ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Deadra L. Jefferson, Circuit Court Judge

Appellate Case No: 2011-189166

THE STATE, ...RESPONDENT

v.

SASHA A. GASKINS, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General
S.C. Bar No. 8729

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

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3. Whether the claim that the trial judge erred in holding that Appellant's expert could not respond to a hypothetical question is not preserved for appellate review because Appellant failed to proffer testimony from the expert concerning the hypothetical question, and to the extent a proffer was not needed, whether the trial judge properly limited the scope of the expert's testimony pursuant to Rule 702, SCRE?

STATEMENT OF THE CASE

Appellant was indicted at the June, 2010 term of the Charleston County grand jury for two counts of first degree burglary (2010-GS-10-4738 & -4794) and two counts of armed robbery (2010-GS-10-4761 & -4793) (R. p.906-p.913). On February 28 to March 4, 2011, she proceeded to a trial by jury before the Honorable Deadra L. Jefferson, pursuant to which she was found guilty as charged. The court held sentencing in abeyance until Appellant's co-defendants could be sentenced. (R. p.894, lines 19-22). On March 4, 2011, Appellant submitted a written "Motion for Reconsideration and Motion for New Trial" to the trial court. (R. p.898-p.899). On March 23, 2011, Judge Jefferson issued and filed a written order denying Appellant's Motions. (R. p.900-p.905). On March 31, 2011, Appellant was sentenced to four concurrent terms of eighteen years' imprisonment. (R. p.896, line 24-p.897, line 6; Sentencing Sheets). Appellant timely filed a notice of intent to appeal her convictions and sentences and subsequently submitted an Initial Brief. This Initial Brief of Respondent follows.

STATEMENT OF FACTS

On the first day of trial, before the jury was selected, the trial judge asked counsel for Appellant: "Who is it that you would have to evaluate your client?" (R. p.2, lines 1-2). The question was asked in response to counsel's motion for a continuance to seek a psychological evaluation of Appellant. The court expressed concerns over delaying the trial and questioned counsel about his reasons for needing an evaluation. After a brief discussion, the trial judge stated:

> And I need to do a little bit of quick research. But I guess the real bottom line is whether it is applicable at all. You certainly could have her evaluated, and it does not take that long to have her evaluated.
>
> And if it is your intention to have a psychiatrist testify as to the effects of fear on her or threats on her, they should be able to do that in very short order. You should be able to have somebody evaluate her today or tomorrow, and be ready to testify.

(R. p.7, line 19-p.8, line 4). After additional discussion concerning Appellant's duress defense, the judge re-directed focus to the request for additional time to prepare for trial. Counsel asked for an additional week to prepare. The judge commented: "It doesn't take a week for a psychiatrist to evaluate somebody. I have them come over here and evaluate people all the time in a couple of hours." (R. p.12, lines 2-9). The Solicitor raised concerns about whether testimony from an expert would be proper, to which the judge replied: "I don't know, I have to cross that bridge when I came [sic] to it." (R. p.14, lines 8-15). Although there was more discussion about whether an evaluation was needed, as well as the appropriate scope of an expert's testimony, the judge ultimately ruled on Appellant's motion as follows:

> The issue at this point, however, is not the admissibility of the evidence, it's making it available to her if she feels that she needs it. Then we will cross the admissibility threshold when appropriate.

> But what is before the court at this point is a motion to continue based on giving access to the witness. And I am inclined to give her the ability to do that, but I don't think it's a basis for a continuance because I think her lawyer can figure out when that witness would be made available.

(R. p.19, lines 2-12).

Herbert Joseph Butler, III, (Herb) testified that at approximately ten o'clock on the evening of Wednesday, February 24, 2010, he and his girlfriend, Emily Michalak (Emily), were at Herb's house cooking steaks. (R. p.20, lines 20-24, p.23, lines 10-23; p.30, lines 17-25). Herb was in the back yard getting the steaks from the grill when Emily answered a knock at the front door. He heard a scream, dropped the steaks as he came in the back, saw Emily's face in total shock, and saw two black males with masks coming into the house. The intruders pointed guns at Herb and Emily and told them to get on the ground and be quiet. Herb described the men as well built and athletic, at least 6 feet tall, with black masks, black gloves, and gray clothes. The men took the victims' cell phones, duct taped their hands together, duct taped their legs together, and put duct tape over Herb's eyes. The intruders later duct-taped a sock in Herb's mouth to keep him quiet, eventually shoving him in a closet. (R. p.24, line 24-p.25, line 17).

During a nearly four hour ordeal, Herb and Emily were interrogated, beaten, pistol-whipped and kicked while being asked for money, debit cards, and drugs. Herb gave up his debit cards and PIN numbers willingly. (R. p.28, line 16-p.29, line 18.) At some point Herb and Emily were separated and Herb was taken to his bedroom. The intruders continued to demand that he give up the money even though Herb told them he did not have any money. One intruder pulled Herb's pants down, grabbed Herb's penis, put a knife to it, and threatened to cut it off if Herb did not give him some money. They

left Herb with his pants down. (R. p. 31, lines 1-20). Despite the intruders' attempts to disguise their voices using an accent, Herb recognized one voice as belonging to Reggie Rice, a former Citadel classmate who had been one of Herb's "smoking buddies." (R. p.31, line 24-p.33, line 4).

Emily testified she had known Herb since 2004, her freshman year at Bishop England High School, where they ran cross-country together. They had been dating for several months before the night of the incident. Although they had typically been staying at Emily's place downtown, on February 24, 2010, they decided to go to Herb's house on James Island to grill steaks and have dinner and a couple of drinks before going to bed, so she could get up early for a class. (R. p.601, line 17-p.603, line 8). While Herb was out back at the grill, Emily heard a knock on the door. When she opened it, she greeted a young female saying her car had just broken down and she needed a cell phone to call for help. Emily identified the female as Appellant, Sasha Gaskins. Emily shut the door and went to retrieve her phone from across the room. When she turned around she noticed Appellant had pushed open the door and was standing about four feet inside Herb's house. Appellant looked over her right shoulder and within two seconds two big males with guns, masks and gloves entered the house and demanded that Emily get on the ground. (R. p.603, line 9-p.605, line 2).

Emily had retreated to the kitchen to get Herb and when they both returned to the living room, the defendant was still standing by the doorway. The two intruders proceeded to duct tape Emily and Herb around the wrists and legs and put duct tape over Emily's eyes. (R. p.606, line 1-p.607, line 6). Emily and Herb were separated, and while one intruder was in the bedroom questioning Herb, the other man sat down beside Emily

and began touching her vagina through her jeans. He then undid his pants, picked Emily up and put her on her knees in front of him. The man put a gun to Emily's head and told her if she didn't do "this" he would kill her. The intruder then put one hand on the back of Emily's head, held the gun to her head with his other hand, and forced his penis into her mouth for approximately ten to fifteen seconds. The sexual assault ended when the second intruder returned and told the first man to stop. (R. p.609, line 1-p.610, line 23). Before the intruders left for good, they told Emily if they ever heard of her calling the police they were going to come back and find her, no matter where she was, and kill her. (R. p.616, lines 11-17). Emily later picked Appellant from a photo line-up prepared by the police. (R. p.618, line 14-p.619, line 15).

Joshua Shelton Harpe (Harpe) testified that at approximately 1:15 a.m. on Saturday, February 27, 2010, he received a phone call from a female claiming to be a friend's ex-girlfriend. The caller said her car had broken down in a nearby parking lot, that she had called Triple-A, and that she knew Harpe's house was close. She asked if he would come get her and let her stay in his condo until Triple-A arrived, because she didn't want to be alone. (R. p.637, line 24-p.638, line 21). Harpe agreed to assist the caller, but as he was walking to his car in the parking garage beneath his apartment building a man put a silver revolver in his face and told him to get on his knees. The man struck him in the back of the head with the pistol and he went to the ground. Harpe then saw two more people come from his left. All three assailants had their faces covered. (R. p.639, line 4-p.641, line 17).

The three men forced Harpe at gunpoint to take them up to his apartment. One man put Harper on his knees, pointed a gun at the back of his head and said now would

be a good time to start praying. Harpe thought he was going to die. The assailants then duct taped Harpe's hands behind his back, duct taped his ankles together, and put a sock over his eyes secured by duct tape around his head. They ransacked his apartment looking for money and demanded Harpe tell them the PIN number for his debit card or else they would cut off his "balls." Harpe complied with their demands. (R. p.642, line 8-p.644, line 6; p.645, line 7-p.647, line 11). During the attack, Harpe recognized the voice of one of his assailants, Reggie Rice. After the intruders left, Harpe was able to free himself and go for help. After being picked up by the police, Harpe was driven to another location and shown two suspects who were in police custody. He positively identified Reggie Rice. (R. p.652, line 15-p.658, line 11).

In addition to eliciting testimony from the three victims of these crimes, the State called Appellant's four co-defendants to the stand. Stephan Francois (Francois), Reginald Rice (Rice), Miguel Dominic Starks (Starks), and Breanna Yastace Bruster (Bruster) provided consistent testimony about a conspiracy to commit the two home invasions, including detailed descriptions of Appellant's knowledge of, and participation in, that conspiracy. Francois testified he was a student at the College of Charleston and was dating Appellant at the time the crimes were committed, and that Bruster was a mutual friend he met through Appellant. He said Starks was a high school friend from Georgia who was attending the Citadel, and that Rice was a friend of Starks whom he met shortly before the robberies. (R. p.52, line 17-p.57, line 25). Rice testified that although he was a couple of years ahead of Starks at the Citadel, they met in 2008 and were playing together on the football team. He said he met Francois and Appellant for the first time the day of the first robbery, and met Bruster for the first time a little later

that same day, prior to the first robbery. Rice testified he knew both Herb and Harpe from his time at the Citadel and that he and Herb would sometimes hang out and smoke "weed" together. He said he also had smoked marijuana with Harpe and had sometimes purchased it from Herb. (R. p.216, line 9-p.225, line 24). Starks testified he met Rice at the Citadel in 2008 where they served in the same "company" together. He said he knew Francois from high school in Georgia and that while he may have seen Appellant before, his first real conversations with her were during the week of the two robberies. Starks testified he met Bruster for the first time on the day of the first robbery when they were introduced by Francois. (R. p.340, line 3-p.343, line 23). Bruster testified she and Appellant were friends and classmates together at the College of Charleston, and met in June of 2009. She said she knew Francois before the robberies, but that she met Starks and Rice for the first time on the day of the first robbery. (R. p.481, line 12-p.486, line 20).

Rice and Starks testified that while they were on a drive from Atlanta to Charleston a few days before the first robbery, they started formulating a plan to rob someone. They initially discussed robbing Harpe, but eventually decided to rob Herb because as a seller, they assumed he would have a bunch of drugs and money. The determined they needed someone Herb did not know who could get him to come outside or allow them to get into the house, and they thought they should use a female to knock on the door. Starks suggested enlisting help from his childhood friend Francois and Francois's girlfriend (Appellant). (R. p.227, line 12-p.229, line 20; p.343, line 11-p.344, line 17).

Francois, Rice, and Starks testified about a meeting they had in Appellant's dorm room to discuss and to further plan the robbery. Rice, Starks, Francois and Appellant were present and participated in the discussion. Starks had even drawn up a "landscape" of Herb's apartment on a napkin, and explained the role each person should play in the plan. Appellant was expected to knock on the door and say she needed to use the phone, or her car was broken, or something to that effect. In other words, she would be the "bait" to "lure" him out, which would allow the others to enter Herb's house and rob him. (R. p.60, line 23-p.63, line 11; p.229, line 21-p.232, line 13; p.344, line 21-p.345, line 14). Francois, Rice, and Starks also testified about picking up Bruster and going with her and Appellant to eat dinner before returning to Starks' apartment to smoke and hang out prior to the first robbery. While at Starks' apartment, Francois, Rice, Starks and Appellant again discussed the robbery, and talked about the possibility of committing two robberies, one against Herb and another against Harpe. (R. p.63, line 16-p.73, line 20; p.234, line 20-p.241, line 1; p.347, line 9-p.351, line 21).

Francois, Rice, Starks, and Bruster testified in great detail as to how the burglary and robbery were carried out at Herb's house, including Appellant's participation. Rice and Starks gave details about the sexual assault against Emily and other events while they were inside Herb's house. (R. p.73, line 21-p.89, line 22; p.241, line 2-p.265, line 17; p.351, line 22-p.360, line 6; p.490, line 16-p.506, line 18). All four co-defendants further testified about driving back to Starks' apartment after the first robbery, dividing up the items stolen from Herb, and discussing plans for the second robbery. They testified as to Appellant's presence when those additional plans were discussed. Francois, Rice and Starks then described in detail how the burglary and robbery were carried out at Harpe's

apartment, including Appellant's participation. (R. p.92, line 15-p.94, line 23; p.97, line 5-p.132, line12; p.265, line 11-p.284, line 23; p.361, line 21-p.362, line 7; p.364, line 2-p.382, line 23; p.511, line 4-p.524, line 10; p.525, line 19-p.533, line 24).

Francois, Rice, Starks, and Bruster testified repeatedly that Appellant was a willing participant in both robberies, that she was part of the discussion when the robberies were being planned, and that she was never threatened in their presence. They testified she did not make any attempt to leave or terminate her participation in either home invasion despite having opportunities to do so. Each of the four testified they neither pointed a gun at nor threatened Appellant, and never saw any other co-defendant point a gut at or threaten Appellant. They also testified Appellant never appeared to be threatened and never told them she felt threatened before or during the robberies.[1]

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[1] Francois' testimony appears in the transcript as follows: R. p.62, line 10-p.63, line 11; p.68, line 6-p.69, line 8; p.70, lines 8-18; p.73, lines 3-20; p.74, lines 12-21; p.77, lines 10-25; p.79, lines 12-24; p.81, line 16-p.82, line 3; p.84, lines 14-24; p.86, line 11-p.87, line 12; p.88, line 14-p.89, line 10; p.90, line 22-p.91, line 15; p.100, line 18-p.101, line 12; p.103, lines 8-19; p.107, line 9-p.109, line 18; p.123, lines 2-12; p.125, line 15-p.126, line 25; p.129, line 24-p.130, line 25; p.150, line 25-p.151, line 18; p.153, lines 20-22; p.160, lines 3-8; p.171, line 22-p.172, line 3; p.173, lines 2-4; p.184, line 23-p.185, line 2; p.197, lines 12-19; & p.214, lines 12-14.

Rice's testimony appears in the transcript as follows: R. p.232, lines 14-20; p.235, line 24-p.237, line 21; p.240, lines 15-25; p.241, line 22-p.243, line 10; p.244, lines 2-5; p.245, lines 2-5; p.246, line 24-p.247, line 4; p.248, line 25-p.250, line 5; p.261, line 21-p.263, line 17; p.268, line 14-p.272, line 7; p.273 lines 20-24; p.279, line 24-p.280, line 5; p.283, lines 4-24; p.285, lines 13-20; p.287, line 19-p.288, line8; p.307, lines 11-14; p. 311, lines 5-20; p.316, lines 4-9; p.334, line 24-p.335, line 2.

Starks' testimony appears in the transcript as follows: R. p.345, lines 5-18; p.347, line 23-p.348, line 10; p.351, lines 7-20; p.352, line 21-p.353, line 4; p.355, line 23-p.357, line 4; p.359, lines 14-p.360, line 16; p.361, line 21-p.362, line 3; p.373, lines 9-14; p.377, lines 4-21; p.380, line 3-p.381, line 23; p.386, lines 1-11; p.388, line 12-p.389, line 13; p.391, line 15-p.392, line 11; p.410, lines 19-25; p.433, lines 7-11.

Bruster's testimony appears in the transcript as follows: R. p.494, lines 14-22; p.495, line 20-p.496, line 6; p.497, lines 18-20; p.498, lines 19-24; p.499, lines 19-25; p.500, line 21-p.501, line 3; p.503, line 8-p.504, line 5; p.507, lines 10-18; p.512, line 5-p.513, line 23; p.516, line 25-p.517, line 12; p.519, lines 2-11; p.520, line 5-p.521, line 20; p.529, lines 10-13; p.530, lines 2-15; p.532, lines 15-24; p.575, lines 4-10.

After the State rested, the solicitor advised the court there was a matter of law to discuss. He said Appellant's counsel had just handed him a document provided by a doctor Appellant planned to call as her first witness. The judge was given a copy of the document and asked Appellant's counsel to explain. Counsel said Appellant would testify as to all the facts in the document, and the doctor would answer a hypothetical question based on those facts. (R. p.668, line 18-p.669, line 23). The judge said the witness can not answer a hypothetical about what she could have done, would have done, or is capable of doing, and could only testify in general as to human behavior, and the effects of fear on the human being. The judge added that "no expert can testify as to the propensity for someone to do something, past or future . . . that's not permissible. That's a jury question." She said, "he cannot say he examined her and in his professional opinion she didn't do it on this date, or that she doesn't have the capacity to do it in the future because that's off limits." (R. p.669, line 24-p.671, line 7). Counsel said he had hoped to present the hypothetical to his witness; however, the judge ruled:

> You can't do a hypothetical if it's going to have him say what she could have done or what she will do. That's a jury question.
>
> . . . .
>
> You can always argue to the jury that, you know, of the effects of fear, and that you presented an expert as to the effect of fear, duress and coercion on a person. It's up to the jury to draw that conclusion.
>
> The jury is the ultimate fact-finders whether something took place or didn't take place. But you can't have an expert supplant that and say that I think that they didn't do it or that they did do it or that they have the capacity to do it. That's off limits.

(R. p.671, line 19-p.672, line 11). Counsel said he would do his best to stay within those parameters. (R. p.672, lines 12-13).

Counsel then called Dr. Lewis Randolph Waid, a clinical psychologist from Mount Pleasant who is on the faculty at the Medical University of South Carolina, to testify on Appellant's behalf. Dr. Waid was admitted as an expert in neuropsychology and testified that the classic example of fear or duress is the absolute threat of loss or life to either the person, another individual, or a family member. (R. p.672, line 24-p.679, line 2). Dr. Waid testified that fear could result in an otherwise completely normal, reasonable, non-criminal person committing a crime, such as a burglary or armed robbery. (R. p.679, lines 3-15). He explained that the more reasonable the belief of imminent threat of death, the more it can mediate why a person would engage in criminal conduct, and that if the person making the threat has a gun available, or pointed at the subject, it would raise the ante that it is a reasonable threat. (R. p.679, line 23-p.680, line 13). Dr. Waid said making a threat on one's life can cause a person to choose what seems to be the lesser of two evils, such as participating in a crime, and that the length of time a person may continue to engage in the participation depends on the continuing period of time he feels there is a continuing threat to himself or family members. (R. p.681, line 20-p.683, line 10).

Appellant testified in her own defense. She described her participation in church, school, extracurricular activities, and her academic success, including her acceptance into the College of Charleston. (R. p.703, line 16-p.708, line 3). She then described her relationship with Francois, her boyfriend of seven months, and meeting Rice and Starks for the first time on Wednesday, February 24, 2010, the day of the first robbery. (R. p.708, line 8-p.712, line 23). Appellant did not deny participating to some extent in the crimes; however, she claimed she initially thought the first robbery was a joke, and only

continued participating in the crimes under duress. She testified Starks threatened to kill her or Francois is she did not do what he said. Appellant said she felt scared and that her only options were to do it or die. She testified she was afraid for her life and felt like she would be killed if she did not say yes. (R. p.712, line 24-p.748, line 4).

Appellant also called several witnesses who testified about her good character and reputation in the community. Alvenes Barksdale, William Eugene Delaine, III, Sa'Datrius Alson, Brenda Ligon, and Appellant's mother, Rosietta Gaskins Nance, all testified as to Appellant's good character and her reputation in her hometown community of Clinton, South Carolina. (R. p.685-p.702; p.805-p.833).

During closing arguments, Counsel for Appellant attempted to attack the State's case in two ways. First, he argued Appellant was a young, sweet, innocent, nice, helpful little girl who does not have the character to voluntarily commit these crimes. (R. p.836, lines 6-9; p.841, lines 9-10; p.842, lines 3-22; p.844, lines 1-9; p.846, line 8-11; p.848, lines 2-4). Second, although counsel acknowledged crimes were committed and that Appellant was involved in those crimes, she only did so out of fear for her life. He argued that Appellant was coerced – that she acted under duress. Counsel argued that on at least two occasions guns were pointed at Appellant and she was told she would be killed if she did not do as she was directed. (R. p.837, lines 2-11; p.838, line 25-p.839, line 16; p.840, line 23-p.843, line 2; p.845, line 23-p.847, line 3).

After Appellant's counsel finished, the solicitor made a closing argument, beginning with a reminder that "any words that come out of [Appellant's counsel's] mouth are not evidence. In the same vein, anything that I say is not evidence." (R.

p.848, line 24-p.849, line 2). Despite an objection, the judge noted this was an accurate statement of the law, and the solicitor repeated the comment. (R. p.849, lines 3-12). The solicitor noted that ninety percent of counsel's argument had been about painting Appellant as the sweetest little girl in town, but asked the jurors to save their sympathy for the victims. (R. p.849, line 24-p.850, line 15). The solicitor then took a moment to "address the allegations that there has been some sort of arrangement between me or my office and those witnesses." He said:

> And we are going to show them mercy and leniency for their testimony? I don't think. [Appellant] isn't near as culpable as they are, but she is just as guilty. Everything Mr. Sowell presented to you is mitigation. It's something that should be considered as sentencing, not toward guilt.

(R. p.852, lines 5-10). Counsel for Appellant objected on grounds that "he is not quoting the law." When pressed about his objection, counsel specifically argued: "He told them that coercion is not to be considered by the jury." (R. p.852, lines 11-21). The judge said: "He didn't misstate the law, he said it's something they can consider. They don't have to consider it." Counsel responded: "I understand that. He said it has to be considered by the Judge at sentencing." (R. p.852, line 22-p.853, line 3). The court overruled the objection and the solicitor continued his argument. (R. p.853, line 17).

Much later in closing the solicitor said:

> We only have one type of criminal justice system and it's the best one in the world. But it treats everybody the same. It treats 18-year-old little girls the same as grown men as far as whether they're guilty or not guilty.
>
> Whether they are a pillar in the community, an active member of the church, or have a great reputation, that's mitigation that's to be given to the judge at sentencing, so you can either down-depart. Or if they have

> the opposite reputation, if they have a reputation for being a bad guy, they might get a stiffer sentence.
>
> But that's for sentencing, that's not for you to consider, that's not for me to consider, that's for the Judge. You are not to concern yourself with sentencing, you are to concern yourself with guilt.

(R. p.865, lines 5-20). Appellant's counsel made no objection.

The trial judge then advised the parties she had an instruction on good character and reputation she was contemplating giving to the jury. She said she was now convinced she needed to give it, because the solicitor had argued Appellant's good character could only be considered in mitigation and "that's not the law." The judge said she did not want to leave the jury with that misapprehension, because it was actually appropriate for them to consider good character in determining whether Appellant committed the crime or not. (R. p.866, lines 9-19). She recited the language she planned to charge and neither party took exception. (R. p.866, line 20-p.867, line 21).

The judge then charged the jury on the law, including correct general charges on the roles of the judge and jury, the duty to assess the credibility of witnesses, the duty to weigh the evidence, expert witness testimony, identification, burden of proof, direct evidence, circumstantial evidence, the presumption of innocence, the crimes and the elements of those crimes, accomplice liability, intent, mere presence, and verdicts. The judge gave the following charge on good character:

> I further instruct you that the defendant has presented evidence of her good reputation and character to show that it would be inconsistent with the defendant committing the crime.
>
> The weight you give to that testimony, like all other testimony in this case, is for you to decide in your good judgment. You may consider testimony of the defendant's good character, along with all the other

evidence in the case, in deciding whether or not the defendant committed the crime.

(R. p.872, lines 1-10). The judge also specifically gave the jury the following charge on the defense of coercion or duress:

> Ladies and gentlemen, the defendant has raised the defense of coercion or duress. Coercion or duress is when a person makes another person commit a crime against someone else's person or property by the threat of immediate physical violence.
>
> The coercion or duress must be present, imminent and of the type to create a well-grounded fear of death or serious bodily harm if the act is not done. The fear of injury must be reasonable.
>
> Coercion or duress is not a defense if there is any reasonable way, other than committing the crime, for the defendant to escape the threat of harm. If you find that the defendant was coerced into committing the crime, you must find the defendant not guilty.

(R. p.885, line 20-p.886, line 9).

At the conclusion of trial, Appellant was convicted of both counts of armed robbery and both counts of burglary in the first degree. (R. p.891, line 14-p.893, line 2). She was sentenced to four concurrent terms of imprisonment for eighteen years. (R. p.896, line 24-p.897, line 6).

ARGUMENT

I.

The trial judge correctly overruled Appellant's objection to the solicitor's allegedly improper closing argument where the solicitor's remarks were not improper, and where those remarks resulted in no prejudice to Appellant because the judge charged the jury on the defense of duress and consideration of "good character" evidence.

Appellant argues the trial judge erred in overruling her objection to the solicitor's closing argument because the solicitor misstated the law concerning the jury's role in two respects. She contends the solicitor improperly characterized the jury's role in considering her defense that she acted under duress, and that the Solicitor improperly characterized the jury's role in considering evidence of her "good character." Appellant argues that by misstating the law, the solicitor effectively denied her right to a fair trial by negating her two primary defenses. The State disagrees and submits Appellant's arguments are without merit.

Initially, the State submits that half of Appellant's argument is not preserved for review because although Appellant objected to the solicitor's alleged comments about her defense of duress, she failed to object or otherwise challenge the solicitor's subsequent remarks about evidence of her "good character." See State v. Owens, 378 S.C. 636, 638, 664 S.E.2d 80, 81 (2008) (noting that without an objection, a claim that the solicitor's closing argument was improper is not preserved for appellate review); State v. Hill, 394 S.C. 280, 299-300, 715 S.E.2d 368, 379 (Ct. App. 2011) (finding a challenge to the State's closing argument was not preserved for review where the defendant failed to make a contemporaneous objection at trial); State v. Black, 319 S.C. 515, 521-22, 462 S.E.2d 311, 315 (Ct. App. 1995) ("An issue which is not properly preserved cannot be

raised for the first time on appeal."). After making a general objection that: "[The solicitor] is not quoting the law," Appellant articulated her actual basis for objecting as follows: "[The solicitor] told them that coercion is not to be considered by the jury." (R. p.852, lines 11-21). Following a discussion of Appellant's grounds, the judge overruled the objection. (R. p.853, line 17). In her brief, Appellant attempts to tie this initial objection to subsequent comments made by the solicitor about evidence of her "good character;" however, those comments were made without objection. (R. p.865, line 5-p.866, line 5). Since Appellant failed to make a contemporaneous objection to the solicitor's later comments, her appellate argument, at least in regard to evidence of her "good character," is not preserved for appellate review. Owens, supra; Black, supra. As a result, Appellant is limited solely to the "coercion" ground defense counsel raised in support of the objection during trial. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). The new "good character" grounds Appellant has raised on appeal in support of her objection to the closing argument cannot be considered for the first time by this appellate court. State v. Shuler, 353 S.C. 176, 187, 577 S.E.2d 438, 443 (2003); State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

In any event, the State submits the solicitor's remarks during his closing argument were proper comments on Appellant's closing argument, the evidence presented during trial and the inferences to be drawn from that evidence, or the roles of the judge and jury during that trial, and therefore did not negate Appellant's defenses or deny her right to a fair trial. Specifically, the initial remarks about Appellant's duress defense were proper

comments on the closing argument presented by Appellant's counsel. The solicitor's allegedly improper remark was that "Everything **Mr. Sowell** presented to you is mitigation. It's something that should be considered as sentencing, not toward guilt." (R. p.852, lines 8-10) (emphasis added). Mr. Sowell was trial counsel for Appellant and the solicitor's comment came immediately after Mr. Sowell presented his closing argument on Appellant's behalf. As explained by the South Carolina Supreme Court, the closing argument merely serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case after all the evidence has been presented. See State v. Mouzon, 321 S.C. 27, 31, 467 S.E.2d 122, 124-25 (1995) (quoting Herring v. New York, 422 U.S. 853, 862, 95 S.Ct. 2550, 2555, 45 L.Ed.2d 593 (1975)). Indeed, it is well established both in South Carolina and other jurisdictions that closing arguments are not evidence. See Gilchrist v. State, 350 S.C. 221, 226, 565 S.E.2d 281, 284 (2002) (acknowledging the PCR court's finding that closing arguments are not evidence); Ohio v. Frazier, 652 N.E.2d 1000 (1995); Kansas v. Overman, 277 P.3d 447 (Ct. App. 2012). This point was made by the solicitor at the beginning of his closing argument and was acknowledged by the trial judge as a correct statement of the law. (Tr.p.1018, line 24-p.1019, line 12). Thus, rather than a misstatement of law, the solicitor's comments constituted a valid characterization of Appellant's closing argument – namely that "everything [counsel] presented" was not evidence and should not be considered in determining guilt.

Even if the solicitor's comments could be construed as a comment on more than Appellant's counsel's closing argument, the comment did not use absolute or prohibitive language. The solicitor simply said that: "Everything Mr. Sowell presented to you is mitigation. It's something that **should be** considered as sentencing, not toward guilt."

(R. p.852, lines 8-10) (emphasis added). Although counsel argued the solicitor had used stronger language: ". . . that coercion is **not to be considered** by the jury" (R. p.852, lines 11-21) (emphasis added), and that "it **has to be considered** by the Judge at sentencing" (R. p.852, line 22-p.853, line 3) (emphasis added), the judge apparently recognized the distinction between mandatory language and advisory language and overruled. The State submits this decision was correct because by suggesting the jury "should" use the evidence in a certain way instead of "must" use the evidence in a certain way, the solicitor's remarks were proper comments on the evidence presented during the trial.

In reviewing the propriety of the solicitor's remarks to the jury, it is a well-settled principle that the trial court has wide discretion in ruling on the appropriateness of a closing argument. State v. Raffaldt, 318 S.C. 110, 114-115, 456 S.E.2d 390, 393 (1995); see State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996) ("The trial court has broad discretion when dealing with the propriety of the solicitor's argument."). Appellate courts will not disturb the trial court's ruling regarding a closing argument unless there is a clear abuse of discretion. State v. Rudd, 355 S.C. 543, 548, 586 S.E.2d 153, 156 (Ct. App. 2003). "It is sometimes difficult to draw the line between proper and improper argument, but counsel's remarks must be confined within the record. However, some latitude must necessarily be allowed and it must, to a large extent, be left to the wide discretion of the Circuit Judge." State v. Edgeworth, 239 S.C. 10, 14, 121 S.E.2d 248, 250 (1961). Appellate courts will review the alleged impropriety of an opening or closing argument in the context of the entire record and must determine whether the comments so infected the trial with unfairness as to make the resulting conviction a

denial of the defendant's due process rights. Rudd, 355 S.C. at 550, 586 S.E.2d at 157. The appellant has the burden of proving the allegedly improper argument rendered the trial fundamentally unfair. Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997). Appellate courts should be "careful and critical" in finding allegedly improper statements of counsel to be reversible error, and "[e]very case must necessarily depend upon its own particular circumstances." State v. Gilstrap, 205 S.C. 412, 415, 32 S.E.2d 163, 164 (1944).

Unquestionably, the solicitor was permitted to comment on the evidence adduced during trial and the inferences to be drawn from it. See State v. Pitts, 256 S.C. 420, 428, 182 S.E.2d 738, 742 (1971) ("The solicitor had a perfect right to state his version of the testimony and to comment on the weight that should be given to such."). One major issue at trial was the credibility of Appellant's four co-conspirators, particularly in regard to whether they were getting a "deal" or some kind of leniency from the solicitor in exchange for their testimony. (R. p.53, line 23-p.54, line 12; p.216, line 21-p.217, line 20; p.295, line 11-p.302, line 22; p.339, line 2-p.340, line 2; p.392, line 18-p.395, line 5; p.482, lines 6-21; p.558, line 25-p.560, line 23). It was in response to Appellant's inference that these witnesses had an interest or motive to lie that the solicitor made the allegedly objectionable comment that: "Everything Mr. Sowell presented to you is mitigation. It's something that **should be** considered as sentencing, not toward guilt." (R. p.852, lines 8-10) (emphasis added). The State submits that rather than being improper, the solicitor's remarks were merely intended to urge the jury to avoid invading the

province of the judge. Indeed, if all five co-conspirators were determined to be guilty, then any difference in their respective sentences does in fact relate to mitigation and is exclusively up to the judge at sentencing. In other words, the remarks merely clarified for the jury what the State believed they should and should not properly consider during their deliberations. Therefore, in the context the statements were made, the solicitor's closing argument did not violate Appellant's right to a fair trial.

Finally, even if the solicitor's remarks about Appellant's coercion defense were somehow improper, Appellant did not suffer any prejudice and his trial was not rendered fundamentally unfair by the comments. The trial judge gave a detailed, accurate charge on the defense of coercion or duress. (R. p.885, line 20-p.886, line 9). Thus, viewing the solicitor's isolated remarks in the context of his argument as a whole, the comments, even if improper, did not render Appellant's trial fundamentally unfair. See State v. Lunsford, 318 S.C. 241, 247, 456 S.E.2d 918, 922 (Ct. App. 1995) ("Further, Lunsford failed to demonstrate as he was required to do, that the result of the solicitor's comment was to materially prejudice his right 'to obtain a fair and impartial trial.' " (citations omitted)).

In regard to the solicitor's subsequent comments about Appellant's evidence of "good character," the State submits any legitimate appellate claim Appellant may have had if she had raised a contemporaneous objection is nevertheless not preserved for appellate review because the trial court gave a curative jury charge in an effort to correct the perceived improper remark. After the State's close, the trial judge advised the parties she had an instruction on good character and reputation she was contemplating giving to the jury. She said she was now convinced she needed to give it, because the solicitor had argued Appellant's good character could only be considered in mitigation and "that's not

the law." The judge said she did not want to leave the jury with that misapprehension, because it was actually appropriate for them to consider good character in determining whether Appellant committed the crime or not. (R. p.866, lines 9-19). She recited the language she planned to charge and neither party took exception. (R. p.866, line 20-p.867, line 21). Appellant never challenged the judge's proposal to give a jury charge on "good character" evidence, or otherwise argued it would be insufficient to cure any alleged error. Appellate also failed to take exception to the "good character" charge that was ultimately given by the trial judge. (R. p.889, line 13-p.890, line 23). Thus, this issue is not preserved for review. Cf. State v. George, 323 S.C. 496, 510, 476 S.E.2d 903, 911-12 (1996) ("If the trial [court] sustains a timely objection to testimony and gives the jury a curative instruction to disregard the testimony, the error is deemed to be cured.") Additionally, as with the remarks about Appellant's duress defense, the State submits Appellant suffered no prejudice as a result of the solicitor's allegedly improper remarks about "good character" evidence based on the nature and context of the remarks within the entire record.

For all of the foregoing reasons, the State submits Appellant's trial was not rendered fundamentally unfair by the solicitor's closing argument, and Appellant has failed to establish sufficient grounds to warrant the grant of a new trial. Therefore, Appellant's convictions should be affirmed.

II.

The claim that the trial judge erred when she ruled that Appellant's expert could not testify as to Appellant's "state of mind" is not preserved for appellate review because the admissibility of the purported evidence was never actually ruled upon by the trial court and because Appellant failed to proffer testimony from the expert on her "state of mind," and to the extent a proffer was not needed, the trial judge properly limited the scope of the expert's testimony pursuant to Rule 702, SCRE.

Appellant argues the trial judge erred when she ruled that Appellant's expert could not testify as to Appellant's "state of mind," which violated Appellant's right to present a complete defense and to a fair trial. The State disagrees and submits this issue is not preserved for appellate review, and even if preserved, the trial judge properly limited the scope of Appellant's expert's testimony pursuant to Rule 702, SCRE.

This issue is not preserved for appellate review both because the admissibility of the proposed "state of mind" evidence was never ruled upon by the trial court, and because Appellant failed to proffer testimony from her expert on her "state of mind." On the first day of trial, before the jury was selected, Appellant's counsel moved for a continuance to seek a psychological evaluation of Appellant. Although there was a great deal of discussion about whether an evaluation was necessary, as well as the appropriate scope of an expert's testimony in regard to the defense of duress, the judge ultimately ruled on Appellant's motion as follows:

> The issue at this point, however, is not the admissibility of the evidence, it's making it available to her if she feels that she needs it. Then we will cross the admissibility threshold when appropriate.
>
> But what is before the court at this point is a motion to continue based on giving access to the witness. And I am inclined to give her the ability to do that, but I don't think it's a basis for a continuance because I

think her lawyer can figure out when that witness would be made available.

(R. p.19, lines 2-12) (emphasis added).

Although Appellant presented expert witness testimony during trial, she did not attempt to elicit any testimony about her "state of mind" and did not seek a ruling from the court in regard to whether such testimony would be admissible if it had been offered. As a result, the trial judge never ruled on the admissibility of "state of mind" evidence, and this issue is not preserved for appellate review. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) (in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge). In addition, this issue is not preserved for review because Appellant did not proffer the "state of mind" testimony from her expert witness. State v. Roper, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) (holding that a proffer of testimony is required to preserve the issue of whether testimony was properly excluded by the trial judge, and an appellate court will not consider error alleged in the exclusion of testimony unless the record on appeal shows fairly what the excluded testimony would have been); State v. Santiago, 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006).

Appellant cites State v. Myers, 301 S.C. 251, 391 S.E.2d 551 (1990), and suggests a proffer was unnecessary based upon the evidence in the record. However the State submits Myers is inapplicable. In Myers, the Supreme Court addressed the trial court's refusal to qualify a witness as an expert in the field of blood spatter patterns and their interpretation, which effectively excluded any testimony from the expert. This prevented the expert being able to enlighten the jury on general principles of blood spatter

interpretation, and deprived the jury of the chance to make an intelligent decision interpreting the blood spatters. Here, the trial court qualified Dr. Waid as an expert and allowed him to testify about the general principles of fear and coercion and how they can lead a person to choose to participate in a crime. This testimony gave the jury a chance to make an intelligent decision about Appellant's claims of duress, unlike the jury in Myers. Without a proffer of specific "state of mind" testimony, there is simply no way this court can "divine" how Dr. Waid's testimony would have enhanced or otherwise added to general principles he had already discussed. Therefore, Myers is of no moment, and this issue is not preserved for appellate review.

Appellant also suggests "a proffer was likely impossible" because by denying her original request for a continuance to get an evaluation, the trial judge effectively denied her the opportunity to obtain the necessary evidence for her defense and the ability to proffer any evidence. (Brief of Appellant, p.12). Yet, Appellant did not call Dr. Waid as a witness until midway through the fourth day of the trial, more than seventy-two hours after moving for a continuance. Appellant did not renew her motion for a continuance or otherwise indicate she had actually sought and been unable to get an evaluation from Dr. Waid during that time. Thus, the State submits this argument regarding her request for a continuance is also not preserved for review. By failing to raise these issues to the judge during trial, and failing to get a ruling regarding the effects of the denial of her request for a continuance on the purported testimony from Dr. Waid, the issue was neither raised to nor ruled upon by the trial judge, and is not preserved for appeal. Dunbar, supra.

To the extent a proffer was not needed to preserve this issue for appeal, the State submits the trial judge nevertheless properly limited the scope of Dr. Waid's testimony pursuant to Rule 702, SCRE. The admission or exclusion of evidence is an action within the sound discretion of the circuit court and will not be disturbed on appeal absent an abuse of discretion. State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012); State v. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010). An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions. Id.; State v. Douglas, 369 S.C. 424, 429–30, 632 S.E.2d 845, 848 (2006). To establish duress which will excuse a criminal act, the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. State v. Benjamin, 345 S.C. 470, 475 n.3, 549 S.E.2d 258, 260 n.3 (2001). Coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm. Id. The fear of injury must be reasonable. Id. Thus, duress in South Carolina is based entirely on a reasonable person, or objective, standard. Compare New Jersey v. B.H. , 870 A.2d 273 (2005) (interpreting the statutory requirements for a defense of duress in New Jersey, which specifically include a subjective component involving the sincerity of the defendant's perception that she is being threatened). The Rules of Evidence provide that: "Testimony in the form of an opinion or inference **otherwise admissible** is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE (emphasis added). However, the rules first require that expert testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue . . .". Rule 702, SCRE. Thus, "all expert testimony must satisfy

the Rule 702 criteria, and that includes that the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). Since South Carolina's duress defense does not include a subjective element that would depend on Appellant's "state of mind" as compared to a "reasonable person's" state of mind, such testimony was properly excluded by the trial judge in her "gatekeeping function" because it would not "assist the trier of fact."

For all of the foregoing reasons, the State submits the exclusion of expert testimony about Appellant's "state of mind" did not violate Appellant's right to present a complete defense, or her right to a fair trial. Therefore, Appellant's convictions should be affirmed.

III.

The claim that the trial judge erred in holding that Appellant's expert could not respond to a hypothetical question is not preserved for appellate review because Appellant failed to proffer testimony from the expert concerning the hypothetical question, and to the extent a proffer was not needed, the trial judge properly limited the scope of the expert's testimony pursuant to Rule 702, SCRE.

Appellant argues the trial judge erred when she held that Appellant's expert could not respond to a hypothetical question. The State disagrees and submits this issue is not preserved for appellate review, and even if preserved, the trial judge properly limited the scope of Appellant's expert's testimony pursuant to Rule 702, SCRE.

After the State finished presenting its case in chief, the solicitor advised the court there was a matter of law to discuss and handed the trial judge a copy of a document he had been given by Appellant's counsel. Counsel said Appellant would testify as to all the facts in the document, and that her expert witness would answer a hypothetical question based on those facts. (Tr.p.668, line 18-p.669, line 23). The trial judge ultimately ruled:

> You can't do a hypothetical if it's going to have him say what she could have done or what she will do. That's a jury question.
>
> . . . .
>
> You can always argue to the jury that, you know, of the effects of fear, and that you presented an expert as to the effect of fear, duress and coercion on a person. It's up to the jury to draw that conclusion.
>
> The jury is the ultimate fact-finders whether something took place or didn't take place. But you can't have an expert supplant that and say that I think that they didn't do it or that they did do it or that they have the capacity to do it. That's off limits.

(R. p.671, line 19-p.672, line 11). Counsel said he would do his best to stay within those parameters. (R. p.672, lines 12-13). Appellant's counsel did not make a proffer of the

hypothetical question or the testimony he sought to elicit from Dr. Waid in response to that question.

This issue is not preserved for review because Appellant did not proffer the hypothetical question or the testimony she sought to elicit from her expert witness. State v. Roper, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) (a proffer of testimony is required to preserve the issue of whether testimony was properly excluded by the trial judge, and an appellate court will not consider error alleged in the exclusion of testimony unless the record on appeal shows fairly what the excluded testimony would have been); State v. Santiago, 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006). Appellant cites State v. Myers, 301 S.C. 251, 391 S.E.2d 551 (1990), and suggests a proffer was unnecessary based upon the evidence in the record. However the State submits Myers is inapplicable. In Myers, the Supreme Court addressed the trial court's refusal to qualify a witness as an expert in the field of blood spatter patterns and their interpretation, which effectively excluded any testimony from the expert. This prevented the expert being able to enlighten the jury on general principles of blood spatter interpretation, and deprived the jury of the chance to make an intelligent decision interpreting the blood spatters. Here, the trial court qualified Dr. Waid as an expert and allowed him to testify about the general principles of fear and coercion and how they can lead a person to choose to participate in a crime. This gave the jury a chance to make an intelligent decision about Appellant's claims of duress, unlike the jury in Myers. Without a proffer of the specific hypothetical question or the testimony Appellant sought to elicit from Dr. Waid, there is simply no way this Court can "divine" how Dr. Waid's testimony would have enhanced or otherwise added to general

principles he had already discussed. Therefore, Myers is of no moment, and this issue is not preserved for appellate review.

To the extent a proffer was not needed to preserve this issue for appeal, the State submits the trial judge nevertheless properly limited the scope of Dr. Waid's testimony pursuant to Rule 702, SCRE. The admission or exclusion of evidence is an action within the sound discretion of the circuit court and will not be disturbed on appeal absent an abuse of discretion. State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012); State v. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010). An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions. Id.; State v. Douglas, 369 S.C. 424, 429–30, 632 S.E.2d 845, 848 (2006). To establish duress which will excuse a criminal act, the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. State v. Benjamin, 345 S.C. 470, 475 n.3, 549 S.E.2d 258, 260 n.3 (2001). Coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm. Id. The fear of injury must be reasonable. Id. Thus, duress in South Carolina is based entirely on a reasonable person, or objective, standard. Compare New Jersey v. B.H. , 870 A.2d 273 (2005) (interpreting the statutory requirements for a defense of duress in New Jersey, which specifically include a subjective component involving the sincerity of the defendant's perception that she is being threatened). The Rules of Evidence provide that: "Testimony in the form of an opinion or inference **otherwise admissible** is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Rule 704, SCRE (emphasis added). However, the rules first

require that expert testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue . . .". Rule 702, SCRE. Thus, "all expert testimony must satisfy the Rule 702 criteria, and that includes that the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). Since South Carolina's duress defense does not include a subjective element that would depend on a hypothetical scenario supported by facts from Appellant's testimony, such testimony was properly excluded by the trial judge in her "gatekeeping function" because it would not "assist the trier of fact."

For all of the foregoing reasons, the State submits the exclusion of expert testimony in response to a hypothetical question did not violate Appellant's right to present a complete defense, or her right to a fair trial. Therefore, Appellant's convictions should be affirmed.

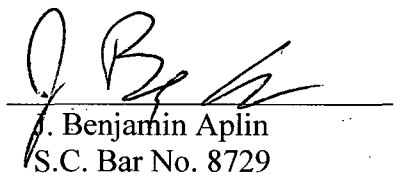
CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

BY: 
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
November 29, 2012

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Deadra L. Jefferson, Circuit Court Judge

Appellate Case No: 2011-189166

THE STATE, ...RESPONDENT

v.

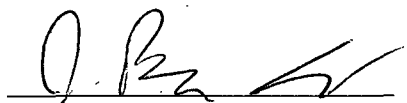
SASHA A. GASKINS, ...APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

BY: 
J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

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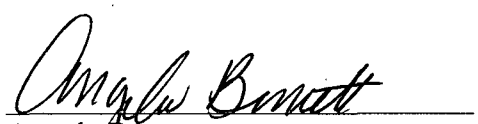
PROOF OF SERVICE

I, Angela Bennett, Executive Legal Assistant, hereby certify that I have served the within *Final Brief of Respondent* dated November 29, 2012, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Susan B. Hackett, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 29th day of November, 2012.



Angela Bennett
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727