STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

RICKY LAMONT ESAW,

APPELLANT

Appellate Case No. 2017-002213

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Did the trial judge violate Appellant's Sixth Amendment right to a fair trial by failing to provide the jury with specific instructions regarding how to analyze the evidence presented concerning the identification of Appellant as the perpetrator, including expert testimony on the subject?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether defense counsel's acquiescence at trial bars review of his charge request on appeal? Alternatively, was the trial court within his discretion to deny Appellant's request for a specific jury instruction regarding expert testimony of cross-race identification when South Carolina law does not permit jury instructions on the specific facts of a case and where the Court provided a thorough instruction on the law for the credibility of witness testimony, the believability of victim's identification, and explanation of expert testimony and the manner in which expert testimony may be considered by the jury?

STATEMENT OF THE CASE

Appellant was indicted for possession of a weapon during the commission of a violent crime, two counts of attempted armed robbery, armed robbery, murder, and attempted murder by Lexington County Grand Jury (2016-GS-32-206; 213; 216; 214; 217; and 218). (Tr. p. 11, line 22 through p. 12, line 3; p. 47, line 20). Assistant Solicitors Rhonda Patterson and Angela Martin represented the State at trial, and Defendant Ricky Lamont Esaw (hereinafter "Appellant") was represented by attorneys Jason Chehoski and Elizabeth Fullwood (hereinafter "Defense Counsel"). (Tr. p. 1). The case was called to trial before the Honorable Thomas W. Cooper, and a jury, on October 16-19, 2017. (Tr. p. 1). The jury returned a guilty verdict for all charges against Appellant. Judge Cooper, by statute, sentenced Appellant to life imprisonment for the collective charges of armed robbery, robbery, armed robbery, murder, and attempted murder. (Tr. p. 749, lines 5-14). Appellant received a five year sentence for his possession of a weapon charge, with all sentences to run concurrently. (Tr. p. 749, lines 3-5). This appeal follows.

STANDARD OF REVIEW

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). An abuse of discretion "means nothing more or less than that the ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of appellant, and therefore, in the circumstances, amounted to error of law." *Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961).

STATEMENT OF FACTS

The Crime

On the night of August 9, 2015, Hector Vasquez (hereinafter "victim"), along with his wife Christy, and son, Franklin, were at their next door neighbors' yard celebrating a baptism. (Tr. p. 248, lines 5-25). The family lived in the mobile home park known as Rolling Meadows. (Tr. p. 247, lines 14-16). That same night, Mr. Wilfred "King" Pitts, Jr. and Appellant arrived at the home of the Vasquez's with the intent to commit an armed robbery. (Tr. p. 578, line 2 through p. 579, line 25). When they stopped the vehicle, Mr. Pitts went to one side to rob a bystander at the party named Rafael Izaguirre. (Tr. p. 580, lines 14-20; p. 267, line 24 through p. 268, line 8). In his effort, Mr. Pitts acquired Mr. Izaquirre's cell phone and wallet, but lost his bracelet in the process. (Tr. p. 268, lines 2-5; p. 581, line 18 through p. 582, line 12; p. 608). Appellant, who was driving the vehicle, exited the vehicle and held a gun up to Franklin Vasquez (hereinafter "Franklin"), asking for his money and valuables. (Tr. p. 280, line 11 through p. 281, line 15; p. 597, lines 20-22). Franklin claimed he did not have anything and Victim stepped in between Appellant and his son to protest Appellant's demands. (Tr. p. 282, lines 9-25). Christy Vasquez (hereinafter "Christy") witnessed the commotion and began to approach Appellant as well. (Tr. p. 250, line 11 through p. 251, line 24).

Appellant attempted to fire his weapon, but the gun jammed and a struggle ensued. (Tr. p. 282, lines 19-25). Franklin attempted to assist his father in the struggle when the gun discharged and struck victim in the chest. (Tr. p. 282, line 25 through p. 283, line 3; p. 371, lines 8-16). Upon hearing a gun shot and witnessing Appellant's struggle, Mr. Pitts fired his weapon and grazed Franklin in the leg. (Tr. p. 283, lines 4-9; p. 583, lines 3-17). Both Mr. Pitts and Appellant

fled the scene in their car. Victim was rushed to the hospital, but ultimately died from his gunshot wound. (Tr. p. 258, line 5 through p. 259, line 10).

Investigation and Evidence Presented at trial

A police investigation began, led by Detective John Moore, and assisted by Sergeant Miles Rawl, Detective Barry Sowards, and Detective Adam Creech. The initial statement from Franklin demonstrated that due to the proximity of the altercation, he got an excellent look at the individual who attacked and killed his father. (Tr. p. 281, line 2 through p. 283, line 9; p. 290, line 20 through p. 291, line 17). Officers created an initial photo lineup, reviewed separately by both Franklin and Christy while at the hospital, but neither individual made a selection from the photo lineup provided at that time, as Appellant had not yet been identified as a suspect. (Tr. p. 342, line 21 through p. 344, line 7).

A breakthrough in the case came a couple of days later. Detective Sowards, who manages the Crimestoppers Tip system, received a tip identifying Ricky Esaw and King Pitts as the individuals responsible for a shooting in the mobile home park. (Tr. p. 377, line 1 through p. 379, line 23; p. 485, line 19 through p. 486, line 8). Admittedly, the tip was not accurate as to the date, (noting August 11, instead of August 9) and did not have the name of the victim correct. (Tr. p. 532, line 12 through p. 533, line 9). Nevertheless, the police investigated the tip. They then utilized photographs of both individuals in a subsequent lineup, presented separately to Christy and Franklin Vasquez. (Tr. p. 428, line 1 through p. 430, line 14). While Christy was not able to make a selection, and in her testimony admitted that she was not as close to the culprits as her son, Franklin was able to make a selection from the new lineup. (Tr. p. 430, line 15 through p. 431, line 1; p. 260, line 1 through p. 261, line 4; p. 292, line 6 through p. 293, line 25). By his

own testimony, he was able to identify Appellant in the lineup almost immediately. (Tr. 294, lines 1-9).

Investigative efforts led police to discover that the vehicle used by Appellant's girlfriend matched the description of the vehicle that Franklin testified to seeing the night of the murder.[1] (Tr. p. 382, lines 3-16; p. 583, line 18 through p. 585, line 18). Both Mr. Pitts and Appellant were apprehended, and both confessed to being involved in the crime. Mr. Pitts, in cooperation with authorities, testified at trial as to his involvement in the crime as the perpetrator who robbed Rafael Izaguirre. (Tr. p. 579, line 14 through p. 581, line 17). He also confessed to firing his gun at Franklin once he realized that Appellant was in trouble. (Tr. p. 583, lines 3-15). Mr. Pitt's testimony demonstrated that Appellant planned the robbery and participated by holding up the victim, which ultimately led to the murder. (Tr. p. 597, lines 12-13). Forensic evidence also corroborated Mr. Pitt's testimony. DNA evidence taken from the stolen cell phone and his lost bracelet, both found at the scene of the crime, matched Mr. Pitts' DNA. (Tr. p. 386, line 21 through p. 387, line 15; p. 494, line 15 through p. 495, line 4).

Appellant, upon initial contact with police, immediately admitted to his involvement in the crime, when he claimed that he was "just the driver" and "at best you got me for accessory". (Tr. p. 401, lines 4-15). These comments were offered freely without questioning while officers attempted to read the contents of the warrant. (Tr. p. 401, lines 4-15; p. 402, lines1-6). Appellant repeated his guilt as an accessory after his arrest as well. Once under arrest and Mirandized, Appellant agreed to make a formal statement, both orally and in his own signed handwriting. This statement reads as follows:

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[1] It does not appear from the evidence that Appellant's girlfriend, Luenetta Grayson, had any participation or knowledge of the crime committed. Appellant simply borrowed her car.

> They came to get me from my mom's house telling me they need a driver, so I drove the Nissan black headed to Rolling Meadows because they had some Mexicans to get. So I drive them down there and when they got out there, they pulled their guns out on the Mexican. Pitts was fighting with one, then he shot him. When they got into the car, AJ asked him why did he shoot him. He said that he was coming at the gun, so he shot him. When Pitts did that, he came back to West Columbia and I went back to my mom's house

(Tr. p. 516, line 20 through p. 517, line 5). In his statement, Appellant attempts to place blame on a third individual named "AJ" (aka Arthur Gene Evans, Jr.) who testified at Appellant's trial and denied having any involvement in the crime. (Tr. p. 566, lines 14-24). AJ's absence from the crime was confirmed by Mr. Pitt's testimony, and Detective Creech noted Appellant's inability to provide details concerning AJ's alleged involvement. (Tr. p. 597, lines 1-5; p. 440, line 3 through 441, line 8).

In the Defendant's case in chief, expert witness Dr. Dawn McQuiston testified regarding the psychology behind eye-witness identification. Part of her testimony dealt with the theory of "cross-race bias" or "cross-race effect", which she explained relates to the premise that a witness's lack of familiarity or exposure to certain races or ethnic groups contributes to a less accurate recollection or identification of those ethnic groups. (Tr. p. 639, line 1 through p. 640, line 10). Dr. McQuiston acknowledged that if a witness has friends, neighbors, or classmates of the same race of the person they identified, they would "probably" be more accurate in their identification. (Tr. p. 650, lines 6-22). To this topic, Franklin testified that he attends school with African-American kids, had African-American friends, some of which lived in his same neighborhood, and had even hung out with African-American friends earlier that same day. (Tr. p. 295 line 16 through p. 296, line 1).

THE ISSUE AS IT WAS PRESENTED AT TRIAL

Following the conclusion of evidence from Defendant, Defense Counsel requested that Judge Cooper give a specific jury instruction regarding "Cross-race" identification. Defense Counsel's proposed instruction reads as follows:

> When a witness who is a member of one race identified a member who is of another race, we see that there has been a cross-racial identification. You may consider, if you think it is appropriate to do so, whether the cross-racial nature of the identification has affected the accuracy of the witness' original perception and/or accuracy of the subsequent identification.

(Tr. p. 661, lines 3-10). Defense counsel noted that the charge was based on upon New Jersey case *State v. Cromedy*, 158 NJ 12, 727 A.2d 457 (1999). (Tr. p. 660, lines 21-25). The court asked Defense counsel if he was aware that South Carolina, in contrast to New Jersey, does not permit jury charges based upon the facts of the particular case. Defense Counsel was not aware of the difference in laws, and did not press the request for the instruction further. (Tr. p. 661, lines 11-25).

After closing arguments, Judge Cooper provided thorough instructions on the State's obligation to prove Appellant's guilt beyond a reasonable doubt, and explained what constitutes reasonable doubt. (Tr. p. 706, line 18 through p. 710, line 4). Judge Cooper also provided a thorough instruction regarding the determination of credibility, wherein he explained to the jury that it was their obligation to determine the believability of the witnesses who testified before them, and that they may do so by judging numerous factors such as demeanor, hesitancy, consistency, biases, self-interests, and corroboration by other evidence. (Tr. p. 711, line 24 through p. 712, line 24). Pertinent to the issue, Judge Cooper lastly provided detailed jury instructions regarding expert witness testimony and witness identification. These charges were set forth as follows:

You've heard in this particular case the testimony of an expert witness. Our rules of evidence ordinarily don't allow witnesses to testify about opinions or conclusions. However, person who by their training and by their qualifications and by their experience in certain fields can be qualified as expert witnesses in those particular fields, and they then have the right to render opinions on those fields in which they have been qualified as experts.

You should consider any expert opinion received in evidence in this case like any other evidence in this case and give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you can disregard the opinion entirely, because an expert witness' testimony is like the testimony of any other witness; it doesn't receive any greater weight than that of any other witnesses.

Because as jurors, ladies and gentlemen, you've got the right to believe a small portion of the testimony of a single witness, disbelieve the larger portion of the testimony of the same witness, or you can believe everything that witness tells you or none of what a witness tells you.

Now, ladies and gentlemen, an issue in this case is the identification of the defendant as a person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt, and you must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you can convict him.

Identification testimony is an expression or a belief of an impression by a witness and you must determine the accuracy of the identification of the defendant. You must consider the believability of the identification witness in the same way as any other witness.

You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense, and this can be affected by things about how long or short the time was available or how far or close the witness was, the lighting conditions, whether the witness had a chance to see or know the person in the past.

> Once again I tell you that the burden of proof upon the State extends every element of the offense charged, and this includes specifically includes the burden of proving beyond a reasonable doubt the identity of the defendant as the one who committed the crime. After examining the testimony if you have a reasonable doubt as to the accuracy of the identification, then you must find the defendant not guilty.

(Tr. p. 712, line 25 through p. 714, line 1; p. 721, line 12 through p. 722 line 16). No objections were made to the Court's provided jury charges and Defense Counsel did not raise any arguments as to the insufficiency of the Court's jury charges.

ARGUMENT

II. The trial court properly denied the requested jury charge on the grounds that it constituted a charge on the facts, impermissible under South Carolina law.

Appellant argues that the trial court erred in declining his requested jury instruction concerning "cross-race identification". However, Appellant's requested jury instruction was not properly preserved for appellate review, runs counter to the prohibition against jury instructions on matters of fact, as set forth by Article V, § 21, and is, in the alternative, harmless in light of the substantial evidence of Appellant's guilt. As such, the trial court was correct in denying Appellant's request for a cross-racial identification charge.

a. This issue was not properly preserved for appellate review.

Appellant failed to preserve this issue for appellate review. Defense Counsel initially made the request for the proposed jury instruction concerning "cross-race identification". However, Defense Counsel acquiesced to the Court's reasoning that such a charge would constitute a charge upon the facts, impermissible under South Carolina law. (Tr. p. 660, line 21 through p. 661, line 25). *State v. Rios*, 388 S.C. 335, 341, 696 S.E.2d 608, 612 (Ct. App. 2010); *Ex parte McMillan*, 319 S.C. 331, 334, 461 S.E.2d 43, 45 (1995) (holding a party cannot

acquiesce to an issue at trial, but then complain on appeal).

Generally, "[Where a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary to preserve the point on appeal, to renew the request at conclusion of the court's instructions." *State v. Johnson*, 333 S.C. 62, 66, 508 S.E.2d 29, 31 (1998). While the trial court offered to make the requested instruction a court's exhibit following its refusal of the charge, Appellant never argued why the trial court's instruction was not sufficient and did not argue why the court's reasoning regarding factual instructions was not proper under the circumstances of the case. (Tr. p. 660, line 21 through p. 661, line 25). Defense Counsel failed to articulate any factual explanation to the trial court as to why this specific instruction was needed, why the trial court's instruction would be in error, and failed to articulate the arguments now presented on appeal.

The trial court was never given an opportunity to consider and respond to the Appellant's arguments that its standard charge allegedly "omitted certain items and failed to include any type of catch-all provision." (Appellant's Brief, p. 11); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Likewise, the trial court was not given the opportunity to hear and decide on the issue concerning whether its provided instruction "left the jury with the impression that it could only consider the factors expressly stated", thereby giving the jury the impression that it should not consider misidentification due to race. (Appellant's Brief, p. 12); See *Gilchrist v. State*, 364 S.C. 173, 178, 612 S.E.2d 702, 705 (2005) (holding that "trial counsel's submission of the request to charge, without any further explanation of his point, was insufficient to preserve for review the trial court's failure to charge the specific language. . ."). In order to properly preserve an issue for appellate review the matter "should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error." *State v. Johnson*, 363 S.C.

53, 58, 609 S.E.2d 520, 523 (2005).

As such, the issue presented on appeal has not been properly preserved for appellate review. The convictions should therefore be affirmed.

b. Appellant's requested charge is impermissible under the South Carolina Constitution.

In Appellant's case in chief, Defense Counsel elicited the expert testimony of Dr. Dawn McQuiston. Dr. McQuiston testified as to the many elements that can affect memory, and more specifically an alleged occurrence referred to as "cross-race effect". (Tr. p. 630-655; p. 639). She explained that "cross-race" identification can be less reliable due to the eye-witness's lack of familiarity with individuals of other races or ethnicities. (Tr. p. 639, line 4 through p. 640, line 10). At the conclusion of the Appellant's case, Defense counsel sought to have the court provide an additional jury instruction that specifically instructed the jury regarding cross-racial identification and the ability for the jury to consider such a factor in its judgment of the accuracy of eye-witness testimony, citing New Jersey case law as its support for the charge. The trial court denied the jury charge request and noted that while New Jersey permits jury instructions based on the facts of the case, South Carolina does not. (Tr. p. 661, lines 3-25). Defense counsel sought no objection to the ruling, and did not further argue for inclusion of the charge or for the inadequacy of the court's charges.

The trial court was correct in its recognition that South Carolina, by constitutional prohibition, does not permit a court to give jury instructions based on the facts of a case. S.C. Const. art. V, § 21. Moreover, the trial court was within its discretion to deny the charge based on the parameters guiding proper jury instructions.

"Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21. "[T]he trial court is required to charge only the current and correct law

of South Carolina." *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). "The law to be charged must be determined from the evidence presented at trial." *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "Generally, the trial judge is required to charge only the current and correct law of South Carolina." *State v. Zeigler*, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." *Id.* Here, the charge was a current and correct statement of the law on identification testimony in South Carolina. "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *State v. Commander,* 396 S.C. 254, 270-71, 721 S.E.2d 413, 422 (2011). "Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues." *State v. Dickey*, 394 S.C. 491, 512, 716 S.E.2d 97, 108 (2011). "The substance of the law is what must be charged to the jury, not any particular verbiage." *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011). [2]

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[2] Appellant makes a limited reference to *United States v. Telfaire*, 469 F.2d 552 (D.C. Cir 1972). To the extent the model *Telfair* charge is considered relevant to the issue at hand, *State v. Motes* considered the model jury instruction from *United States v. Telfaire* and held that there was no error in the trial court's refusal to charge the *Telfaire* model instruction. *State v. Motes*, 264 S.C. 317, 215 S.E.2d 190, 194 (1975). The Supreme Court noted that the model instruction was "designed to focus the attention of the jury on the identification issue and minimize the risk of conviction through false or mistaken identification." *Id.* However, the Supreme Court found, "The trial, and the instructions given, adequately focused the attention of the jury on the necessity for a finding that the testimony identified defendant as the offender beyond a reasonable doubt; therefore, no prejudice resulted to defendant from the failure to give the requested instruction." *Id.* Here, the Court provided explicit instruction to the jury that identify must be proven by the State beyond a reasonable doubt. (Tr. p. 721, line 12 through p. 722 line 16). Moreover, *Telfair* concerned a case reliant up on the identification evidence of a singular witness. Here, there is substantial evidence independently demonstrating Appellant's guilt, and corroborating the eye witness testimony.

Most importantly, this Court has already ruled in this matter, holding that a cross-racial jury charge is "improper instructions into matters of fact or comments on the weight of the evidence." *State v. Green*, 412 S.C. 65, 77, 770 S.E.2d 424, 431 (Ct. App. 2015). In *State v. Green*, the Court considered Green's proposed jury instruction that "instructed the jury to consider issues implicated by cross-racial identifications; specifically, that '[i]dentification by a person of a different race may be less reliable than identification by a person of the same race.'" *Id.* at 428-29. Our Court of Appeals in *Green* denied the requested charge, and instead provided the standard identification charge. *Id.* The court in *Green* ruled that the provided instruction was proper and that the trial court properly informed the jury that the State had the burden to prove beyond a reasonable doubt the identity of the defendant. *Id.* at 430. Lastly, and controlling in the matter at hand, the court in *Green* ruled that the requested charge constituted "improper instruction into matters of fact or comments on the weight of evidence," in conflict with Article V of the South Carolina Constitution. *Id.* at 431.

Appellant's case is indistinguishable as to the matter of jury charges concerning cross-racial identification. There is no error of the trial court, and certainly no abuse of discretion in denying the requested charge. The conviction and sentence should be affirmed.

a. Alternatively, any error by the trial court in denying the contested jury charge was harmless.

In the alternative to Respondent's above arguments, any alleged error in denying the requested charge is harmless in light of the evidence presented at trial. The conviction and sentence should be affirmed.

"When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (quoting *State v.*

Kerr, 330 S.C. 132, 144–45, 498 S.E.2d 212, 218 (Ct.App.1998). "'In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered.'" *Id.*

Here, the jury was not solely reliant upon the accuracy of Franklin's eye-witness identification of Appellant. In addition to Franklin's *confident* selection, Appellant provided an oral and signed written confession to his knowledgeable involvement in the armed robbery, albeit allegedly only as a driver. While this confession would be independently sufficient for a conviction under a "hand of one/hand of all" theory (See *State v. Langley*, 334 S.C. 643, 649, 515 S.E.2d 98, 101 (1999)), the evidence presented by the State also included a full and detailed confession from Mr. Pitt's as to his involvement in the crime that also detailed Appellant's involvement. This confession was substantively equivalent to Franklin Vasquez's testimony. The State's case also included corroborative DNA evidence that supports Mr. Pitt's testimony and a matching eye-witness description of Appellant's girlfriend's vehicle, which Mr. Pitt's testified was used for the crime.

Moreover, the court's instruction concerning the accuracy of eye-witness identification was broad enough not to discourage the jury from considering the elements discussed by Appellant's expert witness. The breadth of the charge as whole placed the jury on notice that they could consider all matters presented at trial, and the court's expert witness instruction specifically instructed them to consider and give weight to such testimony as they see fit. Cf. *State v. Hughey*, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000), overruled on other grounds by *Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009))(holding that the trial court did not err in refusing jury instruction that would provide specific examples of legal provocation, where the broad and accurate recitation of the law was sufficient.).

The evidence presented at trial against Appellant was substantial, and the denial of cross-racial identification jury charge was harmless, if found to be in error. The conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

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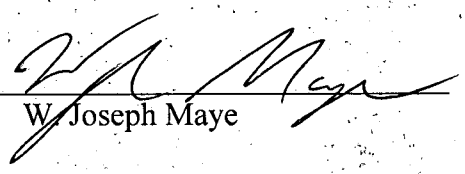
BY: 
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January 31, 2019

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

RICKY LAMONT ESAW,

APPELLANT

Appellate Case No. 2017-002213

CERTIFICATE OF SERVICE

I, W. Joseph Maye,, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, addressed to her attorney of record: Susan B. Hackett, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 1st day of February, 2019.

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ATTORNEY FOR RESPONDENT

ALAN WILSON
ATTORNEY GENERAL

February 1, 2019

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *The State v. Ricky L. Esaw*
Appeal from Lexington County
Appellate Case No. 2017-002213

Dear Ms. Kitchings:

Enclosed for filing please find the original Initial Brief of Respondent and Designation of Matter, together with Proof of Service in the above-referenced case. If you should have any questions, please feel free to contact me.

Sincerely,

W. Joseph Maye
Assistant Attorney General

WJM/dmd
Enclosures
cc: Susan B. Hackett, Esq. (w/two copies of encls.)
The Honorable S. Rick Hubbard, III, Solicitor 11th Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encls.)