STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Greenwood County
Honorable Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE, Respondent,

vs.

KENNETH E. SOWELL, Petitioner,

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Petitioner's due process claim is not preserved for appellate review because it was never raised to and ruled upon by the trial judge.
2. The Court of Appeals correctly affirmed the trial court's ruling that Petitioner was in criminal contempt of court when he disclosed State Grand Jury information subject to a protective order.

STATEMENT OF THE CASE

On February 21, 2002, Bobby Joe Lewis (Lewis) was indicted by the State Grand Jury on a charge of Conspiracy to Distribute Methamphetamine arising out of activities occurring in Laurens and Greenwood Counties, South Carolina (R. pp. 33-34). A superseding indictment was filed on June 13, 2002, for the same charge. (R. pp. 35-36). The Court signed a protective order on March 4, 2002, and it was filed on March 5, 2002. (R. pp. 11-12). Sowell, as Lewis' attorney, filed a *Brady* motion requesting discovery from the prosecution. (R. p. 27). Along with that information, Sowell received the protective order of non-disclosure. (R. pp. 11-12). Further, it was explained to the attorneys, including Sowell, what was required by the protective order at a hearing held on March 8, 2002.

Subsequently, the State came into custody of tapes made by the Drug Enforcement Agency (DEA), in which there was conversation between Jim Molidore (Molidore), a Federal confidential informant, and Kenneth Curtis (Curtis), in which Curtis discusses information regarding the State Grand Jury's ongoing criminal investigation. Moreover, Curtis indicates on these tapes that his information concerning the investigation came from Sowell (tapes filed separately with the Court). Based upon this information, the State filed a Motion for Rule to Show Cause as to Criminal Contempt, which was dated and filed on September 20, 2002. (R. pp. 13-15). The purpose of this action was to determine whether Sowell was to be held in criminal contempt of court for willfully releasing grand jury information to a third party, Gene

Gore (Gore), without permission of the Court or without explaining the obligation of secrecy to Gore as required by the Protective Order.[1]

The non-jury contempt hearing was held before Judge Saunders on November 12, 2002. At this hearing the State was allowed to present evidence of why based upon the facts of this case that Sowell should be held in contempt based upon his actions. The State's position was that Sowell was given the State Grand Jury information pursuant to a protective order signed by Judge Saunders instructing the attorneys that received the information that it was being given pursuant to this protective order and the protective order bound Sowell to the secrecy provisions of South Carolina Code Section 14-7-1720. The State contended that if Sowell wanted to release the material to a used car salesman that he was going to use as a private investigator, Sowell needed to either explain the secrecy provisions of the Protective Order to Gore or that he needed to obtain an Protective Order to release this information. Sowell was given the opportunity to cross-examine the State's witnesses, present evidence, testify on his own behalf and argue his position to the Judge. At the conclusion of this hearing Judge Saunders verbally held the Sowell in contempt. Judge Saunders issued his Order dated November 19, 2002, and filed November 21, 2002, adjudging Sowell in contempt and sentencing him to serve a jail term of ninety days, suspended upon payment of a fine in the amount of $5,000. (R. pp. 4-6).

[1] Petitioner claims that he could have produced a copy of a letter to Judge Saunders to prove that no offense occurred. However, Petitioner requested that this Court consider additional information and that request was denied and therefore whether this letter actually was ever sent or in the possession of Petitioner at the time of the hearing before Judge Saunders is not properly before this Court. Additionally, Petitioner had the opportunity to present such evidence at the contempt hearing, if it did exist and if such a letter was actually sent to the Honorable Wyatt Saunders he would have had knowledge of this letter at the time of the hearing and would have taken that information into consideration when making his determining whether to hold the Petitioner in contempt.

Sowell filed a Motion to Reconsider dated November 20, 2002. (R. pp. 16-17). The Attorney General filed a Response to the Motion to Reconsider dated January 15, 2003. (R. pp. 20-23). Judge Saunders issued an Amended Order dated April 4, 2003, leaving all terms of the original order but reducing the fine to $2,500. (R. pp. 7-10).

On May 9, 2003, Sowell timely served Notice of Appeal, and on May 12, 2003, he timely filed such Notice of Appeal with the Clerk of the lower court. Oral arguments were held on November 10, 2004, and the Court of Appeals affirmed the trial judge's decision in an unpublished opinion. *State v. Sowell*, Op. No. 2005-UP-122 (S.C. Ct. App. filed Feb. 17, 2005). Petition for Rehearing was filed on March 2, 2005, and was denied by Order dated April 21, 2005.

Petitioner then filed a Writ of Certiorari to ask the Supreme Court to review his appeal. The Supreme Court granted the petition for a Writ of Certiorari by Order dated September 21, 2005.

STATEMENT OF FACTS

Ken Sowell, attorney and Appellant, was retained and paid to represent Lewis by funds delivered to Sowell by Lewis' wife. (R. p. 84, lines 1-2). Sowell was first contacted by Curtis, a client of Sowell, pertaining to an unrelated traffic charge. Sowell told Curtis that the first thing Lewis would do, if Lewis went to another attorney, would be to name Curtis as his source for illegal narcotics. (R. p. 57, lines 9-14). Sowell further told Curtis that he would not let Lewis "flip" on Curtis, and that he needed $25,000 to represent Lewis. (R. p. 57, lines 16-23). Curtis paid the $25,000 for Lewis' representation. (R. p. 57, lines 19-20).

Subsequently, Sowell decided to hire a private investigator. (R. p. 80, lines 13-16). Gore was hired as an investigator and was paid $5,000 by someone named Kevin, who was with Curtis. (R. p. 42, lines 2-7).

During this same time, the DEA was conducting their own investigation using a confidential informant by the name of Jim Molidore (Molidore). Unbeknownst to Curtis, Molidore was tape recording their conversations. The tapes are difficult to understand, however, it is clear from the tapes that Curtis is telling Molidore about the ongoing Grand Jury investigation. Curtis also told Molidore that he had obtained this information from Gore, who had obtained it from Sowell. The tapes also include a discussion in which Curtis admits that he paid Sowell to represent Lewis in order to be kept apprized of the ongoing State Grand Jury investigation, which he admits that he was by Gore, who obtained the information from Sowell. (R. p. 59, lines 16-18) (tapes filed separately with the Court).

Gore also testified that during the course of the investigation he told Curtis that they "know you as K.C.". (R. p. 53, lines 11-23). Gore also testified that while he was obtaining this information from Sowell he would show Curtis statements that that referred to Curtis as "K.C.". (R. p. 54, lines 13-24).

Gore met with Curtis showed him the statement and told him that an individual by the name of Floyd Eugene Ballew, a/k/a "Dooney" (Dooney) had given law enforcement Curtis' name, and that Dooney had revealed that Curtis was the drug supplier. He also informed him that "his name was all over the place" and "it looks like you're in a lot of trouble". He stated that after he read the statement Curtis did not comment, but immediately left Gore's office and did not return. (R. p. 54, line 13 – p. 55, line 17). Gore admitted that he relayed all this information to Curtis throughout the investigation and told Curtis when law enforcement discovered his true name, and further identified the person who gave the statement as Floyd Eugene Ballew, aka Dooney (Dooney). (R. p. 46, lines 2-14).

Curtis subsequently was arrested by the DEA and entered a plea before testifying in Lewis' second trial. (R. p. 56, lines 19-20).

It is well established that Sowell, who was paid by Curtis, released grand jury information without a court order or an explanation of the Protective Order to Gore, who was also paid by Curtis. Furthermore, it was established that Curtis, the target of the ongoing investigation, was kept informed of the evidence against him. This is supported by both Curtis and Gore's testimony. (R. p. 54, line 13 – p. 55, line 4; R. p. 63, lines 3-5). In Judge Saunders' Order finding Sowell in criminal contempt he held, "The State presented evidence that Curtis was the main target of this drug investigation and was the

source of the illegal narcotics. Curtis testified that he was kept apprized throughout the investigation of the material that pertained to him and paid Gore five thousand dollars to act as a private investigator for the Defendant." (R. p. 37).

The Court held Sowell to be in criminal contempt of court for disobedience of the Court's Protective Order dated the 4th of March, 2002, and the provisions of 14-7-1720 cited therein. (R. p. 86, line 25 – p. 87, line 4). Specifically, the Judge cites the portion of 14-7-1720 that states "any person may not disclose evidence except when permitted by a court for any purpose." (R. p. 87, lines 5-7). Judge Saunders added that the Court was "concerned about the violation and may not overlook it." (R. p. 87, lines 10-11). The Judge issued an Order filed November 21, 2002, in which he found that "the State of South Carolina established a record that was clear and specific as to the conduct upon which the contempt is based." (R. p. 5). Further, the Judge found beyond a reasonable doubt that Sowell was in criminal contempt of the Protective Order dated March 4, 2002, and that the release of discovery to Gore was a willful act. (R. p. 6).

ARGUMENT

I.

BECAUSE PETITIONER DID NOT RAISE HIS DUE PROCESS CLAIM TO THE TRIAL JUDGE, IT IS NOT PRESERVED FOR APPELLATE REVIEW.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). "Issues not raised and ruled upon in the trial court will not be considered on appeal." *Id*. at 142, 587 S.E.2d at 693-94. "The issue preservation requirement applies to assertions of constitutional violations as well." *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005). Accordingly, "[a] due process claim raised for the first time on appeal is not preserved." *Durlach v. Durlach*, 359 S.C. 64, 76, 596 S.E.2d 908, 915 (2004), citing *Bakala v. Bakala*, 352 S.C. 612, 625, 576 S.E.2d 156, 163 (2003).

The Petitioner failed to raise a due process claim to the trial judge or the Court of Appeals. He raises this issue for the first time in his Petition for Writ of Certiorari to the Supreme Court. Therefore, this claim is clearly not preserved for review.

Even if Petitioner had preserved this issue, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Tall Tower, Inc. v. South Carolina Procurement Review Panel*, 294 S.C. 225, 232, 363 S.E.2d 683, 686-87 (1987), citing *S.C. Nat'l Bank v. Central Carolina Livestock Market*, 289 S.C. 309, 345 S.E.2d 485 (1986). "Procedural due process requires notice and the opportunity to be heard." *Cameron & Barkley Co. v. South Carolina Procurement Review Panel*, 317 S.C. 437, 440, 454 S.E.2d 892, 894 (1995). Further, "[d]ue process requires that a litigant be placed on notice of the issues which the court is to consider."

Bass v. Bass, 272 S.C. 177, 180, 249 S.E.2d 905, 906 (1978); *Henry v. Henry*, 296 S.C. 285, 372 S.E.2d 104 (Ct. App. 1988). "A demonstration of substantial prejudice is required to establish a due process claim." *Tall Tower*, 394 S.C. at 233, 363 S.E.2d at 687.

In *Tall Tower*, there was no substantial prejudice where appellants were given notice of the issues to be determined, afforded an opportunity to be heard by presenting favorable witnesses, and were given the right to cross-examine adverse witnesses before a tribunal.

In this case, the Petitioner was given notice of the allegations against him when the State filed a Notice of Motion for Rule to Show Cause as to Criminal Contempt and had a hearing on the matter. *See Ballington v. Paxton*, 327 S.C. 372, 499 S.E.2d 882 (Ct. App. 1997) (Due process was not violated when Appellants were put on notice through section 15-37-10 and Rule 54(d) SCRCP that costs will be assessed against them if they do not prevail.); *see also Wagner v. Ezell*, 249 S.C. 421, 433, 154 S.E.2d 731, 737 (1967) (Court held that the particulars set forth in the rule to show cause adequately placed Wagner on notice as to the issues.).

In addition, the hearing held on November 12, 2002, afforded Petitioner ample opportunity to defend his interests, present favorable witnesses, cross-examine adverse witnesses, and otherwise have a meaningful opportunity to be heard. This is unlike the situation in *Beeks*, where mother was denied due process because she was not afforded opportunity to examine, cross-examine, defend her interests, or to be meaningfully heard. *South Carolina Dept. of Social Services v. Beeks*, 325 S.C. 243, 247, 481 S.E.2d 703

(1997). Thus, even though not preserved for appellate review, Petitioner's due process was not denied.

Similar to the Respondent in *Mitchell*, Sowell "has simply failed to avail himself of ample opportunity to appear and be heard." *Matter of Mitchell*, 283 S.C. 65, 67, 319 S.E.2d 705, 706 (1984).

II.

THE COURT OF APPEALS CORRECTLY AFFIRMED THE TRIAL COURT'S RULING THAT THE PETITIONER WAS IN CRIMINAL CONTEMPT OF COURT WHEN HE DISCLOSED STATE GRAND JURY INFORMATION SUBJECT TO A PROTECTIVE ORDER.

Petitioner asserts that the Court of Appeals erred in affirming the trial court's ruling that he was in criminal contempt of court when he disclosed State Grand Jury information subject to a protective order. (The State recognizes that Petitioner raised a number of issues but all the issues relate to whether the court properly concluded that he was in criminal contempt of court). The Court of Appeals properly affirmed the trial judge's ruling that Sowell was in criminal contempt of court.

As recognized by the Court of Appeals, Sowell did not challenge the validity of the protective order or the application of section 14-7-1720 to him. *State v. Sowell*, Op. No. 2005-UP-122 (S.C. Ct. App. filed Feb. 17, 2005). Therefore, this issue is not preserved for review. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693 (2003). Instead, Sowell's numerous issues raised center on whether the circuit court judge erred in finding him in criminal contempt.

"A finding of contempt rests within the sound discretion of the trial judge." *Henderson v. Henderson*, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989). "[T]his Court should reverse a decision regarding contempt only if it is without evidentiary support or the trial judge has abused his discretion." *Durlach v. Durlach*, 359 S.C. 64, 70, 596 S.E.2d 908, 912 (2004). "An abuse of discretion occurs either when the court is controlled by some error of law or where the order, based upon findings of fact, lacks

evidentiary support." *Townsend v. Townsend*, 356 S.C. 70, 73, 587 S.E.2d 118, 119 (Ct. App. 2003).

"The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982). "Willful disobedience of an Order of the Court may result in contempt." *Spartanburg County Dept. of Social Services v. Padgett*, 296 S.C. 79, 82, 370 S.E.2d 872, 874 (1988).

An act is willful if "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law." *Id*. at 82-3, 370 S.E.2d at 874. "Intent for purposes of criminal contempt is subjective, not objective, and must necessarily be ascertained from all the facts, words and circumstances surrounding the occurrence." *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994).

"In a criminal contempt proceeding, the State has the burden of proving the guilt of the defendant beyond a reasonable doubt." *State v. Bowers*, 270 S.C. 124,131, 241 S.E.2d 409, 412 (1978). "One may not be convicted of contempt for violating a court order which fails to tell him in definite terms what he must do." *Welchel v. Boyter*, 260 S.C. 418, 421, 196 S.E.2d 496, 498 (1973).

The secrecy of Grand Jury material cannot be overemphasized. "As long as the grand jury has been known to our judicial system, and that body came with the organization of our first courts, their acts and proceedings have been regarded as almost

sacredly secret." *State v. Rector*, 158 S.C. 212, 225, 155 S.E. 385, 390 (1930). "The stringent secrecy provisions contained in the Act [S.C. Code Ann. § 14-7-1720] mirror the view long held uniformly by courts nationwide that secrecy of grand jury proceedings is desirable and necessary." *Evans v. State*, 363 S.C. 495, 505, 611 S.E.2d 510, 515 (2005). As this Supreme Court has acknowledged, "We consistently have recognized that the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings." *Id*.

Some of the several interests promoted by the secrecy requirement of grand jury material are to protect witnesses who have provided testimony, to prevent witness tampering, and to prevent the escape of subjects who may be indicted. *Douglas Oil v. Petrol Stops Northwest*, 441 U.S. 211 (1979). In order to ensure these objectives were achieved in this case, the trial court issued a protective order to prevent the disclosure of grand jury information obtained through the discovery process from being disseminated. However, due to the petitioner's unauthorized disclosure, all three of the aforementioned objectives were compromised.

Special Agent Richard Gregory testified that Curtis was the target of an ongoing Grand Jury investigation. (R. p. 38, lines 2-6). As a result of Sowell's unauthorized disclosure to Gore, Curtis was informed by Gore of a cooperating witness who gave information about him to law enforcement. (R. p. 46, lines 2-17). In addition, Curtis testified that as a result of being kept apprized of the Grand Jury investigation, he moved his "meth lab" in order to avoid being caught. (R. p. 63, lines 6-24).

Notwithstanding the secrecy of grand jury information, "[a] defendant is entitled to review and reproduce recorded materials of those proceedings, subject to the

limitations contained in Sections 14-7-1720, 14-7-1770, and Rule 5, S.C.Crim.P." *Evans* at 506, 611 S.E.2d at 516 (2005), citing S.C. Code Ann. § 14-7-1700 (Supp. 2003). Section 14-7-1720 prohibits the Attorney General or his designee from disclosing state grand jury information except when directed by the court for one of five limited purposes. One of these purposes is "providing the defendant the materials to which he is entitled pursuant to Section 14-7-1700." S.C. Code Ann. § 14-7-1720(A)(4). Moreover, subsection (A) of 14-7-1720 mandates, "If the court orders disclosure of matters occurring before a state grand jury, the disclosure must be made in that manner, at that time, and under those conditions as the court directs."

In this case, disclosure of grand jury information was made by the Attorney General to the Petitioner pursuant to Section 14-7-1720(A)(4), subject to the mandatory conditions imposed by the judge through the protective order. The order stated:

> IT IS HEREBY ORDERED that the Attorney General is protected if he chooses to disclose to the attorney for the defendants in the above-captioned cases testimony taken in the State Grand Jury and interviews of witnesses and other documents in which must subsequently be disclosed under normal circumstances at trial. It is understood that the State Grand Jury material is being provided only for purposes of the trial of the above-captioned cases. *The attorney for the defendants and the defendants are bound by the secrecy provisions of § 14-7-1720.* (Emphasis added).
>
> IT IS FURTHER ORDERED that, pursuant to S.C. Code Ann. §§ 14-7-1700 and –1720(A) (Law. Co-op. 1976), the defendants and their attorneys are prohibited from photocopying any State Grand Jury testimony, interviews of witnesses and any other documents that may be disclosed to the defendants and their attorneys in the above-captioned cases. All such materials shall be completely destroyed at the conclusion of the case. Nothing in this order prohibits the defendants or their attorneys from using Brady material for purposes of preparing for trial.

By means of the protective order, the judge applied the secrecy provisions of section 14-7-1720 to Sowell, pursuant to the court's power to condition the disclosure of information under subsection (A). As such, the judge imposed on Sowell the secrecy provisions that

are applicable to the Attorney General under section 14-7-1720. Sowell then willfully violated the protective order when he disclosed the information to Gore without being directed by the court or explaining the secrecy requirement to Gore. In the contempt order, the judge found that "it was clearly established that the Defendant was not directed by the Court to release this information to Gore, nor did he explain the secrecy requirement of the Protective Order." (R. p. 6).

The trial judge did not abuse his discretion in finding Sowell in criminal contempt. The judge's finding was supported by ample evidence in the record and was not based on an error of law, and therefore should not be reversed. *See Durlach,* 359 S.C. at 70, 596 S.E.2d at 912 (2004); *see also Townsend*, 356 S.C. at 73, 587 S.E.2d at 119 (Ct. App. 2003). In determining Sowell willfully violated the protective order, the judge found the State presented clear and specific evidence of Sowell's conduct and that Sowell was guilty beyond a reasonable doubt. *Sowell,* Op. No. 2005-UP-122 (S.C. Ct. App. filed Feb. 17, 2005). Thus, the Court of Appeals correctly held that "the judge's decision was not based on an error of law given he relied on the appropriate legal standards for a finding of contempt." *Id*.

In addition, the Court of Appeals correctly held that there is sufficient evidence to support the judge's ruling. The trial judge sat as the trier of facts. As stated in *Bowers*, in a criminal contempt proceeding in which the trial judge sits as trier of the facts, "[w]here there is sufficient evidence worthy of belief, this Court will not disturb those findings." 270 S.C. at 131, 241 S.E.2d at 412.

In this case, there is ample evidence in the record to support the judge's ruling. The trial court held, and the Court of Appeals affirmed that, "There is no dispute that

Sowell failed to inform the court that he disclosed the grand jury material to Gore until prompted by the State's motion for a rule to show cause," and that "Sowell failed to explain to Gore the obligation of secrecy." *Sowell*, Op. No. 2005-UP-122 (S.C. Ct. App. filed Feb. 17, 2005). In support of this ruling, the trial judge found Gore and Curtis to be more credible witnesses than Sowell. *Id*. In fact, the most convincing evidence that Sowell could proffer was his own testimony. The fact finder is given broad discretion in determining the credibility or believability of a witness. *See Small v. Pioneer Machinery, Inc*., 329 S.C. 448, 494 S.E.2d 835 (1997). On appeal, this Court is not required to ignore the fact that the trial judge, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. *See Cherry v. Thomasson*, 276 S.C. 524, 525, 280 S.E.2d 541, 541 (1981)

Additional supporting evidence can be found throughout the record. Gore testified that when Sowell left the grand jury information with him, he was not given any instructions. (R. p. 43, line 24 – p. 44, line 3). Further, the judge stated "Gore admits that the information contained in this material was related to Mr. Kenny Curtis, specifically he testified that when the Defendant was named by a cooperating witness he told Curtis about this statement." *Sowell*, Op. No. 2005-UP-122 (S.C. Ct. App. filed Feb. 17, 2005); (R. p. 46, lines 2-14; R. p. 54, line 13 – p. 55, line 4). In addition to Gore's testimony, Curtis testified that he was kept apprized of the Grand Jury investigation by Gore. (R. p. 63, lines 3-5). On the DEA tapes that were played for the Court and made part of the record, Curtis discusses Grand Jury information that he received from Gore, who received the information from Sowell. Curtis further testified that as a result of the information he received through Gore, he moved his methamphetamine lab because of

fear of getting caught. (R. p. 63, lines 6-22). Based on the evidence in the record, the Court of Appeals correctly affirmed the trial judge's ruling and held that the judge did not abuse his discretion in holding Sowell in criminal contempt.

Every attorney is charged with the duty of confidentiality and responsibility to give appropriate instruction and supervision to non-lawyer assistants concerning the obligation not to disclose confidential information. *See* Rule 407, SCACR, Rule 5.3, RPC, comment 1. Surely an attorney should even give greater precautionary warnings concerning the disclosure of highly secretive State Grand Jury material to a non-employee private investigator. Sowell, however, failed to give any such instructions or seek approval from the court, even after being specifically required to by the protective order. As stated by the Court of Appeals, "By requiring defense counsel to proceed through the proper channels, similar to the State, the court will be able to preserve the sanctity of grand jury material." *Sowell*, Op. No. 2005-UP-122 (S.C. Ct. App. filed Feb. 17, 2005).

CONCLUSION

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

Respectfully submitted,

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BY:_____
ATTORNEYS FOR RESPONDENT

Columbia, SC

January 17, 2006

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Greenwood County

Honorable Wyatt T. Saunders, Jr., Judge

THE STATE,

Respondent,

vs.

KENNETH E. SOWELL,

Petitioner.

PROOF OF SERVICE

I, Jennifer D. Evans, Counsel for the Respondent, certify that I have served the within Brief of Respondent on Petitioner by depositing three (3) copies of the same in the United States mail, postage prepaid, addressed to him as follows: Kenneth E. Sowell, Esquire, 212 North Avenue, Anderson, SC 29625.

I further certify that all parties required by Rule to be served have been served.

This 17th day of January, 2006.

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