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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2010-CP-40-5214

Demetrius Mack,..Respondent,

v.

Leon Lott, in his Official Capacity
as Sheriff of Richland County...Appellant.

BRIEF OF RESPONDENT

Joshua Snow Kendrick
Christopher S. Leonard
KENDRICK & LEONARD, P.C.
P.O. Box 886
Columbia, SC 29202
(803) 667-3186

Neal Michael Lourie
LOURIE LAW FIRM, LLC
P.O. Box 12089
Columbia, SC 29211

ATTORNEYS FOR THE RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. THE TRIAL COURT WAS CORRECT IN RULING THERE WAS NO PROBABLE CAUSE FOR THE ARREST OF RESPONDENT DEMETRIUS MACK.

II. THE TRIAL COURT WAS NOT REQUIRED TO RULE AS A MATTER OF LAW THAT AN OBJECTIVELY REASONABLE POLICE OFFICER IN DEPUTY JAMES GORE'S POSITION COULD HAVE CONCLUDED RESPONDENT DEMETRIUS MACK COMMITTED AN ASSAULT.

III. THE TRIAL COURT DID NOT ERR IN MAKING ITS FINDINGS OF FACTS AND CONCLUSIONS OF LAW.

STATEMENT OF THE CASE

This appeal stems from a trial involving a Richland County Sheriff's Department deputy's arrest of Respondent Demetrius Mack.

On December 6, 2008, Mack was working for DTH Protective Services. (R. p.138, lines 22-24). That night he was assigned to work security at Club Essence, a nightclub on Two Notch Road in Columbia, South Carolina. (R. p. 139, lines 1-6). Club Essence was a hip-hop club frequented by young people. (R. p. 140, lines 12-14). Mack described the club as a dangerous place, frequented by hostile gang members who drank cheap liquor. (R. p. 140, lines 15-21).

On the night of the incident, Mack came into contact with McKenzie Williamson, who would turn out to be a real troublemaker. Mack's first run-in with Williamson took place in the foyer of Club Essence, where Williamson was trying to get into the club without paying the required fee for entrance. (R. p. 141, lines 15-25). According to Mack's observations when he arrived in the foyer, Williamson tried to walk right past the lady collecting entrance fees without paying. (R. p.141, lines 19-20). The lady pointed Williamson out to Mack and told Mack he had entered without paying. (R. p.141, lines 19-20). Mack told Williamson to leave if he was not going to pay the entrance fee, and he did. (R. p.141, lines 21-25, p.142, lines 1-2).

Later, Williamson tried to enter the club for free again. (R. p.142, lines 3-8). He was caught once again and Mack escorted him off of the premises. (R. p.142, lines 8-13). Failing to get the message, Williamson tried to sneak into the club for free a third time. (R. p.142, lines 17-20). This time, a different security guard caught him and began to escort him out of the club. (R. p.142, lines 18-20).

Williamson became belligerent. (R. p.142, lines 22-24). He stood in the middle of Weir Avenue, a street next to Club Essence, and started throwing gang signs at the security guards. (R. p.142, lines 22-24). Mack was standing at the door to the club with the owner and watched Williamson making a scene. (R. p.143, lines 1-3). In addition to gang signs, Williamson began making threatening gestures about shooting at the club. (R. p.143, lines 6-9).

Williamson was still not done. He would make yet another attempt to sneak into Club Essence. As the night went on, the crowd became increasingly unruly. Eventually, a fight broke out in the club. (R. p.143, lines 13-16). As the security guards, including Mack, tried to assist the club bouncers in breaking up the fight, another employee of the club informed Mack that Williamson was back on the property. (R. p.143, lines 18-25). Mack had warned Williamson earlier that he would arrest him if he came back to Club Essence. (R. p.144, lines 1-3).

Williamson took off running down Weir Avenue. (R. p.144, lines 4-13) Mack saw him change direction when he realized sheriff's deputies were at the end of Weir Avenue. (R. p.144, lines 14-18). As he changed direction, he hit a car, slipped, and fell under the car. (R. p.144, lines 17-18). Williamson fell on the property located at 109 Weir Avenue, which was also under his jurisdiction as a security guard that night. (R. p.145, lines 19-21). Mack was only able to catch Williamson because of the fall. (R. p.145, lines 22-25).

After catching Williamson and handcuffing him, one of the bouncers from Club Essence flagged down Deputy Parish, who was responding as backup to an unrelated scene at the end of Weir Avenue. (R. p.146, lines 11-20). Mack informed Parrish that Williamson had been attempting to sneak into Club Essence, throwing gang signs, and making threatening gestures about shooting up the club. (R. p.146, lines 14-25). He told

Parish he wanted Williamson put on trespass notice so he could be arrested if he insisted on returning to the club. (R. p.146, lines 14-18).

Deputy Gore then arrived on the scene and asked what was happening. (R. p.147, lines 7-13). Gore immediately told Mack that he and the sheriff's department were tired of private security guards not showing up for court hearings. (R. p.147, lines 14-18). Mack was confused about Gore's attitude and told Gore he was just trying to let them know what happened with Williamson. (R. p.147, lines 19-24). Mack described Williamson's earlier behavior to Gore. (R. p.146, line 25, p.147, lines 1-2). Mack told Gore he did not want Williamson arrested, but did want him placed on trespass notice so that he could be arrested immediately if he returned to the property. (R. p.148, lines 7-9).

As the scene calmed down, Gore walked off to talk privately with Parish. (R. p.148, lines 16-17). He returned and told Mack it was Mack who was going to be arrested. (R. p.148, lines 18-19). Obviously surprised, Mack asked what he had done to result in him being the one under arrest, rather than Williamson. (R. p.148, lines 20-25, p.149, lines 1-5). Gore claimed Mack was out of his jurisdiction and had committed a simple assault when he handcuffed Williamson. (R. p.148, lines 20-25).

Mack was shocked at this turn of events, in light of the fact he detained Williamson on property over which he had jurisdiction as a private security guard. (R. p.149, lines 6-8). Mack attempted to have Gore talk with someone from his company, but Gore refused. (R. p.149, lines 9-16). Mack called his supervisor, who wanted Gore to wait until he arrived before arresting Mack and taking him to jail. (R. p.149, lines 17-25, p.150, lines 1-2). After talking to Williamson, Gore handcuffed Mack and placed him in the back of a patrol car. (R. p.150, lines 13-24)

Mack was taken to jail, where he remained for the night and most of the rest of the day. (R. pp. 152-154).

Any other pertinent facts are discussed in the argument portion of Respondent's brief.

ARGUMENTS

I. THE TRIAL COURT WAS CORRECT IN RULING THERE WAS NO PROBABLE CAUSE FOR THE ARREST OF RESPONDENT DEMETRIUS MACK.

This Court reviews actions at law, tried without a jury, only to correct errors of law. *Consignment Sales, LLC v. Tucker Oil Co.,* 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct.App. 2010). The trial judge's findings of facts will not be disturbed unless there is no evidence to reasonably support those findings. *Id.*

According to Appellant's argument, a police officer's testimony on probable cause should be accepted without question. This is not the case in South Carolina. A police officer is subject to the same credibility assessments as any witness, regardless of whether the finder of fact is a jury or a judge. In this case, the judge, as the fact-finder, clearly rejected the deputies' version of events in reaching her decision. The question in this appeal is not whether the judge correctly applied the legal standard for probable cause. The proper question is whether the judge's findings were supported by the record.

The Appellant cites this Court's opinion in *State v. Cuevas* in support of its position on probable cause. *State v. Cuevas,* 365 S.C. 198, 616 S.E.2d 718 (Ct.App. 2005). The *Cuevas* opinion is easily distinguishable from this case. At issue in *Cuevas* was whether a police officer had probable cause to make a warrantless arrest on the charge of felony driving under the influence. *Id.* at 204, 721. The opinion held that an officer had probable cause when he had a good faith belief a person was guilty of the crime and the belief was supported by facts that would induce an "ordinary prudent and cautious man" to make the same decision on the same facts. *Id.* However, that statement was not meaningless. The Court went on to cite a number of objective factors that supported the officer's decision. *Id.*

In the instant case, the trial judge heard an extensive description of the events leading to Mack's arrest from both Mack and the deputies. She correctly decided to credit Mack's version of events, rather than the deputies. During their testimony, neither of the deputies involved in Mack's arrest cited credible objective facts that supported Mack's arrest. Gore claimed he saw Mack tackle Williamson in the middle of the road, though this was not recorded in his incident report from that night. (R. p.65, lines 21-25, p.72, lines 3-7). Parish claimed in her testimony that the car under which Williamson fell was parked primarily in the roadway, though the video evidence clearly shows that to be untrue. (R. p.206, lines 12-17, p.347).

The existence of probable cause turns on the totality of the circumstances surrounding the information known to the officers. *State v. George,* 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996). In other words, the officers must take into account all of the facts surrounding the incident. They are not free to disregard facts that should be considered in making a probable cause determination.

There is only one fact that matters in this case: whether or not Mack was within his jurisdiction at the time he detained Williamson. If he was not within his jurisdiction, Mack did not have the legal right to detain Williamson. If he was within his jurisdiction, Mack did have the legal right to detain Williamson. Simple assault and battery is an *unlawful* act of violent injury to another. *State v. White,* 361 S.C. 407, 413, 605 S.E.2d 540, 543 (2004). Consequently, if he was within his jurisdiction, his actions were not unlawful and could not constitute a simple assault.

The Appellant confuses the issue of ultimate guilt or innocence and the existence of probable cause, stating they are separate concepts with regard to this case. That is incorrect. The Appellant correctly states that probable cause does not turn on an

individual's actual guilt or innocence. *Jackson v. City of Abbeville,* 366 S.C. 662, 666, 623 S.E.2d 656, 658 (2005). But it does turn on whether a reasonable person would believe the individual arrested was guilty of a crime. *Id.* It is not the end result of the case that governs probable cause. It is the simple question of whether the police officer believed the individual was guilty of a crime at the time of the arrest that governs probable cause.

In making that determination, the fact-finder is required to view the objective facts surrounding the arrest. An objective standard of conduct is required for fair law enforcement. *Id.* at 659, 667 (quoting *Horton v. California,* 496 U.S. 128, 138, 110 S.Ct. 2301 (1990). The law enforcement officer's perspective does not exist in a vacuum. It must be reasonable.

In support of the officer's perspective being critical to the probable cause analysis the Appellant cites this Court's opinion in *State v. Moultrie.* 316 S.C. 547, 451 S.E.2d 34 at n.3 (Ct.App. 1994). Each of the three cases in the cited footnote support Mack's position, not Appellant's. In *United States v. Pasquarille,* probable cause based on an informant's tip was reasonable because the informant's identity was known and the informant had personally observed a drug deal. *United States v. Pasquarille,* 20 F.3d 682, 686 (6th Cir. 1994).

In *United States v. Cortez,* the United States Supreme Court simply cautioned that scholarly review of facts must be outweighed by the view of those with law enforcement experience. *United States v. Cortez,* 449 U.S. 411, 418, 101 S.Ct. 690, 695 (1981). In *Cortez,* the Supreme Court cautioned that "the whole picture" must be taken into account when determining the reasonableness of probable cause. *Id.* The Court then went on to list an extensive amount of factors that supported probable cause in that case. *Id.*

United States v. Thornton recites the familiar standard for probable cause; there must be circumstances known to a police officer would support a reasonable person's belief there was probable cause to conduct a search. *United States v. Thornton,* 733 F.2d 121, 127 (D.C. Cir. 1984). Again, a closer review of the opinion reflects a number of objective facts that support a finding of probable cause.

Contrary to the Appellant's position, the judge correctly applied the proper standard for determining probable cause in this case. The Appellant argues the judge did not apply the correct legal principles, claiming she made no attempt to consider an objective assessment of the facts as they were known to the arresting officer. The order reflects the Appellant is incorrect.

The trial judge's order reflects that Mack's arrest, and the alleged simple assault on which it was based, took place at 109 Weir Avenue. (R. p.1) The trial judge specifically states she reviewed the evidence and testimony in determining the location of the arrest and the alleged assault. (R. p.1) The trial judge then states, based on evidence and testimony, that the location of Williamson's arrest was within Mack's jurisdiction. (R. p.2)

In the conclusions of law, the judge states that an assessment of the evidence in the case did not show that a crime had been committed on the date of the arrest. (R. p.2-3) She further found that the evidence did not reflect the deputies had probable cause to arrest Mack. (R. p.3)

As explained in Mack's statement of the case, there was testimony and evidence to support to support the judge's findings of fact. After making those findings, she correctly analyzed whether those facts would lead a reasonable person to believe a crime had been committed on the day in question. She found they did not lead to that result. Without

probable cause, a false arrest took place. The judge reached the correct decision based on the record.

II. THE TRIAL COURT WAS NOT REQUIRED TO RULE AS A MATTER OF LAW THAT AN OBJECTIVELY REASONABLE POLICE OFFICER IN DEPUTY JAMES GORE'S POSITION COULD HAVE CONCLUDED RESPONDENT DEMETRIUS MACK COMMITTED AN ASSAULT.

The Appellant also claims the existence of probable cause should have been determined as a matter of law. The Appellant is arguing that the judge should have granted a directed verdict motion. It essentially argues this Court can decide in its favor, rather than remanding the case. Neither option is appropriate, as a directed verdict could not have been granted on this record.

In ruling on a motion for a directed verdict, the trial court considers facts in the light most favorable to the opposing party. *Pye v. Estate of Fox,* 369 S.C. 555,563 633 S.E.2d 505, 509 (2006). Judge Benjamin was required to view all facts and any reasonable inferences from those facts in the light most favorable to Mack. If there is more than one inference to be drawn from the facts, or the inference is in doubt, a directed verdict motion must be denied. *Id.* At the directed verdict stage, the trial court does not evaluate the evidence; it is only concerned with the existence or nonexistence of evidence. *Id.*

This Court should reverse the trial court's decision on a directed verdict in two circumstances. A reversal is only appropriate if there is no evidence to support the trial judge's ruling or the ruling was controlled by an error of law. *Id.*

The Appellant correctly points out in its brief that Mack could only arrest someone on property within his jurisdiction. If he was outside of his jurisdiction, any action he took against Williamson could be considered unjustified. As described in the preceding

argument section, the location of Williamson's arrest was the critical factor in deciding this case.

There were two versions of events at the trial, both of which are described in Appellant's statement of the case. Mack testified he was pursuing Williamson and that Williamson fell under a parked car. Mack pulled Williamson out from under the car and detained him. The Appellant argues the car was partially parked in the roadway. It makes no difference where the car was parked; the location of Williamson is the critical factor.

Gore and Proffitt claimed they saw Mack tackle Williamson in the middle of the street. Mack plainly denied this had occurred. At this stage of the proceedings, the trial judge was bound to accept Mack's version of events in deciding a directed verdict. This Court is bound by the same rule. If there is any evidence to support the judge's denial of a directed verdict, it should be upheld. Contrary to Appellant's position, the testimony of Mack alone precluded the trial judge from granting a directed verdict.

The Appellant argues that it makes no difference where the alleged unwanted touching occurred, because that fact is relevant to ultimate guilt or innocence. It claims the officer's objectively reasonable view of the facts form the basis for probable cause. While this may be correct, it completely disregards the fact-finder's duty to assess the credibility of the witnesses. The judge did not disregard the officers' testimony; it appears she did not believe the officers' testimony. The difference is critical.

The Appellant makes note of the fact the judge did not mention the video evidence in her ruling. This is most likely based on the video's lack of clarity. It does not reflect the events that occurred leading up to Williamson's arrest. More importantly, what little can be gleaned from the video supports Mack's story, not the Appellant's. The video came from the dashboard camera of Deputy Parrish's patrol car. Though she sped by the

relevant scene, it does appear that Mack's story is accurate. The white vehicle described in testimony is primarily parked in grass at 109 Weir Avenue, not the roadway as claimed by the officers.

Contrary to the Appellant's argument, the facts of the case not only warranted rejection of the motion for directed verdict, they clearly support the judge's verdict. The Appellant discusses wounds consistent with "road rash", claiming this supports the officers' decision that the touching occurred in the roadway. However, it is also entirely consistent with Mack's observation of Williamson slipping under the car when he saw he was running towards police officers. At the directed verdict stage, the judge accepted Mack's story, as she was required to do by law. In addition, she reasonably credited Mack's version of events over the deputies' version of events. After reviewing the evidence and listening to the testimony, the trial judge obviously decided Mack's version of events was supported by the evidence, while the deputy's version was not.

The Appellant claims the facts and circumstances within Gore's knowledge can only reasonably support a finding of probable cause. This is completely wrong. As has been described throughout this brief, there are numerous facts which support the judge's verdict and directly counsel against accepting the deputies' version of events.

Contrary to the Appellant's position, the evidence in this case does not require that the only reasonable conclusion is a finding of probable cause. There is clearly another conclusion; probable cause did not exist. Because that conclusion is actually supported by credible evidence, the judge ruled correctly in both her decision on the directed verdict motion and her verdict.

III. THE TRIAL COURT DID NOT ERR IN MAKING ITS FINDINGS OF FACTS AND CONCLUSIONS OF LAW.

The Respondent also claims the trial judge's order does not comply with Rule 52(a) of the South Carolina Rules of Civil Procedure. The rule states:

> "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58..."

Rule 52, *SCRCP*. The rule is clear. All it requires is that the trial judge make factual findings and conclusions of law. Both were done in this case.

There was really only one fact that mattered in this case: whether or not Mack contacted Williamson on property within Mack's jurisdiction. If the contact took place within Mack's jurisdiction, there was no reason to arrest him. Further, if the reasonably known facts suggested the contact took place on property within Mack's jurisdiction, the officer's basis for probable cause was unreasonable. This was the issue in dispute at trial. Regardless of how it is framed by the Appellant, that is the real issue in this appeal. There is no legal issue for the Court to resolve. The Appellant is unhappy the trial judge did not believe its witnesses. This is a risk inherent in all trials.

Rule 52(a) is a rule of guidance, not a specific mandate. *Church v. McGee,* 391 S.C. 334, 345-346, 705 S.E.2d 481, 487 (Ct.App. 2011). As long as there is substantial compliance with the rule and an adequate basis for the ruling is set out in the order, an appellate court will not vacate the order. *Id.* The Appellant wants a more detailed finding, which was not necessary in this case. The issue in dispute did not require any more detail than was contained in the judge's order.

The reasonable view of facts that supported probable cause in this case turned on whether or not Mack detained Williamson within his jurisdiction. He did. The deputies' version of events relied on their insistence that Williamson's body was in the roadway, rather than on private property. This was a factual dispute. The deputies' credibility was in question and the judge did not believe their version of the events. Judge Benjamin was not required to make a specific finding of fact regarding the credibility of any witness. *Id.*

Each of Appellant's complaints about the judge's ruling can be easily discarded. The order in this case reasonably reflects that there was no probable cause because Williamson's arrest took place on property under Mack's jurisdiction as a private security guard. The trial judge was not required to state which version of facts she accepted; it is implicit in her ruling. In addition, it was explicit in her ruling that she based her decision on a review of all of the evidence and testimony. For the same reasons, her failure to mention to video evidence is not error. She mentioned that she reviewed all evidence. The trial judge is not required to specifically list each item of evidence, any more than a jury would be required to list each item of evidence and its position on the item with respect to its verdict. Despite the Appellant's insistence, the video evidence is far from indisputable. It is unclear what the video shows.

The Appellant's argument that the trial judge does not specify whether the unlawful touching occurred in the public roadway or not is incorrect. Both paragraph 2 and paragraph 4 of the findings of fact specifically reference 109 Weir Avenue as both the location of the alleged assault and a location over which Mack had jurisdiction. (R. p.1-2)

The trial judge states in her conclusions of law that the central issue in the case is whether there was probable cause to arrest Mack. (R. p.2) She correctly states that the surrounding circumstances must be sufficient for a reasonable person to believe that a

crime has been committed by the person being arrested. The trial judge also defines probable cause in a manner that is both correct under South Carolina law and consistent with the Appellant's own definition: "... probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinary, prudent, and cautious man under the circumstances to believe likewise."

The trial judge goes on to state that a realistic assessment of the evidence does not show that a crime had been committed by Mack when he was arrested. She correctly states the law. The judge is not saying Mack was ultimately innocent of the charge, though he was. She is saying that the evidence at the time did not support the realistic belief a crime had been committed.

The Appellant's reliance on *In re Care and Treatment of Corley* is misplaced. 365 S.C. 252, 616 S.E.2d 441 (Ct.App. 2005). *Corley* involved a finding of probable cause under the Sexually Violent Predator Act. The Sexually Violent Predator Act specifically requires certain facts that relate to the finding of probable cause: (1) belief a person has a mental abnormality; (2) belief a person has a personality disorder; (3) belief either the mental abnormality or personality disorder has changed; and (4) the person is not likely to commit acts of sexual violence if released. *Id.* at 255, 442. There are several decisions to be made, all of which may involve a wide variety of facts. The instant case involved only one simple factor: the location of the contact between Mack and Williamson.

Despite the lack of detail in the order in *Corley,* the Court had no problem upholding the judge's ruling. The Court listed a number of factors that supported the judge's decision, noting that its finding would not be disturbed absent evidence to reasonably support the finding. *Id.* at 256, 443.

In re Treatment and Care of Luckabaugh, also cited by the Appellant, similarly supports Mack's position that the judge's order is acceptable. *In re Treatment and Care of Luckabaugh,* 351 S.C. 122, 568 S.E.2d 338 (2002). In *Luckabaugh,* the trial court's ruling did not find any facts to support its legal conclusions. *Id.* at 131, 342. Discussing what would constitute an appropriate order, the Court noted with approval a magistrate order that stated the applicable legal standard that was violated and how it was violated. *Id.* at 132, 342-343.

The trial judge's order in this case should also be approved by the Court. She clearly states the applicable legal standard by defining probable cause. The judge then states what is required for probable cause by referring to the basis required for forming a belief of probable cause. Her findings of fact laid out where the events happened and her finding on Mack's jurisdiction at the location of the events. She then concludes, based on the evidence, that there was no probable cause to make the arrest. There is no need to even determine if the order substantially complies with the rule, as it completely complies with the rule.

This case involved a simple legal issue that turned on a simple fact. In the famous play *Hamlet,* Shakespeare's character Polonius counsels that "brevity is the soul of wit." William Shakespeare, *The Tragedy of Hamlet, Prince of Denmark,* act 2, sc 2, 86-92. Indeed, the lack of a windy preface like the one Polonius engaged in while telling his story is to be commended. The simplicity of Judge Benjamin's order is not an error.

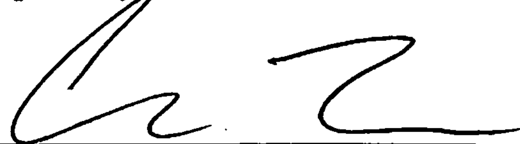
CONCLUSION

Appellant Demetrius Mack was faced with an unruly and threatening gangster the night of December 6, 2008. Williamson had no respect for Club Essence or those charged with protecting it, as evidenced by his repeated attempts to evade the entrance fee and his implicit threats of gangland retaliation and explicit threats to shoot up the club.

Rather than arrest the real troublemaker, the Appellant's officers decided to arrest Mack, who had done nothing wrong. The evidence at the scene of the arrest did not support probable cause. Though the officers attempted to support probable cause at the trial of this case, the judge clearly rejected their story and accepted Mack's version of events. An objective view of the facts that existed at the time of Mack's arrest do not support probable cause.

This was a reasonable decision, supported by credible evidence, and in line with applicable South Carolina law. It should be affirmed.

Respectfully submitted,



Joshua Snow Kendrick
Christopher S. Leonard
KENDRICK & LEONARD, P.C.
P.O. Box 886
Columbia, SC 29202
(803) 667-3186

Neal Michael Lourie
LOURIE LAW FIRM, LLC
P.O. Box 12089
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ATTORNEYS FOR THE RESPONDENT

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DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2012- 212277

Demetrius Mack, Respondent,

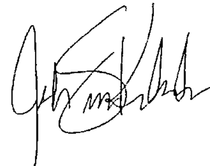
v.

Richland County Sheriff Leon Lott, Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies this brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

Respectfully submitted,



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Joshua Snow Kendrick
KENDRICK & LEONARD
Post Office Box 886
Columbia, South Carolina 29202
(803) 667-3186

Attorney for the Respondent

Columbia, South Carolina
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