

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MARK ELLIOTT,

APPELLANT

---

FINAL BRIEF OF APPELLANT

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BREEN RICHARD STEVENS  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in admitting the hearsay statement of the Complaining Witness made to a nurse regarding details of the purported abduction rather than of the alleged rape for which the Complaining Witness was being treated?
  
- II. Whether the trial court erred in admitting Appellant's initial statements to police when he was Mirandized under coercive conditions?

## STATEMENT OF THE CASE

Appellant Mark Elliott was indicted by the Horry County Grand Jury for kidnapping, criminal sexual conduct (CSC) in the first degree, CSC with a minor in the second degree, failure to stop for a blue light (FSBL), and resisting arrest. R. 216, ln. 17—R. 219, ln. 3. Appellant's case proceeded to trial before the Honorable Larry B. Hyman, Jr. and a jury from November 15 through 19, 2010. R. 1. Appellant was represented by Ronald William Hazzard and Melinda Allyson Knowles, while the State was represented by Nancy R. Livesay and Candice A. Lively. R. 2. The trial court directed a verdict of not guilty on the charge of resisting arrest, and the jury acquitted Appellant of both CSC charges, and of FSBL; however, Appellant was found guilty of kidnapping. R. 733, ll. 11-12; R. 897, ln. 19—R. 898, ln. 11. The trial court sentenced Appellant to thirty years imprisonment. R. 909, ll. 11-14.

## STATEMENT OF THE FACTS

Appellant was driving through North Myrtle Beach to return from Conway, South Carolina, to his home in Tabor City, North Carolina on September 20, 2009; however, Appellant was not familiar with North Myrtle Beach. R. 407, ln. 9-13; R. 408, ll. 15-18; R. 641, ll. 20-24. At approximately 3:00 to 3:15 am, Appellant drove through a residential neighborhood that had several beach houses standing closely together. R. 246, ln. 21-22; R. 282, ln. 3-7. The 14 year old Complaining Witness, her 17 year old boyfriend M.H., and M.H.'s 17 year old friend R.B. all stood in the driveway of a beach house (Beach House) where the Complaining Witness was staying.<sup>1</sup> Appellant eventually stopped at the Beach House driveway, and asked for directions. R. 246, ln. 13—R. 248, ln. 7; R. 284, ll. 1-11; R. 492, ln. 5—R. 475, ln. 13.

According to the Complaining Witness and R.B., the Appellant drove forward a bit after getting instructions from M.H., and stopped the car. He then allegedly exited the vehicle while purportedly holding his arm as if hiding something behind it,<sup>2</sup> ordered the Complaining Witness, M.H., and R.B. to the ground, and told them to empty their pockets. He then allegedly told M.H. and R.B. to get up and walk away, frisked the

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<sup>1</sup> The Complaining Witness rode to North Myrtle Beach with her friend, B.C., and B.C.'s family, on September 26, 2010. R. 455, ll. 2-10. M.H. and R.B. drove down so M.H. could meet with the Complaining Witness. R. 242, ln. 2—R. 243, ln. 25. Because the Complaining Witness was forbidden by her parents to be with M.H., the visit by M.H. and R.B. was not made known to B.C.'s parents at that time. R. 462, ll. 1-8.

<sup>2</sup> The Complaining Witness testified that Appellant never pulled a knife or gun on her, or intimidated her with a weapon. R. 504, ll. 4-15. Although police recovered a car jack from somewhere in the passenger side front seat area of Appellant's car, the Complaining Witness stated she never saw a knife or gun in the car. R. 484, ll. 10-16; R. 623, ll. 3-17; R. 657, ln. 11—R. 658, ln. 16; R. 660, ln. 20—R. 664, ln. 1.

Complaining Witness, and said to get into the car. R. 248, ln. 8—R. 249, ln. 13; R. 284, ll. 14-21; R. 475, ln. 16—R. 481, ln. 19.

R.B. said it took approximately eight minutes to walk to M.H.'s car, which was parked around the corner from the block that the Beach House was on. R. 249, ln. 17—R. 250, ln. 15; R. 284, ln. 20—R. 285, ln. 23. Once in the car, the two had access to their cell phones, and drove back to the Beach House in approximately five minutes. R. 286, ll. 7-11; R. 288, ln. 14—R. 289, ln. 11. R.B. exited the vehicle to go inside the house and call the police while M.H. drove around. M.H. called the Complaining Witness on her cell phone at least three times, which she still possessed. She answered the call, but eventually hung up. She further refused to answer additional calls to her from B.C. R. 359, ln. 2—R. 290, ln. 10; R. 483, ll. 2-21.

Inside the Beach House, R.B. first told B.C. and her mother of what he purportedly saw, yet they did not believe him at first. R. 253, ll. 1-6; R. 296, ln. 12—R. 297, ln. 7. B.C.'s mother eventually called 911; both she and R.B. spoke with the 911 operator. R. 253, ln. 20—R. 254, ln. 2; R. 260, ll. 10-22; R. 267, ll. 17. At approximately 4:14 am, a "be on the look out" (BOLO) was issued to law enforcement for a black male approximately six feet, four inches tall, weighing 200 to 220 pounds, and wearing a white shirt and dark shorts driving a late-eighties red Toyota Camry. R. 379, ln. 6—R.304, ln. 21; R. 307, ll. 7-8; R. 627, ll. 11-18.

The Complaining Witness testified that Appellant wandered through North Myrtle Beach, stopping, backing up, and turning frequently, until they eventually stopped at a boat landing in the Cherry Grove area. She indicated Appellant raped her there while standing outside the passenger-side car door for approximately two minutes, but stopped

and let her go. R. 488, ln. 4—R. 489, 20; R. 490, ll. 16-24. A jogger later spoke to the Complaining Witness, and allowed her to use his phone at his house; she called M.H.'s cell phone, and then spoke to police who were present with M.H. when the call was answered. R. 497, ln. 14—R. 498, 12. She was taken by police to the hospital between 5:00 to 7:00 am where Nurse Susan M. Douglass assisted in performance of a rape kit. R. 498, ll. 18-20; R. 737, ll. 6-24.

Appellant was stopped at approximately 4:25 am in the parking lot of a BP gas station by Deputy Jamie Jernigan (Jernigan) of the Horry County Police Department. R. 307, ll. 10-15. When he stepped out, Jernigan reached toward his gun, and Appellant ran. R. 310, ll. 7-14; R. 351, ln. 4—R. 352, ln. 3. He was eventually stopped by a Taser fired from Jernigan in the parking lot of Billy the Kid's restaurant (Restaurant). Officer Russell Causey of the North Myrtle Beach Department of Public Safety (NMBPS) subsequently arrived, along with two to three additional officers. Appellant was shocked a total of three times with 50,000 volts of electricity on each cycle before he was handcuffed. R. 311, ln. 6—R. 312, ln. 15; R. 340, ll. 7-23.

Causey then read Appellant his Miranda rights and gained his acknowledgement of them while Appellant was face-down on the pavement, his hands cuffed behind his back, and with the Taser probes still in his body. Further, Appellant was apparently told by another unnamed deputy, "you don't want anymore of this juice." R. 340, ln. 21—R. 342, ln. 17; R. 362, ln. 7—R. 364, ln. 18; R. 391, ln. 13—R. 392, ln. 16. Appellant indicated he would answer questions. R. 364, ll. 16-18; R. 366, ll. 6-9.

Police moved him to the back seat of a police cruiser and inquired as to the location of the Complaining Witness. R. 143, ln. 5—R. 148, ln. 18; R. 364, ln. 22—R.

365, ln. 2; R. 403, ll. 1-8. Appellant acknowledged he picked-up a girl, but told them she ran from the car when it stopped at the gas station, which conforms to what another officer at the scene stated when Appellant was arrested in the Restaurant parking lot. R. 378, ll. 8-21; R. 409, ll. 7-11. Police nonetheless searched Appellant's car. R. 368. They also called the Complaining Witness's cell phone number, which purportedly rang from the driver-side car door storage pocket of Appellant's car. R. 421, ln. 14—R. 423, ln. 5.

Appellant gave an additional statements to Lieutenant Michael Baldassare at the scene, but was not Mirandized there again other than the first instance when he was handcuffed on the ground with Taser probes attached to his back.<sup>3</sup> Appellant maintained that he came into contact with two white males and one white female who approached him looking to buy drugs. After he said he did not have any, he drove the female to a motel to buy drugs a few blocks away in the Cherry Grove area. R. 127, ln. 16—R. 129, ln. 25; R. 408, ll. 13-25; R. 428, ll. 10-24.

At trial, the jury learned in the defense's case-in-chief that Appellants DNA did not match what was found from the swabs taken from the Complaining Witness. R 784, ll 4-7. Further, the State was also permitted to utilize the statement of the Complaining Witness made to the Nurse Douglas. R. 744, ln. 11—R. 751, ln. 18. When the Complaining Witness was taken to the hospital, she told the Nurse Douglas that she had

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<sup>3</sup> In the back of the police car, Causey asked Appellant if he remembered his rights, which Appellant answered in the affirmative; however, he was not re-Mirandized. R. 365, ll. 1-25. Appellant later gave another statement at the NMBPS police station at approximately 2:00 to 3:00 pm where he was re-Mirandized and interrogated by Investigator Vance Abercrombie (Abercrombie). R. 436, ln. 7—R. 437, ln. 8; R. 630—R. 631, ln. 24—R. 632, ln. 25. Abercrombie was at the scene where Appellant was arrested, and participated in the investigation at that point. R. 594; R.619; R. 623.

intercourse with M.H. earlier that day. R. 748, ll. 18—R. 751, ln. 12. However, the only portion of the statement utilized by the State at trial related to the purported abduction, rather than the alleged rape for which the Complaining Witness was being treated. R. 752, ln. 3—R. 753, ln. 12.

The jury found guilty of kidnapping, and the trial court sentenced him to thirty years imprisonment. R. 897, ll. 19-24;R. 909, ll. 11-16. This appeal follows.<sup>4</sup>

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<sup>4</sup> No notice of cross-appeal was filed by the State.

## ARGUMENTS

**I. The trial court erred in admitting the hearsay statement of the Complaining Witness made to a nurse regarding details of the purported abduction rather than of the alleged rape for which the Complaining Witness was being treated.**

On the basis of hearsay, the defense objected to admission of the Complaining Witness' statement given to Nurse Douglas when the rape kit was performed at the hospital. The State asserted the statement was admissible pursuant to the exception permitting statements for purposes of medical diagnosis or treatment under Rule 803(4) of the South Carolina Rules of Evidence. The trial court agreed, and permitted the statement to come in. R.744, ln. 10—R. 751, ln. 18. However, the statement utilized by the State had nothing to do with the alleged sexual assault for which the Complaining Witness was being treated at the hospital; rather, the statement was solely about the purported abduction itself, which allegedly occurred at a different time and place than the alleged assault. R. 747, ll. 10-20; R.752, ln. 13—R. 753, ln. 25. Accordingly, the trial court erred in permitting the State to introduce the Complaining Witness' statement to Douglas, as the details of the purported abduction had nothing to do with the purpose of medical diagnosis or treatment for rape.

“The rule against hearsay prohibits the admission of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies.” Dawkins v. State, 346 S.C. 151, 156, 551 S.E.2d 260, 262 (2001) (reversing the PCR court where counsel was ineffective for failing to object to hearsay evidence that corroborated the victim's testimony); see also Rules 801(c) and 802, SCRE. One such limited exception is Rule 803(4) of the South Carolina Rules of Evidence, which is titled, “Statements for

Purposes of Medical Diagnosis or Treatment.” The rule permits a hearsay statement if it is made under the following circumstances:

[F]or purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof *insofar as reasonably pertinent to diagnosis or treatment.*

Rule 803(4), SCRE (emphasis added). Thus, if a statement is given regarding medical history, symptoms, or the character of the cause or source of the pain or symptoms, then it is permissible. However, if the statement does not meet this specific definition, then this limited exception to the hearsay rule is inapplicable, and the statement is inadmissible.

In the case at bar, the specific statement made by the Complaining Witness to Nurse Douglas at the hospital and admitted into evidence had nothing to do with the alleged rape for which she was being treated, and everything to do with the purported kidnapping. As the State acknowledged, it sought to introduce information about the abduction through the medical diagnosis and treatment exception:

It’s her statement that night that she told the nurse when the nurse asked her what had happened, which is procedure in the rape kit.

The victim said: “I was out around 3:15, sitting outside, and that’s when it does in fact that a gentleman drives up, tells my friends to get down on the ground.

It’s about a 1, 2 3, 4—5 sentence summary of what she told this nurse had happened that night.

R. 747, ll. 9-20. After the trial court agreed with the State’s expansive interpretation of medical diagnosis and treatment exception of the hearsay rule, the State elicited

testimony from Nurse Douglas specifically about the Complaining Witness' statement regarding the alleged abduction, and nothing about the purported sexual assault. R. 752, 7—R. 754, ln. 2.

Specifically, the State elicited the following testimony from Nurse Douglas regarding the Complaining Witness' statement to her:

She just stated . . . when the event happened, which was around 3:30 . . . 3:15.

She and . . . two boys were sitting outside of the house on the—where they were staying.

And someone . . . drove by . . . a guy in a car.

And he got out telling them to all lay down on the ground face down . . . and then encouraged them to take everything out of their pockets . . . and told her to get in the car.

And . . . he drove off with her.

R. 752, ln. 16—R. 753, ln. 3. As shown by both the State's prior discussion with the court, as well as the testimony itself, the hearsay statement given by in question had nothing to do with the Complaining Witness' medical history, symptoms, or the character of the cause or source of the pain or symptoms, nor was it reasonably pertinent to diagnosis or treatment. See Rule 803(4), SCRE. Accordingly, the trial court erred in admitting the statement, and it should have been excluded pursuant to the general rule prohibiting hearsay statements. See Rule 802, SCRE.

Moreover, corroborative testimony is limited in CSC cases to the time and place of the alleged assault. Smith v. State, 386 S.C. 562, 566, 689 S.E.2d 629, 632 (2010) (interpreting and applying Rule 801(d)(1), SCRE). "The corroborative testimony cannot include 'details or particulars' regarding the assault." Id. In the present case, the hearsay

testimony actually served to corroborate the Complaining Witness' testimony well beyond the time and place of the alleged sexual assault: it corroborated the details of the purported abduction, which allegedly occurred at a different time and place than the act of CSC as claimed by the Complaining Witness. As such, the statement to Nurse Douglas would not be permissible even under this exception either.

Furthermore, Appellant was prejudiced by the trial court's erroneous admission of hearsay evidence. As previously mentioned, the statement effectively corroborated the Complaining Witness' testimony regarding the abduction in a case where CSC was specifically alleged. This was well beyond the scope of permissible corroborating hearsay. See, cf. Smith, 386 S.C. at 566, 689 S.E.2d at 632; State v. Whisonant, 335 S.C. 148, 156, 515 S.E.2d 768, 772 (Ct. App. 1999) ("Improper corroboration testimony that is merely cumulative to the victim's testimony, . . . cannot be harmless, because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.") (emphasis in original). Accordingly, although cumulative to other testimony at trial, the statement served to impermissibly corroborate the Complaining Witness' testimony specifically regarding the kidnapping.

**II. The trial court erred in admitting Appellant’s initial statements to police when he was Mirandized under coercive conditions.**

The defense objected to the admission of several statements made by the Appellant, both at the scene of his arrest and at the police station, due to the coercive circumstances under which Appellant was Mirandized<sup>5</sup> and consented to speak with police.<sup>6</sup> R. 98, ll. 6-13; R. 154, ln. 16—R. 155, ln. 15. The coercive circumstances included being shocked three times with 50,000 volts of electricity, and then being Mirandized while (1) laying face down on the pavement, (2) with his hands cuffed behind his back, and (3) with the Taser probes still attached to his body. The State argued that Appellant was properly Mirandized by Causey, and that he was aware of his rights when further questioned by Baldassare in the back of the police cruiser. R. 153, ln. 16—R. 154, ln. 11. The trial court determined that Appellant was properly Mirandized, that there was no coercive police activity, and that his waiver of Miranda rights and subsequent statements were made knowingly, intelligently, and voluntarily. R. 156, ln. 12—R. 159, ln. 9.

“[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.” Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774. This fundamental principle applies “even though there is ample evidence aside from the confession to support the conviction.” Id. Additionally, “[e]ven absent the accused’s

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<sup>5</sup> Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966).

<sup>6</sup> State v. Moses, 390 S.C. 502, 510-11, 702 S.E.2d 395, 399 (Ct. App. 2010) (“On appeal, the trial judge’s ruling as to the voluntariness of the confession will not be disturbed unless so egregious as to constitute an abuse of discretion.”).

remain silent, the accused's statement during a custodial interrogation is inadmissible at trial unless the prosecution can establish that the accused in fact knowingly and voluntarily waived [Miranda] rights when making the statement." Moses, 390 S.C. at 513, 702 S.E.2d at 400. Therefore, "[i]n order to introduce a confession arising from custodial interrogation, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona." Id.

"The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the given [statement]. The due process test takes into consideration the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." State v. Miller, 375 S.C. 370, 384, 652 S.E.2d 444, 451 (Ct. App. 2007) (quoting Dickerson v. United States, 530 U.S. 428, 434, 120 S.Ct. 2326 (2000) (internal quotation marks omitted)). The potential circumstances to consider include, but are not limited to, "the crucial element of police coercion," location and length of interrogation, its continuity, as well as the defendant's maturity, education, physical condition, and mental health. Id. 375 S.C. at 385, 652 S.E.2d at 452 (quoting Withrow v. Williams, 507 U.S. 680, 693-94, 113 S.Ct. 1745 (1993)).

Importantly, although "[c]oercive police activity is a necessary predicate to finding a statement is not voluntary," it is "determined from the perspective of the suspect." State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007). "A statement may not be extracted by any sort of threats or violence, or obtained by any direct or indirect promises, however slight, or obtained by the exertion of improper influence." Id. (internal quotations omitted).

Even if some of the gross abuses were not present in this case “that have led the Court in other cases to find confessions involuntary, such as beatings, or truth serums . . . the blood of the accused is not the only hallmark of an unconstitutional inquisition.” Mincey v. Arizona, 437 U.S. 385, 401, 98 S.Ct. 2408, 2418 (1978) (internal quotations and citations omitted). Accordingly, “[d]etermination of whether a statement is involuntary requires more than a mere color-matching of cases. It requires a careful evaluation of all the circumstances of the interrogation.” Id. (internal quotations and citations omitted).

Given the totality of the circumstances in the case at bar, Appellant’s statement was obtained under circumstances of intimidation and coercion wherein his will was likely overborne. First, Appellant was shocked three times with 50,000 volts of electricity by Jernigan when he tased Appellant. Appellant was handcuffed and lying facedown on the pavement. He was also surrounded by up to six armed officers. R. 341, ll. 7-24. Further, with the Taser probes still attached to his body, Causey knelt down near Appellant’s head and read his Miranda rights. It was under these manifestly coercive circumstances in police custody that Appellant acknowledged his Miranda rights and agreed to cooperate. See, e.g., Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601 (2004) (“Just as no talismanic incantation is required to satisfy Miranda’s strictures, it would be absurd to think that mere recitation of the litany suffices to satisfy Miranda in every conceivable circumstance.”) (internal citations and quotations omitted). Accordingly, the statements to law enforcement given, and all information flowing from them, should have been suppressed, as the prophylactic effect of Miranda was undermined by the coercive circumstances surrounding Appellant’s warning and consent.

Further, the fact that Appellant indicated to Baldassare in the back of the police car that he was aware of his rights does not remove the taint of the previous circumstances under which Appellant was Mirandized by police and consented to speak. As indicated above, the first statements made to Baldassare were made after an invalid incantation of Miranda by the State to Appellant. Moreover, Baldassarre never read Appellant his Miranda rights. Accordingly, his status in the back of the police car did not change from un-Mirandized to Mirandized simply by Baldassare asking if he remembered them. Thus, Appellant's statements acknowledging the presence of the Complaining Witness in his car should have been suppressed.

Finally, the fact that Appellant was finally re-Mirandized when questioned by Abercrombie at the police station later on the same day does not salvage the impermissible statements. Where police question an individual and administer Miranda warnings only after incriminating statements are given, and then elicit the same incriminating statement from the individual, admission of the post-warning statement is impermissible unless it passes scrutiny under a four-factor test. Seibert, 542 U.S. at 617, 124 S.Ct. at 2613 (holding defendant's statements inadmissible where the "question-first" tactic "effectively threatens to thwart Miranda's purpose of reducing the risk that a coerced confession would be admitted," and where "the facts do not reasonably support a conclusion that the warnings served their purpose."); State v. Navy, 386 S.C. 294, 302, 688 S.E. 838, 842-43 (2010). The four factors acknowledged by the South Carolina Supreme Court are as follows:

- 1) the completeness and detail of the question and answers in the first round of interrogation;

- 2) the timing and setting of the first questioning and the second;
- 3) the continuity of police personnel; and
- 4) the degree to which the interrogator's questions treated the second round as continuous with the first.

Navy, 386 S.C. at 302, 688 S.E. at 842-43.

In Appellant's case, the Siebert factors militate toward suppressing his statements made to Abercrombie at the police station. First, the questions posed to Appellant in the first round of interrogation in the police car were complete enough to elicit statements that inculpated by acknowledging he stopped and spoke with two white males and one white female earlier that morning, the Complaining Witness, and that she was in his car. Second, the second round of interrogation was held the same day at the police station, albeit several hours later. Appellant was still under arrest, and still interrogated by personnel from NMBPS that was also at the scene where Appellant was arrested. As Abercrombie acknowledged, he arrived when at the scene when Appellant was then Mirandized. R. 594, ln. 22—R. 595, ln. 17. Last, the second round was similar to the first in that Appellant was again questioned about the events of the early morning. Accordingly, Appellant's statements made at the police station should be suppressed. Id.

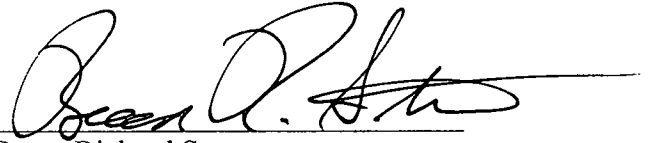
Appellant was also prejudiced by the admission of his statements made to law enforcement. As the State itself indicated in closing argument, the evidence linking the Appellant to the alleged incident was weak: the Complaining Witness' fingerprints were not on or in Appellant's car, nor was her DNA; The Appellant's DNA was not discovered on the swabs from the rape kit performed on the Complaining Witness; and the Complaining Witness not only failed to identify Appellant in a photographic line up, but

she also positively identified the photograph of a different individual as the person who committed the alleged offenses. R. 858, ln. 17—R. 862, ln. 25. Indeed, it is true, (1) Appellant's DNA did not match the swabs taken from the Complaining Witness; (2) the Complaining Witness' fingerprints and DNA was never found on or in Appellant's car; and (3) the Complaining witness identified a photograph of the assailant from a line up that was someone other than Appellant. R. 632, ll. 9-18; R. 635, ln. 24—R. 636, ln. 3. Therefore, without Appellant's inculpatory statements, the State's case against him would likely have been even weaker. Accordingly, Appellant was prejudiced by the erroneous admission of his statements to law enforcement, as the result of the trial would likely have been different in their absence.

CONCLUSION

For the foregoing reasons, Appellant Mark Elliott respectfully requests reversal of his conviction, and remand for a new trial.

Respectfully submitted,

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Breen Richard Stevens  
Appellate Defender

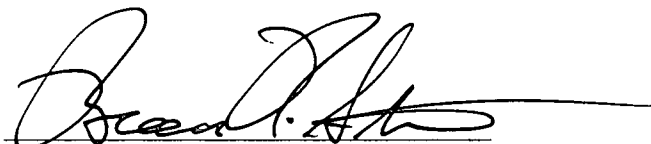
ATTORNEY FOR APPELLANT

This 10th day of September, 2012.

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 10, 2012

A handwritten signature in black ink, appearing to read "Breen R. Stevens", written over a horizontal line.

Breen R. Stevens  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

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Appeal from Horry County

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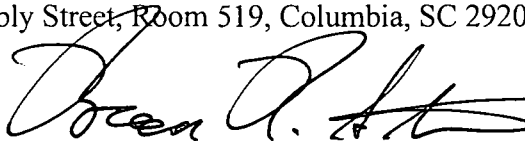
v.

MARK ELLIOTT,

APPELLANT

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 10th day of September, 2012.



Breen Richard Stevens  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 10th day of September, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: July 24, 2022