STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Bentley Price, Circuit Court Judge

Opinion No. 2021-UP-408 (S.C. Ct. App. Filed November 17, 2021)

Lower Court Case No. 2017-GS-10-02131

THE STATE,

RESPONDENT,

V.

ALLEN ANGELO FIELDS,

PETITIONER

APPELLATE CASE NO. 2019-001393

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on December 16, 2021.

QUESTION PRESENTED

Did the Court of Appeals err in finding the trial judge properly allowed a witness to make an in-court identification of Petitioner when the witness previously identified another individual in a photo line-up, shown to her by the police, that included a photo of Petitioner and the in-court identification was rendered inherently unreliable based on the circumstances in which the identification was made?

STATEMENT OF THE CASE

In April of 2017, the Charleston County Grand Jury[1] indicted Petitioner. Allen Angelo Fields for armed robbery and possession of a weapon during the commission of a violent crime, indictments #2017-GS-10-2131, 2132. On August 12, 2019, Petitioner proceeded to jury trial before the Honorable Bentley Price. Brendan M. Daniels and Teresa L. Norris represented Petitioner at trial. David Osborne and Lemuel C. Zeigler prosecuted the case. The jury returned verdicts of guilty on each charge. Judge Price sentenced Petitioner to thirteen (13) years for armed robbery and five (5) years concurrent for the weapon charge. A timely notice of intent to appeal was served on August 16, 2019, and the direct appeal perfected. On November 17, 2021, the South Carolina Court of Appeals affirmed the convictions in an unpublished opinion. State v. Fields, Op. No. 2021-UP-408 (S.C.Ct.App. filed Nov. 17, 2021). (App. pp. 1-2). A petition for rehearing was timely filed and then denied on December 16, 2021. (App. pp. 3-17). This petition for writ of certiorari follows.

[1] It is unclear who testified before the grand jury because the witness is listed as the Charleston City Police Department on both indictments. (R. p. 477, 479).

STANDARD OF REVIEW

"[W]hether an eyewitness identification is sufficiently reliable is a mixed question of law and fact." State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000) (finding show-up identification unreliable as a matter of law); see also State v. Traylor, 360 S.C. 74, 81-82, 600 S.E.2d 523, 526-27 (2004) (citing Moore and holding that photographic line-up procedure was "patently suggestive"). "Generally, the decision to admit an eyewitness identification is at the trial judge's discretion and will not be disturbed on appeal absent an abuse of such, or the commission of prejudicial legal error." Moore at 288, 540 S.E.2d at 448. "In reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court." Id. Questions of law are reviewed *de novo*. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016).

REASON WHY CERTIOARI SHOULD BE GRANTED

This Court should grant the petition for writ of certiorari to clarify that first time, in-court identifications can implicate due process protections.

ARGUMENT

The Court of Appeals erred in finding the trial judge properly allowed a witness to make an in-court identification of Petitioner when the witness previously identified another individual in a photo line-up, shown to her by police, that included a photo of Petitioner and the in-court identification was rendered inherently unreliable based on the circumstances in which the identification was made.

The jury found Petitioner guilty of robbing the TD bank in the West Ashley area of Charleston County. Bank teller Katherine Lucy Muller testified that on September 13, 2016, a man entered the bank, approached the tellers and demanded money while brandishing a knife. (R. p. 34, lines 13-22). At trial, the prosecutor asked the bank teller, "If you were to see this person [the robber] again would you have any chance in identifying him?" (R. p. 41, lines 13-14). The bank teller answered, "Yes." (R. p. 41, line 15). The prosecutor then asked, "Well, do you see him the courtroom?" (R. p. 41, line 16). The bank teller answered, "Yes." (R. p. 41, line 17). Petitioner immediately objected and advised that he had a matter of law. (R. p. 41, lines 18-19). The judge excused the jury. (R. p. 41, lines 20-25).

Counsel for Petitioner argued that the in-court identification was unreliable because the bank teller previously identified another individual when the police showed her a photo line-up that included a photo of Petitioner. (R. p. 42, lines 1-13). The judge overruled the objection noting that counsel could cross-examine the bank teller about the prior identification. (R. p. 42, lines 14-18; p. 43, lines 2-15; p. 44, line 15). The bank teller then, in front of the jury for the first time, identified Petitioner. (R. p. 45, lines 4-10). On cross-examination the bank teller admitted that she identified another individual from the prior photo line-up. (R. p. 52, line 10 – p. 53, 54, lines 1-2). The bank teller admitted that she identified Petitioner for the first time in court. (R. p. 54, lines 5-6). The witness confirmed that the photo line-up contained six photos of African American

men. (R. p. 55, lines 16-19). Counsel asked the bank teller, "Something looks a little different lined up here. One person is a different color, quite frankly. Is that what you see?" (R. p. 54, lines 7-9). The bank teller answered, "Yes." (R. p. 54, line 10). Counsel later noted that Petitioner was the only African American man seated at either counsel table. (R. p. 88, line 24 – p. 89, lines 1-5).

At the close of the State's case Petitioner moved for a mistrial based on the in-court identification. (R. p. 379, lines 5-11; p. 386, line 18 – p. 387, lines 1-3; p. 389, lines 4-12; p. 390, lines 4-8). The judge denied the motion for a mistrial. (R. p. 390, line 9 – p. 391, lines 1-22). The State, citing State v. Lewis, 363 S.C. 37, 609 S.E.2d 515 (2005), noted that a Neil v. Biggers[2] hearing was not necessary under the facts presented. (R. p. 393, lines 16 – p. 394, lines 1-9). Counsel for Petitioner stated, "I would like to just address that to clarify for the record. For Appellate purposes, ours is not a Biggers. We don't think it's – we don't think that anything short of a mistrial is curative." (R. p. 394, lines 11-14). The judge erred in allowing the bank teller to identify Petitioner in court for the first time when she previously identified someone else from a photo line-up containing Petitioner's photo.

First, the present case is distinguished from the Lewis case cited by the State. In Lewis the witness did not make any pre-trial identification. The Court in Lewis held that, "Accordingly, we conclude Neil v. Biggers does not apply to a first-time in-court identification because the judge is present and can adequately address relevant problems; the jury is physically present to witness the identification, rather than merely hearing testimony about it; and cross-examination offers defendants an adequate safeguard or remedy against suggestive examinations." 363 S.C. at 43, 609 S.E.2d at 518.

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[2] 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972).

In the present case, however, the witness made a pre-trial identification and identified someone other than Petitioner. As noted by the Court in footnote nine in Lewis:

> The Court of Appeals found that the protection afforded a defendant when there has been an out-of-court identification does not apply to the situation where there has been only an in-court identification. If there had been a pre-trial identification, a hearing is mandated on the admissibility of that identification. *See* Rule 104(c), SCRE (hearings on admissibility of pretrial identifications of an accused shall in all cases be conducted out of the jury's hearing); State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (2002) (*in camera* hearing required by Rule 104(c) allows defendant to question witness more stringently regarding possible misidentification or bias outside jury's presence; *per se* rule requiring court to hold *in camera* hearing when State offers identification testimony and defendant challenges in-court identification as being tainted by previous illegal identification.).

363 S.C.at 42, 609 S.E.2d at 517–18. Although the witness in the present case identified someone other than Petitioner pre-trial, a hearing was still required where Petitioner could more stringently question witnesses about what influence the prior line-up that included Petitioner's photo and identification of someone other than Petitioner in that line-up had on the in-court identification of Petitioner.

In State v. Simmons, 308 S.C. 80, 82–83, 417 S.E.2d 92, 93 (1992), the South Carolina Supreme Court wrote:

> State v. Williams, 258 S.C. 482, 189 S.E.2d 299 (1972) is dispositive of this case. The question is whether Ricky Crosby's identification of Simmons arises solely from his observation of her when she made the buy on the night of August 15, 1989. The identification must be free of and independent of any later suggestion that Simmons was the person who sold him the crack. The identification may be so tainted by the circumstances surrounding the bond hearing as to require that it be suppressed. In State v. Cash, 257 S.C. 249, 185 S.E.2d 525 (1971), this Court adopted a *per se* rule requiring the court to hold an *in camera* hearing when the state offers witnesses whose testimony identifies the defendant as the person who committed the crime and the defendant challenges the in-court identification as being tainted by a previous illegal identification. Contra Watkins v. Souder, 449 U.S. 341, 101 S.Ct. 654, 66 L.Ed.2d 549 (1981). The lower court refused to hold a hearing. This error warrants reversal.

The Court in Simmons remanded the case for a hearing to determine if the identification was so tainted as to require suppression at trial. Counsel in the present case did not specifically request a hearing but objected to the in-court identification based on inherit unreliability. This Court should find that the judge erred in admitting the in-court identification because it was inherently unreliable. Alternatively, this Court should remand the case, based on the objection, for a hearing outside the presence of the jury to determine if the in-court identification of Petitioner by the bank teller was so tainted by the prior identification to require suppression.

Second, while the present case is distinguished from Lewis because there was an out-of court identification procedure, there is a split of authority on whether, contrary to the holding in Lewis, first time, in-court identifications can implicate due process protections. In United States v. Morgan, 248 F. Supp. 3d 208, 211 (D.D.C. 2017), the District Court for the District of Columbia noted that most federal courts apply the same analysis to both out-of-court identification procedures and first time, in court identifications writing:

> To evaluate whether the Due Process Clause bars admission of identification evidence, courts use a two-pronged test. United States v. Rattler, 475 F.3d 408, 411 (D.C. Cir. 2007). "A court must determine first, whether the identification procedure 'was impermissibly suggestive.' " *Id.* (quoting United States v. Washington, 12 F.3d 1128, 1134 (D.C. Cir. 1994)). "[I]f so, [it must determine] second, whether, under the totality of the circumstances, the identification was sufficiently reliable to preclude 'a very substantial likelihood of irreparable misidentification.' " *Id.* (quoting Manson v. Brathwaite, 432 U.S. 98, 116, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977)). Although the Supreme Court and the D.C. Circuit have developed this test in the context of out-of-court identification procedures, most federal courts have applied the same test to initial in-court identifications (i.e., identifications that are made for the first time in court). See, *e.g.*, Lee v. Foster, 750 F.3d 687, 691–92 (7th Cir. 2014); United States v. Greene, 704 F.3d 298, 305–10 (4th Cir. 2013); Kennaugh v. Miller, 289 F.3d 36, 45–48 (2d Cir. 2002); United States v. Rogers, 126 F.3d 655, 658–59 (5th Cir. 1997); United States v. Hill, 967 F.2d 226, 232 (6th Cir. 1992); but see United States v. Domina, 784 F.2d 1361, 1367–69 (9th Cir. 1986) (distinguishing in-court identifications from pretrial ones because the jury can observe the witness, but still acknowledging that an in-court identification could be so unnecessarily suggestive as to violate due process).

In United States v. Hill, 967 F.2d 226, 232 (6th Cir. 1992)(emphasis added), the Sixth Circuit Court of Appeals wrote:

> The United States argues that the government is not required to conduct a lineup. However, the government is prohibited under the Due Process Clause from introducing the fruits of an impermissibly suggestive and inherently unreliable identification as evidence against the accused. In this case, the court had to make an *ex ante* determination of whether to allow a witness, who had never before positively identified the defendant in person, to make an identification in court. **We hold that the *Biggers* analysis applies to such in-court identifications for the same reasons that the analysis applies to impermissibly suggestive pre-trial identifications. The due process concerns are identical in both cases and any attempt to draw a line based on the time the allegedly suggestive identification technique takes place seems arbitrary.** All of the concerns that underlie the *Biggers* analysis, including the degree of suggestiveness, the chance of mistake, and the threat to due process are no less applicable when the identification takes place for the first time at trial.

In State v. Dickson, 322 Conn. 410, 422, 141 A.3d 810, 821-22 (2016) (n. 8 omitted), the Supreme Court of Connecticut wrote:

> With this general background in mind, we now turn to the case law governing in-court identifications that are not preceded by an unnecessarily suggestive identification procedure, which is the case here. The United States Supreme Court has not yet addressed the question of whether first time in-court identifications are in the category of unnecessarily suggestive procedures that trigger due process protections. See Galloway v. State, 122 So.3d 614, 663 (Miss.2013) ("[t]he United States Supreme Court has not decided whether *Biggers* applies to an in-court identification not preceded by an impermissibly suggestive pretrial identification"), cert. denied, —— U.S. ——, 134 S.Ct. 2661, 189 L.Ed.2d 209 (2014).

The Connecticut Supreme Court then held:

> Accordingly, we conclude that first time in-court identifications, like in-court identifications that are tainted by an unduly suggestive out-of-court identification, implicate due process protections and must be prescreened by the trial court. United States v. Greene, 704 F.3d 298, 308 (4th Cir.) (applying *Biggers* constitutional analysis to in-court identification), cert. denied, —— U.S. ——, 134 S.Ct. 419, 187 L.Ed.2d 279 (2013); United States v. Rogers, 126 F.3d 655, 658 (5th Cir.1997) (same); United States v. Hill, 967 F.2d 226, 232 (6th Cir.) ("We hold that the *Biggers* [constitutional] analysis applies to ... in-court identifications for the same reasons that the analysis applies to impermissibly suggestive [pretrial] identifications. The due process concerns are identical in both cases and any attempt to draw a line based on the time the allegedly suggestive identification technique

> takes place seems arbitrary. All of the concerns that underlie the *Biggers* analysis, including the degree of suggestiveness, the chance of mistake, and the threat to due process are no less applicable when the identification takes place for the first time at trial."), cert. denied, 506 U.S. 964, 113 S.Ct. 438, 121 L.Ed.2d 357 (1992); United States v. Rundell, 858 F.2d 425, 427 (8th Cir.1988) (noting "suggestiveness inherent in the witnesses' knowing that [the defendant] was the sole [person] charged with the [crime]" and applying *Biggers* factors to in-court identification); United States v. Archibald, 734 F.2d 938, 943 (witness' in-court identification suggestive when on cross-examination, witness stated he had "feeling he would be sitting next to" defense counsel, and applying *Biggers* factors), modified, 756 F.2d 223 (2d Cir.1984); E. Mandery, "Due Process Considerations of In–Court Identifications," 60 Alb. L.Rev. 389, 423 (1997) ("[t]here is no sound basis for this distinction" between in-court identifications and suggestive out-of-court identifications); see also Commonwealth v. Crayton, 470 Mass. 228, 241–42 and n. 16, 21 N.E.3d 157 (2014) (concluding pursuant to "[c]ommon law principles of fairness" that first time in-court identifications are inadmissible except for "good reason," as when identity is not at issue or eyewitness knew defendant before crime [internal quotation marks omitted].).

Dickson, 322 Conn. 410, 426–30, 141 A.3d 810, 824–27 (2016) (footnotes omitted).

While the Second, Fourth, Fifth, Sixth, Seventh, and Eighth Circuit Courts of Appeals have applied the same analysis to both out-of-court identification procedures and first time, in-court identifications, the First, Tenth, and Eleventh Circuit Courts of Appeals, relying on Perry v. New Hampshire, 565 U.S. 228, 132 S.Ct. 716, 181 L.Ed.2d 694 (2012), found that due process does not require the district court to make a reliability assessment to determine the admissibility of an in-court identification. In United States v. Thomas, 849 F.3d 906, 910 (10th Cir. 2017), the Tenth Circuit Court of Appeals wrote:

> Since Perry, other circuits have debated whether or not the Court's decision overruled circuit-level precedent requiring inquiries into the suggestiveness and reliability of in-court identifications. See, e.g., United States v. Correa-Osorio, 784 F.3d 11, 17–22 (1st Cir. 2015) (noting the debate and rejecting the defendant's in-court identification argument under both Perry and the circuit's pre-Perry suggestiveness and reliability test); Lee v. Foster, 750 F.3d 687, 690–92 (7th Cir. 2014) (inquiring into the suggestiveness and reliability of an in-court identification even after Perry). We find most persuasive the approach taken by the Eleventh Circuit in United States v. Whatley, where the court held that the Supreme Court's decision in Perry applies not only to pretrial identifications but also to in-court identifications. 719 F.3d 1206, 1214–17 (11th Cir. 2013).

In Perry the Court found that due process did not require review of an out-of-court identification under the Biggers factors because the government did not orchestrate the out-of-court identification. Perry, however, did not involve an in-court identification. As the District Court in Morgan wrote, "To find an identification procedure impermissibly suggestive after Perry, a court must determine that it is (1) suggestive, (2) unnecessary, and (3) arranged by law enforcement." United States v. Morgan, 248 F. Supp. 3d 208, 212 (D.D.C. 2017). The in-court identification in the present case was suggestive, unnecessary and arranged by law enforcement.

This Court should follow the majority of federal courts and find that in-court identifications can implicate due process protections. Under the facts of this case where the witness failed to identify Petitioner in the out-of- court identification procedure and it was obvious to the witness at the time she made the in-court identification that Petitioner, the only black male seated at defense table, was the one on trial, the in-court identification was unnecessarily suggestive. The in-court identification was "arranged by law enforcement." In Morgan the Court wrote:

> An in-court identification of defendant would be "arranged by law enforcement," Perry, 565 U.S. at 248, 132 S.Ct. 716, because the government chose to bring this particular defendant to trial and would be choosing to ask the witness for an identification at his trial. To ask for such an identification would be "improper" government conduct, *id.* at 245, 132 S.Ct. 716, if the government did not have a basis for believing that the witness could make a reliable identification. Although the Supreme Court implied in Perry that it did not want *all* in-court identifications to be subject to judicial reliability screening, *see id.* at 244, 132 S.Ct. 716, due process concerns require such screening for an initial in-court identification that is equivalent to a one-man showup.

248 F. Supp. 3d at 213(n. #2 omitted). The in-court identification in the present case was "arranged by law enforcement" and was unnecessarily suggestive, as the equivalent of a one person show up ID.

In United States v. Greene, 704 F.3d 298, 301 (4th Cir. 2013), the government, through a series of leading questions to which no objections were made, elicited "resemblance testimony" from a bank teller who made no out-of-court identification and could not make an in-court identification of Greene as the robber. The Court in Greene discussed the suggestive nature of the testimony writing, "Sitting across the courtroom from the defendant, with the judge and jury looking on, and a prosecutor drawing her attention to the defendant and asking for similarities, the witness understandably may have felt pressure to find something in the defendant that reminded her of the bank robber. These circumstances present a suggestive situation in which it is not clear whether the witness's own recollections, or outside pressures, are driving the testimony." Greene, 704 F.3d at 307. The Fourth Circuit in Greene found that testimony from the bank teller was unnecessarily suggestive and unreliable. Under the plain error standard of review the Court found plain error but affirmed finding that the error did not affect Greene's substantial rights. The in-court identification in the present case presents the same suggestive and unreliable problems as the resemblance questioning used in Greene. Also, trial counsel in the present case objected to the suggestive unreliable in-court identification.

Importantly, the Fourth Circuit in Greene wrote:

> The Second Circuit has found that when a defendant was the only African–American in the courtroom, and was seated at the defense table, the in-court identifications by three witnesses were "so clearly suggestive as to be impermissible." United States v. Archibald, 734 F.2d 938, 942–43 (2d Cir.1984). "Any witness, especially one who has watched trials on television, can determine which of the individuals in the courtroom is the defendant, which is the defense lawyer, and which is the prosecutor." *Id.* at 941. The court ultimately found, however, that admitting the in-court identifications was harmless error because the witnesses had also identified the defendant in photo arrays prior to trial. *Id.* at 943.

704 F.3d at 306. As noted by defense counsel, Petitioner was the only African American male seated at counsel table. (R. p. 88, line 24 – p. 89, lines 1-5). The in-count identification in the

present case, like the in-court identification in Archibald, was unnecessarily suggestive and impermissible. The error in the present case, however, was not harmless.

In Greene the Fourth Circuit also discussed a case from the Fifth Circuit writing:

> The Fifth Circuit, in another bank robbery case in which a teller's in-court identification was at issue, held that "it is obviously suggestive to ask a witness to identify a perpetrator in the courtroom when it is clear who is the defendant." United States v. Rogers, 126 F.3d 655, 658 (5th Cir.1997). In Rogers, when the teller first took the stand, she described what the robber was wearing. Id. at 657. But following cross-examination, the prosecutor thought that he saw something odd about the witness. Id. He asked an FBI agent to approach the witness, and she told the agent that she recognized the defendant as the robber. The witness was recalled to the stand and provided an in-court identification. Id. In holding the identification to be impermissibly suggestive, the Fifth Circuit noted that ten months had passed between the crime and the identification and stated that the circumstances surrounding the identification rose to the level of a due process violation. Id. at 659. "Even the best intentioned among us cannot be sure that our recollection is not influenced by the fact that we are looking at a person we know the Government has charged with a crime." Id.

704 F.3d at 306–07. As in Rogers, the in-court identification in the present case was unnecessarily suggestive.

In United States v. Emanuele, 51 F.3d 1123, 1130 (3d Cir. 1995), the Third Circuit Court of Appeals wrote, "We conclude that the confrontation was caused by the government, albeit inadvertently, and that to walk a defendant-in shackles and with a U.S. Marshal at each side-before the key identification witnesses is impermissibly suggestive. The more difficult question is whether this impermissibly suggestive confrontation created a "substantial likelihood of misidentification," in light of the totality of circumstances." A critical factor considered by the Court in determining unreliability in Emanuele was the fact that one of the bank tellers could not identify the defendant from an out-of-court photo array. The Court in Emanuele found that it was an abuse of discretion to admit that teller's in-court identification.

In the present case the trial judge abused his discretion by admitting the in-court identification. When the State sought to admit the in-court identification testimony, Petitioner objected. The trial judge erred in failing to conduct an *in camera* hearing to determine both that the in-court identification was unnecessarily suggestive and unreliable based on the Biggers factors, especially in light of the fact that the witness was unable to identify Petitioner in the out-of-court photo lineup as discussed in Emanuele.

In affirming the conviction the Court of Appeals wrote:

> Because Fields cross-examined the witness and addressed her in-court identification during closing argument, the trial court did not abuse its discretion in admitting the witness's in-court identification of Fields. Accordingly, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: State v. Brown, 356 S.C. 496, 502, 589 S.E.2d 781, 784 (Ct. App. 2003) ("Generally, the decision to admit an eyewitness identification is in the trial judge's discretion and will not be disturbed on appeal absent an abuse of discretion, or the commission of prejudicial legal error."); State v. Lewis, 363 S.C. 37, 42, 609 S.E.2d 515, 518 (2005) ("We conclude, as the majority of courts have, that Neil v. Biggers does not apply to in-court identifications and that the remedy for any alleged suggestiveness of an in-court identification is cross-examination and argument.").

State v. Fields, Op. No. 2021-UP-408 (S.C.Ct.App. filed Nov. 17, 2021). (App p. **).

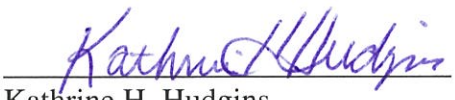
As discussed above, the present case is distinguished from Lewis because Lewis involved a first time in-court identification with no prior out-of-court identification procedure. In the present case the witness was unable to identify Petitioner in the out-of-court identification procedure and identified another person. Also, the majority of federal courts now conclude, contrary to Lewis, that Neil v. Biggers can apply to in-court identifications. The in-court identification in the present case was unnecessarily suggestive where the witness failed to identify Petitioner in an out-of- court identification procedure and it was obvious to the witness at the time she made the in-court identification that Petitioner, the only black male seated at defense table,

was the one on trial. Cross-examination does not cure the error in admitting the suggestive and unreliable in-court identification. The trial judge erred in allowing the in-court identification.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of January, 2022.

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SC Court of Appeals

STATE OF SOUTH CAROLINA

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THE STATE,

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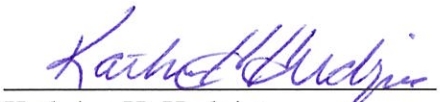
ALLEN ANGELO FIELDS,

PETITIONER

APPELLATE CASE NO. 2019-001393

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the a copy of the Petition for Writ of Certiorari and Appendix in this case has been served on Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Allen Angelo Fields, #259294, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189; and the Court of Appeals, at 1220 Senate Street, Columbia, SC 29201, this 13th day of January, 2022.



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