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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2021-000677

THE STATE, Respondent,

v.

DONNIELLE K. MATTHEWS, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in instructing the jury on the lesser included offense of voluntary manslaughter when evidence existed from which the jury could infer that Appellant killed Victim in the heat of passion upon sufficient legal provocation?

STATEMENT OF THE CASE

In November 2017, a Horry County Grand Jury indicted Appellant for one count of murder. Prior to trial, Appellant moved for immunity from prosecution under the Protection of Persons and Property Act. S.C. Code § 16-11-440. On July 28-29, 2020, an evidentiary hearing was held before the Honorable Steven John regarding Appellant's motion for immunity and the admissibility of Appellant's statements under Jackson v. Denno[1]. After testifying at the immunity/Denno hearing, Appellant withdrew her motion for immunity under the Act. (R. 221-26). On June 14-18, 2021, a jury trial was held in the Horry County Court of General Sessions with the Honorable Steven John presiding. Appellant was represented by Ralph Wilson, Sr., Esq. The State was represented by Assistant Solicitors Martin Spratlin and Seth Oskin of the Fifteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of the lesser included offense of voluntary manslaughter. A sentencing hearing was convened on June 22, 2021 to determine whether Appellant was a victim of spousal abuse within the meaning of S.C. Code § 16-25-90. The trial judge sentenced Appellant to thirty years' imprisonment but determined that Appellant qualified as a victim of spousal abuse under S.C. Code § 16-25-90. Appellant filed a timely notice of appeal and an initial brief.

[1] Jackson v. Denno, 378 U.S. 368 (1964).

STATEMENT OF FACTS

Appellant met Dennis Green (Victim) in June 2011. (R. 660). The two began dating soon thereafter and by the end of 2011, Appellant and Victim were engaged to be married. (R. 662). At the time Appellant and Victim met, Victim was also in a romantic relationship with the mother of his children, Alethia Price. (R. 543-44). At some point, Victim, Appellant, and Price began a polyamorous relationship. (R. 545). After a brief period of living together, Price moved out of Victim and Appellant's apartment. (R. 544-48). According to Price, she moved out because her presence in the home sparked jealousy by Victim and Appellant if she got too close to either person. (R. 547). Price maintained a sexual relationship with Victim and Appellant until Victim and Appellant got married in 2015. (R. 551-52, State's Exhibit #89).

Appellant and Victim made their marital home in Covington, Georgia, but Victim often travelled to Horry County on the weekends while Appellant remained behind in Georgia. (R. 684-87). In early 2017, Victim met Antoinette Vereen (Antoinette) at a club in Horry County. (R. 344). Victim disclosed that he was in an open marriage and that he and Appellant would often bring other women into their marriage. (R. 344). Antoinette and Victim continued to see each other for a number of weeks and eventually became sexually intimate. (R. 346, 371).

During the week of July 4, 2017, Appellant was invited to spend the week in Myrtle Beach by her mother and Victim. (R. 693). In the early morning hours of July 7, 2017, Appellant and Victim planned to spend the evening with Antoinette in order for Antoinette and Appellant to get to know each other. (R. 346). At approximately 12:30 AM, Appellant and Victim picked up Antoinette from her home in the Longs area of Horry County. (R. 347-49). After briefly stopping at Victim's mother's house, the trio went to Ricky's Dockside bar in Little River where they had a few alcoholic beverages. (R. 347-48). After approximately one hour, the three left

Ricky's Dockside and went to a strip club called Thee Dollhouse. (R. 350). At the strip club, the trio continued to drink alcohol. At some point, Appellant followed Antoinette to the bathroom and attempted to kiss her. (R. 351-52). The attempted kiss made Antoinette uncomfortable, and she rebuffed Appellant's advances. (R. 352).

At approximately 4:00 AM, the three left the strip club and went to eat at Denny's. (R. 353). While at Denny's, Appellant followed Antoinette to the bathroom a second time and tried to kiss her when she exited the bathroom stall. Antoinette rebuffed Appellant's advances a second time. (R. 355-56). When the two returned to the table, Appellant tried to kiss Antoinette a third time. As Antoinette tried to pull away, Victim asked Appellant to give Antoinette some space. (R. 357-58). Approximately thirty minutes after their food arrived, Victim indicated he was ready to leave. (R. 358-59). The trio left the restaurant and walked to Victim's car. Victim got in the driver's seat while, Antoinette got in the passenger's side, and Appellant got in the backseat. (R. 361-62). Shortly after getting into the car, Appellant hit Victim in the side of the face with a closed fist and exclaimed "you shouldn't have married me; you should've married her." (R. 362, lines 12-20). Victim drove Antoinette home. When they arrived at her home, Antoinette offered the front seat to Appellant. According to Antoinette, "with an attitude, [Appellant] said no, I'll sit in the back seat." (R. 364, line 7). Once inside her home, Antoinette sent Victim three text messages beginning at approximately 5:13 AM saying that she loved him and missed him. (R. 364-66). Antoinette would later opine "I think [Appellant] was more so jealous of how [Victim] maybe had looked at me. [Appellant] wanted me for herself." (R. 372, lines 14-15).

At approximately 5:19 AM, Matthew Harden, a security officer at Seacoast Hospital, witnessed Appellant arrive in the emergency with Victim. (R. 298). Victim had been stabbed

twice in the right side of his chest. (R. 594-95). When Victim and Appellant arrived, Officer Mark Martin of the Horry County Police Department was sitting in the parking lot of Seacoast Hospital typing reports. (R. 272). Martin was alerted by security that a stabbing victim had just come into the emergency room. (R. 272). Martin entered the hospital to speak with Appellant and his interaction was recorded on his body camera. (State's Exhibit #1). Martin described Appellant's demeanor as "hysterical" and "belligerent". (R. 273, lines 10-11). Appellant repeatedly told Martin that she did not know what happened, but also said she and Appellant stopped at a gas station in North Myrtle Beach. (State's Exhibit #1). According to Appellant, Victim returned from the gas station holding his stomach. Appellant physically demonstrated how Victim held his stomach for Martin. (State's Exhibit #1). Appellant asserted "[Victim] knows these people, he might not tell you." (State's Exhibit #1).

Victim was subsequently transported to from Seacoast Hospital to Grand Strand Medical Center in Myrtle Beach. At Grand Strand, Appellant spoke with Officer Brandon Beaudoin of the North Myrtle Beach Police Department. (R. 408). The interaction was recorded on Beaudoin's body camera. (State's Exhibit #14). Appellant told Beaudoin that she and Victim stopped at a gas station past Dodge's Chicken. (State's Exhibit #14). According to Appellant, Victim got back in the car after going into the gas station and told her to take him to the hospital. (State's Exhibit #14). Appellant gave a written statement to Beaudoin and asked if Beaudoin wanted to photograph her hands. (State's Exhibit #14, #23). However, Appellant never told Beaudoin that Victim attacked her or otherwise mentioned sustaining any physical harm from Victim.

Appellant spoke to law enforcement a third time when she spoke with Detective Andrew Franklin of the North Myrtle Beach Police Department outside the waiting room of Grand Strand

Medical Center. (R. 439-40). Their interaction was captured on Franklin's body camera. (State's Exhibit #33). Appellant again told Franklin that she and Victim stopped at a gas station and Victim went inside to get cigarettes. (State's Exhibit #33). Once he returned to the car, Victim asked Appellant to move to the driver's seat and then he revealed that he had been stabbed. (State's Exhibit #33). Appellant emphasized that she didn't want to sound stupid or for the police to think she was a dumb blonde. (State's Exhibit #33). Appellant said that a friend of hers broke two of her fingernails. (State's Exhibit #33). When asked who she and Victim were partying with, Appellant did not mention Antoinette and said "we weren't partying with anybody." (State's Exhibit #33). Appellant once again declined to tell law enforcement that she was physically assaulted by Victim in any way. (State's Exhibit #33). Toward the end of the interview, Appellant declared "everybody is a suspect, nobody likes [Victim]; they're jealous, he got the pretty girl...." (State's Exhibit #33).

Victim subsequently died at Grand Strand Medical Center from a stab wound that pierced his heart. (R. 595). Law enforcement allowed Appellant to leave Horry County and return to her mother's home in Orangeburg. (R. 625). Detective Greg Lent and Detective Jack Johnson of the Horry County Police Department traveled to Orangeburg to speak with Appellant at her mother's house on July 8, 2017. (R. 614-15). Appellant accompanied Lent and Johnson to the Orangeburg Police Department to be interviewed and their interview was recorded. (R. 617, State's Exhibit #89). During her fourth interview with law enforcement, Appellant claimed she and Victim fought each other previously, but it "wasn't a big deal" and it was like "fighting my brother." (State's Exhibit #89 22:30-23:30). Later in the interview, while acknowledging that she and Victim fought during the morning of July 7, Appellant maintained she wasn't afraid of Victim. Throughout the interview, Appellant did not tell law enforcement about Antoinette and her role

in the evening, but Appellant seemingly referred to Antoinette when she acknowledged they ran into one of Victim's girlfriends at Ricky's and that person went with them to the strip club. (State's Exhibit #89). Appellant claimed not to know who this person was, but admitted the girlfriend was at Denny's when Appellant and Victim arrived. (State's Exhibit #89). Appellant claimed that she and Victim left Denny's alone and when they got to their car, Appellant initially got in the back seat but eventually moved into the front seat as they left the parking lot. (State's Exhibit #89).

After leaving Denny's Appellant claimed, she and Victim stopped at two separate places on their way home, but could not recall where they stopped. After the second stop, Victim returned to the car and handed Appellant a pack of cigarettes. (State's Exhibit #89). Victim told Appellant to take him to the hospital and Appellant noticed Victim was bleeding. (State's Exhibit #89). Appellant initially claimed that she did not remember stabbing Victim, but later stated that Victim said "oh my God, I can't believe you just stabbed me. (State's Exhibit #89 02:11:00-02:12:00). Appellant also stated that she only stabbed Victim once when she was asked how many times she stabbed him. Appellant also claimed Victim asked her not to say anything about the stabbing. At the conclusion of the interview, Appellant was placed under arrest for murder.

At trial, Appellant admitted in opening statements that she stabbed Victim, but maintained she did so in self-defense after Victim attacked her in the car. (R. 260). Antoinette testified on behalf of the State at trial. Antoinette testified Appellant told her at Ricky's Dockside that "[Appellant] was to the point to where she would kill, she had been through so much to the point where she would kill." (R. 392). Appellant did not specify who she would kill. (R. 392). The State entered text messages from Appellant's phone at trial. One text sent to a friend on May 4, 2017 read:

> Yo I've been quiet about a lot of things throughout our entire relationship...six years in I just can't find it in me to just shut up...[Victim] gets away with a lot I just don't tell anybody the things he does it let him know that I know what he does...it pisses me off so bad when he tried to play innocent or make ne (sic) seem like I'm being crazy OR STUPID!! I can overlook a lot but after a while, **I just snap**...he know this and still plays with me like I won't fuck him up...but then I go back to being quiet lmao?

(R. 532, lines 13-22)(emphasis added). Another text message from Appellant to her father that was sent at 5:06 AM on July 7 read:

> He showing off for somebody else...I told him he ain't no man and called him a bitch...He says my daddy is a bitch...So I called you do (sic) he could say it to go himself...He hangs up the phone. The next time I bring this muthafucker to Baltimore to (sic) better beat his ass..."

(R. 514, lines 17-21). Appellant testified in her own defense at trial. Appellant denied that she hit Victim inside the car, but instead maintained that Victim pulled her into the front when she reached for her phone charger in the front console. (R. 731, 735-37). According to Appellant, she stabbed Victim as they were fighting in the front seat. (R. 739). Soon thereafter, Appellant claimed Victim told her to make up a story regarding how he was stabbed. (R. 743). On cross examination, Appellant admitted her story about Victim being stabbed at the gas station was a lie and admitted she didn't tell law enforcement about Antoinette's role in the evening. (R. 763, 767-68).

Appellant also presented the testimony of Dr. Whitney Danso. Dr. Danso administered two diagnostic tests to Appellant and diagnosed Appellant with Post Traumatic Stress Disorder (PTSD) as a result. (R. 790-91). In rebuttal, the State presented the testimony of clinical psychologist Robert Charles Nelson. Nelson doubted Appellant's PTSD diagnosis and determined that the diagnostic tests administered by Dr. Danso indicated Appellant was malingering. (R. 921-22, 929). At the conclusion of trial, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter.

STANDARD OF REVIEW

"The law to be charged must be determined from the evidence presented at trial." State v. Crosby, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003). "A trial judge must charge a lesser included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense." State v. White, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Sims, 426 S.C. 115, 129, 825 S.E.2d 731, 738 (Ct. App. 2019) (quoting Cook v. State, 415 S.C. 551, 556, 784 S.E.2d 665, 667 (2015)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Id.

ARGUMENT

The trial judge did not err in instructing the jury on the lesser included offense of voluntary manslaughter because evidence existed from which the jury could infer that Appellant killed Victim in the heat of passion upon sufficient legal provocation.

Appellant contends the trial judge erred in charging the jury on the lesser included offense of voluntary manslaughter because there was no evidence Appellant stabbed Victim in the sudden heat of passion upon sufficient legal provocation. Appellant argues there was only evidence that she acted with malice or that she acted in self-defense. Appellant's argument ignores her own testimony and the testimony of Antoinette Vereen. Antoinette testified that Appellant was jealous of her relationship with Victim and that jealously was manifested in angry statements made by Appellant when the trio left Denny's, Appellant's physical assault of Victim in the car, and Appellant's angry demeanor when they reached Antoinette's house. (R. 362-72). Antoinette also testified that despite Appellant's jealousy, she sent text messages to Victim saying she loved him within minutes of Victim arriving at the hospital with the stab wounds inflicted by Appellant. (R. 363-66). While Appellant denied hitting Victim in the car, Appellant claimed that Victim grabbed her and pulled her into the front seat and began to hit her. (R. 731, 736-39). Thus, there was evidence before the trial judge that Appellant was angry at Victim over marital infidelity just prior to Appellant stabbing Victim and that Appellant and Victim were engaged in a physical altercation before the stabbing. Accordingly, the trial judge properly instructed the jury on the lesser included offense of voluntary manslaughter because evidence existed from which the jury could infer that Appellant killed Victim in the heat of passion upon sufficient legal provocation.

"To justify charging [a] lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 607,

635 S.E.2d 669, 673 (Ct. App. 2006). "The court looks to the totality of the evidence in evaluating whether such an inference has been created." Id. "A trial judge must charge a lesser included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense." White, 361 S.C. at 412, 605 S.E.2d at 542. "In determining whether the evidence requires a charge on a lesser included offense, the court views the facts in a light most favorable to the defendant." State v. Brayboy, 387 S.C. 174, 179, 691 S.E.2d 482, 485 (Ct. App. 2010).

Voluntary manslaughter is a lesser included offense of murder. State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014). "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). "Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing." State v. Pittman, 373 S.C. 527, 572, 647 S.E.2d 144, 167 (2007). "In determining whether the act which cause death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951).

Fighting is sufficient legal provocation to warrant a voluntary manslaughter instruction. State v. Davis, 278 S.C. 544, 546, 298 S.E.2d 778, 779 (1983). "An overt, threatening act or physical encounter may constitute sufficient legal provocation." State v. Hernandez, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (2010). "Adultery may, in some instances, serve as 'sufficient legal provocation.'" State v. Gadsden, 314 S.C. 229, 233, 442 S.E.2d 594, 597 (1994).

"The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). "Even when a person's passion has been sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable person would have cooled, the killing would be murder and not manslaughter." State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001). "Whether an accused cooled off prior to a violent act must be determined by a review of all the circumstances surrounding the event and the people involved." Hernandez, 386 S.C. at 661, 690 S.E.2d at 585.

Here the trial judge made the following ruling on the State's request to charge the jury on the offense of voluntary manslaughter:

> All right, sir. I'm going to charge voluntary manslaughter. I do believe there is some evidence in the record to—there is evidence in the record that it could've occurred based on the heat of passion and sufficient legal provocation. Again, referring to some of the testimony that I talked about at the—in denying the motion for directed verdict[2], that same evidence would also indicate voluntary manslaughter, and I'm going to charge that to the jury and charge that them to (sic) as lessor included offense.

(R. 957, line 23-R. 958, line 6). The trial judge further elaborated on the specific facts that led to his ruling:

> All right. Yesterday we were talking about murder and voluntary manslaughter, and there's two notes that I have put down and I forgot to put them in the record.

[2] When ruling on Appellant's motion for a directed verdict, the trial judge noted his role was not "to judge the credibility or the believability of the testimony and the evidence presented. My job is to look at whether or not the evidence exists." (R. 955, lines 1-3).

> Again, I'm referring to all of the evidence in the case when I made those decisions about charging murder and voluntary manslaughter. But I did want to note there were two other comments or statements that were made in this case by the witness, and basically, the third party involved that night when she indicated that at the—leaving the Denny's, when she said that the defendant struck the victim. She also made the comment that you should have married her and not me. And then when they got to the—her residence and they dropped her off, she asked the defendant, are you getting into the seat, into the front seat and the defendant answered, no, with an attitude. So, all that just goes to those things that we talked about in deciding about murder and voluntary manslaughter.

(R. 969, line 21-R. 970, line 12).

The aforementioned rulings show the trial judge properly determined that evidence existed from which the jury could conclude that Appellant killed Victim in the heat of passion upon sufficient legal provocation. Because both heat of passion and sufficient legal provocation must be present to warrant a charge on voluntary manslaughter, it is instructive to address each element separately.

Heat of Passion

Here, the trial judge was presented with evidence regarding the unique nature of Appellant and Victim's relationship, the testimony of Antoinette as well as Appellant's own text messages showing her state of mind just prior to the stabbing, and a timeline of events showing that Appellant had very little time to cool down and reflect on her actions. Appellant freely admitted she and Victim were in an open relationship. (State's Exhibit #89). Despite the openness of their relationship, Appellant was not immune from the jealousy that may arise in a polyamorous relationship. Antoinette testified that Appellant attempted to kiss her three times throughout the night, but Appellant's attempts were not reciprocated by Antoinette. (R. 352-58). Antoinette opined that Appellant was jealous of Antoinette and Victim's relationship because Appellant wanted Antoinette all for herself. (R. 372). Appellant's anger and jealously was demonstrated in her assault of Victim that was accompanied by the comment "you shouldn't

have married me; you should've married her." (R. 362, lines 19-20). Appellant was apparently still angry when the trio arrived at Antoinette's home and Appellant refused to move to the front seat. (R. 364). Appellant's behavior was further demonstrated by Officer Martin's interaction with her in the immediate aftermath of the stabbing and his description of Appellant's demeanor as "hysterical" and "belligerent." (State's Exhibit #1, R. 273, lines 10-11).

In addition to Antoinette's testimony, the trial judge had Appellant's text messages to consider as evidence that Appellant was acting in the heat of passion. The State produced a text message sent from Appellant's phone approximately two months before Victim's death where Appellant confided to a friend "I can overlook a lot but after a while, **I just snap**..." (R. 532, lines 19-20). Appellant also sent a message to her father at 5:06 AM that threatened physical harm upon Victim the next time he came to Baltimore. (R. 514, lines 17-21). This text message was evidence of both Appellant's anger towards Victim and her wish to inflict physical violence upon Victim in the minutes immediately before she stabbed him.

In addition to evidence of Appellant's angry state of mind just prior to the stabbing, the trial judge had evidence of how little time Appellant had to cool down from her anger. Antoinette estimated that she, Victim, and Appellant left Denny's at approximately 4:57 AM. (R. 367). Victim took her straight home and she arrived at her home approximately 5:09 AM. (R. 368). A few minutes after she went inside her home, Antoinette texted Victim that she loved him at 5:13 AM. (R. 368). At approximately 5:19 AM, or ten minutes after Appellant and Victim dropped off Antoinette at her home, Victim arrived at the hospital with two stab wounds. (R. 298). Appellant would later claim she remembered the events leading up to the stabbing but did not remember the stabbing itself. (State's Exhibit #89 02:09:20-02:09:30). Therefore, there was evidence before the trial judge, that over an approximately ten minute period of time, Appellant

was so angry with Victim she could not remember stabbing him later. This was evidence that Appellant experienced an uncontrollable impulse to do violence. When considering the testimony of Antoinette, Appellant's text messages, and the short timeline of events, the trial judge appropriately concluded that evidence existed from which the jury could infer that Appellant was acting under the heat of passion when she stabbed Victim.

Sufficient Legal Provocation

The trial judge was presented with evidence of sufficient legal provocation from both the State and the defense. Antoinette testified that Appellant hit Victim inside their car and then said "you shouldn't have married me; you should've married her." (R. 362, lines 19-20). Thus, Antoinette's testimony alone establishes a physical confrontation between Appellant and Victim regarding Victim's infidelity. Even if the jury were to disbelieve Antoinette's testimony, Appellant freely admitted in her own testimony that she and Victim had a physical altercation after Victim pulled her into the front seat of the car. (R. 736-39). Therefore, while Appellant claimed she was acting in self-defense in response to Victim's physical aggression, her testimony is evidence from which a jury could determine that she stabbed Victim upon sufficient legal provocation. Voluntary manslaughter and self-defense are not mutually exclusive. See State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998) (finding the State presented sufficient evidence to create an jury issue regarding whether defendant was acting in self-defense or was guilty of voluntary manslaughter). The jury could have believed Appellant's testimony that Victim assaulted her in the car, but still determine that she did not satisfy the four elements of self-defense but rather killed Appellant after sufficient legal provocation. The trial judge appropriately declined to weigh the evidence presented and merely concluded that evidence existed from which a jury could infer that Appellant acted upon sufficient legal provocation.

Because evidence existed that Appellant stabbed Victim while in the heat of passion upon sufficient legal provocation, the trial judge properly instructed the jury on the lesser included offense of voluntary manslaughter. Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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