

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213404

THE STATE,

Respondent,

v.

DRISTIN JOHNSON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

140 N. Main Street, Suite 102
Summerville, SC 29483
843-871-2640

ATTORNEYS FOR RESPONDENT

RECEIVED

JUL 07 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213404

THE STATE,

Respondent,

v.

DRISTIN JOHNSON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

140 N. Main Street, Suite 102
Summerville, SC 29483
843-871-2640

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT.....	9
The trial court properly admitted a mask and a pair of gloves found at the codefendant's home into evidence because (1) the evidence was relevant and (2) the evidence was probative where the victim testified the intruders wore masks and the getaway driver testified to leaving both assailants at the codefendant's home following the burglary	
CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases:

<u>State v. Aleksey</u> , 343 S.C. 20, 538 S.E.2d 248 (2000)	10
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006).....	14
<u>State v. Bailey</u> , 298 S.C. 1, 377 S.E.2d 581 (1989).....	14, 15
<u>State v. Brooks</u> , 341 S.C. 57, 533 S.E.2d 325 (2000).....	10
<u>State v. Cope</u> , 405 S.C. 317, 748 S.E.2d 194 (2013).....	10
<u>State v. Fletcher</u> , 379 S.C. 17, 663 S.E.2d 480 (2008)	14
<u>State v. Gathers</u> , 295 S.C. 476, 369 S.E.2d 140 (1988).....	14
<u>State v. Haselden</u> , 353 S.C. 190, 577 S.E.2d 445 (2003)	14
<u>State v. Livingston</u> , 282 S.C. 1, 317 S.E.2d 129 (1984).....	15
<u>State v. McConnell</u> , 290 S.C. 278, 350 S.E.2d 179 (1986)	12, 13
<u>State v. Saltz</u> , 346 S.C. 114, 551 S.E.2d 240 (2001)	10
<u>State v. Sherard</u> , 303 S.C. 172, 399 S.E.2d 595 (1991).....	13

Rules:

Rule 401, SCORE.....	9, 13
Rule 402, SCORE.....	9, 10, 13
Rule 403, SCORE.....	11
Rule 601, SCORE.....	11

STATEMENT OF ISSUE ON APPEAL

The trial court properly admitted a mask and a pair of gloves found at the codefendant's home into evidence because (1) the evidence was relevant and (2) the evidence was probative where the victim testified the intruders wore masks and the getaway driver testified to leaving both assailants at the codefendant's home following the burglary.

STATEMENT OF THE CASE

A Dorchester County Grand Jury indicted Appellant for two counts of kidnapping, one count of first-degree burglary, and one count of possession of a firearm during the commission of a violent crime. (R.p.135-136; 138-139; 141-142; 144-145.) On November 13-14, 2012, Appellant proceeded to trial before a jury and the Honorable Doyet A. Early, III. Mary LeMatty, Esquire, represented Appellant, and Assistant Solicitors Glenn P. Justis and Marshall Austin represented the State. The jury found Appellant guilty on all counts. (R. p.131-132.) Judge Early sentenced him to twenty-five years' imprisonment for each kidnapping charge, twenty-five years' imprisonment for the first-degree burglary charge, and five years' imprisonment for the possession of a firearm charge, with all sentences to run concurrently. (R. p.133.)

On November 16, 2012, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

On December 3, 2011, at approximately 9:00 p.m., Amber Fish, her boyfriend Shawn Rabine, and their baby daughter were home when Fish heard pounding on the door. (R. p.11, lines 1-20.) Thinking her brothers were at the door, she opened it and saw a man wearing a mask and black hoodie. (R. p.11, line 23-R. p.12, line 12.) The man held a shotgun to her gut. (R. p.12, lines 11-13.) Fish grabbed the gun and tried to push the man out the door, but another man opened the door all the way and pushed her into the house. (R. p.12, lines 20-24.) The men made Fish and Rabine lie on the floor, where they tied them up. (R. p.13, lines 15-24; R. p.15, lines 7-25.) The men took Fish's cell phone, her identification, the necklace she was wearing, her Xbox, some video games, and approximately \$415 cash. (R. p.17, lines 14-20.) After the men left, Fish was able to untie herself and her boyfriend and then called police from a neighbor's house because her cell phone had been stolen and she did not have a landline telephone. (R. p.18, line 1-R. p.19, line 5.) Fish told police one of the men was someone she knew named Christopher, and she was able to identify him for police. (R. p.20, lines 23-25; R. p.21, lines 1-2; R. p.22, lines 19-21.) She was unable to identify the other man. (R. p.21, lines 1-13; R. p.22, lines 14-21.) Eventually, Appellant was arrested and charged with two counts of kidnapping, one count of first-degree burglary, and one count of possession of a firearm during the commission of a violent crime. (R.p.135-136; 138-139; 141-142; 144-145.)

At trial, victim Amber Fish testified regarding the burglary. (R. p.9, lines 3-4.) When asked whether she could tell what the burglars looked like, she said they had masks on but that she was able to see their eyes and was able to identify one of the men as someone she knew around the neighborhood as "Chris"; she also knew Chris by his

voice. (R.p.13, lines 9-12; R. 13, line 25-R. p.14, line 14.) Fish was able to identify Chris when the police drove her to Chris's house. (R. p.20, 23-R. p.21, line 7.) Police then drove her to Appellant's home, but she was not certain enough to identify him as one of the burglars. (R. p.21, lines 2-13.)

Karen Parker testified that when she arrived home on the night of December 3, 2011, someone named "Savage" (whose real name was Dristin), Christopher Baty, and Carl [Chaplin] were at her home with her daughters. (R. p.23, lines 10-22; R. p.24, lines 16-24; R. p.25, lines 14-17.) She explained she had known Appellant since she first moved to the area, he had been to her house a couple of times, and he had spent the night at her house once. (R. p.25, line 18-SROA. p.1, line 4.) After the burglary, Parker spoke to police and identified Appellant in a photo lineup as the man who was at her house with Chaplin and Baty. (R. p.26, line 21-p.29, line 16.) Parker then identified Appellant in court as the man she selected in the lineup. (R. p.29, line 22-R. p.30, line 9.)

Parker's eleven-year-old daughter, Kelsey Parker, was sworn in to testify. (R. p.31, lines 4-10.) She testified that Savage, Chris, and Carl were at her house on December 3, 2011, with her and her sisters. (R. p.32, lines 10-16.) She stated that Savage's real name was Dristin. (R. p.33, lines 13-15.) She saw Chris, Carl, and Dristin leave together after talking in the yard. (R. p.33, lines 16-24.) Kelsey testified she heard Dristin say, "Let's go down the street and go to a girl's house." (R. p.34, lines 11-19.) She then saw them leave together in Carl's truck. (R. p.36, lines 17-22.) She testified she knew Dristin for about two or three months and identified Appellant as Dristin in the courtroom. (R. p.39, lines 13-23.)

Deputy Winfred Boyd of the Dorchester County Sheriff's Office testified he responded to the scene on December 3, 2011. (R. p.46, lines 4-24.) He spoke to the

victims and obtained statements from both. (R. p.47, lines 2-17.) He testified the victims gave him a description of the perpetrators and that Fish told him she recognized the white male's voice. (R. p.48, lines 11-16.) Boyd took Fish to Chris Baty's residence and she made an identification of him; however, she was unable to identify Appellant when taken to his house. (R. p.49, lines 21-R. p.50, lines 6.)

Next, Sergeant Jolie Tumbleston, also of the Dorchester County Sheriff's Office, testified regarding her response to the crime scene. (R. p.51, line 5-R. p.52, line 19.) Sgt. Tumbleston testified that while she was at Baty's home (110 Pintail in Summerville, South Carolina) waiting for a search warrant to be drafted, she observed some items in the trash can that she believed were taken from the original crime scene. (R. p.53, line 24-R. p.56, line 1.) She saw Fish's driver's license and an insert to an Xbox game in the trash can, and she also saw an Xbox informational pamphlet on the ground. (R. p.56, lines 6-15.)

Detective Andy Martin became involved in the case on December 5, 2011, when he conducted a canine search of 110 Pintail. (R. p.58, lines 18-22.) He testified the dog found a bag, which Martin took into evidence and photographed. (R. p.59, line 3-R. p.61, line 4.) He then identified State's Exhibit 7, a black, three-holed cold-weather mask, and State's Exhibit 8, a pair of blue, cotton-type gloves. (R. p.61, lines 11-22.) When the State offered the exhibits into evidence, Appellant objected on the bases of foundation and relevance. (R. p.62, lines 1-18.) Specifically, Appellant argued the address was a duplex and only half of it belonged to Baty. (R. p.62, lines 16-23.) Furthermore, Appellant stated, "We also have no -- no connection between these items and -- and what anybody else has testified to as ---" (R. p.62, lines 24-25.) The trial court pointed out Fish's testimony that the intruder had a mask on and the fact that the address was the

home of the codefendant and the items were found in his backyard. (R. p.62, line 18-R. p.64, line 3.) Further, the trial court considered the fact that Karen Parker and her daughter Kelsey identified Appellant and the other codefendants, all of whom left together. (R. p.64, lines 3-5.) The trial court ruled, "So I think there's enough connects us to the mask on relevancy to allow them at this time. So I'll allow it." (R. p.64, lines 5-7.) The trial court admitted both Exhibits 7 and 8 into evidence. (R. p.64, line 25-R. p.65, line 1.)

Catherine Leisey, a forensic scientist with SLED, was qualified as an expert in DNA analysis. (R. p.66, line 4-R. p.68, line 8.) She testified regarding the DNA found in the mask and gloves. (R. p.69, line 4-R. p.70, line 23.) Specifically, she testified the DNA profile from the outside of the mask was a mixture of three individuals, of which Baty and Appellant could not be excluded as possible contributors. (R. p.69, lines 6-10.) The DNA profile from the inside of the mask was a mixture of at least two individuals, the major contributor matched Baty's DNA profile, and Appellant was excluded as a possible contributor to the mix. (R. p.69, lines 13-21.) She testified the profile of the outside of the glove provided no conclusive evidence regarding Appellant's inclusion or exclusion, and the profile from the inside of the glove was a mixture of four individuals, of which Baty and Appellant could not be excluded as possible contributors. (R. p.69, line 22-R. p.70, line 9.)

Carl Chaplin testified that on December 3, 2011, he, Baty, and Appellant were at Karen Parker's home. (R. p.72, line 16-R. p.75, line 6.) After driving Parker somewhere to get some pills, Baty and Appellant asked Chaplin to give them a ride. (R. p.77, lines 2-22.) Chaplin drove them to get some "weed" and parked down a dirt road, where Baty and Appellant got out with a shotgun in a case. (R. p.78, lines 6-19; R. p.79, lines 13-16;

R. p.80, lines 11-13.) Baty got out of the car with the shotgun and Appellant had it when they returned. (R. p.84, lines 20-22.) Chaplin testified he parked about sixty to seventy yards from the house that got robbed. (R. p.79, lines 13-15.) The two men were gone approximately twenty to twenty-five minutes, and then came running to the truck telling him to "go, go." (R. p.80, lines 20-25.) Chaplin testified they told him they had robbed the people. (R. p.81, lines 9-11.) He then drove Baty and Appellant to Baty's house. (R. p.81, lines 19-23.) Chaplin testified both men got out and took everything out of the truck, and he left them there. (R. p.82, lines 3-21.)

Detective Adam Smith testified he interviewed Baty after serving warrants on him, at which time Baty gave a statement. (R. p.85, lines 6-13.) He testified he then compiled all the evidence and obtained arrest warrants for Appellant and Chaplin. (R. p.87, lines 12-15.) He had Chaplin and Karen Parker attempt to identify the man they had seen with Baty in photographic lineups. (R. p.88, lines 6-25.) Both of them selected Appellant's photograph. (R. p.88, line 15-R. p.89, line 11.)

After the State rested, defense counsel moved for a directed verdict, which the trial court denied. (R. p.90, line 14-R. p.91, line 5.) Defense counsel called Robin Caulter, Appellant's mother. (R. p.92, line 12-R. p.93, line 15.) She testified that Appellant was home with her on December 3, 2011, except for a time when he stepped outside for what she said could have been a few minutes. (R. p.93, line 16-R. p.96, line 13.) On cross-examination, she admitted she never told law enforcement Appellant was home with her all day on the date of the crime. (R. p.97, lines 7-10; R. p.98, lines 3-7.) The trial court charged the jury on witness credibility as follows:

In order to determine what the true facts are in the case, as I told you earlier, obviously you must determine the credibility of the witnesses who have tried - - who have

testified in the case. And credibility simply means believability. It becomes your duty to analyze and evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability or credibility of the witnesses who have testified in this case, you can believe one witness over several; several over one. You can disbelieve everything somebody says. You can believe a little bit and not the rest. So use your common sense in dealing with people how to tell who's telling the truth.

In making that determination here in this case, you may consider whether any witness has a - - any witness has exhibited to you any interest, bias, prejudice, or other motive in the case. And you may also consider the appearance and manner of a witness while on the witness stand.

(R. p.129, line 14-R. p.130, line 7.)

Ultimately, the jury found Appellant guilty on all counts. (R. p.131-132.) Judge Early sentenced him to twenty-five years' imprisonment for each kidnapping charge, twenty-five years' imprisonment for the first-degree burglary charge, and five years' imprisonment for the possession of a firearm charge, with all sentences to run concurrently. (R. p.133.)

ARGUMENT

The trial court properly admitted a mask and a pair of gloves found at the codefendant's home into evidence because (1) the evidence was relevant and (2) the evidence was probative where the victim testified the intruders wore masks and the getaway driver testified to leaving both assailants at the codefendant's home following the burglary.

Appellant argues the trial court erred by allowing a mask and a pair of gloves into evidence because they were not properly linked to Appellant. To the contrary, the evidence was linked to Appellant through: (1) Fish's testimony that both burglars wore masks when they forced their way into her home; (2) Chaplin's testimony that Appellant and Baty admitted committing the burglary and went to Baty's house directly after committing the crime to unload the stolen items; (3) the DNA from the inside of the mask matching Baty; (4) Kelsey Parker's testimony that Appellant, Baty, and Chaplin left together in Chaplin's truck shortly before the burglary; and (5) the discovery of Fish's ID at the same location where police found the mask and gloves and where Appellant had been dropped off. Furthermore, no requirement exists that evidence must be properly linked to a defendant in order to be admitted. Rather, Rule 402, SCRE, provides that all relevant evidence is admissible, and Rule 401, SCRE, states: "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Because the mask and gloves were found behind the home of Appellant's codefendant Baty and the DNA from the inside of the mask matched Baty's profile, the evidence made it more probable that Baty and Appellant were involved in the crime. Thus, the trial court properly admitted the evidence.

“In criminal cases, the appellate court sits solely to review errors of law. The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion.” State v. Cope, 405 S.C. 317, 334-35, 748 S.E.2d 194, 203 (2013). “All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina.” Rule 402, SCRE. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; State v. Aleksey, 343 S.C. 20, 35, 538 S.E.2d 248, 256 (2000). The determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case. State v. Brooks, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000). Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision made on an improper basis, such as an emotional one. State v. Saltz, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001).

Appellant’s argument on appeal is that the evidence was not properly linked to Appellant. In his brief, he argues: “As pointed out by Ms. LeMatty at trial, there is no connection between **[Appellant]** and the mask and gloves found at the home of Mr. Baty.” (App. Br. 4.) (emphasis added.) However, at trial, defense counsel merely stated generally, “We also have no -- no connection between these items and -- and what anybody else has testified to as ---” (R. p.62, lines 24-25), rather than specifying a lack of connection between the items and **Appellant**. Also, contrary to the assertion in Appellant’s brief that “[t]here was no evidence submitted at trial that Appellant was at the home of Baty where the exhibits were found[,]” (App. Br. 4) Carl Chaplin testified he drove Baty and Appellant to Baty’s house after they committed the crime, and they took

everything out of the truck and he left them there. (R. p.81, lines 19-23; R. p.82, lines 3-21.)

Appellant's argument on appeal is effectively an argument of unfair prejudice based on Rule 403, SCRE. Appellant argues the evidence was highly prejudicial without being very probative. He bases this argument on two assertions: (1) "The evidence was only supported by the testimony of an eleven year old whose memory and credibility should be considered questionable and unreliable," and (2) "[t]he only other witness to testify as to Appellant's involvement was Carl Chaplin who received a five (5) year reduction in his sentence to testify." (App. Br. 5.)

Every person is competent to be a witness except as otherwise provided by statute or these rules. A person is disqualified to be a witness if the court determines that (1) the proposed witness is incapable of expressing himself concerning the matter as to be understood by the judge and jury either directly or through interpretation by one who can understand him, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth.

Rule 601, SCRE. Children of any age can be competent witnesses as long as the trial court does not disqualify them based on the above determinations. Here, there is no indication in the record that the trial court found any reason to disqualify eleven-year-old Kelsey Parker. Moreover, defense counsel did not argue she was not competent at trial. She took the oath before testifying and was clearly able to express herself. (R. p.31, lines 4-R. p.45, line 13.) As for her credibility, that is for the jury's determination and the trial court properly charged the jury on witness credibility. (R. p.129, line 14-R. p.130, line 7.) Similarly, the charge explained the jury's consideration of interest, bias, prejudice, or motive so that it was clear to the jury it could consider Chaplin's reduction in sentence when evaluating his credibility. Thus, Appellant's assertion that "the credibility of these

witnesses would have been questionable enough that the jury would have returned a different verdict” is purely speculative and without merit.

Appellant cites State v. McConnell for the proposition that there must be a connection between the evidence and the crime, but in that case the Supreme Court found the evidence should not have been admitted for many reasons: the items “were not properly connected with the incident, irrelevant, incompetent, and raised spurious inference of prior bad acts.” 290 S.C. 278, 280, 350 S.E.2d 179, 180 (1986). The Court also found “the cumulative prejudicial effect of the enumerated evidence far outweighed its probative value.” Id. The evidence at question in McConnell included bullets, a pistol, and a photograph of a hole. 290 S.C. at 279, 350 S.E.2d at 180. The Court determined the evidence should not have been admitted because the .22 caliber bullets were not discovered until a month and a half after the incident and “uncontradicted testimony showed that the .22 caliber pistol introduced into evidence was not in appellant’s possession at the time of the shooting incident.” 290 S.C. at 279-80, 350 S.E.2d at 180. Additionally, .25 caliber bullets were found outside and no evidence demonstrated the appellant owned or used a .25 caliber weapon, nor was one found. Id. Finally, the hole was not discovered until February and the investigating officer did not know whether the hole was there at the time he investigated the shooting in December. Id.

When one considers the above explanation of the evidence in McConnell, it is easy to see why the Supreme Court determined it should not have been admitted. The evidence was discovered long after the time of the incident and no evidence indicated McConnell had a weapon of that type. However, the case at hand is very different. The evidence at issue is a mask and a pair of gloves. Rather than being discovered a month

and a half after the incident, it was discovered immediately following the crime, in the backyard of the codefendant, where evidence showed both codefendants were dropped off after the crime. Furthermore, evidence existed that both codefendants wore masks during the commission of the crime. While the victim did not testify regarding whether the burglars wore gloves, the gloves were found with the mask and testimony was provided by the DNA expert that Appellant's DNA could not be excluded as a possible contributor to the inside of the gloves. Thus, unlike the evidence in McConnell, the evidence here was connected with the incident, relevant, competent, did not raise spurious inference of prior bad acts, nor was its probative value far outweighed by the alleged cumulative prejudicial effect.

In sum, because Fish testified both men wore masks when they committed the crime, Chaplin testified he dropped the men and their stuff off at Baty's house immediately after the crime, and Appellant could not be excluded as a possible DNA contributor on the items, the evidence certainly meets the requirement of relevance, "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Therefore, the trial court properly admitted the evidence. Rule 402, SCRE.

Harmless Error

Even assuming admitting the mask and pair of gloves was error, it was harmless in light of the overwhelming evidence of Appellant's guilt and the cumulative nature of the evidence. Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the

other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 663 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). When overwhelming evidence of guilt has been established, any trial error may be harmless. State v. Gathers, 295 S.C. 476, 480-81, 369 S.E.2d 140, 143 (1988).

Here, the testimony from Chaplin that Appellant and Baty left his truck with a shotgun and returned telling him they had robbed people, the testimony of Karen Parker that the three men were together at her house that night, the testimony of Kelsey Parker that she heard Appellant tell the other two they should go down the street to a girl’s house immediately before leaving together to commit the burglary, and the lineups Chaplin and Parker used to identify Appellant were all admitted into evidence; therefore, the additional admission of the mask and gloves was cumulative and could not have affected the outcome of the trial. Furthermore, defense counsel was able to use cross-examination to demonstrate lack of conclusive DNA evidence against Appellant found on the mask and gloves. Additionally, she highlighted these DNA results in her closing statement, reminding the jury Appellant was excluded completely from the DNA found on the inside of the mask and emphasizing the range of people in addition to Appellant who

could have contributed to the other DNA results. Therefore, any error in admission of the evidence was harmless. See, e.g., State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (a conviction should not be set aside because of errors not affecting the result when the defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion could be reached); State v. Livingston, 282 S.C. 1, 317 S.E.2d 129 (1984). Appellant's conviction should be affirmed.

CONCLUSION

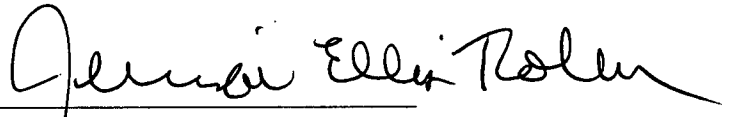
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY: 
Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 7, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213404

THE STATE,

Respondent,

v.

DRISTIN JOHNSON,

Appellant.

CERTIFICATE OF COUNSEL

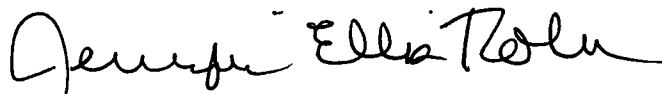
The undersigned hereby certifies that the Final Brief of Respondent complies with
Rule 21.1(b), SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY:



Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RECEIVED

ATTORNEYS FOR RESPONDENT JUL 07 2014

July 7, 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2012-213404

THE STATE,

Respondent,

v.

DRISTIN JOHNSON,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, 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:

Jennifer Breaux Howe, Esquire
DeMint Howe, P.A.
505 Pettigru Street
Greenville, SC 29601

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Appellate Division
P.O. Box 11589
Columbia, SC 29201-1589

RECEIVED

JUL 07 2014

SC Court of Appeals

I further certify that all parties required by Rule to be served have been served.
This 7th day of July, 2014.


ANGELA BENNETT
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727