STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRESHAWN MARKEESE JENKINS,

APPELLANT.

APPELLATE CASE NO. 2018-000360

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in admitting the recording of Appellant's third interrogation by law enforcement where the evidence demonstrated Appellant was interrogated on at least two prior occasions, the officer threatened to charge Appellant's sister with a crime if Appellant did not cooperate, and the officer promised to help Appellant if Appellant cooperated with the interrogation?

STATEMENT OF THE CASE

On December 6, 2017, an Orangeburg County grand jury indicted Appellant for murder (2016-GS-38-1268), possession of a firearm during the commission of a violent crime (2016-GS-38-1269), and attempted murder. R. 702-710. The state, represented by Ashley Cornwell and Phil Giese, called the case to trial before the Honorable Edgar W. Dickson and a jury on February 20-23, 2018. R. 53. Mitch Farley represented Appellant. R. 53. The jury found Appellant guilty as charged. R. 687, ll. 11-20. Judge Dickson sentenced Appellant to five years imprisonment for the weapon, thirty years imprisonment for attempted murder, and forty-five years imprisonment for murder. R. 695, ll. 1-13; R. 702-710. He ordered the sentences for murder and attempted murder to be served concurrently, and the sentence for the weapon to be served consecutively. R. 695, ll. 14-16; R. 702-710.

On February 26, 2018, Appellant served his notice of appeal. This brief follows.

STANDARD OF REVIEW

"On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion." State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990); see also State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998). Put another way, the reviewing court will reverse a trial judge's ruling on the voluntariness of the confession when the ruling is "so erroneous as to constitute an abuse of discretion." State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). "In criminal cases, appellate courts are bound by fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law." State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997).

STATEMENT OF FACTS

On July 19, 2016, teenager "Shy" went missing. R. 390, ll. 6-11; R. 455, ll. 4-11; R. 489, ll. 7-8. Believing Shy was in Eutawville, Frank Smoot, Zaquan Taste, Dwendell High, Matthew Brown, and Appellant drove to a home where they believed Shy was hiding. R. 392, ll. 18-25; R. 393, ll. 6-7; R. 404, l. 15 – R. 405, l. 6; R. 422, ll. 8-15; R. 423, ll. 7-11; R. 424, ll. 3-5; R. 456, ll. 14-16; R. 493, ll. 17-19. When the group arrived, Damian Shuler and others, including Johnny Elmore, Tramel Benjamin, Sr., Tramel Benjamin, Jr., George Jenkins, Denard Reeves, and Jacqueline Wright, were "outside chilling, talking, getting ready to have a cookout." R. 211, l. 25 – R. 212, ll. 8; R. 218, ll. 20-22; R. 220, l. 20 – R. 221, l. 3; R. 231, ll. 23-25; R. 232, ll. 7-11; R. 253, l. 24 – R. 254, l. 1; R. 258, ll. 2-5. A black car pulled up, and Zaquan Taste got out of the driver's seat. R. 212, ll. 9-15; R. 218, l. 22 – R. 219, l. 3; R. 232, l. 18 – R. 233, l. 13; R. 239, ll. 18-20; R. 240, ll. 1-4; R. 259, ll. 22; R. 393, ll. 17-21; R. 425, ll. 18-19; R. 496, ll. 8-18.

Taste asked if Shy were there, and he was informed she was not. R. 393, ll. 18-19; R. 497, ll. 20-23. However, it was undisputed the teenager had been at the residence earlier. R. 222, ll. 10-22; R. 239, ll. 5-7. After Taste greeted everyone, he returned to his car, and was leaving. R. 212, ll. 18-21; R. 219, ll. 7-13; R. 233, ll. 14-16; R. 241, ll. 1-2; R. 457, ll. 3-7; R. 496, ll. 21-24. Taste informed the others in the car that one of the party goers had a weapon and warned him that he would get hurt if he went back there. R. 393, ll. 19-21; R. 426, ll. 5-8; R. 457, ll. 23-25; R. 497, ll. 1-3; R. 499, ll. 12-14. Further, as the group in the car was trying to leave, someone was yelling, "stop them." R. 394, ll. 16-21.

Suddenly, the back doors on the car flew open and "[s]hots just start[ed] flying." R. 212, l. 21 – R. 213, l. 1; R. 219, ll. 17-20; R. 233, ll. 17-21; R. 241, ll. 8-18. Shuler and his cousin, Rico, ran. R. 213, l. 1; R. 213, l. 11-12; R. 219, l. 19; R. 242, ll. 21-25. According to Smoot,

Brown, High, and Taste, Appellant got out of the car and began shooting an assault rifle. R. 395, ll. 1-5; R. 396, l. 2 – R. 397, ll. 7; R. 426, l. 16 – R. 427, l. 10; R. 457, ll. 7-8; R. 458, ll. 10-11; R. 500, ll. 11-14. Smoot claimed Appellant was shooting in the direction of the shed, where several of the partygoers were assembled. R. 397, ll. 8-10. Smoot admitted that he had a revolver; however, he claimed he fired only a single shot into the air. R. 396, ll. 4-13; R. 427, ll. 11-15; R. 457, ll. 8-9; R. 458, ll. 19-20; R. 500, ll. 20-24. Smoot claimed that High shot a gun as well, but that he shot it in the air. R. 501, ll. 5-7.

When Shuler ultimately arrived at the police station, he realized he had been shot in the left shoulder. R. 213, l. 24 – R. 214, l. 2. Also, after the shooting stopped, Jacqueline Wright was found dead on the ground, having been shot. R. 209, ll. 4-5; R. 231, l. 1; R. 232, ll. 12-13; R. 234, ll. 7-10; R. 255, ll. 13-20.

Elmore claimed that he saw a man with a bald head and a beard wearing a white shirt shooting. R. 219, ll. 22-24. Elmore, who had no "firsthand" knowledge of Appellant, told the jurors that Appellant was the shooter. R. 220, ll. 6-10. In fact, Elmore told to the police that he could not tell who the shooter was. R. 226, ll. 24-25; R. 369, l. 18 – R. 370, l. 3. Reeves also claimed he saw Appellant shooting. R. 260, ll. 14-25. Reeves admitted he did not know Appellant, but he claimed he "knew of him." R. 261, ll. 1-4; R. 269, ll. 3-6. He had seen Appellant around. R. 261, ll. 5-6. Reeves asserted that the police the shooter was "Trey Jenkins." R. 263, ll. 19-20. However, it was revealed that he did not identify the shooter by name in the statement he gave to police approximately two hours after the shooting. R. 269, ll. 12-21. Further, Reeves told the police that he saw two shooters. R. 269, ll. 22-23; R. 272, ll. 7-9. When pressed, Reeves said the second shooter was "Dwendell." R. 272, ll. 16-20.

Shortly after the police responded to the call regarding the shooting, several officers left to look for a car matching the description given by the party attendees. R. 284, ll. 3-11. When the officers saw a similar car, a chase ensued. R. 284, ll. 14-23; R. 399, ll. 11-21; R. 430, l. 22 – R. 431, l. 16; R. 465, l. 20 – R. 466, l. 1. The officer's car collided with the suspect's car. R. 285, ll. 1-9; R. 466, ll. 15-18. The individuals in the car ran away. R. 285, ll. 14-17; R. 401, ll. 8-21; R. 431, ll. 19-22; R. 466, ll. 17-21. Nevertheless, on July 19, 2016, the police arrested Taste. R. 505, l. 14 – R. 506, l. 9. Then, on July 20, 2016, the police arrested Appellant and Smoot. R. 402, l. 25 – R. 403, l. 16. Sometime later, Brown and High turned themselves into law enforcement. R. 432, ll. 15-19; R. 453, ll. 20-23; R. 469, ll. 3-9.

ARGUMENT

The trial judge erred in admitting the recording of Appellant's third interrogation by law enforcement where (1) the evidence demonstrated Appellant was interrogated on at least two prior occasions, (2) the officer threatened to charge Appellant's sister with a crime if Appellant did not cooperate, (3) Appellant indicated his desire to no longer speak to police during the first interrogation, (4) Appellant indicated his desire for counsel during the second interrogation, and (5) the officer promised to help Appellant if Appellant cooperated with the interrogation.

Relevant facts

After Appellant was taken into custody by law enforcement on July 20, 2016, he was interrogated by Lieutenant Shumpert. R. 151, ll. 11-17. Investigator John Stokes observed this interrogation using closed circuit television, and he testified on behalf of the state at the pre-trial hearing to determine the admissibility of Appellant's statements. R. 151, ll. 11-13; R. 162, ll. 16-17; R. 162, l. 22 – R. 163, l. 10; State's Exhibit #11. According to Stokes, Shumpert advised Appellant of his rights. R. 151, ll. 20-22; R. 698; State's Exhibit #11. Although Stokes was a mere observer of the interaction between Appellant and Shumpert, Stokes opined that Appellant understood his rights. R. 151, ll. 23-24.

During this interrogation, Shumpert told Appellant of the evidence the police had against him. State's Exhibit #11. Repeatedly, Shumpert emphasized that Appellant did not want to involve Appellant's sister in this matter. State's Exhibit #11. In fact, Shumpert told Appellant that if what Appellant was saying was true, then Appellant's sister was guilty because she was lying in a capital case. State's Exhibit #11. Shumpert offered to prove to Appellant that he was in contact with Appellant's sister. State's Exhibit #11. Shumpert told Appellant he had no

choice but to have Appellant's sister taken to the law enforcement center because a lady was dead and Appellant's sister had been dating two guys. State's Exhibit #11.

Shumpert told Appellant that all he had to do was put Appellant "in the car" and it did not matter who shot. State's Exhibit #11. After speaking with Shumpert for over twenty minutes, Appellant indicated he did not want to talk anymore. State's Exhibit #11. Nevertheless, the interrogation did not end. State's Exhibit #11. Instead, Shumpert told Appellant that he was closing the door on his life. State's Exhibit #11. Shumpert continued to question Appellant regarding the shooting. State's Exhibit #11. Similarly, Appellant mentioned getting an attorney. State's Exhibit #11. Shumpert told Appellant at the end of the interrogation to "go get some advice" and to return to talk to him. State's Exhibit #11.

Appellant met with Shumpert and "Lieutenant Marty" on July 22, 2016. R. 152, ll. 18-24. Stokes, who watched the video of this interrogation, asserted that Appellant was advised of his rights and understood those rights. R. 152, l. 25 – R. 153, l. 5; R. 164, ll. 20-21; R. 699; State's Exhibit #12. On July 20, 2016, and July 21, 2016, Appellant denied any involvement in the shooting in Eutawville. R. 153, ll. 22-25; State's Exhibit #11; State's Exhibit #12. Not satisfied with Appellant's statements, law enforcement promised to interrogate Appellant "in a few days after he had time to think of things." R. 154, ll. 1-5.

Then, on July 27, 2016, the police returned – as promised – to interrogate Appellant. R. 154, ll. 1-9. Stokes and Shumpert were present for this interrogation. R. 154, ll. 10-13; State's Exhibit #13. Stokes advised Appellant of his rights. R. 154, ll. 14-17; R. 700; State's Exhibit #13. Thereafter, Appellant stated he "along with co-defendants, went there to see a person named Shy, see if she [were] there. Once they [were] there Zaquan Taste exited the car. He shook hands with two people in the yard and Zaquan got back in the car. That's when somebody

said the heck with this and the doors flew open and shots were fired." R. 157, l. 22 – R. 158, l. 2; State's Exhibit #13.

Defense counsel argued Appellant's three statements to police must be viewed "as one long" interrogation. R. 166, ll. 15-19. Further, counsel argued Appellant's statements were not voluntary because of "repeated police contact, a wearing down, a threatening, and in the end ... the breaking of the defendant." R. 166, ll. 19-23. Defense counsel noted that during the first interrogation, Shumpert made "threats against his sister," including that he was going "to lock her up." R. 168, ll. 9-11. Concerning the second interrogation, defense counsel explained that "he's telling him that other people have, some of the other people have lawyered up." R. 169, ll. 23-25. Thereafter, Appellant indicated he was trying to get a lawyer. R. 170, ll. 3-6. The officer physically reached out to Appellant showing he was willing to help Appellant if Appellant helped him. R. 170, l. 24 – R. 171, l. 1. Defense counsel emphasized the officer's use of Appellant's one-year-old daughter as an interrogation tool. R. 171, ll. 7-12. During the encounter, Appellant informed law enforcement that he did not have a lawyer, but he wanted one and needed one. R. 172, ll. 1-3.

After explaining the details of the interrogations, defense counsel delved into the totality of the circumstances analysis for the admissibility of statements to police. First, counsel noted Appellant was "a young fellow." R. 172, ll. 22-24. Further, he explained that Appellant's foot had been run over by a car, but no one had provided medical attention to him. R. 173, ll. 1-7. Finally, counsel explained the officers' interrogation techniques involved "mental duress." R. 173, ll. 11-12. The officers engaged in hours of "grilling and grilling" coupled with leaving Appellant alone in an empty room for long periods of time. R. 173, ll. 15-16. Placing Appellant in handcuffs put him "in a position of weakness." R. 173, ll. 18-21. Appellant mentioned

"several times about trying to get a lawyer, wanting to get a lawyer." R. 173, ll. 21-23; R. 174, ll. 1-2. Counsel admitted that Appellant's statements were "not like a clear I want a lawyer," but he noted that Appellant mentioned his desire for a lawyer several times. R. 174, ll. 4-8. During the first interrogation, Appellant stated he did not want to talk, but Shumpert continued the interrogation. R. 174, ll. 9-13.

As explained by defense counsel, these interrogation tactics "culminate[d] into the confession video." R. 174, ll. 13-14. Over the course of a weak, Appellant was "beaten down so much" that he was "willing to say anything to reach up to that officer's hand that is trying to pull him up." R. 174, ll. 14-18. Counsel argued "all of this trickery, deception just cruelty really renders all of these statements involuntary." R. 174, ll. 20-22.

Judge Dickson found Appellant was advised of his rights. R. 180, ll. 12-13. He further found the statements "appear[ed]" to be voluntary." R. 180, ll. 13-14. According to Judge Dickson, Appellant "did not unambiguously request an attorney nor did he ask that the investigation, that the questioning stop." R. 180, ll. 14-16. Judge Dickson agreed there was an argument to "keep out the stuff after he mentioned a lawyer in the 7/20, in the 7/22 interrogations." R. 180, ll. 16-19. However, he found nothing similar in the July 27 interrogation. R. 180, ll. 19-21. Judge Dickson ruled the three interrogations were admissible. R. 180, l. 23 – R. 181, l. 4.

During the trial, the state sought only to introduce the third interrogation. R. 561, ll. 18-21. Defense counsel moved to require the state to introduce all three interrogations pursuant to the rule of completeness. R. 562, l. 12 – R. 563, l. 6; R. 563, ll. 12-21; R. 569, ll. 4-15; R. 569, l. 18 – R. 570, l. 5. Judge Dickson denied defense counsel's request. R. 570, l. 1 – R. 575, l. 2. However, when Shumpert testified before the jury, he admitted that Appellant was interrogated

three times. R. 589, ll. 2-12; R. 589, l. 24 – R. 590, l. 12; R. 590, l. 19 – R. 591, l. 6. Shumpert testified that Appellant denied involvement in the shooting during the first two interrogations. R. 589, ll. 13-16; R. 590, ll. 13-15. The state then introduced the recording of Appellant's third interrogation. R. 594, ll. 12-13. Counsel renewed his objection, and Judge Dickson overruled the objection. R. 594, ll. 14-19.

Discussion

The Fifth Amendment to the United States Constitution provides, "No person shall be ... compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. This privilege is made applicable to the states through the Due Process Clause of the Fourteenth Amendment to the Constitution. Malloy v. Hogan, 378 U.S. 1, 6 (1964)("We hold today that the Fifth Amendment's exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgment by the states.").

In Miranda v. Arizona, 384 U.S. 436, 444 (1966), the United States Supreme Court held "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." The Court explained that "custodial interrogation" meant "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Id. Thereafter, the Court required that

> [p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.

Id. This is because "in-custody interrogation[s]" place "inherently compelling pressures" on the persons interrogated. Id. at 467.[1]

In Jackson v. Denno, 378 U.S. 368, 376 (1964), the United States Supreme Court held that "a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." To introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona, 384 U.S. 426 (1966). State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); State v. Miller, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007).

It is not enough that the interrogator advised the suspect of his rights and the suspect made an uncoerced statement. The prosecution must show that the accused understood the rights. Berghuis v. Thompkins, 560 U.S. 370, 384 (2010) (citing Colorado v. Spring, 479 U.S. 564, 573-575 (1987); Connecticut v. Barrett, 479 U.S. 523, 530 (1987)). Thus, "[t]he waiver inquiry 'has two distinct dimensions': waiver must be 'voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception,' and 'made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" Id. at 382-383 (quoting Moran v. Burbine, 475 U.S. 421, 421 (1986)); see also Johnson v. Zerbst, 304 U.S. 458, 464 (1938) ("A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege.").

In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: did totality of the

[1] The state conceded Appellant was in custody for all three interrogations. R. 176, ll. 4-6.

circumstances surrounding the custodial statement defeat the defendant's will? State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010).

> Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep.

Id. at 513-514, 702 S.E.2d at 401 (internal citations omitted).

It was undisputed that Appellant was a young man during the three interrogations. He was in his early twenties. The evidence also indicated that he had suffered a foot injury when a car in which he was riding drove over his foot when he stepped outside. While the length of the interrogations was approximately one hour per interrogation, it was undisputed that he was detained for days, having been arrested on July 20 and his final interrogation occurring on July 27. The police advised Appellant of his rights, but when Appellant stated he did not want to speak any longer, the police failed to honor his request. Additionally, when Appellant indicated he wanted a lawyer, the police failed to honor his request. Repeatedly, the police made threats against Appellant's sister if Appellant failed to cooperate with the interrogation. Coupled with the threats against Appellant's sister were promises of assistance to Appellant if he cooperated with police. Based upon the totality of the circumstances, the trial judge erred by admitting Appellant's third interrogation into evidence.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of June, 2019.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRESHAWN MARKEESE JENKINS

APPELLANT.

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Treshawn Markeese Jenkins states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.

2. She has reviewed the record of Appellant's trial before Judge Edgar W. Dickson, which was held on February 16, 2018, and February 20-23, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Treshawn Markeese Jenkins.

Respectfully Submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

This 20th day of June, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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THE STATE,

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APPELLANT.

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) Entire transcript from the pretrial hearing held on February 16, 2018;
(2) Entire trial transcript dated February 20-23, 2018;
(3) Exhibits from the pre-trial hearing: State's Exhibits #4 (Miranda advisement dated 7/20/16), #5 (Miranda advisement dated 7/27/16), #6 (Miranda advisement dated 7/27/16), #11 (CD/DVD), #12 (CD/DVD), #13 (CD/DVD);
(4) Exhibits from the trial: State's Exhibits #88 (Miranda advisement), #89 (DVD of interrogation from July 26, 2016);
(5) True-billed indictments; and
(6) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.
June 20, 2019

Susan B. Hackett

Susan B. Hackett
Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330
ATTORNEY FOR APPELLANT

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 20, 2019.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

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TRESHAWN MARKEESE JENKINS

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Treshawn Markeese Jenkins, 373775, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 20th day of June, 2019.

Susan B. Hackett
Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of June, 2019.

Mary Allgood (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027