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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY BERNARD BROWN,

APPELLANT

APPELLATE CASE NO. 2020-001600

INITIAL BRIEF OF APPELLANT

ADAM SINCLAIR RUFFIN
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in refusing to instruct the jury on not guilty by reason of insanity and guilty but mentally ill where there was evidence presented to the jury that Appellant did not have the mental capacity to distinguish between right and wrong and also that Appellant was unable to conform his conduct to the requirements of the law?

STATEMENT OF THE CASE

Appellant was indicted by the Newberry County Grand Jury for two counts of kidnapping, two counts of pointing and presenting a firearm, and one count of possession of a firearm by a person convicted of a violent crime. R. *. Appellant's trial was held before the Honorable Donald B. Hocker and a jury from November 16 – 19, 2020. Appellant was represented by Charles Verner. The state was represented by Dale Scott and Taylor Daniel. Tr. 1.

The jury found Appellant guilty as charged. Tr. 558, l. 14 – 559, l. 9. Appellant was sentenced to life without the possibility of parole pursuant to Section 17-25-45 of the South Carolina Code of Laws. Tr. 567, l. 18 – 568, l. 14.

This appeal follows.

STANDARD OF REVIEW

"In criminal cases an appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Id.

"The law to be charged is determined from the facts presented at trial." State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997). The appellate courts "will not reverse a circuit court's decision to deny a specific request to charge unless the circuit court committed an error of law." State v. Curry, 410 S.C. 46, 52, 762 S.E.2d 721, 724 (Ct. App. 2014). "A requested charge on insanity is properly refused where there is *no* evidence tending to show the defendant was insane at the time of the crime charged." Lewis, 328 S.C. at 278, 494 S.E.2d at 117 (emphasis added).

STATEMENT OF FACTS

On October 2, 2019, Appellant arrived at the Newberry County branch of the South Carolina Vocational Rehabilitation Department (Voc Rehab) and asked to speak with Sonya Byrd. Tr. 233, l. 1 – 235, l. 20. Byrd was a counselor at Voc Rehab and had previously provided Appellant with substance abuse counseling, employment counseling, and mental health treatment. Tr. 304, l. 11 – 305, l. 4.

Appellant had called Byrd earlier that morning between 10:00 and 11:00 and told her that he was suicidal. Tr. 305, l. 12 – 307, l. 20. Appellant also told Byrd that he was not currently on his medication and that he was "taking street drugs, illegal drugs." Tr. 307, l. 20 – 308, l. 3. Byrd got off the phone with Appellant and called his sister to "see what's going on." Tr. 308, l. 4 – 309, l. 8. Byrd arranged for Appellant's sister to give Appellant a ride to Laurens Memorial Hospital so that he could be admitted for treatment. Tr. 309, l. 9 – 310, l. 12.

Byrd testified that she was surprised when Appellant showed up at her office to speak with her and she asked Appellant why his sister had not taken him to the hospital. Tr. 310, l. 13 – 311, l. 5. Appellant told Byrd about some of his recent hardships, including his grandfather dying, his cousin committing suicide, and his girlfriend having a miscarriage. Tr. 311, ll. 6 – 20. After several more minutes of talking, Appellant pulled a gun out of his pocket. Byrd asked Appellant why he had a gun and she recalled that he said: "I'm tired. I'm tired of this. I've had enough. They won't give me my medication." Tr. 314, ll. 3 – 16. Appellant then pointed the gun at the ceiling and fired one shot.[1] Tr. 314, ll. 15 – 21.

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[1] From the time that Appellant fired the first shot into the ceiling until the time he was apprehended by law enforcement was approximately one hour and twenty minutes. See State's Exhibit 2 (Surveillance Footage on file with this Court).

Several other employees at Voc Rehab were in a conference room in the back of the building when they heard the gunshot. Tr. 282, l. 4 – 283, l. 21. Cheri Braswell, who was also a counselor at Voc Rehab, recalled that after she heard the gunshot, she and the other employees started to walk towards the main entrance to the building. Tr. 284, l. 19 – 285, l. 14. Braswell said she saw Appellant waving a gun and Byrd was screaming his name. While Braswell and the other employees were trying to get out of the building, Appellant grabbed her by the back of the head. Tr. 285, l. 15 – 286, l. 10.

According to Braswell, when Appellant grabbed her from behind, he told her that she could not leave. Tr. 287, ll. 287, l. 16 – 288, l. 3. Braswell claimed that Appellant stated he was not going to go outside and that "they" were going to have to come inside and "get him." Tr. 288, ll. 4 – 23. Braswell said that she feared for her life and believed that she could not escape the building without being shot. Tr. 290, ll. 11 – 22.

Byrd testified that she tried to put herself between Appellant and Braswell and pleaded with Appellant not to hurt Braswell and to put the gun down. Tr. 315, l. 21 – 316, l. 10. Byrd called 911 and while she was speaking with the operator, she told Braswell to leave the building. Tr. 316, l. 17 – 317, l. 4. Braswell recalled that Appellant let her go and she left the building out of the side door. Tr. 291, ll. 3 – 15.

After Braswell left the building, only Appellant and Byrd remained inside. Tr. 317, ll. 21 – 22. Byrd recalled that she thought about attempting to flee, but she was afraid that Appellant would shoot her if she ran. Tr. 319, l. 3 – 320, l. 23. Byrd maintained that the whole time she was with Appellant in the office she was talking to him and trying to calm him down. Tr. 321, ll. 4 – 16. According to Byrd, Appellant told her that he had gone to the Department of Mental

Health before coming to Voc Rehab and that he was planning to "shoot everybody" there because they would not give him his medicine. Tr. 321, l. 17 – 322, l. 16.

At some point while Appellant and Byrd were the only people still in the building, Byrd said that Appellant spoke with his aunt on the phone. After Appellant spoke with his aunt, Byrd recalled that Appellant let her leave: "After he spoke to his aunt, he looked at me in such a way, just like the bodily [sic] language changed that he had in the lobby, I saw that change. His eyes, his demeanor, he looked at me and he said, you can go now, Sonya, you need to leave, and I left." Tr. 325, ll. 9 – 16. Byrd said she tried to persuade Appellant to put the gun down and come with her, but he did not. Byrd stepped outside the building and as she started to walk away, she heard gunshots and then she ran until she reached the police officers who were outside.[2] Tr. 325, l. 17 – 326, l. 9.

Moments after Byrd exited the building, numerous law enforcement officers entered the building and arrested Appellant. See State's Ex. 2 at 1:37:00 – 1:40:30. Appellant can be seen on the video placing a gun on the floor in front of the door which was ultimately recovered by the officers and determined to be a .357 magnum revolver. Tr. 379, l. 20 – 380, l. 14.

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2 It was later discovered that Appellant shot the gun four more times into the ceiling and walls after Byrd exited the building. Tr. 384, l. 19 – 386, l. 13.

ARGUMENT

The trial judge erred in refusing to instruct the jury on not guilty by reason of insanity and guilty but mentally ill because there was evidence presented to the jury that Appellant did not have the mental capacity to distinguish between right and wrong and also that Appellant was unable to conform his conduct to the requirements of the law.

Relevant Facts

Prior to Appellant's trial, the judge held a Blair[3] hearing to determine whether Appellant was competent to stand trial. Dr. Casey Gregiore, with the University of South Carolina School of Medicine, was called by the state and qualified as an expert in the field of forensic psychiatry. Tr. 95, l. 14 – 98, l. 8. Dr. Gregiore conducted an evaluation on Appellant for both his competency to stand trial and his criminal responsibility. Court's Exhibits 1 and 2 (Evaluations on file with this Court).

Dr. Gregiore opined that Appellant was competent to stand trial and criminally responsible for his actions on October 2, 2019. Tr. 98, l. 22 – 99, l. 2; tr. 102, ll. 13 – 22. Specifically, Dr. Gregiore opined that Appellant had both the ability to determine right from wrong and the ability to conform his actions to the requirements of the law. Tr. 102, l. 23 – 104, l. 3. Dr. Gregiore diagnosed Appellant with antisocial personality disorder, alcohol use disorder, cannabis use disorder, and methamphetamine disorder. Tr. 100, ll. 2 – 11.

On cross-examination, Dr. Gregiore acknowledged that Appellant was prescribed with antipsychotic medication while housed at the Newberry County jail and that Appellant had an extensive history of self-harm and self-mutilation. Tr. 106, l. 1 – 107, l. 3. Specifically, Dr. Gregiore testified that Appellant was a "cutter" who had multiple permanent scars on his arms

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[3] State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

consistent with cutting himself. Tr. 107, l. 4 – 108, l. 3. Furthermore, Dr. Gregiore acknowledged that Appellant admitted to previously cutting his abdomen open and exposing his own intestines. Tr. 108, ll. 4 – 7.

Appellant had also been previously diagnosed by other doctors as suffering from bipolar disorder, post-traumatic stress disorder, borderline personality disorder, and unspecified depressive disorder. Although Dr. Gregiore disagreed with those diagnoses, he admitted that these diagnoses could result in a person not understanding the difference between right and wrong and not being able to conform their conduct to the requirements of the law. Tr. 108, l. 8 – 113, l. 22. Dr. Gregiore acknowledged he was aware that Appellant had been complaining that his prescription medications were not controlling his behavior. Tr. 116, ll. 12 – 15. Dr. Gregiore did not testify before the jury at Appellant's trial.

Shelly Remion, an administrative assistant with the Department of Mental Health in Newberry, testified that around 12:30 p.m., on October 2, 2019, Appellant came to the office asking to speak with his mental health counselor. Tr. 224, l. 10 – 226, l. 25. Remion recognized Appellant as being one of the Department's current mental health patients. Tr. 229, ll. 10 – 16. She further testified that Appellant stated he wanted to speak with his counselor because his medicine had been "making him feel weird." Tr. 226, ll. 12 – 19. Remion informed Appellant that his mental health counselor was away for lunch and Appellant left the office. Tr. 227, l. 3 – 228, l. 13.

Sonya Byrd, who was Appellant's counselor at Voc Rehab, testified that she was "very aware" of Appellant's mental health background and that his mental health history was substantial. Tr. 339, l. 22 – 340, l. 17. Byrd recalled that Appellant had been diagnosed with schizophrenia, PTSD, and suicidal ideations. Tr. 340, l. 24 – 341, l. 3. Byrd acknowledged that

Appellant's suicidal ideations may have been a symptom of his mental illnesses. Tr. 341, l. 4 – 342, l. 14. Byrd was aware of Appellant's history of cutting himself and that Appellant had profound cutting injuries all over his body. Tr. 342, l. 15 – 343, l. 4. Byrd believed Appellant was in fact suicidal on October 2, 2019 and was intending to either commit suicide himself or commit "suicide by cop." Tr. 356, l. 10 – 358, l. 25. Finally, Byrd stated that she believed Appellant was mentally ill at the time of the incident. Tr. 363, ll. 17 – 19.

After both sides rested, defense counsel asked the judge to instruct the jury on both not guilty by reason of insanity (NGRI) and guilty but mentally ill (GBMI). Tr. 465, l. 8 – 466, l. 13. Counsel pointed out that the "any evidence" standard should apply and, because there was evidence in the record supporting Appellant's claim of mental illness, the jury should be instructed on both. The jury would then decide whether Appellant was guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill. Tr. 466, l. 14 – 467, l. 21.

The trial judge acknowledged that evidence was presented that Appellant had several mental health diagnoses but asked defense counsel what evidence beyond that was presented to show Appellant did not know the difference between right or wrong or that he was unable to conform his conduct to the law. Tr. 467, l. 22 – 468, l. 25. Counsel cited to State v. Curry, 410 S.C. 46, 762 S.E.2d 721 (Ct. App. 2014) and State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990) to support his contention that the jury should be charged on NGRI and GBMI if there was evidence that the defendant had mental illness coupled with lay testimony that was consistent with the defendant not being able to control his behavior. Tr. 471, l. 2 – 473, l. 20.

The trial judge asked defense counsel if his position was that the "any evidence" standard was met based solely on Appellant having been diagnosed with certain mental illnesses. Counsel responded that it was not just Appellant's diagnoses but also the testimony of Byrd who agreed

that Appellant was mentally ill and acting in an irrational and suicidal manner. The entire alleged criminal offense occurred during a time period when Appellant was actively suicidal and exhibiting irrational behavior per the testimony of Byrd and a jury could find, based on her testimony, that Appellant did not know right from wrong or was unable to conform his conduct to the requirements of the law. Tr. 476, l. 2 – 477, l. 9.

The solicitor argued that State v. Rimert, 315 S.C. 527, 446 S.E.2d 400 (1994) stood for the proposition that the judge had to either charge both NGRI and GBMI or neither. The solicitor argued: "I think we first have to analyze whether not guilty by reason of insanity is applicable. If it's not, none of it is. If that doesn't come in, then guilty but mentally ill does not come in either." Tr. 478, ll. 1 – 25. The solicitor further argued that "antisocial behavior alone . . . is not enough to get to the point where because of mental disease or [defect] he lacks sufficient capacity to conform his conduct to the requirements of [the] law." Tr. 479, ll. 7 – 25.

The judge asked defense counsel if he agreed that "it's all or none." Defense counsel responded that he was requesting both verdicts to be charged and that "the Rimert case did say the proper verdict form would include both." Tr. 480, l. 16 – 481, l. 9. The solicitor and defense counsel also agreed that the trial judge could consider evidence from both the trial and the pretrial competency hearing in making his determination. Tr. 481, ll. 10 – 16. The judge then took the matter under advisement. Tr. 485, ll. 11 – 13.

The judge ultimately ruled: "[I]n light of 17-24-30 and Rimert, 315 S.C. 527, which appears to say, if I charge one, I would have to charge both. And I do not believe that the evidence warrants charging both, so I will not charge either." Tr. 489, l. 1 – 490, l. 2. Counsel argued that although he did not call an expert witness to dispute Dr. Gregiore's findings, "the inference from his behavior could support the burden." Tr. 491, l. 25 – 491, l. 10.

Discussion

The trial judge erred in refusing to charge the jury on the verdicts of not guilty by reason of insanity (NGRI) and guilty but mentally ill (GBMI) because there was evidence in the record, primarily through the testimony of Sonya Byrd, from which the jury could have concluded that Appellant was mentally ill or insane at the time of the incident. The judge further erred in stating that because the evidence did not support charging *both* verdicts, he would charge *neither*.

South Carolina law provides for the verdicts of both NGRI and GBMI. S.C. Code Ann. § 17-24-30. Criminal defendants are presumed to be sane so that the state does not have to affirmatively prove sanity in every criminal case. State v. Milian-Hernandez, 287 S.C. 183, 185, 336 S.E.2d 476, 477 (1985). "However, when the defendant offers evidence of insanity, the presumption disappears and it is incumbent on the state to present evidence from which a jury could find the defendant sane." Id.

In a trial where the defense sufficiently raises the issue of his mental illness or insanity, the verdict form *must* include four options: "(1) guilty; (2) not guilty; (3) not guilty by reason of insanity; or (4) guilty but mentally ill." State v. Rimert, 315 S.C. 527, 531, 446 S.E.2d 400, 402 (1994). Expert testimony is not necessary to prove insanity or mental illness; lay testimony may be sufficient. State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997). "In fact, a jury may disregard expert testimony." Id.; see also State v. Poindexter, 314 S.C. 490, 493-94, 431 S.E.2d 254, 256 (1993) (holding that "[t]he jury was free to rely on circumstantial evidence to find Poindexter sane even though expert testimony favored a finding that he was insane").

A defendant is NGRI if, at the time of the commission of the alleged criminal offense, the defendant did not have the mental capacity to distinguish right from wrong or to recognize the alleged criminal offense as being legally or morally wrong. S.C. Code Ann. § 17-24-10(A);

State v. Grimes, 292 S.C. 204, 206, 355 S.E.2d 538, 540 (1987). "In South Carolina, the key to insanity is the power of the defendant to distinguish right from wrong in the act itself—to recognize the act complained of is either morally or legally wrong." State v. Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23 (1992) (cleaned up). The burden of proof is on the defendant to prove by a preponderance of the evidence that he was insane. S.C. Code Ann. § 17-24-10(B).

A defendant is GBMI if, at the time of the commission of the alleged criminal offense, the defendant had the mental capacity to distinguish right from wrong but did not have the mental capacity to conform his conduct to the requirements of the law. S.C. Code Ann. § 17-24-20(A); State v. Poindexter, 314 S.C. 490, 493, 431 S.E.2d 254, 255 (1993). The burden of proof is on the defendant to prove by a preponderance of the evidence that he was mentally ill at the time of the alleged offense. S.C. Code Ann. § 17-24-20(B).

In State v. Poindexter, 314 S.C. 490, 493-94, 431 S.E.2d 254, 256 (1993), the defendant presented lay testimony that he exhibited behavioral changes in the months prior to the murder for which he was charged. The defendant also presented an expert witness who testified that he was unable to absorb vitamin B-12 and was insane as a result. The jury rejected Poindexter's insanity defense and instead found him GBMI. Id. at 491-492, 431 S.E.2d at 254. The Supreme Court affirmed the trial court's refusal to direct a verdict of NGRI because the prosecution presented lay testimony that Poindexter fled after the murder, appeared normal within hours of the murder, and was cooperative during the arrest. The Poindexter Court found that this lay witness testimony was sufficient for the jury to determine that Poindexter was sane at the time of the offense. Id. at 494, 431 S.E.2d at 256.

Just as the state could rely on lay witness testimony to prove sanity in Poindexter, here, Appellant was free to rely on lay witness testimony to prove his insanity. It was undisputed at

trial that Appellant had a long and significant history with mental illness. His former counselor, Sonya Byrd, acknowledged Appellant's numerous mental health diagnoses along with his suicidal and irrational behavior on the date of the incident. Byrd also acknowledged Appellant's history of engaging in self-mutilation by cutting himself. Furthermore, Byrd testified that she believed Appellant was mentally ill at the time of the incident. Tr. 363, ll. 17 – 19. This testimony was sufficient evidence for the jury to consider whether Appellant was either NGRI or GBMI.

In State v. Curry, 410 S.C. 46, 54-55, 762 S.E.2d 721, 726 (Ct. App. 2014), this Court held that the failure of the trial judge to instruct the jury on the verdict of GBMI was reversible error where evidence was presented from which the jury could have concluded that the defendant was mentally ill. In Curry, the defendant was charged with throwing feces on a corrections officer at the Lexington County jail. The state's expert witness testified that Curry did not lack the capacity to distinguish between right and wrong and was therefore not insane at the time of the offense. Id. at 49-50, 762 S.E.2d at 723.

Curry called a counselor with the Department of Mental Health who testified that Curry had a history of mental illness and had become more isolated and less engaging with her questions leading up to the date of the incident. Id. She further testified that Curry was suffering from "mania" at the time of the incident. Curry also called a psychiatrist with the Department of Mental Health who maintained that Curry had recently been refusing to answer her questions and had been showing no emotions or expressions. However, the psychiatrist refused to opine on whether Curry understood whether his actions were right or wrong. Id. at 51, 762 S.E.2d at 723-24. Curry's mother and daughter also testified that he had a long history of mental illness and Curry testified that he did not remember throwing feces on the officer. Id.

This Court found that the counselor's testimony--that Curry was manic at the time of the incident--coupled with other lay witness testimony regarding Curry's history of mental illness, was sufficient to warrant a jury instruction on GBMI. Id. at 53, 762 S.E.2d at 725. The Curry Court specifically rejected the state's argument that Curry was not entitled to a charge on GBMI because he failed to present a witness who stated Curry could not distinguish from right and wrong. Id.

Here, Appellant's Voc Rehab counselor testified that she believed Appellant was "mentally ill" on the date of the incident. This was coupled with testimony about Appellant's long history of mental illness, testimony that Appellant was not getting the medication that he needed, and testimony that Appellant was actively suicidal and intending to place himself in a situation where the police would be forced to kill him. Although there was no expert witness who testified to the "magic words" that Appellant lacked the capacity to conform his conduct to the requirements of the law or to distinguish between right and wrong, there was ample evidence from lay witnesses to support both verdicts.

Furthermore, the trial judge's ruling was based on a clear error of law. The trial judge relied on State v. Rimert, 315 S.C. 527, 446 S.E.2d 400 (1994) in stating that because the evidence did not support charging both verdicts that he would charge neither. This was error because Appellant was entitled to both instructions so long as he presented sufficient evidence that he was suffering from mental illness at the time of the incident. The trial judge erred in using Rimert as a basis to deny Appellant a charge on both NGRI and GBMI so long as there was any evidence to support a charge on at least one of them. The requirement that the verdict form include all four options – guilty, not guilty, NGRI, and GBMI – is a function of statutory construction. This was why the Rimert Court held that once the issue of mental illness or

insanity is sufficiently raised, the jury must be charged on all four verdicts. Id. at 531, 446 S.E.2d at 402.

In State v. Hartfield, 300 S.C. 469, 471-472, 388 S.E.2d 802, 803 (1990), the Supreme Court reversed a defendant's drug convictions where the trial judge refused to allow the jury to consider NGRI or GBMI because the defendant's mental condition was the result of organic brain syndrome caused by chronic substance abuse. The Court held that insanity caused by the use of drugs or intoxication may be a defense where the insanity is permanent and destroys the defendant's ability to know right from wrong. Id. at 473, 388 S.E.2d at 804. The defendant in Hartfield presented an expert who testified he was incompetent based upon his delusional thought system. The defendant suffered from paranoid psychosis and the expert testified that three weeks prior to the alleged incident, the defendant was "crazy as a billy goat." The expert opined that the defendant was unable to distinguish right from wrong or to recognize his acts as wrong. Id. at 471, 388 S.E.2d at 803.

Here, it was for the jury to determine whether Appellant's mental illness prevented him from distinguishing between right and wrong or whether such illness prevented him from conforming his conduct to the requirements of the law. South Carolina does not require expert testimony to be presented for NGRI and GBMI to be considered by a jury nor is there a requirement that any "magic words" be used by a witness to support these verdicts. It is the province of the jury to make the determination whether Appellant met his burden showing that he was either NGRI or GBMI. The trial judge erred in refusing to charge both NGRI and GBMI and Appellant's convictions should be reversed. See State v. Poindexter, 314 S.C. 490, 493-94, 431 S.E.2d 254, 256 (1993); State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990); State v. Curry, 410 S.C. 46, 762 S.E.2d 721 (Ct. App. 2014).

CONCLUSION

By reason of the foregoing argument, Appellant's convictions should be reversed, and this case remanded to the Newberry County Court of General Sessions for a new trial.

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of July, 2021.

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STATE OF SOUTH CAROLINA

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Appeal from Newberry County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

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V.

RICKY BERNARD BROWN,

APPELLANT

APPELLATE CASE NO. 2020-001600

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 Initial Brief of Appellant and Designation of Matter in the above referenced case have been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Ricky Bernard Brown, #237427, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC, 29210 this 1st day of July, 2021.

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT