

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JAMES R. ROSENBAUM,

APPELLANT

APPELLATE CASE NO. 2018-002240

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**MOTION TO USE TRIAL EXHIBITS IN LIEU OF  
EXHIBITS FROM THE PRE-TRIAL HEARING ON THE  
REQUEST FOR IMMUNITY FROM PROSECUTION**

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Appellant, through undersigned counsel, respectfully shows this Court as follows:

1. On November 29, 2017, Appellant was indicted for murder. Thereafter, he moved for immunity from prosecution pursuant to the Protection of Persons and Property Act. His co-defendant, Diane Durkin, also moved for immunity. On July 16-17, 2018, the Honorable Benjamin H. Culbertson presided over a hearing on the motions. At the conclusion of the hearing, Judge Culbertson denied immunity to Appellant and Durkin.

2. During the hearing on the immunity request, two exhibits were admitted on behalf of Durkin, and seven exhibits were admitted on behalf of Rosenbaum. At the conclusion of the hearing, the court reporter returned the exhibits to the “appropriate parties” as indicated by the

reporter's note at the beginning of the exhibits list. Specifically, the court reporter provided: "Reporter's Note: All exhibits returned to appropriate parties at end of hearing."

3. Thereafter, the state called the case to trial before Judge Culbertson and a jury on December 3-10, 2018. Alex Hyman and Travis Hyman represented Appellant. Thomas Jarrett Bouchette and Johnny Gardner represented Durkin. Immediately prior to closing arguments, Durkin entered a plea to voluntary manslaughter. Appellant's trial continued, and the jury ultimately found him guilty of voluntary manslaughter. Judge Culbertson sentenced him to fifteen years imprisonment. On December 18, 2018, Appellant served his notice of appeal.

4. Undersigned counsel filed an initial brief of appellant and designation of matter on October 16, 2019. One of the issues on appeal concerned the circuit court's denial of Appellant's request for immunity from prosecution. In support of the issue, undersigned counsel designated several exhibits from the pre-trial hearing on the request for immunity. Those exhibits included Defendant Durkin's Exhibit #1 (photo); Defendant Durkin's Exhibit #2 (911 tape); Defendant Rosenbaum's Exhibit #5 (photo); Defendant Rosenbaum's Exhibit #6 (photo); Defendant Rosenbaum's Exhibit #7 (photo). Appellant submitted a proposed transportation order for these exhibits and others. On July 22, 2020, this Court issued a transportation order for exhibits in this case, including these five exhibits from the pre-trial hearing.

5. In executing this Court's order to transport the exhibits, the Attorney General's Office confirmed the Clerk of Court did not have the exhibits in her possession because the court reporter returned the exhibits to the parties. Thereafter, undersigned counsel endeavored to obtain the exhibits from the parties. Appellant's trial counsel provided undersigned counsel with the three photographs that were admitted during the pre-trial hearing and designated as matter to be included

in the record on appeal. Undersigned counsel provided these to the Attorney General's Office. The parties agree to submit these exhibits to this Court to satisfy a portion of the transportation order.

6. Undersigned counsel was unable to obtain the exhibits that were admitted during the pre-trial hearing on behalf of Defendant Durkin. However, based upon conversations with trial counsel, undersigned counsel believes Defendant Durkin's Exhibit #1 was a mugshot of Durkin and was admitted as an exhibit during the trial. Therefore, the parties agree to use the following exhibits from the trial in lieu of the Defendant Durkin's Exhibit #1 from the pre-trial hearing: Defendant Durkin's Exhibit #2 (photo), Defendant Durkin's Exhibit #3 (photo), and Defendant Durkin's Exhibit #4 (photo). Undersigned counsel respectfully requests an amended transportation order for these exhibits from the Horry County Clerk of Court.

7. Further, based upon conversations with trial counsel, undersigned counsel believes Defendant Durkin's Exhibit #2 (911 call) was the same exhibit that was admitted during the trial as State's Exhibit #6 (911 call). When the state submitted its initial brief of respondent and designation of matter on March 2, 2020, the state designated State's Exhibit #6 (911 call) from the trial to be included in the record on appeal. Thus, State's Exhibit #6 (911 call) from the trial is already included in this Court's Order of June 22, 2020, to transport exhibits. As such, there is no need to issue a new or amended transportation order for this exhibit. The parties simply request consideration of State's Exhibit #6 (911 call) from the trial in lieu of Defendant Durkin's Exhibit #2 (911 call) from the pre-trial hearing.

8. As indicated by his consent below, counsel for the state graciously consents to this request.

WHEREFORE, the undersigned counsel respectfully requests (1) this Court issue an amended transportation order for the following exhibits from the trial held on December 3-10, 2018:

Defendant Durkin's Exhibit #2 (photo), Defendant Durkin's Exhibit #3 (photo), and Defendant Durkin's Exhibit #4 (photo); (2) this Court consider Defendant Durkin's Exhibit #2 (photo), Defendant Durkin's Exhibit #3 (photo), and Defendant Durkin's Exhibit #4 (photo) from the trial in lieu of Defendant Durkin's Exhibit #1 (photo) from the pre-trial hearing when considering whether the trial judge erred in denying Appellant's request for immunity from prosecution; and (3) this Court consider State's Exhibit #6 (911 call) from the trial in lieu of Defendant Durkin's Exhibit #2 (911 call ) from the pre-trial hearing when considering whether the trial judge erred in denying Appellant's request from immunity from prosecution.

Respectfully submitted,

s/Susan B. Hackett

Susan B. Hackett  
Appellate Defender

August 13, 2020

I CONSENT:

s/William F. Schumacher, IV

William F. Schumacher, IV, Esquire