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Nov 15 2021

SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Richland County
The Honorable DeAndrea G. Benjamin, Circuit Court Judge**

THE STATE,

Respondent,

v.

CHARLES BRANDON BARHAM,

Appellant

Appellate Case No. 2019-001981

SUPPLEMENTAL RECORD ON APPEAL

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Senior Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina, 29211
(803) 734-6305

BYRON E. GIPSON, Solicitor
Fifth Judicial Circuit
Post Office Box 192
Columbia, South Carolina 29202-0192

ATTORNEYS FOR RESPONDENT

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1 BY MR. EATON:

2 Q Ms. Baker --

3 MR. EATON: If I can lead a little bit right
4 now, if that's okay?

5 THE COURT: Yes.

6 BY MR. EATON:

7 Q So the night before Halloween, did they both come
8 over -- or the night of Halloween?

9 A (Nods affirmatively.)

10 Q You were going to have a party?

11 A Yes.

12 Q Tell the Court briefly about that day and them
13 coming over.

14 A They were -- they come over. They were -- Floyd
15 was agitated about somebody knowing what had
16 happened. I don't know if somebody else was with
17 them or they had told someone else about the
18 gentleman being murdered, but he was really upset
19 about it and that they were scared that he was
20 going to tell -- or the person was going to tell,
21 he was going to tell.

22 Q And let me -- I guess, I should back up. What you
23 were about to say before the objection, what was
24 that, that Floyd confessed to you?

25 A Yes, sir.

1 Q Just the two of y'all there?

2 A Yes, sir.

3 Q So you knew what had happened at that point?

4 A Yes, sir.

5 Q Okay. So now fast-forward back to when Brandon and
6 Floyd are there?

7 A Right.

8 Q And go on with what was said at that juncture.

9 A Well, I honestly, when I was first told by Floyd, I
10 didn't believe it. I thought Floyd was just -- I
11 don't know. I really don't know what I thought,
12 honestly, but I didn't really believe it at that
13 point.

14 But I said, So y'all really did do that? And
15 I asked Brandon, I said, What are you doing
16 following -- I think something to the effect, What
17 are you doing following Floyd up doing something
18 like that?

19 And Brandon said that his uncle was a horrible
20 person, that he deserved it. That his uncle was
21 treating his mother bad, something to do with --
22 something about something being wrong with his
23 mother and I guess maybe she got a disability
24 check, or something to that effect, or something,
25 and he was taking it. His uncle was taking the

1 check and was treating his mother badly.

2 And Floyd had stated again that him and the
3 gentleman were having issues and that he was
4 threatening to call DSS on Floyd, social services
5 on Floyd about his children.

6 Q And was anything else said about it at that point?

7 A I think that was pretty much it. Yes, sir.

8 Q Did Floyd and Brandon together ever talk about it
9 again in front of you?

10 A Yes, sir.

11 Q When was that?

12 A It was a few nights later, they came over. It was
13 really late. And they looked like disheveled, like
14 they had been in a fight or something.

15 And Floyd said that they had, I guess, went
16 and beat up the guy that -- went to the guy's house
17 that they that was going to tell or that they were
18 worried about telling and -- to make sure that he
19 didn't tell anyone. And that was the last.

20 Q And were they -- they were both there?

21 A Yes, sir.

22 Q Were they both talking about that?

23 A Yes, sir.

24 Q But was it obvious that they were referencing the
25 murder and a person who knew about the murder?

1 A Yes.

2 Q Other than what you just said, was there any more
3 elaboration of specific statements that you
4 remember from either one of them at that time? If
5 not, it's okay. I want to make sure that we got
6 everything out.

7 A Well, they were just -- I don't remember specific
8 statements. I just know that they were just saying
9 that the gentleman, whoever it was, knew that they
10 had murdered Brandon's uncle. How he knew, I
11 didn't know. Like I said before, I took it as
12 maybe he was there, I don't know, or they told him.
13 Like I said, I don't know. And it was never
14 given -- told me specifically how the person knew.
15 But that they were just worried that he was going
16 to tell. That was just -- you know, that was what
17 the whole thing was, they were worried that he was
18 going to tell.

19 Q And they were both saying this?

20 A Yes, sir.

21 Q They were both on the same page about this?

22 A Yes, sir.

23 Q Something they had both just done together?

24 A Yes, sir.

25 Q That they were talking about together?

1 A Yes, sir. Because I asked them, I said, So y'all
2 have now gone to someone else's house? And I asked
3 them -- I remember asking them where -- no, that's
4 how I knew they went to the house because I asked
5 them, I said, So where did y'all go?

6 And they -- and Floyd said, To his house.

7 And I said, So y'all went to somebody else's
8 house and hurt them? I said, Did you kill them
9 too, was what I asked.

10 And he said -- Floyd said, No, we just made
11 sure he wasn't going to say anything.

12 Q Did either of them ever talk to you again about it
13 after that?

14 A No.

15 MR. EATON: Well, Your Honor, I think all that
16 is admissible under admission by party-opponent, to
17 include things that Floyd said because under 801
18 (d)(2), it's a statement offered against the party,
19 which I'm offering it against Brandon Barham. It's
20 the party's own statement, which we have some of
21 those. Also, a statement of which the party
22 manifested an adoption or belief in its truth.
23 That's -- you know, I think when a conversation
24 happens with two people in front of another person
25 just like this, that's precisely what the rule is

1 THE COURT: All right. Call her in.
2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, and raise your right hand, please.
5 (Witness complies.)

6 THE CLERK: State your full name, please.

7 THE WITNESS: Jessica Devon James.

8 THE CLERK: Do you solemnly swear to tell the
9 truth, the whole truth, and nothing but the truth,
10 so help you God?

11 THE WITNESS: Yes.

12 THE CLERK: Thank you. Have a seat.
13 (Witness seated.)

14 JESSICA JAMES,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION (PROFFER)

17 BY MR. EATON:

18 Q Ms. James, how do you know Floyd Owen?

19 A I met him initially when he was working at Raven or
20 Time Warp on Augusta Highway. And I was actually
21 dating someone else at the time.

22 Q And what was the nature of your relationship with
23 Floyd?

24 A At that time or?

25 Q At that time?

1 A At that time, I just -- we were just acquaintances.
2 I just knew him.

3 Q And how did it progress?

4 A We reconnected after both of us became single and
5 kind of got together after that.

6 Q And then what was the nature of your relationship?

7 A We were together. We were in love.

8 Q And around what timeframe was that?

9 A We got together, I want to say late July, early
10 August of 2015.

11 Q And where were you living?

12 A In Five Points on [REDACTED] Street.

13 Q Where was Floyd living?

14 A I believe he was still at his old house on [REDACTED]
15 Drive off of Two Notch, but he eventually moved in
16 with me. It progressed very quickly.

17 Q The relationship progressed very quickly?

18 A Yes.

19 Q At some point, did he tell you about being involved
20 in a murder?

21 A He did.

22 Q What did he tell you?

23 A He told me that he did it, like he killed somebody,
24 and he was having a lot of trouble with it.

25 Q Who did he kill?

1 A Some guy named Charles.

2 Q And how did he say it happened?

3 A He didn't initially. It kind of came out over the
4 course of the next few weeks. Like, he was having
5 trouble sleeping. He said that he shot him.

6 Q And how did he say -- where did he say he got the
7 gun?

8 A Brandon.

9 Q How did he get to Charlie's house?

10 A Brandon drove him.

11 Q So describe how he said then that the thing
12 happened.

13 A He said that Brandon provided the gun and that
14 Brandon kind of served as a lookout while
15 everything was going on.

16 Q And what did Floyd himself do?

17 A Floyd actually did the act, but -- he pulled the
18 trigger, but Brandon kind of aided that and made it
19 possible for him to do that.

20 MR. EATON: I beg the Court's indulgence.

21 (Pause.)

22 BY MR. EATON:

23 Q And when -- tell us again when he told you all
24 this?

25 A Honestly, not too long after we got together. It

1 would be --

2 Q 20--

3 A 2015.

4 Q So in 2015?

5 A Uh-huh.

6 MR. EATON: Thank you.

7 THE COURT: All right. Yes, sir.

8 CROSS-EXAMINATION (PROFFER)

9 BY MR. BELL:

10 Q May I call you Jessie?

11 A No.

12 Q Jessica?

13 A Yes.

14 Q All right, Jessica. Well, Jessie is what you let
15 the investigators call you during the recorded
16 interview, right?

17 A I suppose.

18 Q And that interview went on for an hour and ten
19 minutes, didn't it?

20 A Yes, sir.

21 Q At the beginning of it, you denied knowing
22 anything, right?

23 A Yes, sir.

24 Q Then about 30 minutes in, you start giving them
25 bits and pieces of information, right?

1 A Correct.

2 Q And that would include that Floyd told you that he
3 killed Charlie and he just says Brandon was with
4 him, right?

5 A Correct.

6 Q In fact, he never told you Brandon was the lookout,
7 did he?

8 A He did.

9 Q You didn't tell law enforcement that, did you?

10 A I was scared.

11 Q So even in that interview where you swore that you
12 told the entire truth to law enforcement, that
13 hour-and-ten-minute interview, you never told them
14 Floyd told you that Brandon was the lookout, did
15 you?

16 A I was terrified.

17 Q So that prior statement you gave is not consistent
18 with what you're trying to testify to now, is it?

19 A I guess if you word it like that.

20 Q You also didn't tell law enforcement that he got
21 the gun from Brandon, did you?

22 A At that time, no.

23 Q No. You told them that he got the gun from a guy
24 named Midget?

25 A Right.

1 Q And they actually followed that up to try to
2 clarify, and you said that, yes, you thought the
3 gun belonged to Brandon, but, no, he didn't get it
4 from Brandon, he got it from Midget, right?

5 A Sure.

6 Q And did you tell law enforcement or the Solicitor's
7 Office what you're testifying to now?

8 A Yes.

9 Q Including your now changed statements from what was
10 on that hour-and-ten-minute recording?

11 A Yes. I listened to my own recording, yes.

12 Q And then you told them the corrections that you
13 left out?

14 A Yes.

15 Q When was that?

16 A Two different times over the past couple of weeks.

17 Q Okay. Who was present at those meetings? This
18 table right here?

19 A I mean, most of them.

20 Q Floyd also told you he didn't tell anybody but you,
21 right?

22 A Correct.

23 Q So if he has already testified and said he told
24 other people, he lied to you?

25 A You're going to have to ask him. I can't answer

1 that.

2 Q But he told you and you told law enforcement that
3 he didn't tell anybody else but you, right?

4 A Correct.

5 Q Also told you that -- or you, at least, were under
6 the impression that they had never jumped anybody
7 after this incident allegedly took place?

8 A What?

9 Q Did he ever tell you about jumping somebody or
10 beating somebody up to try to keep them quiet?

11 A No.

12 Q Never told you about a relationship with Charles,
13 right?

14 A He said there wasn't one.

15 Q Said there wasn't one?

16 A Correct.

17 Q And you told law enforcement that?

18 A Yes.

19 Q So if he said that on the stand, that would be an
20 untruth?

21 A I can't answer for him. You have to ask him that.

22 Q He also -- you also told law enforcement he didn't
23 just confess to you all at once, right?

24 A Correct.

25 Q You said it was actually over the course of at

1 least a month?

2 A Correct.

3 Q And he told you in bits and pieces?

4 A Correct.

5 Q And then you sort of put all that together and
6 relayed it to law enforcement?

7 A Yeah.

8 MR. BELL: Nothing further.

9 THE COURT: All right, you can step down.

10 (Witness steps down.)

11 THE COURT: Yes, sir?

12 MR. BELL: Thank you, Judge. Judge, the
13 imminent issue, obviously, is whether or not what
14 she testifies to is going to be consistent with
15 what Floyd Owen said. That brings up a separate
16 issue, which is she's now saying she told law
17 enforcement all these additional statements that
18 are not in what we were turned over in Rule 5
19 discovery. We think that raises additional grounds
20 for suppression. She said that she has now
21 corrected to law enforcement and the State that she
22 knows that the gun came directly from Brandon, not
23 from Midget, which means she essentially admitted
24 to law enforcement she lied about that. We haven't
25 been told. And there was some additional

1 statements she says that she clarified to law
2 enforcement which we were not told. So we think
3 based on Rule 5, Brady violation, this should be
4 suppressed.

5 But as to the inconsistencies, you heard the
6 testimony.

7 THE COURT: Now, her statement was consistent
8 to what he said.

9 MR. BELL: Not entirely, Your Honor.

10 THE COURT: What was inconsistent?

11 MR. BELL: She even said he denied ever having
12 a relationship with Charles. That would be an
13 inconsistency. There were some --

14 THE COURT: He denied to her.

15 MR. BELL: He also told the jury that he just
16 confessed it to her. She says it happened over the
17 course of a month. It wasn't just one thing where
18 he confessed it all to her. That's an
19 inconsistency.

20 Your Honor, obviously it's kind of hard to
21 combat inconsistencies when we weren't aware she
22 made it inconsistent after meeting with the
23 Solicitor's Office twice. So, again, based on
24 those grounds, we think it should be suppressed as
25 well.

1 THE COURT: All right, I'll be glad to hear
2 from the State.

3 MR. CONRAD: Your Honor, I'll talk about the
4 hearsay issue first. I think Mr. Eaton is looking
5 up some information about the discovery issue.

6 In terms of the hearsay, I agree with the
7 Court, the statements that -- the testimony that
8 the State elicited from the witness was consistent
9 with what Floyd Owen said. And that's why we're
10 offering it. And that's why we offer under
11 801(d)(1)(B), which is consistent with --

12 THE COURT: And I said (D) before. It's (B)?

13 MR. CONRAD: Yes. My apologies. I may have
14 said the wrong thing too. That's why the State is
15 seeking to introduce that. Obviously, Defense
16 counsel stood up and impeached the witness, which
17 they're certainly permitted to do. And if the
18 Court allows her testimony, they'll be permitted to
19 do it in front of the jury. Certainly the State
20 would never argue they can't on some of the
21 inconsistencies with her statement. But in terms
22 of what the State seeks to introduce, it is
23 consistent with what Floyd Owen said and it is
24 permissible under that rule.

25 The Court asked for cases yesterday. I do

1 have one case which I found, which is State v.
2 Saltz, S-A-L-T-Z. It's 346 S.C. 114. If I can
3 approach with a copy.

4 And, Your Honor, this case is actually pretty
5 instructive on this rule of prior inconsistent
6 statement because there's actually two examples of
7 it in this particular trial. One of which the
8 court found permissible, one of which the Supreme
9 Court found impermissible.

10 But the impermissible one was when the State's
11 witness -- after the Defense cross-examined the
12 State's witness dealing with some impeachment
13 material, the State sought to introduce a prior
14 consistent statement. The Court said that was not
15 permissible because mere impeachment of a witness
16 does not necessarily call into a witness's having
17 improper motive or has recently fabricated the
18 statement as the rule requires.

19 And in the second example in State v. Saltz,
20 that was actually the Defense that was seeking to
21 introduce a prior consistent statement with
22 extrinsic evidence. And in that situation, the
23 girlfriend of the Defendant in that case took the
24 stand and gave some evidence. And the State in
25 that case impeached by asking her, you know, You're

1 the girlfriend of the Defendant, correct? You went
2 into the Defense's office and signed an affidavit
3 only 13 days prior to trial, correct? And that was
4 the State's questioning of that witness. And, in
5 fact, the Court found that is attributable improper
6 motive and recent fabrication to the witness. And,
7 therefore, the trial court in the Saltz case should
8 have permitted the Defense to do what they sought
9 to do, which was to bring the girlfriend's father
10 to the stand to testify about a prior consistent
11 statement prior to the affidavit she had given at
12 the Defense attorney's office.

13 And I think in this case, you know, it seems
14 to me it's arguable about 90 percent of Mr. Myers
15 cross-examination of Floyd Owen was trying to
16 impute improper motive. That's what the entire
17 cross has been determining over his guilty plea and
18 sentencing and whatever deal he may or may not be
19 getting. And Mr. Myers spent a considerable amount
20 on that. I think all of that was a charge that he
21 is acting under improper motive, which is
22 self-evident in his testimony.

23 And, second of all, specifically, at one point
24 in his cross-examination, Mr. Myers asked Floyd
25 about when he was being questioned by Investigator

1 your right hand.

2 (Defendant complies.)

3 THE CLERK: State your full name, please.

4 THE DEFENDANT: Charles Brandon Barham.

5 THE CLERK: Do you solemnly swear that the
6 answers you give to the questions propounded by the
7 Court will be the truth, the whole truth, and
8 nothing but the truth, so help you God?

9 THE DEFENDANT: Yes, ma'am, I do.

10 THE COURT: Thank you, sir. You can put your
11 hand down. Remain standing and put your hand down.

12 (Defendant complies.)

13 THE COURT: All right, sir, at this time I am
14 going to explain to you certain of your rights. If
15 you do not understand anything I say, please let me
16 know. If you want me to explain anything in more
17 detail, please let me know. Do you understand,
18 sir?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: We have now reached the stage of
21 the trial where you may present your defense. You
22 have the right to claim the protections given to
23 you by the Fifth Amendment to the Constitution of
24 the United States. This amendment states in part:
25 No person shall be compelled in any criminal case

1 to be a witness against themselves. This means that
2 you cannot be required to testify in this case.
3 You have the right to testify on your own behalf.
4 However, no one can make you testify. This is a
5 personal right and no one can waive this right
6 except you.

7 If you decide to testify, you will be subject
8 to the same rules that govern other witnesses and
9 you may be examined and cross-examined on any
10 relevant issue in this case.

11 In addition, if you have any convictions
12 involving dishonesty or false statements or crimes
13 punishable by imprisonment for more than one year
14 and this Court determines that the probative value
15 of admitting this evidence outweighs the
16 prejudicial effect to you, the Solicitor will be
17 able to introduce your record to attack your
18 credibility.

19 If you decide to testify, this decision on
20 your part must be freely, voluntarily, and
21 intelligently made with the knowledge of the
22 protections given to you by the Fifth Amendment and
23 the consequences of your decision to testify.

24 If you decide not to testify, I would instruct
25 the jurors that they cannot give the fact that you

1 did not testify any consideration whatsoever and
2 that there is to be absolutely no prejudice to you
3 because you did not testify. It is left entirely
4 up to you whether or not you testify. You may talk
5 with your attorney, your family and friends, or
6 anyone else, but the final decision will be left
7 entirely up to you.

8 Do you understand what I have explained to
9 you, sir?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you have any questions about
12 what I have explained to you?

13 THE DEFENDANT: No, I do not.

14 THE COURT: And would you all like for me to
15 take a break to discuss this with your attorney?
16 Do you all need a break?

17 MR. BELL: Your Honor, if we can have a few
18 moments.

19 THE COURT: All right. I will give you an
20 opportunity to speak with your attorney. We will
21 take about ten minutes, and then we will call
22 you -- well, how much time do y'all need?

23 MR. MYERS: Ten minutes. Five minutes
24 probably, Judge.

25 THE COURT: About five minutes, okay. And

1 then we will -- I'll have you all back in the
2 courtroom after that.

3 All right. Thank you.

4 MR. BELL: Thank you, Judge.

5 THE COURT: Can I see the lawyers one quick
6 second? And that's not going to count against your
7 five minutes. And y'all talk as long as you need
8 to.

9 (WHEREUPON, a bench conference was held.)

10 (WHEREUPON, a break was taken at 4:30 p.m.)

11 THE COURT: The bond should be able to start
12 at 9:30, so we'll start at 10:30. They tell me
13 they should be done by 10:15.

14 MR. EATON: Yes, ma'am. 10:30.

15 THE COURT: I'll bring the jurors back in and
16 everybody can get back in place. I will tell them
17 10:30.

18 You can bring them in.

19 (WHEREUPON, the jury came into open
20 court at 4:57 p.m.)

21 THE BAILIFF: The jury is all present, Your
22 Honor.

23 THE COURT: All right. Ladies and gentlemen
24 of the jury, it is 5:00 o'clock. And as you heard,
25 the State has rested.

1 I cannot order something else from your list, I'll
2 let you decide between those three in the morning.
3 I know. I'll let you decide between those three in
4 the morning.

5 But, once again, go home. Don't discuss
6 anything that we talked about here in the
7 courtroom. And have a wonderful evening. And we
8 will see you tomorrow morning at 10:30 in the jury
9 room.

10 Thank you.

11 (WHEREUPON, the jury retires to the jury
12 room at 5:01 p.m.)

13 THE COURT: All right. Just real quick, so
14 I'll do that plea at 9:30. We'll start at 10:30
15 and we'll see. But I am going to have -- my law
16 clerk has done a rough draft, nothing is set in
17 stone, of a jury charge using the court -- the
18 charges that are provided for us in the bench book.
19 And so she will send that out to you all tonight.
20 There is stuff in there, but, like I said, we just
21 kind of -- if we need to take it out, then put it
22 in again. If there are any specific requests that
23 you all have, can you be prepared to bring those to
24 her, e-mail them to her or get them to her in the
25 morning, since we are, knock on wood, I think

1 getting close to the end of the trial. We probably
2 need to start having some conversation regarding
3 the charge, jury charges.

4 If there's anything you all can think of
5 tonight right offhand that you want me to look at,
6 I will be glad to do that. We'll be glad to do
7 that.

8 MR. EATON: Hand of one is our obvious one,
9 Your Honor.

10 THE LAW CLERK: I think it's in there.

11 THE COURT: She thinks it's in there. I can't
12 remember. And there's a third-party guilt one in
13 there. Take a look at it. It's the one that I
14 had, the one that I previously had saved on my
15 computer.

16 Anything else?

17 MR. EATON: Not from the State, Your Honor.

18 MR. MYERS: No, ma'am, Your Honor.

19 THE COURT: All right. So we'll start at
20 10:30. I do have that sentencing tomorrow at 2:00.
21 And we'll just see how it goes in terms of charge
22 and the closing statements, and all of that, if we
23 get to it tomorrow or not. I do know that Monday
24 is a holiday, and so it will probably be Tuesday if
25 we have to come back.

1 All right. Y'all have a good evening.

2 Officer Kelly, I do need to see you.

3 For the court staff, 9:30, because I have got
4 to do the plea. Everyone else, 10:30. So 9:30.

5 (WHEREUPON, court adjourned for the
6 evening at 5:04 p.m.)

7 AUGUST 30, 2019

8 (WHEREUPON, the proceedings began at
9 11:29 a.m.)

10 THE COURT: Good morning, almost afternoon.
11 Are you ready to get started?

12 MR. MYERS: Yes, ma'am, Your Honor.

13 THE COURT: Mr. Myers, on last evening I went
14 over your client's constitutional rights regarding
15 presenting evidence and regarding testifying, and
16 you all requested an opportunity for him to speak
17 overnight with his family members and also with
18 you. We are starting a little bit later than we
19 were supposed to, but has he made a decision as to
20 how he wishes to proceed?

21 MR. MYERS: Yes, ma'am, he has.

22 THE COURT: Yes, sir?

23 MR. MYERS: And he wishes to testify.

24 THE COURT: All right. Is that correct,
25 Mr. Barham?

1 the crowd he would hang around with. The only difference
2 between Brandon and the other convicted -- convicted felons
3 is Brandon's always had a good attorney to avoid the
4 consequences and get him off the hook.

5 There is a saying that the best prediction of future
6 behavior is past behavior. This is especially an accurate
7 statement for Brandon's past and regrettably to Charles's
8 demise. The very last conversation I had with Charles was
9 how upset he was with Brandon and that he had stolen his
10 tools.

11 Brandon is very smart. And he did mastermind the
12 events that led to Charles's murder. His wheels were
13 already in motion long before he had a conversation with
14 Floyd Owens that night.

15 Brandon devised the plan. He provided the gun. He
16 drove the truck and has never thought about it again. You
17 see, his life has become very different following his
18 release on bond. His outlaw lifestyle ceased and he all of
19 a found -- all of a sudden found the woman of his dreams,
20 was married, and had children.

21 This is not the life that Brandon has led for his
22 adult life. This is life that he has to paint the picture
23 of a normal guy living a normal life. Regardless of what
24 you will hear from his wife, Lindsey, and anyone from his
25 family, the real Brandon -- Brandon is a lying, deceitful,

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CERTIFICATE OF COUNSEL

SC Court of Appeals

Pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, counsel for Respondent certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Counsel further certifies that this Supplemental Record on Appeal complies with the Order of the Supreme Court of South Carolina entitled *Re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, 407 S.C. 607, 757 S.E.2d. 421 (April 15, 2014)

By: s/ J. Anthony Mabry
J. ANTHONY MABRY
Senior Assistant Attorney General
S.C. Bar No. 11973

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-6305

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