THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
Brian M. Gibbons, Circuit Court Judge

THE STATE,

Respondent,

v.

JOHN MARION GHENT, JR.,

Appellant

Appellate Case No. 2019-001771.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S QUESTION PRESENTED

I. Whether the Court of Appeals erred by finding the trial judge's instruction that "evidence of a suicide attempt is probative of a defendant's consciousness of guilt" was a harmless insubstantial error in this murder case since this improper jury instruction was highly prejudicial charge on the facts where other explanations for petitioner's suicide attempt were apparent from the record, and where the facts of the fatal incident made accident, involuntary manslaughter, and voluntary manslaughter verdict options?

RESPONDENT'S COUNTER-QUESTION PRESENTED

I. Whether the trial court's jury instruction that "evidence of a suicide attempt is probative of a defendant's consciousness of guilt" and that they "can give this evidence of a suicide attempt whatever weight, if any," they deemed it to deserve, was harmless error, given that the existence of malice aforethought was proven beyond a reasonable doubt such that the jury instruction could not have had an effect on the verdict?

STATEMENT OF THE CASE

Following the October 28, 2013, stabbing death of his wife Elaine, the Lancaster County Grand Jury indicted Petitioner John Marion Ghent, Jr. for the charges of murder and possession of a weapon during the commission of a violent crime. (R. pp. 408-411). Petitioner proceeded to a jury trial beginning March 14, 2016, with the Honorable Brian M. Gibbons presiding. (R. p. 1). Sixth Circuit Public Defender Mike Lifsey represented Petitioner. (*Id.*). Sixth Circuit Solicitor Randy E. Newman and Deputy Solicitor Lisa Collins appeared on behalf of the State. (*Id.*).

After four days of trial, the jury returned a guilty verdict on each charge. (R. p. 404, lines 12-20). On March 17, 2016, Judge Gibbons sentenced Petitioner to fifty-four years for murder and a consecutive five years for possession of a weapon during the commission of a violent crime. (R. p. 406, line 22 – p. 407, line 2). Timely notice of appeal followed on March 23, 2016. (R. p. 412).

The Court of Appeals affirmed Petitioner's convictions and sentence in an unpublished opinion issued pursuant to Rules 215 and 220(b), SCACR. *State v. Ghent*, Op. No. 2019-UP-272 (S.C. Ct. App. filed July 24 2019). (App. pp. 1-2). Petitioner petitioned for rehearing by that Court, which was denied on September 19, 2019. (App. pp. 3-8).

ARGUMENT

Prior to deliberations, the trial court instructed Petitioner's jury that "[e]vidence of a suicide attempt is probative of the defendant's consciousness of guilt, and you ladies and gentlemen of the jury can give this evidence of a suicide attempt whatever weight, if any, you think it deserves." (R. p. 399, lines 14-17). Initially, Respondent would note that the trial court in Petitioner's case did not have the benefit of the decision in *State v. Cartwright*, 425 S.C. 81, 819 S.E.2d 756 (2018). This Court decided *Cartwright* in the intervening time between appellate briefing and the Court of Appeals' resolution of Petitioner's case. *Cartwright* held, in part, that "the trial court shall not provide a limiting instruction or otherwise comment to the jury on" admissible evidence of suicide. 425 S.C. at 93, 819 S.E.2d at 762. However, at the time of Petitioner's March 2016 trial, the jury instruction reflected the current law of our State. (R. p. 399, lines 14-17). *State v. Orozco*, 392 S.C. 212, 220, 708 S.E.2d 227, 231 (Ct. App. 2011).

Taking *Cartwright* into consideration, the Court of Appeals' Rule 220(b), SCACR, opinion found the court's instruction harmless error. This decision is not in conflict with any prior decision by this Court. *See* Rule 242(b). The record adequately supports the application of harmless error as the reason for affirming Petitioner's convictions and sentence such that certiorari is not warranted. Indeed, the totality of the evidence, including Petitioner's numerous admissions, indicates the presence of malice aforethought to the exclusion of all other alternative outcomes beyond a reasonable doubt.

Erroneous jury instructions are subject to harmless error analysis. *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009). The inquiry "is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998).

The court must affirm the conviction if, beyond a reasonable doubt, "'the error complained of did not contribute to the verdict.'" *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (quoting *Kerr*, *supra*). "Thus, whether or not the error was harmless is a fact-intensive inquiry." *Id.*

By way of background, the facts set forth at trial established that Petitioner, who went by Butch, stabbed his wife Elaine in the chest with a fourteen-and-a-half inch-long filet knife at approximately 4:00 AM on October 28, 2017. (R. p. 76, line 23 – p. 77, line 2; R. p. 192, lines 21-25; R. p. 168, line 19-24). The knife entered her lung slightly left of center. (R. p. 22, line 4-20). She additionally sustained a bruise near the stab wound on her chest, two bruises to the left forearm, and two surface scratches to the back of her right hand. (R. p. 23, lines 12-24). She bled out within minutes. (R. p. 28, lines 2-18).

Over the next couple of days, Butch told everyone within earshot that he was responsible. (R. p. 74, lines 3-5; R. p. 84, lines 14-15; R. p. 158, lines 4-5; R. p. 162, lines 19-22; R. p. 270, lines 1-5; R. p. 280, line 5 – p. 281, line 1). Between 4:00 and 4:15 AM, Butch left apologetic voicemail messages for his daughter Tabitha and his sister Betsy. (R. p. 56, lines 1-8; R. p. 261, line 13 – p. 263, line 2; State's Exhibits 4 and 25). Upon receipt of the messages, Butch's family responded to the house. (R. p. 53, line 14 – p. 54, line 9; R. p. 58, lines 12-23; R. p. 65, lines 7-8; R. p. 71, lines 16-25). Upon entering the bedroom, family members became sick from the gore. (R. p. 65, lines 13-16; R. p. 126, lines 10-22; R. p. 168, lines 13-18; R. p. 184, line 13 – p. 186, line 1). Butch's son "grabbed [Butch] and took him out to the kitchen" and began beating on him. (R. p. 84, lines 12-20). "After about the 20th punch [Butch] said, 'I f---- stabbed her.'" (R. p. 84, lines 14-15).

Law enforcement arrived on scene and found Butch lying on his back on the kitchen

floor, nonresponsive, largely uninjured, and covered in what appeared to be flour. (R. p. 125, line 11 – p. 126, line 5; R. p. 137, lines 16-19). He had at least one laceration to a wrist but it did not require medical treatment. (R. p. 137, line 22 – p. 138, line 9). On a non-emergency ride to the hospital, Butch volunteered to EMS that his "son hit [him] in the face because [he had] killed [his] wife." (R. p. 147, line 6 – p. 149, line 6; R. p. 158, lines 4-5; R. p. 162, lines 19-22; R. p. 163, lines 7-17; R. p. 417). Butch's vitals were stable and his blood pressure was near perfect, but his blood sugar was high. (R. p. 139, line 23 – p. 142, line 16). He showed no signs of overdose despite stating he had taken a copious amount of unknown pills. (R. p. 417). At all times he was conscious, oriented, speaking clearly, and alert to person, place and time. (R. p. 143, lines 15-21; R. p. 144, lines 21-22).

At the hospital, Butch voluntarily told the deputy standing watch that he "killed her because she was going to leave [him]. She loved [him] but was not in love with [him]. She was staying out until 3:00 or 4:00 in the morning with her girlfriends and not coming home." (R. p. 269, lines 2-25; R. p. 270, lines 16-20). Butch expounded, saying

> he tried to slit his wrists but it didn't work so he took pills and he thought he would die but that didn't work. So he said his son drug him out of the bed and beat him. Son asked why did he do it, to kill his mama and Ghent stated because she was going to leave him.

(R. p. 270, lines 1-5).

The deputy standing guard later that evening allowed Butch to call his sister Betsy. (R. p. 278, lines 7-24). This is what this deputy heard Butch volunteer to his sister during the chaperoned phone call:

> Shortly after the conversation started Mr. Ghent began to sob and stated that he had killed his wife. He said he had been drinking for the both of them and taking pills. When his wife got home they had a confrontation that began and he at that point began to stab her. His wife begged him to stop. Ghent made the statement

> he had been thinking about it for three weeks. Mr. Ghent then stated he cut his own wrists and got on the bed next to his wife – next to his wife's body, told her that he would die with her. And then the next thing he realized was that his son had found them in the bed and his son began kicking him in the head and body. When he calmed down that was pretty much the extent of that conversation.

(R. p. 280, line 5 – p. 281, line 1). Butch was alert, aware, and speaking plainly on both occasions. (R. p. 271, lines 2-10; R. p. 277, lines 18-24).

At the hospital, Butch required no medical treatment to the superficial abrasions on his wrists. (R. p. 38, line 6 – p. 39, line 12). Butch responded to his treating physician that he was experiencing pain at a "zero" on a zero-to-ten scale. (R. p. 41, lines 12-17). During treatment, Butch stated that he had taken two blood pressure medications and an antidepressant. He presented with low blood pressure and was treated accordingly. (R. p. 42, lines 1-19). Butch, however, normally took high blood pressure medicine. (R. p. 42, lines 20-25). He was ushered from the emergency room into general admission just hours after arriving at the hospital, and he was discharged into the custody of law enforcement on the 30th. (R. p. 40, line 14 – p. 41, line 6). At all times, Butch presented as alert and oriented. (R. p. 39, line 13 – p. 40, line 13; R. p. 43, lines 12-17).

Still other evidence indicated that Butch contemplated the murder. His granddaughter Raylee lived in Butch's home and usually slept in Butch and Elaine's bedroom. But that night, Butch told his family Raylee had to sleep with her own parents, and slammed the door shut before going to bed. (R. p. 79, lines 10-25). When the family discovered Butch and Elaine, they also found a note taped to the outside of Butch's bedroom door that said "DON'T LET RAYLEE COME IN. HOPE YOU ARE HAPPY NOW!! SORRY!! SELL HOUSE AND SPLIT WITH SISTER!" (R. p. 133, line 25 – p. 134, line 15; R. p. 416). A handwriting analyst opined that Butch wrote the note. (R. p. 238, lines 3-18).

According to Butch, who testified at trial, Elaine fell victim during a struggle over the knife Butch was going to use to kill himself. He had been thinking about the prospect of suicide for three or four weeks as a response to Elaine's intent to leave him.[1] (R. p. 295, line 22 – p. 296, line 1; R. p. 331, line 21 – p. 332, line 2). He had previously spoken to his daughter Tabitha about killing himself. (R. p. 56, lines 14-16). The day before the early-morning incident, October 27, was Butch's birthday. (R. p. 295, lines 8-11). When Elaine came home in the early morning hours on October 28, Butch initiated a conversation with Elaine to see if "she was really serious about leaving." (R. p. 297, lines 3-5; R. p. 297, lines 19-25). He could not "remember whether she even answered [him] or not," (Tr. p. 298, lines 4-6), but he "picked up the knife [he] had beside the bed because [he] was already planning on cutting [his] wrists and all and . . . [she must have] seen the knife in [his hand.]" (R. p. 297, lines 11-16). According to Butch, a struggle ensued over the knife. Elaine grabbed his arm to try to get him to let it go. (R. p. 298, lines 15-22).

By Butch's own demonstration, he held the knife in his fist a threatening way, and not in a manner demonstrative of drawing the knife across his wrist in a suicide attempt. (R. p. 315, lines 4-19; R. p. 383, lines 6-17). By Butch's own admission, he "was standing at the foot of the bed" blocking the door to the bedroom. (R. p. 298, line 9; R. p. 345, lines 21-24). He "was hiding [the knife] behind [his] back." (R. p. 315, lines 13-14). Then, prior to the stabbing, the knife was lifted over his head. (R. p. 315, lines 9-19). During this interaction, according to Butch, "she

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[1] The State elsewhere presented evidence of Elaine's ongoing affair and that Elaine was actively looking to leave Butch. (R. p. 69, line 17 – p. 70, line 10; R. p. 110, lines 1-9; R. p. 113, lines 10-19 R. p. 115, lines 21-22). The State also established that Elaine had been with her lover prior to returning home and falling victim to the fatal stabbing. (R. p. 114, lines 6-10; R. p. 116, line 23 – p. 117, line 3; R. p. 119, lines 10-11). No one but Butch heard from Elaine after she came home that night. (R. p. 81, lines 6-22; R. p. 100, lines 1-9 R. p. 223, lines 12-15).

grabbed ahold of [his] wrist" and his "hand just slipped – arm just slipped out of her hand and went straight into her chest." (R. p. 299, lines 3-7). Panicking, he guessed he pulled the knife out "and throwed it down or ripped it out." (R. p. 299, lines 10-17). Then, Butch testified,

> I just let her lay down and I put her to bed. I just let her lay the way she fell. I got up and went in and washed the blood off my hands and stuff and I went and sat on the bed, that's when I got the pills, I tried to cut my wrists first. . . . [B]ut something wouldn't let me cut my wrists. . . . Then I got up and went and looking around trying to see what kind of pills I could take to see what I had. I know she had blood pressure pills and stuff . . . I just swallowed all of them. And then I went back to the bed and I thought about my granddaughter, I didn't want her to come and see us so I wrote the note to not let her come in. I called my sister and my daughter, told them I was sorry . . . I was planning on being dead when they found us and I just wanted to let them know I was sorry.

(R. p. 299, line 19 – p. 300, line 25).

The trial court instructed the jury on the offenses of murder, voluntary manslaughter, and involuntary manslaughter, as well as on the defense of accident. (R. p. 395, line 5 – p. 399, line 13). Petitioner's jury therefore had to determine whether Petitioner was acting lawfully and either recklessly or with due care and did not intend the result; whether Petitioner was acting in the heat of passion due to the victim's intent to leave Petitioner and/or her extramarital affair; or whether Petitioner's actions were instead accompanied by malice aforethought. S.C. Code Ann. §§ 16-3-10, -50, -60 (defining murder, manslaughter, and involuntary manslaughter); *State v. Wharton,* 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009) (defense of accident); *State v. Davis,* 374 S.C. 581, 585-86, 649 S.E.2d 132, 134 (Ct. App. 2007) (involuntary manslaughter).

Ample evidence exists that not only supports the jury's assignment of malice aforethought, but that also demands the conclusion beyond a reasonable doubt that no other lesser verdict could be reached. Petitioner was initially forthcoming about the reason for his wife's death. He issued a number of confessions in this case prior to making any claim that the

killing was unintentional or that he was incapable of cool reflection. Immediately upon discovery he told his family that he stabbed her. (R. p. 84, lines 14-15). In total, Petitioner told his son, his sister, EMS, and two sheriff's deputies that he killed his wife. (R. p. 74, lines 3-5; R. p. 158, lines 4-5; R. p. 162, lines 19-22; R. p. 270, lines 1-5; R. p. 280, line 5 – p. 281, line 1). Speaking precisely to malice, a deputy recounted Petitioner telling his sister, "When his wife got home they had a confrontation that began and he at that point began to stab her. **His wife begged him to stop**. Ghent made the statement he had been thinking about it for three weeks." (R. p. 280, lines 17-20 (emphasis added)). Petitioner even told the deputy standing watch in his hospital room that he "killed her because she was going to leave." (R. p. 269, lines 2-25). Additional repetitive testimony lent motive to opportunity; the victim's friends and family took turns testifying that they knew the victim wanted to leave Petitioner and was actively looking for a new place to live. (R. p. 48, line 24 – p. 49, line 13; R. p. 103, lines 17-23; R. p. 108, lines 16-20; R. p. 110, lines 1-9; R. p. 113, lines 3-5).

In addition to being replete with Petitioner's own declarations of guilt, the record contains circumstantial evidence of premeditation. Petitioner did not allow his granddaughter to sleep in his bedroom that night, breaking with their usual practice. (R. p. 79, lines 10-25). To ensure that Raylee did not see the gruesome scene inside, he taped a note to the door saying "DON'T LET RAYLEE COME IN. . . ." (R. p. 133, line 25 – p. 134, line 15; R. p. 414). He never called for help after the stabbing. He never told his family that it was an accident when he called his daughter and sister to apologize. (State's Exhibits 4 and 25, on file at S.C. Ct. App.). Petitioner's own testimony establishes that he planned to confront his wife about her intention to leave him on this particular night. (R. p. 297, lines 3-5; R. p. 297, lines 19-25). During the confrontation, he was standing at the foot of the bed with the knife in his hand, blocking the door

and the victim's escape route. (R. p. 298, line 9; R. p. 345, lines 21-24). He testified that he could not "remember whether she even answered [him] or not," indicating that he was neither looking for an answer from his wife nor engaging her in an attempt at reconciliation, but rather was determined to act as he had planned. (R. p. 298, lines 4-6).

Moreover, Petitioner claimed that his hand "just slipped" during his and Elaine's struggle over the knife. (R. p. 299, lines 3-7). But the inference required from the forensic pathologist's testimony was that the victim's stab wound required force and was not the result of an unintentional slip of the hand. Elaine's lung was punctured by the long blade and a bruise was located just inches away from the entry wound. (R. p. 22, line 16 – p. 23, line 24). The wound itself was nine-tenths of an inch long. The wound had a slight twist and was made by a long, single-edged filet knife.[2] (R. p. 23, lines 8-11; Tr. p. 192, lines 20-25). Crucially, Petitioner himself demonstrated at trial that he was "hiding" the knife behind his back and then lifted it up in a confrontational manner. (R. p. 315, lines 4-19; R. p. 383, lines 6-17). Petitioner indicated during cross-examination that that he handled the knife with intent to harm rather than as one would in an effort to slit his own wrists. (R. p. 315, lines 4-19; R. p. 383, lines 6-17). Yet, Petitioner testified he tried to cut his wrists using the same knife after he washed Elaine's blood from his hands. (R. p. 299, lines 19-23). This time, "it would not go through," (R. p. 300, lines 1-6), but he created enough of a cut to cause some bleeding. (R. p. 322, line 20 – p. 323, line 12). He did not use the tip of the knife that had succeeded in killing his wife. (R. p. 323, lines 13-22).

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2 The forensic pathologist opined that the knife recovered from the bedroom floor and brought to the autopsy likely caused the wound. (R. p. 24, line 3 – p. 25, line 14). A DNA analysis conducted with samples from Appellant, the victim, and that bloody knife determined that Elaine's DNA profile matched that found on the knife with a probability of 1 in 2.2 quintillion. (R. p. 253, line 17 – p. 254, line 3). With a probability of 1 in 4500, Butch was a minor contributor to the DNA on the knife based upon a Y-chromosome analysis. (R. p. 254, lines 8-22).

The disparity in Petitioner's treatment of the knife is only demonstrative of an intent to kill.

Despite Petitioner's reliance upon the evidence of a suicide attempt as a means of pleading that Elaine's death was accidental, (*e.g.* R. p. 297, lines 19-25), this affirmative defense did not apply to the evidence presented at trial. In order for accident to serve as a defense, the defendant had to have been acting lawfully and had to have been exercising due care in his handling of the knife. *State v. Wharton,* 381 S.C. at 216, 672 S.E.2d at 789. For reasons discussed, the record is void of any indication that Petitioner was exercising due care when a struggle ensued over the knife. (R. p. 297, line 3 – p. 299, line 17 ("I . . . was going to talk to her and she said she wanted to leave me. I got the knife . . . ."). Any struggle between Butch and Elaine ensued as a result of his confronting her about whether or not she was going to leave him. (R. p. 297, line 19 – p. 299, line 6). He was standing at the foot of the bed with the knife in his hand during the confrontation. (R. p. 298, line 9; R. p. 345, lines 21-24). Again, Petitioner demonstrated at trial that he was "hiding" the knife behind his back and then lifted it up in a confrontational manner. (R. p. 315, lines 4-19; R. p. 383, lines 6-17). None of these facts surrounding Petitioner's possession of the knife indicates the use of due care. Furthermore, Petitioner's holding a filet knife during a planned confrontation with his wife does not indicate that Petitioner was acting lawfully at the time. *See* S.C. Code Ann. § 16-25-20 and 16-25-65 (defining crime of domestic violence in varying degrees).

And, when considered alongside the remainder, the evidence that Petitioner staged a suicide attempt was more powerful than the factual support for Petitioner's alternative reasoning that he "didn't want to live without her." (R. p. 297, lines 19-25). The jury was free to weigh this iteration against the medical treatment he subsequently received, but the evidence only supports an inference that the attempt testified to was a cover-up. Emergency responders recorded the

wound on Petitioner's wrist as a "laceration" and testified that it was not bleeding and did not require treatment. (R. p. 137, line 23 – p. 138, line 9; R. p. 416). His treating physician at the hospital likewise administered no treatment to the wound. (R. p. 39, lines 15-25). The emergency department nurse and the medical floor nurses classified the wound as an "abrasion." (R. p. 39, lines 1-5). Petitioner consistently reported to this doctor that he was experiencing "zero" pain. (R. p. 41, lines 12-17). When the knife did not work for him, he said swallowed four of five bottles of pills. (R. p. 300, lines 13-15). And, although he stated he "swallowed every bottled pill [he] could find" in an attempt to overdose, the only adverse effect was low blood pressure. (R. p. 42, lines 1-19; R. p. 270, lines 1-3; R. p. 300, lines 8-15). He had stable vitals immediately after the incident, and only later received limited treatment at the emergency room. (R. p. 139, line 23 – p. 142, line 16). And, Petitioner regularly took high blood pressure medication. (R. p. 42, lines 1-25). The results of a urinalysis showed no signs of an overdose. (R. p. 43, lines 1-11). The evidence does not corroborate Petitioner's statement that he swallowed four or five bottles of pills. There is also conflicting testimony on the number of pills taken: During treatment, Butch stated that he had taken two blood pressure medications and an antidepressant. (R. p. 42, lines 1-19). Thus, the evidence further gives rise to the circumstantial inference that Petitioner attempted suicide as a means of evading criminal responsibility for the act committed—to excuse or cover up what he did to Elaine.

Not only does overwhelming direct and circumstantial evidence link Petitioner's admitted suicide attempt to the accusations which engendered the current convictions, *Cartwight*, 425 S.C. at 92, 819 S.E.2d at 762, but the only competent conclusion established by the sum of the evidence was that Petitioner lay in wait for his wife to come home the night of his birthday and was prepared to execute the plan he had been contemplating for upwards of three weeks. The

evidence adduced at trial indicates an intentional killing not in the sudden heat of passion or as a result of criminal negligence or of an accident, but instead as the result of an act committed with premeditation and a depraved heart. The jury in this case was instructed merely that "evidence of a suicide attempt is probative of a defendant's consciousness of guilt." (R. p. 399, lines 14-15). This instruction included ameliorating language alerting the jury that they may give the suicide evidence whatever weight, *if any*, they deemed it to deserve. (R. p. 399, lines 15-17). The jury was not instructed that the State alone presented that evidence for a particular purpose. *Contra State v. Grant*, 275 S.C. 404, 408, 272 S.E.2d 169, 171 (1980) (jury instruction that "attempts to run away have always been regarded as some evidence of guilty knowledge and intent" found erroneous). Therefore, given all of the evidence, and considering all of the potential verdicts and the jury instruction rendered, the challenged instruction cannot have contributed to the verdict obtained.

CONCLUSION

Respondent requests this Court deny the Petition for a Writ of Certiorari. For the reasons discussed above, certiorari is not warranted on the issue making its way before this Court.

Respectfully submitted,

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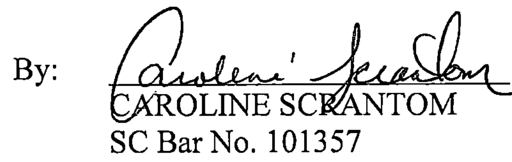
By: 
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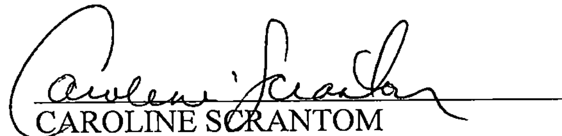
PROOF OF SERVICE

I, Caroline Scrantom, counsel for the Respondent, certify that I have served the within Return to Petition for Writ of Certiorari on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, and addressed to his attorney of record: Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 9th day of December, 2019.



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