STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WHYZDOM ANTONIO LEE DOUSE,

APPELLANT.

APPELLATE CASE NO. 2021-000607

INITIAL BRIEF OF APPELLANT

ROBERT M. DUDEK
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STATEMENT OF ISSUE ON APPEAL

Whether the court erred, in violation of Neil v. Biggers, 409 U.S. 188 (1972), by allowing the identification of appellant as a perpetrator in the shooting by Keyshawn Davis where the police presented Davis with a single photograph of appellant, and asked him if the photograph was of appellant, where the police knew Davis could not independently identify the perpetrators as an eyewitness, and Davis admitted he did not "identify" appellant until he talked to other people about the crime, went on Facebook on investigate, and talked to appellant's girlfriend about whether she had let appellant borrow her car on the night of the shooting, particularly where the court also improperly considered the fact appellant admitted he was the driver of the suspect vehicle on the night of the shooting while ruling the identification was admissible pursuant to Biggers?

STATEMENT OF THE CASE

Appellant was indicted at the November 11, 20219, term of the Aiken County grand jury for the offense of murder. R *. His case was called to trial on May 24, 2021, before the Honorable Clifton Newman, and a jury. Brianne Steiner and Nick McCarley represented appellant. Jacqui Charbonneau and Jack Hammack were the assistant solicitors. Tr. 1.

On May 26, 2021, the jury found appellant guilty of murder. Tr. 364, ll. 17-21. On May 24, 2021, Judge Newman sentenced appellant to thirty-three years imprisonment. Tr. 394, ll. 2-4.

This appeal follows.

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). "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." Id. "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).

ARGUMENT

The court erred, in violation of *Neil v. Biggers*, 409 U.S. 188 (1972), by allowing the identification of appellant as a perpetrator in the shooting by Keyshawn Davis where the police presented Davis with a single photograph of appellant, and asked him if the photograph was of appellant, where the police knew Davis could not independently identify the perpetrators as an eyewitness, and Davis admitted he did not "identify" appellant until he talked to other people about the crime, went on Facebook on investigate, and talked to appellant's girlfriend about whether she had let appellant borrow her car on the night of the shooting, particularly where the court also improperly considered the fact appellant admitted he was the driver of the suspect vehicle on the night of the shooting while ruling the identification was admissible pursuant to *Biggers*

Relevant Facts

Prior to trial a Neil v. Biggers, 409 U.S. 188 (1972), hearing was held on the admissibility of the Keyshawn Davis identification of appellant as one of the perpetrators in the shooting into an occupied vehicle -- from another vehicle --which killed the victim, Robert McMillan. Detective Jonathan Eagerton testified he had been with the Aiken County department of public safety for twenty-two year at the time of the shooting. Tr. 33, ll. 21-24.

Eagerton remembered on August 2, 2019, as the "on-call investigator" he was dispatched to the scene of a shooting at Waterloo and Richland Avenues in Aiken, South Carolina at about 1:30 a.m. He arrived at about 1:45 a.m. Tr. 34, ll. 1-23.

Eagerton said he spoke to Keyshawn Davis, the driver of the car in which the victim was riding, initially at the hospital. Davis drove the victim from the shooting at Waterloo and Richland Avenue to the hospital. Detective Griffin interviewed Davis about an hour later at police headquarters. Tr. 34, l. 24 – 35, l. 23.

When Detective Eagerton spoke with Davis he was unable to identify either suspect in the vehicle which shot into Davis's car. Tr. 35, l. 21 – 36, l. 3. Eagerton said it was not until about six hours later during a subsequent interview at Davis's house in which Davis named "Whyzdom Douse and Harold Bates" as being the two young me he allegedly saw in the suspect vehicle immediately prior to the shooting. Tr. 36, 15-10. As will be seen infra, Davis did considerable "investigation" before coming to this conclusion. Eagerton remembered that Davis told him he knew appellant from them both young men having gone to Midland Valley High School in the past. Tr. 36, 11-15.

After eventually having the names of appellant and Harold Bates, the following morning at 9 or 10 a.m. Eagerton showed Davis a single photograph separate of each man. As will be seen infra, Davis admitted during the Biggers hearing when he was shown appellant's photograph the Detective asked: "Is this Whyzdom?" Davis then confirmed that it was indeed appellant in the photograph. Tr. 60, ll. 15-20. It was under these circumstances that Davis identified appellant and Bates from their photographs as being the ones responsible for the shooting. Tr. 36, l. 23 – 37, l. 2. State's exhibits 7 & 8, the "Douse" and "Bates" photograph are both on file for this Court to review.

On cross-examination, Eagerton admitted *that Davis told him prior to naming appellant and Bates as the suspects that Davis "looked everyone up on Facebook."* (emphasis added). Edgerton remembered that Davis earlier claimed: "I have seen them somewhere before. I think I might - - I want to say that I know them...but he wasn't able to give [me] a name." Tr. 38, ll. 3-9. Eagerton added that Davis was only able to identify the suspects as "two black males. He said around his age. I believe it was eighteen to twenty. I don't remember anything other than that." Tr. 38, ll. 15-19.

Keyshawn Davis then testified that he did not know appellant but said he knew what he "looked like." Tr. 40, ll. 8-12. During the in-camera Davis identified appellant as being in the courtroom, and he said he knew appellant from having gone school with him. Tr. 40, ll. 4-22.

Davis testified that on August 2, 2019, the victim and his friend Richard Carroll were riding with him while his friend Raven drove his car. Davis remembered Raven stopping his car at the intersection of Waterloo and Richland streets for a red light. He recalled seeing two men in the adjacent car looking into his car. Tr. 42, l. 12 – 44, l. 7. Davis claimed the first time he talked with law enforcement he said he thought he knew the men in the other car. He said he did not name appellant or Howard Bates at that time because "I had to get further clarification." Tr. 44, ll. 4-21. Davis readily admitted *he did not know who the men were at the time of the shooting.* Tr. 44, ll. 4-7. (emphasis added).

Davis explained that he talked to "my friends" about the red car that was the suspect car in the incident. After talking with his friends Davis said "that's when it led me to [think] that was Sonjai's car." Davis testified he had gone to school with Sonjai at Midland Valley in the past. Davis said he knew that Sonjai was in a relationship with appellant, and they had a child together. Tr. 44, l. 22 – 45, l. 22.

Davis further explained that he had one of his friends asked Sonjai if appellant was driving "her car at that time of night." After some hesitation Davis admitted that he told Detective Eagerton the names of appellant and Harold Bates after he "confirmed" that he thought they were the men involved. It was after Davis gave Detective Eagerton the names that Eagerton showed Davis the photograph of appellant and a separate photograph of Harold Bates. Tr. 53, ll. 1-7.

Davis estimated that while the cars were stopped at the stop light for about thirty seconds. However, Davis naturally ducked down in the car immediately when a shot was fired, and the

window shattered. Six or seven shots were fired. Davis acknowledged his initial description was only that two black males about his age were involved. This was before Davis began his investigation. Tr. 53, ll. 1-24.

Davis admitted on cross-examination that following the shooting he got on Facebook to do his investigation. Before Davis talked to the police again he talked with Zaylenn Page and Keyasia Barnes. Tr. 54, l. 23 – 56, l. 3. Davis said he did not personally talk to appellant's girlfriend Sonjai while he was checking around, but that his discussions with her were "word of mouth." Tr. 56, l. 23 – 57, l. 3. Davis then told the judge he knew appellant and Bates were involved because he saw them and verified that information. Tr. 57, l. 11 – 58, l. 19. Davis also verified to the judge that after he gave appellant's name and the name of Bates to law enforcement he brought a single photograph of appellant and a single photograph of Bates which he identified. Tr. 58, l. 7 – 60, l. 1. As stated, Davis admitted when he was shown appellant's photograph the Detective said: "Is this Whyzdom?" Davis confirmed that it was appellant in the photograph. Tr. 60, ll. 15-20.

The solicitor cited State v. Liverman, 398 S.C. 130, 727 S.E.2d 422 (2012) and argued that the identification procedure was not unduly suggestive and that Davis's identification was "merely confirmatory." Tr. 64, l. 24 – 67, l. 12. Defense counsel Steiner cited this Court's opinion in State v. Warner, 430 S.C. 76, 842 S.E.2d 361 (Ct.App. 2020)[1], and argued that state action was clearly involved in this case as Detective Eagerton produced a single photograph of appellant and said: "This is Whyzom." Counsel argued this was a "word of mouth" led identification. "Mr. Davis talked about how he spoke with other people." Further, at the time of the shooting Davis had "mere seconds" to view the men in the other car, and he was not able to focus on them. Davis

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[1] Pending on certiorari after oral argument in the Supreme Court as of the writing on the initial brief in this case.

"had plenty of time to look on Facebook and from word of mouth who those people were," before Eagerton did his "confirmation" of what Davis was told from "word of mouth." Tr. 67, l. 15 – 69, l. 10.

The trial judge acknowledged this was not a typical out-of-court "show up" like the previous case Liverman, where a guy is coming out of the woods of a shooting and they have him stand by the car in front of beaming headlights and say – where the identification was made." The judge noted that the photographs were shown here after the suspect names were "verified." The judge said that witness "[d]id some research and found out he [appellant] was driving the car and that's how he nailed down his certainty [of] the identification in his mind. *He then informed the police about that, and the police then showed him the photographs, which he confirmed as being the two.*" Tr. 69, l. 12 – 70, l. 5. (emphasis added).

The judge further reasoned: "Aside from all of that, it's really a non-issue in that the defendant admits that he was the driver of the car and admits that the shooting occurred.[2] The only issue is what his degree of culpability, if the jury is to believe that he gave this voluntary statement, whether it means he's confessed or he's claiming innocence based on the circumstances that he alleged in the statement. So I find that, by a preponderance of the evidence, that the state has shown that the - - [indiscernible] suggested means of identifying a person, he was not a witness, he was able to identify the defendant as someone he went to school with. He saw him and could see him at the scene. The investigation nailed him down to his name and some other things that he did in the intervening hours was subsequently related to him identifying the photos. It does not

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[2] At a Jackson v. Denno, 378 U.S. 368 (1964), hearing held before this Biggers hearing the trial judge ruled appellant's statement to the police admitting that he was driving the car from which Bates shot the victim, but denying that he shot or knew that Bates was intending to shoot, or even that Bates had a gun, was voluntarily given and admissible. Tr. 30, l. 24 – 31, l. 2.

violate a due process clause of the constitution nor the mandate of Neil v. Biggers. I deny the motion to suppress the identification - - out-of-court identification, he's indicated the ability to do an in-court identification based on his knowledge and other things as someone who attended school with him and who saw him that night. So the motion is denied." Tr. 70, l. 6 – 71 , l. 9. This was a final ruling on this constitutional identification issue pursuant to State v. Jones, 435 S.C. 138, 866 S.E.2d 558 (2021).

Trial Evidence

Sergeant Travis Rice of the Aiken Department of Public Safety testified that on August 2, 2019, around 1:15 a.m. he was dispatched to the scene of the shooting at Richland and Waterloo Streets: "I found some broken glass. On further inspection, I found one spent shell casing that was on the ground. And then, at that time, I just secured the scene from anybody from, you know, coming in and running over the evidence." Rice also knew "an individual had showed up to Aiken Regional Medical Center, suffering from gunshot wounds." Tr. 112, l. 16 – 114, l. 15.

Rice described the intersection of Waterloo and Richland Streets as "well-lit" but said "I used my flashlight to find the shell casing, but there are several street lamps right there, and there is also exterior lighting from one of the businesses that keep it pretty well-lit." Tr. 117, ll. 12-18. Rice said the description "put out over the radio" was a that the suspect car was "a red either Nissan or Hyundai." Tr. 119, ll. 11-13.

Twenty year old Keyshawn Davis then testified. Tr. 131, l. 17 – 132, l. 7. Davis said he had known the victim, Rodrick McMillan, for about five years. He considered McMillan his best friend. Tr. 132, ll. 2-15.

Davis remembered that he had been working at the Subway earlier in the day and that he went home and changed clothes. Tr 132, l. 24 – 135, l. 4. Davis met up with his friend Raven

Turner and she drove his car that evening. They went to "a house party" and then picked up Roderick McMillan at the Cushman Apartments. Tr. 135, l. 3 – 136, l. 7. Richard Carroll also went with them. Tr. 136, l. 20 – 137, l. 12. Thus, Raven was the driver that evening with Davis sitting as the front seat passenger, and Richard Carroll and the victim Roderick McMillan in the backseat. Tr. 158, ll. 5-15.

Davis testified he did not think that anyone in his car had a gun but he admitted: "I'm not for sure." Tr. 137, l. 15 – 138, l. 6. Davis said the four of them were "were just chilling and smoking a blunt." Davis said their intention was to get money from Richard Carroll's aunt. Tr. 138, l. 7 – 139, l. 10. When their intention to get money from Carroll's aunt did not work out Davis said his plan was to just go home. Davis remembered Raven stopping at a red light at the intersection of Waterloo and Richland Avenues. "Ten seconds later after, a red car had pulled up, shot had went off." Tr. 139, l. 15 – 140, l. 7. Davis recalled that red car initially "comes from behind and then pulled up to the side of us." No words were exchanged. Tr. 140, ll. 1-19.

Davis said that nothing drew his attention to the other car "until after I heard shots go off." Davis told the solicitor that he did notice the two unknown men "staring" into his car but he did not know who these men were. When the shots were fired Davis remembered both of his back windows were shattered and he thought six or seven shots were fired. Davis ducked and said he saw two men that he could only describe as two black males in the car. He was unable to see which one of them was shooting. Tr. 140, l. 20 – 142, l. 23.

Davis described the suspect car as a red car with an Aiken Tech sticker "and an auto credit sticker." He thought the red car was a Honda or Hyundai four door auto model. Davis then identified appellant as one of the two men in the suspect car. Tr. 143, ll. 2-25. Davis said appellant was the driver that night and that he was "one hundred percent sure." Tr. 143, l. 23 – 144, l. 11.

On cross-examination Davis admitted he did not tell the police the actual names of the men in the suspect vehicle until my second or third statement." Tr. 150, ll. 12-22. Davis also admitted that a gun magazine was found in his car on the night of the shooting. Tr. 158, ll. 16-23. As stated, Davis confirmed that Raven was the driver that evening, that he was sitting in the front passenger seat and that Richard Carroll and the victim Roderick McMillan were in the backseat. Tr. 158, ll. 5-15.

Richard Carroll was called as a witness in this case but he refused to testify. Tr. 172, l. 16 – 173, l. 7.

Sonjai Simpkins testified that she had a child together with appellant. She was working at Aiken Regional Hospital at the time of this incident on August 2, 2019. She was a student "that's not graduated as a nurse yet so I work under the supervision of a nurse helping patients, like, take baths, get dressed, walking them around, and just comfort [comforting] them." Tr. 161, l. 11 – 162, l. 19.

Sonjai testified she owned a 2013 red Hyundai Elantra. Tr. 162, ll. 20-23. Appellant dropped her off at the hospital to work her 7 p.m. to 7 a.m. shift on August 2, 2019. She exchanged text messages with appellant several times that evening, and she also called him. They talked on the phone a couple times that evening "but my messages stopped going through at some point....that means the phone is off or is dead." Tr. 163, l. 17 – 164, l. 20. Sonjai said earlier in the evening when she was talking with appellant he told her he had gotten "into it" with "Blue." Sonjai verified that "Blue" was the victim Roderick McMillan whom she had gone to school with at Midland Valley High School. Tr. 165, ll. 2-17.

Sonjai remembered that appellant picked her up shortly after 7 a.m. the next morning at the hospital after her shift was over. Sonjai went and picked up her young daughter and took her

daughter to her cousin's house so that Sonjai could get some sleep. Sonjai said when she woke up she had "a lot" of messages on her phone. One message included a wanted poster with appellant's photograph on it. Sonjai said she did not know if this was "like a prank," so she called the police and asked them to send an officer by her home to talk. Tr. 165, l. 18 – 168, l. 7.

Sonjai said she also received a phone call that day from appellant from the county detention center. When the jail call was played in the courtroom Sonjai remembered that she was crying during the phone call. "[H]e said he know he messed up. And at the end, he said - - he said it was great - - it was a mistake and - - sorry - - he said, 'it was a great mistake and a great retaliation.' And I said, 'I guess.' And that's it." Tr. 169, l. 7 – 171, l. 11.

The pathologist, Kelly Rose, testified the victim was seventeen-years-old and that he was five-foot-ten and he weighed one-hundred-and-seventy pounds. No soot or stippling were found from the two gunshot wounds on his clothes or his body. This caused Dr. Ross to opine that the decedent was shot from twenty four inches away or further. Rose opined that the decedent "bled out" from the gunshot wound that went into his chest. Tr. 201, l. 25 – 211, l. 23.

Detective Jonathan Eagerton testified that during his interrogation of appellant following the shooting that appellant adamant that he never fired a gun that evening. Detective Eagerton said that co-defendant Harold Bates was in jail but Bates had never agreed to give the police a statement. Tr. 247, l. 11 – 249, l. 8.

Detective Eagerton said there were four bullets in the magazine found in the Davis vehicle in which the victim was riding that night. There was room for more bullets to be placed in the magazine. Tr. 249, l. 15 – 250, l. 18. Eagerton admitted that appellant never wavered on his insistence that Bates was the only shooter that evening, and that appellant was merely present. Tr. 250, l. 16 – 254, l. 1.

Appellant Testifies

Appellant was nineteen-years-old at the time of his trial. He told the jury that he had a diploma from the South Carolina Youth Challenge Academy. He was working at McDonald's at the time of the fatal incident. Appellant's co-worker at the McDonald's, Nyacia Myers, had testified and claimed that the day after the shooting that appellant told his co-workers "I killed somebody. It was over and over again." Tr. 179, l. 17-23. Myers admitted on cross examination that appellant liked to brag and that he lied about things that he did not do at times. Tr. 180, l. 12 – 181, l. 20. During his testimony appellant denied that he ever admitted to anyone at McDonald's that he killed anyone. Appellant remembered Myers said to him: "Man, I heard y'all killed somebody last night." Appellant responded: "I ain't killed nobody," and he added that he heard that "his partner" had killed somebody. Appellant explained that a "partner" only meant that the person was with you when something occurred. Tr. 285, l. 18 – 287, l. 1.

Appellant testified on the day of the fatal incident Bates had been texting him all day. He picked up Bates about 10 o'clock that evening. Appellant testified that he did not see Bates with a gun, and he had no reason to think Bates had a gun. Tr. 274, l. 22 – 277, l. 9.

Appellant remembered that he brought Sonjai two "five-hour energy drinks" that night while she was working at the Aiken Regional Hospital. He told Sonjai that he was planning on picking up their daughter and going home. Afterwards appellant said he noticed a car was following him, and "it was tailing me all night..." Tr. 276, l. 11 – 278, l. 10.

Appellant admitted he had marijuana in the car with him that he planned to smoke. However, when he stopped at the red light, Bates said: "Watch out, that's Blue and them in there [the car next to them on Waterloo Street]. He [Bates] started shooting." Tr. 278, l. 6 – 280, l. 10.

Appellant said he had no prior warning or indication that Bates was going to shoot into the other car.

Appellant said the mistake and "great retaliation" he was speaking about in this jail call to Sonjai was about the mistake he made that evening and him "fighting for his life for the mistake he made in being with Bates." Appellant said at the beginning of his testimony that having Bates was him was the biggest mistake of his lifetime. Tr. 270, l. 1 - 272, l. 7.

Appellant admitted when he was arrested that he had been smoking marijuana earlier in the morning, and he was also taking pills. He told the officers: "I smoke a lot of weed and I am tripping." Appellant admitted he initially lied to the police out of fear given his state of mind and his drug use. Appellant maintained that Bates was the only shooter and that the shooting was totally unexpected. Tr. 287, l. 2 – 294, l. 6; Tr. 299, l. 4 – 300, l. 15.

Discussion

In State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425-426 (2012) our Supreme Court noted that a criminal defendant may be deprived of due process of law by an identification procedure arranged by police which is unnecessarily suggestive and conducive to irreparable mistaken identification .... an in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification." State v. Traylor, 300 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). Our Supreme Court noted in Liverman that the United States Supreme Court in Neil v. Biggers, 409 U.S. 188 (1972), put forth a two-pronged inquiry to determine whether due process required suppression of an eyewitness identification. The Court noted that due process required courts to assess on a case-by-case basis, whether the identification resulted from unnecessary and unduly suggestive police

procedures, and if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification occurred.

In this case it was known by law enforcement that eyewitness Davis could not identify the perpetrators after the shooting. As seen, law enforcement knew appellant had conducted his own "word of mouth" investigation because he could not identify the perpetrators. When Davis gave the police appellant's name after conducting the investigation they knew he had undertaken because he could not identify the perpetrators, they showed Davis a single photograph of appellant and asked him to confirm that it was appellant in the photograph.

As seen, Davis could not tell the police following the shooting who the two men in the red car from which shots were fired were that evening. Davis therefore talked to other people, went on Facebook to investigate, he talked to others, and had "word of mouth" third-hand accounts of what Sonjai Simpkins allegedly was telling other people about the shootings. This was an identification procedure tainted by state action since law enforcement knew Davis could not independently identify the perpetrators from being an eyewitness or from his memory. Yet, law enforcement encouraged and participated in this sham of an identification procedure which culminated in the showing of the single photograph of appellant to Davis, and the request that Davis identify appellant from that photograph where law enforcement knew that Davis could not legitimately identify the perpetrators. Cf. Perry v. New Hampshire, 566 U.S. 228 (2012)(where the police did not participate or induce the identification in any manner to taint it). In this case, this was a state tainted identification procedure which posed "a very substantial likelihood of irreparable misidentification," See, Simmons v. United States, 390 U.S. 377, 384 (1968); Neil v. Biggers, 409 U.S. 188 (1972). The identifications the jury was allowed to hear in this case created a substantial likelihood of irreparable misidentification that was so extremely unfair that its

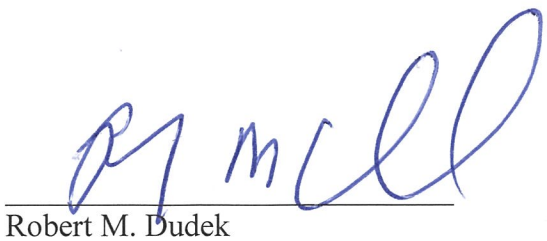
admission violated fundamental conceptions of justice. See Dowling v. United States, 493 U.S. 342, 352 (1990). Showing Davis a photograph of appellant after what occurred in this case made it all but inevitable that Davis would identify appellant as one of the perpetrators. See Foster v. California, 394 U.S. 440 (1969).

Finally, the reasoning of the trial judge that the fact appellant admitted his presence at the scene of the shooting to law enforcement made the identification a "non-issue" -- or harmless -- was an error of law. While making this legally erroneous ruling, the trial judge still correctly noted that the jury would still have to find appellant's statement was voluntarily tendered before it would be able to rely on that statement admitting his presence at the scene. Respectfully, a trial judge should not reason that some other factor involved in a case makes his ruling on a constitutional issue harmless error or a "non-issue."

This was admittedly a highly unusual novel identification case given all of what occurred in this case. It was nonetheless a state tainted identification that should not have allowed where the judge's erroneous constitutional identification ruling was also anchored in his belief that appellant's admission to being present to the police made the Davis "eyewitness" identifications a "non-issue." Appellant should be granted a new trial. Neil v. Biggers, 409 U.S. 188 (1972).

CONCLUSION

By reason of the forgoing arguments, appellant's convictions should be reversed and this case remanded to the Aiken County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of February, 2022.

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STATE OF SOUTH CAROLINA

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Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

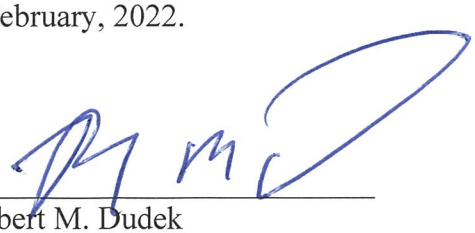
WHYZDOM ANTONIO LEE DOUSE,

APPELLANT.

APPELLATE CASE NO. 2021-000607

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the initial brief of appellant and designation of matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 7th day of February, 2022.



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February 7, 2022

Melody J. Brown, Esquire
Senior Assistant Deputy Attorney General
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Columbia, SC 29201

Re: The State v. Whyzdom Antonio Lee Douse

Dear Ms. Brown:

Enclosed is a copy of the initial brief of appellant and designation of matter in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/lmm

Enclosure