THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS
THE HONORABLE DANIEL F. PIEPER
CIRCUIT COURT JUDGE

Opinion No. 4440
(S.C. Ct. App. filed October 7, 2008)

Ted Corbett.....Petitioner,

v.

Jordan William Weaver, a minor over the age of fourteen (14) years,
and Michael Joel Weaver Defendants,

Of whom Michael Joel Weaver is the .....Respondent.

BRIEF OF PETITIONER

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ATTORNEYS FOR PETITIONER

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certify that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on December 19, 2008. On January 7, 2009, Petitioner filed a Petition for *Writ of Certiorari*. The Supreme Court granted the Petition for *Writ of Certiorari* on June 24, 2009.

QUESTIONS PRESENTED

I. DID THE COURT OF APPEALS ERR IN AFFIRMING THE DECISION OF THE TRIAL COURT TO SUBMIT THE APPLICABILITY OF THE FAMILY PURPOSE DOCTRINE TO THE JURY WHEN ALL ELEMENTS OF THE DOCTRINE WERE ADMITTED BY BOTH DEFENDANTS IN THEIR PLEADINGS OR CONCEDED AT TRIAL?

II. DID THE COURT OF APPEALS DISREGARD CONTROLLING PRECEDENT ESTABLISHING THE ELEMENTS OF THE FAMILY PURPOSE DOCTRINE, SINCE ALL ELEMENTS OF THE DOCTRINE, AS RECOGNIZED BY SOUTH CAROLINA, HAD BEEN ESTABLISHED AS A MATTER OF LAW IN THIS CASE?

STATEMENT OF THE CASE

This action, arising out of a motor vehicle accident, was commenced by the filing of a Summons and Complaint on January 25, 2005 **(R. p. 4)**. The Plaintiff sought damages against the Defendants based upon negligence and application of the Family Purpose Doctrine. The Defendants filed an Answer dated March 11, 2005. **(R. p. 11)**, which admitted the details of the accident, denied the extent of damages, and denied that the Defendant Michael Joel Weaver ("Father") should be vicariously responsible for the negligence of the minor Defendant Jordan William Weaver ("Son"), pursuant to the Family Purpose Doctrine. **(R. p. 11, line 141)** . This case was tried before a jury on April 2, 2007. The son's negligence and liability were admitted. **(R. p. 122, lines 11 - 13)**. The Plaintiff, as a part of his case in chief, published to the jury portions of the depositions of both Defendants. The Defendants, immediately thereafter, published other portions. **(R.p. 31, line 39)**. The Defendants offered no other evidence and rested. **(R.p. 93, lines 23-25)**. At the conclusion of Plaintiff's case in chief, and after the Defendants had rested, the Plaintiff moved for a directed verdict against the Father pursuant to the Family Purpose Doctrine. **(R. p. 94, line 1 - p. 99, line 14)** . Plaintiff's Motion was denied, and the issues of damages and application of the Family Purpose Doctrine were submitted to the jury. **(R. p. 99, lines 15 - 18)** . The jury returned a verdict on April 2, 2007, against the minor son for Two Million ($2,000,000.00) Dollars, and found in favor of the Father, awarding no damages against him. **(R. p. 138, lines 4 - 11)** . Plaintiff's Motion for a new trial as to the Father was made immediately upon return of the verdict. **(R. p. 139, line 22- p. 140, line 15)** . The Court denied the Motion on the record. **(R. p. 140, line 16 - p. 141,**

line 15) . Judgment was entered by the Court, on April 3, 2007. (**R. p. 1)** .

The Court of Appeals affirmed the decision of the Trial Court by Opinion filed October 7, 2008. **(Appendix, p. 2)**. Appellant filed a Petition for Rehearing, which was received by the Court of Appeals on October 20, 2008. **(Appendix, p. 8)**. On December 19, 2008, the Petition for Rehearing was denied. **(Appendix, p. 10)**. Petitioner filed a Petition for *Writ of Certiorari* on January 7, 2009, to review the decision of the Court of Appeals. Plaintiff's Petition for *Writ of Certiorari* was granted by Order of this Court dated June 24, 2009.

STATEMENT OF FACTS

This case arises out of an automobile accident which occurred on April 27, 2004. **(R. p. 31, line 25 - p. 32, line 4)**. The accident happened when the then fifteen (15) year old Defendant, Michael Jordan Weaver, stopped at a stop sign, but proceeded into the roadway when the roadway was not clear to do so. A collision occurred wherein the Plaintiff's vehicle rolled a number of times**. (R. p. 37, line 5 - p. 39, line 8; R. p. 39, line 22 - p. 40, line 3)**. The then fifty-five (55) year old Plaintiff sustained serious and permanent injuries. **(R. p. 70, lines 7 - 9)**. He is now a paraplegic having no use of his body from the nipple line down. **(R. p. 64, line 14 - p. 65, line 1)**. In order to ambulate in a wheelchair, the Plaintiff must be strapped in because he has no use of his abdominal muscles. **(R. p. 69, line 15 - p. 70, line 3)**. The Plaintiff has serious problems with bowel and bladder control. **(R. p. 68, lines 9 - 19)**. He suffers from what is described as "crippling pain" at all times. **(R. pp. 12-15)**. The Plaintiff takes extensive medications on an ongoing basis. **(R. p. 66, line 7 - p. 68, line 8)**.

By the time of the trial on April 2, 2007, the Plaintiff had accumulated Five Hundred Sixty-Eight Thousand Nine Hundred Fifty-Eight and 77/100 ($568,958.77) Dollars in actual medical bills. **(R. p. 48, line 19 - p. 49, line 3) (Plaintiff's Exhibit 1, R. pp.142-245)**. The Plaintiff had to depend on his girlfriend to pay his bills **(R. p. 62, lines 2 - 7)**, and she has done so to the limit of her ability.

Prior to the accident, the Plaintiff was in excellent health. **(R. p. 52, lines 18-23)**. The Plaintiff had "stick-built" his 1900 square foot home all by himself. **(R, p. 50, lines 15 - 20)**. At the time of the accident, the Plaintiff bought cars in a state of disrepair, physically upfitted them solely by himself, and re-sold them for profit. **(R. p. 53, lines 2 - 10)**. He also farmed and bailed hay for a living. **(R. p. 53, lines 11 - 17)**. The Plaintiff was a pilot and enjoyed motorcycling. **(R. p. 53, lines 24 - 25).**

The minor Defendant was fifteen (15) years old at the time of the accident. **(R. p. 39, line 25 - p. 40, line 1)**. He lived with his parents. **(R. p. 31, lines 15 - 17)**. He was a high school student. **(R. p. 32, lines 7 - 10)**. The Defendant, Michael Joel Weaver, the father of the minor Defendant, was the title owner of a 1994 Jeep Wrangler which, among other vehicles, he provided for the use of his family. **(R. p. 40, line 24 - p. 41, line 24)**. The minor Defendant usually drove the Jeep, which was the vehicle involved in the accident herein. **(R. p. 42, line 25 - p. 43, line 2)**. He normally drove this vehicle to school **(R. p. 33, lines 10 - 11)** and transported his younger brother to school for his parents. **(R. p. 34, lines 7 - 9)**. On the date of the accident, the Father had

specifically sent the minor son on an errand to purchase a part for the Father at the NAPA Auto Parts Store. **(R. p. 32, lines 8 - 15)**. The minor Defendant purchased the part, and on the return trip home, the wreck occurred. **(R. p. 35, line 22 - p. 36, line 2)**.

The Appellant sought verdicts against both the son and the father, pursuant to the Family Purpose Doctrine. Liability was stipulated as to the son.

ARGUMENT

I. SINCE ALL OF THE ELEMENTS OF THE FAMILY PURPOSE DOCTRINE WERE EITHER ADMITTED BY BOTH DEFENDANTS IN THEIR ANSWER OR CONCEDED AT TRIAL, THE TRIAL COURT ERRED IN SUBMITTING THE APPLICABILITY OF THE FAMILY PURPOSE DOCTRINE TO THE JURY, THE ERROR BEING THAT RULE 8(D) *SOUTH CAROLINA RULES OF CIVIL PROCEDURE* AND THE CONCEPT OF JUDICIAL ESTOPPEL SHOULD HAVE PRECLUDED SUBMISSION OF THE APPLICABILITY OF THE FAMILY PURPOSE DOCTRINE TO THE JURY.

A. The Court overlooked established law, which should have precluded consideration of evidence that the son was the owner of the 1994 Jeep Wrangler. The joint Answer filed on behalf of both Defendants admitted that the Father was the owner of the vehicle. The case of ***Postal v. Mann* 308 SC 385, 418 SE2d 322 (S. C. App. 1992)** stands for the proposition that parties are bound by their pleadings:

> It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action. ***Elrod v. All,* 243 S.C. 425, 134 S.E.2d 410 (1964)**.

The issue relating to ownership of the vehicle was not properly a jury issue.

B. The Court failed to consider the applicability of ***South Carolina Rules of Civil Procedure*** **Rule 8(d)** which provides that "averments in a pleading to which a responsive pleading is required, . . .are admitted when not denied in the responsive pleading." Application of this Rule should have precluded consideration of the ownership of the Jeep in this case. Paragraph 2 of Defendant's Answer admits each and every element of the Family Purpose Doctrine as pled by the Plaintiff. **(R.pp. 4-10)**.

C. The Father should have been judicially estopped from asserting at trial, or

on appeal, that he is not the owner of the 1994 Jeep vehicle driven by his son, Jordan Weaver, at the time of the accident based upon the admissions set forth in his Answer and his own testimony. The Complaint alleges in paragraph 2 that:

> At all times herein mentioned the Defendant Jordan William Weaver is and was a minor over the age of Fourteen (14) years. He is the Son of Defendant Michael Joel Weaver and heretofore has and now does reside with him and his Mother at the family home in Florence County, South Carolina. Further, at all times pertinent hereto the Defendant Michael Joel Weaver owned, maintained and furnished a 1994 Jeep motor vehicle for the general use and convenience of his family, including the minor Defendant Jordan William Weaver, his Son. At the times herein referenced, the Defendant provided the subject 1994 Jeep motor vehicle to his minor Son, Defendant Jordan William Weaver, for him to use, for his general use and convenience, as a family member, for general family purposes, and with his permission. **(R.p. 4-10)**.

The Answer of the Defendants, admitted the allegations of paragraph 2, without question or qualification. **(Answer dated March 11, 2005 R. p. 11-13)**. The case was tried in light of the admissions and Answer to the above allegations.

The foregoing admissions encompass the elements of (1) head of household; (2) ownership of vehicle; (3) use for general convenience of the family member; (4) authority of the family member to use the vehicle. The fifth element, the negligent operation of the vehicle, by the family member, was conceded at trial. **(R. p. 122, lines 3 - 24)**. The admissions as to the foregoing elements were confirmed by the testimony of the Father. The Father identified himself as the Father of the Co-Defendant, Jordan William Weaver. **(R. p. 39, lines 17 - 23)**. The Father admitted that the son lived in his home. **(R. p. 40, lines 1 - 5)**. He testified that "I've got three personal vehicles". **(R. p. 40, lines 22 - 25)**. The vehicles included the 1994 Jeep Wrangler involved in the accident. **(R. p. 41, lines 1 - 5) (R. p. 41, lines 19 - 24)**. He admitted that these three (3) vehicles were for his use, his wife's use, and the use of his children. **(R. p. 41, lines 6 - 8)**. Regarding which family member used what vehicle, the Defendant testified "We more or less used them as we needed to use them. It wasn't a personal vehicle". **(R. p. 41, lines 17 - 18)**. He was asked "Is that the Jeep that you're now on (Sic)." He responded in the affirmative. **(R. p. 41, lines 23 - 42)**.

The Father agreed that the Jeep was "sort of" a present to the son and that the minor Defendant would have used the Jeep the most. **(R. p. 42, line 20 - p. 43, line 2)**. The vehicle was titled to the father**. (R. p. 97, lines 9 - 13).**

At the conclusion of Defendant's case in chief, and after all of the evidence was in, the Plaintiff moved for a directed verdict against the father based upon the Family Purpose Doctrine. The Court denied the motion on the

ground that the jury might conclude that the Family Purpose Doctrine did not apply since it could conclude that the child himself was the owner of the vehicle. **(R. p. 94, line 1-p. 99, line 17)**. The case should be reversed, it is respectfully submitted, because the decision is wholly unsupported by the evidence, the admissions, and the pleadings. The decision of the Trial Court was controlled by an error of law, ***Creech v. South Carolina Wildlife and Marine Resources Department* 328 SC 24, 491 SE2d 571 (1997)**. For the same reasons the Court denied the Plaintiff's post trial motions. **(R. p. 140, line 16- p.141, line 8).**

The Lower Court found that under the evidence a genuine factual question existed as to whether the son owned the vehicle involved in the accident. It also found, on the other hand, that the jury could determine as a fact that the father had maintained control over the vehicle. Therefore, the Court concluded that it became a jury question as to whether the Family Purpose Doctrine operated to render the father vicariously responsible for the negligence of the son in this case. The Court of Appeals concurred.

The Answer filed by the Defendants admitted the allegations contained in paragraph 2 of the Complaint. **(R.p. 11)**. Paragraph 2 alleges that the Defendant father "owned, maintained and furnished a 1994 Jeep motor vehicle for the general use and convenience of his family, including the minor Defendant Jordan William Weaver, his Son". **(R.p. 7)**. Further, "at the times herein referenced, the Defendant provided the subject 1994 Jeep vehicle to his minor Son, Defendant Jordan William Weaver, for him to use, for his general

use and convenience, as a family member, for general family purposes, and with his permission". **(R.p. 7)**. The foregoing is consistent with the testimony of the father presented at trial. He specifically testified that:

Q. How many vehicles do you own for your personal use

A. I've got three personal vehicles. Do you want to kno

Q. Well, let's talk about your personal vehicles then we'll get into the farm. What are the three personal vehicles?

A. A 1995 Chevy Silverado pickup, a 1994 Chevy Blazer and a 1994 Jeep Wrangler.

Q. All right, sir. These personal vehicles are they for your use, your wife's use and the use of the children?

A. Yes, sir.

Q. Your Son, Jordan William Weaver, do you recall when he got his driver's license?

A. I sure don't remember the exact date.

Q. Would it have been when he was about 16?

A. Fifteen.

Q. Was there one of these particular vehicles that was assigned to his use or did all of you use them as you needed to use them?

A. We more or less used them as we needed to use them. It wasn't a personal vehicle.

D. The Respondent should have been judicially barred from taking a position

contrary to those set forth in his pleadings and contrary to his testimony.

The proof offered by a party at trial is dictated by the matters admitted or denied in the pleadings. A Plaintiff is prejudiced when the Defendant is allowed to take a position contrary to that set forth in his Answer and in his prior testimony. Had the Plaintiff known that the Defendant would be allowed to place the ownership of the vehicle in issue, despite the admissions made in his pleadings and his own testimony, the Plaintiff might have called witnesses relative to this issue. The Supreme Court recognized the doctrine of Judicial Estoppel in ***Hayne Federal Credit Union v. Bailey, et al.* 327 SC 242, 489 SE2d 472 (1997)**. "Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." The Court explained "when a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him". The Respondent admitted in his Answer that he owned the 1994 Jeep involved in the accident. He also testified at trial that the 1994 Jeep was one of his three (3) personal vehicles. The Defendant should have been judicially estopped from claiming at trial or on appeal that he is not the owner of the vehicle.

E. The Court misapprehended the testimony in the record regarding the family use of the 1994 Jeep. The Court overlooked the unequivocal testimony of both Defendants when it ruled that "Furthermore, because there was evidence the Jeep was not provided by Michael for the general use and convenience of the family, but rather was a gift to Jordan, a question of fact existed as to whether Michael should be held liable under the Family Purpose Doctrine." **(Appendix, p. 6)**. This is directly contrary to the testimony of the Respondent wherein he testified "we more or less used them as

we needed them. It wasn't a personal vehicle". **(R. p. 41, lines 14 - 18)**. The son, himself, testified that he "just normally drove the Jeep". The Record does not support the finding of the Court of Appeals.

F. The son testified that the 1994 Jeep was a gift to him from his father. **(R. p. 33)**. The father said he owned three (3) vehicles, including the 1994 Jeep. **(R. p. 41, lines 1 - 5)**. The father indicated that these three (3) vehicles were for his use, his wife's use, and the use of the children. **(R. p. 41, lines 6 - 8)**. When the father was asked whether any particular vehicle was assigned to the son's use, he said "we more or less used them as we needed to use them". **(R. p. 41, lines 14 - 17)**. "It wasn't a personal vehicle." He agreed with the statement that the Jeep was "sort of" a gift to the son. **(R., p. 42, lines 22 - 24)**.

The Court found that there was conflicting testimony regarding ownership of the vehicle because the jury could determine that the Jeep was a gift to the son. In order for a gift to take place, the donor must have a complete and unconditional intention to make a gift. The donor must evidence that intention by a complete and unconditional delivery. ***Warrell v. Lathan,* 324 SC 368, 478 SE2d 287 (1996)**. The son's (donee's) statement as to the intention to gift is not controlling. The father was clear that the vehicle was not personal to the son and that all three (3) vehicles were for the use of the entire family. He did agree that the vehicle was "sort of" a gift to Jordan. In order for a gift to occur, there must be a total relinquishment of control to the donee. In South Carolina, the evidence viewed as a whole does not support the conclusion that the father had given ownership of the Jeep, which remained titled to his name, to the son. The Court of Appeals overlooked the established law concerning gifts in South

Carolina.

G. For the reasons set forth hereinabove, and based upon the record, the Court

should have concluded that no factual issues regarding the ownership of the vehicle, or the family use of the vehicle, were properly before the Court. Accordingly, the Trial Court's decision to deny Plaintiff's Motion for a directed verdict on the Family Purpose Doctrine should be reversed because it was controlled by an error of law. ***Law v. S. C. Department of Corrections*** **368 SC 424, 629 SE2d 642 (2006)**.

H. The issues of ownership of the vehicle and family use of the vehicle should not have been submitted to the jury. The submission of these issues constituted an error of law. ***Folkens v. Hunt*** **300 SC 251, 387 SE2d 265 (1990)**. For these reasons, the decisions of the Lower Courts should be reversed.

II. THE DECISION OF THE TRIAL COURT TO SUBMIT THE APPLICABILITY OF THE FAMILY PURPOSE DOCTRINE TO THE JURY IN THIS CASE EFFECTIVELY DISREGARDS OR OVERRULES PRIOR DECISIONS OF THE COURT ESTABLISHING THE APPLICABILITY OF THE FAMILY PURPOSE DOCTRINE.

Where the Court has denied a Motion for directed verdict, the decision of the Trial Court will be sustained where there is conflicting evidence on an evidentiary issue. ***Creech v. South Carolina Wildlife & Marine Resources Department*** **328 SC 24, 491**

SE2d 571 (1997). This is true because neither the Trial Court nor the Appellate Court has authority to decide conflicts in the testimony or evidence. ***Reiland v. Southland Equipment Serv. Inc*. 330 SC 617, 500 SE2d 145 (Ct. App. 1988)**.

In this case, the Trial Court and the Court of Appeals determined that there was conflicting evidence as to whether the Respondent was the owner of the vehicle involved in the accident. **(Opinion No. 4440); (Appendix, p. 6)**. Both the Trial Court and the Court of Appeals overlook the fact that the concept of Judicial Estoppel and **Rule 8(d)** ***South Carolina Rules of Civil Procedure*** should have eliminated this issue from consideration. The decision of the Trial Court is properly reversed where no competent evidence supports the ruling below or when the ruling is controlled by an error of law. ***Creech v. South Carolina Wildlife and Marine Resources Department* 328 SC 24, 491 SE2d 571 (1997)**.

The issue of ownership of the vehicle was not properly a subject for the Court or the jury to decide in view of the admissions made in the pleadings and at trial. Beyond all legal fiction, the child herein was specifically embarked upon a mission as agent of the father when the accident occurred. If the Family Purpose Doctrine does not impose liability under the facts before this Court, the Doctrine has effectively been decimated. **(Record p. 129, line 22 - p. 130, line 4)**. The case of ***Evans v. Stewart* 370 SC 522, 636 SC2d 632 (Ct. App. 2006)** establishes the elements necessary to the application of the Family Purpose Doctrine. All elements of the Family Purpose Doctrine having been established as a matter of law in this case, the issue of the applicability of the Doctrine should never have been submitted to the jury.

The Father relies upon the case of ***Evans v. Stewart*** **370 SC 522, 636 SE2d 632 (Ct. App. 2006)** as authority for the proposition that title ownership of the vehicle is not dispositive. The case does support that proposition. Under all of the facts in that case the Court found that the Mother, who held legal title to the vehicle, was not the owner because she DID NOT FURNISH AND MAINTAIN IT FOR THE GENERAL USE AND CONVENIENCE OF THE FAMILY. This is not so in the case at bar. The testimony of the Father referenced above is exactly to the contrary. The facts of ***Evans*** show that the Mother did not furnish the vehicle for family usage. The child did not live in her home, he was self supporting, the child provided the bulk of the purchase price of the vehicle, the vehicle was not kept at the Mother's home, the Mother did not even know where her Son or the vehicle was at the time of the accident. He was emancipated and no longer a minor. In this case we have a teenage child, in high school, who lives in the home, the vehicle was one of the family vehicles which was used as needed by the family members. The car was "sort of" a gift to the child, the minor Defendant drove to school in the vehicle daily and transported his younger brother with him. Most importantly, on the day in question the Father sent his Son on an errand for him. Clearly the Father was directing the usage of the car that day. Upon the return trip home from the errand, while still in the process of completing the errand for his Father, the accident occurred. The child was clearly embarked on family business, at the behest and direction of the Father, in a family vehicle furnished by the Father,

when the accident occurred.

Furthermore, it seems ludicrous to suggest that the liability of the Father, under the facts of this case, should be determined by which of the three family vehicles the minor child chose to drive to run the errand for the Father.

It cannot be said that genuine questions of fact exist in this case warranting the Court's submission of the issue of applicability of the Family Purpose Doctrine to the jury. Where there are no genuine issues of fact the question becomes one of law for the Judge. ***Lucht v. Youngblood*, 266 SC 127, 221 SE2d 854 (1976)**. When this Court considers the testimony and the reasonable inferences to be drawn from the evidence, it will be clear that the decision by the Court was wholly unsupported by the evidence. ***Vinson v. Hartley* 324 SC 389, 477 SE2d 715 (Ct. App. 1996)**.

For the reasons set forth hereinabove, the trial Court should have ruled as a matter of law, it is respectfully submitted, that the Family Purpose Doctrine applied and should have granted Plaintiff's post trial motions.

CONCLUSION

For the reasons stated, Petitioner respectfully requests that this Court reverse the decision of the Court of Appeals as to the Respondent, Michael Joel Weaver.

Respectfully submitted:

July 20, 2009

Lake City, SC

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS
THE HONORABLE DANIEL F. PIEPER
CIRCUIT COURT JUDGE

Opinion No. 4440
(S.C. Ct. App. filed October 7, 2008)

Ted Corbett.....Petitioner,

v.

Jordan William Weaver, a minor over the age of fourteen (14) years, and Michael Joel Weaver Defendants,

Of whom Michael Joel Weaver is the .....Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the **BRIEF OF PETITIONER** complies with Supreme Court Order 2007-08-13-02 regarding Personal Data Identifiers and other sensitive information.

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Of whom Michael Joel Weaver is the .....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the **Brief of Petitioner** complies with Rule 208 (b), *SCACR*.

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