THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2017-002224

Case Nos. 2017-GS-19-01817,
2017-GS-19-01818,
2017-GS-19-01819, and
2015-GS-19-00351

The State, ... Respondent,

v.

Montrell Deshawn Troutman, ... Appellant.

PETITION FOR REHEARING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

FACTUAL AND PROCEDURAL BACKGROUND 2

REASONS FOR GRANTING THE PETITION 7

I. This Court's reliance on Mathis's denial that he lied for Merriweather in 2011 is misplaced. 7

A. The jury was free to reject Mathis's denial about the subject of his 2011 conviction because Mathis already lied about having lied to police. 8

B. Troutman's theory of why Mathis fled his dying friend's side is a reasonable one. 9

II. This constitutional violation was not harmless. 12

CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

Alaska v. Davis,
415 U.S. 308 (1974) 13, 15

Anderson v. Warden, Md. Penitentiary,
696 F.2d 296 (4th Cir. 1982) 12

Douglas v. Alabama,
380 U.S. 415 (1965) 11

Glenn v. W. Union Tel. Co.,
84 S.C. 155, 65 S.E. 1024 (1909) 8

Mattox v. United States,
156 U.S. 237 (1895) 12

State v. Clark,
315 S.C. 478, 445 S.E.2d 633 (1994) 11

State v. Dickey,
394 S.C. 491, 716 S.E.2d 97 (2011) 14

State v. Holder,
382 S.C. 278, 676 S.E.2d 690 (2009) 12

State v. Mizzell,
349 S.C. 326, 563 S.E.2d 315 (2002) 11

State v. Perez,
423 S.C. 491, 816 S.E.2d 550 (2018) 12, 13, 15

State v. Troutman,
2020-UP-129 (Ct. App. May 6, 2020) 7

State v. Wallace,
44 S.C. 357, 22 S.E. 411 (1895) 1

State v. Wigington,
375 S.C. 25, 649 S.E.2d 185 (Ct. App. 2007) 14

United States v. Martinez-Vives,
475 F.3d 48 (1st Cir. 2007) 11

United States v. Turner,
198 F.3d 425 (4th Cir. 1999) 11

Watkins v. Sowders,
449 U.S. 341 (1981) 1, 11

Statutes

S.C. Code § 16-17-725(a) 9

S.C. Code § 16-23-20 10

Other Authorities

Case No. 71827ED (Edgefield Cty. Magistrate) 6

Black's Law Dictionary (9th ed. 2009) 8

Bartlett's Familiar Quotations (Justin Kaplan ed. 17th ed. 2002) 8

Pursuant to Rule 221(a), SCACR, Montrell Deshawn Troutman petitions this Court for rehearing from the Court's unpublished decision affirming the circuit court's judgment.

INTRODUCTION

Time and again, courts have held that cross-examination is an essential protection for criminal defendants. *See, e.g.*, *Watkins v. Sowders*, 449 U.S. 341, 349 (1981); *State v. Wallace*, 44 S.C. 357, 22 S.E. 411, 412 (1895). In a two-page, unpublished opinion, this Court did not take issue with that principle. Instead, it held that Montrell Troutman's Sixth Amendment right to confront a key witness in the State's case—Keith Mathis—was not violated.

That holding is wrong. For one, it overlooks the well-established rule that a jury is free, when a witness has lied about one thing, to reject other parts of that witness's testimony. Here, Mathis lied about having lied to the police, claiming he did not give false information to the police in 2011 despite having pled guilty to doing so. The jury therefore could have concluded that Mathis was lying about what he lied about in 2011: protecting Leric Merriweather, his "really good" friend, after a shooting incident.

For another, the Court's holding misapprehends the importance of a critical fact. Mathis fled his dying friend's side in the minutes after the shooting, before the police arrived. The State never even tried to explain why. But Troutman did. Troutman's theory was that Mathis was trying to hide the gun that Merriweather said he was going to get in the moments right before the shooting. By not getting to

cross-examine Mathis about lying to protect Merriweather in 2011, Troutman was denied the opportunity to develop the facts to prove his explanation for Mathis's flight and to support his claim of self-defense.

FACTUAL AND PROCEDURAL BACKGROUND

Troutman kills Merriweather in a confrontation in June 2015.

After moving from Florida to Edgefield, Montrell Troutman met Leric Merriweather, who lived nearby. (R. p. 353, lines 6–15; p. 35, lines 17–19.) The two men generally got along with each other, but at times, Merriweather would pick on Troutman, call him names, and threaten him, particularly when other people were around, and they had "problems" in late May 2015. (R. p. 353, line 20–p. 354, line 10; p. 612, lines 22–23.)

The conflict between Troutman and Merriweather came to a head on June 6, 2015. Merriweather had friends over to grill that day, and during the afternoon, Troutman stopped by Merriweather's house with another man, while riding in that man's car. (R. p. 355, lines 10–15; p. 373, lines 13–18; p. 63, lines 1–11; p. 64, lines 17–20; p. 65, lines 5–8; p. 91, lines 9–13; p. 355, lines 10–15; p. 373, lines 13–18.) While Troutman was there, a confrontation arose between Merriweather and a man named Dwayne Jones, prompting Jones to pull a gun. (R. p. 65, lines 12–22.) Witnesses disagreed about how involved Troutman was in this confrontation, but they agreed that at least Merriweather shouted at Troutman. (*Compare* R. p. 101, lines 7–23; p. 108, line 22–p. 109, line 10, *with* R. p. 355, line 23–p. 356, line 11; p. 379, lines 7–17.)

Later that day, Troutman and Merriweather met on a street near where both men lived. Testimony conflicted on how they met this second time on June 6. According to Keith Mathis and two others, the car in which Mathis, Merriweather, and a third man were riding had stopped, and those three were talking to a fourth man when Troutman walked by, pointed at Merriweather, and showed he had a gun. (R. p. 128, lines 19–24; p. 168, lines 9–23; p. 168, lines 1–19; p. 130, lines 2–6; p. 131, lines 13–16.) According to Troutman, he was walking down the road when Merriweather's car passed him, then stopped and backed up. (R. p. 359, lines 10–21.) Merriweather, Mathis, and the third man got out of the car. (R. p. 359, line 22–p. 360, line 1.) Troutman showed the three men his gun in an effort to try to go by, without pointing at anyone or trying to start a fight, but he was not allowed to pass. (R. p. 360, line 2–p. 361, line 2.)

Whatever happened, Troutman and Merriweather were soon "going back and forth." (R. p. 132, lines 1–7.) Merriweather was exclaiming "fighting words." (R. p. 172, line 13.) And he threatened to burn Troutman's house down, with his stepchildren inside. (R. p. 360, line 22–p. 361, line 24; p. 363, line 19–p. 364, line 1.)

Merriweather continued to challenge Troutman, demanding to know why Troutman showed a gun with no bullets. Merriweather said that he was going to get his own gun and moved back toward his car, sat down in his car, and then got back out. (R. p. 146, lines 8–13; p. 363, lines 11–15; p. 410, line 10.) Merriweather was still "overtalking" after getting back out of his car. (R. p. 144, line 11; p. 147, lines 7–11.)

The confrontation continued. As Merriweather and Troutman exchanged more words, Merriweather knocked Troutman's phone off of the trunk of the car. Troutman picked it up and took two or three steps back. (R. p. 132, line 21–p. 133, line 15.)

Merriweather then got within "about two feet" of Troutman and was "talking kind of loud." (R. p. 133, lines 23–25.) Merriweather had his fists "balled up" as if "he wanted to fight" Troutman. (R. p. 147, lines 21–23; p. 173, lines 1–6.) At the same time, Mathis—standing on the other side of the car and approaching from a different direction—had a bottle in his hands. (R. p. 147, line 24–p. 148, line 1; p. 395, line 14–p. 396, line 13.) Troutman said Mathis was "ready to launch the bottle" at him. (R. p. 364, lines 4–7.)

Unsure of whether Merriweather had gotten a gun out of his car like he said he was going to do, (R. p. 363, lines 16–18), Troutman pulled the gun from his pocket and shot Merriweather in the chest, (R. p. 133, line 17–p. 134, line 4; p. 364, lines 2–3; p. 397, lines 12–16). Merriweather took off running. (R. p. 174, lines 17–23; p. 399, lines 9–18.) Troutman fired multiple more times, as Mathis and the third man both ran away; the third man was grazed in the leg by one bullet. (R. p. 136, lines 10–12; R. p. 200, lines 12–23.)

Troutman testified that he was "scared and nervous" and "in fear of [his] life" when he fired. (R. p. 364, lines 8–9; p. 367, line 22–p. 368, line 1). He initially showed Merriweather, Mathis, and the third man the gun only "to scare them off" so he could "just go home." (R. p. 362, lines 12–13.)

Mathis flees the scene before the police or EMS arrive.

Mathis and Merriweather were old friends and "had each other [*sic*] backs." (R. p. 180, lines 11–23.) Yet between when someone called 911 at 8:43 P.M. (right after the shooting) and the few minutes before emergency personnel responded, Mathis left the scene and his friend's side. (R. p. 239, lines 19–22.)

Police found "a bunch of people in the yard" when they arrived. (R. p. 290, line 22–p. 291, line 1.) During the process of securing the scene, the police never spoke to Mathis. In fact, the officer in charge of the scene testified that he did not "know that name." (R. p. 292, lines 11–13.) And no one testified to seeing Mathis at the scene after the shooting. Mathis testified that he "sat there with Mr. Merriweather for a second" in the moments after the shooting when Merriweather fell in a driveway. (R. p. 176, line 24.) Mathis never said where he went before the police arrived. (R. p. 185, lines 12–18).

During their search of the scene, the police never found any gun. (R. p. 288, lines 14–16.)

Troutman is charged and convicted.

Troutman ultimately was charged in four indictments. One was for murder, two were for attempted murder, and the fourth was for possession of a weapon during the commission of a violent crime in violation of S.C. Code § 16-23-490. (R. pp. 2, 5, 8, 11.)

Before the trial started in October 2017, the State moved *in limine* to exclude certain evidence. As relevant here, the State asked the trial court to exclude evidence about Mathis, particularly a 2011 shooting incident. (R. p. 34, line 14–p. 35, line 21.) Mathis was convicted of giving false information to police about that incident, and that

false information, according to Troutman, "was covering up for Leric Merriweather." (R. p. 31, line 21); *see also* Case No. 71827ED (Edgefield Cty. Magistrate). Troutman opposed this attempt to limit the evidence that could be introduced about Mathis. (R. p. 29, line 23–p. 32, line 3.)

During the trial, Mathis was cross-examined on his relationship with Merriweather. He admitted that he and Merriweather were "really good friends" and "had each other [*sic*] back," (R. p. 180, lines 14–21), but he denied that he would lie for Merriweather, (R. p. 181, lines 3–4). Mathis's testimony continued after a bench conference, and Mathis contended that, despite having admitted to being convicted of giving false information to the police on direct examination, (R. p. 179, lines 9–11), what he told the police "wasn't false," (R. p. 184, line 15). After his testimony was finished, the circuit court gave Troutman the chance to proffer evidence about the 2011 conviction. Mathis admitted that the 2011 conviction involved a shooting incident with Merriweather, but he denied that he was "covering up for" his friend. (R. p. 188, lines 12–24.)

Troutman was tried by a jury in Edgefield County, from October 16-20, 2017. Troutman claimed he acted in self-defense. The jury returned guilty verdicts on lesser-included offenses on the three most significant charges. On the murder indictment, the jury's guilty verdict was for voluntary manslaughter. On the two attempted murder indictments, the jury came back with guilty verdicts on assault and battery of a high and aggravated nature and assault and battery in the first degree. The jury found

Troutman guilty of possessing a weapon during the commission of a violent crime. (R. p. 477, line 21–p. 483, line 24.)

The court sentenced Troutman to thirty years on the voluntary manslaughter conviction. (R. p. 3.) It gave him twenty years on the ABHAN conviction, to run concurrently with the thirty-year sentence on the voluntary manslaughter conviction. (R. p. 9.) The trial court imposed a sentence of ten years on the assault and battery in the first degree conviction, to run consecutively to the other two sentences. (R. p. 6.) And finally, the court sentenced Troutman to time served (868 days) on the fourth count. (R. p. 12.)

This Court affirms the circuit court.

On appeal, Troutman raised a Sixth Amendment challenge to the limitation on his cross-examination of Mathis. This Court rejected that argument. It held that Troutman's proffer of Mathis did not show that that Mathis's 2011 conviction "involved a lie, a cover-up, or the removal of evidence to protect Merriweather" and that "Mathis explicitly denied he provided false information to protect Merriweather." *State v. Troutman*, 2020-UP-129, at 2 (Ct. App. May 6, 2020).

Troutman now petitions this Court for rehearing.

REASONS FOR GRANTING THE PETITION

I. This Court's reliance on Mathis's denial that he lied for Merriweather in 2011 is misplaced.

The cornerstone of the Court's decision to affirm the circuit court is Keith Mathis's statement that he did not lie, cover up, or remove any evidence to help Leric

Merriweather in 2011. The Court's analysis, however, puts more weight on Mathis's denial than it can bear, for at least two reasons.

A. The jury was free to reject Mathis's denial about the subject of his 2011 conviction because Mathis already lied about having lied to police.

From a legal perspective, the Court overlooked the legal principle of *falsus in uno, falsus in omnimbus*. Under that doctrine, a factfinder who concludes that a witness lied about one thing may reasonably conclude that the factfinder lied about other things. *See, e.g.*, *Glenn v. W. Union Tel. Co.*, 84 S.C. 155, 65 S.E. 1024, 1027 (1909) ("If the jury concluded that they had not been received, they had the right to conclude that the testimony of the agents that they had been mailed was false, and to apply to their testimony the maxim, 'Falsus in uno, falsus in omnibus,' and to disregard their other testimony as to efforts to deliver."); *see also Black's Law Dictionary* 679 (9th ed. 2009) (defining *falsus in uno, falsus in omnibus* to mean that "if a jury believes that a witness's testimony on a material issue is intentionally deceitful, the jury may disregard all of that witness's testimony"). The logic of this rule is that if someone is willing to lie once, his likely willing to lie again. *Cf. Bartlett's Familiar Quotations* 357 (Justin Kaplan ed. 17th ed. 2002) ("He who permits himself to tell a lie once, finds it easier to do it a second and third time, till at length it becomes habitual." (quoting Thomas Jefferson, Letter to Peter Carr (Aug. 19, 1785))).

It cannot be disputed that Mathis lied about his 2011 conviction in at least one respect. He was convicted for giving false information to law enforcement. (R. p. 179, lines 9–11.) The statute criminalizing that action makes it "is unlawful for a person

to knowingly make a false complaint to a law enforcement officer concerning the alleged commission of a crime by another." S.C. Code § 16-17-725(a). To be guilty of that crime, a person must knowingly give false information. In other words, he must lie. Yet, despite admitting on direct examination he pled guilty to this crime, Mathis insisted on cross-examination that he told the police "wasn't false." (R. p. 184, line 15.) That denial was a false statement. Because it was false, the jury was entitled under the *falsus in uno, falsus in omnibus* doctrine to conclude that Mathis's other testimony was likewise false.

Particularly so when it came to his other testimony on that 2011 conviction. If Mathis was willing to lie about having lied to the police, the jury could have reasonably concluded that Mathis was also willing to lie about what he lied about. Troutman should have been able to cross-examine Mathis about whether he lied to protect his Merriweather. Mathis, of course, could have denied doing so, (*see* R. p. 188, lines 12–24), but it would have then be up to the jury whether to believe that denial.

The jury, however, never got the chance to make that credibility determination. The circuit court refused to allow Troutman to cross-examination Mathis on this subject, despite the *falsus in uno, falsus in omnibus* doctrine.

B. Troutman's theory of why Mathis fled his dying friend's side is a reasonable one.

From a factual perspective, the Court's opinion ignores a puzzling but critical fact about what happened in the moments after the shooting: Mathis left Merriweather's side in the minutes between the 911 call and the police arriving. Merriweather was his "really good friend[]." (R. p. 180, lines 14–15.) Merriweather was lying on a driveway

with a gunshot wound to his chest, clearly in pain and distress. Yet Mathis left. He must have had a reason.

The State, however, never offered one. In fact, the State's case glossed over Mathis's flight.

Troutman had a theory: Mathis fled to protect Merriweather, just like he lied to protect Merriweather four years before in 2011. Specifically, Mathis wanted to protect Merriweather from being discovered with a gun in his possession. During the altercation, Merriweather said that he was going to get his own gun and then quickly got in and out of his car. (R. p. 146, lines 8–13; p. 363, lines 11–15; p. 410, line 10.) Admittedly, no one testified they saw Merriweather holding a gun, but that does not mean Merriweather did not stick a gun in his pocket or have one in his car he did not pull out. Given the close relationship between Mathis and Merriweather, the jury could have reasonably concluded Mathis would have known that Merriweather had a gun. And it could have also concluded that Mathis wanted to keep his friend's gun from being discovered by police. That Mathis would want to do so makes sense, if Merriweather did not have a permit to carry the gun. *See* S.C. Code § 16-23-20.

Cross-examining Mathis more fully about the 2011 conviction would have allowed Troutman to develop facts to support this theory. Indeed, this is exactly what cross-examination and the Confrontation Clause ensure a criminal defendant has the right to do. As the Fourth Circuit once put it, "prohibiting a criminal defendant from cross-examining a witness on relevant evidence of bias and motive may violate the Confrontation Clause, if the jury is precluded from hearing evidence from which it

could appropriately draw adverse inferences on the witness's credibility." *United States v. Turner*, 198 F.3d 425, 429 (4th Cir. 1999). Thus, "[c]onsiderable latitude is allowed in the cross-examination of a witness for potential bias." *State v. Clark*, 315 S.C. 478, 481, 445 S.E.2d 633, 634 (1994). In light of this latitude, to "limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate." *State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002).

The record here does not show that cross-examination of Mathis on his 2011 conviction would have been "inappropriate." Troutman's theory was not the type of "inherently speculative" argument or "fishing expedition[]" without any basis in fact that courts have treated as a reason to deny a criminal defendant the right to cross-examine a witness. *United States v. Martinez-Vives*, 475 F.3d 48, 53–54 (1st Cir. 2007). To the contrary, Troutman's theory was the only one offered by either side for why Mathis left his dying friend. Troutman had a constitutional right to question Mathis about this theory, and the circuit court wrongly denied him that right.

In fact, cross-examination is the only realistic way that the truth of Mathis's flight was likely to be uncovered. Despite the hope that no one would ever lie under oath, experience belies that aspiration. To lie in response to friendly questioning is easy, but to maintain false claims in the face of intense cross-examination is much more difficult. That is why "cross-examination has always been considered a most effective way to ascertain truth." *Watkins*, 449 U.S. at 349; *see also Douglas v. Alabama*, 380 U.S. 415, 419 (1965) (cross-examination serves the purpose "not only of testing the

recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief" (quoting *Mattox v. United States*, 156 U.S. 237, 242–43 (1895))). Forcing Mathis to answer tough questions in front of the jury about his 2011 conviction would have ensured Troutman the chance to present the full defense that the Confrontation Clause guarantees.

II. This constitutional violation was not harmless.

In a footnote, the Court held—without any analysis—that even if Troutman's Confrontation Clause right was violated, the violation was harmless. That conclusion is incorrect because Mathis's testimony was critical to the State's case.

A Confrontation Clause violation is harmless only "if the evidence is overwhelming and the violation so insignificant by comparison that [a court is] persuaded, beyond a reasonable doubt, that the violation did not affect the verdict." *State v. Holder*, 382 S.C. 278, 285, 676 S.E.2d 690, 694 (2009). Proving an error was harmless is a "heavy burden." *Anderson v. Warden, Md. Penitentiary*, 696 F.2d 296, 300 (4th Cir. 1982) (en banc).

Here, there was no physical evidence of who instigated the confrontation on June 6, 2015. Thus, credibility determination were all the jury had on which to base its verdict, so the "opportunity to elicit testimony from the State's witnesses regarding any potential bias was critical to [the] defense." *State v. Perez*, 423 S.C. 491, 499, 816 S.E.2d 550, 555 (2018).

This opportunity was particularly critical when it came to Mathis. *See id.* at 498, 816 S.E.2d at 554 (noting the "importance of the witness' testimony to the prosecution's case" is a factor in the harmless error analysis). Even the State admits Mathis's testimony "was significant." Appellee's Br. 9. Understandably so. He was an eyewitness to the confrontation between Troutman and Merriweather in the moments before the shooting, and Troutman said that Mathis even raised a bottle to throw at him, making Mathis a participant in this confrontation. (R. p. 147, line 24–p. 148, line 1; p. 364, lines 4–9; p. 395, line 14–p. 396, line 13.) Just like the defendant in *Alaska v. Davis*, 415 U.S. 308 (1974), Troutman's right to confront a crucial witness was limited in a way that prevented him from making a record that showed that witness's bias. The limited cross-examination here may have disclosed Mathis's friendship with Merriweather and conviction for lying to police, but Troutman did not have the opportunity flesh out how those two things were connected in a way that was relevant to the facts in this case.

None of the other evidence overwhelmingly proves Troutman's guilt. To be sure, the State was correct that no one testified that Merriweather was armed at the time of the shooting. But that fact does not defeat Troutman's self-defense argument. Troutman claimed that Merriweather initiated the altercation and he (Troutman) feared for his life. (R. p. 364, lines 8–9; p. 367, line 22–p. 368, line 1.) Part of what gave rise to this fear was Merriweather's saying that he was going to get his gun and then getting back in his car for a moment before continuing his argument with Troutman.

This fear was an important issue for Troutman's defense. *See State v. Dickey*, 394 S.C. 491, 501, 716 S.E.2d 97, 102 (2011) ("Word accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense."). Even if a gun was not visible at the moment of the shooting, the jury could have reasonably concluded that Merriweather's actions made Troutman believe that he was in imminent danger, in light of the incident at Merriweather's house earlier that day, Merriweather's claim that he was going to get his gun, and Merriweather's aggressive approach toward Troutman. *Cf. State v. Wigington*, 375 S.C. 25, 35, 649 S.E.2d 185, 190 (Ct. App. 2007) (holding that the elements of self-defense were not met when a prior altercation between the defendant and victim was six years old and the victim did not approach the defendant during the incident).

Moreover, the State's focus on the fact that Merriweather was not holding a gun at the moment of the shooting does not mean that Merriweather did not have a gun in his car. Indeed, all of the testimony to which the State pointed focused on whether Merriweather had a gun at the moment of the shooting when Merriweather was charging at Troutman, not whether Merriweather had a gun in his car that he may have gotten. *See* Appellee's Br. 4 (citing Tr. pp. 346, 369, 398–399, 419–20, 652). Likewise, the fact that police never found a second gun does not mean that Merriweather did not have a gun in his car (or even in his pocket). If Troutman's theory of Mathis's flight from the scene is correct, then that means that Mathis was successful in covering up (again) for his friend.

To provide the jury with reasonable doubt, Troutman had to have the opportunity expose Mathis's bias in sufficient detail to reveal for the jury how close Mathis and Merriweather were and how Mathis had, in the past, tried to protect his friend after a shooting incident. *See Davis*, 415 U.S. at 317 (recognizing that cross-examination must be permitted so that a defendant can expose the "biases prejudices, or ulterior motives of the witness as they may relate directly to issues or *personalities* in the case" (emphasis added)). Troutman had the right to present this bias to the jury, which had the exclusive right to evaluate how credible Mathis was based on all of the facts. *See Perez*, 423 S.C. at 499, 816 S.E.2d at 554–55.

CONCLUSION

The petition for rehearing should be granted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that this PETITION FOR REHEARING was served on all counsel of record via electronic mail, pursuant to Supreme Court Order 2020-03-20-01, § (g)(3), on May 19, 2020, and a copy of that electronic mail is attached to this certificate::

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William,

I hope you are doing well and staying healthy.

Please find attached a copy of the petition for rehearing in this appeal, which we will be electronically filing today.

Regards,
Grayson