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**May 09 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DEVONTE T. MAJOR,

APPELLANT.

APPELLATE CASE NO. 2021-000874

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ANDERS BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS .....3

STANDARD OF REVIEW .....7

ARGUMENT

The trial judge abused her discretion by refusing to admit evidence the decedent had methamphetamine and marijuana in his system when he died since the evidence was relevant pursuant to Rule 401, SCRE, and Rule 402, SCRE, and would have impeached the credibility of Marcus Porter, the subject of the attempted murder charge, and one of only two eyewitnesses who testified. ....8

CONCLUSION.....11

PETITION TO BE RELIEVED AS COUNSEL .....12

**TABLE OF AUTHORITIES**

**Cases**

In re Corley, 353 S.C. 202, 577 S.E.2d 451 (2003) ..... 10

State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002) ..... 7

State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000) ..... 7

State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct. App. 2004) ..... 9, 10

State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) ..... 7

Wilder v. State, 388 S.C. 282, 696 S.E.2d 587 (2010) ..... 10

**Rules**

Rule 401, SCRE ..... 1, 8, 9

Rule 402, SCRE ..... 1, 8, 9

**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge abuse her discretion by refusing to admit evidence the decedent had methamphetamine and marijuana in his system when he died since the evidence was relevant pursuant to Rule 401, SCRE, and Rule 402, SCRE, and would have impeached the credibility of Marcus Porter, the subject of the attempted murder charge, and one of only two eyewitnesses who testified?

## STATEMENT OF THE CASE

A Dorchester County Grand Jury indicted Appellant on September 26, 2019 for murder, attempted murder, first degree burglary, possession of a firearm during the commission of a violent crime, and ill treatment of animals. R. 853-862. Appellant's case was called to trial on July 9, 2021 before the Honorable Diane S. Goodstein, and a jury. R. 1. Appellant was tried jointly with his codefendant, Elijah Green. R. 1. Assistant Solicitors David Osborne and Nicholas Young represented the state. R. 1. Laree Hensley represented Appellant. R. 1. Melisa Gay represented Green. R. 1.

On July 16, 2021, the jury found Appellant guilty as indicted. R. 833, l. 23 – 834, l. 13. He was sentenced to life without parole for murder and first degree burglary, thirty years for attempted murder, five years for the weapons offense, and five years for ill treatment of animals. R. 850, l. 18 – 851, l. 9. All sentences were ordered to be served concurrently. R. 851, l. 10.

This appeal follows.

## STATEMENT OF FACTS

Shortly before midnight on January 27, 2019, four armed masked men forced their way into the home shared by Marcus Porter and David Swibaker in Summerville. The intruders allegedly kicked in the back door, which led into the kitchen. R. 251, l. 10 – 252, l. 25; R. 296, l. 5 – 297, l. 4. Swibaker and Joe Weaver, Porter’s friend, were in the kitchen when the men entered. Porter and his dog were sitting on the couch in the living room. R. 249, l. 17 – 251, l. 4; R. 295, l. 20 – 296, l. 4. The intruders immediately began “demanding weed.” R. 296, ll. 12-25. Porter’s dog aggressively approached the men and was instantly shot. R. 252, l. 25 – 253, l. 4; R. 297, l. 14 – 298, l. 6. At the same time, Swibaker fled to the bathroom and hid in the shower. R. 251, ll. 13-16; R. 253, ll. 14-16.

Unsurprisingly, tensions were extremely high, especially after the dog was shot. Weaver attempted to “diffuse the situation.” He put his hands in the air to show he was unarmed and told the intruders he could get them some weed from North Charleston. R. 297, ll. 8-13; R. 298, l. 21 – 299, l. 9. Weaver “inched closer” to the men and was repeatedly told to “stand back.” Before he could back up, Weaver was shot and fell to the ground. R. 299, l. 23 – 300, l. 6. According to Porter, Elijah Green was the individual who shot Weaver. R. 300, ll. 7-10.

One of the intruders then told Porter, “You know what time it is, man, just give us the weed, [and] we out of here.” R. 300, ll. 12-15. Porter, who admittedly sold drugs and had numerous pending charges at the time of trial, lied and told the man “there was none.” R. 283, l. 9 – 284, l. 18; R. 300, ll. 15-16; R. 317, ll. 2-8. Porter suggested the men look in his bedroom. Two of the intruders drug Porter to the back bedroom. R. 300, ll. 17-19.

From his hiding place in the shower, Swibaker saw the two men drag Porter. R. 251, l. 13 – 252, l. 1. After the three went by, Swibaker ran across the hallway into his bedroom. R.

254, ll. 20-22. The other two intruders followed him into the room. R. 255, ll. 10-18. One of them struck Swibaker in the back of the head with a firearm. He fell to the ground and was told “to lay on the ground or they were going to blow [his] brains out.” R. 254, ll. 20-25. The intruders took the mattress off Swibaker’s bed and flipped it over him. Then they searched his room. R. 254, l. 25 – 255, l. 5.

Meanwhile, when Porter and the other intruders entered Porter’s bedroom, Porter saw his dog “basically” dying on the bed. R. 301, ll. 16-18. He remembered repeatedly saying, “Man, you shot my dog, you killed my dog.” R. 301, ll. 18-19. Porter showed the intruders the glass jar where he often stored loose marijuana, but there was not much in the jar at the time. One of the men stuck his gloved hand into the jar and grabbed the weed out. R. 300, l. 19 – 301, l. 14.

The men did not believe Porter that there were no other drugs in the house. R. 301, ll. 24-25. They pushed him back out to the living room. R. 301, l. 25 – 302, l. 1. Weaver was laying on the ground in the hallway. According to Porter, he was still breathing. R. 302, ll. 7-10. The intruders became increasingly angry. Porter claimed Green then announced, “If you don’t come up with some weed, I’m going to start killing motherfuckers around here.” Green then shot Weaver again. R. 302, ll. 12-18. The intruders began ransacking the house. “They [were] digging through everything at that point.” R. 303, ll. 14-16.

Eventually one of the men exclaimed, “We gotta go, we gotta go.” R. 303, ll. 17-18. According to Porter, in the midst of fleeing out the back door, Green tripped over Weaver, which made Green angry, and he shot Weaver a third time. R. 303, ll. 19-23. All four intruders exited out the back door. As they were leaving, gunshots rang out. Porter claimed, “[I]t seemed like there [were] a whole lot of bullets coming at me and coming at us. And there was . . . he [Weaver] ended up getting shot five more times, and me [Porter] once.” R. 304, ll. 3-9. Porter

also claimed it was Green who shot him. R. 304, ll. 10-13. Porter was shot once in the chest. R. 311, l. 21 – 312, l. 1. Swibaker was uninjured. However, Weaver died as a result of his wounds. R. 686, ll. 1-3.

After the intruders fled through the back door, Porter left out the front door. He walked to his neighbor's house. R. 304, ll. 14-21. As he was walking, he "heard four sets of people jumping the [chain-linked] fence" between his yard and the woods. R. 305, ll. 1-5. He told his neighbor they had all been shot and asked her to call 911. R. 304, ll. 14-17. She called 911 and reported the burglary. She provided a vague description of the intruders relayed to her by Porter.

As Officer Joshua Scarborough was responding to the shooting, he saw a dark colored Honda CR-V with four black males inside leaving the neighborhood. He was not sure if the vehicle was related to the burglary, but he "[r]elayed the information over dispatch to [his] team and then proceeded to the incident location." R. 347, ll. 13-21. Corporal Jacob Cramer, who was also responding to the shooting, heard Scarborough mention the vehicle over the radio. R. 373, ll. 21-25. As Cramer was entering the neighborhood, he likewise saw the Honda CR-V with four male occupants pass by him. R. 374, ll. 16-23. Cramer decided to stop the vehicle "since it could have possibly been involved." R. 376, ll. 14-18. He saw the CR-V turn left onto Highway 78. Cramer turned his patrol car around, got behind the vehicle, and attempted to conduct a traffic stop. The lights and sirens on his patrol car were activated. The CR-V slowly made a right hand turn and appeared as if it was going to stop. However, the vehicle continued to move slowly until it eventually sped up. R. 376, l. 11 – 377, l. 9.

Cramer continued to pursue the vehicle, which refused to stop. Numerous jurisdictions became involved. The pursuit lasted approximately thirty minutes and reached speeds over one hundred miles per hour. R. 378, ll. 12-13; R. 379, l. 21 – 380, l. 1. Officers with the Colleton

County Sheriff's Office set up "spike strips" to stop the fleeing car. R. 382, ll. 4-11. Once the CR-V finally came to a stop, all four occupants were arrested. They were identified as Polo Salazar, Muanah Fortune, Elijah Green, and Appellant, Devonte Major. R. 382, l. 17 – 383, l. 11.

During the course of the pursuit, officers saw numerous objects fly out of the vehicle, including a wallet, clothing, and a mask. R. 380, l. 14 – 381, l. 24; R. 387, ll. 4-25. After the men were arrested, Corporal Cramer went back and collected these items. R. 387, ll. 4-25. The wallet was later identified as belonging to Joe Weaver, the decedent. R. 389, ll. 11-16. Porter also claimed watches found in the CR-V were his. R. 313, ll. 17-23.

Because no firearms were found on the suspects, in the vehicle after it was stopped, or in the vicinity of the residence, Cramer continued to search along the route of the pursuit for guns. R. 389, l. 21 – 390, l. 2; R. 392, l. 25 – 393, l. 14. He "went back to the one place where [he did not] have eyes on the vehicle, which was right there off Highway 78 where the car made the left hand turn" out of the neighborhood shortly after the burglary occurred. R. 394, ll. 4-11. Cramer found four firearms on the shoulder of the road. R. 394, ll. 12-16. Bullets recovered from the body of the decedent were determined to be fired by one of these firearms. R. 608, ll. 1-17.

Porter and Swibaker did not know any of the alleged intruders: Polo Salazar, Muanah Fortune, Elijah Green, or Appellant, Devonte Major. The only connection law enforcement could determine between the two groups was through an individual named Jaquavious Washington. R. 246, l. 11 – 247, l. 17; R. 292, l. 1 – 293, l. 22; R. 516, l. 24 – 517, l. 18; R. 527, l. 21 – 529, l. 5. Porter had sold marijuana to Jaquavious Washington on at least one prior occasion. R. 246, l. 11 – 247, l. 17. About an hour and a half before the burglary, there was an outgoing call from Elijah Green's phone to a number identified as belonging to Washington. The call lasted fourteen and a half minutes. R. 516, l. 24 – 517, l. 18.

## **STANDARD OF REVIEW**

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) (citing State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id. (citing State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)).

## ARGUMENT

The trial judge abused her discretion by refusing to admit evidence the decedent had methamphetamine and marijuana in his system when he died since the evidence was relevant pursuant to Rule 401, SCRE, and Rule 402, SCRE, and would have impeached the credibility of Marcus Porter, the subject of the attempted murder charge, and one of only two eyewitnesses who testified.

### **Relevant Facts**

Before the forensic pathologist, who was the last witness, testified, the assistant solicitor moved to exclude any evidence the decedent had methamphetamine and marijuana in his system at the time of his death. R. 669, ll. 16-21. The solicitor asserted the evidence was not relevant. R. 669, l. 21 – 670, l. 8. He admitted evidence the decedent did not have any alcohol in his system was relevant to “discredit Marcus Porter.” However, he maintained the evidence concerning methamphetamine and marijuana was irrelevant. R. 670, ll. 3-8.

Appellant argued the evidence was relevant as to the credibility of Marcus Porter. Porter testified that he and the decedent had been drinking alcohol prior to the burglary. He did not mention any drug use. Appellant’s counsel argued the evidence “goes to my entire theory of the case about the truth.” R. 673, ll. 14-22. She asserted, “[T]here’s been a lot of discussion in this case about methamphetamine and marijuana and about Marcus Porter being a drug dealer, and about Marcus Porter’s credibility. And I think that it’s information, it’s something that the doctor relied upon. I think its relevant to the testimony in this trial, I think it’s relevant to this case.” R. 672, ll. 4-10. When asked by the judge specifically how it was relevant, counsel explained that Porter claimed he and the decedent “had drinks” before the burglary, yet “the evidence suggests otherwise” since the decedent had no alcohol in his system, but did have

methamphetamine and marijuana. R. 672, ll. 12-15. The judge further inquired whether there was any testimony from Porter or Swibaker regarding whether they were using methamphetamine or marijuana that night. R. 679, ll. 3-10. Counsel admitted there was none. R. 679, l. 11.

The trial judge found evidence the decedent did not have any alcohol in his system was “absolutely relevant” and admissible, but excluded any evidence concerning the presence of methamphetamine and marijuana. R. 679, l. 18 – 670, l. 7. She said that if Porter or Swibaker had been asked about whether they had ingested marijuana or methamphetamine that night and denied doing so then the evidence would have been relevant. The judge concluded there was “no predicate” to make the evidence regarding the presence of methamphetamine and marijuana in the decedent’s system relevant. R. 680, ll. 3-7.

### **Discussion**

The judge abused her discretion by refusing to admit evidence the decedent had methamphetamine and marijuana in his system when he died since the evidence was relevant pursuant to Rule 401, SCRE, and Rule 402, SCRE. Such evidence would have impeached the credibility of Marcus Porter, one of only two people who testified concerning what occurred during the burglary.

“All relevant evidence is admissible.” Rule 402, SCRE; See State v. Pagan, 357 S.C. 132, 142, 591 S.E.2d 646, 651 (Ct. App. 2004). “Relevant evidence” is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE.

“Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or

make more or less probable the matter in controversy.” Pagan, 357 S.C. at 142, 591 S.E.2d at 651 (citing In re Corley, 353 S.C. 202, 577 S.E.2d 451 (2003)).

Evidence the decedent had methamphetamine and marijuana in his system at the time of his death was relevant to Marcus Porter’s credibility. Porter claimed he and the decedent only drank alcohol the night the burglary occurred. He did not mention using any methamphetamine or marijuana. The decedent’s toxicology report would have discredited Porter. Porter’s credibility was essential. He was only one of two eyewitnesses who testified. He described what allegedly occurred inside the house that night and identified Green and Appellant at various points in his account of what occurred. Consequently, the trial judge abused her discretion by finding the evidence was not relevant and not admissible. See Wilder v. State, 388 S.C. 282, 285, 696 S.E.2d 587, 588-589 (2010).

Respectfully, given the judge’s abuse of discretion, this Court should reverse Appellant’s convictions and sentence and remand for a new trial.

**CONCLUSION**

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully Submitted,

s/ Lara M. Caudy  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of May, 2022.

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APPELLATE CASE NO. 2021-000874

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Devonte T. Major states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial, which was held on July 9-16, 2021 before the Honorable Diane Schafer Goodstein, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Devonte T. Major.

Respectfully Submitted,

s/ Lara M. Caudy

Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Complete Trial Transcript dated July 9-16, 2021;
- (2) True Billed Indictments;
- (3) Sentence Sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

s/ Lara M. Caudy  
Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

s/ Lara M. Caudy \_\_\_\_\_

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal in the above referenced case have been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Devonte T. Major, #353008, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 6th day of May, 2022.

s/ Lara M. Caudy  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR APPELLANT