RECEIVED

Jun 10 2020

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM DARLINGTON COUNTY
Court of General Sessions

J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2017-002402

The State, ...Respondent,

v.

Damyon M. Cotton, ... Petitioner.

PETITION FOR REHEARING

Lesley A. Firestone
Moore & Van Allen, PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000

Lara Mary Caudy, Esquire
Robert Michael Dudek, Esquire
Chief Appellate Defender
PO Box 11589
Columbia, SC 29211
Attorneys for Petitioner

Pursuant to Rules 221(a) and 240, SCACR, Petitioner Damyon M. Cotton ("Petitioner") files this Petition for Rehearing as to Opinion No. 27965 of the Court filed on May 6, 2020. Rehearing is appropriate on the following grounds: (1) this Court has overlooked and misapprehended material facts in the record in reaching its decision; (2) this Court has overlooked the fact that it has not explained how the two incidents in this case are connected; and (3) the Court misapprehended or overlooked that the prior incident did not serve a legitimate purpose beyond establishing propensity.

STATEMENT OF THE CASE

On November 20, 2017, Petitioner filed his Petition for Writ of Certiorari and Appendix regarding the Court of Appeals' Opinion No. 2017-UP-356 dated September 6, 2017, which affirmed the trial court's admission of prior bad act evidence under the common scheme exception to Rule 404(b), SCRE. On May 6, 2020, the Court issued Opinion No. 27965 affirming Petitioner's convictions and sentence. Petitioner now moves this Court for a rehearing on the Court's Opinion No. 27965 based on the Court's misapprehension and misapplication of the arguments raised by Petitioner, the applicable law, and the Appendix, all of which demonstrate that the Court should reconsider its Opinion and reverse both the Court of Appeals and trial court.

REHEARING STANDARD

The scope of review for deciding a Petition for Rehearing is limited to whether the Court "overlooked or misapprehended" a point in reaching its decision. Rule 221, SCACR states, "[a] petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court." In order to prevail on a petition for rehearing, a party must demonstrate that the Court overlooked or misapprehended their argument. *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322 (2001).

ARGUMENT

Initially, Petitioner notes that the Court provides no analysis in its Opinion as to why the crime charged and the other incident satisfy the new *Perry* framework, other than stating that the two sexual assaults are similar. Interestingly, the Court conducts more of an analysis of Petitioner's case in *State v. Perry*, Op. No. 27963 (S.C. Sup. Ct. filed May 6, 2020) (Shearhouse Adv. Sh. No. 18 at 12), then it does in its own Opinion of Petitioner's case. An actual analysis of Petitioner's case under the *Perry* framework and Rule 404(b), SCRE case law would lead to a reversal of Petitioner's convictions.

In concluding that the two incidents were similar, the Court relied on inaccurate facts, which are contradicted by a review of the record. Further, the Court overlooked abundant dissimilarities between the two incidents and cherry-picked facts from the record to manufacture greater similarities between the two incidents. Finally, these two sexual assaults are linked only by general similarities common to most if not all sexual assaults. These types of similarities are not distinctive enough under *Perry* or Rule 404(b) case law to establish the required connection between the two incidents.

In *Perry*, the Court further explained that there was more than just similarity in *Cotton* because the other incident had a logical relevance to the underlying crime – it refuted Petitioner's alibi defense. As further explained below, the other incident is not relevant in proving any element or disputed fact of the underlying crime and serves no legitimate purpose beyond propensity. How can an unrelated incident eight months prior to the underlying crime be relevant to refuting Petitioner's alibi defense to the underlying crime? There was no connection of time and place between these two incidents, and the two incidents involved characteristics that are common to

most sexual assaults, which makes the other incident irrelevant for purposes of refuting Petitioner's alibi defense.

I. THE COURT MISAPPREHENDED AND OVERLOOKED MATERIAL FACTS WHICH FORMED THE BASIS OF ITS OPINION.

a. The Court relied on inaccurate facts in affirming Petitioner's convictions.

The Court relied on inaccurate facts in determining the two incidents were similar. The Court concluded the two incidents were similar because of the following facts: Petitioner met the females on online; Petitioner picked them up in his car for the purpose of going on a date; Petitioner quickly became aggressive; Petitioner forced them to perform oral sex; Petitioner drove them to secluded areas of the woods; Petitioner raped them outside of the car; both females tried to dissuade Petitioner from raping them by stating why intercourse with them would be undesirable; and in both cases, "Petitioner stated he did not care and would 'fix that,' putting on a condom and continuing with the rape." *State v. Cotton*, Op. No. 27965 (S.C. Sup. Ct. filed May 6, 2020 (Shearhouse Adv. Sh. No. 18 at 75).

The Court's factual recitation is incorrect in at least four respects. First, Petitioner did not meet the main female online. To the contrary, the main female testified she met Petitioner on a chat line over the phone. (App. p. 10, l.16- p. 11, l. 11; p. 21, ll. 11-24; p. 124, l. 13- p.125, l. 10; p. 168, ll. 9-19). Petitioner also testified that they met over the phone, not online. (App. p. 45, ll. 8-12).

Second, Petitioner did not pick up the second female for the purpose of going on a date. Second female testified she met Petitioner because she needed a ride home. (App. p. 25, ll. 14-17; p. 34, ll. 23-25; p, 175, ll. 19-21). Petitioner also testified that he picked up the second female because she needed a ride. (App. p. 51, l. 16 – p. 52, l. 16; p. 53, ll. 5-12; p. 344, ll. 18-21). As

explained in Petitioner's brief, he only had a romantic relationship with the main female. He did not have a romantic relationship with the second female. (Pet. Br. pp. 22-23).

Third, Petitioner did not take both females home. Again, contra to the Court's Opinion, he dropped off the main female at her home, but he dropped off the second female on McIver Road, and she walked home from there. (App. p. 19, ll. 3-5; p. 30, l. 25 – p. 31, l. 3; p. 183, l. 24 – p. 184, l. 1).

Finally, the following excerpt from the Opinion is contradicted by a review of the record: "In both cases, Petitioner stated he did not care and would "fix that[.]" The record – specifically the females' testimony – simply does not support this statement. The main female testified that in response to her statement as to why sex would be undesirable with her, Petitioner stated "we'll fix that". (App. p. 17, l.24 – p.18, 1. 7). However, there was no testimony from the second female or anyone else that Cotton responded to the second female by saying he would "fix that." (App. p. 29, l. 21 – p. 30, l. 4; p. 179 ll. 18-20). Moreover, no one testified that Petitioner told either female he did not care about whether they wanted to have intercourse. The main female neither explicitly or implicitly stated Petitioner said "he did not care" and the second female's testimony on this point is at best equivocal. Second female's testimony could be interpreted to mean that Petitioner did not *state* that he didn't care but rather that he *acted* like he didn't care.[1] (App. p. 29, l. 21 – p. 30, l. 4; p. 179, ll. 18-20).

In sum, the Court relied on many inaccurate facts in concluding the two incidents were similar. A review of the record would show that these two incidents are nowhere close to being "essentially identical." The Court should withdraw its Opinion and issue a new opinion correcting

[1] Further, the fact that the two females offered statements as to why intercourse would be undesirable is not notable in the similarity analysis. It is the similarity of Petitioner's conduct that matters, not the females' conduct.

the inaccurate facts and addressing the distinctive differences between the two incidents as further discussed below.

b. The Court overlooked or misapprehend that the incidents in this case are less similar than the incidents that occurred in *Perry*.

In *Perry*, the Court held that Perry's sexual assault of his stepdaughter was not substantially similar to his assault of his biological children. *State v. Perry*, Op. No. 27963 (S.C. Sup. Ct. filed May 6, 2020) (Shearhouse Adv. Sh. No. 18 at 12). Some of the distinctive differences between the assaults that the Court highlighted were: the age of the children when the sexual abuse began, the location of the assaults, the type of sexual abuse, the physical force used, and threats that were used during the abuse. *Id.* The Court concluded the ages when the abuse began were not similar because Daughter Two was abused between five and seven and Daughter Three was abused between ten and eleven, while stepdaughter was abused at age nine. *Id.* "Age nine may be similar to ten, but in terms of the age at which a sexual predator begins sexually assaulting a daughter, ages nine and seven hardly seem to show 'a close degree of similarity.'" *Id.* The Court also found the location of the sexual abuse occurring within the home as "too general to be considered a meaningful similarity." *Id.* In finding that the type of abuse was not similar, the Court highlighted the fact that the abuse of the stepdaughter progressed into actual vaginal/penile penetration, while there was no evidence of vaginal/penile penetration with his biological daughters. *Id.* In regard to physical force, the Court found physical force was used against Daughter Two but not against stepdaughter or Daughter Three. *Id.* Finally, the Court noted that Perry threatened violence against stepdaughter if she disclosed what happened, but no violence was threatened against his biological children. *Id.*

Like *Perry*, the age of the females when the assaults occurred in this case was not similar – the main female was an adult (age 18) and the second female was a minor (age 15). The law

recognizes the significant differences between minors and adults, which is evidenced by their different treatment under the law. Like *Perry,* the location of the assaults – in secluded areas of the woods – is too general to be considered a meaningful similarity. The assaults in this case did not even occur in the same place. The main assault occurred on Turnpike Road in a wooded area in Darlington County, while the second female's testimony indicated her assault began in Florence County and culminated near Whitehall Lane in a wooded area in Hartsville in Darlington County. (App. p. 14, ll. 2-21; p. 15, l. 9 – p. 16, l. 4; p. 25, l. 14 – p. 27, l. 9; p. 28, l. 22 - p. 29, l. 18). Also, like *Perry*, there are distinct differences in the type of sexual assaults that occurred. The main female's assault only involved either vaginal intercourse or oral and vaginal intercourse[2] as opposed to the second female's assault which involved oral, vaginal, and anal intercourse. Here, the Court fails to even address the fact that the main female's assault did not involve anal intercourse as second female's assault did. Like *Perry*, the use of threats in the two incidents were different. According to the females, Petitioner threatened the main female with a gun while he threatened the second female with the use of physical violence. Using *Perry* as the guide, there are not substantial similarities between the two incidents in this case.

Furthermore, the Court ignores other distinctive differences between the two incidents beyond what is already described herein. Petitioner describes the significant differences between the two incidents further in its main brief. (Pet. Br. p. 20-26). To note a few, the Court ignores the following significant differences: no other people were present other than main female and Petitioner for their date, while Petitioner's brother was present for a portion of the car ride with the second female and Petitioner; Petitioner made stops at public places with the main female prior to the incident, while Petitioner and the second female made no stops at public places; and

[2] Her testimony at trial indicates that only vaginal intercourse occurred.

Petitioner allegedly asked the second female demeaning questions during intercourse, such as "if it was rape", he asked her "to call him names like daddy", and he asked her if she wanted to have his kids. (App. p. 30, ll. 13-16). There was no evidence that Petitioner asked the main female demeaning questions during intercourse. For the reasons described above, the Court needs to withdraw its Opinion and issue a new opinion that addresses the facts it got wrong and the significant facts that it ignored.

II. *PERRY*, AS APPLIED TO *COTTON*, EXPOSES THE SAME FUNDAMENTAL FLAW AS *WALLACE*, THE CASE *PERRY* PURPORTS TO OVERRULE.

The basic problem with this Court's analysis in *Perry*, as applied in *Cotton*, is to interpret the common scheme or plan exception to include committing similar acts. *Lyle* itself rejects this conclusion when this Court said "[a]ssuming that the evidence conclusively proved what the state was undertaking to establish - that on these prior dates this identical defendant under substantially similar circumstances had uttered other forged checks - what connection other than the similarity of character of crimes and method of execution, is there between the Georgia crimes and the crime in the indictment?" *State v. Lyle*, 125 S.C. 406, 420, 118 S.E. 803, 808 (1923). This Court in *Perry*, *Durant* and *Cotton* never stated what a common scheme or plan actually means. Nor has any other South Carolina case since *Lyle.*

What the exception truly means is a true connection between different crimes. Suppose as part of a plan to rob bank, a person steals an explosive to blow up the safe. The common scheme or plan was to rob the bank with the stolen explosives. The evidence of stealing the explosives would be admissible to show the common plan or scheme. If a person steals an automobile to rob a bank the same principle would apply. The automobile theft would be part of the common scheme or plan to rob the bank. The exception means more than the fact that a defendant committed two similar or very similar crimes. This Court has two previous cases that provide examples of this

exception. *State v. Brooks*, 235 S.C. 344, 111 S.E.2d 686 (1959) and *State v. Nix*, 288 S.C. 492, 343 S.E.2d 627 (1986). The government must prove a clear connection between the two or more crimes as part of a scheme to commit the crime.

Another strikingly similar murder was excluded in *People v. Molineux*, 168 N.Y. 264, 61 N.E. 286 (1901), a New York case that *Lyle* relied upon, because similarity was not a basis for admitting the evidence of the other murder under any exception. The *Molineux* court said "[t]o bring a case within this exception to the general rule which excludes proof of extraneous crimes, there must be evidence of system between the offense on trial and the one sought to be introduced. They must be connected as parts of a general and composite plan or scheme, or they must be so related to each other as to show a common motive or intent running through both." *Id.* at 305, 61 N.E. at 299.

Blanton and *Campbell* best illustrate the inherent danger of using similarity as a basis for admitting other crimes. In *State v. Blanton*, 316 S.C. 31, 446 S.E.2d 438 (Ct. App. 1994), the South Carolina Court of Appeals said "[t]his evidence is admissible if it tends to show common scheme or plan and its close similarity to the charged offense enhances its probative value so as to outweigh its prejudicial effect." *Id.* at 32, 446 S.E.2d at 439. Then, in an opinion just over six months later, without making reference to *Blanton*, the court in *State v. Campbell*, 317 S.C. 449, 454 S.E.2d 899 (S.C. Ct. App. 1994) said, "[w]hen the prior bad acts are strikingly similar to the one for which the appellant is being tried, the danger of prejudice is enhanced." *Id.* at 451, 454 S.E. at 901. Did the South Carolina Court of Appeals truly mean for attorneys to argue to the trial judge the subtle difference between "close similarity" and "strikingly similar" in making a determination of whether evidence of other crimes is admissible? The fact that *Blanton* involved a lewd act on a minor child and *Campbell* involved a drug crime should be of no consequence if

we are to decide cases based upon legal principles and not human emotions. After *Perry, Durant* and *Cotton* do attorneys still make this fine distinction? The trilogy of cases ruling on this issue provides no guidance. We do know, however, that because none of these cases overturned *Lyle*, a "substantially similar" prior bad act is still inadmissible.

The treatise writers who have addressed this issue also generally agree that the common scheme or plan exception does not mean two or more crimes are similar. *See,* Brown, MCCORMICK ON EVIDENCE, *Character and Habit* § 190 (Thomas-Reuter 2013); Imwinkelried, *Uncharged Misconduct Evidence*, § 3:25, 137; Wright & Graham, FEDERAL PRACTICE & PROCEDURE: EVIDENCE § 5244, 499–500; David P. Leonard, THE NEW WIGMORE*: Evidence of Other Misconduct and Similar Events* § 4.4, 231–32 (Aspen Publishers 2009); Mueller and Kirpatrick, EVIDENCE, *Character Evidence* § 4.15 (3d Ed. Aspen Publishers 2003); *but see* Fishman, JONES ON EVIDENCE CIVIL AND CRIMINAL, *Common Scheme or Plan* § 17:44 (7th Ed. 1998)(Westgroup).

The problem with introducing similar crimes is not that they are probative of whether a defendant committed the crime, but that the prejudicial impact of the evidence is clearly more prejudicial than probative. If another criminal act is admitted to prove intent, lack of mistake or knowledge, then a trial judge can truly weigh the evidence under the probative versus the prejudice factors required under Rule 403, SCRE. But when the only basis for admitting the other criminal act is to prove that the acts are similar, then that which makes the evidence prejudicial also makes it probative. No trial judge can then weigh the prejudicial effect versus probative value especially when the mere similarity proves no element of the crime. Nor is such evidence essential for the State to prove its case. "A plan or system common to other crimes was not an essential ingredient of the crime charged." *Lyle*, 125 S.C. at 427, 118 S.E. at 81. Nor is a plan or system common to the other crime essential in this case. Exactly what is the other bad act being used to prove?

III. THE COURT NEVER EXPLAINED HOW THE TWO INCIDENTS IN THIS CASE ARE ACTUALLY CONNECTED BY REFERENCE TO *ANY* UNIQUE FACTORS.

In *Perry*, the Court further found that there was no connection between the assaults because Perry's "methods and means" are not unique. The Court stated:

> [r]ather, in our significant collective experience dealing with crimes of this nature, a very high percentage of sexual crimes against children are committed just like Perry's alleged crimes: by father figures, in the home, in a bedroom, beginning in the pre-pubescent years. The fact Perry's crimes fit this general pattern does not give Perry a 'monopoly' on his criminal method.

State v. Perry, Op. No. 27963 (S.C. Sup. Ct. filed May 6, 2020) (Shearhouse Adv. Sh. No. 18 at 12).

Like *Perry*, Petitioner's "methods and means" are not unique. These two incidents are linked only by superficial similarities common to most if not all sexual assaults. *See State v. Tutton*, 354 S.C. 319, 328, 580 S.E.2d 186, 191 (Ct. App. 2003) (providing in sexual crime cases general similarities are not sufficient to support the finding of a common scheme or plan unless a pattern of continuous illicit conduct is established). Just like the trial court, this Court relied on facts common to most sexual assaults in admitting the testimony of the second female: both (a) victims were young females; (b) females were acquaintances of Cotton; (c) were allegedly alone with Cotton at the time of the alleged incidents; (d) incidents allegedly occurred at night and in a private place; and (e) incidents allegedly involved implicit or explicit forms of violence. This Court overlooked that these factors are common to several, if not most, sex crimes, and lack any real significance. Put another way, the sample size of sex crimes that do not involve a young female victimized in a private place at night is vanishingly small. *See State v. Timmons*, 327 S.C. 48, 53, 488 S.E.2d 323, 326 (1997) (holding the trial court erred in admitting prior robberies based upon similarities common to all robberies).

In *State v. Hansen*, the Supreme Court of Montana explains how rapes in general follow a similar fact pattern. *State v. Hansen*, 187 Mont. 91, 608 P.2d 1083 (Mont. 1980). *Hansen*, like *Cotton*, involved sexual assaults which began with women voluntarily entering the defendant's car and continuing with driving to remote areas, advances by defendant, resistance by women, and forcible intercourse. In *Hansen*, the court stated "[c]ase law from other jurisdictions holds that when the alleged similarities between crimes reveals nothing more than a sequence of events common in the crime charged, the acts are not usual [sic] and distinctive enough to come within the purview of the [other crimes admission rule] exception." *Id.* at 96, 608 P.2d at 1086. The court stated:

> Numerous rapes follow the pattern of barroom pickup, voluntary entry into the offender's vehicle by the victim, driving to a remote area, advances, resistance and forcible intercourse. The sequence of events has no distinctive qualities that distinguish the acts from other rapes thus bringing the events within the purview of the similarity element of the other crimes admission rule exception.

Id.

In another similar Montana case, the court held the evidence of the first rape inadmissible stating, "[s]exual acts, whether rape or no rape, originating in barroom pickups, powered by urge, and consummated in automobiles, are entirely too common in this day and age to have much evidentiary value in showing a systematic scheme or plan." *State v. Sauter*, 125 Mont. 109, 232 P.2d 731 (Mont. 1951). The only distinctive difference from the Montana cases to this case is that the defendant in those cases met the women in a bar, which was common in the 1950s-1980s. In this day and age, it is common for men and women to meet online or over a phone. It is common knowledge that each and all of the characteristics of the incidents discussed above are shared by the charged and uncharged crimes in this case, but also by very many sexual assaults. *See* (Pet. Br. pp. 19-20). The general similarities between these two incidents are not enough to establish

the required connection between the incidents. And, for the same reasons, Petitioner's methods and means are not unique in nature for purposes of establishing a connection.

In short, the Court – likely because it cannot - has not stated what connects these two incidents. Petitioner believes it has not done so because there is none. If the Court believes otherwise it should, at a minimum, withdraw its Opinion and address what connection, if any, it believes exists. As written, any trial judge can use *Cotton* to justify the admission of any typical criminal sexual conduct using force, especially when the differences are excluded.

IV. THE COURT MISAPPREHENDED OR OVERLOOKED THAT THE PRIOR INCIDENT DID NOT SERVE A LEGITIMATE PURPOSE BEYOND ESTABLISHING PROPENSITY.

Reading *Perry* and *Cotton* together, the Court seems to hold that the second female's testimony is admissible under *Perry* because in addition to there being similarities between the two incidents, the other incident was relevant in disproving Petitioner's alibi defense. While Petitioner denied being with the complainant on the night of the alleged attack, he did not deny seeing her shortly before and admitted touching her clothing so as to account for the DNA.

In *Lyle*, the Court allowed the admission of the two other crimes that occurred in Aiken because they were committed within a few town blocks, as to distance, and within a few minutes, as to time, of the crime charged to refute the defendant's alibi. *Lyle*, 125 S.C. at 418, 118 S.E. at 808. The Court refused to allow in three separate Georgia crimes which occurred ten days to seven weeks prior to the commission of the crime charged. In excluding the Georgia acts, as stated earlier herein, the Court stated:

> Assuming that the evidence conclusively proved what the State was undertaking to establish--that on these prior dates this identical defendant under substantially similar circumstances had uttered other forged checks--what connection, other than the similarity in character of crime and method of execution, is there between the Georgia crimes and the crime charged in the indictment? There is

> no connection of time and place, as appears in the Aiken transactions covered . . . , which would support a legitimate inference that, because the defendant was at the places at the times designated, he was in Aiken and committed this crime on January 12.

Id. at 419-420, 118 S.E. at 808. Just like the Georgia crimes in *Lyle*, the other incident in this case is not connected by time or place to the crime charged. These two incidents happened eight months apart and in different locations.

Lyle relied upon two New York Cases – *People v. Molineux*, 168 N.Y. 264, 61 N.E. 286 (1901) and *People v. Romano*, 84 App. Div. 318, 82 N.Y.S. 749 (1903). In *Romano*, the state accused the defendant of robbery. The means used to accomplish the robbery was to throw snuff in the face of the victim and then rob him. The sole defense was alibi. The state sought to introduce evidence that the defendant committed another robbery within a three-week period at the same location upon another person by the use of the same means. The trial court admitted the evidence "as showing a similar offense, done in a similar manner, within a reasonable time." *Id.* at 319, 82 N.Y.S. at 749. The New York appellate court held the evidence was not admissible. In reversing the trial court, the appellate court stated: "[t]here is always more or less of similarity between the commission of independent crimes of this class, and in many instances features that are common to one are found in the other; and yet it has never been supposed that, where there was separation as to time and no connection established beyond that of place and similarity, the first crime was admissible to establish any of the elements which constituted the other." *Id.* at 320, 82 N.Y.S. at 750.

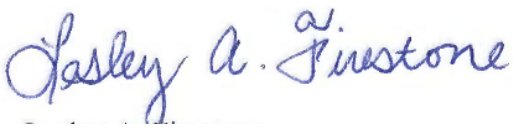
In this case there was separation as to time and place and no connection beyond that of similarity. For the reasons set forth in *Lyle* and *Romano*, the other incident in this case, even with an alibi defense asserted, should not be admissible to establish the elements of the crime charged. What is the other similar act being used to prove in this case?

The Court's Opinion does not answer this simple, but basic, question. By avoiding this threshold question and moving directly to a slightly reconfigured version of the *Wallace* similarity analysis, the Court again misses the forest for the trees. Although the Court mentions that the other crime was admissible to refute the innocent explanation as to the DNA on the button, this Court never explains how another alleged rape refutes Petitioner's testimony. If that is the basis for admission, whether the other bad act was similar or dissimilar is simply not relevant to the admission of the other bad act. If this Court truly believes that another alleged rape refutes Petitioner's innocent explanation, then the prejudice to Mr. Cotton greatly outweighs the probative value of that testimony. *See* Rule 403, SCRE.

CONCLUSION

For the aforementioned reasons, this Court should grant this Petition, withdraw its prior Opinion, and issue a new opinion addressing the arguments made herein and reverse the erroneous ruling below.

Respectfully submitted,



Lesley A. Firestone
Moore & Van Allen, PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000

Lara Mary Caudy, Esquire
Robert Michael Dudek, Esquire
Chief Appellate Defender
PO Box 11589
Columbia, SC 29211

Attorneys for Petitioner

June 10, 2020

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM DARLINGTON COUNTY
Court of General Sessions

J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2017-002402

The State, ...Respondent,

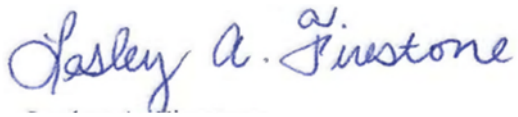
v.

Damyon M. Cotton, ... Petitioner.

PROOF OF SERVICE

This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the foregoing ***Petition for Rehearing*** by depositing same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

William M. Blitch, Jr., Esquire
Alan McCrory Wilson, Esquire
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211



Lesley A. Firestone (S.C. Bar No. 100080)
MOORE & VAN ALLEN, PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000

Lara Mary Caudy, Esquire
Robert Michael Dudek, Esquire
Chief Appellate Defender
P.O. Box 11589
Columbia, SC 29211

June 10, 2020