STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2013-000615

THE STATE,

Petitioner,

vs.

CHRISTOPHER BROADNAX,

Respondent.

BRIEF OF PETITIONER

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III.

Furthermore, the Court of Appeals erred in not applying the harmless error standard because any error in admitting Respondent's armed robbery convictions was harmless due to the overwhelming evidence of guilt.

STATEMENT OF THE CASE

Procedural History

In November 2009, a Richland County Grand Jury indicted Respondent on the charges of armed robbery and four counts of kidnapping. On June 10, 2010, Respondent proceeded to trial before the Honorable G. Thomas Cooper, Jr. Attorneys James May and Charles Cochran represented Respondent. Attorneys Kathryn Luck Campbell and Nicole Simpson represented the State.

On June 16, 2010, the jury found Respondent guilty as charged. Judge Cooper sentenced Respondent to the mandatory sentence of life without the possibility of parole based on Respondent's three prior armed robbery convictions. On June 23, 2010, Respondent served a Notice of Appeal.

On May 8, 2012, the Court of Appeals heard arguments on the matter. On January 9, 2013, the Court of Appeals issued an opinion in which it reversed Respondent's conviction and sentence and remanded the case for a new trial. State v. Broadnax, 401 S.C. 238, 736 S.E.2d 688 (Ct. App. 2013).

On February 1, 2013 Petitioner served a Petition for Rehearing. On February 22, 2013, the Court of Appeals issued an order denying the Petition for Rehearing.

Factual History

On May 24, 2009, Respondent entered a Church's Fried Chicken and held four of the employees at gunpoint while he stole the money in the cash register. (R. pp. 91-99, R. pp. 147-156.)

At trial, the State presented testimony from two of the victims who positively identified Respondent as the armed assailant. (R. pp. 137-138; R. p. 162). The victims testified that the robber pointed a silver automatic gun at the victims. (R. p. 95; R. pp.

111-112, R. p. 159.) Additionally, the two victims described the robber as a black male with a lazy eye, who wore a striped shirt. (R. p. 98; R. p. 101; R. p. 109; R. p. 122; R. p. 151; R. pp. 159-160.) The victims also testified that the robber put a mask on his face when he walked into the building. (R. p. 98; R. p. 122.)

After the robber exited the building, one of the victims saw the robber walk towards a gray Dodge truck. (R. pp. 103-106.) When the police pulled over the truck a few blocks from the Church's Fried Chicken within minutes of the robbery, they found Respondent crouching on the floorboard of the truck over a plastic bag. (R. pp. 191-192.) Respondent, who was wearing a striped shirt and had a lazy eye like the victims described, was lying on top of a silver gun, money, and a mask. (R. p. 212; R. p. 244; R. p. 246; R. p. 261.) One of the victims, Arthur Haynes ("Haynes"), was brought to the scene and confirmed the gray truck was indeed the one he had seen. (R. pp. 107-108.) Haynes also immediately identified Respondent as the perpetrator based on his clothing and physical features, specifically noting the lazy eye. (R. pp. 108-109; R. p. 138.)

Furthermore, Respondent's co-defendant, Charles Green ("Green") testified against Respondent at trial. The co-defendant testified that he took Respondent, who was wearing a striped shirt, to the Church's Fried Chicken and saw Respondent go inside the restaurant with a plastic bag. (R. p. 155; R. pp. 226-227.) Green reported that Respondent crouched down when he saw police cars. (R. p. 229.) Green was described as "a black male, older black male with a gray beard and a red shirt," whose appearance was drastically different than that of Respondent. (R. p. 212; R. p. 266.) Haynes and Kirby were clear that the man driving the truck was not the robber. (R. pp. 118-120, R. pp. 158-159.) An officer also noted they had seen no other gray Dodge trucks in the area during their pursuit of Green and Respondent. (R. p. 213.)

Before Respondent testified, the trial judge went over which convictions the State could use to impeach Respondent. (R. pp. 287.) The State told the trial court that it wanted to use Respondent's three prior convictions for armed robbery. (R. p. 287.) Respondent's trial counsel objected to the use of the prior armed robbery convictions. (R. pp. 292-296.) However, the trial judge ruled that the armed robbery convictions were admissible for impeachment purposes under Rule 609(a)(2), SCRE. (R. p. 298.)

ARGUMENT

I.

The Court of Appeals erred in holding that armed robbery is not a crime of dishonesty under Rule 609(a)(2), SCRE.

Petitioner asks this Court to grant certiorari because the Court of Appeals erred in holding that armed robbery is not crime of dishonesty under Rule 609(a)(2), SCRE. Additionally, the Court of Appeals erred in conducting its own Rule 609, SCRE, balancing test. If such test is necessary, the Court of Appeals should have remanded the case to the trial court in order for the trial judge to conduct an on-the-record balancing test because the trial judge was in the best position to weigh the evidence. Furthermore, even if the trial judge erred in admitting Respondent's prior armed robbery convictions, any error was harmless due to the overwhelming evidence of guilt against Respondent.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The reviewing court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

The admission or exclusion of evidence rests on the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. 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." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). Moreover, "[a] trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995); see also State v. Navy, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010) (stating appellate courts must uphold the trial court's findings regarding whether a defendant was in custody when statements were made if the trial judge's ruling is supported by the record).

The Court of Appeals erred in holding that armed robbery is not a crime of dishonesty under Rule 609(a)(2), SCRE. Armed robbery is a crime of dishonesty and automatically admissible under Rule 609(a)(2), SCRE.[1]

For the purposes of attacking the credibility of a witness, Rule 609(a)(2), SCRE provides the following: "[E]vidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment." Moreover, if the witness' prior conviction falls under Rule 609(a)(2), SCRE, the court does not have to engage in a probative versus prejudicial analysis. See State v. Bryant, 369 S.C. 511, 517, 633 S.E.2d 152, 155 (2006). Simply put, the prior conviction is automatically admissible if it falls under Rule 609(a)(2), SCRE. See Id.

Specifically, the Court of Appeals cited State v. Bryant, 369 S.C. at 517, 633 S.E.2d at 155, in support of its holding that the trial judge erred in admitting Respondent's prior armed robbery convictions for impeachment purposes under Rule 609(a)(2), SCRE. Although this Court in Bryant stated, "a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of

[1] Furthermore, Respondent waived his right to challenge the admissibility of his prior convictions in light of Ohler v. United States, 529 U.S. 753 (2000) (holding a party cannot introduce evidence and then complain on appeal that the evidence was erroneously admitted).

truthfulness[,]" the issue under consideration in that case was not whether a prior conviction for robbery was a crime of dishonesty under Rule 609(a)(2). See Bryant, 369 S.C. at 515, 633 S.E. 2d at 154. Instead, the issue in Bryant was whether or not the defendant's prior firearm conviction was properly admitted. Id. Thus, this Court's statement that "a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness" was merely dicta and not binding in future cases. See e.g., Humphrey's Ex'r v. United States, 295 U.S. 602, 627 (1935) (instructing dictum is not controlling but **may** be followed if sufficiently persuasive).

In the past, South Carolina courts have taken a favorable approach for Petitioner's position in applying Rule 609(a)(2), SCRE. In State v. Shaw, 328 S.C. 454, 456-57, 492 S.E.2d 402, 403-04 (Ct. App. 1997), the Court of Appeals specifically rejected the federal position in ruling that a shoplifting conviction involved dishonesty for purposes of Rule 609(a)(2). The Court stated:

> Common sense tells us that anyone who, in violation of the shoplifting statute, takes and carries away a storekeeper's merchandise with intent to deprive the owner of its possession without paying for it, or alters or removes a label or price tag in an attempt to buy a product at less than its value, or transfers merchandise from its proper container for the purpose of depriving a storekeeper of its value acts dishonestly. We, therefore, hold a prior conviction for shoplifting can be used to impeach a witness under Rule 609(a)(2), SCRE.

Id. at 456-57, 492 S.E.2d at 403-04. Furthermore, this Court expressly adopted the reasoning and holding in Shaw. See State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999).

Moreover, this Court in Bryant, the case which the Court of Appeals and Respondent primarily rely upon, expressly recognized shoplifting as a crime of

dishonesty. Bryant, 369 S.C. at 517, 633 S.E.2d at 155 ("Under Rule 609(a)(2), SCRE, if a crime is viewed as one involving dishonesty, the court must admit the prior conviction because, prior convictions involving dishonesty or false statement must be admitted regardless of their probative value or prejudicial effect. Thus, Petitioner's convictions for shoplifting and writing bad checks were properly admitted and Petitioner does not dispute this.").

It would thus seem, therefore, that if shoplifting, a form of stealing, is a crime of dishonesty, then armed robbery, which contains an element of larceny, is also a crime involving dishonesty.[2] See State v. Frazier, 386 S.C. 526, 533, 689 S.E.2d 610, 613-14 (2010); State v. Keith, 283 S.C. 597, 598, 325 S.E.2d 325, 325-26 (1985); S.C. Code Ann. § 16-11-330(a) (2008); see also State v. Colf, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) (citing Shaw, and stating: "Although theft-related convictions are probative of credibility . . . ."); See State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000). In discussing the issues, the Colf court noted: "The fact that *larceny reflects on credibility*

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[2] Section 16-13-110 (a)(1) of the South Carolina Code provides the following:

> (A) A person is guilty of shoplifting if he:
>
> (1) takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value[.]

S.C. Code Ann. §16-13-110 (a)(1).

Thus, subsection (a)(1) is essentially the crime of larceny. See State v. Sweat, 221 S.C. 270, 70 S.E.2d 324 (1952) (larceny is the trespassory taking and carrying away of the property of another with intent to steal); State v. Haynie, 221 S.C. 45, 68 S.E.2d 628 (1952) (larceny is always included in the offense of robbery).

and the importance of credibility are both factors the trial court should have weighed....") (emphasis added). Thus, this Court has indicated that larceny bears on credibility.

In another well-reasoned opinion, the Court of Appeals in State v. Al-Amin, 353 S.C. 405, 425, 578 S.E.2d 32, 43 (Ct. App. 2003), held that a prior conviction for armed robbery was admissible under Rule 609(a)(2), SCRE, as a crime of dishonesty. Id. at 425, 578 S.E.2d at 43. In reaching that decision, the court reasoned that "[t]o restrict the application of Rule 609(a)(2) only to those offenses which evidence an element of affirmative misstatement or misrepresentation of fact would be to ignore the plain meaning of the word 'dishonesty.'" Id. The court noted that the common definition for dishonesty is a "'disposition to lie, cheat, or steal.'" Id. (citations omitted).

Furthermore, while the comment to Rule 608, SCRE, mentions the restrictive *crimen falsi* definition in its discussion of the "probative of truthfulness or untruthfulness" standard for cross-examination with specific instances of conduct, the notes to Rule 609, SCRE, do not contain such a discussion despite their presence in the comments to Rule 609, FRE. This indicates an intent by the drafters of the South Carolina Rules of Evidence not to adopt the restrictive federal interpretation. See e.g., City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (" 'the canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or the alternative.' "") (citations omitted). Moreover, many courts have held that a prior robbery conviction is admissible under Rule 609(a) (2) as a crime involving dishonesty. [3]

[3] The following is a list of where the various state jurisdictions generally fall on the issue of whether robbery is a crime of dishonesty under Rule 609. Many states, of course, have variations on Rule 609, but the principles are generally applicable.

1. Out-of-State Authority

YES OR PROBABLY: AL, AK, AR, CO, CT, DE, DC, FL, ID, IL, IN, IA, KS, ME, MD, MI, MS, NV, NJ, NM, NY, NC, OH, OK, OR, PA, TN, TX, WA, WI

NO OR PROBABLY NOT: AZ, GA, LA, MT, ND, UT, VT, WY

DEPENDS ON FACTS: HI, MN, NH, NE, WV

N/A: CA, KY, MA, MO, RI, VA

UNCLEAR: SD

As evident, most states have found robbery to be a crime of dishonesty. See also Al-Amin, 353 S.C. at 416, 578 S.E.2d at 38. The following is a listing of all the states in alphabetical order with a short discussion of their relevant cases on this issue.

(1) **ALABAMA**: **PROBABLY**. The Alabama Court of Criminal Appeals held that 3rd degree theft qualified as a crime involving dishonesty. The Court recognized the contrary federal interpretation and legislative history, but concluded that its holding was more "logical" and consistent with the state's prior case law that theft was a crime of moral turpitude. Robbery was also a crime of moral turpitude, so the same reasoning should apply. The court also quoted a portion of its local civil procedure treatise which referred to looking at the underlying facts of the crime. Huffman v. State, arm (Ala. Crim. App. 1997), cert denied, (Ala. Nov. 21, 1997). My searches did not reveal any definitive statement by the Alabama Supreme Court.

(2) **ALASKA** **YES**. The Alaska Supreme Court recognized the contrary federal precedent, but still ruled that larceny and robbery "disclose the kind of dishonesty and unreliability which bear upon the veracity of persons perpetrating those crimes." Alexander v. State, 611 P.2d 469, 475 (Alaska 1980). See also Jensen v. Goreson, 881 P.2d 1119 (Alaska 1994) (holding that conspiracy to poach fish was a crime of dishonesty).

(3) **ARIZONA** **NO**. The Arizona courts have ruled that the crime must involve the element of deceit or falsification. State v. Malloy, 639 P.2d 315 (Ariz. 1981) (in banc) (burglary does not qualify); State v. Terrell, 753 P.2d 189 (Ariz. Ct. App. 1988) (superseded by statute on other grounds) (attempt to receive stolen property does not qualify).

(4) **ARKANSAS** **YES.** The Arkansas Supreme Court has held that theft, while not probative of truthfulness or untruthfulness under Ark. R. Evid. 608(b), which pertains to when specific instances of conduct may be used to impeach a witness, is a crime involving dishonesty. Laughlin v. State, 316 Ark. 489, 872 S.W.2d 848 (1994); Rhodes v. State, 276 Ark. 203, 634 S.W.2d 107 (1982). As such, the court has expressly allowed the use of prior theft convictions to impeach a witness's credibility under Rule 609(a)(2). See, e.g., Webster v. State, 284 Ark. 206, 680 S.W.2d 906 (1984) (allowing use of prior conviction for grand larceny without need to consider the prejudicial effect as a crime involving dishonesty); Floyd v. State, 278 Ark. 86, 643 S.W.2d 555 (1982) (allowing evidence of prior

convictions for burglary and theft under Rule 609(a)(2)); James v. State, 274 Ark. 162, 622 S.W.2d 669 (1981) (finding that prior convictions for grand larceny and theft involved dishonesty).

(5) **CALIFORNIA** — **N/A**. California uses moral turpitude. Robbery is a crime involving "moral turpitude" and thus is probative of a witness's credibility. People v. Collins, 722 P.2d 173 (Cal. 1986).

(6) **COLORADO** — **PROBABLY.** The Colorado Supreme Court held that shoplifting is a crime of dishonesty. People v. Segovia, 196 P.3d 1126 (Colo. 2008).

(7) **CONN.** — **YES.** Connecticut still uses case law-established evidentiary rules, but it has noted its rules roughly follow Rule 609. Crimes involving larcenous intent fall within its "dishonesty" category. State v. Dawkins, 681 A.2d 989 (Conn. 1996); State v. Banks, 755 A.2d 279 (Conn. App. Ct. 2000).

(8) **DELAWARE** — **YES**. Gregory v. State, 616 A.2d 1198 (Del. 1992) ("we have further defined the term 'dishonesty' as the act or practice of lying, deceiving, cheating, stealing or defrauding"); see also Paskins v. State, 655 A.2d 1225 (Del. 1995) (holding robbery is a crime of dishonesty).

(9) **D.C.** — **YES**. Bates v. United States, 403 A.2d 1159 (D.C. 1979) (noting that House Report for the DC statute includes robbery as crime involving dishonesty, and quoting with approval the D.C. Circuit in stating that acts such as stealing reflect on a man's honesty and trustworthiness).

(10) **FLORIDA** — **YES**. State v. Page, 449 So.2d 813 (Fla. 1984) (ruling that all crimes within the "Theft, Robbery, and Related Crimes" section of the criminal statutes involve dishonesty).

(11) **GEORGIA** — **NO**. See Adams v. State, 644 S.E.2d 426 (Ga. Ct. App. 2007) (holding prior conviction for misdemeanor theft by receiving stolen property is not a crime involving dishonesty within the meaning of OCGA § 24-9-84.1(a)(3); while adopting narrow view, does not preclude showing that crime was committed by deceitful means, and State bears burden of making such showing).

(12) **HAWAII** — **POSSIBLY (depends on facts)**. State v. Pacheco, 26 P.3d 572 (Haw. 2001).

(13) **IDAHO** — **PROBABLY**. Idaho's rule is different and requires that the crime not only be a felony but also relevant to the witness's credibility. In an older case under a slightly different rule, the court held burglary relevant to credibility and quoted with approval: "'On the other hand robbery, larceny, and burglary, while not showing a propensity to falsify, do disclose a disregard for the rights of others which might reasonably be expected to express itself in giving false testimony whenever it would be to the advantage of the witness. If the witness had no compunction against stealing another's property or taking it away from him by physical threat or force, it is hard to see why he would hesitate to obtain an advantage for himself or friend in a trial by giving false testimony. Furthermore, such criminal acts, although evidenced by a single conviction, may represent such a marked break from sanctioned conduct that it affords a reasonable basis of future prediction upon credibility....'" State v. Ybarra, 634 P.2d 435 (Idaho

1981). See also State v. Grist, 152 Idaho 786, 275 P.3d 12 (Idaho App. 2012)(current rule requires all potential prior used for impeachment subject to analysis of (1) whether fact or nature of conviction is relevant to credibility and (2) whether probative value outweighs prejudicial effect; crimes of theft and robbery fall into a middle category with "only a general relationship with honesty," but must review facts and circumstances of each case to determine whether a particular conviction is relevant to credibility; also noted that a theft or robbery statute requiring fraud or deceit may be stronger indicator of witness' credibility); State v. Griffith, 144 Idaho 356, 161 P.3d 675 (Idaho App. 2007)(grand theft conviction admitted).

(14) **ILLINOIS**

YES. Illinois's rule applies a "probative substantially outweighed by prejudice" standard to both the "one-year" and dishonesty categories. It has held that "crimes involving . . . stealing press heavily on the probative side of the scale," without need to look at the facts of each conviction and also has held that misdemeanor theft is a crime involving dishonesty. Torres v. Irving Press, Inc., 707 N.E.2d 248 (Ill. Ct. App. 1999).

(15) **INDIANA**

YES. Theft is a crime of dishonesty in a 609 analysis. Rowe v. State, 704 N.E.2d 1104 (Ind.App. 1999) (under common law burglary and theft convictions are admissible as involving dishonesty and reflecting upon credibility for truth and veracity; these convictions would also be admissible under Ind. Rule 609); Newman v. State, 719 N.E.2d 832 (Ind. Ct. App. 1999). Therefore, robbery should be a crime of dishonesty as well.

(16) **IOWA**

YES. Armed robbery is a crime of dishonesty in an impeachment analysis. State v. Latham, 366 N.W.2d 181 (Iowa 1985). See also State v. Mickens, 462 N.W.2d 296 (Iowa Ct. App. 1990) (theft is crime of dishonesty).

(17) **KANSAS**

YES. The rule in Kansas prevents use of convictions for impeachment unless the crime involves dishonesty or false statement. Also, such impeachment cannot be done against a testifying criminal defendant unless the defendant puts his credibility at issue. State v. Johnson, 907 P.2d 144 (Kan. Ct. App. 1995). A juvenile theft conviction involving dishonesty or false statement is admissible to attack the credibility of a witness following a sufficient proffer. State v. Mahkuk, 551 P.2d 869 (Kan. 1976). "Crimes which are impulsive or which are committed in the heat of passion, or crimes which are founded on negligence, or crimes which in no way reflect a dishonest nature, would not normally reflect on the credibility of the witness and should not be admissible. On the other hand, there are crimes which are inherently dishonest, whether because of their willful character, disregard for decency, or general lack of fairness." State v. Brown, 630 P.2d 731, 734 (Kan. Ct. App. 1981).

(18) **KENTUCKY**

N/A. Kentucky uses a case law-based system. Their old rule allowed impeachment only with "dishonest" felonies, including stealing. Now, however, identification of prior convictions can only be introduced if the witness denies any felony convictions during cross-examination. Commonwealth v. Richardson, 674 S.W.2d 515 (Ky. 1984).

(19) **LOUISIANA** — **PROBABLY NOT**. Louisiana's evidentiary statute is modeled after Rule 609. In one case, the court cited McCormick on Evidence for the proposition that crimes involving force, such as robbery, are not dishonest per se. Williams v. United Fire & Casualty Co., 594 So.2d 455 (La. Ct. App. 1991). The court has held that embezzlement by an employee is a crime of dishonesty, but embezzlement is an easy fit because of the employee's position of trust. Hebert v. Hartford Ins. Co., 649 So.2d 631 (La. Ct. App. 1994).

(20) **MAINE** — **YES**. Maine has Rule 609, but applies a pragmatic relevance test to both the "one-year" and dishonesty categories. Thus, the issue whether armed robbery is dishonest is generally moot because it also satisfies the "one-year" category. In any event, the courts have still held that robbery is "dishonest." State v. Charest, 424 A.2d 718, 719 (Me. 1981) ("Under Maine law, it is the category of the offense which establishes whether it is an offense involving dishonesty or false statement and not the underlying facts leading to the prior conviction.") (quoting State v. Gervais, 394 A.2d 1183, 1186 (Me. 1978) (" '[A]cts of deceit, fraud, cheating, or stealing ... are universally regarded as conduct which reflects adversely on ... honesty and integrity.' ") and State v. Toppi, 275 A.2d 805, 810 n. 5 (Me. 1971)). See also State v. Hanscome, 459 A.2d 569 (Me. 1983).

(21) **MARYLAND** — **PROBABLY**. Maryland has a modified version of Rule 609 which allows impeachment of "infamous crimes" (moral turpitude) as well as other crimes "relevant to the witnesses' credibility." A pragmatic relevance test is applied to both categories. Jackson v. State, 668 A.2d 8 (Md. Ct. App. 1995). The court has held that theft qualifies as *crimen falsi* because it is the "embodiment of deceitfulness." Beales v. State, 619 A.2d 105 (Md. Ct. App. 1993). Robbery has been held to qualify as an "infamous crime." Passamichali v. State, 569 A.2d 733 (Md. Ct. Spec. App. 1990).

(22) **MASS.** — **N/A**. Massachusetts has a markedly different rule in which various types of crimes (e.g. misdemeanor, felony with no or suspended sentence, felony with jail time) are excluded after certain time periods unless there were subsequent convictions. Mass. Gen L., ch. 233, § 21 (1999). The court has had no problems with impeachment with armed robbery, but, of course, whether it is a crime involving dishonesty is not a test under Massachusetts law. In a discussion on the subject, the court noted that while robbery was not as probative as perjury, robbery "does involve theft and is a serious crime that shows conscious disregard for the rights of others. Such conduct reflects more strongly on credibility than, say, crimes of impulse, or simple narcotics or weapons possession." But robbery "is generally less probative than crimes that involve deception or stealth." The court cited with approval a federal case which held that robbery does NOT fall within the automatic "dishonesty" category. Commonwealth v. Ruiz, 493 N.E.2d 511 (Mass. App. Ct. 1986).

(23) **MICHIGAN** — **YES**. Michigan's Rule 609 is different in that it specifically requires that the crime either contain an element of theft or be characterized as dishonest. Moreover, all crimes must satisfy the "one year" requirement. Rule 609, MRE. Thus, obviously armed robbery qualifies because it has an element of theft. However, one opinion stated that while robbery is less probative than other theft

offenses, it "is an indicator that [the] defendant is of dishonest character." People v. Cross, 508 N.W.2d 144, 146-47 (Mich. Ct. App. 1993).

(24) **MINNESOTA** — **POSSIBLY (depends on facts)**. Minnesota has held that robbery is not a crime of dishonesty. However, the court has noted that while shoplifting does not qualify as a crime involving dishonesty, theft by swindle does. The court has implied that the facts of the prior crime may decide the issue. State v. Sims, 526 N.W.2d 201 (Minn. 1994). Presumably such an argument could be made for an appropriate armed robbery.

(25) **MISS.** — **YES**. See Bogard v. State, 624 So.2d 1313, 1316 (Miss.1993) (noting that robbery conviction may be introduced pursuant to M.R.E. 609(a)(2) as crime of "dishonesty" for purpose of impeaching defendant's credibility as witness in his own behalf).

(26) **MISSOURI** — **N/A.** The Supreme Court of Missouri has interpreted § 491.050, its impeachment statute, as conferring an absolute right to use prior convictions of any witness, including the accused, in order to impeach his credibility in a subsequent criminal or civil case. State v. Giffin, 640 S.W.2d 128, 132 (Mo.1982).

(27) **MONTANA** — **NO.** Montana's Rule 609 provides that evidence of a criminal conviction is NOT admissible to impeach a witness. However, under Rule 608 Montana allows inquiry into specific instances of conduct, even though they might have ultimately resulted in a criminal conviction. Of these acts, burglary and theft do not qualify as dishonest acts sufficient to bring them within the "probative of truthfulness" standard in Rule 608(b). See, e.g. State v. Martin, 926 P.2d 1380 (Mont. 1996); State v. Gollehon, 864 P.2d 249 (Mont. 1993).

(28) **NEBRASKA** — **POSSIBLY (depends on facts)**. Nebraska's Rule 609 is similar to the federal rule, and its opinions have cited the various federal authorities to hold that only crimes of *crimen falsi* apply. The court has ruled however, that if inquiry into the facts show that a petit larceny involved **deceit or deception**, then the crime is *crimen falsi*. State v. Ellis, 303 N.W.2d 741 (Neb. 1981) (disapproved on other grounds (citation omitted)).

(29) **NEVADA** — **PROBABLY**. Nevada allows impeachment if a conviction is punishable by more than one year, and the crime is not more than one year old. There is no dishonesty category. However, the court has implied that a robbery conviction reflects on truthfulness, which enhances its probative value in a pragmatic relevance test. Wesley v. State, 916 P.2d 793 (Nev. 1996).

(30) **N.H.** — **DEPENDS ON FACTS.** See State v. Long, 12 A.3d 1289 (N.H. 2011). However, in Long, New Hampshire Supreme Court cited to an Ohio case, State v. Taliaferro, 2 Ohio App.3d 405, 442 N.E.2d 481, 482 (1981) ("We hold that the offenses of attempted forgery, petty theft and attempted receiving stolen property are offenses involving dishonesty and that the trial court therefore did not err in permitting the introduction into evidence of the defendant's prior convictions for those offenses for the purpose of impeaching his credibility.").

(31) **N.J.** — **YES**. New Jersey's Rule 609 allows impeachment with all criminal convictions unless excluded within the discretion of the trial judge. State v. Brunson, 625 A.2d 1085 (N.J. 1993). However, the court held under its old rules that an armed robbery conviction was a crime involving dishonesty and thus properly admitted for impeachment. State v. Pennington, 575 A.2d 816 (N.J. 1990).

(32) **N. MEXICO** — **YES**. Robbery has been held to be a crime of dishonesty under Rule 609. State v. Day, 617 P.2d 142 (N.M. 1980).

(33) **NEW YORK** — **YES**. Robbery and petit larceny are crimes of dishonesty and thus admissible for impeachment of a criminal defendant. People v. Moody, 645 N.Y.S.2d 375 (N.Y. App. Div. 1996).

(34) **N. CAR.** — **YES**. N.C.'s rule does not distinguish crimes of dishonesty and permits a broad range of offenses to be admitted to attack credibility. Nonetheless, it has been noted that robbery is a crime of dishonesty and therefore highly probative for impeachment under Rule 609. In one particular case, the court ruled that since the defendant's credibility was crucial to the case, an over-age robbery conviction was more probative than prejudicial. State v. Holston, 518 S.E.2d 216 (N.C. Ct. App. 1999) (citing State v. Lynch, 445 S.E.2d 581 (N.C. 1994)).

(35) **N. DAKOTA** — **NO**. The court, citing various federal authorities, has ruled that crimes of force, such as robbery, and crimes of stealth, such a burglary, are not crimes of dishonesty automatically admissible under Rule 609(a)(2). State v. Bohe, 447 N.W.2d 277 (N.D. 1989).

(36) **OHIO** — **YES**. The courts have ruled that theft is a crime of dishonesty under Rule 609, despite the Staff Note to the state rule indicating an intent to adopt the restrictive federal version. Ohio v. Tolliver, 514 N.E.2d 922 (Ohio Ct. App. 1986).

(37) **OKLAHOMA** — **PROBABLY**. Under Oklahoma's old impeachment statute, which also had the 609-style "dishonesty" and "one-year" categories, the court ruled breaking and entering to be a crime involving dishonesty. The court believed the crime dishonest because it involves the elements of intent to commit a felony, larceny, or malicious mischief. Parks v. State, 746 P.2d 200 (Okla. Crim. App. 1987).

(38) **OREGON** — **YES**. Oregon has held both theft and armed robbery to be crimes of dishonesty. State v. Gallant, 764 P.2d 920 (Or. 1988); State v. Sims, 692 P.2d 575 (Or. 1984).

(39) **PA.** — **YES**. Pennsylvania's 609 allows impeachment only if the crime involves dishonesty or false statement. Robbery is deemed to be a crime involving dishonesty. Commonwealth v. Jackson, 561 A.2d 335 (Pa. Sup. Ct. 1989).

(40) **R.I.** — **N/A**. Rhode Island allows conviction with any crime but requires an *in camera* offer of proof if the crime is a misdemeanor involving dishonesty. State v. Simpson, 606 A.2d 677 (R.I. 1992). There are no cases interpreting this statue and robbery.

(41) **S.D.** — **UNCLEAR**. No cases were found interpreting the dishonesty category in South Dakota's version of Rule 609.

(42) **TENN.** **YES**. Under Tennessee's version of Rule 609, robbery is a crime involving dishonesty. State v. Galmore, 994 S.W.2d 120 (Tenn. 1999).

(43) **TEXAS** **PROBABLY**. Texas's Rule 609 allows the use of felonies and crimes involving moral turpitude, after the judge performs a pragmatic relevance test. However, the impeachment value, or whether the crime involves dishonesty and deception, is a relevant factor in judging probativeness. Theus v. State, 845 S.W.2d 874 (Tex. Crim. App. 1992). Robbery has been held to constitute a crime of dishonesty, but the courts have said it is "unclear" whether robbery involves deception. Simpson v. State, 886 S.W.2d 449 (Tex. Ct. App. 1994); Wilson v. State, 1995 W.L. 232744 (Tex. Ct. App. 1995) (unpublished).

(44) **UTAH** **NO**. Utah has a similar version of Rule 609 but has held that robbery is not automatically admissible under the dishonesty category. State v. Morrell, 803 P.2d 292 (Utah Ct. App. 1990)(while not automatically admissible under 609(a)(2), opinion suggests inquiry may be made at court's discretion to determine if theft may be admissible under 609(a)(2) based on facts).

(45) **VERMONT** **PROBABLY NOT**. Vermont's Rule 609 allows impeachment with any crime if it either involves a statutory element of "untruthfulness or falsification" or is a "one-year" felony, and it passes a pragmatic relevance test. The Reporter's Comments to the rule note the intent to take the restrictive federal interpretation, and states that the word "untruthfulness" was deliberately used to avoid the flap over the meaning of "dishonesty". V.R.E. 609. See generally State v. Ashley, 623 A.2d 984 (Vt. 1993).

(46) **VIRGINIA** **N/A**. Virginia allows impeachment with either felonies, or misdemeanors involving moral turpitude. Luck v. Commonwealth, 515 S.E.2d 325 (Va. Ct. App. 1999); Johnson v. Commonwealth, 345 S.E.2d 343 (Va. Ct. App. 1986).

(47) **WASH.** **YES**. Washington has a version of Rule 609 similar to South Carolina's. Robbery is a crime of dishonesty and is therefore automatically admissible. State v. Rivers, 921 P.2d 495 (Wash. 1996).

(48) **W. VA.** **POSSIBLY (depends on facts)**. The court has discussed with approval the more restrictive federal interpretation that robbery is not a crime of dishonesty per se. However, the court has indicated that it will look at the facts of the underlying crime when making this determination. State v. Rahman, 483 S.E.2d 273 (W. Va. 1996); Wilkinson v. Bowser, 483 S.E.2d 92 (W. Va. 1996).

(49) **WISC.** **PROBABLY**. Wisconsin allows impeachment with any crime after application of a pragmatic relevance test. Wis. Stat § 906.09 (1999). In any event, at least one unpublished case has stated that robbery's probative value was enhanced because it is a crime involving dishonesty. State v. Fry, 1993 W.L. 38300 (Wisc. Ct. App. 1993) (unpublished).

(50) **WYO.** **PROBABLY NOT**. Wyoming has discussed with approval the restrictive federal definition of crimes amounting to dishonesty or false statement. Jones v. State, 735 P.2d 699 (Wyo. 1987). However, the court has indicated a willingness to look at the facts of the crime in determining its probativeness.

Miller v. State, 784 P.2d 209 (Wyo. 1989) (prior conviction more probative because it contradicted defendant's testimony on his use of aliases).

2. Federal Authority

(1) **1st Cir.** **POSSIBLY (depends on facts).** The First Circuit has held that robbery is not a crime of dishonesty per se. However, the court has noted that if it is shown the crime was committed by "fraudulent or deceitful" means, then it could qualify as automatically admissible under Rule 609(a)(2). United States v. Sullivan, 85 F.3d 743 (1st Cir. 1996) (theft); United States v. Levesque, 681 F.2d 75 (1st Cir. 1982); United States v. Grandmont, 680 F.2d 867 (1st Cir. 1982).

(2) **2nd Cir.** **POSSIBLY (depends on facts).** In an older opinion, the court cited with approval a D.C. Circuit opinion which concluded that attempted robbery was not a crime of dishonesty per se. United States v. Hawley, 554 F.2d 50 (2d Cir. 1977). However, the court has noted it "will look beyond the elements of the offense to determine whether the conviction rested upon facts establishing dishonesty or false statement." United States v. Payton, 159 F.3d 49 (2d Cir. 1998).

(3) **3rd Cir.** **NO.** The Third Circuit has indicated it will only look to the statutory elements in determining whether a crime involves dishonesty or false statement. Cree v. Hatcher, 969 F.2d 34 (3d Cir. 1992) (willful failure to file federal tax return NOT a crime involving dishonesty) (citing United States v. Lewis, 626 F.2d 940, 946 (D.C. Cir.1980)). But see United States v. Bianco, 419 F.Supp. 507, 508-09 (E.D.Pa.1976), aff'd, 547 F.2d 1164 (3d Cir. 1977) (unpublished).

(4) **4th Cir.** **PROBABLY NOT.** The court has cited with approval the restrictive interpretation generally given to "dishonesty" by federal authorities. Indeed, the court has held insufficient a conviction for "worthless checks" where nothing indicated the charges were for anything more than insufficient funds. United States v. Cunningham, 638 F.2d 696 (4th Cir. 1981). The court has also seemed only to engage in a analysis of the crime's elements rather than the underlying facts. United States v. Rogers, 853 F.2d 249 (4th Cir. 1988) (N.C.'s worthless checks statute contains elements of dishonesty); United States v. Blackshear, 1992 W.L. 36809 (4th Cir. 1992) (unpublished) (defendant does not contest finding that interstate transportation of stolen goods involves an element of dishonesty).

(5) **5th Cir.** **PROBABLY NOT (may depend on facts).** The Court has ruled that bank robbery does not fall within Rule 609(a)(2) despite earlier precedent implying the contrary. United States v. Preston, 608 F.2d 626, 638 n. 15 (5th Cir. 1979). See also Coursey v. Broadhurst, 888 F.2d 338 (5th Cir. 1989) (cattle theft not crime of dishonesty). But see United States v. Cathey, 591 F.2d 268, 276 n. 16 (5th Cir. 1979) (noting that certain petit larcenies involve dishonesty and the court must look at the underlying facts). But see United States v. Livingston, 816 F.2d 184 (5th Cir. 1987) (bad check conviction would be admissible but defendant failed to explain nature of crime or whether it involved intent to defraud).

As the Court of Appeals pointed out in Al-Amin,

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(6) **6th Cir.** — **NO**. Armed robbery is not a crime of dishonesty or false statement under Rule 609(a)(2). United States v. Scisney, 885 F.2d 325, 326 (6th Cir.1989).

(7) **7th Cir.** — **POSSIBLY (depends on facts)**. The court has indicated willingness to consider the facts of a theft conviction to determine whether the crime falls within dishonesty or false statement. United States v. Wiman, 77 F.3d 981 (7th Cir. 1995); United States v. Rodriguez, 62 F.3d 948 (7th Cir. 1995). United States v. Amaechi, 991 F.2d 374 (7th Cir. 1993) (noting that petty shoplifting is not a crime involving dishonesty, but left the question open on whether a more serious shoplifting qualifies).

(8) **8th Cir.** — **NO**. The court has stated that theft is not a crime involving dishonesty. "It involves stealth and a lack of respect for property rights, and is not characterized by deceit or deliberate interference with judicial truthseeking." United States v. Yeo, 739 F.2d 385 (8th Cir. 1984).

(9) **9th Cir.** — **NO**. Robbery is not a per se crime of dishonesty and thus it is inadmissible under Rule 609(a)(2). United States v. Alexander, 48 F.3d 1477 (9th Cir. 1995). But see United States v. Mehrmenesh, 689 F.2d 822 (9th Cir. 1982) (smuggling has conviction did not involve dishonesty when government did not present any facts demonstrating conviction actually involved fraud or deceit); see also United States v. Bracken, 969 F.2d 827 (9th Cir. 1992) (holding that armed robbery is not a crime of dishonesty per se).

(10) **10th Cir.** — **POSSIBLY (depends on facts)**. Reasoning that an absence of respect for property rights is not probative of truthfulness, the Tenth Circuit has stated that theft, robbery, and shoplifting are not crimes which per se fall within the "dishonesty" category. United States v. Dunson, 142 F.3d 1213 (10th Cir. 1998). However, the court has noted that it will look at the underlying facts of a conviction not involving a per se dishonest crime to see if it rested on facts establishing honesty or false statement. Id. See also United States v. Mejia-Alarcon, 995 F.2d 982 (10th Cir. 1993); United States v. Whitman, 665 F.2d 313, 320 (10th Cir.1981) (larceny conviction resulting from land fraud scheme was crime of dishonesty or false statement).

(11) **11th Cir.** — **NO**. The Eleventh Circuit has stated that theft, robbery, and shoplifting do not fall within the category in Rule 609(a)(2). United States v. Sellers, 906 F.2d 597 (11th Cir. 1990). However, the court has stated that "[p]rior misdemeanor theft convictions are usually not sufficiently probative of veracity," which may be read to imply a willingness to look at the underlying facts. United States v. Farmer, 923 F.2d 1557 (11th Cir. 1991).

(12) **D.C. Cir.** — **NO**. Robbery, larceny, and shoplifting are not crimes of dishonesty or false statement. United States v. Lipscomb, 702 F.2d 1049, 1057 n. 29 (D.C. Cir. 1983).

> An essential element of robbery is that the perpetrator of the offense steals the goods and chattels of another . . . Stealing is defined in law as larceny. Larceny involves dishonesty. The fact that the perpetrator of the crime manifests or declares his dishonesty by brazenly committing the crime does not make him an honest person.

353 S.C. at 421. 578 S.E.2d at 40-41.

Because precedent set by the federal circuit courts is not binding on this Court[4] and the statement in Bryant was merely dicta, this Court should follow the sound reasoning in Al-Amin, which held armed robbery, which is a crime involving the taking of property that the perpetrator of the crime has no honest right to possess, is automatically admissible under 609(a)(2) as a crime of dishonesty.

II.

Additionally, the Court of Appeals erred when it refused to remand the case to the trial court in order for the trial court to conduct an on-the-record Rule 609, SCRE, balancing test as required by State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000).

Moreover, the Court of Appeals erred in conducting its own Rule 609(a)(1), SCRE balancing test. Thus, if this Court concludes that armed robbery is not a crime of dishonesty, this Court should remand this case to the trial court in order for the trial judge to make an on-the-record Rule 609(a)(1), SCRE finding.

In State v. Colf, 337 S.C. 622, 628-29, 525 S.E.2d 246, 249 (2000), this Court held that the Court of Appeals erred in conducting a Rule 609 balancing test instead of remanding the issue to the trial court in order to make the determination. This Court stated the following:

[4] State v. Al-Amin, 353 S.C. at 416, 578 S.E.2d at 38.

> The Court of Appeals went on to "consider in more detail the probative value of these convictions, and whether this probative value 'substantially outweighs' the prejudicial effect." **This was error.** The Court of Appeals should not have undertaken the Rule 609(b) balancing test itself, but should have remanded the question to the trial court.

Id. (citation omitted) (emphasis added).

Moreover, in its reasoning, this Court instructed: "It is difficult, if not impossible, for an appellate court to balance the interests at stake when the record does not contain the specific facts and circumstances necessary to a decision." Id.

Under Rule 609(a)(1), SCRE, evidence of an accused's prior conviction is admissible so long as the "the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted . . . and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused." Rule 609(a)(1), SCRE.

Thus, the Court of Appeals should have remanded this case, in accordance with Colf, to the trial court in order for the trial judge to conduct a Rule 609 balancing test. See also State v. Howard, 384 S.C. 212, 223, 682 S.E.2d 42, 48 (Ct. App. 2009) (noting that an appellate court should not undertake a Rule 609 balancing test but rather should remand the issue to the trial court).

In summary, the Court of Appeals erred in conducting its own Rule 609, SCRE, balancing test instead of remanding the case to the trial court to conduct the test because the trial judge was in the best position to weigh the evidence.

III.

Furthermore, the Court of Appeals erred in not applying the harmless error standard because any error in admitting Respondent's armed robbery convictions was harmless due to the overwhelming evidence of guilt.

In the case at hand, the State presented overwhelming evidence of guilt against Respondent. Thus, any error in admitting Respondent's prior convictions for armed robbery was harmless. See State v. Scott, 326 S.C. 448, 452, 484 S.E.2d 110, 112 (Ct. App. 1997)) (overwhelming evidence of guilt leads to harmless error). After an error is discovered, the appellate court must then determine whether the error was harmless. See State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless.").

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

In the case at hand, the evidence of Respondent's guilt was absolutely overwhelming, rendering any error in admitting the prior convictions harmless. The State presented testimony from two of the victims who positively identified Respondent as the armed assailant. (R. pp. 137-138; R. p. 162). The victims testified that the robber pointed a silver automatic gun at the victims. (R. p. 111.) Additionally, the two victims described the robber as a black male with a lazy eye, who wore a striped shirt. (R. p. 98; R. p. 109; R. p. 122; R. p. 151.) The victims also testified that the robber put a mask on his face when he walked into the building. (R. p. 122.) Moreover, after the robber exited the building, one of the victims saw the robber walk towards a gray Dodge truck. (R. pp. 103-106.) When the police pulled over the truck a few blocks from the Church's Fried Chicken, they found Respondent crouching on the floorboard of the truck over a plastic bag. (R. pp. 191-192.) Respondent, who was wearing a striped shirt and had a lazy eye like the victims identified, was lying on top of a silver gun, money, and a mask. (R. p. 244.). Furthermore, Respondent's co-defendant testified against Respondent at trial. The co-defendant testified that he took Respondent to the Church's Fried Chicken and saw Respondent go inside the restaurant. (R. pp. 226-227.) The co-defendant also testified that Respondent was wearing a striped shirt and light colored pants on the day of the robbery. Moreover, Respondent carried a plastic bag inside the restaurant. (R. pp. 226-227.)

Based on the absolutely overwhelming evidence of guilt consisting of the positive in-court and out-of-court identifications of Respondent as the gunman in the robberies, the fact the robber had a lazy eye just like Respondent, the fact the robber wore a striped shirt just like Respondent, the accomplice's testimony implicating Respondent in the crimes, the discovery of the silver gun underneath Respondent's body, the discovery of a

substantial quantity of money lying underneath Respondent, the discovery of a mask underneath Respondent's body, and the truck matching the witnesses' description, all within minutes of the robbery, Respondent's guilt was conclusively established beyond a reasonable doubt. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt). Moreover, three additional theft crimes (grand larceny, petit larceny, and financial transaction card theft) were admitted for impeachment of Respondent's testimony without challenge. (R. p. 298; R. p. 315.)

In summary, this Court should reverse the Court of Appeal's decision because even if the three convictions were erroneously admitted, the error was harmless.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals should be reversed and the judgment and conviction of the trial court be reinstated.

Respectfully submitted,

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July 14, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable G. Thomas Cooper, Circuit Court Judge
Appellate Case No. 2013-000615

THE STATE,

Respondent,

vs.

RUSHAN COUNTS,

Petitioner.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent 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."

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July 14, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Richland County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

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vs.

CHRISTOPHER BROADNAX,

Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Brief of Petitioner on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served. This 14th day of July, 2014.

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