

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Appellate Case No.2018-000393

Diane S. Goodstein, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

James Alfonza Biggs III.....Appellant.

INITIAL BRIEF OF APPELLANT

RECEIVED
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SC Court of Appeals

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STATEMENT OF THE CASE

James Alfonza Biggs III was tried between February 20-24, 2018 before the Honorable Diane S. Goodstein and a jury for two counts of murder, 2016-GS-18-00111, 2016-GS-18-00112. He was represented by Brian Byrd and Michael Nelson. The State was represented by Sheila Mims and Don Sorenson. He was convicted of both counts and sentenced to life in prison.

This appeal timely follows.

STATEMENT OF RELEVANT FACTS

James Alfonza Biggs III, the Appellant, was convicted of murdering two young men the evening of November 30, 2015 in Dorchester County, South Carolina. The State's case against him was entirely circumstantial, and based on telephone calls made by one of the victim's phones to Biggs's telephone immediately before the shooting. The victims were found, deceased, in Biggs's car. But there was no physical evidence, or eyewitness testimony tending to show that Biggs was responsible for their deaths. The State offered the following evidence at trial.

The State's Circumstantial Case Against Biggs

The State called Justin Jenkins. Now a truck driver, Jenkins was previously with the Dorchester County Sheriff's Office as a patrol deputy. Tr. 72. On the night of November 30, 2015, at approximately 6:00pm, he responded to 102 Larson Drive to a call of possible shots fired. Tr. 76, 74. It took him about 2-3 minutes to respond. Tr. 76. When he arrived, he saw a dark colored sedan. He saw a black male in the driveway of the residence who indicated he was one of the people who called the police. Jenkins told him to stay where he was. Tr. 77. Jenkins also noticed a white sedan in the yard of the residence. Approaching that car from the passenger side, he saw two feet hanging outside, below the passenger side door. Tr. 78. He saw a black male, slumped over in the passenger seat with his head into the floorboard. Tr. 78. He checked for signs of life, but did not find any. Tr. 78. While checking this first person, he also saw a second black male on the driver side of the car in a kneeling position with his head in the driver's seat. He saw at least one gunshot wound to that

person. He also checked for signs of life, and heard him gasp for air. He told dispatch they needed emergency medical services. Tr. 79. EMS took that person to the hospital. Tr. 80. Jenkins testified that the gray car was running, and the lights were on. Tr. 82. Shortly afterwards, the crime scene investigators arrived. Tr. 84.

Jenkins indicated he did not see any weapons at the scene when he arrived. Tr. 85. Nor did he see any other people. Tr. 85.

The State called Brandon Stancil, a 34 year old man who, at the time of trial, lived with Latasha Marion at 102 Larson. Ms. Marion is James Biggs' mother. Tr. 95. Before that, and at the time of these events, he lived elsewhere in Summerville, South Carolina. Tr. 95. He was dating Ms. Marion at the time. In November 2015, Biggs was not living at home with his mother, but with his grandmother in Summerville. That night Stancil arrived at the house a little before 6:00pm. Tr. 100.

Stancil testified that Biggs' white Pontiac Grand Am was in the driveway. Tr. 100. As Stancil parked his car, the Grand Am backed out of the drive way. Stancil waved to the person in the Grand Am, but they did not speak. He could not see who was in the car because the windows were tinted. Tr. 101. Stancil then entered the house. Tr. 102. Biggs did not come into the house while Stancil was there. Tr. 102. He did not see Biggs' brothers, Omar or Jaylin there either. Tr. 102. In the house, Stancil grabbed the laundry and started folding clothes. Tr. 103. He spoke to Ms. Marion on the phone as her work shift ended and she was about to go to class. Tr. 103. While on the phone with her, Stancil heard a gunshot. Ms. Marion was able to hear it too. He thought the sound came from where the cars were located. Tr. 103-

04. He then heard two “bloodcurdling screams or hollers.” Tr. 104, ll. 12-13. Stancil then grabbed his firearm and headed to the front door. When he got to the door, he heard at least 5 or 6 more shots. Tr. 104. He opened the door and then heard a voice say “go, go” and then a car backed out of the driveway. Tr. 105, l. 10. It was a dark colored car, rounded in the back and it pulled away. It was dusk, and Stancil was unable to make out the make or model of the car. Tr. 105-06. It was not the same car that was there when he initially arrived. Tr. 106. He did not see anyone else outside. Tr. 106. After he got off the phone with Ms. Marion, Stancil called 911. Tr. 106. Stancil saw the two decedents in the white Grand Am. Tr. 108. When Officer Jenkins arrived, Stancil told him to secure the car on the street with the parking lots because he did not know who that car belonged to. Tr. 109. Jenkins told him to stay put in the driveway. Tr. 110. Stancil did not have any contact with Biggs that night. Tr. 110. From the night of the incident, until Stancil gave a statement to law enforcement three days later, Stancil did not see Biggs. Tr. 111-12. Stancil noted that Biggs’s brothers cars were also in the in vicinity of where these events occurred. Tr. 114-15. Stancil testified that he has never seen Biggs with a gun. Tr. 116.

Jazzmin Williamson also testified. Tr. 118. One of the decedents was her first cousin, and the other was her boyfriend. She knew Biggs because she went to school with him. Tr. 119. Earlier that day she was with Jamal, Tyrell, her cousin’s wife, Tiffany and her son, and they were at her aunt’s house. They decided they wanted to cook seafood so they went to Jazzmin’s mother’s house. Tr. 120. They got there around 4:00-4:30pm. Tr. 120. Jazzmin left to take a friend home. Tr. 121. Jamal and Tyrell

stayed to cook the fish. As she was taking Courtney home, she received a call from her mother. Tr. 122. Based on that call, she started calling Tyrell and Jamal to see what was going on. She told Courtney she could not take her home, and she turned around to return to her house. Her mother and Tiffany Bowens, Tyrell's wife, were there. Tr. 123. They tried to figure out what happened. They heard there was a shooting at Greenhurst. Tr. 123. Jazzmin got into her car and drove to Greenhurst. Tr. 123. She took Tiffany back to her mother's house and then she and Courtney went to Biggs' mother's house. Tr. 124. She knew that Jamal and Tyrell went to Greenhurst to buy marijuana. They were supposed to get it from Biggs. She knew that because the day before she and Jamal had bought marijuana from him. Tr. 124-25. The day before, they bought it from him at the Summerville Station Apartments. Tr. 125. She testified that she had purchased marijuana from him three or four times before.

The State called Tiffany Bowens. Tr. 141. She was married to one of the decedents, Tyrell Miles. Tr. 142. She testified his phone number was 843-324-1762. She corroborated Ms. Williamson's testimony about cooking seafood with Jamal and Tyrell. At some point, Jamal approached her and asked if he and Tyrell could use the car to go purchase marijuana in Greenhurst. Tr. 144. He wanted to use their Honda Accord. Tr. 144. They left around 5:30pm. Tr. 145. Apparently Tyrell's cousin posted something on Facebook Live and then she started calling Tyrell. He did not answer his phone. She did not find out anything about him until 10:00 or 11:00 that night. Tr. 146.

Hunter Eadie and Biggs attended Ashley Ridge High School together. Tr. 159. On November 30 2015, Eadie sent Biggs a text message asking to purchase some marijuana. He had done so one time earlier. Tr. 160. Biggs sent him a text message telling him to meet him at 102 Larson Drive. Tr. 161. The address he originally sent him was 106 Larson Drive. Tr. 162. Biggs had Eadie get into the passenger side of the car and that is where he purchased the marijuana. Tr. 163. According to Eadie, Biggs pulled the marijuana out of a mason jar and put it on a scale. He weighed out 1/8 of an ounce, and Eadie paid him \$60. Tr. 164. Eadie's telephone number was 843-297-0144. Eadie did not see a gun on Biggs. Tr. 168.

The State called Brandon Woodall to testify. Tr. 169. Woodall and Biggs were friends from high school; they played basketball together. Tr. 170. He too would purchase marijuana from him. Tr. 171. Woodall saw Biggs on November 30, 2015. Tr. 172. Woodall gave a statement to law enforcement indicating that he was at Larson street around 5:45pm that evening. Tr. 175-76. When he got to Biggs's house, Biggs was outside on the phone. Woodall pulled in the driveway and Biggs took \$10 from him. "Literally within a second or two" he heard noises, screaming, yelling, and gunshots and left. Tr. 176, l. 21. It was dark outside, so he did not see anything. Tr. 179. After he heard the gunshots, his girlfriend ordered him to leave. Tr. 179. He backed his car out of the driveway and left. Tr. 180. As he was leaving, he saw Biggs in the yard. He was not near the Grand Am. He was closer towards the street. He could not see if anyone else was in the yard. Tr. 180. Later, he got a phone call from someone who told him, "you don't know anything, you don't know anything, you don't

know anything.” Then he heard a voice say that one of the people who got shot said they saw a gold Honda.

Woodall testified did not recognize the first voice, but said the second voice was Biggs. Tr. 181-82. He did not call law enforcement. Tr. 182. Later, he gave law enforcement a statement, but he was not entirely truthful. He left out the fact that he saw Biggs at the scene, and he said he was not present when the gunshots started. Tr. 182. Woodall gave a second statement that included those facts. Tr. 183. At the time of this trial, he was charged with obstruction of justice. Tr. 184. On cross-examination, Woodall admitted that, in his first statement, he said he handled the marijuana transaction with a dark-skinned guy, someone he did not know. Tr. 185. Woodall admitted that he did not see Biggs with a gun, or did he see who else was at the white car when he arrived. He admitted that he heard a fight. Tr. 185. He thought he heard Biggs screaming for help. Tr. 186. He testified he was “a hundred percent sure” of that. Tr. 190. It was after he was threatened with obstruction of justice that Woodall changed his statement. Tr. 188.

Emily Robbins, Brandon Woodall’s girlfriend, also testified. Tr. 192. She attended high school with Biggs. Tr. 192. She testified that a car followed her and Woodall on their way to Biggs’s house that night. It stopped, too, when they stopped to purchase marijuana from Biggs. Tr. 197. After they gave \$10 to Biggs, they waited for a minute. Then she saw what “looked like a flash of someone running past me towards” Biggs’s car. Tr. 199, ll. 5-6. She and Woodall were talking, and then she heard screaming, fighting, and then emergency flashers on Biggs’s car came on. Tr.

199. She heard what sounded like a fight at the white Pontiac. Tr. 201. Then she heard 5 or 6 gunshots. Tr. 201. She told Woodall to go, and then she saw Biggs run towards the street. Tr. 201. She also gave a statement to law enforcement. Tr. 203. She too told them that she did not see Biggs at the scene, and that they departed prior to the gunshots being fired. Tr. 204. She was charged with obstruction of justice, and gave a second statement. Tr. 204.

The State called Alexander Coutu to testify. He lived in the neighborhood. Tr. 214. When he gave his initial statement to law enforcement, he said that he thought he heard two different guns. Tr. 220.

Investigator Jeff Scott of the Dorchester County Sheriff's Office testified. Tr. 228. He responded to the scene that night. Tr. 231. Exhibit #19 shows a Chevrolet car at the scene that law enforcement never identified who it belonged to. Tr. 234. He found a spent shell casing located under the driver's side of the car. Tr. 236. There was also a projectile located on the passenger side of the car. Tr. 237. There were also 6 spent cartridge casings found. Tr. 240-41. Four were located from inside the car. Tr. 243. A phone was recovered from the driver's side of the car. Tr. 244. He found marijuana in a mason jar in the passenger side floorboard and another mason jar with marijuana in the driver's side floorboard. Tr. 246. He did not find any firearms at the scene. Tr. 249. The lead detective involved in the forensic side of the investigation was Detective Mullis, who is no longer with the department and was not called by the State to testify. Tr. 251. Detective Mullis was responsible for taking latent fingerprints, collecting DNA, and the analysis of the blood stain that was found

on a door. It was Detective Mullis's decision whether to turn the blood stain over to SLED. Tr. 251-52.

Mattie Ingalls was working as a police officer for the Town of Lincolnville in November 2015. Tr. 255. She pulled him over for speeding on November 30, 2015. Tr. 257. She said she could smell marijuana and they searched the car. Tr. 257. She gave him two citations—one for reckless driving and one for possession of marijuana. Tr. 258. She patted Biggs down and did not find a gun either on him, or in the car. Tr. 264. Michael Holt was the backup officer. He testified that he saw Biggs using a phone that was in a "very feminine phone case." Tr. 269, l. 25-Tr. 270, l. 4. After the stop, someone came to the scene and drove away with Biggs and the car because Biggs did not have a valid driver's license. Tr. 270. According to Holt, there were two other cars there, too—a gold sedan and an SUV. They also left, and went in the same direction as Biggs and the driver of his car. Tr. 273.

Chad Smith with the firearms department of SLED testified. Tr. 277. He received 7 fired .9 millimeter caliber cartridge cases. Six of them were marked NATO, and one cartridge case was marked Luger. Tr. 284. The NATO is a military-type ammunition; the Luger is a more commercial brand. Tr. 285. He concluded that all seven cartridge casings were fired by the same firearm. Tr. 289. No firearm was submitted to SLED. Tr. 289.

The State called Detective Brandon Berg of the Dorchester County Sheriff's Office to testify. Tr. 307. He is a crime scene investigator. A cell phone extraction was performed pursuant to a search warrant by Viann Brantly. Tr. 309. Ms. Brantly

also testified she performed the extraction. Tr. 312. The State moved Biggs's phone records into evidence without objection. Tr. 323.

Detective Adam Smith of the Dorchester County Sheriff's Office testified. Tr. 328. He was a first responder to the scene. Tr. 330. A cellphone was taken from one of the decedents. Tr. 339. Law enforcement performed a data extraction from Tyrell Miles's phone. Tr. 339.

The State introduced Exhibit #44, an excerpt of the phone logs. The exhibit shows incoming and outgoing calls. It also shows missed calls. It provides the phone number with whom the caller corresponded with and that person's contact information if it is stored in the user's phone. It also includes date and time, and the duration of the call.

Calls to 911 started coming in at 6:02pm. Tr. 352. The detective noted that Biggs's girlfriend called Biggs around 5:40pm, and Biggs returned her call at 5:53pm. Tr. 354. Tyrell Miles also called Biggs at 5:43pm, 5:47 and 5:58pm. Tr. 355. The call at 5:58 had a duration of 35 second. Tr. 355. Biggs' last completed call that night was with Miles at 5:58pm. Tr. 356. About four minutes later, the first calls to 911 occur. Tr. 357. Biggs also corresponded by text with Hunter Eadie and Emily Robbins. Tr. 359-360.

Brandon Woodall and Emily Robbins were parked in the driveway at 102 Larson Drive at the time of the shooting. Tr. 361-62. They were not truthful with law enforcement:

Q: Were you able to figure out if they were telling you the absolute truth in those first statements?

A: Yes. After we spoke to them the first time we talked to them, the information they provided didn't match up with the information that we had obtained during the course of the investigation and actually contradicted some information. So it was determined that they had either withheld or misinformed us when they talked to us.

Q: So what did you do?

A: At that point in time we obtained arrest warrants for both Emily Robbins and Brandon Woodall for obstruction of justice. We contacted both of them and advised them of the warrants and then asked them to come back in and speak with us about the case.

Tr. 362, l. 20- 363, l. 12.

They each gave a second statement to law enforcement. Tr. 363.

Detective Smith acknowledged on cross-examination that there were "several vehicles" that left the scene, "but those were never identified." Tr. 366, ll.9-12.

Q: And did you receive information there was a tan Chevy Impala leaving the area very quickly that night immediately after the incident?

A: Yes, something of that sort, yes.

Tr. 366, ll. 13-16.

There were also telephone numbers from the cell phone extraction that the Detective could not identify. Tr. 367.

Detective Smith also admitted asking Kelvin DeAndre Armstrong if "he felt guilty because he set up Jamal and Terrell to do the robbery and it caused them to get shot and killed?"

Tr. 374, ll. 12-17. The detective's notes showed that he received information that Kelvin DeAndre Armstrong may have set up the robbery that got his brother killed. Tr. 376.

The State's last witness was Dr. Nicholas Batalis, a forensic pathologist. Tr. 399. Mr. Miles had three gunshot wounds. Tr. 412. A toxicology report showed Miles had THC or marijuana in his system at the time of his death. Tr. 419. Mr. Armstrong had 5 gunshot wounds to the body. Tr. 424. Mr. Armstrong also had THC in his system at the time of his death. Tr. 440.

The State rested. Tr. 443. Trial counsel then motioned for a directed verdict. Tr. 443. The trial court denied the motion. Tr. 447. Biggs did not testify or offer any evidence on his behalf.

ARGUMENTS

I. The trial court erred, and violated Biggs's right to due process, by not granting his motion for a directed verdict when the State did not offer substantial evidence which reasonably tended to prove his guilt, and where the evidence only raised a mere suspicion that he murdered the two victims.

The evidence presented at trial was insufficient to support Biggs's conviction. The most it shows is that the victims attempted to speak with Biggs by cell phone just prior to their deaths. The evidence does not prove that Biggs had his telephone on him, or that he received the calls. It is clear from the evidence that other people were in the area when the victims were killed, but law enforcement neither investigated them, nor even knew who they were.

A case should be submitted to the jury when the evidence is circumstantial "if there is any substantial evidence which reasonably tends to prove the guilt of the

accused or from which his guilt may be fairly and logically deduced.” *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). *See also State v. Williams*, 321 S.C.327, 332, 468 S.E.2d 626, 629 (1996). “the jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict...” *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. *Id.* at 133, 322 S.E.2d at 452 (citing *State v. Manis*, 214 S.C. 99, 51 S.E.2d 370 (1949)).

In *State v. Bostick* 392 S.C. 134, 708 S.E.2d 774 (2011), the South Carolina Supreme Court, analyzing the evidence in the light most favorable to the State, found that the State’s evidence only raised a suspicion of guilt that Bostick committed the crime. The State’s case consisted of the following evidence: (1) the decedent’s car keys, calculator, and other items from her home were found in the Bostick family’s burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick’s mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick’s jeans excluded about ninety-nine percent of the population, the blood could not be matched to the decedent’s DNA. Also, the weapon used to kill the decedent was never introduced into evidence, and there was no evidence introduced to show that Bostick had knowledge the decedent may have had money in the

briefcase or if any money was, in fact, in the briefcase on that date. *Id.* at 141-42, 708 S.E.2d 778.

In *Schrock, supra*, a double-homicide case, the South Carolina Supreme Court reversed a conviction where the State did not offer any evidence that the defendant was at the scene of the crime, could not definitely testify that the footprint found at the scene was made by shoes allegedly owned by the defendant, the State could not establish that cigarettes found at the scene had been smoked by the defendant, a hand print found at the scene was not the defendant's, and shoes presented in evidence were not identified by any witness who had seen the defendant actually wearing the shoes.

Also, in *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), the South Carolina Supreme Court found evidence insufficient when the defendant's fingerprint on a coffee cup lid tab established that he was in the borrowed BMW on the same day the victim was last seen, and that the BMW was abandoned in Tennessee where the defendant stayed after his stay in Savannah, Georgia only raised a suspicion of guilt and was not sufficient to uphold the conviction. *Also see Mitchell, supra* at 409 ("The only evidence linking respondent to the burglary is the fingerprint"). Respectfully, this Court should enter a judgement of acquittal because the evidence was insufficient to support the conviction and sentence.

II. The trial court erred by refusing to charge the jury with voluntary manslaughter jury instruction.

The trial court declined to charge the jury with voluntary manslaughter:

With regards to voluntary manslaughter, of course, the elements of voluntary manslaughter are that a charge on voluntary manslaughter is not appropriate where there is no evidence that the Defendant shot the victims in the heat of passion upon sufficient legal provocation. Of course, the definition of voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation and there is simply is no evidence to support that charge. I would note that even in your argument your statement was no one knows why he was scared. All right. Now, so thank you for that noting your exception for the record.

Tr. 503, ll. 1-14.

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. *State v. Wharton*, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). To warrant the court eliminating the charge of manslaughter, there must be no evidence whatsoever tending to reduce the crime from murder to manslaughter. *Id.* If there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed, the defendant is entitled to such charge. *Dempsey v. State*, 363 S.C. 365, 371, 610 S.E.2d 812, 815 (2005). *Also see State v. Knoten*, 3487 S.C. 296, 307, 555 S.E.2d 391, 397 (2001) (“There can be little argument that an unprovoked knife attack constitutes sufficient legal provocation to warrant the requested [voluntary manslaughter] charge.”); *State v. Pittman*, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (“This Court has previously held that an overt, threatening act or a physical encounter may constitute legal provocation.”).

Various witnesses testified that they heard screaming and yelling just prior to the gunshots being fired. Brandon Stancil testified he hear two “bloodcurdling screams or hollers”, Tr. 104, ll. 12-13, just prior to hearing five or six gunshots.

Brandon Woodall heard noises, screaming, yelling, and then gunshots. Tr. 176, l. 21. He also testified he thought he heard Biggs screaming for help. Tr. 186. Emily Robbins also testified she heard screaming and fighting. Tr. 199. All of this supports an inference that Biggs was frightened and shot a gun to protect himself. Additionally, Detective Smith admitted asking Kelvin Armstrong if “he felt guilty because he set up Jamal and Terrell to do the robbery and it caused them to get shot and killed.” Tr. 374, ll. 12-17. It was up to the jury to either make the inference Biggs was frightened and shot the victims, or not make it. The trial court erred in refusing to give the jury the opportunity. Respectfully, this Court should reverse the conviction and sentence and remand for a new trial.

CONCLUSION

As to Issue I, Biggs respectfully asks this Court to enter a judgment of acquittal. As to Issue II, Biggs respectfully asks this Court to reverse his convictions and sentence, and remand for a new trial.

Respectfully submitted,

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November 19, 2018

THE STATE OF SOUTH CAROLINA
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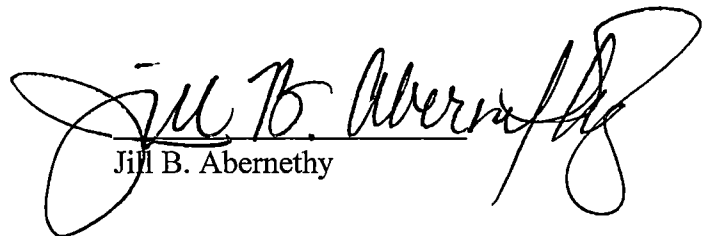
v.

State of South Carolina. Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Appellate's Initial Brief and Designation of Matter to be Included in the Record on Appeal was served by first class United States mail, postage prepaid, this 19th day of November, 2018, upon the following:

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November 19, 2018

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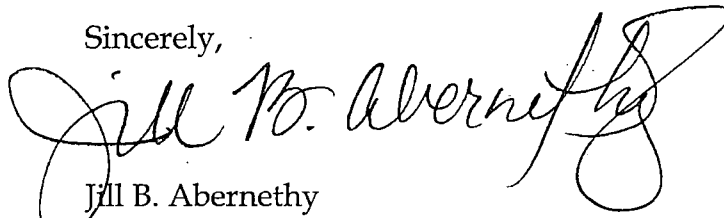
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2018-000393

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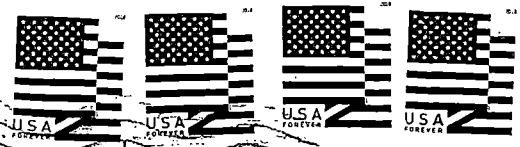
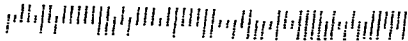
Please find enclosed for filing, with certificate of service, the original and one copy of the Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal in regards to the above captioned case. Please clock-in the extra copy and return it to me in the enclosed self-addressed stamped envelope.

If you should have any questions, please feel free to contact this office.

Sincerely,


Jill B. Abernethy
Paralegal

cc: Melody Brown, Esq.



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