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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

APPELLATE CASE NO. 2019-001008

THE STATE,RESPONDENT

v.

TIMOTHY RAY JONES, JR.....APPELLANT

**MOTION TO SUBSTITUTE AND AMEND
FINAL BRIEF OF RESPONDENT**

Respondent, State of South Carolina, respectfully moves this Court for an Order allowing it to substitute and amend its Final Brief of Respondent filed August 19, 2021. Respondent is not seeking to change any legal argument or position. Respondent is not seeking to add facts. Rather, Respondent is seeking to address drafting errors and incorrect assertions regarding the record. Respondent submits that the corrections should not cause the need for any additional briefing, or cause postponement of any deadline or any considered date for argument. Instead, the revisions, if allowed, should aid in easy reference to the Record on Appeal and ease in reading. In support of this request, Respondent submits:

1. The Final Brief of Respondent was filed on August 19, 2021. The brief is 145 pages and includes argument on 8 issues. In subsequent review, it was discovered that this final brief did not undergo the proofing procedures currently in place. Upon recent review, the undersigned

realized there are many typographical errors in the filing, *i.e.*, minor punctuation, spelling, grammar, capitalization errors, and/or stray words. In essence, the errors are general drafting errors which should, admittedly, be recognized and addressed in the final briefing process. They were not, and are, regrettably, now before the Court. Respondent has also corrected citation error, which, again, should have been identified and corrected in the final briefing process, but was not.

2. The majority of the errors Respondent seeks to correct fall into the referenced categories.¹ However, and in an abundance of caution, undersigned counsel separately seeks specific permission to address these errors:

- a. On page 78, to correct drafting error that combined inset quote and argument;
- b. On page 82, to correct assertion the Solicitor “argued that Jones use of the exclusionary rule is an attempt to reverse this decision” - the sentence should be omitted and remaining text restructured to accurately reflect the record;
- c. On page 89, to correct the sentence, “Dr. Frierson actually testified that not for the spice they would not even be in court,”- sentence should be deleted as inaccurate. The record shows Dr. Frierson’s response to defense questioning was,

¹ See, for example:
On page 80, to correct “all cases: to “all relevant cases”;
On page 82, to correct phrase “applying Mississippi state law” to “complying with”;
On pages 84 and 86, to correct improper paragraph separation;
On pages 90-91, to correct “admonished her” to “admonished counsel,” and correct grammatically incorrect and/or poorly structured sentence;
On page 93, to correct “*Inman* was all about” to “*Inman* was about”;
On page 95, to correct reference to testimony and records as “and/or”;
To correct spelling for one doctor, Dr. Bhushan Agharkar;
To correct Dr. Dorney’s diagnosis to “schizo-affective disorder”;
On pages 102-103, to correct quoted portions of record inserting quotation marks;
On page 105, to correct sentence to include “since” after “to protect Jones and,” to insert “that” after Deborah Gray for clarity;
On page 125, to correct sentence by including “not” to phrase “provided to the jury”;
On pages 108-109, to correct quotation from R. p. 5707 and incomplete sentence/awkward phrasing;
On page 111, to correct by inserting (*i.e.*, “move along”) after “this statement”;
On page 112, to correct “excuse” to “erase”;
To correct “state’s witness” to “court’s expert”;
On page 131, to correct sentence fragment by inserting “does not prove them.”
On page 137 and 141, to correct sentence fragments;
On pages 143-144, to correct citation; and
Correction of other similarly clear typographical, drafting, spelling and grammatical errors not changing the substance of the argument.

“I don’t think so, but, you know, I’m not a - - I’m not a fortune teller ... I think spice contributed incredibly to what happened.” (R. p. 4559, lines 18-22). The remaining quotes from Dr. Frierson need to be appropriately designated within quotation marks for accuracy;

d. On page 97, to correct the phrase “Then he told them” by changing to more accurately reflect, “Later, he stated....”;

e. On page 100, to correct reference to *Mercer* - “Jones” should be deleted and brackets used with “a defendant,” the word “this” omitted; and also the phrase “numerous mental illnesses” changed to “varied mental illness” to accurately reflect the record;

f. On page 107, to correct by deletion of the sentence opining “Jones did not have a worse childhood than most” as a weight or comparative assessment not necessary to the argument; to delete “marijuana” and substitute “drugs” as the record reflects the arrest was not for marijuana alone; and, to add a citation for the record summaries from events between ages three and ten already in text;

g. On page 120, to correct “child abuse and trauma” to “childhood trauma” to accurately reflect the record;

h. On page 121, to correct references to “competency” or “competent” to “insanity” consistent with the insanity discussion in the paragraph;

i. On pages 122-124, to correct by insertion of “recognition” regarding legal or moral wrong; separating “Amber” from “children’s physician” and correcting quote from R. p. 4698, consistent with the record;

j. To correct by insertion of appropriate quotation marks for record facts, and addition of specific record citations (no modification to the portion of the record explained in text), See Rule 208(b)(4), SCACR.

3. Respondent attaches, for the convenience of the Court in review of this motion, one copy of the proposed amended brief. Respondent stands ready to provide, without delay, as many copies as the Court should direct, if the Court should grant Respondent’s request.

4. Respondent submits these corrections will enhance clarity and prevent unnecessary distraction for the Court in review, and/or for the parties and Court at oral argument, so that the focus of the matter can remain rightly where it should be in this appeal – the appellate issues.

WHEREFORE, based on the foregoing, Respondent respectfully seeks permission to file an Amended Final Brief of Respondent with the corrections and modifications as set out above in addition to correction of normal typographical/drafting errors as shown in the attached proposed amended brief.

Respectfully submitted,

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