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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
The Hoborable Robert E. Hood, Circuit Court Judge
South Carolina Court of Appeals Case No. 2017-002329

Opinion No. 2020-UP-241

MIMI JOE MARSHALL,

Petitioner,

V.

THE STATE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made, and finally ruled on by the Court of Appeals on October 28, 2020.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in upholding the trial court's refusal to charge the jury on the law of involuntary manslaughter where there was evidence in the record to support the charge?

II. Did the Court of Appeals err in upholding the trial court's admission of the testimony of Timothy Lee, a crime scene investigator, on crucial blood evidence where he was not qualified as an expert in blood spatter or crime scene reconstruction?

III. Did the Court of Appeals err in upholding the trial court's admission of opinion testimony on crucial blood spatter evidence where said evidence was not reliable and could not satisfy three of the four factors proffered in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999)?

STATEMENT OF THE CASE

On the morning of Saturday, August 16, 2015, family members discovered Doris Marshall deceased from a gunshot wound to the head in the trailer she shared with her husband, the Petitioner. R. 108, l. 11; R. 109, 1. 25; R. 110, ll. 1-2. Petitioner's nephew, Robert Marshall, Jr., touched off a search by calling police and family members after Petitioner showed up to his home, "heartbroken.". R. 141; l. 12; R. 142, l. 10. While at Robert Marshall's, Petitioner confessed he had "messed up," indicating he had killed Doris. R. 142, ll. 5-8. After family members forced entry into their home, they discovered Doris Marshall deceased. R. 414, ll. 16-25; R. 414, ll. 10-11. Police developed information that Petitioner was at a local hangout called "Tony's Lounge." R. 333, 1. 9; R. 334, ll. 5-6; R. 16, ll. 16-24. Police detained Petitioner at

Tony's and transported him to the Richland County Sheriff's Office, where he gave a statement to investigator Joe Clarke, of the Richland County Sheriff's Department. In that statement, Petitioner confessed to the unintentional killing of his longtime wife. State's Exhibit No. 3. On direct, Clarke testified that Petitioner explained he had his gun in the front room of the trailer because the trailer park was an unstable place, that the decedent had "come at him," that the decedent grabbed the gun, and "it went up and it went off." R. 566, ll. 15-17. After providing the statement, Petitioner was arrested. R. 579, ll. 9-12.

On December 15, 2015, a Richland County grand jury indicted Petitioner for murder and felon in possession of a firearm. R. 754. On October 30, 2017, Petitioner was tried before the Honorable Robert Hood and a jury for murder. R 27. April Sampson, Sandra Moser, and Samuel McGlothin represented the State. R. 27. Alicia Goode, Stephen Krzyston, and Lucas Hawks represented the Petitioner. R. 27.

During trial, the State's theory centered around the "factual impossibility" of Petitioner's claims. The State called two police witnesses that testified to "blood spatter evidence," Timothy Lee and Stan Richards. Through these witnesses, the solicitors repeatedly elicited testimony and argued that Petitioner's claims were contradicted by irrefutable evidence. R. 112, l. 20 – R. 114, 1. 5; R. 115, ll. 5-14; R. 567, ll. 5-10; R. 668, l. 23 – R. 669, l. 5; R. 677, l. 17; R. 678, ll. 2-7; R. 678, ll. 8-9; R. 678, ll. 11-13. In contrast, Petitioner's counsel argued the physical evidence indicated an unintentional shooting for which there was no evidence of malice aforethought. R. 120, ll. 5-12; R. 693, l. 17 – R. 695, l. 10; R. 698, ll. 15-19; R. 699, l. 24 – R. 700, l. 10. Ultimately, the jury convicted Petitioner of murder. R. 728, l. 23 – R. 729, l. 14. Judge Hood

sentenced Petitioner to life without the possibility of parole for the murder and a concurrent five-year term on the weapon charge. R. 740; ll. 9-15.

On May 5, 2020, Petitioner was notified by the Court of Appeals that his appeal was being submitted for decision without arguments. Thereafter, the Court of Appeals entered its dispositional decision on August 12, 2020. Petition for Rehearing was filed on August 25, 2020 and denied by the Court of Appeals on October 28, 2020. This petition follows.

ARGUMENTS IN SUPPORT OF PETITION

I. The Court of Appeals erred in upholding the trial court's refusal to charge on the law of involuntary manslaughter because evidence in the record required the trial court to instruct the jury on involuntary manslaughter.

The Court of Appeals erred in finding that there was no evidence in the record that Petitioner was lawfully armed and in failing to view the evidence in the light most favorable to Petitioner. The Court found that there was evidence in the record that suggested the Petitioner had pointed or presented the weapon at the decedent.

Petitioner argued his statement provided an appropriate foundation for a charge of involuntary manslaughter. R. 653, ll. 9-11. After receiving arguments, the trial court refused to instruct the jury on the law of involuntary manslaughter, stating there was no evidence on the record that Petitioner had armed himself in self-defense. R. 653, ll. 12-16; R. 654, ll. 15-16; R. 654, ll. 21-23.

The law to be charged must be determined from the evidence presented at trial. *State v. Crosby*, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003) (internal citations omitted). A trial court commits reversible error where it fails to give a requested charge on an issue raised by the evidence. *State v. Brayboy*, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010) (internal

citations omitted). Involuntary manslaughter is defined as either (1) the killing of another without malice and unintentionally, but while one is engaged in the commission of some unlawful act not amounting to a felony and not naturally tending to cause the death or great bodily harm, or (2) the killing of another without malice and unintentionally, but while one is acting lawfully with reckless disregard of the safety of others. *State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104, 109 (1999). A trial court may refuse to charge involuntary manslaughter only where it very clearly appears that there is **no evidence whatsoever** tending to reduce the crime from murder to manslaughter. *See id.* 513 S.E.2d at 109 (internal citations omitted) (emphasis added).

In *Burriss*, the Court found one can be acting lawfully, even if one is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting. *Id*. The *Burriss* court held the circumstances of a case must show the defendant was entitled to arm himself in self-defense when the gun went off, or that the killing resulted from the negligent handling of a loaded gun, in order to be entitled to an instruction on involuntary manslaughter. *See id*. 513 S.E.2d at 109.

In the instant case, there is ample evidence in the record, when construed in favor of the Petitioner, that casts doubt on whether he possessed the gun at the time of discharge. *Infra*. Thus, because the Petitioner presented a recitation of events in which he did not possess a firearm in violation of law, he is entitled to have the jury analyze whether he is guilty of involuntary manslaughter or murder.

There is also evidence when construed most favorably for Petitioner, that he accidentally killed the decedent while lawfully armed in self-defense with reckless disregard for the safety of decedent. R. 566, ll. 15-17; R. 568, l. 22 – R. 569, l. 3; State's Exhibit No. 3. Viewing the

evidence in the light most favorable to the Petitioer shows on August 16, 2015, after his arrest, he gave a statement to investigator Joe Clarke of the Richland County Sheriff's Department. When called during the third day of trial, Joe Clarke testified to the substance of Petitioner's statement. The State, through Clarke, admitted Petitioner's statement to police. R. 547, ll. 20-21; State's Exhibit No. 3. Clarke testified that Petitioner claimed he had his gun in the front room of the trailer because the trailer park was an unstable place, that the decedent had "come at him," that the decedent grabbed the gun, and "it went up and it went off." R. 566, ll. 15-17.

Clarke testified that Petitioner never admitted to intentionally pointing the gun at the decedent, nor did he ever admit to intentionally pulling the trigger. R. 569, l. 21. Petitioner elicited testimony that showed the gun was in such an unsafe condition that it could discharge without a trigger pull. R. 619, l. 17 – R. 620, l. 7. Clarke also testified that Petitioner claimed that the decedent grabbed the gun, and "it went up and it went off." R. 566, ll. 15-17. Additionally, evidence was offered which substantiated Petitioner's belief that the trailer park was unstable. R. 566, ll. 15-17; R. 568, l. 22 – R. 569, l. 3; R. 569, l. 21; State's Exhibit No. 3

Given the evidence in the record, the most favorable interpretation for Petitioner suggests that Petitioner was checking outside of his trailer due to the noise of what, unbeknownst to him, was his wife returning and the unstable nature of the trailer park and that the noise and the unstable nature of the trailer park couple together to form a reasonable basis which permitted him to lawfully arm himself in self-defense. R. 566, ll. 15-17; R. 568, l. 22 – R. 569, l. 3; R. 569, l. 21; State's Exhibit No. 3. A trial court may refuse to charge involuntary manslaughter only where it very clearly appears that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. *See Burriss*, 334 S.C. at 264, 513 S.E.2d at 109 (emphasis added).

Here the Court of Appeals erred when it ignored the most favorable content of the Petitioner's statements. Because of the foregoing, the Court of Appeals erred in upholding the Circuit Court's refusal to charge on the law of involuntary manslaughter. As a result, this Court should reverse Petitioner's conviction for murder, and remand the case for a new trial.

II. The Court of Appeals erred in upholding the Circuit Court's admission of opinion testimony on crucial blood evidence where the witness was not qualified to offer an opinion on blood evidence.

The Court of Appeals erred in holding that Lee's testimony was consistent with his qualifications and the scope of his expertise. Specifically, the Court found that Lee's testimony centered on his training and how it led him to photograph and collect evidence. This holding ignores Lee's gratuitous statements and their overwhelmingly prejudicial effect.

As the State prepared to call Lee, Petitioner challenged the witness arguing the State had not demonstrated the reliability requirements proffered by *White*, *Jones*, and Rule 702, SCRE. R. 185, ll. 7-17. During *in camera voir dire* the State established that Lee was certified through the International Association for Identification (IAI) for **crime scene investigation** but **not as a crime scene analyst**. R. 189, l. 22 – R. 190, l. 3. Further, the State conceded that Lee had only been admitted as an expert in crime scene processing eight times in ten years. R. 190, ll. 4-8. No showing or demonstration of any of the *Jones* factors as illustrated in *Council* and *Ford* occurred.

During Petitioner's *voir dire*, he established that Lee did not do any "tests" when "doing the blood spatter," did not photograph the subject blood with scale, did not follow essential elements of the applicable blood evidence protocols, and did not take measurements of the subject room or blood stains. R. 195, ll. 21-25; R. 196, ll. 1-3. In arguing, Petitioner asserted the State could not show reliability as required by the Supreme Court's holding in *Jones*. R. 196, ll.

17-21. The solicitor responded by offering Lee as an expert only in the area of **crime scene processing**. R. 197, ll. 3-14. Thereafter, the trial court found him qualified as an expert in **crime scene processing**. R. 204, ll. 9-25.

On direct, the State began to address the positioning of the decedent's body. R 220, ll. 5-11. The State, begging Lee's opinion asked, "Why is this photo important to you?" R. 220, l. 11. Lee testified, "…it shows the limited amount of blood staining over here. And when you look over here, you see more staining that's heavier, so that gives us an indication that a blood letting occurred within –." R. 220, ll. 12-15.

After objection, Petitioner argued Lee had moved "significantly beyond the scope" of his expertise and had not been qualified under Rule 702, SCRE and *Jones*. R. 220, l. 23 – R. 221, l. 4. The State responded by arguing that the decedent's location "within the room" was important to the investigation, as were why "certain things" were collected. R. 221, ll. 5-8. Without addressing the merits of Petitioner's argument, the solicitor continued that Lee was "merely talking about **how he knew where she was**," and was going to go into "**if there was any evidence that she had been moved**." R. 221, ll. 8-11.

Petitioner again argued such testimony was "squarely within the realm" of analysis as opposed to processing, that Lee's qualification did not entitle him to opine on blood evidence, and that no reliability inquiry under Rule 702, SCRE and *Jones* had taken place. R. 221, ll. 12-15. Petitioner also argued Lee had not complied with his department's protocols or with commonly accepted practices within the blood evidence field. R. 224, ll. 15-24.

The trial judge ultimately ruled Lee could give his opinion concerning the position of the decedent's body at wounding, finding that Lee was certified and blood spatter analysis was

"completely and totally within his expertise." R. 228, ll. 21-23. This occurred despite the fact that Lee testified he was only certified as a crime scene investigator and had not completed certification as a crime scene analyst, R. 189, l. 22 - R. 190, l. 3. After the trial court's ruling, the solicitor continued to elicit testimony from Lee on the subject of the decedent's positioning. R. 233; l. 4; R. 233, ll. 5-11; R. 233, ll. 15-17; R. 233, l. 20 - R. 234, l. 1; R. 234, ll. 3-6; R. 236, ll. 3-5.

On cross-examination, Petitioner established that no measurements were taken at the crime scene, that the photographs taken by Lee "might have been" over or underexposed, and that over or underexposure could lead to inaccurate depiction of probative evidence. R. 249, ll. 12-13; R. 254, ll. 23-24. Petitioner also established that Lee had not complied with the technical requirements for the prescribed photographic documentation process, and that no stringing or computer modeling had been done to determine an area of convergence. R. 261, ll. 9-22; R. 264, ll. 9-13. Def. Exhibit 12.

In closing statements, the solicitor argued that the Petitioner's statement, because of blood evidence, was demonstrably false, and that as the decedent entered the trailer, she "sat down to relax, [and] didn't even have time to untie her shoes," when [Petitioner] sprung into "deadly action." R. 678, l. 11-13; R. 669, ll. 6-22. The solicitor repeatedly highlighted the "important" testimony of Lee and Stan Richards; a crime scene analyst discussed *infra*. R. 676, ll. 23-24. Specifically, she repeatedly claimed that Lee and Richards had discussed the "dynamic" nature of the scene, the bloodletting of "horrific proportions," and that [Lee and Richards] didn't need to do [or show any testing results] to be believed. R. 677, ll. 12-15.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. Rule 704, SCRE. However, an expert's opinion may not exceed the scope of his expertise. *State v. Ellis*, 345 S.C 175, 178, 547 S.E.2d 490, 491 (2001). In *Ellis*, the Supreme Court found reversible error where an expert, qualified only in crime scene processing[1] offered an opinion on the positioning of the victim at the time of wound infliction. In deciding *Ellis,* the Supreme Court found the opinion of a crime scene processor exceeded his qualification when they were permitted to impart a conclusion to the jury which was drawn from measurements and observations. *Ellis*, 547 S.E.2d at 491. The Supreme Court expressly indicated that such a witness could only testify to measurements taken at the scene, the recovery of shell casings, and the identification of blood stains. *Id*. Here, the trial court qualified Lee as an expert in crime scene processing. R. 204, ll. 18-19: Despite representations to the contrary, the State elicited gratuitous testimony regarding the decedent's positioning at the time of wounding. R. 220, ll. 11-15; R. 231, ll. 14-17; R. 233, l. 5 – R. 234, 1. 6; R. 236, ll. 3-7. The Court of Appeals upheld the trial court's decision permitting Lee to offer his opinion concerning the blood evidence despite the fact that he was unqualified, and the scope of his expertise did not extend to analysis. R. 230, l. 25 – R. 231, l. 5.

In deciding *Ellis*, the Supreme Court concluded that "improper opinion[s] [which] go to the heart of the case are not to be considered harmless." *Id*. (internal citations omitted). The error, which the Court of Appels overlooked, allowed Lee to offer an opinion that went beyond relaying measurements taken at the scene, recovery of evidentiary items of interest, and identification of the existence of blood stains, and well into opinions which were not based on

[1] The witness was also a qualified fingerprint examiner.

science but upon observations as discussed *infra*. Because of the aforementioned considerations, this Court should reverse the Petitioner's conviction for murder, and remand for a new trial.

III. The Court of Appeals erred in upholding the Circuit Court's decision to admit the opinion testimony of Stan Richards because the opinion was not reliable and could not satisfy three of the four factors proffered in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999).

The Court of Appeals erred in finding the trial court properly performed its gatekeeping role and in finding the trial court did not abuse its discretion in allowing Richards' testimony. In so holding, the Court of Appeals ignored evidence which established that Richards' and Lee's opinions were based merely upon their subjective visual observations as opposed to an empirical hypothesis capable of demonstrating reliability.

Having determined that the State would call Stan Richards to discuss blood evidence, the trial court agreed to conduct an *in-camera* hearing to allow the Petitioner to "cross examine" Richards on the opinion. R. 427, ll. 16-19. When asked how he was involved in the case, Richards indicated he talked to Lee and tried to gather as much information as possible because he essentially relied on Lee to process the scene for him. R. 432, ll. 6-10. Richards testified they did take photographs to document the scene as they entered. R. 433, ll. 5-8. Interestingly, Richards claimed the photographs utilized the road-mapping procedure that Lee previously admitted was not employed.[2] *See* R. 433, ll. 11-19, *and* R. 261, ll. 9-22; *see also* Def. Exhibit No. 12. The solicitor then elicited Richards' opinions on the blood evidence. R. 433, l. 24 - R. 438, l. 8.

During cross-examination, Richards testified that he authored the "blood-spatter protocols" marked as Defendant's Exhibit 12. R. 439, ll. 7-l1. Richards also admitted he was

familiar with the substance of RCSD's procedures for determining areas of origination. R. 439, ll. 12-18. He further acknowledged that among those guidelines there is a process called "road-mapping." R. 439, ll. 16-18. Despite admitting previously that road-mapping was not employed, Richards claimed: "we had road-mapping." R. 439, l. 20 – R. 440, l. 3.

In *State v. Council,* 335 S.C. 1, 515 S.E.2d 508 (1999), our Supreme Court found scientific evidence was admissible only after the trial court makes findings under Rule 702, SCRE that (1) the evidence in question would assist the trier of fact; (2) the expert witness in question is qualified; the underlying science is reliable as informed by the *Jones* standard; and (4) the probative value of the evidence outweighs the danger of unfair prejudice pursuant to a Rule 403 analysis. *See Council,* 515 S.E.2d at 518 (internal citations omitted). The court in *Council* added additional clarification by citing to *State v. Ford*, 301 S.C. 485, 392 S.E.2d 781 (1990) (internal citations omitted), by illustrating that inquiry under *Jones* required a court to consider several factors, including (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence' involved; (3) the quality control measures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. *Council,* 515 S.E.2d at 517 (internal citations omitted).

The Supreme Court's holding in *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009), then extended *Council* to all expert testimony. In establishing reliability as a central tenant of admissibility, the *White* Court held that "[t]he familiar tenet of evidence law that a continuing challenge to evidence goes to 'weight, not admissibility' has never been intended to supplant the gatekeeping role of the trial court…in assessing the overall admissibility of expert testimony." *Id.,* 676 S.E.2d at 688. Lastly, *White* held that the trial court, in the discharge of its gatekeeping

[2] Eventually, Richards relented that road-mapping had not been employed. R. 440, l. 12.

role, “must **initially answer** the always **present threshold questions of qualification and reliability**.” *Id.,* 676 S.E.2d at 689 (emphasis added).

At trial, Petitioner established neither Lee nor Richards conducted any tests when "doing" the blood spatter analysis, did not photograph the subject evidence with “scale,” did not take physical measurements of the crime scene, did not take physical measurements of subject blood stains, did not conduct any computer modeling or stringing to determine area of origination, and did not adhere to protocols prescribed for photographic documentation. R. 195, l. 25 - R. 196, l. 3; R. 254, ll. 23-24; R. 249, ll.12-13. Moreover, Lee and Richards admitted the photographs they did take may have been over or underexposed, potentially resulting in spoiled evidence. R. 195, l. 25 - R. 196, l. 3.

When Richards offered his opinion on the blood evidence, the State provided no objective basis upon which to determine the reliability of the opinion. Richards testified that the core of his methodology was classification via a taxonomical structure. R. 431, ll. 4-6. Despite this, Richards was never asked to explain the taxonomy which was supposedly peer-reviewed and standardized, even though he admitted the taxonomy he used may vary from the standardized taxonomy. R. 431, ll. 10-17. *In camera*, Richards never objectively defined spatter, impact spatter, or pattern. The State presented no testimony regarding the effect of size or shape on Richards’ classification of blood stains within his undefined taxonomy.

After classification, Richards testified, “You may, if it's necessary, go into looking at motion, directionality, then you may go into looking for – looking at the convergence or area of origin[ation]. After that, you relate what you found to one pattern – from one pattern to another pattern and how that sequence might evolve.” R. 430, l. 20-25. The State offered no evidence

establishing a basis upon which to judge the reliability of directional determinations and no evidence regarding how Richards or Lee determined the subject area of origination. Richards never indicated by whom or when his methodology was peer-reviewed. R. 431, l. 12. Richards' contended that the methodology was standardized, even though his "taxonomy" might have a "different name to it." R. 431, l. 13-17. Thus, Richards' claims that they utilized a commonly accepted taxonomy were taken on faith without evidentiary support. Petitioner objected to Richards on the basis of the State's inability to demonstrate reliability and upon the witness' non-conformance with the applicable methodology. R. 255, ll. 17-24; R. 440, l. 17 - R. 441, 1. 3; R. 441, ll. 9-11; R. 441, l. 25 - R. 442, 1. 1.

Before expert testimony may be introduced to the jury, *Council* specifically requires the trial court to make findings under a Rule 403, SCRE balancing test, that the probative value of the opinion evidence in question is not substantially outweighed by the danger of unfair prejudice or the risk of confusion. *See Council,* 515. S.E.2d at 518 (internal citations omitted).

In the instant case, The Court of Appeals also ignored the trial court's failure to determine whether the probative value of Richards' and Lee's testimony substantially outweighed the danger of unfair prejudice or risk of confusion as required. *Council,* 515 S.E.2d at 517. The result was that Richards bolstered the boot-strapped testimony of Lee, with data only he and Lee could interpret, and which was based on subjective observation as opposed to empirical evidence.

While a trial court may properly conclude that challenges are more appropriately relegated to weight-based challenges for the jury to assess, it may only do so after initially determining the threshold question of reliability. *See White*, 676 S.E.2d at 686. The Court of

Appeal's holding endorses the trial court's *a priori* acceptance of Richards claims of reliability. R. 427, ll. 16-19; R. 378, ll. 13-14. Neither the Court of Appeals nor the trial court were shown evidence sufficient to demonstrate the reliability of Richards and Lee's opinions, and such a failure is fatal to the Court of Appeals holding.

Petitioner argued against admissibility because Richards and Lee did not follow the protocols which governed the analysis. R. 440, ll. 17 - R. 441, l. 3. Petitioner specifically cited the lack of compliance with methodology and reliability as his objection to the admissibility of the evidence. R. 441, ll. 9-11. The trial court overruled Petitioner's objection in finding Richards' opinion reliable. R. 442, l. 23 – R. 443, l. 5. In addition to the opinion testimony elicited on direct examination, in closing arguments the solicitor repeatedly argued Petitioner's claims were demonstrably false because of Richards' and Lee's opinion. *Supra*; R. 669, ll. 6-22. R. 676, ll. 23-24. R. 677, ll. 12-17; R. 678, ll. 2-13. Because the opinion of Richards, like Lee, was not grounded in empirical data, was not formed by adhering to the requisite protocols, could not have been effectively challenged, was not reliable, and prejudiced the Petitioner's ability to obtain a fair trial, the Court of Appeals erred in upholding the trial court's decision. Based on the foregoing, the Court should reverse Petitioner's conviction for murder and remand the matter for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that this Court grant his petition for writ of certiorari to the Court of Appeals to allow full briefing on the issues presented.

[*signature block to follow*]

Respectfully submitted,

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This 14th day of December, 2020.

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THE STATE,

Respondent.

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari to the South Carolina Court of Appeals in the above-entitled case has been served upon Caroline Scrantom, Esquire, Assistant Attorney General at the primary e-mail address listed in the Attorney Information System (AIS); and Mimi Joe Marshall at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 14th day of December, 2020.

s/Stephen F. Krzyston
Stephen F. Krzyston, S.C. Bar No. 100666
ATTORNEY FOR PETITIONER