THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case Nos. 2011-GS-23-01118; 01122-01124

The State, Respondent,

v.

Christopher E. Russell, Appellant.

Appellate Case No. 2013-000381

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On July 19, 2011, at a Court of General Sessions, the Grand Jurors of Greenville County returned true bills on indictments against Christopher Eric Russell ("Russell") for Conspiracy (Case No. 2011-GS-23-001118), Kidnapping (Case No. 2011-GS-23-001122), Armed Robbery (Case No. 2011-GS-23-001123), and Burglary First Degree (Case No. 2011-GS-23-001124), all of which were alleged to have occurred on December 18, 2010. (R. pp. 530-37). On December 8, 2011, the State filed its Notice of Intent to Seek Life Without Parole. (R. pp. 523-25). On October 26, 2012, Russell, through counsel, filed a Notice of Alibi Defense setting forth his whereabouts on December 18, 2010 and identifying two witnesses who would testify to his alibi. (R. p. 477). On February 11, 2013, Russell made two oral motions to suppress evidence. (R. pp. 21-31). On February 11, 2013, Russell's motions were denied and he was put on trial before the Honorable R. Lawton McIntosh and a jury in Greenville County. (R. p. 31). Russell's

trial counsel moved for directed verdict and renewed her evidentiary motions at the close of each evidentiary phase. (R. pp. 314, 464). Russell's trial counsel objected to certain statements during the State's closing argument and moved for a mistrial, and renewed the motion after the jury instructions. (R. pp. 424, 464). On February 13, 2013, the jury deliberated and returned a verdict of guilty with respect to all four indictments. (R. pp. 468-70). The trial court sentenced Russell to life without parole. (R. pp. 474, 526-29). On February 20, 2013, Russell filed and served the Notice of Appeal. (R. p. 538).

FACTS

This case involves a robbery of a residence in Greenville, South Carolina (the "Residence") that was perpetrated by Antonias Williams ("Williams") and another man on the evening of December 18, 2010. (R. p. 264). The owners of the Residence, Jeffrey and Elaine Lyles ("Mr. and Mrs. Lyles"), were surprised that evening by two armed individuals who tied them up, took the money that each had on their person, and ran from the house. (R. pp. 60-70, 93-97, 147-148). One of the robbers, Williams, tried to flee with Mr. Lyles' money and other possessions but was chased down at the scene by a police dog. (R. pp. 212-14). The other individual successfully fled the scene without being apprehended. (R. pp. 148-49). Although Williams initially refused to identify the other person who was with him, he later identified his partner and agreed to testify against him. (R. pp. 223-24). When Williams initially gave a statement to law enforcement, he identified his accomplice as "Poncho." (R. p. 303). When Williams testified at trial, he stated that his partner, "Poncho," was Russell. (R. pp. 264-65). No other witness testified during the State's case-in-chief that Russell was known as

"Poncho." (R. pp. 368-70). In fact, one of the State's witnesses testified that the State had a record of aliases for Russell, and "Poncho" was not one of them. (R. p. 252-53).

Williams admitted that he expected to receive a benefit from the State for his testimony against Russell. (R. p. 302-03). Before Russell's trial, Williams pled guilty to conspiracy, armed robbery and kidnapping in connection with the robbery of the Residence, and was sentenced to five years in prison for conspiracy, with the State waiting until after Russell's trial to sentence Williams on the other charges. (R. p. 260-61, 300-301). The State agreed to dismiss Williams' burglary charge, which had the highest mandatory minimum sentence. (R. p. 303). Williams had a prior criminal record. (R. pp. 509-18). As a result, Williams could have been facing a lengthy prison term if the burglary charge had not been dropped by the State. (R. p. 298, 302-03).

What happened to Mr. and Mrs. Lyles was terrible, but Russell simply was not with Williams on the night of December 18, 2010. (R. p. 335). The Defense denied that Russell was "Poncho," Williams' accomplice who disappeared into the night. (R. pp. 406-48). Russell notified the State of his alibi defense, and presented his alibi at trial through the two witnesses identified in his notice. (R. p. 447, 329-31, 350-63).

Where was Russell on December 18, 2010?

On the evening of Saturday, December 18, 2010, Russell was at the home of his mother, Eleanor Russell ("Ms. Russell"), watching a sports game on her television with some other people. (R. pp. 335-38). Russell was accompanied by, among others, his girlfriend at the time, Ruby Willett ("Willett"). (R. pp. 352-54). According to Ms. Russell, Russell arrived around 7:00 p.m. and stayed until 10:00 p.m. (R. p. 335).

Russell and Willett went to his mother's house to watch the game because Russell and Willett's apartment did not have cable television at the time. (R. pp. 352-53).

What did Williams do on December 18, 2010?

Meanwhile, on December 18, 2010, Williams and the man that Williams initially identified as "Poncho," who the State alleged at trial was Russell, traveled to the Residence in a van that Williams had borrowed from his employer. (R. pp. 264-65, 273-74). Williams had been observing the Residence for several weeks. (R. p. 267). Williams intended to take money from an individual named Tavarus Lyles, also known as "T-Lyles," who was involved in drugs. (R. pp. 85, 267-68) Williams had been inside the Residence before with T-Lyles. (R. p. 308). Williams believed that T-Lyles lived at the Residence and kept a large amount of money there. (R. pp. 267-68). Williams and his accomplice put on ski masks that said "Police" and hid behind the Residence. (R. pp. 271-75). Williams testified that he and the other man left their cell phones in the vehicle before they went to hide behind the Residence. (R. pp. 274-75). After hiding for some time, Williams and the other man forced their way into the Residence when someone opened the back door to get firewood. (R. p. 277).

Williams took cash, a watch and a cell phone from the man in the Residence. (R. p. 279). The man Williams identified as Poncho told Williams that someone was coming, and another person arrived at the house and was taken to the ground by Williams and his partner. (R. pp. 279-80). Eventually, the police arrived. (R. p. 281). Williams tried to flee out the back door but was caught by a police dog. (R. p. 282). Williams had

no idea where his accomplice went when Williams tried to flee the house. (R. pp. 282-283). Williams refused to talk to police at the scene. (R. pp. 213-14).

The Eyewitness Testimony Regarding December 18, 2010.

Mr. and Mrs. Lyles, who lived in the Residence, both testified at trial. (R. p. 60). The Residence had two entrances, one in the front and one in the back. (R. pp. 145-46). Mr. and Mrs. Lyles were not home during the day on December 18, 2010 because they were working at a restaurant in Greenville owned by members of their family. (R. pp. 60-61, 89-90). Mr. Lyles, after cooking and cleaning at the restaurant, grew tired and left the restaurant around 4:45 p.m. (R. p. 61). Mrs. Lyles stayed at the restaurant for a longer period of time, along with the Lyles' granddaughter, Danielle Durham ("Durham"). (R. pp. 90-91). Mr. Lyles got home around 5:00 p.m. and started a fire and put on some music to relax. (R. p. 61). At some point that evening, Mr. Lyles stepped out the back door of the Residence to get more firewood. (R. p. 63).

When Mr. Lyles went outside to get firewood, he was confronted by two armed men wearing stocking caps that said "Police" on them. (R. p. 63). The men forced their way into the Residence. (Id.) The men forced Mr. Lyles to the ground and tied him up. (R. p. 66). One of the men pointed his gun at Mr. Lyles and demanded to know the location of "the safe." (Id.) Mr. Lyles was not aware of any safe in his home. (Id.) The men took Mr. Lyles around the Residence searching for "the safe." (R. pp. 66-68). One of the men demanded Mr. Lyles' money. (R. p. 66). Mr. Lyles gave the bigger man the cash that he had on his person. (R. p. 67). The bigger man also took Mr. Lyles' watch and cell phone. (R. p. 72). This same man was the one who had pushed Mr. Lyles to the

floor and tied him up. (R. p. 87). Williams was apprehended with Mr. Lyles' possessions on his person. (R. p. 214).

Meanwhile, around 8:30 p.m., Mrs. Lyles and Ms. Durham left the restaurant. (R. p. 90). They had intended to go to Waffle House to pick up dinner, but ended up driving to the Residence instead because they were unable to reach Mr. Lyles to find out what he wanted to eat. (R. pp. 90-92). Mrs. Lyles and Durham arrived at the Residence and went inside. (R. p. 91). When Mrs. Lyles went inside, she was surprised by an armed man wearing a mask that said "Police." (R. pp. 93-94). Durham, who was behind Mrs. Lyles, fled the house when she saw the man confront Mrs. Lyles. (R. pp. 135-36).

The man who surprised Mrs. Lyles tied her up and demanded to know where "the safe" was and demanded her money. (R. p. 95). Mrs. Lyles, like Mr. Lyles, was not aware of a safe in the residence and told the man that. (R. pp. 95-96). The man took the cash in Mrs. Lyles' purse. (R. pp. 96-97).

While Mr. and Mrs. Lyles were tied up in the Residence, Durham ran to the house next door. (R. pp. 142-44). At that time Jimmy McDaniel ("McDaniel"), who used to live at that house, was pulling into the driveway to return something to the house. (Id.) Durham ran up to McDaniel and asked for help. (R. p. 137). McDaniel called 911 and law enforcement thereafter arrived at the Residence. (R. pp. 145-46).

When law enforcement arrived, the two masked men in the Residence split up. (R. p. 99). Williams went to the back door, and his accomplice went to the front door. (R. pp. 99, 281-82). They opened the doors and ran from the residence. (R. pp. 147-48). Williams dropped his gun as he fled. (R. p. 282). A police dog chased Williams and

took him down. (Id.) According to McDaniel, the other man, who ran out the front door, disappeared into a wooded area. (R. pp. 148-49, 151).

None of the Four Witnesses at Trial Definitively Identified Russell as Present at the Crime Scene on December 18, 2010.

At trial, each of the four witnesses, Mr. Lyles, Mrs. Lyles, Durham and McDaniel, was asked to testify as to whether Russell was at the Residence on December 18, 2010. None of them could do so definitively. When Russell was pointed out by the Solicitor, Mr. Lyles testified that he had "[n]ever seen him before in my life." (R. p. 74). Durham testified that she could not identify the man that she saw in the Lyles' Residence. (R. p. 139). McDaniel testified that he only saw the build, not the face, of the man who ran out the front of the Residence, and speculated that the individual was African-American (like Russell and Williams) because of the racial makeup of the neighborhood, not any personal observation. (R. p. 150). He could not definitively identify the man who left out of the front of the Residence. (R. p. 149).

Russell initially objected to the State's attempt to have Mrs. Lyles identify him in court. (R. p. 102). Mrs. Lyles testified in-camera that the height, weight, lips, complexion and voice of the man who ran out the front door were "consistent" with Mr. Russell's appearance in court. (R. p. 105-06). However, she admitted that she did not get a good look at the man and could not make a complete identification. (R. p. 102). The Solicitor conceded that Mrs. Lyles could not make a definitive identification, either. (Id.) The trial court permitted the Solicitor to ask Mrs. Lyles the lips, height, build, complexion and voice of the man who ran out the front door of the Residence were similar to Russell. (R. pp. 118-24). She testified that they were, but did not specifically

identify the man who ran out the front door as Russell and said she only saw the man for one or two seconds without a mask on. (R. pp. 122-26).

Williams' accomplice, the man who ran out the front door, was not arrested at the crime scene on the night December 18, 2010. (R. p. 213). Law enforcement's only apparent clue regarding this man was a second cell phone discovered during a search of the vehicle that Williams had used the night of the robbery. (R. pp. 217-23). The evidence regarding the second cell phone was admitted over Russell's objection. (R. pp. 22-31, 218). No fingerprints, blood, DNA, hair, or other similar evidence was placed in the record to link Russell to either the vehicle Williams drove or to the Residence. (R. pp. 210, 229, 482-83).

Williams' Testimony Was the Link Between Russell and the Crimes.

The identity of "Poncho" was a significant issue at the trial. (R. pp. 375-76). When Williams initially confessed to police, he identified his accomplice as "Poncho." (R. p. 303). At trial, Williams testified that his accomplice was Russell, and Williams explained that he had always known Russell as "Poncho." (R. pp. 264-65). But there was no other evidence from the State (except for the courtroom deputy's "rebuttal" testimony) that Russell and "Poncho" were the same person. (R. pp. 394-95). Williams' testimony was essential for the State because he was the only witness who definitively identified Russell as having been present in the Residence on the night of the robbery. (R. pp. 273, 277-82). Williams referred to Russell as "Poncho" on more than one occasion during his trial testimony. (R. pp. 265, 280, 303). However, the State's records at the time, which contained other aliases for Russell, did not include "Poncho" as one of

Russell's nicknames. (R. pp. 252-53). As both parties noted in closing, the only witness in the State's case-in-chief who referred to Russell as "Poncho" was Williams. (R. pp. 409-10, 417-18). Russell's counsel pointed out that if "Poncho" was someone other than Russell, the State's case against Russell would be weakened considerably, both from the damage to Williams' credibility and since Russell presented an alibi for the night of the robbery. (R. p. 375).

The Solicitor told the jury that Russell's cell phone was found in the vehicle Williams had intended to use as the get-away vehicle. (R. p. 50). Williams' cell phone was recovered from the search of the vehicle he parked near the Residence, along with a second cell phone. (R. pp. 219-20). The cell phone carrier's records did not identify who owned the second cell phone. (R. pp. 225-26). Williams was the link between the second cell phone found in the vehicle and Russell. (R. p. 276). The investigating officer, Greenville County Sheriff Sergeant Dave Weiner ("Weiner"), testified that Williams told him during his January 5, 2011 confession that the second cell phone belonged to Russell. (R. pp. 224-25). However, Weiner conceded that there was no recording of the confession to substantiate this testimony and further conceded that Williams' written statement did not identify the second cell phone as belonging to Russell. (R. p. 227-28). Russell's counsel objected to the admission of the cell phone records because the affidavit supporting the search warrant for the contents of the second cell phone included Weiner's assertion that Williams identified the second cell phone as belonging to Russell, even though that fact did not appear in Williams' written statement. (R. pp. 30-31, R. pp. 235-36). The search of the phone's records revealed that the second cell phone included Williams in its contacts database, and that several calls had been

placed from that phone to Williams. (R. pp. 284-88, 484-508). The phone's database also included Russell's mother's phone number under the contact "Momma." (R. p. 238, 247, 332, 484-508). The contact alone did not necessarily connect the phone directly to Russell, because Ms. Russell testified that she talked to Russell regularly on the phone, and there were no calls in the second cell phone's database to or from Ms. Russell. (R. pp. 347, 484-508). Furthermore, Ms. Russell had other children besides Russell who could also reasonably have her number under the contact "Momma." (R. 336). The telephone number for Willett, who was undisputedly Russell's girlfriend at the time, does not appear anywhere in the second cell phone's records. (R. pp. 363, 484-508).

The Solicitor, Without Notice to Russell, Called a Courtroom Deputy to Testify at Trial.

After Russell presented his alibi evidence at trial, the Solicitor announced that he intended to present the testimony of a Greenville County Sheriff's deputy in rebuttal. (R. p. 369). The "rebuttal" witness, Master Deputy Bruce Allen Smith ("Deputy Smith"), had been the courtroom security deputy during Russell's trial. (R. p. 384). As such, Deputy Smith was present for the testimony of the witnesses during Russell's trial, and after hearing the evidence volunteered testimony regarding the alias "Poncho" to the Solicitor during the trial. (R. pp. 384-85). Deputy Smith was not on the Solicitor's witness list and was not identified as a rebuttal witness in response to Russell's Notice of Alibi Defense. (R. p. 370-72). According to the trial judge, the Solicitor originally asked to have Deputy Smith testify during the State's case-in-chief, but the trial judge refused to permit the testimony at that time because Deputy Smith was not on the State's witness list. (R. p. 374).

Russell's counsel objected to Deputy Smith testifying because his testimony was not related to Russell's alibi defense. (R. pp. 374-76). After hearing the arguments of counsel, the trial court overruled Russell's objection and permitted Deputy Smith to testify to the jury. (R. pp. 377-86). Deputy Smith testified that he worked off-duty as a security officer for an apartment complex in Greenville. (R. pp. 394-95). Deputy Smith testified that, approximately three to four years before the trial, he saw Russell wearing a camouflage jacket and riding a bicycle at the apartment complex. (R. p. 395). Deputy Smith testified that he asked Russell his name and Russell responded that his name was "Poncho." (R. p. 395).

Deputy Smith's testimony clearly had some effect on the jury, because the jury inquired about him during deliberations. (R. pp. 465). The jury sent a note to the trial court asking: "Was the police Officer Allen Smith on the original list of witnesses? Our concern is that he seems like a last minute witness." (R. p. 522). Deputy Smith was not, in fact, on the State's list of witnesses. (R. p. 466). The trial judge summoned the jurors and instructed them:

> All right, Madam Forelady, ladies and gentlemen of the jury, your question with regard to Mr. Smith as a witness and whether or not he was on the original witness list, let me - - I always hate telling - - not answering a question that the jurors send out to me. However, the rules require that you have to make your decision based on the testimony and the evidence that you heard in this courtroom. Okay. And that's what I've tried to bring forth to you. That is information that is not in the evidence and so I'm not allowed to comment on it. The Judges are not allowed to comment on the facts or have an opinion of the facts. You'll just have to make your determination without any further response from me. And I'm sorry I can't be anymore clearer, okay.

(R. pp. 466-67). Russell's counsel objected to the trial court's instructions. (R. p. 467). Less than two hours later, the jury returned with a guilty verdict on all four counts of the indictment. (R. pp. 468-69).

ARGUMENTS

I. THE TRIAL COURT ERRED BY ALLOWING THE REBUTTAL TESTIMONY OF THE COURTROOM DEPUTY WHO SAT IN COURT DURING THE ENTIRE TRIAL, WAS NOT PREVIOUSLY DISCLOSED AS A WITNESS, DID NOT TESTIFY AS TO ANY OF DEFENDANT'S EVIDENCE, AND PROVIDED THE ONLY TESTIMONY TO SUBSTANTIATE A CLAIM BY THE STATE'S STAR WITNESS THAT RELATED TO HIS IDENTIFICATION OF THE DEFENDANT AS HIS ACCOMPLICE.

A. Standard of Review.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). An abuse of discretion occurs when the trial court's conclusions lack evidentiary support. Id. The trial court's ruling on the admissibility of evidence may also be reversed if it is based on a legal error that results in prejudice to the defendant. State v. Compton, 366 S.C. 671, 677, 623 S.E.2d 661, 664 (Ct. App. 2005) (citing State v. Hamilton, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct. App. 2001), *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)).

B. The Trial Court's Decision Was Incorrect.

The State asked the trial court during its case-in-chief to permit Deputy Smith's testimony, even though Deputy Smith was not on the State's witness list. (R. p. 374). After Russell presented his evidence, the trial court heard a proffer of Deputy Smith's

testimony. (R. p. 381). Deputy Smith's testimony was to be solely limited to the issue of nicknames. (Id.) Deputy Smith testified that, in addition to serving as a courtroom security officer, he also works as the security coordinator for an apartment complex. (R. p. 383). Deputy Smith stated that he saw Russell wearing a camouflage jacket (during warm weather) and riding a bicycle at the apartment complex approximately three to four years before the trial. (R. pp. 383-84). Deputy Smith testified that when he asked Russell his name, Russell responded "Poncho." (R. p. 384). Deputy Smith stated that he was present for the entire trial as a courtroom security officer, and volunteered his information to the Solicitor during the trial. (R. p. 384-85). Deputy Smith conceded during the proffer that other people could have the nickname "Poncho" and admitted that he had never checked any records to see if there were other people with the alias "Poncho." (R. p. 385). The trial court decided, despite its initial reservations, to allow the testimony over Russell's objection that the testimony was hearsay, not proper rebuttal testimony, and more prejudicial than probative given the length of time involved (three or four years). (R. pp. 386, 388-89). The trial court allowed the testimony because: (i) the trial court did not think the State needed to name its reply witnesses beforehand; (ii) the trial court was concerned with fairness because it prevented the State from introducing Deputy Smith's testimony during its case-in-chief; and (iii) Russell interjected the issue of the identity of "Poncho" into the case through cross-examination. (R. pp. 374, 389). Deputy Smith's testimony to the jury was identical to his *in camera* testimony. (R. pp. 393-96).

C. The Trial Court's Incorrect Decision Was An Abuse of Discretion.

The trial court abused its discretion in permitting Deputy Smith to testify for the State in reply because Deputy Smith was not a proper rebuttal witness. Although the admission of reply testimony is ordinarily within the discretion of the trial court, reply testimony should be limited to rebuttal of matters raised by the defense. State v. Farrow, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998). The improper admission of reply testimony is a basis for reversal if it is prejudicial. Id., 504 S.E.2d at 133. Deputy Smith's testimony did not address matters raised by the defense, and was prejudicial to Russell. The trial court abused its discretion by allowing the testimony.

i. Deputy Smith's Testimony Was Improperly Admitted Because It Did Not Address Matters Raised by the Defense.

In *Farrow*, a case involving the armed robbery of a convenience store, the State put on evidence that the defendant was wearing a shirt identical to the shirt of the robber, as filmed on the store's surveillance video. 332 S.C. at 191, 504 S.E.2d at 132. After the first day of trial, a juror submitted questions about technical aspects of the surveillance system. Id., 504 S.E.2d at 132. The trial court decided to allow the State to present evidence during rebuttal to address the juror's questions. Id., 504 S.E.2d at 132. The defendant presented an alibi defense, introducing two witnesses who testified that (i) defendant was not at the store on the date of the robbery and (ii) the defendant did not buy a shirt like the one seen in the surveillance video until after the date of the robbery. Id. at 192-93, 504 S.E.2d at 132. During its reply, the State presented, over the defendant's objection, testimony from a law enforcement officer regarding the store's surveillance system. Id. at 194, 504 S.E.2d at 132. The defendant had not addressed the

technical workings of the surveillance system in his case-in-chief. Id., 504 S.E.2d at 133. The State argued on appeal that the testimony regarding the surveillance system was equivalent to the trial court exercising its discretion and permitting the State to reopen its case to prove an essential element. Id., 504 S.E.2d at 133. This Court disagreed, and held that the law enforcement officer's testimony about the surveillance system was improper because it was not presented to rebut the defendant's evidence. Id., 504 S.E.2d at 133. This Court decided not to reverse because the testimony about the surveillance system was not prejudicial as the "rebuttal" testimony consisted of describing the surveillance system as "not sophisticated and was similar to a home camera." Id., 504 S.E.2d at 133. *See also* State v. Huckabee, 388 S.C. 232, 242-43, 694 S.E.2d 781, 786 (Ct. App. 2010) (holding that the trial court did not abuse its discretion in admitting reply testimony because the testimony, that the witness did not own a handbag, was limited to contradicting the defendant's testimony that the witness had pulled a gun from her handbag and fired it at him).

Like the situation in *Farrow*, Deputy Smith's testimony in this case did not rebut Russell's evidence. Russell presented three witnesses. First, Anthony Lounds ("Lounds"), a prisoner who stated that he was in the same jail as Williams, testified that he overheard Williams talking on the telephone and believed that Williams said something to law enforcement that caused Russell to be jailed for something Russell did not do. (R. pp. 326-27). Ms. Russell then testified that Russell was at her residence during the time of the robbery. (R. pp. 328-31). Finally, Willett testified that Russell was at Ms. Russell's residence on the day of the robbery. (R. pp. 350-54). The Solicitor conceded that Russell's witnesses did not testify regarding the identity of "Poncho." (R.

p. 370). Deputy Smith's testimony was supposed to relate solely to whether Russell went by the alias "Poncho." (R. p. 369). That had nothing to do with the evidence that Russell presented.

Instead, the Solicitor called Deputy Smith to bolster the testimony of the State's star witness, Williams, that Russell was known by the name "Poncho" and set up the State's closing arguments that Russell committed the crime because he owned a camouflage coat like one of the robbers and rode a bicycle just as Russell did on the day he was arrested. (R. p. 418). During his testimony for the State, Williams referred to Russell as "Poncho" on more than one occasion. (R. pp. 265, 280). But the State's prison records custodian testified that the State had no record of Russell using the alias "Poncho," although the State had other aliases for Russell in its records. (R. p. 252-53). Russell did not attempt to introduce the State's list of aliases into evidence. (R. p. 253). Russell did not present any evidence in his case-in-chief regarding (i) the name "Poncho," (ii) Russell's clothing on December 18, 2010 or (iii) the circumstances of Russell's arrest. Deputy Smith's testimony did not refute any evidence presented by Russell. It was improper and should have been excluded.

The trial court noted that Deputy Smith's testimony was not responsive to the Defense's evidence:

> THE COURT: Well, let me stop you. I hear you. Let me ask you this, do you want to risk dirtying up the record, based on a procedural posture in this case, by introducing evidence that was not responsive to the Defense? Regardless of my mistake or not?
>
> MR. MOYER: Your Honor, I really don't have a problem with it.
>
> THE COURT: I do.

(R. p. 377-78). However, the trial court, despite its expressed reservations, permitted the testimony over Russell's objection because it had prevented the Solicitor from introducing Deputy Smith's testimony during the State's case-in-chief because Deputy Smith was not on the witness list provided to Russell. (R. p. 389). The trial court's decision was analogous to the trial court's decision in *Farrow* to permit the State to furnish testimony that should have been presented during its case-in-chief and did not address the evidence the defendant presented to the jury. As this Court held in *Farrow*, such evidence is improper. Deputy Smith's testimony was improper and should have been excluded.

ii. Deputy Smith's Testimony Was Prejudicial to the Defense.

The trial court's decision to allow Deputy Smith to testify prejudiced Russell for three reasons. First, allowing the courtroom deputy to testify improperly influenced the jury. Second, it subjected Russell to trial by ambush. Third, the trial court did not poll the jury to determine if any members knew Deputy Smith.

Deputy Smith's testimony improperly influenced the jury. Criminal defendants have a Fourteenth Amendment due process right to trial by an impartial jury, untainted by improper influences. Turner v. Louisiana, 379 U.S. 466, 474 (1965); State v. Bryant, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003). The Supreme Court of the United States has held that when a law enforcement officer plays the dual roles of key trial witness and jury bailiff there is inherent prejudice warranting reversal. Gonzales v. Beto, 405 U.S. 1052, 92 S.Ct. 1503, 1505 (1972) (Stewart, J., concurring). In *Turner*, two deputy sheriffs were "key" prosecution witnesses and also served as bailiffs who ate with and conversed with

the jury while they were sequestered. Turner, 379 U.S. at 467-68. The Supreme Court reversed Turner's conviction, even though the deputies testified under oath after the trial that they did not discuss the case with the jury outside of their courtroom testimony, because of the "extreme prejudice" inherent in their dual roles of key testifying witnesses and continued contact with the jury. Id. at 473. The Supreme Court's fundamental concern was that the jurors would give more weight to the deputies' testimony based upon their position of authority with the jury. Id. at 474. Although the facts of this case differ somewhat from *Turner*, the Supreme Court's fundamental concern remains an issue.

In this case, the record regarding Deputy Smith's role at trial is not well developed. At a minimum, Deputy Smith was in the courtroom before he testified, in uniform, during the entire trial as the courtroom security officer. (R. pp. 384-85). As such, he, like the bailiffs in *Turner*, may have been viewed by the jury as more credible than a typical witness when he testified because they observed him in a position of authority in the courtroom. Indeed, the jury obviously took note of his testimony, because they asked the trial court a question about it during deliberations. (R. p. 465). The trial court, over Russell's objection, declined to give the jury any guidance in response to their question, and never instructed the jury to give Deputy Smith's testimony the same weight as that of other witnesses. (R. pp. 466-67). Nothing was done to prevent the jury from giving undue weight to Deputy Smith's testimony.

In other jurisdictions with reported cases regarding the issue of testimony by a courtroom security officer, the proper relief varies. In California, for example, the proper course of conduct is to relieve the individual of his or her courtroom duties and admonish

the jury not to give the witness' testimony greater weight because he or she was a courtroom deputy. People v. Cummings, 850 P.2d 1, 37-38 (Cal. 1993); People v. Guerra, 129 P.3d 321, 364 (Cal. 2006) (instruction not necessary if bailiff reassigned before the commencement of jury selection) *overruled in part on other grounds by* People v. Rundle, 180 P.3d 224 (Cal. 2008). Other states do not necessarily have this general rule, but share the concerns of the U.S. and California Supreme Courts. In Georgia, the state supreme court fairly recently issued a decision reversing a conviction where a law enforcement officer was one of several prosecution witnesses and also served (after testifying) as a bailiff for approximately one day of a four day trial. Bass v. State, 674 S.E.2d 255, 257-58 (Ga. 2009). In North Carolina, the state supreme court held that there was no prejudice to the defendant when the testifying security officer only had contact with the jurors in the courtroom letting the jurors in and out of the room or directing them to their seats, and the trial court remedied any potential conflict by ordering the testifying officer not to have any direct contact with jurors. State v. Flowers, 489 S.E.2d 391, 402 (N.C. 1997). Also of note, in *Flowers* the defendant did not allege any actual prejudice but merely asserted that prejudice must be conclusively presumed if a witness serves as a bailiff in a criminal trial. Id. In this case, unlike the California and North Carolina cases, the trial court took no precautions regarding Deputy Smith's testimony. Russell was actually prejudiced by Deputy Smith's testimony. The jurors obviously gave some consideration to Deputy Smith's testimony, because they asked the trial court about it, and although Russell objected to the trial court's answer, no instructions or other curative steps were taken to prevent Deputy Smith's testimony from being given undue weight.

Russell was further prejudiced by Deputy Smith's testimony, if that testimony was solely intended to bolster Williams' statement that Russell was "Poncho," because the testimony was an ambush. This Court has disapproved of "trial by ambush" before. State v. Barroso, 320 S.C. 1, 23, 462 S.E.2d 862, 876 (1995) (holding that trial court did not err in refusing to grant mistrial when trial court disallowed "ambush" testimony and gave "a careful and thorough curative instruction") (Ct. App. 1995), *rev'd on other grounds*, 328 S.C. 268, 493 S.E.2d 854 (1997); *see also* State v. Duncan, 274 S.C. 379, 382, 264 S.E.2d 421, 423 (1980) (defendant not prejudiced by testimony of witness not on State's list because defendant's counsel was aware of the nature of the witness' testimony and had the opportunity to confer with the witness before he took the stand). Russell had no prior notice of Deputy Smith's testimony. It is undisputed that Deputy Smith was not on any witness list provided to the defense by the Solicitor. In admitting Deputy Smith's testimony, the trial court relied on the fact that Rule 5(a), SCRCrimP, does not require the State to provide its witness list to a criminal defendant. State v. Nicholson, 366 S.C. 568, 579, 623 S.E.2d 100, 105 (Ct. App. 2005). The State had known since Williams gave his statement on January 5, 2011 that its key witness would claim that Russell was known as "Poncho." (R. pp. 265, 303). Russell's trial was not until 2013. There was therefore plenty of time for the State to notify Russell of his alleged statement to Deputy Smith three to four years ago that would be used against him, but the State did not do so. The trial court should have excluded Deputy Smith's testimony.

If Deputy Smith's testimony was intended to counter Russell's alibi defense, it was not properly noticed and should have been excluded. Rule 5(e)(2), SCRCrimP,

requires the State to identify the witnesses that it intends to rely on to establish a defendant's presence at the crime scene not less than ten days before trial. Deputy Smith was not identified as a witness before trial. (R. p. 371). Rule 5(e)(4), SCRCrimP permitted the trial court to exclude Deputy Smith's testimony if the testimony was intended to rebut Russell's alibi. The trial court's decisions under Rule 5(e)(4), SCRCrimP, are reviewed for abuse of discretion. State v. Trotter, 317 S.C. 411, 414, 453 S.E.2d 905, 907 (Ct. App. 1995), *modified*, 322 S.C. 537, 473 S.E.2d 452 (1996); *but see* State v. Beckham, 334 S.C. 302, 312-13, 513 S.E.2d 606, 611 (1999) (not discussing standard of review). The trial court abused its discretion. It should have followed its initial inclination to "air on the other side just to be cautious." (R. p. 380, lines 14-18; Tr. p. 418). Based upon the combination of the trial court's own concerns regarding the prejudice to Russell and the jury's evident consideration of Deputy Smith's testimony, the trial court abused its discretion in admitting Deputy Smith's testimony.

Finally, Russell was prejudiced because the trial court never polled the jury to see if they knew of or were related to Deputy Smith. The Solicitor initially suggested that the jury be asked if any of the members knew Deputy Smith, whose name was not called out to the jury during *voir dire*. (R. p. 372). The trial court never did so before Deputy Smith testified. (R. p. 393). Identifying witnesses to the jury panel during *voir dire* is necessary to see that an unbiased, fair and impartial set of persons is impaneled. State v. Powers, 331 S.C. 37, 43-44, 501 S.E.2d 116, 119 (1998). Since Deputy Smith was not identified during *voir dire*, it is not possible to know if Russell received an unbiased, fair and impartial panel. The trial court erred by not asking the jurors if they knew Deputy Smith before he testified, and Russell was prejudiced by the trial court's error.

Deputy Smith's "rebuttal" testimony was not responsive to Russell's evidence and improperly influenced the jury or otherwise prejudiced Russell. It should have been excluded. Russell's counsel properly objected. The trial court abused its discretion in permitting Deputy Smith to testify. Deputy Smith's testimony did not relate to Russell's alibi or case-in-chief. Deputy Smith's testimony was improperly influential because, as a courtroom deputy, Deputy Smith was in a position of authority; his testimony was clearly of interest to the jury, but the jury was not instructed to give his testimony no more weight than any other witness. Furthermore, his testimony was not properly noticed and the jury was never questioned to see if they could evaluate Deputy Smith's testimony impartially. This Court should reverse Russell's conviction and remand the matter for a new trial as a result of Deputy Smith's improperly influential testimony regarding Russell's identity.

II. THE TRIAL COURT ERRED BY DENYING THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE OBTAINTED PURSUANT TO A SEARCH WARRANT THAT CONTAINED FALSE INFORMATION.

A. Standard of Review.

The trial court's factual findings regarding whether evidence should be suppressed based upon a Fourth Amendment violation are reviewed for clear error. State v. Baccus, 367 S.C. 41, 48-48, 625 S.E.2d 216, 220 (2006). In determining whether there was a substantial basis to find probable cause to authorize a search, the reviewing court analyzes the totality of the circumstances of the affidavit supporting the search warrant, including the status, basis of knowledge, and veracity of the informant. State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 679 (2000).

B. The Search Warrant Affidavit.

The State obtained data from the second sell phone pursuant to a search warrant dated February 7, 2013. The affidavit supporting the search warrant, from Investigator A.L. Bailey ("Bailey"), requested the search because (i) Williams identified the second cell phone as belonging to Russell and (ii) a thorough search of the phone was necessary to complete a proper investigation. (R. p. 479). The affidavit was the subject of a pretrial motion, and was handed up to the trial court for its review by Russell's counsel during her argument. (R. pp. 27, 30-31). Although the affidavit was not identified as a court exhibit, it was reviewed and considered by the trial court in making its decision regarding the search. (R. p. 31).

Russell moved to suppress the records produced by the February 7, 2013 search of the second cell phone before the State presented its case, arguing that the search warrant did not establish probable cause. (R. pp. 22-24). Russell reasonably anticipated that the State would attempt to use the data from the phone, including the fact that the phone contained a contact labeled "Momma" with Russell's mother's phone number, to tie Russell to the robbery. Rather than hearing testimony, the trial court allowed counsel to summarize the circumstances of the search and the contents of the affidavit. (R. pp. 25-29). Essentially, the State alleged in its search warrant affidavit that the second cell phone found in the vehicle belonged to Russell based upon a statement that Williams made to law enforcement. (R. pp. 27-28). However, no statements or other information from Williams identifying the second cell phone as having belonged to Russell were ever produced to Russell. (R. pp. 29-30). The trial court initially denied Russell's motion without actually receiving any evidence. (R. p. 31).

At trial, the State introduced the second cell phone into evidence through Weiner, subject to Russell's objection. (R. p. 222). Weiner testified that Williams told him that the second cell phone belonged to Russell, but agreed that no video or written record evidenced Williams' statement. (R. pp. 224-25, 227-28). Weiner admitted that the second cell phone's carrier did not have any record regarding its ownership. (R. pp. 225-26). Weiner also admitted that the phone did not have any fingerprints on it. (R. p. 229). The trial court never heard testimony from the affiant, Investigator Bailey, to establish his knowledge of Williams' alleged statement. The investigator who did testify, Weiner, did not mention Bailey during his testimony. Russell's counsel renewed her motion to suppress the evidence, but the trial court overruled her and admitted the second cell phone's database records into evidence as State's Exhibit 43. (R. pp. 235-36). Although Williams later testified that the second cell phone belonged to Russell, he did not testify regarding whether he told that to law enforcement during his January 5, 2011 statement. (R. p. 276).

C. *The Affidavit Included False Information and the Trial Court Should Have Suppressed the Cell Phone Records or Given Russell an Evidentiary Hearing.*

A search warrant may only be issued upon a sworn affidavit that establishes the grounds for the warrant. S.C. Code. Ann. § 17-13-140 (2013). Although the affidavit is presumed valid, a challenger is entitled to an evidentiary hearing if: (i) the challenger alleges a deliberate falsehood or reckless disregard for the truth; (ii) the allegations are accompanied by an offer of proof that (a) points out the specific portion of the affidavit that is claimed to be false and (b) is accompanied by supporting reasons; and (iii) if when the allegedly false materials are disregarded, the affidavit's remaining content is not

sufficient to find probable cause. Franks v. Delaware, 438 U.S. 154, 171-72 (1978). Russell supplied sufficient grounds to be entitled to an evidentiary hearing, but the trial court never conducted one. (R. pp. 30-31). Instead the trial court relied on Weiner's testimony before the jury to overrule Russell's *Franks* motion. (R. pp. 235-36).

In *State v. Jones*, an officer submitted a search warrant affidavit to a magistrate that stated information had been obtained from an "agent" regarding the defendant's drug activities, when the information really came from a confidential informant. 342 S.C. 121, 125, 536 S.E.2d 675, 677 (2000). Although the officer truthfully told the magistrate that the "agent" was really a confidential informant, the magistrate was under the false impression that the information was coming from a law enforcement officer. Id. at 126, 536 S.E.2d at 677. The trial court admitted the evidence resulting from the search, but this Court reversed, holding that the evidence should have been suppressed because the affidavit contained a false statement. Id., 536 S.E.2d at 678. The Supreme Court agreed, because if the statement was excluded there would not be sufficient corroborating evidence of the allegations in the affidavit to support a finding of probable cause. Id. at 127, 536 S.E.2d at 678.

In this case, although Bailey's affidavit stated that Williams identified the second cell phone as Russell's, Bailey never testified and Weiner conceded that: (i) there was no videotape of the confession and (ii) Williams' sworn written statement did not actually identify the second cell phone as belonging to Russell. (R. pp. 227-28). Based on the record, the only statement in the search warrant affidavit connecting Russell to the second cell phone was Williams' purported oral statement to Weiner. (Id.) The trial court determined that although ownership of the second cell phone was not mentioned in

Williams' written statement, the statement in the search warrant affidavit did not rise to the level of a material misrepresentation required by *Franks*. (R. p. 236). However, the statement in the search warrant affidavit was a misrepresentation because it was not supported by the contents of Williams' sworn written statement. The trial court's decision was a clear error, as there was no evidence in the record to explain how the affiant, Bailey, knew about Williams' supposed statement. The misrepresentation is material because if Williams' alleged statement was stricken from the search warrant affidavit, there would not have been a substantial basis for the magistrate to find probable cause to order the search because the statement was the only indication that the second cell phone was in any way connected to the robbery. (R. p. 479); State v. Jenkins, 398 S.C. 215, 224, 727 S.E.2d 761, 766 (Ct. App. 2012). The trial court erred in overruling Russell's *Franks* motion, and since the phone records were an integral part of the trial testimony, which otherwise contains little evidence to connect Russell to the robbery, like *Jones* the proper remedy is to reverse and remand for retrial. State v. Jones, 342 S.C. 121, 129, 536 S.E.2d 675, 679 (2000). In the alternative, Russell is at the very least entitled to have this matter remanded for an evidentiary hearing by the trial court to determine what Bailey actually knew, and what the magistrate may have been told (if anything), when the affidavit was issued. State v. Sampson, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1994).

III. THE TRIAL COURT ERRED BY NOT DECLARING A MISTRIAL AFTER THE SOLICITOR REPEATEDLY AND IMPROPERLY ATTACKED THE DEFENDANT'S ALIBI DEFENSE DURING CLOSING ARGUMENT.

A. Standard of Review.

A trial court's decision on the appropriateness of a solicitor's argument is reviewed for abuse of discretion, and any alleged impropriety is examined in light of the entire record. State v. Rudd, 355 S.C. 543, 548, 586 S.E.2d 153, 156 (Ct. App. 2003); State v. Sweet, 342 S.C. 342, 347-48, 536 S.E.2d 91, 93-94 (Ct. App. 2000).

B. The Solicitor's Made Improper Arguments That the Trial Court's Instructions Did Not Cure.

During his closing argument, after he claimed that Deputy Smith's testimony made Williams' assertion that Russell was "Poncho" a "nonissue" the Solicitor asserted that the Defendant's alibi witnesses:

> had the key to remedy that injustice. And they had that key in their pocket. And they kept that key in their pocket for two years. Two years.

(R. pp. 418-20). In other words, the Solicitor insinuated that the alibi witnesses did not come forward with information until trial. Russell's counsel promptly objected and stated that Russell had provided notice of his alibi defense. (R. p. 421). The Solicitor also commented on the fact that only two people testified when five people were with Russell at the time of the robbery. (Id.) The Solicitor continued and asserted:

> all they had to do was go down to the law enforcement and let that person free. You wouldn't sit by and not let that information out. You'd be crying from the roof tops.

(Id.) Russell's counsel objected again, and the trial court instructed the jury:

> Ladies and gentlemen, the burden is on the State of South Carolina at all times to prove the Defendant guilty beyond a reasonable doubt of all charges. Any insinuation that may be given to you otherwise is incorrect.

(R. pp. 421-22).

The trial court's instruction should have ended the matter. But the Solicitor continued railing against Russell's alibi witnesses, and claimed that they should have gone to the local news. (R. p. 422). Finally, the Solicitor asserted: "Instead of that, it was an ambush. They wait until all this time goes by and then they let it out." (Id.) Russell's counsel again objected, based upon the fact that Russell had provided notice of his alibi defense as required by Rule 5(c), SCRCrimP, and the trial court sent the jury out of court to hear counsel's arguments regarding Russell's objection. (Id.)

Russell's counsel's moved for a mistrial based upon the Solicitor's comments that Russell's alibi evidence "was an ambush." (R. p. 423). The trial court denied her motion without explanation. (R. p. 424). However, the trial court agreed that Russell's objection was appropriate, and *sua sponte* instructed the jury when they reentered the courtroom:

> Just one moment, ladies and gentlemen of the jury, attorneys are allowed wide latitude in their arguments. And I'll remind you of this, when you go back and begin your deliberations, if your memory of the testimony and evidence differs from what either of these attorneys tell you, then your memory will control, okay. With that being said, the Rules of Procedure in criminal court are if a Defendant wishes to assert an alibi defense, as was done in this case, that you have to give advance notice before trial to the State. And that was done.

(R. pp. 424-25). This did not match Russell's request for jury instruction regarding Rule 5(c), SCRCrimP, but the trial court declined to give further instruction regarding Russell's Jury Instruction Request No. 8. (R. pp. 438, 520-21). The trial court did

instruct the jury regarding the burden of proof with respect to Russell's alibi using the instruction Russell requested. (R. pp. 458-59, 520).

At the conclusion of the jury instructions, Russell's counsel renewed her objections. (R. p. 462). Russell's counsel also renewed her request for a mistrial, based on the Solicitor commenting on what testimony Russell did not present. (R. p. 464). The trial court denied her objections and request for a mistrial. (R. p. 465).

C. In Light of the Entire Record, Russell Has Demonstrated That The Solicitor's Argument Denied Him a Fair Trial and the Trial Court Should Have Granted Russell's Request for a Mistrial.

It does not appear to have been proper for the Solicitor to repeatedly comment on Russell's alibi witnesses supposedly not coming forward and insinuating an adverse inference from Russell only calling two alibi witnesses instead of five. When a defendant does not present evidence, it is not proper for the solicitor to comment in closing argument on a defendant's failure to call alibi witnesses. State v. Primus, 349 S.C. 576, 584, 564 S.E.2d 103, 108 (2002), *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). A jury should ordinarily be instructed not to draw inferences from the neglect of a defendant to call witnesses, although if the defendant presents evidence, the solicitor may comment on the defendant's failure to produce witnesses who would substantiate his story. Douglas v. State, 332 S.C. 67, 71, 504 S.E.2d 307, 309 (1998). However, the Supreme Court of South Carolina held three months after *Douglas* that an adverse inference is not warranted where a party does not call a particular witness but the material facts in that witness' knowledge are testified to by other qualified witnesses. State v. Charping, 333 S.C. 124, 128-29, 508 S.E.2d 851,

853-54 (1998). In this case, additional alibi witnesses would have been cumulative. Although the trial court did instruct the jury in response to Russell's counsel's objections, the judge never instructed the jurors not to make an adverse inference. The trial court could have easily let the jurors know, as Russell's counsel requested in her proposed instruction, that Russell provided the location and identified his witnesses. Simply telling the jury that a notice was provided, without explaining what the State was told, or that no adverse inference should be drawn, was not an adequate curative instruction. Therefore, the proper remedy was a mistrial.

In *State v. Primus*, the Supreme Court discussed the application of harmless error when a solicitor comments regarding an alibi defense. 349 S.C. 576, 587-88, 564 S.E.2d 103, 109 (2002). In that case, involving alleged criminal sexual conduct, the solicitor's comments were harmless in light of the overwhelming evidence of guilt, including both fingerprint and DNA evidence, a positive identification by the victim, and injuries on the defendant consistent with those the victim stated she inflicted while struggling with the defendant. Id., 564 S.E.2d at 109. In this case, there is no fingerprint or DNA evidence implicating Russell, and neither robbery victim positively and definitively identified Russell as being one of the perpetrators. (R. pp. 74, 102, 210, 229). Although Williams testified against Russell, the evidence of Russell's guilt is far less overwhelming than in *Primus*. The trial judge's error regarding the Solicitor's comments was not harmless. The Solicitor's repeated comments during closing argument, coupled with the trial court's failure to provide an adequate curative instruction, so infected Russell's trial with unfairness that his conviction was a denial of due process. Primus, 349 S.C. at 588, 564 S.E.2d at 109.

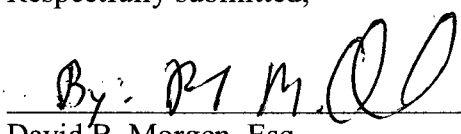
Even if the errors listed above are individually insufficient to warrant a new trial, their cumulative effect was so prejudicial to Russell as to justify reversal. State v. Peterson, 287 S.C. 244, 246, 335 S.E.2d 800, 801 (1985) (per curiam), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. Freeman, 319 S.C. 110, 123-24, 459 S.E.2d 867, 875 (Ct. App. 1995). In *Freeman*, a combination of multiple interruptions or limitations of cross examination by the trial judge was sufficient to justify granting a new trial based upon the prejudice to the defendant, even though each error alone would not have been enough. 319 S.C. at 123, 459 S.E.2d at 875. In this case, the combination of the improperly influential testimony of Deputy Smith, improperly admitted phone records, and improper arguments of the Solicitor are each alone sufficient to justify a new trial, but in combination, they worked to deprive Russell of a fair trial and justify reversing the verdict and remanding for a new trial.

CONCLUSION

For the reasons stated herein, this Court should reverse the judgment of the circuit court and remand the matter for a new trial. Deputy Smith's "rebuttal" testimony was not responsive to Russell's evidence and was improperly influential on the jury or otherwise prejudicial. The records from the second cell phone were the product of a search that relied upon a warrant with unsubstantiated, allegedly false statements. Finally, the Solicitor's closing was improper and not cured by the trial court's instructions to the jury. Judgment should be reversed and Russell's case remanded for a new trial.

Respectfully submitted,

July 30, 2014

By: 

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings".

July 3rd, 2014

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In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case Nos. 2011-GS-23-01118; 01122-01124

The State, Respondent,

v.

Christopher E. Russell, Appellant.

Appellate Case No. 2013-000381

CERTIFICATE OF SERVICE

I certify that I have served the Final Brief of Appellant and Record on Appeal on the State of South Carolina on July 3 2014, addressed to the State's attorney of record, Mark R. Farthing, South Carolina Attorney General's Office, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201.

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SUBSCRIBED AND SWORN TO before me
this 3rd day of July, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24 ,2022 .