STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SARAH D. CARDWELL,

APPELLANT

APPELLATE CASE NO. 2012-213334

FINAL BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion to suppress evidence of a video taken from Appellant's laptop where Appellant left the computer with a repair technician; where the local police chief entered the technician's shop and saw a still image of Appellant's unclothed son flash across the screen; and where, without obtaining a search warrant, the chief instructed the technician to locate the file on the computer and play the video that it came from, to copy the video file to a disk, and to provide the video file to another law enforcement officer, who also watched the video file without obtaining a warrant.

STATEMENT OF THE CASE

The Georgetown County grand jury indicted Appellant on two counts of unlawful conduct towards a child and two counts of sexual exploitation of a minor, first degree. R. 230 - R 237. On October 29, 2012, Appellant proceeded to trial before a jury and the Honorable Edward B. Cottingham. Reuben Goude represented Appellant and Candice Lively represented the State. R. 1-2. At the conclusion of the trial on October 31, 2012, the jury found Appellant guilty on all four counts. R. 8; R. 200, l. 6-20. For the charges of unlawful conduct, Judge Cottingham sentenced Appellant to concurrent two year sentences. R. 214, l. 24 – R. 215, l. 4. For the charges of sexual exploitation, Judge Cottingham sentenced Appellant to concurrent three year sentences. R. 215, ll. 4-20. Judge Cottingham ordered the three year sentences to run consecutive to the two year sentences. *Id.*

This appeal follows.

ARGUMENT

The trial court erred in denying Appellant's motion to suppress the computer evidence because Appellant had a reasonable expectation of privacy in the files on her personal computer and because both Chief Douglas and Investigator Hanna watched the video file without first obtaining a warrant when no warrant exception applied.

STATEMENT OF FACTS

On December 8, 2010, Johnsonville Police Chief Ron Douglas entered the shop of David Marsh, a local computer technician. Court's Ex. 3. Marsh frequently handled the police department's computer work. R. 50, ll. 3-15. Chief Douglas came from the police station a half a block down the street to drop off some packages. R. 50, ll. 16-18; R. 73, ll. 1-10. The computers on which Marsh was working were visible to Chief Douglas, and he saw flash across the screen of a laptop belonging to Appellant an image of a boy wearing nothing but a pink bra. R. 53, l. 23 – R. 55, l. 1; R. 74, ll. 15-19.

According to Marsh's testimony, Chief Douglas said to him, "I just saw something go across the screen, can you back it up?" At that point, Marsh "had no clue" what Chief Douglas was talking about. Upon seeing the computer, Marsh told Chief Douglas it belonged to Appellant and had problems booting up, so he was backing up the files to an external hard drive. R. 48, ll. 6-23; R. 74, l. 20 – R. 75, l. 6; R. 217 – R. 229, Court's Ex. 3. "Please back that up just a little bit," Chief Douglas repeated, and when Marsh did, the two saw that the image was a still from a video file with a play button at the top. R. 54, ll. 1-21. "[T]hat's what [Chief Douglas] said he saw and he wanted to see. So, we clicked play and we watched just a little . . . ." R. 55, ll. 8-11. In a written statement Marsh made on December 13, 2010, he reported that Chief Douglas "called me back in to the office and said for me to look at one of the computers. . . . He asked if I would look at one of the last files backed-up, and we saw it was a video. Upon request of [Chief Douglas], [w]e watched the

video." R. 217 – R. 229 Court Ex. 3. On the same day, Chief Douglas made a written statement and said that after he asked Marsh about what flashed across the screen, "I then asked to see the file that had just been backed up and he searched until finding it and played it for me." *Id.*

Without Appellant's consent, the two watched about a minute of the video, which was ostensibly filmed by Appellant in her home and contained objectionable footage of her young son, daughter, and her then-fiancée Michael Cardwell, who was not biologically related to the children. R. 55, l. 15 – R. 56, l. 13; R. 60, ll. 14-22; R. 81, l. 17 – R. 82, l. l; R. 229. Marsh recognized all of them. R. 55, ll. 20-25.

Because Chief Douglas feared that the file would be lost if the computer failed, he instructed Marsh copy the file to a disk:

> Q: [I]n your experience as an investigator as well is one of the things you're concerned about the preservation of potential evidence in a case?
>
> A: Definitely, that's exactly why I told him what I did.

R. 77, ll. 4-8; R. 75, ll. 1-17; R. 217 – R. 229, Court's Ex. 3.

Chief Douglas believed he had no authority to secure the computer himself because Appellant lived in Georgetown County, which was "not in [his] jurisdiction." Accordingly, he "instructed [Marsh] to . . . secure the computer until [he] could contact someone with Georgetown Sheriff's Office to see if they would assist with the investigation and take over that." R. 75, ll. 13-24; R. 76, ll. 9-16; R. 217 – R. 229, Court's Ex. 3.

Chief Douglas contacted Investigator Phillip Hanna with the Georgetown County Sherriff's Office about the investigation. On December 10, 2010, Investigator Hanna asked Marsh to meet him at the Johnsonville Police Department with the computer and the back-

up disk with the video. When Marsh arrived, Investigator Hanna watched the video. He then seized the computer and the disk and obtained a search warrant to search the entire computer. R. 79, l. 12 – R. 85, l. 4; R. 217 – R. 229, Court's Ex. 3.

Based on the video's contents, the State brought against Appellant and Mr. Cardwell two unlawful conduct charges and two first degree sexual exploitation charges each. R. 8, ll. 10-12. The State based its case solely on the contents of the video. R. 37, l. 20 – R. 38, l.7. Prior to trial, Appellant moved to suppress the video evidence, arguing that the technician's playback of the video at the Johnsonville Chief's instruction constituted a warrantless search. The trial court denied the motion for two reasons. First, Appellant had no expectation of privacy in the computer because she left it with the technician. Second, no search occurred because the Johnsonville Chief saw in plain view "evidence of a serious child pornography crime," and he therefore had "every right to pursue his interest in determining where the truth lies." R. 21, l. 3 – R. 25, l. 17. Appellant also argued that the Georgetown's Investigator's viewing of the video prior to obtaining a warrant was illegal. The court again ruled that no search occurred because the computer was "in the public domain." R. 26, l. 5 – R. 27, l. 10. Appellant renewed the motion during the trial, moving to exclude the computer and any files taken from it. The trial court continued to deny the motion. R. 51, l. 19 – R. 52, l. 12; R. 61, l. 22 – R. 62, l. 1; R. 206, l. 16 – R. 207, l. 4.

At the conclusion of the trial, the jury found Michael Cardwell and Sarah Cardwell guilty of all charges against them. R. 199, l. 11 – R. 200, l. 20.

DISCUSSION

The trial court erred in denying Appellant's motion to suppress the computer evidence because Appellant had a reasonable expectation of privacy in the files on her

personal computer and because both Chief Douglas and Investigator Hanna watched the video file without first obtaining a warrant when no warrant exception applied. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *U.S. v. Jacobsen*, 466 U.S. 109, 113 (1984). "A probable cause analysis involves the use of a fact-based, objective perspective that requires more than reasonable suspicion of criminal activity . . . ." *State v. Morris*, 395 S.C. 600, 609-10, 720 S.E.2d 468, 472 (Ct. App. 2011).

> "Probable cause is a commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Probable cause to search exists where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found in a particular place. The principal components of the determination of probable cause will be whether the events which occurred leading up to the search, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause."

Id. (quoting *State v. Brown,* 389 S.C. 473, 482, 698 S.E.2d 811, 816 (Ct.App.2010) (internal citations omitted)).

The United States Supreme Court has emphasized the central concern with warrantless searches and seizures:

> The point of the Fourth Amendment, which often is not

> grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

Johnson v. United States, 333 U.S. 10, 14-15 (1948). Thus, "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). *See also Coolidge v. New Hampshire*, 403 U.S. 443, 91 (1971); *State v. Weaver,* 361 S.C. 73, 80–81, 602 S.E.2d 786, 790 (Ct. App. 2004). "The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption...that the exigencies of the situation make the course imperative.'" *Coolidge*, 403 U.S. at 91.

For example, to justify a warrantless search based on the destruction of evidence, the State must show a reasonable suspicion of imminent destruction based on the actual circumstances at the time of privacy invasion. *Richards v. Wisconsin*, 520 U.S. 385, 395-96 (1997); *see also U.S. v. Jacobsen*, 466 U.S. at 114-15. Additionally, the South Carolina Supreme Court has held that under the "plain view" exception, evidence is subject to a warrantless *seizure* if "the initial intrusion which afford the authorities the plain view was lawful and . . . the incriminating nature of the evidence was immediately apparent to the seizing authorities." *State v. Wright*, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011). "The burden of establishing probable cause as well as the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures is upon the prosecution." *Bultron,* 318 S.C. 323, 332, 457 S.E.2d

616, 621 (Ct. App. 1995).

While the Fourth Amendment does not apply to searches by private parties, it does apply to searches in which a private party acts as instrument or agent of the government. *State v. Brockman*, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). Thus, when a private party conducts a search pursuant to an explicit request by a governmental party, the Fourth Amendment applies. *Id.* at 66-67, 528 S.E.2d at 666 (citing *State v. Cohen*, 305 S.C. 432, 434-35, 409 S.E.2d 383, 385 (1991).

The United States Supreme Court created the exclusionary rule to safeguard Fourth Amendment rights. *United States v. Calandra*, 414 U.S. 338 (1974). The exclusionary rule provides that evidence seized in violation of the Fourth Amendment must be excluded from trial. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). The Fourteenth Amendment incorporates the rule of excluding evidence obtained through an illegal search or seizure and makes it applicable to the states. *Id.; see also State v. Sachs,* 264 S.C. 541, 560, 216 S.E.2d 501, 511 (1975); *State v. Brown*, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010). The exclusionary rule also prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure under the fruits of the poisonous tree doctrine. *Wong Sun v. United States*, 371 U.S. 471, 484 (1963); *see also State v. Nelson*, 336 S.C. 186, 519 S.E.2d 786 (1999).

In *Walter v. U.S.*, 447 U.S. 649 (1980), the United States Supreme Court held that when FBI agents lawfully seized boxes of film having obscene pictures on the labels, which provided probable cause that the film could not lawfully be traded in interstate commerce, the Fourth Amendment nonetheless required the agents to obtain a search warrant before opening and viewing the film. *Id.* at 657. The boxes were packaged and

mistakenly delivered to a third party, which opened the packages, found the boxes therein containing suggestive drawings and explicit descriptions of the contents, and unsuccessfully attempted to examine the film by holding it up to the light. *Id.* at 652. The Court affirmed that "it has been settled that an officer's authority to possess a package is distinct from his authority examine its contents." *Id.* at 654. The Court also stated the particular principle that "[w]hen the contents of the package are books or other materials arguably protected by the First Amendment, and when the basis for the seizure is disapproval of the message contained therein, it is especially important that this requirement [for a warrant] be scrupulously observed." *Id.* at 654-55. It explained the FBI did nothing wrong by seizing the boxes or examining them to the extent that the third party had already exposed them; however, "[t]he projection of the films was a significant expansion of the search that had been conducted previously by a private party and therefore must be characterized as a separate search. That search was not support by any exigency, or by a warrant even though one could have easily been obtained." *Id.* at 657.

In *U.S. v. Barth*, 26 F. Supp. 2d 929 (W. D. Tex 1998), the federal district court discussed its decision to grant a motion to suppress computer evidence based on facts substantially the same as those at hand. The defendant was a computer owner who left his hard drive with a computer technician for repair. *Id.* at 932. During the repair, the technician opened a file and discovered an image containing child pornography, after which he immediately shut down and unhooked the hard drive. *Id.* He then contacted the local police as well an FBI agent for which he happened to be an informant. *Id.* The FBI agent instructed the technician over the phone to copy the hard drive. *Id.* After the two spoke, the technician reconnected the hard drive and discovered more images of child pornography.

Id. at 932-33. The next day, the technician took the hard drive to the local police station, and the officers viewed and copied the hard drive. *Id.* The officers then obtained a warrant for the hard drive. *Id.*

The district court stated that closed computer files and hard drives are similar to closed containers and personal effects for purposes of the Fourth Amendment, *id.* (citing *U.S. v. Knoll*, 16 F.3d 1313, 1320 (2d Cir. 1994), and the defendant therefore had a reasonable expectation of privacy. The court also reasoned that the technician became an agent of the government once he spoke to the FBI agent because "[t]o draw the line at any later time would give Kellar, untrained in law enforcement and unrestrained by the responsibilities and duties of officers sworn to protect the Constitution, a free reign to violated the protections of the Fourth Amendment while nonetheless working for the Government." 26 F. Supp. 2d at 936. Thus, while the technician's discovery of the first illicit image was a private search, it only extinguished defendant's privacy interest to that extent, and any subsequent viewing of the hard drive by the technician, police, or FBI was subject to the Fourth Amendment.[1] *Id. See also U.S. v. Scott*, 387 Fed. Appx. 334 (4th Cir. 2010) (per curiam) (motion to suppress properly denied where no evidence that government investigator directed computer technician to open files on customer's laptop); *United States v. Payton,* 573 F.3d 859, 864 (9th Cir. 2009) ("[T]he nature of computers makes such searches so intrusive that affidavits seeking warrants for the search of computers often

[1] The court also found "it is clear that [the technician] did not have actual authority to consent to a search of Defendant's hard drive. [He] was in possession of the unit for the limited purpose of repair. . . . [He] did no have general 'joint access' to the hard drive for most purposes . . . ." *Id.* at 938. *See also State v. Brockman*, 329 S.C. at 121-22, 494 S.E.2d at 443 ("Third party consent may validly be given by one who has common authority over or some other sufficient relationship to the premises or effects searched.

include a limiting search protocol, and judges issuing warrants may place conditions on the manner and extent of such searches to protect privacy and other important constitutional provisions."); *State v. Sachs*, 372 S.W.3d 56, 61 (Mo. Ct. App. 2012) ("using a mouse and/or keyboard to shuffle between files that are not plainly visible on an active computer screen is just as much of a search as opening and looking through Appellant's filing cabinets or desk drawers.")

In this case, the Fourth Amendment generally applied to the searches of Appellant's computer because she had the same reasonable expectation of privacy in the files on the personal computer as she would in any other closed container, file, document, or personal effect. As discussed in *Barth*, Appellant did not relinquish this expectation merely by giving possession of her computer over to Marsh for repair. Further, as explained in *Walter v. U.S.*, when Marsh caused to be displayed on the screen the still image of the video file, it only extinguished Appellant's privacy interest to the extent of displaying that particular still image. In *Walter*, the third-party recipient opened the packages and boxes of film and attempted to examine them; however, the FBI's projection of the films expanded the third-party's search. Similarly in this case, Appellant retained a legitimate privacy interest in the video, i.e., the unplayed audio and still images comprising the video, and Chief Douglas conducted a separate search by playing the video.

Furthermore, Chief Douglas's watched the video file in Marsh's shop under color of law and the aegis of the government. First, Chief Douglas explicitly requested that Marsh effect the search. Although Marsh caused the still image to display on the screen the

---

Common authority [requires] 'mutual use of the property by persons generally having joint access or control for most purposes' . . . .).

process of backing up the files, he testified that he "had no clue" about it actually displaying at the time Chief Douglas saw it, and he did not play the video file on his own initiative. Rather, Chief Douglas first explicitly requested and then instructed Marsh to bring the file back up after the image had lapsed. According to Marsh's testimony, Chief Douglas saw the file was a video, and he wanted to see it, so they played it. According to his written statement just five days after the incident, Marsh said Chief Douglas called him over to the computer, asked him to bring the file back up, and, *upon his request*, they watched the video.

Second, Chief Douglas was acting under color of law and within his authority as a police officer. Marsh knew Chief Douglas in his official capacity as the town's police chief who for some time regularly stopped by from the station down the street to deliver packages. Marsh was also familiar with the police department because he frequently handled its computer work. On the day he viewed the video, Chief Douglas came from the police station to deliver packages. After seeing the video still, Chief Douglas made requests of Marsh and gave instructions ostensibly within his authority. At trial, he expressly testified that he treated the situation as an investigation in seeking help from another law enforcement office, and he acted out of his investigative experience by treating the video as evidence of a crime. He in no way dispelled to Marsh or the court at trial that he was acting outside that authority or without an official motive. Finally, he limited his actions in seizing the computer and backup disk based on his belief that he lacked the jurisdiction and authority to do so as a Johnsonville police officer.

The trial court held that Chief Douglas did not need a warrant because Appellant's laptop was in his plain view. The holding was erroneous for two reasons. First, to support a

warrant exception, the State still had to establish probable cause. Similarly, the plain view doctrine exception required that the incriminating nature of the video file was immediately apparent. The record does not show the satisfaction of either requirement because Chief Douglas merely saw an image of an unclothed boy wearing a pink bra inside of a residence and because, under the circumstances at hand, he should have been aware that the boy was the son of the computer's owner.

Second, as the South Carolina Supreme Court has specifically held, the plain view doctrine merely allows warrantless *seizures* of evidence in plain view. Similarly, in *Walter v. U.S.*, although FBI agents lawfully seized the boxes of film having obscene pictures on the labels, which provided probable cause that the film could not lawfully be traded in interstate commerce, the Fourth Amendment nonetheless required the agents to obtain a search warrant before opening and viewing the film. Here, Chief Douglas's authority to seize the computer was altogether distinct from his authority examine its contents, and the Fourth Amendment required that he obtain a warrant or establish some other warrant exception in order to lawfully watch the video.

In his testimony, Chief Douglas also attempted justified his failure to obtain a warrant based on fear that the laptop could shut down and the video would be lost. To sustain such a warrant exception, a reasonable suspicion of imminent destruction based on the actual circumstances at the time of privacy invasion must have existed. However, the record plainly establishes that Marsh had already backed up the video file to an exterior hard drive when Chief Douglas instructed him to play it. Further, Chief Douglas actually secured a copy on a backup disk by instructing Marsh to copy the video file. Accordingly, Chief

Douglas could not have had a reasonable suspicion that the contents of the video file would be forever lost if he did not view it immediately.

Not only did Chief Douglas's playing of the video violate the Fourth Amendment, but so did Investigator Hanna's. Investigator Hanna instructed Marsh to meet him at the Johnsonville Police Department with the computer and backup disk. When Marsh arrived, like in *U.S. v. Barth*, Investigator Hanna watched the video file directly, and only then did he seek a warrant. The record does not disclose any applicable warrant exception or any argument by Investigator Hanna in support thereof.

The Fourth Amendment requires that before conducting a search, a law enforcement officer, if possible, must obtain a warrant supported by independent determination of probable cause from a neutral and detached magistrate. In this case, the reasonable course of action under Fourth Amendment principles was for Chief Douglas to secure the video file and apply for a search warrant based on the still image he saw displayed on the computer. A detached and neutral magistrate could then have weighed the circumstances of the image and the common-sense inferences to be drawn therefrom with Chief Douglas's reasonable conclusions about the nature of the video based on his experience and training as a police officer. Only this procedure would have properly balanced the interests of the State against the privacy interests of its citizens as required under the Fourth Amendment.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's denial of her motion to suppress the computer and backup disk evidence, reverse her conviction, and dismiss the charges against her.

Respectfully submitted,

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of April, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 7, 2014

Benjamin John Tripp
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SARAH D. CARDWELL,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of April, 2014.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of April, 2014.

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

The State, Respondent,

vs.

Sarah D. Cardwell, Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

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

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Other Authorities

STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

Expectation of Privacy

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

Thus,

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

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

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

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

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

Id. at 443.

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

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

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

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

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

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

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

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

Id. at 369-370 (emphasis added).

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

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

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

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

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

Third Party Possession

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

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

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

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

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

Third Party Consent

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

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

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

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

Id. at 518.

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

Plain View and Contraband

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

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

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

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

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

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

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

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

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

Inevitable Discovery

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

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

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

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

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY: _____
William M. Blitch, Jr.

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

ATTORNEYS FOR RESPONDENT

April 2, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

The State, Respondent,

vs.

Sarah D. Cardwell, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 
William M. Blitch, Jr.

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

ATTORNEYS FOR RESPONDENT

April 2, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

The State, Respondent,

vs.

Sarah D. Cardwell, Appellant.

PROOF OF SERVICE

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

Benjamin J. Tripp, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 2nd day of April, 2014.

Sally Ellison

SALLY ELLISON
Legal Assistant

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