STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS



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Appeal from Horry County

Larry B. Hyman, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

TERESA ANN MCCRACKEN-HALL,

APPELLANT

APPELLATE CASE NO. 2016-001192

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# FINAL BRIEF OF APPELLANT

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1.

Whether the court erred in allowing Detective Lent to repeat what Officer Bellamy allegedly told him about appellant's "strange behavior" in retrieving the decedent's lost cell phone, and her failure to inquire where it was found, since the repetition and emphasis of this hearsay testimony about alleged "strange behavior" made it extremely prejudicial?

2.

Whether the court erred by excluding evidence appellant's neighbor, Matthew McGurl, had easy access to the decedent husband, that he had been threatening her husband over drug transactions, where the decedent filed a lawsuit against McGurl the same day he was murdered, since appellant had the right to rebut the state's theory of the case that appellant, as the wife, had the unique opportunity and motive to murder the decedent?

## STATEMENT OF THE CASE

Appellant was indicted by the Horry County grand jury for the offense of murder. Her case was called to trial on May 23, 2016, before the Honorable Larry B. Hyman, Jr., and a jury. Greg McCollum and Dean Muraddu represented appellant. Scott Hixson and J. Stephen Grooms were the assistant solicitors. R. 1.

On May 26, 2016, the jury found appellant guilty of murder. R. 471, ll. 18-22. Judge Cothran sentenced appellant to thirty-five years imprisonment. R. 472, ll. 13-19.

This appeal follows.

## ARGUMENT

1.

The Court erred in allowing Detective Lent to repeat what Officer Bellamy allegedly told him about appellant's "strange behavior" in retrieving the decedent's lost cell phone, and her failure to inquire where it was found, since the repetition and emphasis of this hearsay testimony about "strange behavior" made it extremely prejudicial.

**Relevant Facts**

Horry county police officer Jeremy Crews testified he responded to a 911 call from appellant's sister that a man, appellant's husband, had been shot to death at a residence on the "Conway side of the waterway." R. 19, l. 4 – 21, l. 9. It was 7:38 that July 18, 2013 evening, and Crews met appellant, and her sister, who were outside the home became the crime scene tape denying access to the house had already been placed there. R. 23, ll. 15-20. Crews was told appellant's decedent husband was in the back bedroom. R. 23, ll. 23-25.

Crews described appellant as "hysterical" when he first arrived. He said that she eventually "calmed down a little bit." R. 28, l. 17 – 29, l. 5. Crews found the decedent in the back bedroom, and he observed "there was some blood, but it seemed like it wasn't fresh, it had been dried up type of blood." R. 31, ll. 5-17

Patricia Pate lived across the street from appellant and her husband. She remembered the day before, on July 17, 2013, she "heard a couple pops." She thought she heard the noises coming from the front of appellant's house. R. 36, l. 13 – 39, l. 4.

The contentious testimony of Jaclyn McGurl would follow. R. 46, ll. 1-6. McGurl testified that she lived next door to appellant and her husband. Her husband was Matthew McGurl. R. 46, l. 20 – 47, l. 14.

McGurl testified that although appellant and her husband were neighbors they were not friends. "They would drink and were loud sometimes in the front yard. I kind of could tell they might be trouble, so really wasn't a neighbor you would want to have." R. 50, ll. 4-13.

McGurl said on July 17, 2013, she heard appellant and her husband involved a heated argument. She thought they were outside at the time. R. 61, ll. 1-23.

McGurl testified that later in the day she heard two or three noises that she thought were firecrackers going off. R. 53, ll. 2-18. McGurl remembered that later in the day appellant's sister came to pick her up at the house, and she saw appellant leaving with her sister and the dogs. R. 54, ll. 3-24. McGurl opined that she thought this was odd because the small dog was always with the decedent. Appellant's sister, Sabrina, would later dispute that claim. R. 55, ll. 2-18.

McGurl said the police came to the house the following day when they received a 911 call about the decedent's dead body being discovered. R. 57, l. 7 – 59, l. 23.

On cross-examination, McGurl admitted her husband had "difficulties" with the decedent. R. 60, ll. 4-12. When asked to admit that the difficulties involved money, McGurl claimed: "I don't honestly know the specifics of it, I wasn't involved in it. I didn't care to get involved in it." R. 60, ll. 13-17.

McGurl admitted she later found out that the decedent had filed a lawsuit against her husband on the same day he was apparently killed. R. 60, ll. 18-25. McGurl claimed that on July 17, 2013, the day the police believed the decedent was actually killed, that her husband was at work cleaning office buildings. R. 60, ll. 22 – 61, l. 14. When defense counsel started to press McGurl as to her husband's whereabouts at the time the police thought the decedent was killed, the solicitor objected, and as will be seen *infra* in issue two, a lengthy discussion and proffer was

had regarding the difficulties between Matthew McGurl, the decedent, and appellant followed. These involved text messages -- which defense counsel stated were "nasty" -- between Matthew McGurl, the decedent, and appellant. R. 480, Text Messages 335-362. The judge excluded this evidence as impermissible third-party guilt evidence.

The state's theory of the case was that appellant shot and killed her husband on July 17, 2013. She then called her sister on the decedent's cell phone, and he sister picked her up and took her over to her house. Appellant returned the next day, July 18, 2013, claiming to have discovered the decedent's dead body with her sister present. The state also theorized that appellant dumped the murder weapon into the water at Peachtree Landing, and accidentally left the decedent's phone on a park bench there. All of this was, of course, the state's circumstantial evidence theory of appellant's guilt. The state maintained that appellant had to be the murderer given her alleged unique access to the decedent, their history of domestic violence, appellant being on a dating website, and the lack of any evidence of forced entry to their household.

Chrystal Boyette testified that on the morning of July 18, 2013, she was at Peachtree Landing at Socastee, which was a dock out by the waterway, when she found a cell phone on a park bench. She called the police, and she met a police officer, Officer Bellamy, at a gas station around the corner. She gave him the lost cellphone. R. 89, l. 6 – 91, l. 24.

Officer Billy Bellamy testified on July 18, 2013, he met Boyette at a convenience store near the Peachtree Landing where she turned over the cell phone to him. R. 95, l. 18 – 98, l. 16. Bellamy remembered that the phone was not locked, and that he turned it on. He was able to check the voice messages quickly, do some quick investigation, and figure out that the phone belonged to the decedent. R. 99, l. 11 – 101, l. 23.

At about 8:00 a.m. that morning, Bellamy went to the decedent's house, and a neighbor confirmed that the decedent lived there. However, no one answered the door so Bellamy left his business card in the front door. R. 102, l. 6 – 103, l. 22.

Bellamy said he also was able to contact appellant, and leave a voice message that the decedent's cell phone had been located. R. 104, l.5 – 106, l. 7.

Bellamy testified that appellant, in turn, contacted Horry County dispatch at about noon that day. Appellant agreed to meet Bellamy so she could return the lost cell phone to her husband. They met at the same convenience store where near Peachtree Landing where Bellamy had met Boyette when she returned the lost cell phone. R. 106, l. 9 – 108, l. 15.

The solicitor asked Bellamy: "Did Ms. Hall ask you *where in the world this phone was found*?" R. 108, l. 16-17. (emphasis added). Bellamy said he did not recall any discussion about where the phone was found. He agreed this was unusual since "most times when someone's property is found they want to know where it was located and found. They even ask questions if we knew how it got there." R. 109, l. 17 – 110, l. 15.

Bellamy elaborated that most people were also excited when a $400 lost piece of property was returned to them. None of these "normal" reactions applied to appellant. She did not ask where the cell phone was found, and she was not excited that it was being returned to her. R. 109, l. 17 – 110, l. 15. The assertions about how "most people react" to the return of property were admitted over defense counsel's objections.

Later during the trial the solicitor called Detective Gregory Lent as a witness. Lent remembered that he responded to a 911 call at about 8:15 on July 18, 2013, where he discovered the decedent's body in the back bedroom. R. 215, l. 1 – 216, l. 5. Lent interviewed appellant

and her sister, Sabrina, "together [to get] any information that we could to understand what had occurred." R. 216, ll. 6-10.

Lent remembered that the crime scene had already been secured when he arrived. Lent found appellant seated on the ground either in the driveway or out in the street. R. 217, ll. 3-17.

Lent said he found appellant's demeanor "strange to me." R. 217, ll. 9-23. Lent said conversely that Sabrina was "extremely upset." R. 217, l. 24 – 218, l. 6. Lent interviewed appellant and Sabrina. R. 219, ll. 1-21.

Lent recalled that while at the crime scene he was told that Officer Bellamy had left his business card in the front door. Lent said he called Officer Bellamy on the phone, and asked him about the business card. When Lent began to describe what Bellamy told him defense counsel immediately objected. The judge remarked that he did not think this testimony was hearsay, and he also noted Officer Bellamy already testified. The judge reasoned that Lent would only be reiterating what he heard. The solicitor also said Officer Bellamy had already testified, been cross-examined, and respectfully apparently reasoned that made Lent repeating what Bellamy allegedly told him admissible evidence. R. 223, l. 4 – 224, l. 4.

Lent then testified that the decedent's phone was left at the Peachtree Landing, and that Bellamy was able to determine that the phone belonged to the decedent. Bellamy did further investigation, and he found out the decedent's address. R. 224, l. 5 – 225, l. 1.

Lent testified that Officer Bellamy told him while going through "the contacts" he found appellant's phone number, and he left her a voice message. Bellamy told Lent that appellant came and got the telephone from him at "a gas station right near where the phone was found." R. 224, l. 5 – 225, l. 1.

Lent then testified,

> "That interaction was, what happened. He explained he pulled up, provided her with a phone, and my main question *was did she ask where did you get the phone, how did it end up where it was, has anyone spoken to my husband, normal questions of what I felt were normal questions that I would receive from someone who would ask if I returned their loved one's property to them. He stated that none of those questions were asked, that conversation never went on. She didn't ask him any and he didn't provide that information to her. She didn't ask, and that was the extent of their conversation, Here is your husband's phone, okay, and she then left."*

R. 225, ll. 1-19. (emphasis added).

Based on the decedent's cell phone being found on the Peachtree dock bench, Former Special Operations Investigator Jack Stewart testified that divers were sent to the location to search the water for a weapon. R. 119, l. 6 – 124, l. 23. Stewart said the Intracoastal Waterway was extremely dangerous to dive in, and that four divers were therefore sent to do the search. R. 124, ll. 2-23. Stewart testified that the fourth diver found a pistol in the water, and that it was turned over to SLED. R. 125, l. 1 – 125, l. 21.

The state's evidence was that DNA found in the barrel of the gun matched the "DNA profile of Stephen Hall," the decedent. R. 291, ll. 15-20. SLED agent Dan Defreese testified that a bullet taken from the decedent's body at the autopsy, and a bullet taken from the wall in the decedent's bedroom were both "fired by the same gun." R. 299, ll. 13-19. However, Defreese testified that due to the rusting on the gun his findings were inconclusive regarding whether the gun found in the water actually fired the bullets in question. R. 300, ll. 3-9.

In appellant's defense Sabrina Myers, appellant's sister, testified she had been an administrative manager for Caldwell Banker for approximately twenty-nine years, and she had been married for thirty-three years. R. 357, l. 7-25. Sabrina testified that when appellant called

her on July 17, 2013, that she heard the decedent's voice inside the house when she went to the door to knock. She was "absolutely sure" it was the decedent's voice. Although she did not see the decedent at the time she picked appellant up, she recognized his voice from their years of knowing each other. R. 364, l. 18 – 365, l. 25. Sabrina remembered loading the dogs into the car with the appellant. R. 366, l. 4-16.

Sabrina consistently said on cross-examination to a probing solicitor that she heard the decedent's voice inside the house on July 17, 2013 when she left the house with appellant and the dogs. Unless the state accused Sabrina of lying this meant the decedent was not dead at the time, and the state's circumstantial "theory" of the case was not true. R. 388, ll. 2-17.

**Discussion**

The repetition by Detective Lent about what Officer Bellamy allegedly told him about the state's obsession with appellant's "strange" behavior when she received her husband's lost cell back was highly prejudicial hearsay. Its "cumulative" nature was what made it so prejudicial as the Supreme Court, and this Court has explained in other contexts. The state sought to emphasize, through this inadmissible hearsay testimony, its point that appellant allegedly was acting strangely because she did not ask where the cell phone was found, and she was not excited about its return.

This, the state theorized, showed that appellant knew she accidently left the cell phone behind when she disposed of the murder weapon at the Peachtree Landing, and she was not excited about its return because she had to be worrying what the police found on the phone while it was in their possession.

The state's evidence in this case was all circumstantial as the solicitor told the jury in his opening statement but he promised all of the pieces would come together in the end. R. 9, l. 4 –

11, l. 1. The solicitor in his closing argument stressed its theory of the case, and appellant's "strange" reaction to the discovery of her husband's cell phone. R. 441, l. 16 – 443, l. 16.

In Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001), the Supreme Court noted that it had stated in Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994), that the cumulative nature of hearsay testimony was what enhanced its devastating impact. In Dawkins and Jolly, the hearsay testimony was corroborating testimony. In the present case the hearsay repetition of what Officer Chambers allegedly told Lent had an unduly prejudicial enhanced effect on the jury because Lent's repetition of what Chambers allegedly told him about the details of appellant's "strange behavior" had the impermissible spurious tendency to make it seem more believable to the jury.

The rule against hearsay prohibits the admission of evidence of an out-of-court statement to prove the truth of the matter asserted unless an exception to hearsay rule applies. Watson v. State, 377 S.C. 68, 71, 634 S.E.2d 642, 644 (2006).

In Vail v. State, 402 S.C 77, 738 S.E.2d 503 (2013), this Court recognized that improper hearsay corroborating testimony that it is cumulative cannot be harmless. While appellant understands that Jolly, Dawkins, and Vail involved cumulative hearsay corroboration testimony, offering hearsay cumulative testimony on a critical point the state seeks to emphasize to the jury should respectfully not be analyzed any differently as to its prejudicial effect, and as to harmless error.

The state sought to emphasize that appellant was "acting strangely" when she retrieved her husband's cell phone because she allegedly knew where she lost it, and/or she did not care because she knew he was dead. The state is entitled to its theory of the case, and to emphasize

what evidence it chooses to emphasize. It is not free to emphasize evidence through hearsay testimony, as it did with Detective Lent in this case.

2.

The court erred by excluding evidence appellant's neighbor, Matthew McGurl, had easy access to the decedent husband, that he had been threatening her husband over drug transactions, where the decedent filed a lawsuit against McGurl the same day he was murdered, since appellant had the right to rebut the state's theory of the case that appellant, as the wife, had the unique opportunity and motive to murder the decedent.

**Relevant Facts**

As seen above, the solicitor objected when defense counsel began to cross-examine Mrs. McGurl about the difficulties between her husband, Matthew, and the decedent and appellant. The solicitor said that appellant was selling her prescription pain medication to Matthew McGurl, and there were text records to prove that fact. Matthew McGurl did not want his wife to know about this because she did not want him to continue to use prescription medication. The solicitor argued to the court that the defense had opened the door to him presenting evidence appellant caused problems by illegally selling pills. In essence, the solicitor was threatening the defense if it presented this evidence. R. 62, l. 1 – 64, l. 18.

The solicitor also noted that the decedent filed a lawsuit against Matthew McGurl but he contended since it was not served on Matthew McGurl until after the decedent's death that it did not provide a motive for Matthew McGurl to kill the decedent. It was undisputed that McGurl was a suspect in the decedent's murder. R. 62, l. 1 – 64, l. 18.

Defense counsel told the court the defense did not accept McGurl's alibi because it was conflicting, and he appeared to allege he was in two places at the same time. Although the solicitor initially said the state had time sheets to prove McGurl's alibi, he quickly backed off that assertion. He acknowledged that law enforcement took the word of McGurl's apparent

supervisor that McGurl was at work around the time the state believed the murder took place. R. 64, l. 4 – 68, l. 1.

Defense counsel noted there were three threatening text messages from McGurl in this case. "I'll read the first one. One of you better get the fuck out of the house. Sorry just doesn't cut it for what you did. I'll never talk to you again. You fucked me. You are a rat. You didn't remember the rules of the playground. Quit calling and texting me and my wife." R. 68, ll. 3-11; R. 480.

Defense counsel noted the third threatening message was in all capital letters. As shown by the text records it stated: "I don't need to know when the check was mailed out. I told u when I got it U WOULD GET IT. IF U WANT CALL THE MAILMAN AND FIND OUT WHAT TIME HE WILL BE DELIVERING THE MAIL. R. 480, Text Message 362.

Other text messages corroborating the drug abuse and selling of prescription pain killers stated: "No more selling your pills. I'm calling your doc in the morning." R. 480, Text Message 337. In addition to threatening messages to stop calling and texting his wife, another text message concerned the money owed for the pills. R. 480, Text Message 340.

The solicitor attempted to make much of the fact that McGurl alleged "passed" a polygraph examination. The solicitor impermissibly presented evidence of that fact in the presence of the jury. R. 64, ll. 14-18. Detective Lent also testified in hearsay testimony that McGurl's employer said McGurl was at work "that night. To follow up with that comment we also had *Mr. McGurl submit himself, to a polygraph, which he passed.*" Lent claimed his investigation eliminated McGurl as a suspect in the murder. R. 270, ll. 8-24. (emphasis added).

The defense was foreclosed from presenting the testimony of Jacklyn McGurl that if her husband went to the decedent's house the decedent would have let him into the house without

incident. R. 71, ll. 4-25. Ms. McGurl also said she knew of a relationship with selling prescription pain medication that existed between appellant and her husband but she claimed: "I don't know of Steve [the decedent]." R. 73, l. 24 – 74, l. 19.

The judge's erroneous exclusion of the proffered text messages, the proffered cross-examination of Jaclyn McGurl, and the remainder of the proffer prohibited appellant from offering a coherent rebuttal defense to the state's circumstantial theory of the case. With the exception of the dispute over the validity of McGurl's albi, and the state accepting it at face value without investigation, the remainder of the proffered evidence was not really in dispute. The state just did not want the jury to hear it. The judge reasoned it was impermissible third-party guilt evidence because it was not "inconsistent" with appellant's guilt. Yet, no one contended that appellant was colluding or conspiring with McGurl against the decedent. The decedent being murdered on the same day he filed a lawsuit against McGurl was quite a coincidence, if it was one. R. 61, l. 1 – 76, l. 1.

Further, as seen, the state was able to strategically attack the defense by impermissibly having Lent point out that McGurl had "passed" a polygraph examination, and that his unknown employer allegedly provided an alibi for him. The defense also told the judge that the decedent ran or owned a bar that was under the control of the Hells Angels, and that he was involved in buying and selling prescription narcotics. All of this created the backdrop for the proffered text messages that are before this Court. "A lot of nasty stuff was going on," defense counsel told the judge. R. 65, ll. 4-17.

**Discussion**

In Holmes v. South Carolina, 547 U.S. 319, 324 (2006), the Supreme Court noted, "[S]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. United States v. Scheffer, 523 U.S. 303, 308, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998); see also Crane v. Kentucky, 476 U.S. 683, 689–690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986); Marshall v. Lonberger, 459 U.S. 422, 438, n. 6, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983); Chambers v. Mississippi, 410 U.S. 284, 302–303, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); Spencer v. Texas, 385 U.S. 554, 564, 87 S.Ct. 648, 17 L.Ed.2d 606 (1967). This latitude, however, has limits. `Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' Crane, supra, at 690, 106 S.Ct. 2142 (quoting California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); citations omitted). This right is abridged by evidence rules that `infring[e] upon a weighty interest of the accused' and are 'arbitrary' or 'disproportionate to the purposes they are designed to serve.' Scheffer, supra, at 308, 118 S.Ct. 1261 (quoting Rock v. Arkansas, 483 U.S. 44, 58, 56, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987))."

In Rock v. Arkansas, 43 U.S. 44 (1967), the Court noted that a defendant had a constitutional right to present a complete defense. The state's "theory" of the case, as defense counsel McCullum referred to it throughout the trial, was that appellant had to be the murderer because she had unique access to the decedent. The defense sought to show that was not true, and Mathhew McGurl's wife admitted in the proffer that appellant would have let Matthew into the house if he came to the door. This was despite the prescription drug selling and purchases

that Jaclyn McGurl knew about. Appellant also proffered evidence of the threats made by McGurl, and the bad blood between McGurl and the decedent. Appellant filed a lawsuit against McGurl on the day he was murdered.

The state's tried to make much of the fact that the relationship between the decedent and appellant consisted of domestic violence, that appellant was on a dating website calling appellant an "asshole" around the time of his murder, that there was no evidence of forced entry, and therefore, by process of elimination, appellant had to be the murderer. She allegedly had unique access, prior bad blood, and present evidence of bad blood. The defense had the right to rebut these assertions by showing McGurl had each of the same with easy access, present and past bad blood and motive. McGurl was threatening the decedent over drugs, the decedent filed a lawsuit against McGurl on the day he was killed, and McGurl could easily have gained access into the house without breaking into it.

The judge's exclusion of the proffered evidence in this case on the grounds of third-party guilt was infringing "upon a weighty interest of the accused," appellant, in this case, and therefore it was "arbitrary" or "disproportionate to the purposes" of the Gregory third party guilty evidence. Holmes v. South Carolina, 547 U.S. 319, 324 (2006). Appellant wanted the jury to hear the proffered evidence to rebut the state's claim, and "theory of the case" that appellant was *uniquely* positioned to have access to kill the decedent, and she *uniquely* had the bad blood motive to kill the decedent at the time. Given McGurl's more than equal status in this regard at the time, the state's theory of the case simply was not true, and appellant had a right to rebut it, and show why it was not true.

Even if the proffered evidence in this case was controlled by State v. Gregory 198 S.C. 98, 104-105, 16 S.E.2d 532, 534-535 (1941), and Gregory was not being used as a tool to

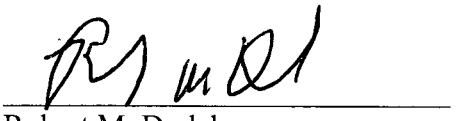
exclude admissible evidence, it did not cast a bare "suspicion upon another, or raise conjectural inference as to the commission of a crime by another." Further, there was no evidence that appellant was acting in concert with Matthew against her husband in any manner such as the evidence would not have been inconsistent with her own guilt.

What was equally unfair in this case was that the state was strategically allowed to "exonerate" McGurl where appellant was precluded from offering its rebuttal evidence against the state's theory of the case by presenting its proffered case involving McGurl in a coherent fashion given the judge's wholesale exclusion of this evidence. The state presented inadmissible testimony that McGurl passed a polygraph examination, and hearsay testimony that McGurl's employer presented him with an alibi. The state was also allowed to argue that the decedent's lawsuit against McCurl was not damaging to the state's theory of the case because McGurl would not have known of the lawsuit until after appellants death. With the bad blood between McGurl and the decedent as shown by the text messages appellant submits it was very likely McGurl had been threatened with the lawsuit. The salient point was that the state was able to strategically disarm appellant's rebuttal evidence where appellant was not allowed to present it as a defense.

Appellant recognizes this is a highly unusual case where admissible rebuttal evidence in his defense was erroneously excluded as inadmissible third-party guilt evidence. This Court should reverse appellant's conviction, and remand for a new trial so that appellant can present a complete defense.

## CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed, and this case remanded to the Horry County Court of General Sessions for a new trial.



Robert M. Dudek
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ATTORNEY FOR APPELLANT



This 6th day of July, 2017.

## CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 6, 2017

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