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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
The Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2020-000076

THE STATE, ...RESPONDENT,

v.

JONATHAN RAKIM BRIGHT, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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II. The trial judge properly refused to bifurcate Appellant's trial because evidence of Appellant's prior criminal conviction was necessary for proving his guilt for the offense of unlawful possession of a firearm by a person convicted of a violent offense.

STATEMENT OF THE CASE

Appellant was indicted by the Horry County Grand Jury for two counts of possession of a stolen pistol, unlawful carrying of a pistol, and unlawful possession of a firearm by a person convicted of a violent offense. On January 8–9, 2020, Appellant proceeded to a jury trial before the Honorable Steven H. John. Assistant Solicitor Thomas G. Terrell, III, Esquire, represented the State; Jonathan M. Hiller, Esquire, represented Appellant. The jury found Appellant guilty as charged and the trial judge sentenced him one year of incarceration for the unlawful carrying of pistol charge and concurrent sentences of five years' incarceration for the remainder of the charges.

Appellant timely filed a notice of appeal and brief. This brief of Respondent now follows.

STATEMENT OF FACTS

Pretrial Hearing

Prior to trial, Appellant's counsel moved to bifurcate Appellant's trial, presenting three of the four indictments—both possession of a stolen pistol charges and unlawful carrying of a pistol—initially to the jury. Following verdicts on those charges, the State would be permitted to present evidence of Appellant's fourth charge, unlawful possession of a firearm by a person convicted of a violent crime pursuant to S.C. Code Ann. Section 16-23-30(B).[1] Trial counsel argued that presentation of the charges in this manner would "basically keep the [S]tate from presenting evidence that [Appellant]'s been convicted – is a convicted felon during the case in chief." (Tr.p.25, line 22–Tr.p.26, line 19)

The trial judge noted it appreciated the defense's concern but did not feel it was proper to bifurcate the trial because

> "The [S]tate charged [Appellant] with this particular crime and it [was] an obligation of the [S]tate, if they are to proceed on that [charge], which they have the right to do, to prove all of the elements of the crime. And one of the elements of th[e] crime is the prior conviction of the crime of violence."

However, the trial judge offered to instruct the jury the "sole and only purpose" of admitting the evidence of the prior crime would be to prove an element of the unlawful possession of a firearm charge, and that such evidence "cannot be used for any other purpose." (Tr.p.26, line 20–Tr.p.28, line 4)

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[1] Under S.C. Code Ann. Section 16-23-30(B), it is unlawful for any person "enumerated in subsection (A)" of the statute to "possess or acquire handguns within this State." Subsection (A)(1) specifically describes "a[ny] person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions, or the District of Columbia . . . ."

Trial Evidence

On November 6, 2018, Officer Raymond Schoonmaker of the Myrtle Beach Police Department went to a Scotchman gas station to investigate a report that someone was sleeping in their vehicle while parked at a gas pump. Officer Schoonmaker arrived at the gas station at 2:07 a.m. and found Appellant with "his head down in the vehicle." When he began questioning Appellant, he immediately noticed the latter was slurring his words, had a strong odor of alcohol on him, and had "super glossy" eyes. Officer Schoonmaker also spotted an open container of alcohol in the vehicle. Based on these observations, he determined Appellant was intoxicated and unable to safely operate the vehicle and placed him under arrest. After checking the registration of the car, officers discovered it was registered to Appellant's mother. (Tr.p.42, line 12–Tr.p.44, line 21; Tr.p.53, line 11–Tr.p.54, line 2; Tr.p.59, line 9–Tr.p.60, line 3)

Appellant waited for another officer, Officer Vasquez, to arrive and secure the vehicle before taking Appellant to the local jail. By the time Officer Schoonmaker returned to the scene, Officer Vasquez had found a stolen pistol, over $1,200 dollars, and a second pistol in the trunk which was later discovered to also be stolen. Because guns were found, officers ran a background check on Appellant to determine whether he had a concealed weapons permit. However, officers discovered Appellant had a criminal history which, under South Carolina law, prohibited him from possessing a firearm and meant there was "no possible way for [Appellant] to obtain a [concealed weapons] permit. (Tr.p.54, line 3–Tr.p.59, line 8)

Officer Justin Vasquez testified about his recollection of the events surrounding Appellant's arrest, including the clear evidence that Appellant was intoxicated. After Officer Schoonmaker left with Appellant, Officer Vazquez inventoried the vehicle because it was going to be towed away from the gas station. He found one of the stolen handguns underneath the

driver's seat and the second one in the trunk. Additionally, a large sum of money was "spread around" the passenger seat along with miscellaneous clothing and other items. (Tr.p.64, line 22–Tr.p.71, line 11)

At the conclusion of Officer Vasquez's testimony, the State submitted Appellant's certified prior conviction into evidence over trial counsel's renewed motion for a bifurcated trial. The trial judge instructed the jurors the conviction was submitted only for the purpose of proving Appellant was guilty of the crime of possession of a pistol by a person convicted of a violent offense and that it could not be used for "any other purpose or consideration . . . in [their] deliberations and decision." (Tr.p.75, line 1–Tr.p.79, line 10; State's Exhibit 1)

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence.").

Likewise, decisions regarding the conduct of a criminal trial are left largely to the sound discretion of trial judges, and a trial judge's ruling on the conduct of a trial will not be reversed absent a prejudicial abuse of discretion. State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007); see State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958) ("Necessarily the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

I.

The trial judge properly allowed the State to introduce into evidence a video recording in which Appellant made voluntary, non-custodial statements regarding his ownership of a vehicle and the items within.

Appellant argues the trial judge erred in admitting the video recording of Appellant, claiming the statements shown within it were custodial statements made without required Miranda warnings. The State disagrees with this allegation of error. Appellant's statements were non-custodial and made by him without any questioning by the officers who placed him under arrest. Accordingly, they were properly admissible as evidence at trial.

Appellant's Recorded Statements

During the trial, the State sought to admit a DVD containing the recording of Officer Schoonmaker's dashboard camera from the time period of Appellant's arrest. The State began playing the video, without objection, until the point of the recording depicting Appellant's arrest. After the jury witnessed that footage, trial counsel objected to the jury viewing additional portion of the recording. The parties agreed the remainder of video showed Appellant in the back of Officer Schoonmaker's patrol car making numerous statements about his ownership of the vehicle and the items within it. (Tr.p.44, line 22–Tr.p.47, line 17; State's Exhibit 2)

Even though the parties agreed Appellant was not instructed on his Miranda rights, the State argued this portion of the video and Appellant's statements made within it were admissible to the jury because Appellant volunteered the statements outside of a custodial interrogation; specifically, Appellant's comments were spontaneously made by him without any questioning by the officers. Trial counsel disagreed with the State's analysis: although counsel conceded Appellant's comments were not made during a "formal interview," Appellant's statements were

in part made in response to comments made by the officers such as their announcement they were about to search Appellant's vehicle. After hearing both parties' arguments,, the trial judge requested to hear the remainder of the video. (Tr.p.47, line 17–Tr.p.49, line 14; State's Exhibit 2)

After reviewing the remainder of the recording, the parties made additional arguments. Trial counsel again acknowledged that Appellant's statements were not made during "an interrogation as such," but "the failure to Mirandize could have prevented him from continuing this colloquy with law enforcement, some of which [was] innocent enough, all of which [was] colorful." In response, the State reiterated that Appellant's comments were not made during a custodial interrogation and the only questions asked of Appellant were "not for interrogative purposes." The importance of the video to the States case was showing Appellant's reaction to officers searching the car, demonstrating his ownership and/or control of the vehicle. Ultimately, the trial judge decided to allow limited redaction of the video: jurors would not see any portion of the video after the arrest in which the officers asked Appellant any questions. The recording would skip forward to the point of time in which the officers walked away from the vehicle and Appellant made spontaneous, unsolicited statements about the vehicle and the items within it. When the jury returned to the courtroom, the redacted remainder of the video was played for the jurors. (Tr.p.49, line 15–Tr.p.51, line 15; Tr.p.52, line 25–Tr.p.53, line 10; State's Exhibit 2)

Analysis

Miranda warnings are designed to protect several constitutional rights of an accused, most importantly, the privilege against self-incrimination. State v. Howard, 296 S.C. 481, 374 S.E.2d 284 (1988). In order to assure that an accused's right to remain silent is not compromised during custodial interrogation, the United States Supreme Court ruled that "[p]rior to any

questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed." Miranda v. Arizona, 384 U.S. 436, 444 (1966). "A statement, whether exculpatory or inculpatory, obtained as a result of custodial interrogation is inadmissible unless the person was advised of and voluntarily waived his rights under Miranda . . . ." State v. Kennedy, 325 S.C. 295, 302, 479 S.E.2d 838, 842 (Ct. App. 1996) *aff'd as modified*, 333 S.C. 426, 510 S.E.2d 714 (1998).

The special procedural safeguards outlined in Miranda are not required if a suspect is simply taken into custody, but only if a suspect in custody is subjected to interrogation. Id., at, 303, 479 S.E.2d at, 842 (Ct. App. 1996) *aff'd as modified*, 333 S.C. 426, 510 S.E.2d 714 (1998). The interrogation requirement of Miranda is met by express questioning or its functional equivalent, and includes words or actions the police should know are reasonably likely to elicit incriminating responses from a criminal suspect. Rhode Island v. Innis, 446 U.S. 291 (1980); State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989); Kennedy, 333 S.C. at 426, 510 S.E.2d at 714. Volunteered statements not made in response to custodial interrogation do not require Miranda warnings. Arizona v. Mauro, 481 U.S. 520 (1987). Miranda warnings are inapplicable to volunteered statements not the product of interrogation. State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989). In Howard, the court stated:

> In formulating a definition of interrogation, the [Innis] Court pointed out that "the concern of the Court in Miranda was that the 'interrogation environment' created by the interplay of interrogation and custody would 'subjugate the individual to the will of his examiner' and thereby undermine the privilege against compulsory self-incrimination." The Court noted that interrogation must reflect a measure of compulsion above and beyond that inherent in custody itself.

296 S.C. at 488, 374 S.E.2d at 288 (emphasis added).

Moreover, any time a defendant initiates further discussion, he implicitly waives his Miranda rights. State v. Kennedy, 333 S.C. 426, 430–31, 510 S.E.2d 714, 716 (1998) (citing Edwards v. Arizona, 451 U.S. 477, 845 (1981)). "Volunteered statements, whether exculpatory or inculpatory, stemming from custodial interrogation or spontaneously offered up, are not barred by the Fifth Amendment." State v. Miller, 375 S.C. 370, 380, 652 S.E.2d 444, 449 (Ct. App. 2007) (quoting State v. Hook, 348 S.C. 401, 409-10, 559 S.E.2d 856, 860 (Ct. App. 2001), *aff'd as modified*, 356 S.C. 421, 590 S.E.2d 25 (2003)).

In the case sub judice, Appellant was not provided Miranda warnings because he was not subjected to interrogation.[2] Notably, even trial counsel conceded the comments were not made during a "formal interview" nor were they part of "an interrogation as such." Still, the trial judge, in an abundance of caution, prevented the State from playing portions of the interview in which the officers asked any questions of Appellant. Ultimately, the only post-arrest statements from Appellant which were introduced into evidence were the unsolicited and volunteered statements he made while he was in the back of a patrol car, the type of statements South Carolina courts have routinely found to be admissible by a criminal defendant independent of the presence of Miranda warnings. See Miller, 375 S.C. at 380, 652 S.E.2d at 449. Further, Appellant's intoxication did not impact the voluntariness of these statements. See State v. Easler, 322 S.C. 333, 342, 471 S.E.2d 745, 751 (Ct. App. 1996) (holding DUI arrest resulting in

[2] In fact, Appellant's obvious intoxication prevented the State from attempting any meaningful questioning; had officers attempted to interrogate Appellant while he was inebriated, the State is certain it would have been forced to defend against the argument that Appellant's intoxication rendered it impossible for him to voluntarily waive his Miranda rights. See State v. Moses, 390 S.C. 502, 513-14, 702 S.E.2d 395, 401 (Ct. App. 2010) (stating the factors to be considered when making a voluntariness determination include, but are not limited to the accused's background, experience, conduct, age, maturity, **physical condition**, mental health, misrepresentations by law enforcement, isolation of a minor from a parent, direct or indirect promises (however slight), repeated and prolonged questioning, and exertion of improper influence) (emphasis added)

volunteered, noncustodial statements did not require Miranda warnings); also State v. Kerr, 330 S.C. 132, 147, 498 S.E.2d 212, 219 (Ct. App. 1998) (DUI defendant found to have volunteered non-custodial statement that did not necessitate Miranda warnings). Accordingly, the trial judge properly allowed the State to introduce Appellant's volunteered, not-custodial statements into evidence.

II.

The trial judge properly refused to bifurcate Appellant's trial because evidence of Appellant's prior criminal conviction was necessary for proving his guilt for the offense of unlawful possession of a firearm by a person convicted of a violent offense.

Appellant argues the trial judge erred in denying his motion to bifurcate his trial. The State disagrees with this allegation of error because a bifurcated trial is inappropriate in situations, such as Appellant's, in which evidence of a prior conviction is inextricably tied to the State's burden of proving each and every element of a charged offense.

"[A] bifurcated proceeding is not required in a non-capital case." Chubb v. State, 303 S.C. 395, 397, 401 S.E.2d 159, 161 (1991). "[A bifurcated trial] is not required by either the common law, the statutory law, or the constitution of this State." State v. Bennett, 256 S.C. 234, 242, 182 S.E.2d 291, 295 (1971). Similarly, the United States Supreme Court has explained, "Two-part jury trials are rare in our jurisprudence; they have never been compelled by this Court as a matter of constitutional law, or even as a matter of federal procedure." Spencer v. Texas, 385 U.S. 554, 568 (1967).

Appellant's argument on appeal relies upon the Supreme Court of South Carolina's opinion in State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019), in which the court found the trial judge erred in refusing to bifurcate a defendant's trial for the offenses of first-degree criminal sexual conduct (CSC) with a minor and committing a lewd act on a minor. In that case, the defendant requested his lewd act charge and the sexual battery element of the CSC charge be presented to the jury first and, if the jury concluded a sexual battery occurred, then evidence of his prior first-degree CSC with a minor conviction from 1992. Id. at 470–71, 832 S.E.2d at 283–

84. Importantly, Cross was charged with first-degree CSC with a minor pursuant to S.C. Code Ann. Section 16-3-655(A), which provides:

> (A) A person is guilty of criminal sexual conduct with a minor in the first degree if:
>
> ....
>
> (2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D).

Distinguishing Cross's case from prior South Carolina cases[3], the Supreme Court found the trial court erred in refusing to bifurcate Cross's trial. Id. at 477–78, 832 S.E.2d at 287–88. The court emphasized Cross's 1992 conviction for first-degree CSC with a minor "had insurmountable probative value in proving the prior conviction element of first–degree CSC with a minor," but found the failure to bifurcate was reversible error in Cross's situation because: (1) the prior conviction was not probative of "the threshold issue of whether Cross committed the [charged] sexual battery . . . ."; (2) prior sex-related offenses carry an "inherently prejudicial stigma"; (3) the evidence of Cross's guilt was based entirely on the jury's evaluation of the witnesses' credibility which the prior conviction, given its inherent prejudice, possessed an "overwhelming danger" of improperly influencing. Id. at 477–79, 482–84, 832 S.E.2d at 287–88, 290–91.

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[3] See, e.g., State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000), in which the Supreme Court found a defendant's two prior burglary convictions were admissible during his trial for first-degree burglary where the prior convictions formed the basis for the upgraded charge. Id. at 153, 526 S.E.2d at 229. Notably, Benton offered to stipulate to the two prior burglary convictions in camera to avoid their introduction to the jury. The court found the State was not forced to accept the stipulation and was permitted to introduce evidence of the prior convictions at trial because the convictions were used "to establish a material fact or element of the crime charged . . . ." Id. at 155–56, 526 S.E.2d at 230.

Notably, Appellant's case lacked any of the factors upon which the Cross court based its decision. Appellant was not on trial for a sex-related offense nor was the prior conviction related to a sex crime. Further, witness credibility was not a critical issue with Appellant's trial: Appellant failed to provide any evidence of his own and the State's witnesses had their testimony supported by the other evidence submitted at trial, including the recording in which Appellant claimed the car and its items were his property.

Still, the most important reason why bifurcation was improper for Appellant's case is because Appellant's prior conviction was **required** to prove whether was guilty of unlawful possession of a firearm by a person convicted of a violent offense as defined by S.C. Code Ann. § 16-23-30. Notably, in delineating the elements of the offense, the legislature chose to make the defendant's prior conviction an element of the offense. Thus, in order to prove Appellant's guilt for the charged offense, the solicitor was required submit evidence that Appellant was previously convicted of a violent crime. See In re Winship, 397 U.S. 358, 364 (1970) ("[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."); also State v. Green, 261 S.C. 366, 371, 200 S.E.2d 74, 77 (1973) ("[E]vidence logically relevant to establish a material element of the offense charged is not to be excluded merely because it incidentally reveals the accused's guilt of another crime.").

For that reason, the evidence of Appellant's prior conviction had immense probative value in Appellant's case as it established an element of the offense that necessarily had to be proven, and, since that evidence was essential to prove the charged offense, the probative value of the evidence was not – and could not be – substantially outweighed by a danger of unfair prejudice, which was particularly true in light of the limiting instructions the trial judge

presented to the jury in regard to the evidence of the prior conviction both after it was introduced and before the jurors began their deliberations.[4] See United States v. Gaudin, 515 U.S. 506, 510 (1995) ("[The Fifth Amendment and Sixth Amendment to the United States Constitution] require criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt."); also Foye v. State, 335 S.C. 586, 590, n. 1, 518 S.E.2d 265, 267 (1999) ("The jury was instructed to determine petitioner's guilt based only on the evidence presented in the trial. A jury is presumed to follow instructions. Therefore, without some showing the jurors disregarded these instructions, this Court declines to presume prejudice." (citations omitted)); State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) ("[J]urors are presumed to follow the law as instructed to them."); State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975) ("It is the duty of jurors to take the law from the court in the particular case on trial. It must be presumed that they do so.").

[4] Notably, Appellant did **not** object to the sufficiency of the trial judge's limiting instructions during trial or allege those instructions were unlikely to be followed by the jurors; in fact, trial counsel claimed he "would be willing to stipulate" to such a charge when the trial judge explained his intention to use it at the conclusion of trial. (Tr.p.26, line 20–Tr.p.28, line 4); See State v. Wilson, 389 S.C. 579, 583, 698 S.E.2d 862, 864 (Ct. App. 2010) ("[A]s the law assumes a curative instruction will remedy an error, failure to accept such a charge when offered, or failure to object to the sufficiency of that charge, renders the issue waived and unpreserved for appellate review."); also State v. Mitchell, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998) (instructing an appellant cannot complain on appeal about a particular ruling if the appellant acquiesces to that ruling during trial). Therefore, Appellant is precluded from challenging the sufficiency of the limiting instructions for the first time on appeal. See State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005) ("The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal."); also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial.").

As a result, the trial judge did not abuse his discretion in admitting the evidence of Appellant's prior conviction for the limited purpose of proving an element of the indicted offense after appropriately evaluating the comparative value of that evidence. See State v. Cheatham, 349 S.C. 101, 109-110, 561 S.E.2d 618, 623 (Ct. App. 2002) ("It is well settled the admission of prior burglary or housebreaking convictions for limited consideration as an element of first degree burglary does not constitute undue prejudice. Thus, the admission of Cheatham's prior burglary and housebreaking convictions as an element of first degree burglary does not constitute unfair prejudice in this case. Further, the trial judge specifically instructed the jury not to consider Cheatham's prior convictions as evidence of the Patel burglary and to limit their consideration of the prior convictions to whether an element of first degree burglary was proven. We find no error in the admission of the convictions because the trial court took every precaution to prevent the improper consideration of Cheatham's convictions and to guard against undue prejudice.")

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

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v.

JONATHAN RAKIM BRIGHT, ...APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant via electronic mail to the address listed by counsel in AIS, addressed to his attorney of record:

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I further certify that all parties required by Rule to be served have been served this 18th day of March, 2021.

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Subject: BRIGHT Johnathan ; Appellate Case No. 2020-000076 (IBOR) (02518109.PDF;1).PDF
Attachments: 02518109.PDF

Good Morning,

Attached please find a copy of the Initial Brief of Respondent and Designation of Matter along with the proof of service for State v. Johnathan R. Bright (2020-000076). Please confirm receipt. This Initial Brief will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System. Please don't hesitate to contact our office should you have any questions or concerns.

Thank You.

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