STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARCUS DANIEL ALLISON,

APPELLANT

Appellate Case No. 2012-211981

FINAL BRIEF OF APPELLANT

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II. Where the State lost or destroyed photographs of the crime scene, including of a freshly glued drawer facing allegedly used as a hiding spot and crowbar pry marks on the door of the burglarized camper, the Trial Court erred in failing to suppress any of the State's testimony as to the drawer facing and the evidence located inside it and the crowbar pry marks where the evidence possessed an exculpatory value apparent before the evidence was destroyed and Appellant cannot obtain other evidence of comparable value by other means.

STATEMENT OF THE CASE

On August 2, 2010, Marcus Daniel Allison was indicted by the Oconee County Grand Jury for (1) burglary in the first degree; and (2) grand larceny for taking and carrying away goods valued at more than $1,000.00 but less than $5,000.00. R. 202.

A trial was held before the Honorable Benjamin H. Culbertson and a jury. R. 1. Allison was represented by W. Wilson Burr and Keith G. Denny, and the State was represented by Deputy Assistant Solicitor David R. Wagner. Id.

On April 25, 2012, the jury found Allison guilty of both burglary in the first degree and grand larceny. R. 195, ll. 14-21. Judge Culbertson sentenced Allison to twenty-five years imprisonment for first degree burglary and five years imprisonment on the charge of grand larceny to run concurrent. R. 200; R. 196, ll. 18-25.

Allison timely served and filed his Notice of Appeal on April 27, 2012.

STATEMENT OF FACTS

The first witness to testify at trial was Bruce Kelley. He was from Jonesboro, Arkansas, but travelled extensively for his job and was on the road for about six months out of the year. R. 26, ll. 19-20; 27, ll. 15-22. During May 2010, he was working at the Oconee Nuclear Station as a millwright doing outage work. R. 27, ll. 3-6. Instead of renting hotel rooms, he had a camper that he lived in while away from his Arkansas home. R. 27, ll. 18-25.

Kelley's camper was located in a lot next to a camper where Appellant Marcus Allison lived. R. 28, ll. 1-2. Kelley met Allison approximately two weeks before the incident, and Kelley testified that he "kind of made friends with the guy, you know, saw him every night, had a beer or two with him. I kind of considered him my friend at the time." R. 28, l. 21 – 29, l. 2.

On May 2, 2010, Kelley left his camper around 4:30 or 4:45 p.m. to begin a night shift at work which began at 6:00 p.m. R. 28, ll. 17-19; 29, ll. 11-14. He returned home at approximately 6:45 in the morning. R. 29, ll. 21-24. Kelley testified that when he pulled up to his camper, he noticed it had been broken into. He looked around and called the police around 6:50 a.m. R. 30, ll. 5-7.

Kelley saw Allison and an individual known as "Rags" walk out of Allison's camper, and Kelley asked them whether they had seen anything. Both responded that they had not heard anything from Kelley's camper. R. 30, ll. 10-17. Rags asked Kelley what was stolen, and Kelley responded three guns and some miscellaneous items. R. 30, l. 21 – 31, l. 1. Kelley said Allison told him to call law enforcement. R. 55, ll. 12-16.

Rags told Kelley that the break in must have happened before he arrived at Allison's camper because nothing in his truck was stolen. R. 31, ll. 3-5.

Kelley also testified that both Allison and Rags said they had been up all night partying and never went to bed. R. 31, ll. 9-17.

In addition to the three guns stolen, Kelley stated that he was missing a 22 inch television, a 19 inch television, DVDs with the titles "Asylum," "The Hills Have Eyes," "A House of a Thousand Corpses," and a season of "South Park." R. 31, l. 18 – 32, l. 16. He was also missing a liter bottle of Evan & Williams that was about two-thirds full, some prescription medicine, and a box of Wolf 123 grain hollow point gun ammunition. R. 33, l. 19 – 34, ll. 11.

Around 9:00 a.m. in the morning, before the police had arrived, Kelley said he saw Rags and Allison leaving. Kelley stated he saw Rags carrying a small, overnight-type toiletry bad with a "House of a Thousand Corpses" DVD sticking out of the top. Kelley said Allison was carrying a big military surplus duffle bag. R. 35, l. 10 – 36, l. 12. Kelley testified that he thought most of his items could have fit in these bags, but not the big television. R. 36, ll. 13-18.

Kelley also testified that while he saw Rags with a DVD title that he had reported stolen, he never saw any of his property in Allison's possession. R. 53, ll. 10-21.

Corporal Jarrett Price received the initial call to go to Kelley's camper. R. 59, ll. 15-17. When he arrived, he said he saw evidence of a forced entry because the door to the camper was pried. R. 60, l. 16 – 61, l. 1. He spoke with Kelley and made a list of the items Kelley reported stolen. R. 61, l. 6 – 62, l. 6.

Price stated that while he was taking the initial report from Kelley, Allison came over and asked several questions about what was going on. R. 62, ll. 9-13. Kelley said that Allison returned by himself without Rags and just walked up while Price and Kelley were talking. Kelley did not see Allison pull up in a vehicle. R. 38, ll. 13-20. Allison did not have any of his own transportation. R. 81, ll. 5-7.

Price left the scene, but returned later in the day when he was contacted by Kelley who said he had seen Allison in a wooded area adjacent to this camper. R. 62, ll. 14-23. On his return visit, Price says he ran into Allison who asked him if Price wanted to search his camper. Price responded that he did not and then he left again. R. 63, ll. 7-9, 19-25.

Price said he returned back to the scene when he received a call from Allison to discuss some landlord issues. R. 64, ll. 2-6. Price had Sergeant Casey Bowling accompany him to the scene. R. 64, ll. 9-20. They talked to Allison outside of his camper, and Allison offered up consent to search his camper. Price did not search the camper at that time, and the three talked a little longer. Price then asked Allison for consent to search his camper to which Allison consented. R. 65, ll. 7-23.

Price went inside Allison's camper and began the search. R. 65, ll. 22-23. Price testified that during his search, he pulled on a drawer underneath one of the closets. He said that the drawer did not open immediately but wiggled and moved a little bit, so Price thought it was a stuck drawer. He pulled harder and what appeared to be a door was a door facing that had been, according to him, "freshly glued" on to where the drawer goes. Price said behind that was a void area. R. 67, l. 18 – 68, l. 2.

Price said he immediately saw a Wolf ammunition box in the area. He also located four "South Park" DVDs, a DVD set of "The House on the Haunted Hill," and a bottle of

whiskey. R. 68, ll. 1 – 18. Price showed the items to Allison. Price said at that point Allison testified that if Price wanted to search anymore, Price needed a search warrant. R. 68, ll. 19-23.

Price obtained a search warrant and went back out to Allison's camper for a further search. Price went back to the area where the glued drawer was facing and found in the back of the area another DVD set that contained "The Hills Have Eyes," "The Asylum," and "Hit and Run." Price testified that he also pulled out a black crowbar and black gloves from the boarded area. R. 69, l. 10 – 70, l. 3; 72, ll. 8-11.

Price then took the crowbar over to Kelley's camper and said crowbar perfectly fit the pry mark on the door of Kelley's camper. R. 73, ll. 15-18.

Price also testified that Allison told Price that he did not have anything to do with this burglary and that his friend Rags must have taken them items and planted them in Allison's camper while Allison was asleep in his chair. R. 75, ll. 15-20, 78, ll. 11-12.

Price never found the allegedly stolen guns or any other items Kelley claimed were stolen, aside from the few DVDs, the ammunition box, and the bottle of whiskey. R. 76, ll. 5-10. These items were neither in Allison's camper nor in the woods surrounding the camper. R. 76, ll. 5-10; 81, ll. 8-14.

On cross-examination, Price testified that he was able to locate Donald Gentile, the person known as "Rags," and that Gentile was able to describe to Price all of the items that Kelley had reported as stolen. R. 79, l. 12 – 80, l. 18. Price said Kelley had also told him about seeing Gentile with the "One Thousand Corpses" DVD. R. 80, l. 19 – 81, l. 4.

The State also called Donald Gentile, known as "Rags," to the stand. R. 87, ll. 13-15. Gentile testified that he went over to Allison's camper around 9:00 p.m. the night of

May 2, 2010 for a cookout and a couple of drinks. R. 89, ll. 2 – 9. Gentile testified they had some drinks, and after a while, Allison showed Gentile some new pistols he had picked up. R. 91, ll. 7-22. They drank and watched a movie, and Gentile said he then asked if he could crash on the couch. He did not remember what time he went to sleep, but said he just remembered waking up in the morning. R. 91, ll. 15-24.

Gentile said the next morning he spoke with Kelley about the break in at his camper. R. 92, l. 23 – 93, l. 10. According to Gentile, Allison then asked Gentile for a ride to a friend's house. Gentile said Allison went inside and got a small bag and a duffle bag and Gentile took the bags and put them in his truck. R. 93, ll. 13-25.

Gentile testified he drove Allison to the friend's house and dropped Allison off. Gentile said Allison took the bags. R. 94, l. 20 – 95, l. 6. Gentile never went back to Allison's camper because "[t]he police were coming and I had a warrant on me. No, I wasn't about to go back there." R. 100, ll. 5-10.

Gentile testified that later in the week he was pulled over by the Sheriff's Office because he had a warrant out for theft of an electric current. R. 96, ll. 8-25, 100, ll. 12-16. Gentile was asked about the burglary at Kelley's camper, and Gentile gave a written statement. R. 97, ll. 3-11. Once Gentile gave his voluntary statement, he was informed by the officers that he was no longer a suspect in the burglary of Kelley's camper. R. 103, ll. 8-13.

Allison was ultimately indicted on charges of first degree burglary and grand larceny. R. 200.

ARGUMENT

I. The Trial Court committed reversible legal error in ruling that Appellant could argue third-party guilt but only if the jury was also charged on "the hand of one is the hand of all" theory of accomplice liability where the State agreed there was no evidence that Appellant and the third-party joined together to accomplish an illegal purpose.

During pre-trial motions, the State made a motion *in limine* to exclude defendant's evidence of third-party guilt. The Trial Court denied the State's motion and stated it would wait and see how the evidence was presented. R. 7, l. 9 – 8, l.1.

At the close of the evidence, the State renewed it motion regarding third-party guilt:

> I think at this point in time there's been no evidence pointing to anybody except him [Allison], and I think it would be inflammatory at this point in time to be able to argue that it was somebody else when there's been no evidence presented and there is no other evidence.

R. 139, ll. 4-9.

The Trial Court again denied the State's motion, finding enough evidence for the defense to at least make that argument to the jury. R. 139, ll. 11-13.

The State argued that if the defense was going to argue third-party guilt, then "the hand of one is the hand of all" would be appropriate. R. 140, ll. 23-25. During the charge conference, Allison objected to the "hand of one, hand of all" instruction on the grounds "that there was never foundation or evidence laid that there was any common theme or common enterprise between the two [Allison and Gentile]; there's nothing, no testimony, no facts or evidence presented by the State on that matter." R. 147, ll. 14-21.

The Trial Court denied Allison's objection:

> Well, if the hand of one comes out, then you're not gonna be able to argue committed by a third party. If you are pointing the finger at Mr. Gentile, then the hand of one stays in.

R. 147, ll. 22-25.

Faced with this conundrum, Allison chose to nevertheless argue third-party guilt even though the Trial Court ruled that the "hand of one" would stay in if Allison argued Gentile's guilt. R. 148, ll. 2-6.

The Trial Court gave the following charge to the jury:

> If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan or purpose.
>
> For example, two people can be guilty of killing another person when only one of the two had a gun, only one bullet was used, and only one of the two fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all, or as it is sometimes said, the hand of one is the hand of all.
>
> . . .
>
> The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime or who is present, aiding, abetting, or assisting in the crime. When a person does not act in the presence of and with the assistance of another, the act is done by both.
>
> When two or more acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

R. 189, l. 11 – 190, l. 22.

"In criminal cases, appellate courts review only errors of law and will not reverse a trial court's decision concerning jury instructions unless the trial court abused its discretion." State v. Miller, 397 S.C. 630, 634-35, 725 S.E.2d 724, 727 (Ct. App. 2012). "An abuse of discretion occurs when the [trial] court's decision is unsupported by the evidence or controlled by an error of law." State v. Garris, 394 S.C. 336, 344, 714 S.E.2d 888, 893 (Ct. App. 2011).

"In general, the 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). "In reviewing jury charges for error, we must consider the [trial] court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct.App.2003).

The Trial Court's ruling that if Allison argued third-party guilt, the jury also had to be charged with the "hand of one is the hand of all" theory of accomplice liability is controlled by an error of law and should be reversed. There is no legal authority supporting the Trial Court's view that an argument of third-party guilt by the defense must be accompanied by the State's ability to argue "hand of one, hand of all." These are two, distinct legal concepts which are not intertwined.

The admissibility of third-party guilt evidence is governed by the rule set forth in State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). The rule states:

> [E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible ... [B]efore such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party.

Id. at 104-05, 16 S.E.2d at 534-35 (internal citations omitted).

In this case, the Trial Court did rule the evidence supported Allison's argument that Gentile was guilty of burglarizing Kelley's camper and properly allowed Allison to argue third-party guilt, albeit conditioned upon the erroneous presumption that the State then got to automatically argue the "hand of one is the hand of all" theory of accomplice liability.

The "hand of one is the hand of all" theory is completely different and separate than the theory of third-party guilt. "Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. . . . Under accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (internal citations omitted).

"In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct. . . . Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime. . . . Mere presence at the scene is not sufficient to establish guilt as an aider or abettor." Id. at 480, 697 S.E.2d at 584 (internal citations omitted).

Evidence that supports a charge on third-party guilt does not automatically warrant a "hand of one is the hand of all" jury charge. There must be some other evidence to support the State's requested charge of "hand of one, hand of all" accomplice liability. See Douglas v. State, 332 S.C. 67, 73, 504 S.E.2d 307, 310 (1998) (ruling that a jury charge of "the hand of one is the hand of all" did not automatically warrant a reciprocal charge on defense of others; there must be some other evidence to support the defense of others theory).

In this case, the State did not present any evidence warranting a jury charge on "the hand of one is the hand of all." In fact, the State's case was that Allison committed this burglary alone. In renewing its motion regarding third-party guilt, the Solicitor stated:

> I think at this point in time there's been no evidence pointing to anybody except him [Allison], and I think it would be inflammatory at this point in

> time to be able to argue that it was somebody else when there's been no evidence presented and there is no other evidence.

R. 139, ll. 4-9.

The State offered Gentile as its witness, who testified that he had nothing to do with the burglary, did not know what Allison was doing, and did not know what was in the bags Allison allegedly carried to Gentile's truck. Gentile's testimony suggested that the burglary happened before Gentile ever arrived at Allison's camper. R. 90, ll. 1 – 22; 93, l. 14 – 94, l. 8.

The law enforcement officers who testified, Corporal Price and Sergeant Bowling, offered no testimony that they believed Gentile and Allison were working together. R. 58, l. 11 – 83, l. 16; 108, l. 8 – 121, l. 10.

There was simply no evidence or testimony that Gentile and Allison joined together through a common scheme to burglarize Kelley's camper; the evidence was only that one or the other may have done it, thus supporting Allison's argument of third-party guilt.

Even in its closing statement, the State continued to argue that only Allison committed the crime. With respect to Gentile, the State argued:

> He's not a burglar. They didn't charge him. There wasn't any evidence to charge him. He cooperated. The statement he gave was corroborated by the victim and everything else the officers already knew. He was not charged. He didn't do it.

R. 157, ll. 7-12.

The State went on to assert to the jury:

> All of the evidence in this case points directly at the Defendant, not at anybody else. R. 160, ll. 4-5.

. . .

Rags [Gentile] didn't do this thing, this Defendant did it.

R. 163, ll. 16-17.

The State nevertheless seized upon the "hand of one is the hand of all" charge in its argument to the jury:

> You're gonna hear a charge called from the Judge what's called the hand of one is the hand of all. That means if two people go and commit a crime, let's just say there were two people involved in the burglary, one of them doesn't even go in the place but he stands outside as a lookout or as an accomplice in helping him carrying off the goods, participate in the burglary, even if he never sets foot in it, the hand of one is the hand of all. He is guilty just as much as if he actually set foot in the building.
>
> I would submit to you in this case, I would submit to you that it doesn't apply because I think one person did this burglary and that's our contention. But if you find that the Gentile guy was involved in it in your deliberation, that they were both involved in it, the hand of one, hand of all would apply, in the fact that, you know, they both participated in the crime.

R. 151, l. 18 – 152, l. 9.

The Trial Court's charging the jury with "the hand of one is the hand of all" when there was no evidence of such and the State's accompany closing statement to the jury is highly prejudicial because it suggests to the jury that if they find that Gentile committed the crime, that under the "hand of one is the hand of all," they must also find that Allison was guilty as well. This effectively extinguishes Allison's argument that Gentile alone was guilty.

The Trial Court committed a reversible error of law in giving the jury the "hand of one is the hand of all" instruction, and the error in giving this jury instruction was not harmless. This Court should reverse the Trial Court's decision to instruct the jury as to the "hand of one is the hand of all" and remand for a new trial.

II. Where the State lost or destroyed photographs of the crime scene, including of a freshly glued drawer facing allegedly used as a hiding spot and crowbar pry marks on the door of the burglarized camper, the Trial Court erred in failing to suppress any of the State's testimony as to the drawer facing and the evidence located inside it and the crowbar pry marks where the evidence possessed an exculpatory value apparent before the evidence was destroyed and Appellant cannot obtain other evidence of comparable value by other means.

In their investigation of the burglary of Kelley's camper, law enforcement took photographs of the crime scene, including the alleged hiding spot – the "freshly glued" drawer facing – and crowbar marks on Kelley's camper. R. 74, ll. 8-12; 75, ll. 7-9; 117, ll. 8-12. Those photographs were subsequently lost when there was a change in the officer handling the case. R. 12, l. 25 – 13, l. 8; 74, l. 17 – 75, l. 6; 117, l. 13 – 118, l. 13.

As a result, Allison moved prior to trial to suppress any evidence presented by the State as to the "freshly glued" drawer facing and the evidence located inside it, including the crowbar, and the crowbar marks on Kelley's camper. R. 198; R. 11, l. 20 – 12, l. 22; 16, ll. 8-14. Allison argued that had he had those photographs in preparation for his defense, he could have investigated whether the glue substance existed and whether the crowbar marks on Kelley's camper matched the crowbar found in Allison's camper. Allison believed those photographs would have shown that the drawer facing was not freshly glued and that the crowbar marks which the State alleges were caused by Allison's crowbar do not match. R.198; R. 12, ll. 11-22.

The Trial Court denied Allison's motion to suppress evidence of the "freshly glued" drawer facing and the evidence located inside it and the crowbar marks on Kelley's camper, but stated the defense was entitled to a spoliation of evidence charge. R. 13, l. 17 – 14, l. 11; 17, ll. 10-23.

Allison contemporaneously objected to this evidence again during trial when Corporal Price began to testify about it which the Trial Court denied. R. 67, ll. 5-11.

In State v. Cheeseboro, this Court held that to establish a due process violation when useful evidence is destroyed by the State, the defendant must demonstrate:

> (1) that the State destroyed the evidence in bad faith, or
>
> (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.

346 S.C. 526, 538-39, 552 S.E.2d 300, 307 (2002).

Allison does not contend that the State destroyed the photographic evidence in bad faith, but does contend that these photographs were exculpatory because they would have shown that the drawer facing was not freshly glued and that the crowbar marks on Kelley's camper did not match the crowbar found in Allison's camper. At trial, Allison had nothing to refute Corporal Price's and Sergeant Bowling's testimony regarding these issues because the photographs were gone. The State's lack of care in ensuring that the photographs were preserved severely undermined Allison's defense.

In State v. Jackson, 302 S.C. 313, 396 S.E.2d 101 (1990), the prosecution of a defendant after charges had been dismissed and a videotape of defendant performing field sobriety tests had been erased violated due process. Here, the evidence was destroyed while the investigation was pending, not merely after the fact as in Jackson. There, as here, the defendant could not obtain evidence of comparable value. Id. at 316, 396 S.E.2d at 102.

It is unfair for law enforcement to have the ability to testify about an alleged hideout drawer being freshly glued and crowbar marks exactly matching a crowbar found in Allison's camper when the photographic evidence which could have been used by Allison to

dispute their testimony was destroyed, even if it was done inadvertently. Corporal Price was permitted to testify how the "crowbar fit perfectly in the pry marks in the door." R. 73, l. 25 – 74, l. 7. Sergeant Bowling also gave his testimony and opinion about the crowbar found in Allison's camper:

> We held the crowbar up. And if you look at the crowbar, it was one of those points in law enforcement that you look at something you held up it against it and you're like, yeah, that's a match. So when we held up the crowbar right to the door, you fit the pry mark in the door with the exact width, the exact shape as the dovetail in this crowbar. It was one of those times in law enforcement that you look at and say, Wow, I'm pretty darn certain that that was what was used to open that pry, that door.

R. 113, l. 24 – 114, l. 8.

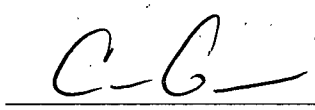
Allison had nothing to show the jury that the officers were incorrect in their opinion that the crowbar found in Allison's camper was the exact one that was used to pry open the door to Kelley's camper.

Although the circumstances surrounding the missing photographs were explained to the jury, the value of the photographs could not be replaced. Under these circumstances, Allison should receive a new trial, and the Trial Court should suppress any evidence or testimony presented by the State as to the "freshly glued" drawer facing and the evidence located inside it and the crowbar marks on Kelley's camper.

CONCLUSION

For the reasons set forth herein, Appellant Marcus Daniel Allison respectfully requests this Court to reverse his conviction and remand for a new trial for either or both (1) the Trial Court's error in charging the jury on the "hand of one is the hand of all" theory of accomplice liability; or (2) the Trial Court's failure to suppress any evidence or testimony presented by the State as to the "freshly glued" drawer facing and the evidence located inside it and the crowbar marks on Kelley's camper due to the State's failure to preserve the photographs.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of September, 2013.

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 10th, 2013

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THE STATE,

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MARCUS DANIEL ALLISON,

APPELLANT

Appellate Case No. 2012-211981

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, 2013.

Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of September, 2013.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.