ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

---

The State of South Carolina,

Respondent,

vs.

Lorenzo Guillermo Daniel Calderon,

Appellant.

Appellate Case No. 2018-001707

---

# FINAL BRIEF OF RESPONDENT

---

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

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

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia Street, Third Floor
Spartanburg, SC 29306

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

---

The State of South Carolina,

Respondent,

vs.

Lorenzo Guillermo Daniel Calderon,

Appellant.

Appellate Case No. 2018-001707

---

# FINAL BRIEF OF RESPONDENT

---

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

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

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia Street, Third Floor
Spartanburg, SC 29306

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**:

**Other Authorities**:

## RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

I.

Because Appellant drove his co-defendant away after his codefendant shot the victim, a reasonable juror could find Appellant committed accessory after the fact to murder and therefore, the trial court properly denied the motion for directed verdict. Further, the issue is not preserved for review because Appellant failed to state any grounds in support of his motion for directed verdict to the trial court.

II.

The trial court did not err in allowing testimony concerning several events constituting the res gestae of the crime. Appellant failed to preserve for review all but one complaint of error which was evidence he verbally taunted the victim earlier in the day from a moving vehicle. The testimony was admissible because its probative value was not outweighed by the negligible danger of unfair prejudice.

III.

The trial court did not err in allowing a 9mm pistol and photograph of the pistol found in the codefendant's truck into evidence. Further, any possibility of error was eliminated when the trial court instructed the jury to not consider evidence of the 9mm pistol as evidence against Appellant.

IV.

The trial court did not err in denying codefendant's claims of self-defense because codefendant could have avoided the difficulty and brought a weapon to the difficulty; plus the trial court was not obligated to believe his unconvincing story.

## STATEMENT OF THE CASE

Appellant Calderon was jointly tried with his codefendant, Devin Ruttle on September 10-13, 2018. Ruttle was found guilty of murder and Appellant was found guilty of accessory after the fact to murder by the jury. Appellant was sentenced to fifteen years imprisonment suspended to five years imprisonment and five years probation by the Honorable J. Derham Cole. A previous immunity hearing was held on August 29, 2018 and Judge Cole denied immunity to both defendants by order dated September 5, 2018.

## STATEMENT OF FACTS

It is undisputed Devin Ruttle shot and killed his victim, Dalton Moore, and it is further undisputed Appellant Calderon drove him away. Ruttle would claim self-defense, but shortly before the shooting, Justin Rector testified he was in the bed of another pickup truck and he waived at Victim as he walked down Foster Street to see if Victim needed a ride. Victim declined. Victim was carrying a soda and nothing else. R. pp. 158-64.

As Tammy McAlister and her husband were coming home in their Expedition, they saw a young man wearing a hoody walking down Foster Street in their neighborhood in Cowpens. As she turned into their driveway, in her rear view mirror she saw someone hanging out of a grey truck and then jump out of the truck. Shortly afterwards, by her porch, she heard two gunshots. Her husband went towards the nearby community center from where they heard the gunshots to see what happened. She went next door and gave a description of the truck to the 911 dispatcher who was already on the phone with her neighbor. From her neighbor's porch, she saw the young man wearing the hoody now laying on the ground. R. pp. 172-73. The young man was the victim, Dalton Moore.

Jeffrey McCallister is Tammy's husband, and he testified he also noticed the young man

walking down the street with something in his hand, he thought possibly a Walkman. He also saw a silver pickup truck and observed someone jump out of the passenger side while the truck was still in motion. The truck continued to drive away. Shortly after, Jeffrey heard the shots from the front steps of their house. R. pp. 166-68. Thinking of the young man he just saw, he handed over the family Chihuahua to his wife and went to see what happened. Running down the street, he found the young man lying on the ground and administered CPR, as he was trained to do. R. pp. 168-69.

Donald Greene lived across the street from the community center. He heard two shots and looked out the window to see Dalton stagger, then fall to his knees. He told his wife to call 911 and ran across the street, helping Jeffrey with CPR. Debbie Greene testified she called 911 after her husband looked out the window after they both heard two gunshots. While on the phone with 911, she handed the phone over to Tammy. R. pp. 179-80.

Stephanie Brewster lived on the same street. She heard gunshots, walked onto her porch and saw Dalton on his knees. She yelled across the street and asked if he was okay, he replied he was shot. She called 911, grabbed a couple of towels, and ran across the street. She saw a man in the middle of the street running sideways to a car as the car rolled backwards down the slope. It was an older, bigger model car, tan with four doors. The man wore a lime-green hoody underneath a beige jacket. R. pp. 181-86.

Jerry and Jennifer Taylor were sitting on the deck behind their house, on the same street as the shooting, when they heard two gunshots. They heard the sound of a rapidly accelerating car, and Jerry told his wife, "I bet you that's somebody trying to get away. R. p. 197. He heard the car turn down the dead end street, then it returned from the dead end, driving at a high rate of speed. The driver-side rear window had a plastic bag over it. The car was a goldish four-door vehicle, like a

Crown Vic. R. pp. 198-99. Jennifer Taylor saw two men in the goldish tan car as it raced past the house, one of the men wore a hoody. R. pp. 198-99.

Deputy Sheriff James Rush heard a BOLO for a Ford Ranger and a Crown Vic-type vehicle. He found a vehicle meeting the description of the car that had tape marks on the mirror, but no plastic bags. He turned his vehicle around and stopped the vehicle once two other patrol vehicles caught up to him in the pursuit. He found Appellant and Ruttle in the vehicle. Additionally, firearms were in the vehicle and a loaded magazine lay on the floorboard. He observed adhesive left behind on the mirror. Ruttle was driving the vehicle at the time of the stop. R. pp. 218-26.

Hunter Sizemore was driving his mom's Ford Ranger and Appellant was a passenger, driving through Cowpens, when he was forced to slow down because Appellant was about to jump out of his truck. R. p. 237. Specifically, Appellant yelled "stop, stop, stop, stop, stop" at the sight of Dalton walking down the street. R. p. 244, lines 14-17. When Sizemore did not immediately stop, Appellant started opening the door. R. p. 244. Sizemore also confirmed the passenger side window of Ruttle's car was covered with a trash bag that day. R. p. 253. Sizemore testified when Appellant jumped out of his truck, it looked like Appellant had a pistol in his waistband. R. pp. 253-54.

Earlier in the day, Sizemore, Appellant, and another individual helped Ruttle get his vehicle out of a ditch. Ruttle was driving what Sizemore described as a Crown Vic and was wearing a green hoody. R. pp. 240-43. On the way to help Ruttle, they passed Dalton and Appellant yelled at Dalton something to the effect of "don't get caught lacking." Sizemore did not know what that meant. R. pp. 244-46.

Lieutenant Wallace, a SLED crime scene investigator, processed the gold-color Grand Marquis. There were two handguns and ammunition in the glove compartment. R. pp. 280-81; p.

283. Lieutenant Wallace recovered both .40 caliber and 9mm ammunition. Lieutenant Wallace noted there were no magazines in the pistols. A magazine of 9mm ammunition was found in a book bag. A 9mm rifle was found in the trunk. A .40 caliber handgun was also found in the vehicle. R. pp. 284-86.

On cross-examination, SLED Agent Harvey Owens testified he received information that Appellant was present with Ruttle when Ruttle disposed of his clothing, but was not advised that Appellant assisted in disposing of the clothing. R. pp. 313-14. Agent Owens on redirect examination confirmed Appellant originally claimed Ruttle drove him away, despite the video evidence to the contrary. R. p. 317.

Appellant's niece, Maria Calderon, testified she was close with Ruttle, although she explained they were "not quite" a couple. Ruttle, through Snapchat, told Maria that Ruttle shot Dalton. When she asked if he killed Dalton, Ruttle replied, "I just took care of some business." R. p. 323, lines 10-12. Brittni Gossett was friends with Appellant and knew Ruttle through Appellant. She was best friends with Maria. She testified she was with Maria when Ruttle, through Snapchat, told Maria he loved her and cared for her strongly. Maria texted why Ruttle was saying this to her and he replied that he shot Dalton. When asked if he killed Dalton, Ruttle replied "I took care of business." R. pp. 330-32.

DNA recovered from a cartridge matched Ruttle's DNA. It was a 1 in 1.2 septillion match. R. pp. 357-58. Pathologist Dr. John Wren testified the bullet went into Dalton's chest near the underarm going backwards and slightly upwards. Dr. Wren recovered a .40 caliber hollow point bullet. R. pp. 367-68. Dalton suffered bilateral hemothoraxes resulting in blood building in multiple cavities. The cause of death was an internal hemorrhage. R. pp. 363-69.

Devin Ruttle testified on his own behalf. Ruttle testified on a prior occasion, he drove through the neighborhood in Cowpens with Appellant when he saw Dalton, with something behind his back, start running at their car, which stalled at the top of the hill. Appellant "presented a weapon" at Dalton and Dalton ran away. R. pp. 395-96. Ruttle testified Dalton and Appellant had prior difficulties with each other but Ruttle never had any problems with Dalton. R. pp. 396-97.

On May 5, Dalton flagged Ruttle down, then saw Appellant on the street. He picked Appellant up and then parked the car and walked to Dalton. Ruttle testified Appellant handed him a gun before he exited the car. Dalton pulled a knife on Ruttle, and Ruttle pulled out his pistol. He attempted to fire two warning shots in the air, but the gun would not go off. R. pp. 405-05. Dalton then charged Ruttle and Ruttle pulled the trigger. Ruttle contended he was not even aiming the pistol. Appellant started the car and Ruttle got in. Appellant drove away and they switched drivers at the end of the road. R. p. 405. Ruttle admitted throwing away items including the gun. R. p. 412.

Ruttle also admitted the guns found in his car were his. Ruttle testified he is a gun enthusiast. It is his hobby. R. p. 415. Ruttle also claimed he did not plan to be aggressive and Appellant did not know Ruttle would shoot Dalton. R. pp. 415-16. Ruttle testified he ran back to the car because he was scarred. Ruttle did not remember if Appellant stopped driving before or after Ruttle told Appellant about the shooting. R. pp. 417-18. On cross-examination, Ruttle admitted he originally claimed he was not on Foster Street that day. Ruttle also told law enforcement he did not know Dalton. R. p. 422.

Ruttle admitted the 9mm AR15 recovered from the trunk was his. R. p. 448. Ruttle agreed there was .40 caliber ammunition in his car even though the .40 caliber gun was Appellant's. R. pp. 448-49. Ruttle used Appellant's .40 caliber gun when he shot Dalton. He claimed he got rid of

Appellant's gun without talking about it with Appellant. R. p. 467.

Brianna Ivestor testified Ruttle and Appellant arrived at her house. Ruttle said someone tried to kill him with a knife. Ruttle threw several items away. He gave Ivestor money for their son. Then both Ruttle and Appellant left. R. pp. 471-72.

At the close of evidence, the trial court gave an instruction to the jury that the 9mm rifle found in the trunk of the car was not being offered as evidence against Appellant. R. p. 502, line 19 – p. 491, line 7.

## ARGUMENT

I.

**Because Appellant drove his co-defendant away after his codefendant shot the victim, a reasonable juror could find Appellant committed accessory after the fact to murder and therefore, the trial court properly denied the motion for directed verdict. Further, the issue is not preserved for review because Appellant failed to state any grounds in support of his motion for directed verdict to the trial court.**

Appellant alleges evidence was not sufficient for the case to be submitted to the jury. However, it is undisputed that Appellant drove Ruttle away from the immediate scene after Ruttle shot Victim. Seven neighbors heard the gunshots, and Appellant hastily drove the vehicle away, rapidly accelerating as he turned down a side street.

At the close of the State's evidence, Appellant's counsel made only a generalized directed verdict motion, stating, "We move also for a directed verdict. We believe in the light most favorable to the state they have not met their burden to go before the jury." R. p. 381, lines 11-13. Neither defendant moved for directed verdict after they rested their respective cases. R. p. 496. Following the State's reply witness, Appellant's counsel moved for directed verdict, arguing "I renew my request for a directed verdict. I don't believe the state has met its burden to go forward to the jury." R. p. 505, lines 1-3.

Merely moving for a directed verdict without stating any grounds is insufficient to preserve a directed verdict issue for review. State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998) *aff'd*, 337 S.C. 617, 524 S.E.2d 837 (1999). Issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. State v. Russell, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001); State v. Jordan, 255 S.C. 86, 177 S.E.2d 464 (1970).

Because Appellant failed to make any argument or direct the trial court as to what elements of the offense Appellant believed the State failed to prove, Appellant failed to preserve for review any argument that the trial court erred in declining to direct a verdict.

Further, the State presented sufficient evidence to present the case to the jury. When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. Id.

Once a defendant comes forward with proof, the propriety of a directed verdict is judged on all the evidence. State v. Hepburn, 406 S.C. 416, 432, 753 S.E.2d 402, 410 (2013). However, when a defendant only offers proof to explain, impeach, or rebut a codefendant's testimony, such evidence will not be considered in the directed verdict analysis. Id. at 433, 753 S.E.2d at 410. In the instant case, Ruttle's testimony served to support Appellant's claims that he lacked knowledge of the freshly committed felony and that no felony occurred because Ruttle killed in self-defense. Appellant's one witness, Maria Calderon, was recalled to the stand by Appellant before Ruttle called any witnesses and Maria's testimony was in no way responsive to Ruttle's evidence that followed. State v. Phillips, 416 S.C. 184, 195, 785 S.E.2d 448, 453 (2016) (finding because appellant's testimony preceded her codefendant's defense, the waiver rule still applied). Accordingly, Hepburn's limitation on the waiver rule does not apply in the instant case. However, regardless of Ruttle's testimony, the State's evidence alone was sufficient to submit the case to the jury.

Ultimately, the question for review of the denial of a motion for directed verdict is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all

the elements beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016). The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty." See State v. Pearson, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016).

As observed in Pearson, the United States Supreme Court noted the following:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Pearson, 415 S.C. at 471 n.2, 783 S.E.2d at 806 n.2 (quoting Jackson, at 319) (emphasis in the original); see also State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.").

To prove a defendant guilty of accessory after the fact, the State must prove the following elements: (1) a completed felony; (2) the accused knew the principal committed the felony; and (3) the accused harbored or assisted the principal felon. State v. Legette, 285 S.C. 465, 466, 330 S.E.2d 293, 294 (1985); State v. Blakely, 402 S.C. 650, 656, 742 S.E.2d 29, 32 (Ct. App. 2013). "The

assistance or harboring rendered must be for the purpose of enabling the principal felon to escape detection or arrest." Legette, 285 S.C. at 467, 330 S.E.2d at 294. "An accessory after the fact is one who, knowing a felony to have been committed receives, relieves, comforts, or assists the felon." State v. Nicholson, 221 S.C. 399, 405, 70 S.E.2d 632, 634 (1952) (citation and internal quotation marks omitted). The person must know of the felony and know the person aided is the guilty party, and the accused must intend to shield the person aided from the law. Id.

The Kentucky Court of Appeals observed, "Certainty of knowledge [a felony has been committed] is not required. It is sufficient that the accused had actual knowledge of facts which would give him good reason to believe the person assisted to be the felon." Maddox v. Commonwealth, 349 S.W.2d 686, 688-89 (Ky. Ct. App. 1960).

A person merely present at the time of the crime may become an accessory after the fact if the person "thereafter aids the perpetrator to cover it up or escape from the crime." State v. Collins, 329 S.C. 23, 27, 495 S.E.2d 202, 205 (1998). This is a recent modification to case law that now recognizes absence from the scene of the crime is not an essential element of accessory after the fact, and that "mere presence at the scene will not preclude an accessory verdict where the defendant becomes involved after the commission of the substantive offense." Id. at 27-28, 495 S.E.2d at 205 (emphasis removed, internal quotation marks omitted).

The Kentucky Court of Appeals observed:

> Any assistance whatever given to a felon to hinder his being apprehended, tried, or suffering punishment makes the assistor an accessory. IV Blackstone 37. 'The true test for determining whether one is an accessory after the fact is, to consider whether what he did was done by way of personal help to his principal, with the view of enabling the principal to elude punishment – the kind of help rendered appearing to be unimportant.' Bishop's Criminal Law 365

(§634).

Maddox, at 689.

In Maddox, the defendant, a union field representative, was accused of accessory after the fact when a miner told Maddox he shot a man during a strike. Maddox gave the shooter a ride to nearby Barbourville, and then gave the shooter money to take a taxi cab to Pineville. Maddox claimed he took the shooter to Barbourville to surrender to police, and then when the shooter was worried about being subjected to violence there, Maddox gave him fare for the taxi so he could surrender to police in Pineville. However, a passenger contradicted this testimony, indicating Maddox never told the shooter he should surrender to law enforcement and that Maddox told the shooter to take the taxi home. Id. at 690-91. The Kentucky court observed, "Thus it may be seen that apart from Maddox's own version of the matter there was very little in the evidence to persuade the jury that his motives were simon-pure." Id. at 691. The court also held, "We do not think . . . that an intent on the part of [the shooter] to escape or avoid detection was necessary in order for Maddox to become an accessory." Id. at 691.

In State v. Best, 674 S.E.2d 467, 472 (N.C. Ct. App. 2009), the North Carolina Court of Appeals found evidence supported that Best provided substantial assistance to the principals when he drove them away from the crime scene to a motel, washed the exterior and vacuumed the interior of the car, and picked up both principals at the hotel the next day, appearing at a party with one of the principals the next night.

In the instant case, Appellant does not contest the existence of a completed shooting. Ruttle shot Victim – the felony was already completed when he ran to his own car, which Appellant was driving. Further, a reasonable juror could infer Appellant was aware a felony was just committed.

Appellant had already switched seats and the vehicle was already moving towards Ruttle, who got in the vehicle and was driven away from the scene. Seven neighbors heard the gunfire, two from inside their house, so a reasonable juror could find Appellant must have also heard the gunfire given his closer proximity to the shooting. The car was described as turning off Foster and driving quickly to the dead end street, then racing back to Foster Street before leaving the immediate location of the shooting. A reasonable juror could find that Appellant rendered assistance to Ruttle by driving him from the immediate scene to avoid detection. The shooting occurred in a residential neighborhood and one neighbor already was present by the time Ruttle jumped in the vehicle. Other neighbors descended on the scene shortly thereafter. So the motive and need for a speedy getaway to avoid detection is readily apparent.

Therefore, there is sufficient evidence for a reasonable juror to find Appellant guilty of accessory after the fact. See People v. Scott, 170 Cal.App.3d 267 (Cal. Ct. App. 1st Dist. 1985) (finding evidence supported Scott as an accessory after the fact to a completed bank robbery where evidence showed she agreed to give a ride to the robber and dropped him off near the bank and waited for his return – she claimed not to know he was going to commit a crime. She drove him away when he returned, and loose cash was found in and around her purse when her car was stopped by police); Jones v. United States, 716 A.2d 160 (D.C. Ct. App. 1998) (noting "[e]ven if joining Rice in his flight would not in itself be enough to render appellant an accessory after the fact, this action could be considered by the jury as further proof bearing upon the nature and purpose of any ambiguous action in the cut.").

II.

**The trial court did not err in allowing testimony concerning several events constituting the res gestae of the crime. Appellant failed to preserve for review all but one complaint of error which was evidence he verbally taunted the victim earlier in the day from a moving vehicle. The testimony was admissible because its probative value was not outweighed by the negligible danger of unfair prejudice.**

Appellant argues the trial court erred in allowing testimony concerning three events: (1) The "Easter incident" during which Appellant presented a weapon when Victim allegedly charged Ruttle and Appellant while they were in a vehicle. This was testified to by Ruttle during the defendants' case. (2) Testimony by Hunter Sizemore that earlier in the day when they passed Victim walking on the street, Appellant yelled "don't get caught lacking." (3) Ruttle's testimony that Appellant gave Ruttle a gun when he left the vehicle to speak with Victim. Appellant argues the evidence was not admissible under Rules 401, 402, 403, and 404, SCRE. Only the objection to Appellant warning Victim to not get caught "lacking" is preserved for review. Appellant did not object to Ruttle's testimony before the jury so those complaints are not preserved for review.

**Easter incident as testified to by Ruttle**

Prior to trial, counsel made an in limine motion to exclude various prior incidents, the only objection relevant to this appeal being to an incident around Easter a few weeks prior to the murder. In response to the motion, the prosecution reminded the trial court, "Your Honor heard briefly about one during the pretrial hearing which it was just about – I think it was about three weeks prior to this involving both defendants being in the area of the victim's house and a gun being pulled out on the victim." R. p. 30, line 23 – p. 21, line 2. The prosecution argued that the incident went towards motive and intent. R. p. 31, lines 3-5. Appellant argued that because he was charged with accessory

after the fact, the prior incident would be irrelevant and prejudicial. The prosecution countered the evidence would show Appellant "helped ferret the shooter away from the scene and help him dispose of evidence." R. p. 32, lines 1-9. The prior incident showed motive and intent "towards that he wanted something to happen to Dalton. Whether he initially caused it, encouraged it on that day in question, he certainly was in agreement with what happened." R. p. 32, lines 10-13. The trial court found that what the parties referred to as the "Easter incident" was relevant because both defendants were present and the evidence went to the state of mind of each as well as the state of mind of the victim. R. p. 32, lines 16-21. Appellant argued his participation in the event should not be mentioned, because the incident was relevant as to Ruttle, but not Appellant. R. pp. 33-34. However, the trial court found it was relevant evidence showing either Ruttle or Victim were acting in self-defense at the time of the shooting. R. p. 34, lines 4-12.

After the State rested its case, Ruttle testified in his own defense. He testified that on Easter, he and Appellant went to see someone who Appellant knew in Victim's neighborhood. Driving in the neighborhood, Ruttle saw Victim standing on the edge of his driveway with his hand behind his back. The car cutoff as Ruttle drove it up a hill and Ruttle saw in his mirror that Victim ran towards Ruttle's car with his hand still behind his back. Ruttle testified he panicked and he alerted Appellant who "presented a weapon towards [Victim] . . . ." Victim then ran the other way. R. pp. 395-96. Appellant did not renew the earlier in limine objection when Ruttle testified about the Easter incident.

The issue concerning the admissibility of the Easter incident is not preserved for review. A ruling *in limine* is not a final ruling on the admissibility of evidence. State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000); State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999). Generally, a motion

*in limine* seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. See State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). A pre-trial ruling on the admissibility of evidence is preliminary, and is subject to change based on developments at trial. Id. Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) *reversed on other grounds by* State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016).

**Don't get caught lacking**

Hunter Sizemore testified he was driving on Foster Street and Appellant was a passenger earlier on the day of the shooting. R. p. 245, lines 10-25. Specifically, Sizemore testified as follows on direct examination:

> Q: You drove down Foster Street.
>
> A: Yes, sir.
>
> Q: And at some point you passed Dalton walking?
>
> A: Yes, sir.
>
> Q: And Mr. Calderon yelled something at him?
>
> A: Yes, sir.
>
> Q: Do you remember what it was?
>
> A: Something like don't get caught lacking or something. It was something like don't get caught lacking or something.
>
> Q: What does that mean?
>
> A: Honestly, I don't have a clue.
>
> [Appellant's counsel]: Objection, Your Honor. Speculation.

R. p. 245, line 14 – p. 211, line 1. The trial court overruled the objection, advising that if the witness knew what the term meant, he could testify to it. However, when asked whether the phrase was slang for something, Sizemore indicated he "honestly" did not know what the phrase meant. R. p. 246, lines 2-12. Appellant's counsel then asked to be heard in camera and argued that the testimony was speculative and not relevant. R. pp. 246-47. The trial court overruled the objection. R. p. 248. Back in the presence of the jury, Sizemore confirmed that in his statement, he advised law enforcement that Appellant said, "Don't get caught slacking" but Sizemore did not know what that meant. He believed he told Appellant to calm down. R. p. 249, lines 3-17.

Appellant does not explain why evidence of Appellant's taunt was unfairly prejudicial, and although Appellant does make a conclusory argument generally about the admission of prior bad acts under Rule 404(b), Appellant does not explain how this action qualifies as "[e]vidence of other crimes, wrongs, or acts." Rule 404(b), SCRE; see State v. Faulkner, 274 S.C. 619, 621, 266 S.E.2d 420, 421 (1980) ("While the State may not attack a criminal defendant's character unless he has placed it in issue, relevant evidence admissible for other purposes need not be excluded merely because it incidentally reflects upon the defendant's reputation."). Nonetheless, a reasonable juror could conclude Appellant and Ruttle were taunting Victim and it was during this campaign or harassment or taunting that Ruttle shot Victim, with or without Appellant's prior knowledge, rendering the evidence relevant.

**Ruttle testifies Appellant handed him the gun he used to shoot Victim**

Appellant also complains about Ruttle's direct examination testimony that before Ruttle got out of his vehicle, Appellant handed him a gun. R. pp. 402-03. However, Appellant did not object to Ruttle's direct examination testimony. Therefore, this complaint of error is not preserved for

review. The failure to object when evidence is offered constitutes a waiver of the right to raise the issue on appeal. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996).

**Whether or not it was coincidence Ruttle picked up Appellant before confronting Victim**

Buried deeper in the argument is the offhand complaint that the trial court should not have allowed the prosecution to suggest it was more than coincidence that Ruttle picked up Appellant before parking the car and confronting Victim. During cross-examination, counsel objected to the prosecutor's question asking Ruttle if it was just a coincidence that he rode by Victim at the same time Ruttle was driving down the street. Appellant contended the premise of the question was not an appropriate characterization since Appellant was being tried as an accessory after the fact and not as a principal. R. pp. 428-30. The objection was overruled after the State argued he was challenging the veracity of Ruttle's testimony. The trial court overruled the objection. R. p. 430.

The testimony was proper because it was cross-examination and reasonable challenge to Ruttle's testimony. State v. Plath, 277 S.C. 126, 142, 284 S.E.2d 221, 229 (1981) (noting that wide latitude is allowed on cross-examination than on direct examination and the scope is largely discretionary with the court) *overruled on other grounds by* State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998); State v. Short, 333 S.C. 473, 511 S.E.2d 358 (1999). Further, it was relevant to call into question whether or not Ruttle was not at fault in brining on the difficulty. Appellant pointed a gun at Victim and taunted Victim. Ruttle claimed he was going to tell Victim he did not have a problem with Victim, yet he picked up Appellant, the person with whom Victim was locked in the bitter dispute leading to Victim having a gun drawn on him. The prosecution would be remiss not to point out this fallacy in the testimony.

**Res Gestae**

Appellant's argument falters with the viewpoint advanced by Appellant that only evidence of the felony and everything that happened after the felony is admissible in a trial for accessory after the fact. However, all the evidence was relevant res gestae testimony that showed the complete story. Appellant and Victim were not on good terms and Appellant had a prior confrontation with Victim, taunted Victim, and jumped out of a moving vehicle in the proximity of Victim to join forces with Ruttle. A reasonable juror could find that although Appellant did not plan on the subsequent murder to occur, he nonetheless assisted Ruttle at the culmination of their pattern of confrontation with Victim with the intent to help Ruttle avoid detection. Accordingly, the trial court did not err in allowing the admission of any of this testimony.

"The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." State v. Shuler, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003). Thus a trial court's decision regarding the comparative probative value and prejudicial effect of relevant evidence will be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

In the instant case, all three pieces of evidence constitute the res gestae of the crime. "Evidence of other crimes is admissible under the *res gestae* theory when the other actions are so intimately connected with the crime charged that their admission is necessary for a full presentation of the case." Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003) (defendant's assault on

defendant's former girlfriend and his threat to shoot her or the other man provides the context of subsequent shooting of the other man and is admissible as *res gestae*); accord State v. Benjamin, 345 S.C. 470, 549 S.E.2d 258 (2001) (finding, in prosecution of armed robbery and murder at a Citgo, evidence of subsequent robbery at a Dodger's store, where defendant dropped his gun, was admissible under *res gestae* theory, as it was necessary to a full presentation of State's case); State v. Gagum, 328 S.C. 560, 492 S.E.2d 822 (Ct. App. 1997) (in strong arm robbery prosecution, evidence that defendant offered his civilian captors dope to let him go was admissible as *res gestae* of crime); State v. Crim, 327 S.C. 254, 489 S.E.2d 478 (1997) (Evidence of defendant's larceny of car defendant drove when the accident leading to the felony DUI charge occurred was admissible as *res gestae* in prosecution for felony DUI); State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) (defendant's use of cocaine prior to robbery and murder admissible as the drug usage was inextricably intertwined with robbery and murder) *overruled on other grounds by* State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014); State v. Johnson, 306 S.C. 119, 410 S.E.2d 547, 552 (1991) (finding that evidence of a dead body in defendant's van tended to explain why the defendant shot the trooper when the trooper opened the van door).

In the instant case, the Easter incident showed existing animus between the parties, and as to Ruttle, provided evidence to the jury that Ruttle had a reasonable fear of apprehension from Victim. From the State's perspective, the evidence defeats self-defense because it suggests Ruttle brought on the difficulty by approaching a person with whom he had previous difficulties.

Appellant's taunting Victim with the ambiguous phrase, "don't get caught lacking" (or "slacking") suggests animus between the parties. A reasonable juror could interpret the term to mean do not get caught "lacking" a weapon. It certainly represents a taunt, showing a willingness for

Appellant and Ruttle to confront Victim even if no preexisting plan between the defendants to murder Victim developed. Once Victim was killed, the evidence suggests Appellant was willing to assist Ruttle to flee the scene. A reasonable juror could view the evidence as a whole as a program of taunting Victim that went out of control when Ruttle shot the Victim during an unnecessary confrontation with Victim.

Evidence that Appellant handed Ruttle the weapon is probative because it is further evidence that Appellant was aware Ruttle committed a felony when Ruttle ran back to the car following gunshots. See People v. Plengsangtip, 148 Cal.App.4th 825 (Cal. Ct. App. 4th Distict 2007) ("[I]n determining whether a defendant had the requisite knowledge and intent to commit the crime of accessory, the jury may consider such factors as the defendant's possible presence at the crime or other means of knowledge of its commission, as well as his companionship and relationship with the principal before and after the offense.") (citation and internal quotation marks omitted). Further, it is evidence tending to prove the felony itself since the gun Appellant handed Ruttle was the gun Ruttle used to murder Victim regardless if Appellant knew beforehand Ruttle would shoot Victim. Ruttle's decision to dispose of a weapon he did not even own also is some evidence of Ruttle's consciousness of guilt. State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) ("As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt."). Since the State was required to prove the felony occurred, the testimony is probative and not unfairly prejudicial. Rule 403, SCRE.

## III.

**The trial court did not err in allowing a 9mm pistol and photograph of the pistol found in the codefendant's truck into evidence. Further, any possibility of error was eliminated when the trial court instructed the jury to not consider evidence of the 9mm pistol as evidence against Appellant.**

Appellant argues the trial court erred in admitting a 9mm pistol, modified to look like a rifle, that was found in Ruttle's trunk. The improper admission of evidence is reversible error only when the admission causes prejudice. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). Reversal of a circuit court's ruling on the admission or exclusion of evidence requires prejudice to the defendant. State v. Liverman, 386 S.C. 223, 233-34, 687 S.E.2d 70, 75 (Ct. App. 2009). Appellant was not prejudiced by admission of the rifle or the photographs because Ruttle admitted the rifle was his and explained he collected firearms. R. p. 448. No evidence was presented that Appellant possessed the gun or was aware it was in the trunk. "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof." State v. Lee, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012) (quoting State v. Kirton, 381 S.C. 7, 24, 671 S.E.2d 107, 115 (Ct. App. 2008)).

Additionally, the evidence was cumulative to evidence that other weapons and ammunition were found in the cab of the vehicle and the glove compartment. The introduction of inadmissible evidence is harmless when the evidence is merely cumulative to other evidence presented without objection. Kirton, 381 S.C. at 37-38, 671 S.E.2d at 122-23. When other properly admitted testimony reveals essentially the same information, the jury's exposure to improper evidence is harmless. State v. Brown, 344 S.C. 70, 75, 543 S.E.2d 552, 554-555 (2001); State v. Funderburke, 251 S.C. 536, 540, 164 S.E.2d 309, 311 (1968) ("Cumulative evidence has repeatedly been defined

to be additional evidence of the same kind to the same point.").

Further, **the trial court admonished the jury to not consider evidence of the 9mm rifle in determining Appellant's guilt or innocence**. R. p. 502, line 19 – p. 503, line 7. Specifically, the trial court advised the jury:

> During the course of the trial evidence is received and it may be received for the purpose of being evidence against one defendant or against another defendant. So you have to separate the evidence as it relates to the charges against the separate defendants.
>
> In this case there was introduced during the trial Exhibit 65 [R.p 615], which was identified as a 9mm pistol with an extended grip, I would say. It looks longer than a regular pistol. Looks like a rifle. It's in the box. But that was Exhibit 65. And it was testified to that that exhibit was recovered from a vehicle that is shown in Exhibit 14.
>
> That evidence has been offered as against the case, the state's case, against Mr. Ruttle, That particular piece of evidence has not been offered in the state's case against Mr. Calderon.
>
> There is no connection with Exhibit 65 and Mr. Calderon, and so you're not to consider that piece of evidence in any way in your determination as to the verdict in his particular case.

R. p. 502, line 14 – p. 503, line 7. Jurors are presumed to follow the trial court's instructions. State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). Therefore, the risk of prejudice to Appellant was eliminated.

Additionally, the trial court did not err. Ruttle's attorney objected in camera prior to Lieutenant Wallace taking the stand. Appellant joined his co-defendant's objection. The basis of the objection was that the weapon was prejudicial and looked more powerful than it really was. Appellant explained it was a 9mm pistol modified to look like a rifle, but it was not the high-powered weapon it might appear to be. R. pp. 263-64.

In response, the prosecutor noted it was one of several weapons found in the car that Ruttle

and Appellant were driving and the vehicle belonged to Ruttle. The prosecutor explained he wanted to tell the story to the fullest and not leave out a piece of what happened. Additionally, the prosecutor noted Ruttle was claiming that he came to the incident with no ill intentions, and evidence showing access to the two weapons in the glove compartment and the rifle in the truck constitutes evidence that Ruttle could have had some other motive than making peace when approaching Victim. Therefore, the prosecutor contended the evidence was relevant. R. pp. 264-65. The trial court overruled the objection. R. p. 265.

The admission or exclusion of evidence is a matter addressed to the trial court's sound discretion and will not be reversed absent a manifest abuse of the trial court's discretion and probable prejudice. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004).

For evidence to be admissible, it must be relevant. Rule 402, SCRE. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears, and it is not required that the inference sought should necessarily follow from the fact proved." State v. Sweat, 362 S.C. 117, 126-27, 606 S.E.2d 508, 513 (Ct. App.2004). Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; State v. Pagan, 369 S.C. 201, 210, 631 S.E.2d 262, 266 (2006). A trial court's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. McLeod, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App.2004). Determination of relevancy is largely within the discretion of the trial court and will not be reversed

absent an abuse of that discretion. Sweat, 362 S.C. at 127, 606 S.E.2d at 513. "[T]he proper test places the burden on the opponent of the evidence to establish inadmissibility [under Rule 403, SCRE]." State v. King, 424 S.C. 188, 200, 818 S.E.2d 204, 210, n. 6, (2018). In the instant case, the evidence was relevant as to Ruttle because Ruttle's numerous weapons suggest that he went into his confrontation with Victim prepared for violence. Therefore, the trial court's ruling was not erroneous.

## IV.

**The trial court did not err in denying codefendant's claims of self-defense because codefendant could have avoided the difficulty and brought a weapon to the difficulty; plus the trial court was not obligated to believe his unconvincing story.**

Appellant argues that the trial court should have granted immunity to Ruttle, and in turn Appellant, based on Ruttle's testimony alleging self-defense. However, Ruttle brought a weapon to the confrontation with Victim "just in case" and could have avoided the difficulty with someone he claimed to have been in fear of. The trial court acted within its discretion in denying the motion for immunity.

**Immunity hearing**

Ruttle testified at the immunity hearing that he did not know Victim well. They maybe crossed paths a couple of times. R. p. 23. He recalled both him and Victim being at a birthday party when he was thirteen years old, six years ago. R. pp. 44-45. However, Ruttle was aware that Appellant and Victim had a past dispute of some sort, possibly stemming from a girl. R. p. 24.

Ruttle waited until cross-examination before testifying about the prior Easter incident. Ruttle claimed he was driving his car down Foster Street and the car stalled at the top of the hill when Victim charged out, holding something behind his back that made Ruttle think it was a weapon. Appellant got out of the car and pointed a gun at Victim. Ruttle claimed Victim made it seem like he had a weapon and Ruttle felt like his life was in danger that day. R. pp. 45-46.

As to the day of the homicide, Ruttle testified he was driving his vehicle down Foster Street when he saw Victim walking in the opposite direction. Ruttle claimed Victim "waived" Ruttle down. Ruttle testified he wanted Victim to know he did not have any issues with Victim. R. pp. 26-

28. So he turned his vehicle around in a parking lot to drive back towards Victim. By then, Appellant jumped out of Hunter Sizemore's truck and Ruttle let Appellant in his vehicle. Ruttle knew Appellant was mad at Victim and Ruttle was worried he might have done something violent towards Victim. R. p. 30.

Ruttle parked his car and told Appellant to wait. He told Appellant he was going to speak with Victim. **Appellant gave Ruttle a gun and told Ruttle to take the gun "just in case."** R. p. 30. Ruttle put the gun in his waistband, got out of the car, and looked for Victim. He jumped the ditch and saw Victim in a parking lot. R. p. 30.

Ruttle claims he approached Victim and told him, "Hey, man. I really don't know what you and [Appellant] have got going on but I don't have anything to do with any of that." R. p. 30, line 25 – p. 31, line 2. Ruttle claims at that point Victim reached behind his back and pulled out a knife. Ruttle told Victim to stop. He pointed his gun in the air to fire a warning shot, but the gun did not fire. Ruttle did not think he could outrun Victim and Ruttle lowered the gun and cocked it back, then "let it go" pulling the trigger as Victim moved towards him. R. p. 31.

Ruttle testified he was scared and did not know what to do so he got in the passenger seat of his car and Appellant drove them away. He explained, "I heard the tires screeching. I turned around and got in the car." R. p. 53, lines 17-19.

They switched drivers at the end of another street. R. p. 32. Ruttle then went to his girlfriend's house and gave her all the money he had on him. He threw the gun in the trashcan, and disposed of his shoes and his distinctive lime-green hoody. R. pp. 36-37; p. 40; p. 55. He testified he planned to turn himself in, but law enforcement stopped his car first before he could turn himself in. R. p. 36. He concluded direct-examination by apologizing to Victim's mother. R. p. 37.

**Standard of Review**

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Id. The Court will "not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." State v. Mitchell, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009).

**Discussion**

"Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). This includes all elements of self-defense, save the duty to retreat. Id. To establish a case of self-defense, the defendant must first establish he is:

> without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Douglas, 411 S.C. 307, 318, 768 S.E.2d 232, 238–39 (Ct. App. 2014).

If a defendant fails to prove any element of self-defense, then a defendant is not entitled to a finding of immunity. See State v. Lockamy, 369 S.C. 378, 631 S.E.2d 555 (Ct. App. 2006) (finding a defendant is not entitled to an instruction on self-defense if evidence is lacking supporting any single element of self-defense). "Because all of the elements are required to establish self-defense . . . [i]t is an axiomatic principle of law that [self-defense] has not been established **if any one element is disproven**." In re Tracy B., 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010) (emphasis added) *quoting* State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010).

In the instant case, Ruttle brought on the occasion. Ruttle was driving his car and Victim was a mere pedestrian, so Ruttle did not have to obey Victim's alleged summoning. Therefore, it was simply unnecessary for him to stop the vehicle. According to Ruttle, in his previous encounter, he was put into fear for his own life because of Victim's actions and Victim retreated when Appellant pointed a gun at him. From Victim's perspective, Appellant pointed a gun at Victim. Because Ruttle was in the company of Appellant after Victim found himself on the uncomfortable side of a gun, engaging Victim was likely to provoke fear in Victim and create difficulty. Ruttle did not lawfully arm himself in self-defense because he simply could have avoided the danger by not responding to Victim's alleged request, especially in the company of Victim's chief nemesis. See State v. Sullivan, 345 S.C. 169, 547 S.E.2d 183 (2001) (noting that one must have a reasonable belief of imminent danger before arming himself in self-defense). Ruttle's actions instead were reasonably calculated to bring on the difficulty that arose in the instant case. See State v. Slater, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007).

In Slater, the defendant admitted he approached an ongoing altercation with a weapon, but claimed he was trying to assist to the victim of an armed robbery in progress. The Supreme Court

found the defendant was not entitled to an instruction on self-defense because: "[T]he record clearly reflects that [defendant] approached an altercation that was already underway with a loaded weapon by his side. Such activity could be reasonably calculated to bring the difficulty that arose in this case." Id.[1]

Ruttle brought a weapon with him "just in case" of an altercation, an activity calculated to bring on a difficulty and disqualifying of self-defense. Therefore, the trial court did not err in finding Ruttle did not meet his burden of proving entitlement to immunity as his testimony taken as true, defeats a claim of self-defense. Further, the trial court did not need to take his testimony as true given multiple aspects of the story that were not believable. See Terwilliger v. Marion, 222 S.C. 185, 72 S.E.2d 165 (1952) ("The fact that evidence is not contradicted by direct evidence does not render it undisputed, as there still remains the question of its inherent probability and the credibility of the witness or his interest in the result.") (quoting Green v. Greenville County, 176 S.C. 433, 180 S.E. 471, 473 (1935)).

[1] As an additional sustaining ground, the Supreme Court found the defendant also acted in violation of the law by carrying a weapon and therefore was not entitled to a self-defense instruction for that reason too. Slater, 373 S.C. at 70-71, 644 S.E.2d at 52-53.

## CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY: _____
DAVID SPENCER

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

ATTORNEYS FOR RESPONDENT

March 9, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

---



The State of South Carolina,

Respondent,

vs.

Lorenzo Guillermo Daniel Calderon,

Appellant.

Appellate Case No. 2018-001707

---

**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that this Final Brief of Respondent 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."

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

By:_____
DAVID SPENCER

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

ATTORNEYS FOR RESPONDENT

March 9, 2020