STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2011-197635

THE STATE,

RESPONDENT,

V.

ROGER BRUCE,

APPELLANT

PETITION FOR REHEARING

Comes now Respondent, above named, by and through the Attorney General of South Carolina, and pursuant to Rule 221(a), SCACR, hereby respectfully petitions this Court for rehearing.

INTRODUCTION

On October 12, 2009, Florence authorities, while performing a welfare check at a residence occupied by Laura Creel ("Victim") and her boyfriend, Roger Bruce ("Appellant"), discovered Victim's body stuffed in the trunk of her car. (R. 109-10, 116-17, 127). The ensuing investigation culminated in the trial and conviction of Appellant. (R. 459).

STATEMENT OF THE CASE

Appellant was indicted by the Florence County grand jury for murder (#2010-GS-21-0254). (R. 465-66). Following his indictment, Appellant was tried before the Honorable

Thomas A. Russo and a jury on August 8-11, 2011 in Florence. (R. 1). At trial, Appellant was represented by chief public defender, Jack Lawson and assistant public defender Scott P. Floyd, while the State was represented by solicitor E.L. Clements, III. (R. 1). At the conclusion of trial, Appellant was found guilty and received a life sentence. (R. 459-60, 464). Thereafter, Appellant filed a timely notice of appeal and, on May 23, 2012, filed his final brief arguing, "the trial court erred in refusing to suppress evidence seized from appellant's residence and a car in his backyard when the police took keys to the car from the residence without consent and without a search warrant." Br. of App. at 3. In the conclusion of his brief, Appellant requested only that his conviction be reversed. Br. of App. at 9. In response, the State, via its' final brief maintained the trial court's factual finding, that the victim's body would have discovered pursuant to the inevitable discovery doctrine, was not clearly erroneous and furthermore, even if it was, reversal was not the appropriate remedy in light of a variety of evidence supporting the trial court's judgment. Br. of Resp. at 1. Accordingly, the State asked this Court to affirm the trial court's judgment below. Br. of Resp. at 16.

On April 3, 2012, this Court issued a published opinion remanding the case back to the trial court, stating "the court did not make adequate factual findings or legal conclusions." State v. Bruce, No. 5110 (Ct. App. filed April 3, 2013). In particular, this Court determined, the trial court's findings, that suppression was not the appropriate remedy under the inevitable discovery doctrine, were "inadequate for appellate review." Id. Accordingly, this Court instructed the trial court to evaluate (1) whether Appellant had a legitimate expectation of privacy in the trunk of the victim's car; (2) whether Appellant consented to the search; and (3) if Appellant's Fourth Amendment rights were violated, whether the exclusionary rule applies. Id. The State now seeks rehearing as it believes this Court overlooked or misapprehended the evidence supporting

the trial court's ruling as well as the evidence in the record supporting the additional sustaining grounds advanced by the State.

STANDARD OF REVIEW

"[A] petition for rehearing must 'state with particularity the points supposed to have been overlooked or misapprehended by the court.' " Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011) (quoting Rule 221(a), SCACR). Similarly, "[t]he purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (quoting Jean H. Toal, Appellate Practice in South Carolina 309 (1999)).

BACKGROUND

Prior to trial, defense counsel informed the trial court they intended to suppress "evidence obtained in relation to the body itself" based upon their belief the evidence was obtained in violation of Appellant's Fourth Amendment rights. (R. 5). However, defense counsel further informed the court that it would seek to suppress such evidence at the time the State sought to introduce it. (R. 5). Accordingly, while Beckett, one of the first officers on the scene, was testifying regarding his and others officers attempt to open the trunk, defense counsel objected and the jury was sent to the jury room. (R. 119). Defense counsel then explained "[w]e're getting to the point where the trunk is about to be open, and I understand—the Defense would object to the discovery of the body in that fashion, basis that there was no search warrant obtained and no—does not appear any consent by my client given at that time to search the vehicle. I know that he allowed them to come in and look when they asked, but there's no indication that he consented[.]" (R. 120).

In response to defense counsel's objection, the trial court questioned whether Appellant had standing to object to the search of a vehicle that was not his. (R. 120). Replying to the trial court's question, defense counsel argued Appellant had standing to challenge the search because the car was on his property and the keys were found in the house. (R. 120). The State then argued Appellant did not have standing to challenge the search since the officers knew the keys and car belonged to Victim and Appellant had given the officers permission to enter the residence. (R. 120). Continuing, the State noted Appellant simply did not have a reasonable expectation of privacy in a car that was not his. (R. 120-21). Defense counsel then argued Appellant and Victim were essentially in a common law marriage and the officers only knew the vehicle in the driveway looked like Victim's car. (R. 121). Based upon this, defense counsel further argued that the officers needed Appellant's permission to take the keys, which defense counsel claimed, they never attempted to do. (R. 121). In response, the State explained:

> Your Honor, I think Corporal Hobgood yesterday testified that [Appellant] said, here, and went to the keys and said, I'll show you which key to open it with and they hit the trunk release button and opened the trunk and so [Appellant] didn't have to. I think that was the testimony of Corporal Hobgood yesterday, and I'm pretty sure that that would have been testimony we'd gotten from him as well, but I don't think—I don't think there's any evidence; I don't think no one has ever said, yeah we're husband and wife. Just the fact that people live together, that doesn't establish in and of itself common law marriage. I just don't think he had any standing or any expectation of privacy in that vehicle and he also had offered to open the trunk for him before they hit the trunk release button.

(R. 122). Thereafter, the trial court noted, "[i]t appears that this is inevitable discovery; but/for hitting the trunk release button and opening the trunk according to the earlier testimony, [Appellant] was gonna open the trunk for them, or at least was providing the keys to do so." (R. 122). Continuing, the trial court determined, "I'm gonna overrule the objection and allow it." (R. 122). Defense counsel then argued "I understand it may inevitably have been discovered at a later point and what I'm saying is that any evidence gathered in the time between when it was

discovered and when it would have been discovered would be appropriately suppressed in spite of the fact that they may have inevitably discovered it with a proper search warrant." (R. 122-23).

ARGUMENTS

I. Contrary to this Court's determination, the trial court made adequate legal and factual findings supporting its' ruling that the victim's body would have been discovered pursuant to the inevitable discovery doctrine

On appeal, Appellant claimed the trial court erroneously determined the victim's body would have been inevitably discovered explaining the trial court's ruling was based upon the solicitor's incorrect recollection of the facts as testified to by the State's witnesses during a Jackson v. Denno hearing conducted the previous day. As a result, Appellant maintained the State failed to meet its burden of showing, by a preponderance of the evidence, that Victim's body would have been discovered lawfully.[1] The State disagreed with Appellant's contention arguing that even assuming the solicitor's recollection of the factual testimony from the Jackson v. Denno hearing was incorrect, the evidence at trial supported the trial court's ruling on inevitable discovery meaning the ruling should be affirmed. See State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure issue, this court must affirm if there is any evidence to support the trial court's ruling and will

[1] Notably, Appellant *never* argued the trial court erroneously applied the inevitable discovery doctrine. Rather, Appellant's only argument on appeal was that the State failed to prove, by a preponderance of the evidence, that the victim's body would have been discovered through lawful means. See Br. of App. at 6-7 ("The prosecution bears the burden of showing by a preponderance of the evidence that the items seized would ultimately have been discovered lawfully even though it was obtained by an illegal seizure. The prosecution has not met that burden.") (internal citation omitted). In other words, Appellant only argued the trial court made a *factual error* rather than a *legal error*. Thus, because Appellant only alleged that the trial court made a *factual error* in his inevitable discovery ruling, this Court by finding "this does not appear to be a situation in which the inevitable discovery doctrine is properly applied," has answered a question which was never asked of it. See Atlantic Coast Builders and Contractors, LLC v. Lewis, 396 S.C. 323, 331 n.4, 730 S.E.2d 282, 286 n.4 (2012) ("If a question is not presented for our review, we should not answer it no matter how much we may want to do so. For as former Chief Judge Alex Sanders famously wrote, 'appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.' ") (quoting Langley v. Boyter, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct.App.1984), quashed on other grounds, 286 S.C. 85, 332 S.E.2d 100 (1985)).

reverse only where there is clear error."). Ruling on the issue, this Court opined there was "no evidence" to support the trial court's inevitable discovery ruling. In so finding, the State submits this Court misapprehended the trial court's application of the inevitable discovery doctrine and further overlooked evidence which clearly supported the trial court's ruling and as such, asks this Court to reconsider its' previous ruling.

Applicable Law

The inevitable discovery doctrine is an exception to the exclusionary rule which states that illegally obtained evidence should not be suppressed where the prosecution can establish, by a preponderance of the evidence, that such evidence would have been discovered by lawful means. Nix v. Williams, 467 U.S. 431, 444 (1984). Thus, "[w]hen the State has met its burden of proving it inevitably would have discovered the evidence, the 'deterrence' purpose of the exclusionary rule is not 'clearly subserved,' and there is no rational basis to keep that evidence from the jury to ensure the fairness of the trial proceedings.'" State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011) (quoting Nix 467 U.S. at 447).

Subsequent case law from the Fourth Circuit Court of Appeals regarding the application of Nix illustrates at least three circumstances in which inevitable discovery may apply. Specifically, in United States v. Allen, 159 F.3d 832 (1998), a case cited by Appellant and relied upon by undersigned counsel throughout the oral argument, the Fourth Circuit found, "[t]he inevitable discovery doctrine may apply where additional routine or factually established investigative steps would inevitably lead to discovery of the evidence without undertaking any search." Id. at 841. Similarly, the Allen Court said, "*the doctrine also may apply where the facts indicate another search inevitably would have occurred and would inevitably have uncovered the evidence, and that search falls within an exception to the warrant requirement.*" Id.

(emphasis added). Continuing, the Allen Court explained, "[t]he doctrine may even apply where the subsequent search that inevitably would have uncovered the disputed evidence required a warrant and the police had probable cause to obtain this warrant prior to the unlawful search but failed to do so, *if* the government produces evidence that the police would have obtained the necessary warrant absent the illegal search." Id. (emphasis in original).

Analysis

As detailed above, this Court determined there was no evidence supporting the trial court's ruling on inevitable discovery. In response, the State submits this Court misapprehended the basis for the trial court's inevitable discovery ruling and as a result, overlooked evidence supporting the trial court's application of inevitable discovery. Specifically, a review of the record shows the trial court's ruling was *not* based upon a factual determination that authorities would have sought and obtained a search warrant as contemplated under the first circumstance in the Allen case. Indeed, the State agrees there was nothing supporting this assertion in the record. Rather, as explained by undersigned counsel during the oral argument, the factual basis supporting the trial court's inevitable discovery ruling was that if Starling had not hit the trunk release button, police would have still lawfully opened the trunk because it was clear Appellant, through his words and actions, consented to the trunk being opened. (R. 126-27, 145, 156-58, 168-69). Thus, consistent with the second example in Allen, because authorities had implicitly received consent from Appellant to open the trunk and consent is a warrantless search exception, the record shows police would have discovered the victim through lawful means absent Starling's intervening action of hitting the trunk release button. See Allen, 159 F.3d at 841 ("The doctrine also may apply where the facts indicate another search inevitably would have occurred and would inevitably have uncovered the evidence, and that search falls within an

exception to the warrant requirement."). Indeed, the record reflects this was clearly the trial court's line of thinking when he stated, "[i]t appears that this is inevitable discovery; but/for hitting the trunk release button and opening the trunk according to the earlier testimony, [Appellant] was gonna open the trunk for them, or at least was providing the keys to do so." (R. 122).

Keeping in mind the trial court's rationale in admitting the evidence, the State submits there is a variety of evidence supporting the trial court's ruling. First, the State notes that almost immediately after the trial court denied defense counsel's motion to suppress, the solicitor elicited testimony from Officer Beckett indicating Appellant was reaching for the keys to show Hobgood which key would open the trunk. (R. 126-27). Specifically, Beckett testified Appellant was attempting to show Corporal Hobgood which key opened the trunk of Victim's car immediately before Officer Starling hit the trunk release button on Victim's key ring. (R. 126-27). Hobgood later corroborated this, adding that Appellant actually offered to show him which key opened the trunk right before Starling hit the trunk release button. (R. 145). This was confirmed on cross-examination and again during Starling's direct examination. (R. 156-58, 168-69). Understanding this, the State submits there is evidence supporting the trial court's inevitable discovery ruling and as such, asks this Court to reconsider its previous ruling. See Wright, 391 S.C. at 442, 706 S.E.2d at 326 ("When reviewing a Fourth Amendment search and seizure issue, this court must affirm if there is any evidence to support the trial court's ruling and will reverse only where there is clear error.").

II. Even if the trial court's inevitable discovery doctrine was not supported by the evidence, the record requires the trial court's judgment be affirmed since: (A) the keys to the victim's car were obtained as a result of authorities receiving consent from Appellant to search the residence; (B) Appellant informed authorities the keys found in the residence were the victim's car keys, a car in

which he had no possessory interest, and (C) Appellant never expressly limited or revoked his consent to the scope of the search

On appeal, the State asserted three additional sustaining grounds, explaining that even if the trial court's factual finding was determined to be incorrect, the judgment should still be affirmed as the record reflects: (A) Victim's keys were obtained as a result of a consent search; (B) the keys were not Appellant's and Appellant had no possessory interest in Victim's car meaning Appellant had no standing to challenge the search of the car; and (C) even if Appellant did have a possessory interest in Victim's car, Appellant never expressly limited or revoked his consent to search, but instead, through his actions, implicitly consented to the search of the car. See Rule 220(c), SCACR (explaining the appellate court may affirm any ruling, order or judgment for any ground appearing in the record on appeal). In its decision, this Court failed to rule on the State's additional sustaining grounds, instead remanding the case to the trial court and requesting a ruling on these questions. Accordingly, the State submits this Court overlooked the State's additional sustaining grounds in failing to address, or even explain, its' rationale in failing to address the additional sustaining grounds advanced by the State. Therefore, the State asks this Court to substitute an opinion determining, whether the additional sustaining grounds it has submitted may obviate the need for a remand.

Applicable Law

In I'On, L.L.C v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) our Supreme Court explained the purpose served by the submission of additional sustaining grounds opining:

> [A] respondent—the "winner" in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate

> review. *It also could violate the principle that a court usually should refrain from deciding unnecessary questions.*

338 S.C. at 419, 526 S.E.2d at 723 (emphasis added); Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 327, 734 S.E.2d 177, 181 (Ct. App. 2012). Explaining other requirements of additional sustaining grounds the I'On Court said, "additional sustaining grounds must appear in the record on appeal" Id. at 419-20, 526 S.E.2d at 723 and further stated:

> The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment. An appellate court may not rely on Rule 220(c), SCACR, when the reason does not appear in the record, or when the court believes it would be unwise or unjust to do so in a particular case. It is within the appellate court's discretion whether to address any additional sustaining grounds.

Id. Here, the State submits there is evidence in the record supporting its' assertion that even if the trial court's ruling on inevitable discovery is incorrect, Appellant's conviction and sentence should be affirmed. Specifically, because (A) Appellant consented to the search of the residence at which time he identified the keys found in plain view within the residence as being (B) the *victim's car keys*, a car in which he had no possessory interest, and (C) Appellant never expressly revoked his consent, but instead implicitly consented to the search of the car, his conviction and sentence should be affirmed.

A. The Officers had Consent to Search the House and Seize the Keys

As detailed in the State's brief, the record conclusively shows Appellant voluntarily gave the officers permission to search the residence he shared with the victim. Therefore, even if the trial court's ruling on inevitable discovery is clearly erroneous, reversal would not be required because Appellant consented to allowing the officers to search his home.

"The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . ." State v.

Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011). "Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent." State v. Provet, 391 S.C. 494, 507, 706 S.E.2d 513, 520 (Ct. App. 2011). "Undoubtedly, a law enforcement officer may request permission to search at any time." Id. Nevertheless, the State "bears the burden of establishing the voluntariness of the consent." Id. Determining the voluntariness of consent to search is a question of fact to be determined from the totality of the circumstances. Id.

Here, the State submits Appellant voluntarily consented to allowing the officers to search the residence and therefore, cannot object to the seizure of Victim's keys which were found in plain view inside the residence. Specifically, the record demonstrates that while Appellant may have been intoxicated, *he clearly understood the officers were at the residence to check on Victim and understanding this to be the case, agreed to let the officers search the premises and question him regarding Victim's whereabouts without qualification.* (R. 117-19, 141-42, 158, 164-65, 166). In fact, Appellant consistently demonstrated his ability to respond to questions posed to him by the officers volunteering that the *car keys and cell phone found in the residence were not his, but Victim's.* (R. 117, 49-50, 50-51, 167, 168). Accordingly, as Appellant voluntarily consented to allowing the officers to search and question him regarding Victim's whereabouts, it logically follows that the keys, which were in plain view and were obtained as a result of this consent search, were lawfully obtained and therefore, the seizure was not unreasonable and did not violate Appellant's Fourth Amendment rights.

B. Appellant had no Standing to Challenge the Search of the Car

Additionally, Appellant did not have standing to challenge the search of *Victim's car* where the record reflects Appellant did not have a possessory interest in the car. While defense

counsel argued Appellant had standing based upon the fact the car was located in the yard of the residence he occupied, the State submits this fact simply does not matter, as the car, which was the property that was actually searched, was not Appellant's.

For purposes of Fourth Amendment analysis, "[a] 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." State v. Moore, 377 S.C. 299, 307, 659 S.E.2d 256, 260 (Ct. App. 2008) (quoting U.S. v. Jacobsen, 466 U.S. 109, 113 (1984)). Further, in Rakas v. Illinois, 439 U.S. 128 (1978) the Supreme Court of the United States addressed whether evidence seized in an automobile in which defendants had been passengers should have been suppressed. In doing so, the Court held that:

> Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections. There is no reason to think that a party whose rights have been infringed will not, if evidence is used against him, have ample motivation to move to suppress it. Even if such a person is not a defendant in the action, he may be able to recover damages for the violation of his Fourth Amendment rights, or seek redress under state law for invasion of privacy or trespass.

Rakas, 439 U.S. at 133–34 (internal citations omitted).

Here, the record clearly reflects *Appellant did not have a possessory interest in Victim's vehicle*. Specifically, there was a wealth of testimony indicating Victim owned the car and drove the car exclusively. (R. 90, 101-102, 218-219, 236, 345). Additionally, an inventory of the car revealed the victim's driver's license was in the car and further indicated the car was registered and insured in Victim's name. (R. 305-306). In fact, Appellant did not have a driver's license meaning he could not lawfully operate the vehicle. (R. 223). Furthermore, there is no evidence

showing Appellant had permissive use of the vehicle at the time the car was searched. Accordingly, the State submits Appellant did not have standing to contest the search of Victim's car and therefore could not seek exclusion of the evidence seized pursuant to the search of the car. See Rakas, 439 U.S. at 133 ("Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.").

C. Appellant Never Expressly Revoked or Limited his Consent to the Search

Finally, even if Appellant did have a possessory interest in Victim's car, Appellant never expressly limited or revoked his consent to search once the officers removed the keys from the residence and began to use them to open Victim's car. In fact, rather than expressly revoke or limit his consent, Appellant instead, by way of his actions, implicitly consented to the search of Victim's car.

In State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) the Supreme Court of South Carolina explained that pursuant to the South Carolina Constitution, "suspects are free to limit the scope of the searches to which they consent." 343 S.C. at 648, 541 S.E.2d at 843. Continuing, the Forrester Court stated, "[w]hen relying on the consent of a suspect, a police officer's search must not exceed the scope of the consent granted or the search becomes unreasonable." Id. "The scope of the consent is measured by a test of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" State v. Mattison, 352 S.C. 577, 585–86, 575 S.E.2d 852, 856 (Ct.App.2003) (citation omitted).

Here, the State submits the facts and circumstances surrounding the search clearly informed Petitioner of the scope of the search. Furthermore, even if one were to assume that Appellant did not consent to a search of Victim's car when he granted consent, the facts surrounding his questioning and the subsequent actions of the officers and Appellant clearly demonstrate Appellant, despite having the opportunity to limit the search or revoke his consent, declined to do so, instead deciding to aid the officers in the search of Victim's vehicle.

Indeed, Appellant was clearly aware, based upon the statements and actions of the officers that they intended to use the keys to search Appellant's car. Specifically, Appellant was asked who owned the keys they found in the residence, and after he explained the keys were Victim's, observed the officers as they proceeded to Victim's car in an attempt to unlock the vehicle. (R. 118, 119, 49-50, 50-51, 144, 167, 168). Nevertheless, Appellant, rather than revoking or limiting consent, chose to aid the officers in their search by attempting to show them which key opened the trunk in Victim's car. (R. 126, 145, 156-57, 168).

Understanding these circumstances, the State submits an objectively reasonable person would have understood that when the officers asked whose keys were in the apartment, picked the keys up, headed outside and began using the keys, the scope of consent may have changed. However, despite these facts, the State submits that an objectively reasonable person would have interpreted Appellant's additional actions of attempting to aid the officers in their search, as implicitly consenting to the expanded search rather than seeking to limit or revoke his consent. Accordingly, the State submits Appellant's Fourth Amendment Rights were not violated and therefore, the evidence obtained from the search of the car should not be excluded.

CONCLUSION

For the aforementioned reasons, the State respectfully requests this Court grant rehearing or, in the alternative, substitute an opinion addressing the concerns advanced by the State in this petition and affirm the judgment imposed by the trial court.

Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

BRENDAN J. McDONALD
Assistant Attorney General
S.C. Bar No. 77784

EDGAR L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3188

Brendan J. McDonald
ATTORNEY(S) FOR RESPONDENTS

April 18, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2011-197635

THE STATE,

RESPONDENT,

v.

ROGER BRUCE,

APPELLANT

PROOF OF SERVICE

I, Brendan McDonald, counsel for the Respondent, certify that I have served the within ***Petition for Rehearing,*** on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record:

Robert M. Pachak, Esq., SCCID/Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 18th day of April, 2013.

BRENDAN J. McDONALD
S.C. Bar No. 77784
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3188
ATTORNEY FOR RESPONDENT

April 18, 2013.