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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of General Sessions

Kristi Harrington, Circuit Court Judge

Case Nos.: 2010GS1008190 and 2010GS1008191  
Appellate Case No.: 2012-213248

THE STATE OF SOUTH CAROLINA .....Respondent,

v.

DENORRIS HALL .....Appellant.

**FINAL REPLY BRIEF OF APPELLANT DENORRIS HALL**

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## ARGUMENT

Appellant relies upon the Initial Brief and this Reply Brief to respond the Respondent's argument with the following additions:

### **I. Issue Preservation**

Respondent contends that the trial court properly denied Appellant's Motion for a Mistrial because there was no violation of *Brady v. Maryland*, 373 U.S. 83 (1963) or Rule 5 of the South Carolina Rules of Criminal Procedure. In support of its contention, Respondent argues that the issues raised in this appeal were not properly preserved. (Resp'ts Br. 9.) However, the record establishes that the trial court did decide the Appellant's motion and the issues therein were ruled upon by the trial court.

Counsel for the Appellant based his motion for a mistrial upon the newly discovered information that the victim was able to identify the shooter. (R. p. 122, lines 1-22.) After hearing the victim's proffered testimony, the trial court allowed the victim to identify Appellant in the presence of the jury and decided to continue the motion for mistrial until the following morning. (R. p. 127, line 3 – p. 131, line 21.) At that time, Appellant's counsel argued that only information available indicated that there were two black males involved in the shooting and that Mr. Smith, the co-defendant, admitted that he was the shooter. (R. p. 165, line 15 – p. 167, line 25.) Appellant's counsel further argued that the State violated Appellant's due process rights by withholding this vital information. (R. p. 167, lines 22-25.) Based upon the arguments of counsel, the trial court then denied the motion for a mistrial and allowed the previous in-court identification to stand. (R. p. 169, line 23 – p. 170, line 12.) Clearly, the trial court ruled

upon the motion for a mistrial, and therefore, Appellant's right to appeal was properly preserved.

## II. *Brady v. Maryland*

Respondent contends that there was no violation of *Brady v. Maryland*, 373 U.S. 83 (1963). The Appellant disagrees. In *Brady*, the United States Supreme Court held that suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. *Id.* The overriding theme of the *Brady* line of cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play. See *Riddle v. Ozmint*, 369 S.C. 39, 46, 631 S.E.2d 70, 76 (2006) (citing *Kyles v. Whitley*, 514 U.S. 419 (1995)). An individual asserting a *Brady* violation must demonstrate that evidence: (1) is favorable to the accused; (2) is in the possession of or known by the prosecution; (3) was suppressed by the state; and (4) was material to the accused's guilt or innocence or was impeaching. *Riddle*, 369 S.C. at 44, 631 S.E.2d at 73 (citing *Kyles v. Whitley*, 514 U.S. 419 (1995); *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999)).

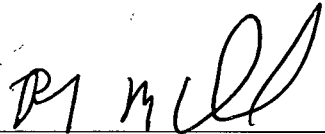
Here, Appellant's counsel argued that under *Brady*, the victim's ability to identify Appellant should have been disclosed by the State. (R. p. 165, lines 2-7.) Essentially, the fact that no one could identify the Appellant was favorable to him. Further, the evidence produced by the State indicated that the co-defendant admitted to the shooting. (R. p. 167, lines 6-9.) As applied to the *Brady* factors, the State was aware that no proper identification of Appellant as the shooter had been made, and the State suppressed the

information regarding the identification, which was material to the Appellant's guilt or innocence.

**CONCLUSION**

For the foregoing reasons, Appellant respectfully submits that this Court should grant a new trial in this matter.

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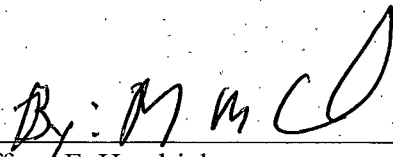
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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Reply Brief of Appellant complies with Rule 211(b), SCACR.



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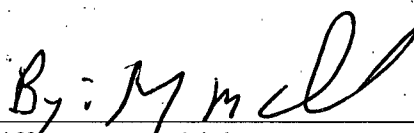
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PROOF OF SERVICE

I certify that I have served the Final Reply Brief of Appellant on Respondent State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on Christina J. Catoe, addressed to its attorney of record, Christine J. Catoe, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211.



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June 17, 2014

SWORN TO BEFORE ME this 1<sup>st</sup> day  
of April, 2014.

*Klaus Hendzel* (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.