

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Colleton County

R. Scott Sprouse, Circuit Court Judge

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HALDEN LAMONT HOLLMAN,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000843

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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PETITIONER

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**ISSUE PRESENTED**

Did trial counsel render ineffective assistance in violation of the Sixth and Fourteenth Amendments by failing to make a contemporaneous objection to the admission of Petitioner's statement to law enforcement to preserve his motion *in limine* to suppress where there was evidence that the police threatened Petitioner and the only evidence against Petitioner was his statement to police?

## STATEMENT

During the evening of August 8, 2012, and into the morning hours of August 9, 2012, Billy Lyn Tanner was asleep in his house. App. 72, l. 4 – App. 73, l. 4. When he awoke at 5 a.m., he realized three items were missing: his television, his son's laptop, and his wife's iPhone. App. 72, ll. 4-23. Tanner immediately contacted the police. App. 72, ll. 19-20. Although the police officers who responded to the scene dusted for fingerprints and lifted a single print, the print was insufficient for identification. App. 77, l. 23 – App. 78, l. 4. Subsequently, on September 4, 2012, the police questioned Petitioner regarding the theft of Tanner's property. App. 79, ll. 17-23.

Initially, Petitioner denied any involvement in the theft. App. 85, ll. 10-12. According to the officer who interrogated Petitioner, the officer told Petitioner that the police had "done [their] homework." App. 85, ll. 13-15. Although the police had no evidence whatsoever, the officer told Petitioner the police "had a lot of evidence in this case." App. 85, ll. 15-16. Thereafter, according to the officer, Petitioner confessed to stealing the items. App. 85, l. 16 – App. 86, l. 5.

Petitioner explained that the only reason he confessed was because he wanted to get his girlfriend out of trouble and the police had threatened to take his children from his girlfriend, who was also under arrest at the time. App. 39, ll. 6-8; App. 130, ll. 5-6; App. 136, l. 18 – App. 137, l. 3; App. 138, ll. 5-8; App. 149, ll. 9-11; App. 150, ll. 15-21. His girlfriend relayed this threat to him while the two were in the detention center. App. 38, ll. 13-20. It was undisputed that Petitioner's girlfriend was arrested at the same time as Petitioner and that the charges against her were dropped at her preliminary hearing. App. 88, ll. 17-21; App. 89, ll. 6-9; App. 137, ll. 4-

8; App. 150, l. 18 – App. 151, l. 9.<sup>1</sup> However, the police denied threatening to take her children. App. 41, ll. 13-15.

On October 18, 2012, a Colleton County grand jury indicted Petitioner for burglary in the first degree (2012-GS-15-0639). App. 269-270. The state, represented by Steve Knight, called the case to trial before the Honorable Perry M. Buckner, III, and a jury. App. 1. Harris S. Beach represented Petitioner. App. 1. Prior to trial, defense counsel moved to exclude a statement given by Petitioner to police. App. 27, l. 15 – App. 44, l. 5. Defense counsel appeared to recognize at that point that the state’s evidence against Petitioner was thin, but for Petitioner’s statement to police. App. 27, l. 15 – App. 44, l. 5. In fact, during opening statements, the state acknowledged that the only evidence against Petitioner was his statement to police. App. 66, l. 22 – App. 67, l. 4.

The police searched Petitioner’s cell phone and found a text message sent “to a Mr. Black” at 5:45 a.m. on the morning of August 9, asking if Mr. Black wanted to purchase an Apple laptop computer. App. 87, ll. 10-16.<sup>2</sup> Merrell Moses Black admitted he received a text message from Petitioner regarding the purchase of a computer. App. 100, l. 21 – App. 101, l. 2.

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<sup>1</sup> The lead investigator’s testimony changed on key points from the pre-trial hearing to the trial. Specifically, during the pre-trial hearing, the lead investigator did not recall if Petitioner’s girlfriend was out on bond when he interrogated Petitioner. App. 41, ll. 19-25. He also did not recall whether he told Petitioner that he had interviewed his girlfriend. App. 42, ll. 1-4. Nevertheless, during the trial, the investigator testified unequivocally that Petitioner’s girlfriend was out on bond at the time he interrogated Petitioner. App. 88, ll. 22-24. In fact, his memory was so much improved that he indicated the girlfriend had been out of jail for two days. App. 89, ll. 2-3. Further, the investigator testified at trial that he “never spoke about” the girlfriend “at all” during his interrogation of Petitioner. App. 89, l. 21 – App. 90, l. 1.

<sup>2</sup> The record does not disclose whether law enforcement had a search warrant to search the contents of Petitioner’s cell phone. App. 87, ll. 10-16. The solicitor described the officer as having “sort of scrolled on the phone” to find the text message. App. 164, ll. 5-6. It appears unlikely the police had a search warrant to search Petitioner’s phone, which is required pursuant to the Fourth Amendment. See Riley v. California, 134 S.Ct. 2473 (2014); State v. Brown, 423 S.C. 519, 815 S.E.2d 761 (2018).

Black claimed he paid Petitioner \$350 for the computer. App. 101, ll. 20-22. Black explained that he “fix[es] computers on the side” and often purchased computers “off the street.” App. 104, ll. 2-4.

Petitioner explained that although he did not take the items from Tanner’s house, he was involved in assisting those who did with selling the items. While Petitioner and his friend, Nicholas Hodges, were visiting at Petitioner’s home, two men arrived in a white Impala. App. 132, ll. 3-8; App. 144, ll. 12-19; App. 145, ll. 9-10. The men were “Turtle,” who had died by the time of trial, and Jay. App. 132, ll. 5-19. The two men had a television in the backseat of the car, and they asked Petitioner if he knew anyone who wanted to buy the television. App. 133, ll. 1-13; App. 144, l. 23 – App. 145, l. 6. Petitioner took a photo of the television and tried to find a buyer, but he was unsuccessful. App. 133, ll. 18-21. The two men also had a laptop, which they asked Petitioner to unlock. App. 134, ll. 1-10; App. 145, ll. 14-21. Petitioner successfully unlocked the laptop for the men. App. 134, ll. 5-6; App. 140, ll. 1-5. Petitioner candidly admitted that he arranged for Black to buy the laptop. App. 135, ll. 4-8. Petitioner explained he received \$20 for unlocking the laptop and an additional \$20-\$30 for assisting with its sale. App. 135, ll. 13-22.

Although defense counsel appeared to realize the import of Petitioner’s statement to police as critical evidence against him, defense counsel failed to renew his objection to the statement when the state offered it as substantive evidence during the trial. App. 81, ll. 11-12; App. 85, ll. 10-11.

During his closing argument, defense counsel admitted Petitioner “had the computer,” “made calls about the television,” and “got paid for helping to sell the computer.” App. 156, ll. 20-22. He admitted Petitioner was guilty of a crime, but informed the jury he was not guilty of

burglary. App. 156, ll. 23-24. Thereafter, he pointed to the significant dearth of evidence against Petitioner:

Other than the cryptic statement that this young man made, there is no evidence whatsoever putting him on that property or putting him anywhere near that property. There's no physical evidence. There's no fingerprints, and they looked for them. ... There's no DNA. ... No security.

App. 157, ll. 8-17. The only evidence implicating Petitioner was his statement to police. App. 160, ll. 14-17. Even the state admitted there was no physical evidence against Petitioner: "We don't have fingerprints. We don't have DNA. Like [defense counsel] attested, no DNA, no fingerprint." App. 167, ll. 12-14. The state was forced to rely solely upon Petitioner's statement to police and the text message from his cell phone. App. 167, ll. 16-25.

Despite the paucity of evidence, the jury found Petitioner guilty as charged. App. 186, l. 25 – App. 187, l. 6. The jury demonstrated its reliance upon Petitioner's statement to police when it requested "to see the defendant's statement where he confessed" during deliberations. App. 185, ll. 8-15. Judge Buckner sentenced Petitioner to twenty-five years imprisonment. App. 196, ll. 5-9; App. 271.

Petitioner filed a notice of appeal, which was perfected by Benjamin Tripp. App. 198-212. Appellate counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), raising the only issue preserved for review – whether Petitioner was entitled to a directed verdict. App. 198-212. On September 24, 2014, the Court of Appeals affirmed Petitioner's conviction and sentence. State v. Hollman, 2014-UP-342 (S.C. Ct. App. filed Sept. 24, 2014). Remittitur was issued on October 20, 2014.

Subsequently, Petitioner filed an application for post-conviction relief (PCR). App. 229-235. The matter proceeded to an evidentiary hearing on February 15, 2017, before the Honorable R. Scott Sprouse. App. 242. Ruston Neely represented the state, and James K. Falk

represented Petitioner. App. 243. At the time of the PCR hearing, defense counsel was deceased. App. 245, ll. 12-13. Petitioner explained that although he met with defense counsel once in the county jail, he never reviewed the discovery produced by the state. App. 246, ll. 13-22. He further explained that trial counsel never objected to some of the statements that the state made. App. 247. Petitioner re-iterated that the police had threatened his girlfriend, which induced Petitioner to give a statement to police claim responsibility for the burglary. App. 249, l. 3 – App. 250, l. 8.

In summation, PCR counsel argued defense counsel “probably could have done a better job at trying to show” that the police “were trying to make this case against [Petitioner], and [let] the jury know that they were taking such extreme measures as to try to coerce the mother of his child to testify against him, with the threat of taking [their] children away.” App. 255, ll. 13-19. PCR counsel emphasized the “scant evidence” against Petitioner. App. 256, ll. 12-22.

Nevertheless, by an order filed on September 28, 2017, Judge Sprouse denied Petitioner relief. App. 263-268. In the order, Judge Sprouse contended that defense counsel developed a trial strategy that involved arguing the state failed to prove its case due to a lack of forensic evidence and that Petitioner’s confession was coerced by law enforcement’s detention of his girlfriend. App. 266. In a conclusory fashion, the PCR judge found that defense counsel “provided competent representation in light of the overwhelming evidence against” Petitioner. App. 266. Having received notice of the order on May 1, 2018, Petitioner served his notice of appeal on the same day. This petition for writ of certiorari follows.

## ARGUMENT

Trial counsel rendered ineffective assistance in violation of the Sixth and Fourteenth Amendments by failing to make a contemporaneous objection to the admission of Petitioner's statement to law enforcement to preserve his motion *in limine* to suppress where there was evidence that the police threatened Petitioner and the only evidence against Petitioner was his statement to police.

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the effective assistance of counsel. U.S. Const. amend. VI. To prove ineffective assistance of counsel, Petitioner must establish that counsel's representation fell below an objective standard of reasonableness, and that counsel's deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668 (1984); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 686.

To prove ineffective assistance of counsel, "the defendant must show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." Id. "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 687-688. "[T]he performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." Id. at 688.

Concerning prejudice, "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." Rather, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694.

### **Deficient performance**

“Representation of a criminal defendant entails certain basic duties.” Id. at 688. Counsel has “the overarching duty to advocate the defendant’s cause” and “a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.” Id. “[T]he performance inquiry must be whether counsel’s assistance was reasonable considering all the circumstances.” Id. South Carolina’s preservation rules require a contemporaneous objection in order to preserve for appeal a motion *in limine*. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600(1999); State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996); State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993); Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011). In McHam v. State, 404 S.C. 465, 474, 746 S.E.2d 41, 46 (2013), this Court held that McHam’s counsel’s “failure to renew the Fourth Amendment objection” when the drugs were actually admitted into evidence “constituted deficient performance” where the drugs were the most critical piece of evidence. See also Gibbs v. State, 403 S.C. 484, 493-495, 744 S.E.2d 170, 174-176 (2013) (analyzing trial counsel’s failure to object contemporaneously to the identification testimony under the prejudice prong only).

In light of defense counsel’s failure to renew his object to the admission of Petitioner’s statement to law enforcement during the course of the trial, defense counsel unquestionably rendered deficient performance.

### **Prejudice**

In Jackson v. Denno, 378 U.S. 368, 376 (1964), the United States Supreme Court held that “a defendant in a criminal case is deprived of due process of law if his conviction is founded, in

whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession.” To introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda. State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 694 (1996); State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); State v. Miller, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007); State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005); State v. Crawley, 349 S.C. 459, 463, 562 S.E.2d 683, 685 (Ct. App. 2002).

The waiver has two distinct dimensions. It must be “voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception,” and it must be “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” Moran v. Burbine, 475 U.S. 412, 421 (1986); see also State v. Middleton, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986). It is not enough that the interrogator advised the suspect of his rights and the suspect made an uncoerced statement. The prosecution must show that the accused understood the rights. Berghuis v. Thompkins, 560 U.S. 370, 384 (2010) (citing Colorado v. Spring, 479 U.S. 564, 573-575 (1987); Connecticut v. Barrett, 479 U.S. 523, 530 (1987)).

In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: did totality of the circumstances surrounding the custodial statement defeat the defendant’s will? State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010).

Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any

advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep.

Id. at 513-514, 702 S.E.2d at 401 (internal citations omitted). The test requires consideration of “totality of all the surrounding circumstances – both the characteristics of the accused and the details of the interrogation.” Dickerson v. United States, 530 U.S. 428, 434 (2000)(citations omitted).

“A statement may not be ‘extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] obtained by the exertion of improper influence.’” State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007) (quoting State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990)). In State v. Osborne, 301 S.C. 363, 365-367, 392 S.E.2d 178, 179 (1990), the South Carolina Supreme Court held a defendant’s statements were inadmissible where the police repeatedly told the defendant that if she withheld evidence, she could be charged with a crime.

In a case very much like the one presented, the South Carolina Court of Appeals held a defendant’s statements were not admissible when the police, “at the very least,” coerced his conviction “by means of veiled threats against his family.” State v. Corns, 310 S.C. 546, 552, 426 S.E.2d 324, 327 (Ct. App. 1992). The police conceded they informed the defendant “his wife could be arrested, that she could be ‘involved in the marijuana,’ and that their children could be taken from them amounted to an exertion of improper influence rendering [the defendant]’s statement involuntary.” Id.

During the pre-trial hearing, Petitioner testified that he only told police that he was involved in the burglary because he wanted to help his girlfriend, whom police had threatened. Petitioner explained that he was able to talk to his girlfriend at the detention center based upon how the

building and the cells were constructed. The girlfriend revealed to Petitioner that the police were threatening to take custody of their children if the girlfriend did not cooperate with police. Petitioner assured his girlfriend that he would help her get out of the jail. Thereafter, Petitioner told the police what they wanted to hear – that Petitioner was involved in the burglary of the Tanner residence. The interrogating officer admitted that Petitioner initially denied involvement, but admitted to the burglary when the officer, falsely, told Petitioner the police had a considerable amount of evidence against him. This threat against Petitioner’s girlfriend concerning the custody of their children rendered Petitioner’s statement to police involuntary and inadmissible. Defense counsel rendered deficient performance by failing to renew his objection to its admissibility.

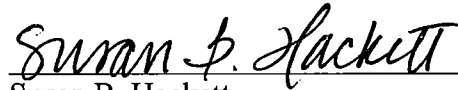
This Court explained the interaction between review of an error on direct appeal and the prejudice analysis required in post-conviction relief matters in Edmund v. State, 341 S.C. 340, 534 S.E.2d 682 (2000). At Edmund’s burglary trial, a police officer testified, without objection, that Edmund invoked his right to counsel and his right to remain silent. The prosecutor, in closing and without objection, described Edmund as acting “smartly enough” when he invoked his right to counsel. The prosecution presented only circumstantial evidence against Edmund. Id. at 343-344, 534 S.E.2d at 684. This Court explained that “[i]n a direct appeal, the admission of comments or evidence of the defendant’s exercise of a constitutional right is a ‘trial error’ subject to harmless error analysis.” Id. at 346, 534 S.E.2d at 685. In a PCR proceeding, an application “must show both error and prejudice to win relief.” Id. at 346-347, 534 S.E.2d at 685-686. Turning to Edmund’s claim that trial counsel was ineffective for failing to object to the officer’s testimony and the prosecutor’s comments, this Court concluded Edmund had shown error. This ruling was based on decades of case law forbidding comment by the prosecutor or his witnesses on the accused’s silence. Id. at 347, 534 S.E.2d at 686.

Next, this Court examined the prejudice prong and explained “[i]n deciding the prejudice prong in this PCR action, we examine the following factors, which are the same ones analyzed in deciding on direct appeal whether a similar error is harmless beyond a reasonable doubt.” *Id.* at 348, 534 S.E.2d at 686-687. This Court held that Edmund had shown prejudice where the record contained three direct references to the exercise of his right to remain silent or be represented by counsel. After commenting on Edmund’s invocation of his right to silence, the prosecutor argued to the jury that the man Edmund accused of the crime had testified he did not commit the crime. Additionally, evidence of Edmund’s guilt was not overwhelming as the state’s case was built on circumstantial evidence. *Id.* at 348-349, 534 S.E.2d at 687.

Contrary to the state’s argument and the one adopted by the PCR judge, the evidence against Petitioner was not overwhelming. In fact, the state had almost no evidence against Petitioner except his statement to police. The “confession” was the single piece of evidence relied upon by the state in making its case against Petitioner. As illustrated by the jury’s question during deliberations, the jury was very interested in Petitioner’s statement to police and relied heavily upon it in rendering a verdict. Thus, trial counsel’s failure to renew his object to the admissibility of Petitioner’s statement to law enforcement was deficient performance prejudicial to Petitioner.

**CONCLUSION**

Petitioner respectfully requests this Court reverse the PCR court, find trial counsel rendered ineffective assistance, and remand for a new trial.

  
Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of December, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Colleton County

R. Scott Sprouse, Circuit Court Judge

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HALDEN LAMONT HOLLMAN,

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V.

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PETITION TO BE RELIEVED AS COUNSEL

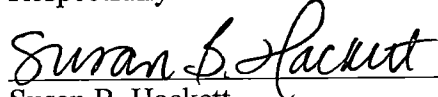
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Counsel for Halden Lamont Hollman states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent Petitioner.
2. She has reviewed the record of Petitioner's post-conviction relief hearing before Judge R. Scott Sprouse, which was held on February 15, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), she has briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Halden Lamont Hollman.

Respectfully Submitted,



Susan B. Hackett

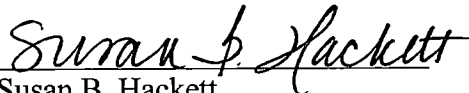
Appellate Defender

ATTORNEY FOR PETITIONER

This 12th day of December, 2018.

**CERTIFICATE OF COUNSEL**

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

  
Susan B. Hackett  
Appellate Defender

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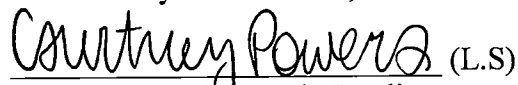
RESPONDENT

—————  
CERTIFICATE OF SERVICE  
—————

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Christian Saville, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Halden Lamont Hollman, #354491, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 12th day of December, 2018.

  
Susan B. Hackett  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 12th day of December, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 2, 2027