STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County
Honorable Edward B. Cottingham, Circuit Court Judge
Appellate Case Tracking No. 2012-213334

The State, Respondent,

vs.

Sarah D. Cardwell, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court did not err in denying the motion to suppress when Appellant had no reasonable expectation of privacy in her computer and its data voluntarily turned over to a third party, and the third party placed the data on his own equipment and allowed that equipment to be searched.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

Appellant[1] brought her laptop computer to David Marsh for repair.[2] The computer would not boot. (T.251-252; R. 114-115). Appellant instructed Marsh to get the data off the computer, rebuild or repair it if possible, and then put the data back onto her computer. (T.65; R. 47). Marsh had to remove the computer's hard drive and attach it to his computer in order to make a back-up of the data until he could get the laptop working. (T.66; R. 48). At this point, the laptop did not work and all data was being handled through Marsh's computer. He testified: "If the computer will not boot up I usually take the hard drive and attach it to my Mac . . . and then I will back all the data up to a file on my Mac. . . ." (T.66; R.48). With regard to Appellant's computer, he stated: "I had to take the hard drive out [of Appellant's laptop computer], connect it via USB cable into my Mac and start the download process." (T.66; R.48).

While he was copying the data onto his computer, Chief Ron Douglas with the Johnsonville Police Department came into Marsh's work area to deliver some packages. Marsh took the packages into the other room and then heard Chief Douglas call him back into the work area. (T.67-68; R. 49-50). Chief Douglas indicated he saw something and wanted Marsh to back up a few files to determine what he had seen. (T.72; R. 54).

When Marsh went back through the files, he located a still image of Appellant's son. The image showed her son naked except for a pink bra. (T.72-73; 92; R. 54-55; 74). At this time they realized the image actually was a thumbnail for a video file. Chief Douglas indicated he wanted to see the file and so Marsh played a little bit of the file. The video showed two of Appellant's children dancing naked along with her co-

[1] During trial, she is sometimes referred to as Sarah Pope.
[2] Appellant specifically indicated the pink laptop was hers when she brought it to Marsh. (T.65; R. 47).

defendant, Michael Cardwell.[3] (T.73; R. 55). Michael Cardwell was also naked in the video. (T.74; R. 56). Marsh indicated Appellant's voice could be heard on the video directing the children what to do next. (T.74; R. 56). Marsh acknowledged even if Chief Douglas had not seen the video, had he become aware of it he would have been required to report it to law enforcement. (T.85; R. 67).

Chief Douglas then told Marsh to put the computer and hard drive under lock and key. Chief Douglas got in touch with Investigator Phillip Hanna from the Georgetown Sheriff's Department. (T.93; 95; R. 75; 77). He instructed Marsh to make a copy of the video because the computer was having so many issues he did not want to risk losing the data. (T.84; 93; 94-95; R.66; 75; 76-77).

The computer and the disk containing the copy of the video were turned over to Investigator Hanna. He took possession of the computer, obtained a search warrant for the computer, and sent the computer to a forensic laboratory in Charleston. (T.101; R. 83). He indicated obtaining the search warrant was standard procedure if images such as the video were seen. (T.101; R. 83).

At trial, Appellant and her co-defendant moved to suppress the video arguing the computer was searched and seized in violation of the Fourth Amendment. The trial court denied the motion, indicating she lost her expectation of privacy when she turned the computer over to the technician Marsh. (T.16; R. 23). Later the court elaborated and found Chief Douglas saw the item in plain view while in Marsh's shop and had a right to seize it at that point. (T.18; R.25). The court further indicated the computer was now in the custody of the technician and there is no indication Marsh objected to Chief Ron's requests to view the files. (T.20; R. 27).

[3] At the time of the video, Michael Cardwell was Appellant's boyfriend, but by trial, the two were married.

ARGUMENT

I. The trial court did not err in denying the motion to suppress when Appellant had no reasonable expectation of privacy in her computer and its data voluntarily turned over to a third party, and the third party placed the data on his own equipment and allowed that equipment to be searched.

Appellant contends the trial court erred in denying Appellant's motion to suppress evidence of a video which formed the basis of the charges against Appellant and her co-defendant. Appellant had no reasonable expectation of privacy in a computer and its data voluntarily turned over to a third party with instructions that the third party remove the data from the computer. Further, once the third party removed the data from Appellant computer and placed it on his own computer, his consent to search the data on his own computer was valid and eliminated any need for a warrant. Finally, the contraband was seen in plain view and Appellant could not have a legitimate expectation of privacy in contraband.

In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see also, State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004) ("On appeal from a suppression hearing, this court is bound by the circuit court's factual findings if any evidence supports the findings."). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures. "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991).

Expectation of Privacy

When moving to suppress evidence on the basis of an alleged unreasonable search, the defendant has the burden of showing a legitimate expectation of privacy in the area searched. See United States v. Rusher, 966 F.2d 868 (4th Cir. 1992); see also Rawlings v. Kentucky, 448 U.S. 98 (1980) (declaring a legitimate expectation of privacy is necessary to trigger Fourth Amendment protections); State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987) (stating defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate his "own rights" have been violated by showing he has a legitimate expectation of privacy in connection with the searched premises in order to challenge the search). "Since Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), the touchstone of [Fourth] Amendment analysis has been the question whether a person has a 'constitutionally protected reasonable expectation of privacy.'" Oliver v. United States, 466 U.S. 170, 177, 104 S.Ct. 1735, 1740–41, 80 L.Ed.2d 214 (1984) (quoting Katz, 389 U.S. at 360 (Harlan, J., concurring)).

Thus,

> in order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; i.e., one that has "a source

> outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society."

Minnesota v. Carter, 525 U.S. 83, 88, 119 S.Ct. 469, 472, 142 L.Ed.2d 373 (1998) (quoting Rakas v. Illinois, 439 U.S. 128, 143–44 n. 12, 99 S.Ct. 421, 430 n. 12, 58 L.Ed.2d 387 (1978)). A legitimate expectation of privacy is both subjective and objective in nature: the defendant must show (1) he had a subjective expectation of not being discovered, and (2) the expectation is one that society recognizes as reasonable. Oliver, 466 U.S. at 177 (citing Katz, 389 U.S. at 361 (Harlan, J., concurring)).

In Katz v. United States, the United States Supreme Court explained: "For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." Katz, 389 U.S. at 351. This was further announced in United States v. Miller, 425 U.S. 435 (1976), when the Supreme Court found no protection for information turned over by a depositor at a bank. The court explained:

> This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.

Id. at 443.

In Smith v. Maryland, 442 U.S. 735 (1979), the Supreme Court used the above analysis to hold that petitioner had no legitimate expectation of privacy when he used his phone to voluntarily convey the telephone number he was dialing to the telephone company and "'exposed' that information to its equipment in the ordinary course of

business. In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed." Smith, 442 U.S. at 743.

In a case totally unrelated to technology, but analogous to the case at hand, the United States Supreme Court found a person did not have a reasonable expectation of privacy in trash left for the trash collector because it was given to a third party. California v. Greenwood, 486 U.S. 35 (1988) (finding no reasonable expectation of privacy in "plastic garbage bags left on or at the side of a public street," which are accessible by "members of the public" and left on the curb "for the express purpose of conveying [them] to a third party, the trash collector").

In the instant case, Appellant did not have a subjective expectation of privacy or an expectation society would recognize as reasonable. Appellant voluntarily turned over her computer and all data on her computer to a third party, Marsh. She provided Marsh with no restrictions on how he was to repair the computer or files he could or could not view. She made no attempt to exclude his access from the video by placing it in a private folder or utilizing any means of encryption or password protection. See e.g., United States v. Barrows, 481 F.3d 1246, 1248–49 (10th Cir. 2007) (finding appellant's "failure to password protect his computer, turn it off, or take any other steps to prevent third-party use" indicative of a lack of a subjective expectation of privacy). Accordingly, she failed to maintain even a subjective expectation of privacy in the video once it was turned over to a third party.

Additionally, as discussed above, the Fourth Amendment does not find society willing to protect information turned over to a third party. Whether it is telephone records, bank records, trash, or computer data, once it is given to a third party the original

possessor assumes the risk of something happening with that data, including it being given to law enforcement.

Other courts have reached similar conclusions when a computer is turned over to a technician and contraband is located on the computer. In Commonwealth v. Sodomsky, 939 A.2d 363 (Pa. Super. 2007), the court analyzed a similar situation. The defendant turned a computer over to Circuit City for repair and upgrades. In doing the work, the repairman viewed the beginning of a video appearing to contain child pornography. He called the police, who came and viewed the video file. The computer and its data were seized. Id. at 364-366. The Court concluded because the defendant: "abandoned his privacy interest in the videos contained in the computer, he cannot object to the subsequent viewing of the video list and file by police." Id. at 369. The Court continued:

> Our result in this case is consistent with the weight of authority in this area. **If a person is aware of, or freely grants to a third party, potential access to his computer contents, he has knowingly exposed the contents of his computer to the public and has lost any reasonable expectation of privacy in those contents.** E.g. United States v. Simons, 206 F.3d 392 (4th Cir. 2000) (where employee was informed that his work-related internet activity would be scrutinized by employer, he had no legitimate expectation of privacy in fruits of his internet activity as he knowingly exposed such activity to public); United States v. King, 2006 WL 3421253 (M.D. Ala. 2006) (defendant knowingly exposed personal files to public under Katz by linking to network after being informed that personal files could and would be searched using network even though defendant attempted to protect files from network search); Lown v. State, 172 S.W.3d 753 (Tex. App. 2005) (defendant did not have reasonable expectation of privacy in files on work computer which were backed up at request of people in authority at defendant's company).

Id. at 369-370 (emphasis added).

In Rogers v. State, 113 S.W.3d 452 (Tex. App. 2003), the Court considered whether a defendant lost his expectation of privacy not only when he voluntarily turned over his computer to the repair shop for analysis, but also requested that files be backed up. The Court concluded in turning the computer over to the repair shop, and seeking to have the files backed up, the defendant "no longer had a legitimate expectation of privacy in those files, and the trial court did not err in denying Rogers's motions to suppress." Id. at 458.

Significantly, the Rogers court also distinguished United States v. Barth, 26 F.Supp.2d 929 (W.D. Tex. 1998), which is a case relied on by Appellant. In Barth, the Court found the defendant did not give up his expectation of privacy when he turned over a hard drive to a repairman. In Barth, the defendant gave the hard drive to the technician "for the limited purpose of repairing a problem unrelated to specific files and also expected that he would have the unit back the following morning to continue his business." Id. at 937. The Rogers court found its circumstances clearly distinguishable because the defendant in Rogers asked the repairman to back up the files and not just fix a generic problem. Rogers, 113 S.W.3d at 457.

In United States v. Barrows, 481 F.3d 1246 (10th Cir. 2007), the Tenth Circuit Court of Appeals found mere ownership is not enough to establish and maintain a subjective expectation of privacy in a computer. The Court concluded when the defendant connected his personal computer to a public computer network to share files, he exposed his computer to the public and no longer had an expectation of privacy. Id. at 1248-1249.

The Court of Criminal Appeals of Alabama undertook and exhaustive analysis of a situation very similar to the one in the instant case in Melton v. State, 69 So.3d 916 (2010). In that case, the defendant took his computer to Best Buy to have viruses removed and the computer repaired. Id. at 922-923. The Court found persuasive the analysis of Sodomsky discussed above. Further, the Court found that even though the Best Buy employees only viewed highly graphic file names indicating their contents were child pornography, the fact the officers opened the files did not violate any Fourth Amendment rights. Id. at 928. The Court concluded, relying in part on United States v. Jacobsen, 466 U.S. 109 (1984), nothing more was learned from viewing the files based on the name. Further, the Court held once the files were determined to be child pornography from their filenames, there was no constitutional protection in the contraband. Id. at 928-929. Finally, the Court concluded there was no expectation of privacy society was prepared to recognize at the time the officers viewed the file names and the contents of any of the files. Id. at 931.

This Court should join the other courts and find Appellant maintained no expectation of privacy in any of the files she turned over to Marsh. She placed no restrictions on the files or his usage of the files. He freely copied the files onto his own computer and it was from there the files were viewed by Chief Douglas and himself. Appellant had no subjective expectation of privacy when she specifically told him to access the files and back them up, and she certainly had no reasonable expectation of privacy society is prepared to recognize in the contraband turned over to a third party.

Third Party Possession

Further, Appellant has no expectation of privacy in the files viewed by Chief Douglas nor in the copy of the file made because they were seen and copied from Marsh's computer and no longer in the possession of Appellant. Marsh testified Appellant told him to back up the data. In doing so, he made a copy of her data on his computer. He indicated he connected her hard drive to his computer and began making a copy of the data. As Marsh made the copy onto his machine, with nothing in the record to indicate he was prevented from making the copy, it is clear Appellant no longer retained exclusive control over the data or the ability to exclude anyone from that data.

As the United States Supreme Court stated in Alderman v. United States, 394 U.S. 165, 174 (1969): "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. Id. "And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections." Rakas v. Illinois, 439 U.S. 128, 133-134 (1978).

The search conducted in this case was conducted on Marsh's computer and on data he placed there with Appellant's permission. The copying of the data by Marsh was not governmental action, but was the actions of a private, third party. There is no allegation when he produced the backup at Appellant's request he was acting as an agent for the government or law enforcement. As a result, his actions are purely private actions

in searching or seizing the data. See U.S. v. Jacobsen, 466 U.S. 109, 113-114 (1984) ("This Court has also consistently construed this protection as proscribing only governmental action; it is wholly inapplicable 'to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official.'").

Once the data was copied, any search of the copied data on Marsh's computer was, at most, a violation of Marsh's Fourth Amendment rights and not Appellant's rights. Accordingly, she cannot assert a violation of the Fourth Amendment when Marsh's action as a private citizen effectuated the seizure of the data, and any search or other violation allegedly occurring took place on Marsh's property and not her own.

Third Party Consent

Additionally, even if Appellant somehow retained an expectation of privacy in the data and computer voluntarily turned over to Marsh, and copied by Marsh onto his computer, Marsh consented to any search and he had the apparent authority to do so. Consent is a clearly recognized exception to a warrant requirement. See State v. Gamble, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013). A third party may consent if that party "possesses common authority over premises or effects" and their consent is "valid as against the absent, nonconsenting person with whom that authority is shared." U.S. v. Matlock, 415 U.S. 164, 170 (1974).

The South Carolina Supreme Court reached a similar conclusion in State v. Curley, 253 S.C. 513, 171 S.E.2d 699 (1970). In Curley, the defendant loaned the vehicle to a third party along with no restrictions or prohibitory instructions. Id. at 516, 171 S.E.2d at 700. An officer stopped the driver and asked consent to search the vehicle

including the trunk. The driver consented, and upon looking in the trunk, the officers spotted evidence linking the car and its owner to a safecracking. The Supreme Court found the evidence should not be suppressed because the driver validly consented. The Court explained:

> [T]he defendant Curley, by allowing another to use his car and, without prohibitory instructions, entrusting her with the key to the trunk, must be taken to have assumed the risk that she would accede to the request of an officer to look inside. Having to this extent surrendered his right to privacy as to the contents of the trunk, he is in no position to maintain that the shoes were discovered in derogation of it.

Id. at 518.

In the instant case, Appellant voluntarily gave to Marsh her computer and all its data with instructions to back up the data to put it back on her computer when repaired. She gave no prohibitory instructions or restrictions on how he was to handle the date, the type or number of copies he could make, or the length of time he could keep the data. As a result, just like Curley, Appellant assumed the risk he would search the data and expose the video in question to law enforcement. As a result, Appellant cannot assert a violation of her Fourth Amendment expectation of privacy.

Plain View and Contraband

Also, even assuming Appellant has some expectation of privacy remaining in the data turned over to Marsh and copied by Marsh onto his computer, the file was seen in plain view by Chief Douglas and he had the right to seize the file. Once he saw the file, its nature as contraband was obvious and Appellant can have no legitimate interest in contraband.

"Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence." State v. Wright, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011). The Court explained: "the two elements needed to satisfy the plain view exception are: (1) the initial intrusion which afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities." Id.

In the instant case, Chief Douglas was clearly where he was entitled to be and his "intrusion" into Marsh's work area was lawful. Both Chief Douglas and Marsh testified Marsh had packages delivered to the police station because he was sometimes closed. Chief Douglas was delivering the package to Marsh and was in Marsh's work area at Marsh's invitation. Chief Douglas stayed in the area he first met Marsh and there is no indication he was not properly in this area. As a result, when he witnessed the thumbnail go across the screen, he clearly was in a location he was lawfully allowed to be.

In addition, he testified the image he saw on the screen caused him concern because it was an image of a naked child holding a bra across his chest. The incriminating nature of this image was immediately apparent. See e.g., S.C. Code Ann. § 16-15-365 (Supp. 2010) ("Any person who wilfully and knowingly exposes the private parts of his person in a lewd and lascivious manner and in the presence of any other person, or aids or abets any such act, or who procures another to perform such act, . . . is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than six months or fined not more than five hundred dollars, or both."); S.C. Code Ann. § 16-15-395 (Supp. 2010) ("An individual commits the offense of first degree sexual exploitation

of a minor if, knowing the character or content of the material or performance, he: (1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; (2) permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity"); S.C. Code Ann. § 63-5-70 (Supp. 2010) ("It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child as defined in Section 63-7-20 to: (1) place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety"). Accordingly, the contraband was seen in plain view and appropriately seized by Chief Douglas.

The United States Supreme Court has made it clear that one does not have a legitimate interest in contraband. The Court held:

> Official conduct that does not "compromise any legitimate interest in privacy" is not a search subject to the Fourth Amendment. Jacobsen, 466 U.S., at 123, 104 S.Ct. 1652. We have held that any interest in possessing contraband cannot be deemed "legitimate," and thus, governmental conduct that only reveals the possession of contraband "compromises no legitimate privacy interest." Ibid. This is because the expectation "that certain facts will not come to the attention of the authorities" is not the same as an interest in "privacy that society is prepared to consider reasonable." Id., at 122, 104 S.Ct. 1652 (punctuation omitted).

Illinois v. Caballes, 543 U.S. 405, 408-409 (2005). Once the contraband was in plain view, the fact Chief Douglas manipulated the video compromised no legitimate expectation of privacy. Appellant cannot demonstrate a violation of her Fourth

Amendment right when the file was seen and seized in plain view and it was clearly contraband for which she cannot have an expectation of privacy.

Inevitable Discovery

Finally, even if there was no basis for the search and seizure by Chief Douglas or Investigator Hanna, once the file was viewed by Chief Douglas the officers would have, and in this case did, obtain a warrant for the computer and files so any discovery of the video and its contents was inevitable. The inevitable discovery doctrine is an exception to the exclusionary rule which requires the State to establish by a preponderance of the evidence the same evidence seized unlawfully would have been discovered inevitably by lawful means. See State v. Jenkins, 398 S.C. 215, 227, 727 S.E.2d 761, 767 (Ct. App. 2012) (citing State v. Brown, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010); Nix v. Williams, 467 U.S. 431, 447, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984) (holding evidence may be admitted despite a violation of the Fourth Amendment "if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police")). When the doctrine applies, the evidence will not be suppressed despite the fact it was obtained pursuant to an illegal search. Brown, 389 S.C. at 483, 698 S.E.2d at 816.

In the case *sub judice*, Investigator Hanna testified he obtained a warrant to search the computer and the files on the computer as standard procedure when images of child pornography are seen. (T.101; R. 83). First, the computer was properly seized by Chief Douglas under the plain view doctrine as discussed above. Also, Marsh testified he is required to report images such as the one seen by Chief Douglas to law enforcement, so, even if not properly seized in plain view, the computer and image would have been

brought to the attention of law enforcement because Marsh had a copy of the file on his computer. As a result, if any further action was in violation of the Fourth Amendment, it should not require exclusion because the evidence would have been found through the search warrant investigator Hanna obtained based on the image and the subject matter of the image.

The trial court properly ruled because Appellant turned her computer over to Marsh she maintained no expectation of privacy. Further, Marsh made a copy of the data in what was at most a private search and seizure and any governmental action took place on his computer and related to his copy of the data for which Appellant would have no reasonable expectation of privacy. Additionally, Marsh consented to the search of his data and his computer, and would have had authority to consent to the search of Appellant's computer and data because she turned it over to him without any restrictions or prohibitions. Also, the trial court correctly ruled the evidence was seen in plain view by Chief Douglas, he readily knew its incriminating nature, and as a result he properly seized the contraband in which Appellant could not maintain a legitimate expectation of privacy. Finally, even if the actions by Investigator Hanna or Chief Douglas were overreaching, the evidence would have inevitably been discovered under the warrant obtained as a matter of standard procedure by Investigator Hanna. Accordingly, the trial court properly denied the motion to suppress the video.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

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PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Benjamin J. Tripp, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.
This 2nd day of April, 2014.

Sally Ellison

SALLY ELLISON
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