STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN ALEXANDER DARRIEUX,

APPELLANT

APPELLATE CASE NO. 2016-000624

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court err in denying Appellant Darrieux's motion for a new trial based on after discovered evidence that the CD with the jail call Appellant made to his girlfriend that was presented at trial was not the original when the original was available which was a violation of Rule 1002, SCRE and Rule 1004, SCRE and which was prejudicial to Appellant because the state argued to the jury that this jail call was "critical evidence"?

2.

Did the trial court err in admitting the jail call that Appellant Darrieux made to his girlfriend when the state did not authenticate that it was Darrieux because no witness was called to identify the voice as Darrieux or that the witness talked to him, and the records custodian admitted that another inmate could use the account and name of Darrieux if Darrieux agreed and provided his name?

STATEMENT OF THE CASE

On June 23, 2015, the Berkeley County Grand Jury indicted John Alexander Darrieux on the charges of burglary first degree, burglary second degree, three counts of armed robbery (AR), three counts of kidnapping, and possession of a weapon during the commission of a violent crime. On January 26-29, 2016, Appellant Darrieux proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. Darrieux was represented by Rodney Davis, and the state was represented by E. Mason West and Daniel Poulos. R. 1. The jury found Darrieux not guilty of the burglary second degree which the state had reduced to a burglary third degree[1]; guilty of the burglary first degree, the three AR, the three kidnappings, and the gun charge. R. 374, ll. 20 – R. 375, ll. 12.

The judge sentenced Darrieux to thirty years on the burglary, and on each of the armed robberies and kidnappings. The sentence on the possession of a weapon during the commission of a violent crime was five years. All sentences were to run concurrent. R. 391, ll. 17 – R. 392, ll. 19.

On February 26, 2016, a hearing was held before Judge Benjamin Culbertson on the Rule 29, SCRCrimP, motion for new trial filed by Appellant Darrieux who again was represented by Rodney Davis. The state was represented by E. Mason West. R. 393. Judge Culbertson issued an order on February 29, 2016 denying the motion.

This appeal follows.

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[1] R. 34, ll. 11 – R. 39, ll. 12.

STATEMENT OF THE FACTS

On the evening of October 21, 2014, Charles Roberts was asleep in his home as were his girlfriend Rose Simpson, and his friend and employee, Stephen Jones, who lived with Roberts. R. 108, ll. 1 – R. 109, ll. 3. Around four o'clock early morning, Rose Simpson, who was asleep on the couch in the living room, was awakened by someone knocking down the front door. Three people wearing Scream masks entered, and all had guns. One asked where was the old man. Rose knew the person meant Charlie Roberts. She never saw a fourth person. R. 52, ll. 21 – R. 56, ll. 2.

One person went to Stephen Jones' room and brought him to the living room. Another one then went to Charlie's room. R. 57, ll. 1 – 24. Eventually, Rose and Stephen were moved to the bedroom. She said that the man in the courtroom, referring to Darrieux, stood by the closet and held a gun on her and Stephen. The man wore a mask at first but then removed it because he said it was too hot. She got a good look at his face then because the robbers turned on all of the lights in the bedroom. The only item they took from her was her purse. R. 58, ll. 1 – R. 59, ll. 25.

Rose said that a woman took her purse. The woman was the leader and Rose described her as "very intimidating." R. 60, ll. 1 – 24. Rose identified Darrieux in court as the man who was there. Defense counsel objected to the identification. R. 65, ll. 13 – R. 66, ll. 16.

Stephen Jones worked off and on for Charles Robert and lived with him. In the early morning of October 21, 2014, he heard a "loud bang and a bunch of yelling." Two people wearing masks came to his bedroom, hit him in the back of the head with a gun and took him to the living room holding the gun to his head. Then they started going through the house taking items. R. 84, ll. 21 – R. 87, ll. 25.

One of the men he never saw with a mask. That man "got right in Jones' face." Jones identified Darrieux in court as that man. Defense counsel renewed his objection. R. 89, ll. 1 – 25.

Charles Roberts was awakened about four o'clock on the morning of October 21, 2014, by a man opening his bedroom door and "shoving" a gun at him. R. 108, ll. 19 – R. 109, ll. 22. He saw only two people because he stayed in his bedroom the entire time. One was a female. They went through everything and took from his bedroom whatever they could carry. R. 118, ll. 1 – R. 122, ll. 24. The people in his bedroom had automatic handguns. R. 124, ll. 1 – 11. The robbers were there about an hour. R. 125, ll. 23 – 25.

Roberts had owned property in a trailer park on Cindy Lane. No one was living in the property on Cindy Lane on October 21, 2014. R. 126, ll. 13 – R. 127, ll. 25. On October 21, 2014, Courtney Pringle lived on Cindy Lane. During that day, she saw a woman she knew, Natalia, that Courtney had worked with, drive up to the house next door in a tan Dodge Durango. She saw three men with Natalia come out of the house with a mattress and other items. They put the mattress in the truck. Natalia came to Courtney's house and told her what they were doing – that they were "hitting licks." Courtney called the police who arrived shortly. R. 196, ll. 9 – R. 200, ll. 17; R. 448.

Officer Cassandra Drew with the Berkeley County Sheriff's Office, heard the dispatch about a Durango with mattresses on top. She went into the trailer park and saw the Durango in a cul-de-sac. Four people—three males and one female – were with the Durango. She called dispatch and other officers soon arrived. R. 206, ll. 1 – R. 208, ll. 24.

Officer Cody Graff arrived and arrested the four people for an open container of an alcoholic beverage—Raz-Ber-Rita Bud Light- in the console. He then searched the vehicle and

found numerous items including car radios, tool boxes, and other miscellaneous items. Officer transported two of the four to the county jail. R. 209, ll. 13 – R. 213, ll. 19; R. 217, ll. 1 – 25; R. 218, ll. 11 – R. 219, ll. 14.

Detective Daniel Wilson interviewed one of the co-defendants, Tristen Bower. Following that interview, the detective executed a search warrant on the home of Natalia Chisolm. R. 229, ll. 1- R. 231, ll. 25.

Tristen Bower, who was sixteen at the time of the incidents, talked to the police about the incident at the police station when he was first arrested and provided information to them. Then he gave a statement to police that was recorded on audio and video. He identified the other three co-defendants. Tristen told the officers that Natalia needed her money back because she had been robbed of $500 recently. He told them of the first incident on Bryan Drive when they wore masks. R. 174, ll. 1 – R. 182, ll. 6.

Tristen realized that a robbery was going to happen when Natalia handed him a gun. R. 157, ll. 2 – 25. Natalia was his aunt but not biological as she was the sister of the man who raised Tristen that he called Dad. R. 152, ll. 1 – 24.

Appellant Darrieux, along with his three co-defendants Natalia Chisolm, Tristen Bower, and John Arsenalt, was charged with burglary first degree, burglary second degree, three counts of armed robbery, three counts of kidnapping, and possession of a weapon during a crime of violence. R. 40, ll. 15 – R. 42, ll. 12.

On January 26, 2016, Appellant Darrieux proceeded to trial alone without the co-defendants. R. 41, ll. 15 – 25; R. 1. However, Co-defendant Tristen Bowers testified at trial implicating Appellant Darrieux in both burglaries: the one at Charles Roberts' house and the trailer on Cindy Lane. R. 151, ll. 6 – R. 173, ll. 25.

In an in camera hearing, Tristan testified that he had received no offers from the state. R. 147, ll. 21 – R. 148, ll. 1. However, he admitted on cross examination before the jury that he hoped by his testifying at trial that "the state would not go after him on all of these charges." He hoped to get rid of these charges. R. 178, ll. 1 – 16; R. 194, ll. 4 – 9. He met with the solicitor and his attorney and signed a proffer agreement with the state which was admitted into evidence as a Defense Exhibit 3. R. 177, ll. 9 – R. 178, ll. 16.

In a pretrial hearing, defense counsel told the judge that there were 94 jail calls of Appellant that were on CD's, and he had understood initially that the solicitor was not going to "get into those." Then he received an email form the solicitor on Sunday before trial saying that he did intend to use some of the calls. R. 12, ll. 18 – R. 15, ll. 11. The solicitor said he planned to introduce five jail calls. He agreed to tell defense counsel which ones. R. 18, ll. 1 – 21. The judge said that the calls came under the business records exception. The state was calling the records custodian to introduce them. R. 22, ll. 20 – R. 23, ll. 16.

Defense counsel argued that there was an identity issue with the calls as the state would need to show that it was actually Darrieux making the call. Counsel argued that just because the calls used Darrieux's account number, did not mean it was him making the call. Counsel continued to argue that inmates could use other inmates' accounts to make calls. One of the calls included was not from Darrieux's account. Counsel explained that the issue was identifying the caller. He argued that the state had not subpoenaed anyone who could verify that the caller was Darrieux or that they had received a call from Darrieux. Counsel also argued there was a confrontation problem if the person receiving the call was not available to testify. R. 25, ll. 6 – R. 29, ll. 3.

The state argued in response that the admissibility of the jail calls was "not in question" because they came under the hearsay exception of business records. He said it was up to the jury to decide if it were Darrieux making the call. The state said Darrieux identified himself on the call. The judge denied defense counsel's motion for a continuance to review the calls, and ruled that the state could go forward. R. 30, ll. 1 – R. 33, ll. 17.

During the trial, before calling the records custodian from the detention center in order to introduce State's Exhibit 123 as the jail calls, the state told the judge that defense counsel had some objections. Defense counsel argued that there were "hurdles" the state had to meet in order for these jail calls to be admitted into evidence. Counsel said these calls were hearsay because it was not a live person who heard defendant talk. He said it was not a written statement but was a phone call recorded by a third party. R. 250, ll. 19 – R. 252, ll. 11.

The second point argued by defense counsel was that the calls needed to be authenticated. He said that the records custodian can say that the calls were from Darrieux's account number but the custodian could not say if one of the two people talking on the call was Darrieux. The other concern with the calls was a confrontation issue under Crawford. R. 252, ll. 12 – R. 253, ll. 16.

The state responded that the hearsay objection was unfounded because the calls were admitted under rule 801(D)(2), SCRE as an admission by a party opponent against interest. The state explained that they wanted to admit the phone conversation where Darrieux talked about the incident to use as proof against him as his guilt. It is just the defendant telling the other party what occurred. The judge said he might need to listen to the calls. R. 253, ll. 18 – R. 254, ll. 23.

After listening to the calls, the judge allowed only one call, Number 5, to be admitted but the state would still have to authenticate it. Therefore there was not a confrontation issue

because the female on the other end of the call did not say anything that implicated Darrieux. He sustained defense counsel's objection to suppress the other calls. Defense counsel renewed his objections to the call because he said the state still had to authenticate it. R. 260, ll. 21- R. 265, ll. 21.

Sergeant Katie Shuler testified for the state as the person at the detention center in charge of the inmates' phone access. She insured that they had a PIN number that enabled them to access the phone. She provided a CD of Darrieux's phone calls to the solicitor at the state's request. When the state showed her State's Exhibit 123, which was the CD of Darrieux's calls from the jail, the testimony was:

State: Do you recognize that**?**

Shuler: Yes, sir…..This is the CD that ---this one here—

State: Does it have your initials on it?

Shuler: It does ----but that ain't my handwriting.

State: I understand that, but is that, is that a CD you provided to our office?

Shuler: Yes. That's my initials, but I didn't do the writing on here.

R. 266, ll. 21 – R. 269, ll. 4.

When the state asked to move State's 123, the CD, into evidence, defense counsel objected on his prior objections and said: "Now I would focus on authentication." The judge said that the exhibit was admitted into evidence over the defendant's objection. The CD was then published to the jury. R. 269, ll. 1 – 25.

On cross examination, Sgt. Shuler admitted that inmates could use another inmate's PIN number to make a call if the inmate entered his PIN number and then "verified his voice" and

handed the phone to another inmate. She said: "We can't stop that." She agreed that it did happen from time to time. R. 272, ll. 11 – R. 274, ll. 4.

The state did rest. Then defense counsel moved for a directed verdict as to all charges. Counsel argued that all of the evidence was "mere suspicion." The judge denied counsel's motion. R. 275, ll. 6 – R. 280, ll. 5.

In his closing argument to the jury, the solicitor argued:

> The last thing I want to talk about is what you heard from the jail call of John Darrieux. That jail call is critical evidence in this case as it gives you, again, a picture of what the Defendant thought about all of what was going on. This Defendant said: "I f'd up. I'm sorry. I f'd up big time. Fortunately, no one got hurt real bad with this situation here."

R. 318, ll. 19 – R. 319, ll. 1.

Defense counsel argued to the jury in his closing that if the jail call was so critical, why did the state not call the person talking on the other end to verify that it was Darrieux's voice on the call. If the call was that critical, then the state would have called the other person. Counsel argued that Sgt Shuler said that inmates used other inmates' PIN numbers to make calls. The state needed to prove even more that it was Darrieux's voice. R. 332, ll. 4 – 18.

Counsel then argued that Tristen was a "sixteen year old kid" when he talked to the police in isolation. He did not have his parents there. Counsel said that Tristen was hoping for something since he was now only seventeen. R. 332, ll. 19 – R. 334, ll. 4.

The jury returned a verdict of guilty on all of the armed robberies, kidnappings, the burglary first degree, and the possession of a weapon during a crime of violence. The jury found him not guilty of the burglary third degree. R. 374, ll. 20 – R. 375, ll. 12.

February 26, 2016 Hearing

On February 25, 2016, defense counsel filed a motion pursuant to Rule 29, SCRCrimP, for a new trial based on after discovered evidence. Counsel explained in the motion that he had received a call on Monday, February 1, 2016, from the Assistant Solicitor Mason West, who was the lead trial prosecutor, that Exhibit 123 was not the original compact disc of the jail call but was a copy produced by Investigator McGowan of the solicitor's office. See Motion filed February 25, 2016.

On February 26, 2016, a hearing was held before Judge Culbertson. Defense counsel, Rodney Davis was present as well as the solicitor Mason West. R. 393. The solicitor told the judge that he learned after the trial, that the original CD produced by Sgt. Shuler of the jail calls made by appellant Darrieux, was not the CD introduced at trial. The solicitor said that he notified defense counsel the following Monday immediately. He obtained affidavits from Sgt. Shuler and the investigator. He argued that the two CD's were identical. R. 396, ll. 1 – 25.

The solicitor then argued that in her testimony at trial, Sgt. Shuler said those were her initials on the CD that was introduced which was authentication. He explained that because of the process in which she used the secure software to download the calls, the CD could not be altered. He said the CD was authenticated when Sgt Shuler testified that the signature initials were hers. R. 397, ll. 1 – 21.

The solicitor explained that the purpose of the hearing was "simply to supplement the record with the CD that should have been introduced but inadvertently was not." He said a duplicate CD was introduced. He argued that under the best evidence rule, a copy was permissible and no harm was done to the defendant. R. 397, ll. 22 – R. 398, ll. 4.

Defense counsel said the 'biggest" purpose of the hearing was to provide a record. Counsel argued that this was a novel situation. He was asking for a new trial. R. 398, ll. 7 – R. 399, ll. 2.

The judge marked the original CD as State's Exhibit 123A. He told the solicitor to go ahead and act as though they were in trial and he was seeking to introduce 123A. The state then called Sgt. Shuler. R. 400, ll. 3 – 20.

Sg. Shuler testified as she did at trial regarding her duties. She looked at Exhibit 123A and confirmed that was her handwriting and her initials. She admitted that she had not heard any of the calls on the CD until she was in trial. The state then moved Exhibit 123A into evidence. Defense counsel objected and renewed all of his previous objections. He argued that the issue raised by this situation is authentication which he raised previously. Since there was now the problem that a duplicate was admitted instead of the original raised the issue of authentication more. R. 401, ll. 1 – R. 404, ll. 7.

The judge said that "it's" not really an exhibit as far as the trial transcript, but was being proffered. He then said that "if the Appellate Court wants to review it, they can or deal with it how they deem appropriate." R. 404, ll. 8 – 12.

Sgt. Shuler said that she testified at trial that those were her initials on the CD then but she also stated at trial that that was not her handwriting. Immediately after the trial, she returned to her office and sent a copy of the original CD to the solicitor. Her affidavit was admitted. R. 405, ll. 5 – R. 407, ll. 25.

On cross examination, Sgt. Shuler admitted that she had not compared the duplicate CD that was Exhibit 123 and introduced at trial with Exhibit 123A or the original. She did compare it to photocopies of the CD. She had not reviewed the contents of 123A. R. 408, ll. 1 – 25.

Investigator Kevin McGowan testified that he made copies of the CD 123A and turned it back over. He wrote on the duplicate exactly what was on the original which included Sgt. Shuler's initials. His affidavit was admitted also. The judge ruled that he was going to allow all of the witnesses and exhibit from the hearing to be added to the record as proffered testimony. R. 413, ll. 16 – R. 416, ll. 25.

Defense counsel argued that the best evidence rule required that if available, the originals should be the evidence used. In this case, the original was available and was not used. He again argued this was a novel issue and he was asking for a new trial. R. 417, ll. 3 – R. 418, ll. 20.

The judge denied the motion for a new trial. He said that the "Appellate Court can do with it as they deem appropriate." R. 419, ll. 1 – 16.

ARGUMENT

1.

The trial court erred. in denying Appellant Darrieux's motion for a new trial based on after discovered evidence that the CD with the jail call Appellant made to his girlfriend that was presented at trial was not the original when the original was available which was a violation of Rule 1002, SCRE and Rule 1004, SCRE and which was prejudicial to Appellant because the state argued to the jury that this jail call was "critical evidence."

Rule 1001, SCRE, provides the definition of "duplicate" as:

> A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques accurately reproduces the original.

Rule 1002, SCRE, provides that in order to "prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required except as otherwise provided in these rules or by statute."

Rule 1003, SCRE provides:

> A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004, SCRE, provides:

> The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:
>
> (1) Originals are lost or destroyed
> (2) Original is not obtainable
> (3) Original is in the possession of the opponent
> (4) Collateral matters

Rule 1005, SCRE, provides in part that the contents of an official record, or of a document authorized to be recorded or filed .... may be proved by copy, or testified to by a witness who has compared it with the original.

Rule 1007, SCRE, allows the contents of writings, recordings, or photographs to be proved by the testimony or deposition of the party against whom the evidence is offered or that part's written admission without accounting for the nonproduction of the original.

The question of whether to admit evidence under {Rules 1001 to 1004 collectively known as the best evidence rule} is also addressed to the discretion of the trial court. State v. Mitchell,399 S.C. 410, 731 S.E.2d 889 (Ct. App. 2012) citing State v. Halcomb, 382 S.C. 432, 434-44, 676 S.E.2d 149, 154-55 (Ct. App. 2009).

In State v. Halcomb, Jr., 382 S.C. 432, 676 S.E.2d 149 (Ct. App. 2009), the Court of Appeals held that the best evidence rule did not require the exclusion of statements by the co-defendant's girlfriend Amber Counts, regarding a letter she received from the co-defendant, Cottrell, indicating his personal motive to commit murder which would have provided exculpatory evidence for Appellant Halcomb. The girlfriend had previously destroyed the letter which law enforcement did not receive. The only evidence of the contents of the letter was the girlfriend's statements. The trial court refused to admit the girlfriend's statements on the basis that it was unreliable and inadmissible under the best evidence rule. The Court of Appeals held that the trial court erred in refusing to admit the evidence of the letter because it had not been destroyed in bad faith, and there was no basis to exclude the girlfriend's statements under the best evidence rule. However, the Court ruled that this error was harmless and would not have changed the outcome of the trial. The Court affirmed.

Appellant Darrieux's case is distinguished from that of Halcomb because the original CD of the jail call was available. The admission of the CD of the jail call was not harmless in Darrieux's case because the only evidence against Darrieux was the jail call and the testimony of the co-defendant, Tristen Bowers. However, Tristen's testimony was biased because he admitted that he hoped by testifying to have his charges dismissed. He had motive to lie against Darrieux.

The solicitor had argued in his closing to the jury that this jail call was "critical evidence" against Darrieux. Therefore, the admission of the jail call was not harmless.

The trial court in Darrieux's case erred in admitting the jail call of Darrieux to his girlfriend where he made inculpatory statements because it was not the original and did not meet any of the exceptions under Rule 1004, SCRE. The jail call would not be admitted pursuant to Rule 1001-Rule 1007, SCRE. Under rule 1003, there was a question as to the authenticity of the original because the CD admitted at trial was a duplicate. It would have been unfair to admit the duplicate when the original was available.

Under Rule 1004, SCRE, the original was available. It was not lost or destroyed; it was obtainable; it was not in possession of the opponent Darrieux; and the call was "critical evidence" according to the solicitor in his closing argument. It was not a collateral matter.

Pursuant to Rule 1005, SCRE, the witness, Sgt. Shuler, testified that she had not compared the original CD which was Exhibit 123A to the duplicate, Exhibit 123, which was admitted at trial.

Under Rule 1007, SCRE, Darrieux did not testify nor give any statement about the jail call.

The Court in Halcomb held that the question of whether to admit evidence under the best evidence rule was addressed to the discretion of the trial court. However, the trial judge in

Darrieux's case said twice on February 26, 2016 that the final decision on the jail call would be left to the Appellate Court. He admitted the original CD of the jail call as proffered evidence.

ARGUMENT

2.

The trial court erred in admitting the jail call that Appellant Darrieux made to his girlfriend when the state did not authenticate that it was Darrieux because no witness was called to identify the voice as Darrieux or that the witness talked to him, and the records custodian admitted that another inmate could use the account and name of Darrieux if Darrieux agreed and provided his name.

Rule 901 (a), SCRE, provides:

> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Rule 901(b) provides examples of authentication. Rule 901(b)(5) is for voice identification. It states:

> *Voice Identification:* 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)(9) provides an illustration for the process or system. It states:

> *Process or System:* Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

In State v. Aragon, 354 S.C. 334, 579 S.E.2d 626 (Ct. App. 2003), the Court of Appeals held that the audio tape of the victim's telephone conversation with the defendant was authenticated where the victim testified that she known the defendant over ten years and had a relationship with him. She had telephoned the defendant from the sheriff's office and knew it was being taped. She testified that the tape fairly and accurately represented the telephone

conversation. After the tape was admitted, the victim testified that she knew her conversation was with Aragon because she dialed his number and recognized his voice. The Court ruled that the state sufficiently established that the tape was what it claimed consistent with the requirements of Rule 901, SCRE.

In United States v. Fuller, 441 F.2d 755 (4th Cir.1971), the Fourth Circuit Court of Appeals held that a sufficient foundation was laid for a tape recording found in the defendants' possession where the voices on the tape were identified and FBI agents, through whose hands the tape had passed, testified that it had not been altered and its condition at trial was identical to its condition at the time of the seizure.

Counsel argued to the judge that the jail call was prejudicial to Appellant Darrieux because there was talk about having served time in prison previously. R. 261, ll. 13 – R. 262, ll. 25.

Sgt. Shuler testified about the process used to record jail calls and to obtain them on the CD under Rule 901 (b)(9). However, the state did not prove that the voice on the call was Darrieux's. The state did not call a witness to verify that the voice belonged to Darrieux. Sgt. Shuler testified that other inmates use the account and voice of another inmate at times. She said that it happens and they could not stop it.

Darrieux did not testify to verify that the call was made by him.

The admission of the call was prejudicial because the solicitor argued in his closing to the jury that the call was "critical" evidence. The call and the testimony of the co-defendant Tristen Bowers were the only evidence against Darrieux as there were no fingerprints nor forensic evidence. The stolen evidence was found at Natalia's house. R. 234, ll. 1 – R. 235, ll. 25; R. 328, ll. 1 – 17; R. 327, ll. 8-11. Tristen Bowers was a biased witness as he was seventeen at the

time of trial and admitted that he hoped the state would dismiss his charges by his testifying against Darrieux. The call therefore was critical evidence for the state. Its admission was not harmless error.

CONCLUSION

Based on the above, Appellant's convictions and sentences should be reversed, and the case remanded for a new trial.

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Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of May, 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 "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 16, 2017

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