues the identification process was suggestive, prejudicial, and unconstitutional due to the police investigation of Petitioner's Facebook page, which resulted in Officer Williams including Petitioner's picture in the photo lineup. However, the Court of Appeals properly affirmed the admission of Victims' identification testimonies, as there was ample evidence supporting the trial judge's finding that the out-of-court photographic lineup identifications did not result from unduly suggestive police procedures. Thus, Petitioner's challenge to the identification testimony should be denied and his convictions should be affirmed.

Standard of Review

In criminal cases, appellate courts only review errors of law. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "Whether an eyewitness identification is sufficiently reliable is a mixed question of law and fact. In reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court." State v. Liverman, 398 S.C. 130, 137-38, 727 S.E.2d 422, 425 (2012). "Generally, the decision to admit an eyewitness identification is at the trial judge's discretion and will not be disturbed on appeal absent an abuse of such, or the commission of prejudicial legal error." State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000).

An out-of-court identification of a defendant violates due process and must be suppressed when the identification procedure used by law enforcement was impermissibly suggestive and conducive to a substantial likelihood of misidentification. Liverman, 398 S.C. at 138, 727 S.E.2d at 425; State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct. App. 2013). A witness's subsequent in-court identification is inadmissible "if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (emphasis added). "A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification." Id.

In Neil v. Biggers, the United States Supreme Court set forth a two-part test for courts to use in determining whether due process requires suppression of an eyewitness identification. 409 U.S. 188, 198 (1972). "First, the court must determine whether the identification resulted from 'unnecessarily suggestive' police procedures." Dukes, 404 S.C. at 557, 745 S.E.2d at 139 (emphasis added). "If the court finds the identification did not result from impermissibly suggestive police procedures, the inquiry ends there and the court does not need to consider the second prong." Id. at 557-58, 745 S.E.2d at 139. "If the court finds, however, that the police used an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless 'so reliable that no substantial likelihood of misidentification existed.'" Id. at 558, 745 S.E.2d at 139. The defendant bears the burden of proving the identification procedure was impermissibly suggestive. Id. at 561, 745 S.E.2d at 141 ("Our supreme court has never placed the burden of disproving suggestiveness on the State. The Fourth Circuit, whose decisions regarding federal constitutional law are binding on us, has held

the defendant bears the burden of proving the identification procedure was impermissibly suggestive.”).

Suggestiveness

Petitioner places great weight on the fact that Victims had only brief interactions with Petitioner prior to the robbery itself: Victim 1 viewed Petitioner during their walk between his own car and the spot where he was robbed, and Victim 2 saw Petitioner only briefly when Victims arrived at the address and for a few moments before she was thrown on the ground beside Victim 1. Appellate counsel notes Victims were on their stomach and bound for the majority of the robbery, and that the chaos of the situation impacted their ability to accurately recall the appearance of the unmasked robber. According to appellate counsel, these high emotions led to an unreliable Facebook identification, which in turn led to the improper photo lineup identifications.

Initially, the State notes the main identification in dispute, Victims’ identification of Petitioner on Facebook the day after the robbery, is a situation which falls outside of a Neil analysis. In State v. Tisdale, 338 S.C. 607, 527 S.E.2d 389 (Ct. App. 2000), this Court found that pre-trial witness identifications of a defendant based on media coverage were suggestive, but because they police were not involved in the media identifications and they originated from a non-governmental source, they were admissible. The Court of Appeals noted the purpose of Neil and its progeny is to deter the police from using a less reliable identification procedure where a more reliable one may be available, and because no police deterrence would be achieved by excluding identifications in which government agencies were not involved, the circuit court did not err in allowing the witnesses’ identification testimony. Id. at 392, 612. Accordingly, this Court found that questions regarding “[t]he extent to which a suggestion from nongovernment

sources has influence the memory or perception of the witness . . . is a proper issue for the trier of fact to determine.” Id. at 612–614, 392–393 (citing United States v. Peele, 574 F.2d 489, 491 (9th Cir. 1978)).

In the instant case, Victims and Hatchell performed the Facebook search for Petitioner on their own, without the involvement of police or any other government agency. (R.p.53, lines 8–21). Accordingly, the trial judge properly ruled that questions regarding whether the Facebook identifications influenced the memories of perceptions of Victims and their later identifications of Petitioner were issues reserved for the jury’s determination. See Peel, 574 F.2d at 491; Dukes, 404 S.C. at 557–558, 745 S.E.2d at 139 (stating that if an out-of-court identification was not the result of “impermissibly suggestive police procedures,” due process does not require the identification to be suppressed); Tisdale, 338 at 612–614; 527 S.E.2d at 392–393.

Moreover, the photo lineup generated by SLED was not suggestive even under a Neal analysis. Victims’ identified Petitioner in a Facebook picture which included him and three other men. SLED generated a six-man photo lineup using a completely separate picture which had not been seen by Victims, Petitioner’s DMV photo, and used computer software to select five pictures of individuals possessing similar features to Petitioner, including hair style and length, facial hair, and facial features including mouth and nose structure. (R.p.15, lines 4–17; R.p.31, lines 6–18; R.p.81, lines 12–24). Officer Williams separated Victims during the photo lineup process, and Victims both identified quickly identified Petitioner without any outside influence from each other or Officer Williams. (R.p.16, line 13–R.p.18, line 22; R.p.59, lines 4–11; R.p.82, line 12–R.p.83, line 12; R.p.84, line 14–R.p.85, line 10; R.p.99, line 15–R.p.100, line 6; State’s Exhibits 1–2).

Finally, Petitioner's argument that the photo lineup procedure was suggestive simply because the Victims found Petitioner's Facebook page the day after the robbery is completely without merit. Victims did not perform a random search of Facebook to locate Petitioner; instead, they performed a search for Petitioner's phone number, which yielded two Facebook posts, by Petitioner, in which he extended a general invitation for people viewing his profile to contact him. Both of those posts were made within weeks, and in one case, days prior to the robbery. (R.p.53, lines 11–21; R.p.76, line 17–R.p.79, line 8; State's Exhibits 6–7).

Additionally, both Victims testified they immediately recognized Petitioner as the unmasked robber, despite the presence of three additional men in the Facebook picture. (R.p.53, line 11–R.p.54, line 3; R.p.56, line 9–R.p.57, line 11; R.p.96, lines 10–23; R.p.97, line 19–R.p.98, line 5; State's Exhibit 5). Accordingly, Victims' later identifications of Petitioner in the photo lineups and at trial were not due to any suggestive procedure from the state; rather, they were the result of their own investigation, which was based on their own memories of the crime. Petitioner has failed to provide any evidence contradicting Victims' testimony, or that anything other than their own search using Petitioner's phone number led them to his Facebook page. Thus, Petitioner has failed to carry his burden of proving the identification procedure was impermissibly suggestive. See Dukes, 404 S.C.at 561, 745 S.E.2d at 141 (finding a defendant bears the burden of proving the identification procedure was impermissibly suggestive).

Reliability

When determining the likelihood of misidentification, courts must evaluate the totality of the circumstances using the following factors: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the

witness at the confrontation, and (5) the length of time between the crime and the confrontation. Neil, 409 U.S. at 199-200; State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 697 (2007); State v. Singleton, 395 S.C. 6, 13-14, 716 S.E.2d 332, 335-36 (Ct. App. 2011).

Petitioner argues that Victims' photo lineup identifications were not reliable under the totality of the circumstances and that Victims did not satisfy the first four Neil factors. Specifically, he contends: (1) Victims had only a limited opportunity to view the unmasked robber's face during the crime, because they spent the majority of the crime face-down on the ground, and each witness viewed the unmasked robber for only a few moments during the robbery; (2) Victims did not pay much attention to the unmasked robber's features, because they were consumed with serious concern that they would be killed; (3) Victims did not provide Officer Williams with a detailed description of the unmasked robber, and instead relied upon the name and photo they found on Facebook; and (4) the Victims' level of certainty in their identification of Petitioner was skewed because they located his Facebook page a month before Officer Williams presented them with the photo lineups, so they could not be sure if they were identifying the person from the Facebook page or the robber.

As stated previously, Victims' Facebook search for Petitioner was an identification involving a nongovernmental source, and as such this Court need not reach the question of the reliability of the photo identifications. See Dukes, 404 S.C. at 557-558, 745 S.E.2d at 139; Tisdale, 338 at 612-614; 527 S.E.2d at 392-393.

As to the first factor, Victims' opportunity to view Petitioner's face, Victims testified they met Petitioner outside at 3:00 that afternoon, in clear weather. Victim 1 testified he had a conversation with Petitioner on the way to the ambush spot, which was approximately 300 yards away, which took the pair roughly three minutes to walk. He stated that during this time, he was

able to view Petitioner “perfectly well,” and had seen his face since the moment he arrived. Victim 2 testified she saw Petitioner when they arrived for the sale, and heard the conversation between him and Victim 1 until the two men walked away. Notably, South Carolina courts have repeatedly found that encounters as short as minute were adequate opportunities for identification purposes under Neal. See, e.g., Traylor, 360 S.C. at 83, 600 S.E.2d at 527 (finding three witnesses, who had observed a defendant during a burglary and robbery for respective periods of one minute, five minutes, and ten minutes in a lit area were adequate time periods which did not undermine the reliability of the witnesses’ identification of the defendant); Tisdale, 338 S.C. at 614, 527 S.E.2d at 393 (finding bank tellers’ identifications of defendant, which ranged from thirty to forty-five seconds during the robbery, were reliable, when witnesses saw defendant clearly, in a well-lit area, without anything obstructing his face).

Petitioner also challenges the second factor, Victims’ degree of attention to Petitioner’s appearance, Petitioner’s argument is without merit. His sole argument regarding this factor is that Victims’ apprehension undermined their abilities to accurately recall the unmasked robber’s appearance. However, case law disputes that assertion. See State v. Govan, 372 S.C. 552, 560, 643 S.E.2d 92, 96 (Ct. App. 2007) (finding that under circumstances such as an armed robbery, specifically where a gun is being held to a victim’s head, the victim’s attention would have been heightened) ; see also State v. Blassingame, 338 S.C. 240, 252, 525 S.E.2d 535, 541-42 (Ct. App. 1999) (“A person in fear of his life presumably has a more acute degree of attention to his surroundings than a mere passerby.”).

As to the third factor, the accuracy of Victims’ description of Petitioner, Petitioner argues the description was too vague to be reliable, as it primarily consisted of statements from Victim 1 that the unmasked robber was a black male with a similar build to his. (R.p.62, line 15–R.p.63,

line 20; R.p.89, line 6–R.p.90, line 3). However, Victim 1 testified he provided Officer Williams with Petitioner’s name, phone number, and Facebook picture. (R.p.57, line 19–R.p.58, line 14). Accordingly, it was unnecessary for Victim 1 to provide Officer Williams with any significant verbal description of Petitioner, as the name, phone number, and photo were far more accurate and useful than a vague, verbal description of Petitioner’s appearance.

Regarding the fourth factor, the level of certainty demonstrated by Victims during the photo lineup, Petitioner argues Victims’ certainty was skewed because they based their identification on Petitioner’s Facebook photo, and not on their actual memories of the robbery. According to Petitioner, this affected the reliability of their identifications because they were unsure whether they were identifying the unmasked robber or the person whom they identified using Facebook. However, this argument is without merit, because Victims positively identified Petitioner as the unmasked robber, and were completely certain of that identification, from the very moment they saw his Facebook picture. Notably, Victims did not base their Facebook identification solely on the results of their phone number search: Petitioner’s Facebook picture included three other black men, yet they quickly identified Petitioner as the man who robbed them. (R.p.53, line 18–R.p.56, line 20; R.p.66, lines 7–13, R.p.67, line 24–R.p.68, line 2; R.p.96, lines 10–23; State’s Exhibit 5).

Accordingly, the Court of Appeals properly affirmed Petitioner’s conviction and sentences.

CONCLUSION

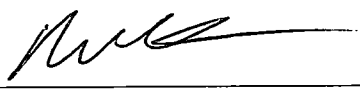
Based on the foregoing reasons, Respondent submits this Court should deny the petition for a writ of certiorari and let stand the decision of the Court of Appeals affirming the trial court. If the Court grants the petition for a writ of certiorari, Respondent would request permission under the rules to fully brief the issues contained herein.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
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THE STATE,RESPONDENT

v.

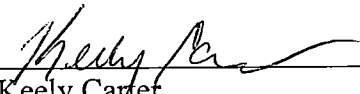
QUARTIS HEMINGWAY, PETITIONER.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Return to Petition for a Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 20th day of April, 2017.


Keely Carter
Legal Assistant
Office of the Attorney General
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APR 20 2017

SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

April 20, 2017

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RE: State v. Quartis Hemingway
Appellate Case No. 2017-000720

Dear Ms. DuRant:

I am enclosing two (2) copies of the Return to Petition for a Writ of Certiorari in the above-referenced case.

Sincerely,

William F. Schumacher, IV
Assistant Attorney General
S.C. Bar No. 100231

Enclosures

cc: Honorable Daniel E. Shearouse (original and six copies enclosed)
Victim Services