VOLUME TWO OF TWO

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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Kristi L. Harrington, Circuit Court Judge

Case No. 2017-001928

STATE OF SOUTH CAROLINA,

RESPONDENT

v.

DEAN NELSON SEAGERS,

PETITIONER

APPENDIX

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ATTORNEY FOR PETITIONER

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Volume II

CAMERON MARSHALL
ATTORNEY AT LAW

July 17, 2015

The Hon. Jenny Abbott Kitchings
South Carolina Clerk of Appellate Court
P.O. Box 11629
Columbia, SC 29211

Re: *State of South Carolina v. Dean Nelson Seagers*
Charleston County General Sessions Court
Case No.: 2012-GS-10-6779

Dear Ms. Kitchings,

Please find enclosed for filing one original and one copy of a Notice of Appeal, a copy of the judgment which is to be challenged on appeal, as well as a Certificate of Service in the above-captioned matter.

We would appreciate you filing these documents and returning a clocked copy to us in the self-addressed stamped envelope provided.

With kindest regards,

Cameron L. Marshall (JC)

Cameron L. Marshall

CLM:jc

Enclosures: as stated.

cc: J. Whit Sowards, Esq.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi L. Harrington, Circuit Court Judge

Case No. 2012-GS-10-6779

State of South Carolina, ... Respondent,

v.

Dean Nelson Seagers, ... Appellant.

NOTICE OF APPEAL

Dean Nelson Seagers appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Kristi L. Harrington on July 9, 2015. Appellant made a post-trial motion for a new trial and has not yet received written notice of the order denying the motion.

July 17, 2015

Cameron L. Marshall
7 Gamecock Ave, Suite 707
Charleston, South Carolina 29407
(843) 795-2298
Attorney for Appellant

Other Counsel of Record:
J. Whit Sowards
Assistant Solicitor
101 Meeting Street, Fourth Floor
Charleston, South Carolina 29401
(843) 958-1900
Attorney for Respondent

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.

DEAN NELSON SEAGERS

AKA: Dean Seagers
Race: Black Sex: M Age: 35
DOB: [redacted]1980 SS#: [redacted]
Address: [redacted] Ranger Dr
City, State, Zip: North Charleston, SC 29405-7362
DL# 011199001 SID# SCO 1076948
*CDL Yes • No 12 CMV Yes • No 13 Hazmat Yes • No •

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1006779
A/W: 2012A1010900184
Date of Offense: 06/20/2012
S.C. Code §: 44-53-0375 (B)(1)
CDR Code #: 3014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was IS CONVICTED OF or • PLEADS
TO: Distribution of Cocaine Base
In violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code U 3014

• NON-VIOLENT • VIOLENT E SERIOUS • MOST SERIOUS • Mandatory GPS (CSC w/minor 1st or Lewd Act) ☑ §17-25-45

The charge is: ☑ As indicted. • Lesser Included Offense. • Defendant Waives Presentment to Grand Jury. ___ (def.'s initials)
The plea is: ☑ Without Negotiations or Recommendation. • Negotiated Sentence, • Recommendation by the State.

ATTEST:

Whit Sowards, Assistant Solicitor 101021 SC Bar# | Defendant | • Attorney for Defendant 64192 SC Bar#

WHEREFORE, the Defendant is committed to the ☑ State Department of Corrections • County Detention Center, for a determinate term of life imprisonment this day or • ☐ under the Youthful Offender Act not to exceed ___ years and/or to pay a fine of $___; provided that upon the service of ___ days/months/years and or payment of $___; plus costs and assessments as applicable*; the balance is suspended with probation for ___ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

• CONCURRENT or • CONSECUTIVE to sentence on: ___

☑ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

• The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

• RESTITUTION: • Deferred • Def. Waives Hearing
Total: $___ plus 20% fee: ___. $___
Payment Terms: ___

• Set by SCDPPPS ___

Recipient: ___

•Fine: ___		$___
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(l)(Conv. Surcharge)	$100	$ iTOM
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 35-00
§14-1-213 (Drug Court Surcharge)	$150	$ J M
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ Just
3% to County (if paid in installments)	$	$ 8.40
TOTAL		$ MAO

• Ordered PTUP ___ ___ days/hours Public Service Employment
Obtain GED •
Attend Voc. Rehab. Or Job Corp. ___
May serve W/E beginning ___
Substance Abuse Counseling •
Random Drug/Alcohol Testing •
Fine may be pd. in equal consecutive weekly/monthly pmts. of $___ Beginning ___
$___ Paid to Public Defender Fund

Other: ___
ATY

• Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk:
Court Reporter: Melissa Singletary

Presiding Judge:
Judge Code: 1215
Sentence Date: 7/14/15

ATTEST: A TRUE COPY
JULIA J. ARMSTRONG (SEAL)
CLERK C.P. & G.S. & F.C.
By: ___
DEPUTY CLERK

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2012-GS-10-6779
	)	
STATE OF SOUTH CAROLINA	)	
	)	
v.	)	
	)	**VERDICT FORM**
DEAN NELSON SEAGERS,	)	
	)	

VERDICT

1. We, the Jury, find the Defendant Dean Nelson Seagers, NOT GUILTY.____

OR

2. We, the Jury, find the Defendant Dean Nelson Seagers, GUILTY of Distribution of Cocaine Base. ✓

H. Kuffalz
Henry W « ll., Foreperson.
July 7, 2015.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG^SEALi
CLERK, C.P./G.S. & F.I.
By
DOTffCLERK

SLB20120806437

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

121017G

ARREST WARRANT NUMBER

2012A1010900184

DATE OF ARREST

August 30,2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAY 17

VERDICT

Guilty

J. Highsmith 7-9-15

Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2012GS1006779

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2012

THE STATE

VS.

DEAN NELSON SEAGERS
DOB: 1980 [redacted]
B/M

Indictment for

Distribution of Cocaine Base

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK C.P./G.S. ATFC.
By
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on November 13,2012 the Grand Jurors of Charleston County present upon their oath:

Distribution of Cocaine Base

That in Charleston County, South Carolina, on or about June 20,2012, the Defendant, DEAN NELSON SEAGERS, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the stitute in such case made and provided.

/STEPHANIE BILINDER
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
"JULIE J/ttfRMSTRONGiSEAL)
CLERK C.F. GS jyrc, &
Qy
DEPUTYULERK

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi L. Harrington, Circuit Court Judge

Case No. 2012-GS-10-6779

State of South Carolina, ... Respondent,

v.

Dean Nelson Seagers, ... Appellant.

CERTIFICATE OF SERVICE

I, Joanna Cretella, do hereby certify that I have served a copy of the Notice of Appeal, dated July 17, 2015, in connection with the above-referenced case, via United States Mail, to the addressee listed below on the 17th of July, 2015:

J. Whit Sowards
Assistant Solicitor
101 Meeting Street, Fourth Floor
Charleston, South Carolina 29401
(843) 958-1900
Attorney for Respondent

July 17,2015

Joanna Cretella
17 Gamecock Ave., Suite 707
Charleston, South Carolina 29407
(843) 795-2298
Legal Assistant to Cameron Marshall,
Attorney for Appellant

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SEP 21 2016
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
The Honorable Kristi L. Harrington, Circuit Court Judge

Appellate Case No. 2015-001662

STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

DEAN NELSON SEAGERS,

APPELLANT.

FINAL BRIEF OF APPELLANT

TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

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Columbia, SC 29204
(803) 738-8622
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tdslaw@shurlinglaw.com

ATTORNEY FOR APPELLANT

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Cases

STATEMENT OF THE ISSUES ON APPEAL

I.

The Trial Court erred in permitting the State to introduce the voice identification testimony of Detective Grill where the State failed to present a sufficient foundation for the testimony in question.

II.

The Trial Court erred in permitting the State to introduce the voice identification testimony of Detective Grill where the witness had not been qualified as an expert in voice identification and the jury was likely, on the narrow facts of this case, to view his testimony as deriving from his qualification as an expert.

III.

The Trial Court erred, and thereby violated Appellant's right to due process of law, by instructing Appellant's jury on the law as it relates to accomplice liability where there was no evidence adduced at trial which tended to establish that Appellant acted in concert with anyone in the crime charged.

STATEMENT OF THE CASE

Appellant, Dean Seagers, was indicted by the Charleston County grand jury during the November 2012 term for Distribution of Cocaine Base (2012-GS-10-06779). He was represented in the trial court by Cameron L. Marshall, Esquire. The Appellant proceeded to trial by jury on July 6-9, 2015 before the Honorable Kristi Lea Harrington. The State was represented at trial by J. Whit Sowards, Assistant Solicitor, and Lauren L. Mulkey, Assistant Solicitor. At the conclusion of this trial, the Appellant was found guilty as charged and was subsequently sentenced on July 9, 2015 to Life without Parole for Distribution of Cocaine Base.

The Appellant served and filed a timely Notice of Appeal from his judgment and sentence. This appeal follows.

ARGUMENT

STATEMENT OF FACTS

Appellant was alleged to have sold a confidential informant crack cocaine on June 20, 2012. The confidential informant, who was subsequently identified as Robert Drayton, was working with Detective Mike Burke. According to Burke's trial testimony, Drayton was being paid to conduct undercover drug buys. Burke ultimately admitted, however, that Drayton had himself been the target of a drug investigation and that his office had ultimately recruited him as a paid CI after determining that he would be more valuable to them as a resource. His testimony clearly establishes that there were charges that would have been brought against Drayton had it not been for his agreement to work with the police. Tr. p. 281, l. 4 – p. 284, l. 12. Burke admitted that at the time he made the decision to offer Drayton money to make buys as a confidential informant he was aware that this individual had a prior conviction for providing false information to law-enforcement. ROA p. 267, ll. 11-16.

According to Burke's trial testimony Drayton used his own telephone to set up a purchase from Appellant. The drug deal that supposedly followed was monitored with audio surveillance and Drayton was outfitted with a camera on his clothing. ROA p. 234, l.8 – 236, l. 10. There was no live video feed being monitored by law-enforcement contemporaneous with this alleged drug transaction. Detective Burke testified *in camera* that when the video surveillance feed was subsequently downloaded it did not show Appellant and, in fact, did not show who had lowered the small quantity of crack cocaine to Drayton from a second-story window. ROA p. 30, l. 20 – p. 32, l. 14.

Prior to jury selection, Appellant made a motion to suppress his identification by Drayton during a pretrial identification procedure and during the trial. ROA p. 4A, ll. 16-22. When Drayton was called as a witness for the State during the *in camera* proceeding on that motion, Drayton invoked his Fifth Amendment rights and declined to answer questions concerning the events of June 20, 2012. He did however acknowledge having known Appellant for a couple years and indicated that he knew him through his family. He further testified that he knew Appellant by the nickname Baby Dean. ROA p. 12, l. 13 – p. 13, l. 2. Drayton did acknowledge having been shown one photograph by Burke which Drayton acknowledged identifying as Baby Dean. ROA p. 14, l. 24 - p. 15, l. 7.

As previously noted, during the *in camera* proceeding Drayton denied seeing Appellant at all on the date this drug sale allegedly took place and expressly denied buying drugs from Appellant that day. When Drayton subsequently testified before the jury, however, he claimed that the statement he had given to Burke immediately after the transaction was truthful. That statement was introduced into evidence as State's Exhibit No. 2. ROA p. 10, ll. 19-24 (marked for ID) and ROA. p. 190, ll. 12-20 (introduced). Drayton claimed he had not testified truthfully in the *in camera* proceeding because he had received a threatening phone call from someone that morning before the trial began. He did not claim the call was made by Appellant. He likewise did not testify that the call was made by anyone he knew to be affiliated with Appellant. ROA p. 229, l. 8 – p. 230, l. 21.

In his trial testimony, however, Drayton claimed that he did not see the person who lowered the drugs down to him, in a cup on a string, from a second floor window. He did claim that he got a quick glimpse of Appellant through a window after the drugs were delivered to him in the cup. He subsequently admitted, however, that he only saw the person he identified as Appellant for a split second and that he could have been mistaken about the

individual being Appellant. ROA p. 191, l. 12 - p. 193, l. 18. There were other things about the account given by Drayton that were questionable. For example, both law enforcement officers who testified about this operation, Grill and Burke, testified that Drayton was thoroughly searched prior to being sent out to make this purchase. Grill testified that when he arrived on the scene, Burke was in the process of searching Drayton. He described in detail how thoroughly a CI was always searched before an operation. ROA p. 169, l. 8 - 170, l. 11. Burke's testimony described a very thorough search of Drayton's person before the undercover buy. While Drayton confirmed that he was searched by Burke, he vehemently denied that the police searched the crack in his buttocks. ROA p. 199, l. 5 – p. 200, l. 24.

The drugs ultimately attributed to this drug transaction were eventually identified by State witness, Renee Hilton, a forensic chemist, as testing positive as crack cocaine, not powder cocaine as Burke had supposedly made arrangements to buy from Appellant. The drugs in question were said to have weighed only 2.03 grams. ROA p. 334, l. 25 – p. 340, l. 25. Thus, the amount of drugs allegedly purchased from Appellant was extremely small and could easily have been concealed on Drayton's body in intimate areas not searched by Burke prior to the sting operation.

Burke admitted in his *in camera* testimony that he never even printed out his report on Drayton's debriefing and that as of the date of the trial that report was on the hard drive in his police vehicle in his new position in Indianapolis. ROA p. 24, l. 21- p. 25, l. 13. In another interesting twist, Burke ultimately admitted that when Drayton was searched and sent out Appellant was not the individual Drayton was supposed to be buying drugs from on that date. Burke indicated that the intended buy fell apart for some reason and that Drayton then called Appellant and arranged a different deal. ROA p. 232, l. 3- p. 234, l. 3. Burke's testimony indicated that he talked to Drayton twice by phone after he left him. ROA p. 284, l.13- p.

285, l. 18. Drayton on the other hand, denied speaking to Burke at all after he was searched and before he returned to where Burke was waiting for him. ROA p. 204, ll. 18-21. Drayton did acknowledge that he talked on the telephone while riding the bicycle to the buy location and indicated that the person he was talking to was his girlfriend. ROA p. 203, l. 20 - p. 204, l. 2. Although Drayton was equipped with a camera hidden on the front of his shirt, and a live feed audio device, there were multiple blackouts in the recordings in question resulting in a significant amount of time when it was impossible to know exactly what Drayton was doing. The transcript of Appellant's trial reveals that neither Burke nor Drayton revealed where the *original* buy was to have taken place or what caused that buy to fall through. In fact, while Burke testified that Appellant was not the original target that day, Drayton never acknowledged that there was a change in the plan and that he supposedly called Appellant to set up a buy as a fall back plan when the deal he was supposed to be making fell apart.

At trial the State introduced testimony from Detective Charles Jacob Grill. He was not the case agent in this case; however, according to his testimony, he had some involvement in this case. He was in fact the first witness to be called by the State after the jury was sworn. After a lengthy discussion of his law enforcement experience, he was qualified as an expert in narcotics investigations without objection by the defense. ROA p. 107, ll. 10-14. Grill was permitted, without objection by the defense, to testify at length concerning how many of the facts in this case were typical of the actions of a drug dealer. ROA p. 108, l. 5 - p. 128, l. 13. He went on to testify that on the date in question he observed a gray Dodge Charger down the street from the target location and recognized it to be a vehicle that law-enforcement knew Appellant to drive. Grill resisted numerous attempts by the defense to get him to answer questions concerning whether he had ever personally seen Appellant driving or riding in the car in question. ROA p. 139, ll. 1 – p. 143, l. 17.

Ultimately he admitted that he did not take pictures of the automobile or record its tag number. He acknowledged that his testimony that Appellant was "known to" use that vehicle was based on "Intel", that he had no idea the source of. He even testified that he "wanted to say" the car had tags from North Carolina or Virginia which lead him to believe it was a rental car. ROA p. 166, l. 9 – p. 167, l. 22. Grill next stated that someone might have told them that was a car Appellant had been seen in. ROA p. 174, l. 12 – p. 176, l. 15. Burke on the other hand, eventually admitted that he did check out the ownership of the gray car in question, but claimed he did not document his findings because the car did not "come back" as registered to Appellant and he attributed no significance to the fact that the vehicle would be registered to someone other than Appellant, opining that the fact that the car that was not registered in his name was not significant. ROA p. 279, l. 8 – 281, l. 3.

Grill offered testimony that he recognized Appellant's voice on the audio recording of the transaction. Trial Counsel objected to this testimony on two grounds. First, Appellant argued that Grill was not an expert in voice identification and secondly, Appellant noted that no proper foundation had been laid for his voice identification testimony. ROA p. 132, l. 23 – p. 135, l. 8. The Court overruled Appellant's objection to this line of testimony indicating that it disagreed with Trial Counsel's analysis, but not indicating a ruling on the two separate grounds upon which the objection was raised. The Court did however note that Appellant's objections were preserved for the record. ROA p. 135, ll. 9-20. Only *after* the Court's ruling did the prosecution ask Grill questions designed to lay a foundation for his voice identification testimony. ROA p. 136, l.14 - p. 138, l. 10. In this testimony, he claimed to have spoken with Appellant on several occasions prior to the date of the alleged buy. He also testified that he was present when Appellant was arrested at the same location where the buy was alleged to have occurred and had spoken with him after his arrest. Based upon that

exposure, he claimed to be certain that the voice on the audio recording was that of Appellant.

On cross-examination Grill acknowledged that his law enforcement training had taught him to document matters that were significant in his police reports. Notwithstanding that training, he asserted that he didn't document the fact that he supposedly recognized Appellant's voice in this case, noting that he "just didn't write it down". ROA p. 139, l. 24 - p. 141, l. 15.

With regard to his previous opportunity to observe Appellant's voice, on cross-examination Grill admitted that on the two occasions when he had previously spoken with Appellant, ***"I believe it was just kind of a hey, how are you doing – type deal as we were on the street working either doing – – executing warrants in this area or just – – just an encounter."*** ROA p. 157, 1-6. He asserted, however, that after Appellant was arrested ***"we did have a long conversation with the defendant. Yes, sir, I did."*** ROA p. 157, ll. 6-9. When asked if he could remember when these two brief encounters with Appellant before his arrest took place, Grill indicated that he did not remember when they occurred, but that he just knew that he had spoken to Appellant in the past. When Trial Counsel asked him if these encounters were ***"said hello on the street?"***, Grill repeated ***"Yes sir, just an encounter."*** ROA p. 157, ll. 10-16.

DISCUSSION

Issues I and II

The Trial Court erred in permitting the State to introduce the voice identification testimony of Detective Grill where the State failed to present a sufficient foundation for the testimony in question.

The Trial Court erred in permitting the State to introduce the voice identification testimony of Detective Grill where the witness had not been qualified as an expert in voice identification and the jury was likely, on the narrow facts of this case, to view his testimony as deriving from his qualification as an expert.

As noted by the South Carolina Court of Appeals in *State v. Smith*, 3 S.C. 376, 425 S.E.2d 409 (Ct. App. 1993), voice identification testimony from a person having heard someone's voice has long been regarded as legitimate and competent evidence to establish the identity in criminal cases. *See also, State v. Plyer*, 275 S.C. 291, 270 S.E.2d 126 (1980). The facts in this case are however readily distinguishable from those in *Plyler* and *Smith.* In *Smith, supra,* a dispatch operator received a call from an anonymous caller relating to that homicide case. The dispatcher described the caller's voice as that of a white male around 40 years old with a ***"very country and rugged, scratchy like voice."*** She specifically noted that the voice stuck out in her mind due to the fact that it ***"was so country [and] kind of had a ring to it."*** Id, 306 SC at 386, 415 SE 2d at 415. In *Smith*, the dispatcher testified that less than 24 hours after receiving the anonymous call, Smith came to the sheriff's office and told the dispatcher he was there to talk to detectives. The dispatcher testified that she immediately turned to her partner and informed him that she recognized the man's voice. She next told the detectives that Smith was there to see them and informed them promptly that Smith sounded like the man she had talked with the day before. The facts in Appellant's case are far different from those in *Smith.* Here Grill did not document having recognized Appellant's voice as he listened to the audio recording on the live feed from the crime scene.

To the contrary, Grill did not apparently report his claim that he recognized Appellant's voice until after, according to his own testimony, he had prolonged exposure to Appellant's voice during his arrest and the lengthy conversation which followed. He did not document recognizing Appellant's voice at any stage prior to this trial. Appellant would respectfully submit that his prolonged exposure to Appellant's voice, as someone who was under arrest for this offense, had the strong potential to taint Grill's identification based on prior extremely brief encounters at some unknown point in the past.

The facts in *Plyler, supra*, are even more dissimilar to those in Appellant's case. In *Plyler* the defendant's ex-wife had been at her mother's home visiting with her sister who had arrived driving her own car. The sister left earlier than the ex-wife. The ex-wife was subsequently on the phone with her sister when she excused herself to answer a knock at her door. The sister placed the phone on the couch and the ex-wife then heard a conversation followed by several gun shots. The ex-wife was still at her mother's home at the time of the call and immediately turned and exclaimed that her ex-husband, Harry Plyler, had just shot her sister, Linda. She then rushed to her sister's residence. Thus, the witness in *Plyler* had intimate knowledge of the defendant's voice and immediately reported recognizing the voice she heard on the phone as that of her ex-husband. There, as here, the State sought to introduce her testimony to place *Plyler* at the scene of the shooting. In that case our Supreme Court noted that voice identification testimony is regarded as legitimate and competent to establish identity in criminal and civil cases. However, unlike in the present case, the witness in *Plyler* had extensive familiarity with the voice in question and, as in *Smith, supra*, she immediately reported her recognition of that voice. Here, Grill admitted he had only a fleeting exposure to Appellant's in the past and he could not recall how long ago that exposure had taken place. In addition, his identification of Appellant's voice was no doubt

tainted by the fact that his more lengthy, and more recent, exposure to Appellant's voice which took place in the context of conversations held between him, Burke and Appellant after he was already in custody on these same charges. In addition, in this case we have the additional factor that there is no evidence that Grill ever reported his alleged recognition of Appellant's voice until this trial nearly three (3) years after Appellant's arrest. We know for certain that he did not document it.

Appellant would submit that there is one additional problem with the admission of the voice identification testimony of Detective Grill. As noted in the statement of facts above, Detective Grill was offered by the State as an expert *in narcotics investigations*. Trial Counsel objected to his voice identification testimony on the ground that he *was not* an expert in voice identification and, additionally, that a proper foundation had not been laid for this testimony. While Appellant does not dispute the fact that lay witnesses may offer voice identification testimony, the facts are not nearly so simple in Appellant's case. This officer had already been qualified as an expert *in narcotics investigations*. This jury would ultimately receive special jury instructions concerning the testimony of expert witnesses. In that charge, the jury was expressly told that expert witnesses, unlike lay witnesses, were allowed to testify as to their opinions and conclusions. ROA p. 467, l. 9 - p. 468, l. 3. Furthermore, Appellant's jury heard Trial Counsel object to this testimony on the ground that this witness was not a voice identification expert. That objection was overruled and the witness, in the presence of the jury, was told he could continue. Although the prosecution stated that they were not attempting to admit Grill as an expert, that statement did not cure the prejudice to Appellant where the jury had already heard Grill qualified as an expert witness. ROA p. 133, ll.1-16. When Trial Counsel renewed his objection just moments later, the jury was excused from the courtroom. It was then that the trial court stated that it

disagreed with Trial Counsel's analysis, "but it's preserved for the record." ROA p. 134, l. 8 - p. 135, l. 20. When the jury was subsequently returned to the court room, this line of testimony concerning Grill's ability to identify Appellant's voice continued and Grill was allowed to testify to his conclusion that the voice on the video was the voice he recognized as Appellant. ROA p. 136, l. 4 - p. 137, l. 10.

In this case, Drayton admitted that he could be mistaken about his identification of Appellant as someone he saw at the scene. In light of that testimony, which easily could have created reasonable doubt in the minds of the jury, the claim by Grill that he was able to positively identify Appellant's voice was highly prejudicial. The admission of eyewitness identification testimony which is tainted by suggestive pre-trial identification procedures violates due process. *Neil v. Biggers*, 409 U.S. 188(1972). Appellant asserts that tainted voice identification does the same damage. In the case before this Honorable Court, Grill had very little prior exposure to Appellant's voice before the date of the alleged drug transaction. He himself described his prior exposure to Appellant's voice as ***"Hey, how are you doing"*** conversations. On the facts of this case, the trial court erred in admitting Grill's voice identification testimony. As correctly argued by Appellant at trial, the State had not laid a sufficient foundation to establish a reliable basis for Grill's ability to identify Appellant's voice. Furthermore, due to the way this issue developed at trial, there was a very real danger that Appellant's jury would evaluate the credibility of this witness testimony on this crucial issue through the prism of expert authority.

Issue III

The trial court erred, and thereby violated Appellant's right to due process of law, by instructing Appellant's jury on the law as it relates to accomplice liability where there was no evidence adduced at trial which tended to establish that Appellant acted in concert with anyone in the crime charged.

During the charge conference held before jury instructions were issued, the trial judge asked Trial Counsel if he objected to "hand of one charge." Trial Counsel noted his objection to a charge on the law of accomplice liability at that time. ROA p. 418, ll. 4-9. The trial judge then stated that she would be "charging hand of one based upon the testimony that was presented." ROA p. 418, ll. 7-8. Appellant now respectfully submits that the trial court erred in issuing a jury instruction on the law of accomplice liability where there was no evidence presented at trial which established that Appellant was acting in concert with anyone.

Indictment as a principal does not in itself preclude a finding of guilt on an alternative theory of accomplice liability. *State v. Mattison*, 388 S.C. 469, 697 S.E.2d 578 (2010). "Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *Id.* at 479, 697 S.E.2d at 584.

However, an instruction on the alternative theory of accomplice liability must be supported by the evidence. *State v. Dickman*, 341 S.C. 293, 534 S.E.2d 268 (2000) (accomplice liability charge was proper when there was evidence that the defendant and a second person planned the murder and the second person was the shooter). "Like a lesser-included offense, an alternate theory of liability may only be charged when the evidence is equivocal on some integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact." *Barber v. State*, 393 S.C. 232,

236, 712 S.E.2d 436, 439 (2011) (citing *State v. Funchess*, 267 S.C. 427, 229 S.E.2d 331 (1976) (lesser-included offense charge properly refused where no evidence supported it), and *Dickman, supra*). *See also, Dempsey v. State*, 363 S.C. 365, 610 S.E.2d 812 (2005); *State v. Foxworth,* 269 S.C. 496, 238 S.E.2d 172 (1977); *State v. Fields*, 356 S.C. 517, 589 S.E.2d 792 (Ct. App. 2003).

In the case before the Court, there simply was no evidence that Appellant acted in concert with anyone else. Drayton did testify that there were three people in the apartment at the time of the deal. ROA p. 185, l. 9. He did not explain how he knew that fact since he was claiming that he had not gone inside at the crime scene, but rather had conducted this deal with someone who lowered the drugs out the second story window. He expressly testified that he did not see the person who lowered the drugs out the window in a cup on a string. ROA p. 184, l. 25 – p. 185, l. 7. There was no testimony concerning who rented the apartment or who lived there. There was no testimony from the confidential informant, Drayton, that Appellant was known to sell drugs with others from that location. Simply put, there was no evidence that Appellant was acting with partners in a mutually agreed upon plan to sell drugs. For that reason, it was error for the Court to issue a jury instruction on the law in this state concerning accomplice liability. Where Drayton admitted that he may have been mistaken about having seen Appellant at all at the scene of this drug deal, this error violated Appellant's right to due process of law. This error was highly prejudicial to Appellant and requires reversal of his conviction and sentence and the remand of his case for a new trial.

CONCLUSION

Based upon all the foregoing arguments and authorities, the Appellant's convictions and sentences should be reversed and his case remanded to the Court of General Sessions for a new trial.

Respectfully submitted,

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ATTORNEY FOR APPELLANT

This 15th day of September, 2016.

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SEP 21 2016
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
The Honorable Kristi L. Harrington, Circuit Court Judge

Appellate Case No. 2015-001662

STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

DEAN NELSON SEAGERS,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that certificate that this Final Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents.

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ATTORNEY FOR APPELLANT.

This 15th day of September, 2016.

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi L. Harrington, Circuit Court Judge

RECEIVED
SEP 09 2016
SC Court of Appeals

Appellate Case No. 2015-001662

THE STATE,

Respondent,

v.

DEAN NELSON SEAGERS,

Appellant.

FINAL BRIEF OF RESPONDENT

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Other Authorities:

STATEMENT OF ISSUES ON APPEAL

I.

The trial court properly admitted Detective Grill's voice identification testimony because he established the basis for his familiarity with Appellant's voice and it was unnecessary to qualify him as a voice identification expert. Further, there is no intimation the State sought to qualify him as an expert in voice identification and any contention that the jury may have inferred that is baseless speculation.

II.

The trial court properly charged the jury on the theory of accomplice liability because evidence existed to support the charge.

STATEMENT OF THE CASE

Appellant was indicted at the November 2012 term of the grand jury for Charleston County for distribution of cocaine base. He was ultimately convicted as indicted after a jury trial before the Honorable Kristi Lea Harrington, who sentenced him to life without the possibility of parole pursuant to Section 17-25-45 of the South Carolina Code (2014). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief. This Brief of Respondent follows.

STATEMENT OF FACTS

Dean Nelson Seagers (Appellant) was arrested and subsequently indicted for distribution of cocaine base after being the target of a controlled drug buy. His case proceeded to trial before the Honorable Kristi Lea Harrington.

At trial, the State presented the testimony of Detective Charles Jacob Grill with the Drug Enforcement Administration Task Force of the Charleston Police Department. Initially, the State offered him, without objection, as an expert in narcotics investigations. (R.107). After providing general background testimony, Detective Grill was questioned about the specifics of the case. (R.128). He testified that in this instance he was not the lead investigator, but he assisted with perimeter security and surveillance during the controlled drug buy. (R. 130). During Detective Grill's testimony, he stated he was familiar with Appellant's voice, explaining he had been interacting with that community for almost a decade and had had previous conversations with Appellant. (R. 133). Appellant objected on the grounds that Detective Grill was not a voice identification expert. (R. 133). The State responded it was not seeking to introduce him as an expert and the trial court overruled the objection, stating the witness was permitted to testify as to what he heard and saw. (R. 133). Detective Grill then testified that when he listened to the live wire that day he recognized Appellant's voice. (R. 134). Detective Grill further explained he had an hour-long conversation with Appellant after his arrest. (R. 136). He also stated he watched the video after the buy and recognized Appellant's voice. (R. 137).

Robert Drayton testified that he had been a confidential informant with the Charleston Police Department and participated in the controlled buy of cocaine from Appellant. After introducing the video of the buy, Drayton went on to testify about how he purchased the drugs

from a house on Alston Street. He explained he called Appellant to arrange to buy some cocaine. (R. 185). Drayton further testified that after arriving at the Alston Street house, the drugs were lowered to him in a jar from an upstairs window. (R. 184). He stated he did not witness Appellant physically lowering the drugs, but he saw him afterwards in the upstairs window. (R. 185). Drayton noted there were two other people in the Alston Street house at the time. (R. 185). He stated that after he purchased the drugs, he gave them to the lead investigator. (R. 181-82).

After the close of evidence, the trial court discussed the requests to charge and asked Appellant's counsel if he "would object to the inclusion of hand of one" to which he answered in the affirmative. (R. 418). The trial court then stated it would charge the jury on the hand of one based on the testimony. (R. 418). After closing statements and the jury charge, Appellant was found guilty of distribution of cocaine base and was sentenced to life without the possibility of parole. (R. 475, 480).

ARGUMENTS

I.

The trial court properly admitted Detective Grill's voice identification testimony because he established the basis for his familiarity with Appellant's voice and it was unnecessary to qualify him as a voice identification expert. Further, there is no intimation the State sought to qualify him as an expert in voice identification and any contention that the jury may have inferred that is baseless speculation.

Appellant argues the trial court erred in allowing Detective Grill to testify that he recognized Appellant's voice on the video presented at trial because there was insufficient foundation for his identification. Additionally, Appellant argues that the trial court erred in admitting the testimony because the jury may have inferred he was an expert in voice identification because he had been previously qualified as an expert in narcotics investigations.

"The admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion." *State v. Hewins*, 409 S.C. 93, 103, 760 S.E.2d 814, 819 (2014). "An abuse of discretion occurs when the decision of the trial court is based upon an error of law or upon factual findings that are without evidentiary support." *Id.*

"For some time, a witness' testimony of identification of a person by having heard his voice has been regarded as legitimate and competent evidence to establish identity in criminal cases." *State v. Smith*, 307 S.C. 376, 386, 415 S.E.2d 409, 415 (Ct. App. 1992). To satisfy the requirements of authentication under the South Carolina Rules of Evidence, the proponent of the evidence may demonstrate: "Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker." Rule 901(b)(5), SCRE.

The familiarity the witness must possess is not substantial and any concerns with the reliability of the identification go to the weight, not the admissibility, of the testimony. 3 Wharton's Criminal Evidence § 14:6 (15th ed. 1999).

Appellant acknowledges, as he must, that voice identification testimony based on familiarity with the speaker's voice is a long-accepted means of establishing identity. Understandably, Appellant's argument on the lack of foundation is limited to distinguishing the facts of prior case law. However, factual differences do not change the very straightforward application of the rules of evidence. Appellant's alleged defects in Detective Grill's identification may be valid bases for attacking the weight of the evidence, but they do not preclude introduction of the testimony. Establishing the foundation of admissibility for voice identification only requires the witness has at some other time heard the person's voice under circumstances connecting the voice and speaker. Here, that is plainly satisfied. Detective Grill testified he had interactions with Appellant based on his work with the community over the years. Additionally, Detective Grill spoke with Appellant at the station after his arrest. The law requires no more for admissibility.

Nevertheless, it appears Appellant also contends that because Detective Grill was qualified as an expert in narcotics investigation, the jury may have inferred he was also an expert in voice identification. This conjecture ignores the fact that in the presence of the jury the solicitor explained she "[was not] attempting to admit [Detective Grill] as an expert" in voice identification. (R. 133). Therefore, any misguided assumptions the jury might have made were dispelled. Additionally, Appellant's suggestion that once a witness has been qualified as an expert in any topic, that witness cannot provide lay testimony because the jury *might* get confused, is contrary to a foundational belief inherent in our system of trial by jury—that a jury

listens to instructions. *See Jones v. United States*, 527 U.S. 373, 394 (1999) (stating that juries are presumed to follow the instructions they are given). Therefore when a trial court informs the jury a witness is an expert in narcotics investigation, the law assumes that is the sole area of expertise the jury considers. Accordingly, the trial court did not err in allowing Detective Grill to testify about recognizing Appellant's voice on the audio and video of the drug transaction.

II.

The trial court properly charged the jury on the theory of accomplice liability because evidence existed to support the charge.

Appellant also argues the trial court erred in charging the jury on the law of accomplice liability, alleging there was no evidence presented that Appellant acted in concert with anyone.

"In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010). The law charged must be determined based on the evidence presented at trial and a trial court should not decline to charge the law on any issue raised by the indictment or evidence. *Id.* at 479, 697 S.E.2d at 583. If any evidence exists to support a charge, it should be given. *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002). An appellate court will not reverse a conviction unless the trial judge's charge is both erroneous and prejudicial. *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003).

Accomplice liability is premised on the notion that in determining culpability the hand of one is the hand of all. *State v. Reid*, 408 S.C. 461, 472, 758 S.E.2d 904, 910 (2014). Accordingly, under this theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *Id.* Without more, mere presence or prior knowledge that a crime would be committed is insufficient to constitute guilt. *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 769–70 (Ct. App. 2010). "It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." *Mattison*, 388 S.C. at 479, 697 S.E.2d at 584.

Here, evidence was adduced at trial that Drayton spoke to Appellant on the phone to arrange the transaction and again after he received the drugs. Further, Drayton did not see the individual who lowered the drugs down to him from the upstairs window. He testified there were three people in the house at the time, opening the possibility that other persons participated in the crime. All the claims of defects in the evidence are merely arguments as to the weight of the evidence and whether the State has met its burden. Appellant ignores the standard of review, which is whether there is any evidence supporting the jury charge. Evidence was submitted that Appellant may have acted in concert with others in executing the drug transaction. No more is required to warrant a charge on accomplice liability. Accordingly, the trial court did not abuse its discretion in charging the jury on accomplice liability.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 9, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi L. Harrington, Circuit Court Judge

Appellate Case No. 2015-001662

THE STATE,

Respondent,

v.

DEAN NELSON SEAGERS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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September 9, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Dean Nelson Seagers, Appellant.

Appellate Case No. 2015-001662

Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2017-UP-263
Submitted May 1, 2017 – Filed June 28, 2017

AFFIRMED

Tara Dawn Shurling, of Law Office of Tara Dawn Shurling, PA, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Susan Ranee Saunders, both of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, all for Respondent.

PER CURIAM: Dean Nelson Seagers appeals his conviction of distribution of cocaine base, arguing the trial court erred in (1) admitting a detective's voice identification testimony when the State failed to present a sufficient foundation, (2)

admitting the detective's voice identification testimony when the detective was not qualified as an expert in voice identification and the jury was likely, on the narrow facts of the case, to view his testimony as deriving from his qualifications as an expert in narcotics investigations, and (3) instructing the jury on the law of accomplice liability when no evidence adduced at trial tended to establish that Seagers acted in concert with anyone. We affirm[1] pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in admitting the voice identification testimony: *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); *State v. Smith*, 307 S.C. 376, 386, 415 S.E.2d 409, 415 (Ct. App. 1992) ("[A] witness'[s] testimony of identification of a person by having heard his voice has been regarded as legitimate and competent evidence to establish identity in criminal cases."); *id.* at 387, 415 S.E.2d at 415 (recognizing "the identity of the party with whom the witness talked need not be known at the time of the conversation, but is sufficient if knowledge enabling the witness to identify the other party is later obtained" (citing *State v. Porter*, 251 S.C. 393, 398, 162 S.E.2d 843, 846 (1968))); *State v. Fripp*, 396 S.C. 434, 441, 721 S.E.2d 465, 468 (Ct. App. 2012) ("[T]he identification of a familiar person does not require any specialized knowledge, skill, experience, or training . . . .").

2. As to whether the trial court erred in charging the jury on the law of accomplice liability: *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) ("An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion."); *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) ("The law to be charged is determined from the evidence presented at trial."); *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011) ("If there is any evidence to warrant a jury instruction, a trial court must, upon request, give the instruction."); *State v. Dickman*, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) ("It is well-settled that a defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense."); *Condrey*, 349 S.C. at 194, 562 S.E.2d at 324 ("Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose."); *State v. Gibson*,

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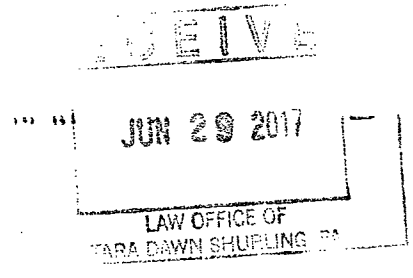
[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) ("In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties.").

AFFIRMED.

LOCKEMY, C.J., and HUFF and THOMAS, JJ., concur.


JUN 29 2017
LAW OFFICE OF

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 2015-001662

STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

DEAN NELSON SEAGERS,

APPELLANT.

PETITION FOR REHEARING

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ATTORNEY FOR APPELLANT

NOW COMES the Appellant in the above-captioned action, acting by and through undersigned counsel, seeking rehearing on this Court's unpublished opinion in this matter. *The State v. Dean Nelson Seagers,* 2017-UP-263 (S.C. Ct. App. Dated June 28, 2017). Pursuant to Rule 221(a), SCACR, the Appellant petitions for rehearing on the ground that certain issues of material fact or law have either been overlooked or misapprehended by this Honorable Court in the opinion in question. In support of this position, the Appellant would show unto this Court the following.

QUESTION I AND II ON APPEAL

Section 1 in the Opinion of the Court

Trial Counsel objected to the voice identification testimony of Detective Grill[1] on two distinct grounds. First, Appellant argued that Detective Grill was not an expert in voice identification. Additionally, he argued that the prosecution had not laid a proper foundation for his voice identification testimony. ROA p. 132, l. 23- p. 135, l. 8.

Appellant respectfully submits that the opinion issued in this case failed to address the two separate components of Appellant's challenge to this testimony. Appellant did not dispute that a non-expert may offer voice identification testimony. Appellant objected to the admission of said testimony on the ground that a proper foundation had not been laid for the introduction of such testimony from this witness. It was Appellant's position that, as with eye-witness identification testimony, the admission of voice identification testimony tainted by suggestive pre-trial identification procedures violates due process. *Neil v. Biggers*, 409 U.S. 188 (1972). Ordinarily, in determining whether eye-witness testimony is reliable, independent of the alleged opportunity for taint, the Court looks to the factors set forth in *Neil v. Biggers, supra.*

[1] The witness's trial testimony is summarized in the Final Brief of Appellant at pages 8-9.

Appellant submits that the *Biggers* factors are equally relevant with voice identification witnesses. Appellant has outlined in detail the trial testimony which establishes that Detective Grill admitted very limited prior opportunity to hear Appellant speak. He did not promptly report his alleged recognition of Appellant's voice, nor did he document it in any way. He could not say how long ago the fleeting exposure he did have had taken place. There was no evidence that Detective Grill had ever reported his alleged recognition of Appellant's voice on the audio recording of the drug transaction in this case. On direct-examination he claimed to have spoken with Appellant on several occasions prior to the date of the alleged buy involved in this case. He, in fact, claimed that he had actual *conversations* with Appellant. He answered "Yes, ma'am" when asked point blank if those were *actual conversations* with Appellant and repeated that response when asked if they were, "[b]ack and forth conversations." ROA p. 132, l. 19- p. 133, l. 24. Adding, "I mean, just --you know, just typical police info--you know, that's all it way." [2] ROA p. 133, ll. 20-25. He expressly stated, "I believe so, yes, ma'am" when asked if these "conversations were more than just yes or no." ROA p. 134, ll. 1-3. As noted in the Brief of Appellant, on cross-examination, however, Detective Grill testified as follows:

> With regard to his previous opportunity to observe Appellant's voice, on cross-examination Grill admitted that on the two occasions when he had previously spoken with Appellant, **"I believe it was just kind of a hey, how are you doing - type deal as we were on the street working either doing - - executing warrants in this area or just - - just an encounter".** ROA p. 157, l-6. He asserted, however, that after Appellant was arrested **"we did have a long conversation with the defendant. Yes, sir, I did."** ROA p. 157, ll. 6-9. When asked if he could remember when these two brief encounters with Appellant before his arrest took place, Grill indicated that he did not remember when they occurred, but that he just knew that he had spoken to Appellant in the past. When Trial Counsel asked him if these encounters were **"said hello on the street?"**, Grill repeated **"Yes sir, just an encounter."** ROA p. 157, ll. 10-16.

[2] There was no objection to Detective Grill's interjection of testimony about his prior police involvement with Appellant.

The Appellant's argument on appeal was that no foundation had been laid to establish a basis for Detective Grill to give reliable voice identification testimony independent of the lengthy conversation he had with Appellant right after his arrest. The impact of that conversation would have had his ability to independently identify Appellant's voice on the audio tape in question is obvious in light of his very limited prior exposure to Appellant's voice, and the inherent prejudice flowing from his involvement *in this case* as a narcotic's detective. Appellant urges this Honorable Court to grant his request for rehearing on this ground.

Likewise, the opinion of the Court appears to overlook the main thrust of his Question II, dealing with the fact that Detective Grill was not qualified as an expert in voice identification. As argued in his brief, Appellant believes that although the prosecution stated they were not attempting to introduce him as an expert[3], the truth is he had already been qualified, without objection, as an expert in narcotics investigations. ROA p. 107, ll10-14. On the very narrow facts of this case, Appellant submitted that the voice identification testimony should have been excluded, not only because the State failed to lay a proper foundation, but also because there existed a very real danger the jury would give it weight to which it was not entitled because of his status as an expert. Therefore, Appellant has not asserted that he should not have been allowed to present this testimony simply because he was not a voice identification expert, but rather that on the facts of this case the jury was likely to improperly attribute credibility to his opinion as to his voice identification in light of his recognition by the Court as an expert.

QUESTION III ON APPEAL

Section 2 in the Opinion of the Court

Appellant respectfully submits that the record before this Honorable Court is void of any evidence that tended to prove Appellant acted in concert with anyone. While, as this opinion

[3] ROA p. 133, ll. 8-14.

notes, an agreement may be established through "circumstantial evidence and the conduct of the parties", there was no such evidence in this case.

For all the reasons set forth in the Brief of Appellant, pages 15-16, Appellant respectfully submits that there existed no evidentiary support for an accomplice liability instruction at his trial. He asks for a rehearing on this issue.

CONCLUSION

WHEREFORE, having set forth his grounds, the Appellant, Dean Nelson Seagers, asks that this Court rehear his appeal and grant him a new trial.

Respectfully submitted,

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ATTORNEY FOR APPELLANT

This 13th day of July, 2017.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 2015-001662

STATE OF SOUTH CAROLINA,

RESPONDENT.

DEAN NELSON SEAGERS,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon opposing counsel by depositing in the U.S. Mail, postage prepaid, this 13th day of July, 2017, addressed as follows:

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ATTORNEY FOR THE APPELLANT.

SWORN TO BEFORE me this 13th day of July, 2017.

Janet H. Johnson (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/31/24

The South Carolina Court of Appeals

The State, Respondent,

v.

Dean Nelson Seagers, Appellant.

Appellate Case No. 2015-001662

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Tara Dawn Shurling, Esquire
Susan Ranee Saunders, Esquire
Scarlett Anne Wilson, Esquire

FILED
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