REL: December 8, 2017

Court of Criminal Appeals
State of Alabama
Judicial Building, 300 Dexter Avenue
P. O. Box 301555
Montgomery, AL 36130-1555

MARY BECKER WINDOM
Presiding Judge
SAMUEL HENRY WELCH
J. ELIZABETH KELLUM
LILES C. BURKE
J. MICHAEL JOINER
Judges

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MEMORANDUM

CR-16-0752 Baldwin Circuit Court CC-16-361

Vanessa Stuart v. State of Alabama

WINDOM, Presiding Judge.

Vanessa Stuart appeals her convictions for criminally-negligent homicide, a violation of § 13A-6-4,

Ala. Code 1975, and driving under the influence, a violation of § 32-5A-191, Ala. Code 1975, and her resulting sentences to 12 months in jail for each conviction. The circuit court split Stuart's sentences to serve 9 months in jail, followed by 24 months of supervised probation.

Around 11:00 p.m. on April 1, 2015, officers with the Daphne Police Department responded to an emergency 911 call about a single-vehicle accident on Interstate 10. Sergeant Glenn Barr, one of the first officers on the scene, saw the headlights of a vehicle, which had slid down the shoulder, shining toward the interstate. Sergeant Barr and Officer Brad Chandler descended the steep shoulder to attend to any passengers in the vehicle. The officers found Stuart sitting in the vehicle, talking to someone on the telephone. While Officer Chandler attended to Stuart, Sergeant Barr scanned the surrounding area. In the distance, he saw a set of taillights glowing along the wood line. Sergeant Barr rushed to the newly-discovered vehicle. Inside he found Tiffany Howell; Sergeant Barr testified that "it was obvious she was dead at the time." (R. 162.) Sergeant Barr trudged through the surrounding brush looking for additional victims but did not any.

Sergeant Barr returned to Stuart's location. Sergeant Barr testified that as emergency personnel aided Stuart up the shoulder, he could smell the odor of alcohol as Stuart went past him.

Stuart was taken to a local hospital where she was advised of her rights and of the law of implied consent. Stuart refused a blood test and eventually attempted

to leave the hospital. At that point Corporal Michael Merritt told Stuart that she was under arrest. Stuart responded by screaming and "trying to get away" from Corporal Merritt. (R. 294.) Stuart was placed in handcuffs and taken to jail.

A search warrant was obtained for Stuart's blood and she was returned to the hospital, where several vials of blood were drawn. Subsequent forensic analysis established that at the time Stuart's blood was drawn, which was over four hours after the wreck, Stuart's blood-alcohol level was .174. Jason Hudson, the toxicology section chief with the Alabama Department of Forensic Sciences, estimated that Stuart's blood-alcohol level at the time of the wreck was .234.

Sergeant Ken Lassiter, a traffic-homicide investigator, determined that Stuart's vehicle struck Howell's vehicle from the left rear, causing Howell's vehicle to rotate clockwise and then enter a roll. In Sergeant Lassiter's opinion, Howell's vehicle rolled several times before striking a tree and coming to a rest. Sergeant Lassiter estimated Stuart's speed at impact to have been between 90 and 100 miles per hour.

On appeal, Stuart argues that the circuit court erred: 1) by allowing the State to admit forensic evidence without a sufficient chain of custody; 2) by allowing the State to admit forensic evidence through a witness who did not perform the forensic analysis; and 3) by failing to give a requested jury instruction.

I.

Stuart argues that the circuit court erred by allowing the State to admit the results of the forensic analysis of her blood without a sufficient chain of custody. Stuart's blood was drawn at the hospital by a nurse, who gave the vials to Officer Matthew Kilcrease. Officer Kilcrease sealed the vials and gave them to Sergeant Lassiter, who packaged the vials and sealed the package. Sergeant Lassiter gave the package to Detective James Rivers, the evidence custodian for the Daphne Police Department, who in turn shipped the package to the DFS by FedEx courier service.

> The chain of custody is composed of 'links.' A 'link' is anyone who handled the item. The State must identify each link from the time the item was seized. In order to show a proper chain of custody, the record must show each link and also the following with regard to each link's possession of the item: '(1) [the] receipt of the item; (2) [the] ultimate disposition of the item, i.e., transfer, destruction, or retention; and (3) [the] safeguarding and handling of the item between receipt and disposition.' Imwinklereid, *The Identification of Original*, *Real Evidence*, 61 Mil. L. Rev. 145, 159 (1973).
>
> "If the State, or any other proponent of demonstrative evidence, fails to identify a link or fails to show for the record any one of the three criteria as to each link, the result is a 'missing' link, and the item is inadmissible. If, however, the State has shown each link and has shown all three criteria as to each link,

> but has done so with circumstantial evidence, as opposed to the direct testimony of the 'link,' as to one or more criteria or as to one or more links, the result is a 'weak' link. When the link is 'weak,' a question of credibility and weight is presented, not one of admissibility."

Ex parte Holton, 590 So. 2d 918, 920 (Ala. 1991).

Stuart raises on appeal a number of alleged deficiencies with the chain of custody. Specifically, Stuart argues that the State failed to present evidence of Sergeant Lassister's or Detective Rivers's safekeeping or storing of the vials. With respect to Detective Rivers, Stuart complains that Detective Rivers "inexplicably delayed shipment" until the week after receiving the evidence and failed to state whether the evidence was refrigerated or whether the package was marked "perishable." (Stuart's brief, at 27.) Stuart also asserts that there was no testimony regarding the "handling and care of the evidence while it was in transit through Federal Express," who received the evidence at the DFS, or how the evidence was handled by the employees of the DFS prior to testing. (Stuart's brief, at 29.)

The deficiencies alleged by Stuart attack a number of links in the State's chain of custody. However, Stuart's objection at trial was more limited in scope: "Since this is coming in, I object to the failure of the State to establish the full chain of custody, *specifically how the samples are [sic] handled while they were in the care of Sergeant Lassiter for a day-and-a-half and how they were handled in the Daphne evidence room.*" (R. 650; emphasis added.) "Specific grounds of

objection waive all other grounds not specified." *Owes v. State*, 512 So. 2d 797, 799 (Ala. Crim. App. 1987) (citing *Fisher v. State*, 439 So. 2d 176 (Ala. Crim. App. 1983); *Alldredge v. State*, 431 So. 2d 1358 (Ala. Crim. App. 1983)). Consequently, only Stuart's arguments regarding Sergeant Lassiter's and Detective Rivers's links are properly before this Court for review.[1]

Upon receiving the vials from the nurse at the hospital, Officer Kilcrease had the nurse sign security seals. Officer Kilcrease placed his name, his identification number, and the time on the security seals, and then used the security seals to seal the vials. (R. 332.) Sergeant Lassiter testified:

> "Officer Kilcrease gave me the vials. I have the box open so he can put them in the box. I sealed the box right there in the room in front of everyone and there's a red sticker you put on the outside of the box that seals the integrity of the box so it shows that the box is sealed. There's no tampering with it."

(R. 428.) Sergeant Lassiter maintained the package in his possession until he gave the package to Detective Rivers the following day, which was Friday, April 3. (R. 433.) Detective Rivers entered the package into the police department's record-management system and placed labels on the package that bore the department's case number, a description of the evidence, an

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[1] Stuart raised many of her unpreserved arguments during her motion for judgment of acquittal. (R. 699-701.) This was not a timely assertion of the arguments with respect to this issue.

evidence property number, and the date and time the evidence was received. (R. 617.) The package was stored by Detective Rivers in the department's evidence room, which remains locked and has a security system, until the following Tuesday, at which time Detective Rivers shipped the package to the DFS via FedEx. (R. 623.) Upon receipt by the DFS, photographs were taken of the package and of the vials inside. The photographs depicted that the package and the vials inside were sealed when received by the DFS. (C. 207-12, 215-20.) *See Hale v. State*, 848 So. 2d 224, 229-30 (Ala. 2002) (holding that the sealed condition of a package is circumstantial evidence of the safeguarding and handling of the item by a particular link who receives the package, does not open it, and relinquishes it, still sealed (citing *Ex parte Holton*, 590 So. 2d at 920)). Sergeant Lassiter was able to identify the photographs of the package because his signature appeared on the tape sealing the package. (R. 429.)

Indeed, there was no explanation as to why Detective Rivers held the package in the evidence room for five days, and there was no evidence presented that the package was refrigerated or marked "perishable." However, there is nothing in the record to suggest that Detective Rivers's waiting five days to ship the package was detrimental to the evidence, or that refrigeration of the package or marking it "perishable" were required. On the contrary, Dr. Jason Hudson, the toxicology section chief with the DFS, was asked if, based on his review of the records in this case, there were any

problems with the blood sample received by his laboratory. Dr. Hudson answered, "No." (R. 684.)

The State presented sufficient evidence to demonstrate Sergeant Lassiter's and Detective Rivers's receipt, safeguarding, and disposition of the evidence at issue. Any alleged weaknesses in the State's chain of custody would go to the evidence's weight, not its admissibility. *See Ex parte Holton*, 590 So. 2d 918, 920. As such, this issue does not entitle Stuart to any relief.

II.

Stuart argues that the circuit court erred by allowing the State to admit forensic evidence through a witness who did not perform the forensic analysis. Specifically, Stuart argues that it was error to allow Dr. Hudson to testify to the results of the analysis of her blood because "there was no evidence that he reviewed the findings, signed any reports, or had any supervisory duties with respect to the current case whatsoever." (Stuart's brief, at 32.) In fact, Dr. Hudson was not employed by the DFS at the time of the analysis. Stuart argues that the circuit court's allowing Dr. Hudson to testify to the results of the forensic analysis violated her rights under the confrontation clause.

In *Chambers v. State*, 181 So. 3d 429 (Ala. Crim. App. 2015), this Court stated:

> "In *Ex parte Ware*, 181 So. 3d 409 (Ala. 2014), the Alabama Supreme Court addressed the issue whether Ware's Sixth Amendment right to confront witnesses against him was

violated when the circuit court admitted into evidence a DNA-profile report that was based on the work of laboratory technicians who did not testify at trial. The Court analyzed the United States Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), and the decisions following *Crawford* stating:

> "'The Sixth Amendment of the United States Constitution provides in part that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . . ." In *Ohio v. Roberts*, 448 U.S. 56, 66, 100 S. Ct. 2531, 65 L. Ed. 2d 597 (1980), the United States Supreme Court held that the Confrontation Clause does not bar admission of an unavailable witness's statement against a criminal defendant is the statement bears "adequate 'indicia of reliability.'"
>
> "'In *Crawford*, the United States Supreme Court overruled *Roberts*, rejecting the "reliability" standard and holding that the right to confront witnesses applies to all out-of-court statements that are "testimonial." 541 U.S. at 68, 124 S. Ct. 1354. Although the *Crawford* Court did not arrive at a comprehensive definition of "testimonial," it noted that "the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of ex parte examinations as

evidence against the accused." 541 U.S. at 50, 124 S. Ct. 1354.

"'. . . .

"'Since *Crawford*, the Supreme Court has released three decisions addressing the application of the Confrontation Clause to forensic-testing evidence. In *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009), the Supreme Court held that a sworn certificate of analysis attesting that certain materials were cocaine was a testimonial statement. The Court in *Melendez-Diaz* declined to create a forensic-testing exception, and it rejected the argument that the certificate at issue there was not testimonial because it was not "accusatory."

"'In *Bullcoming v. New Mexico*, 564 U.S. 647, 131 S. Ct. 2705, 180 L. Ed. 2d 610 (2011), the Supreme Court held that the Confrontation Clause applied to an unsworn forensic-laboratory report certifying the defendant's blood-alcohol level, where the report was specifically created to serve as evidence in a criminal proceeding and there was an adequate level of formalities in the creation of the report.

"'In *Williams v. Illinois*, [567 U.S. 50], 132 S. Ct. 2221, 183 L. Ed. 2d 89 (2012), the United States Supreme Court held, in a plurality opinion, that the Confrontation Clause was not violated where an expert was allowed to offer an opinion based

on a DNA-profile report prepared by persons who did not testify and who were not available for cross-examination. *Williams* involved a bench trial in which a forensic specialist from the Illinois State Police laboratory testified that she had matched a DNA profile prepared by an outside laboratory to a profile of the defendant prepared by the state's lab. The outside lab's DNA report was not admitted into evidence, but the testifying analyst was allowed to refer to the DNA profile as having been produced from the semen sample taken from the victim.

"'The plurality opinion concluded that the analyst's testimony was not barred by the Confrontation Clause for two independent reasons, neither of which received the concurrence of a majority of the Court. First, the plurality concluded that the expert's testimony was not admitted for the truth of the matter asserted but was admitted only to provide a basis for the testifying expert's opinions. Second, the plurality concluded that the DNA-profile report was not testimonial because its primary purpose was not to accuse the defendant or to create evidence for use at trial, but "for the purpose of finding a rapist who was on the loose." *Williams*, [567] U.S. at [58], 132 S. Ct. at 2228. The *Williams* plurality also noted the inherent reliability of DNA-testing protocols and the difficulties in

> requiring the prosecution to produce the analysts who did the testing.'

"*Ex parte Ware*, 181 So. 3d at 413-15 (footnotes omitted).

"In light of the fractured decisions of the United States Supreme Court on this issue, our Supreme Court in *Ware* concluded that a case could be 'made for both sides of the issue whether the DNA-profile report in [Ware's] case was "testimonial" under the "holdings" of *Melendez-Diaz, Bullcoming*, and *Williams*.' 181 So. 3d at 416. However, the Court did not resolve the issue because, it concluded that 'the Confrontation Clause was satisfied by the testimony' of Jason E. Kokoszka, an employee of Orchid Cellmark Laboratory 'who supervised and reviewed the DNA testing and who signed the DNA-profile report.' 181 So. 3d at 416. The Court concluded

> "'that Kokoszka's testimony in this case satisfied the purpose of the Confrontation Clause. Kokoszka signed the DNA-profile report and initialed each page of Cellmark's "case file" that was also admitted into evidence. Kokoszka testified that he was one of the individuals taking responsibility for the work that resulted in the report and that he had reviewed each of the analyses undertaken to determine that they were done according to standard operating procedures and that the conclusions drawn were accurate and appropriate. Kokoszka's testimony at

> trial provided Ware with an opportunity to cross-examine Kokoszka about any potential errors or defects in the testing and analysis, including errors committed by other analysts who had worked on the case.'
>
> '*Ex parte Ware*, 181 So. 3d at 416-417."

181 So. 3d at 436-37.

Here, Dr. Hudson gave extensive testimony regarding the policies and procedures of the DFS's toxicology laboratory. This included controls in the analysis and the laboratory's standard practice of having the results of the analysis independently reviewed. Dr. Hudson testified that, "as the [toxicology] section chief, I'm fundamentally the toxicology supervisor so I'm responsible for the day-to-day workflow in the laboratory, testing assignments for cases, as well as personnel management." (R. 630.) "This testimony provided [Stuart] with ample opportunity to cross-examine [Dr. Hudson] regarding the [blood]-analysis report." *Taylor v. State* [Ms. CR-15-0354, Sept. 9, 2016] ___ So. 3d ___, ___ (Ala. Crim. App. 2016).

This Court holds that Stuart's right to confront the witnesses against her was not violated by the circuit court's allowing Dr. Hudson to testify to the results of her blood analysis. As such, this issue does not entitle Stuart to any relief.

III.

Stuart argues that the circuit court erred by failing to give a requested jury instruction. Stuart was initially indicted for reckless murder and driving under the influence. With the consent of Stuart, her reckless-murder charge was reduced to reckless manslaughter. Stuart's indictment was amended to allege that she "did recklessly cause the death of Tiffany Howell by striking the vehicle of which Tiffany Howell was the driver and/or occupant, in violation of § 13A-6-3(a)(1) of the Code of Alabama." (C. 53.) Stuart asserts on appeal that the State "utilized two primary means of proof" to establish her recklessness – "[t]hey alleged that the defendant was traveling between 90 and 100 mph at the time of the accident and they alleged that she was under the influence of alcohol." (Stuart's brief, at 40.)[2]

Stuart asserts that her being convicted of reckless manslaughter due to her intoxication and of driving under the influence would have been a violation of double jeopardy. *See Johnson v. State*, 922 So. 2d 137 (Ala. Crim. App. 2005). Stuart requested the following jury

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[2] Stuart asserts that these two means of proof were argued by the State from "opening statements through closing arguments." (Stuart's brief, at 40.) This Court notes that neither the opening statements nor the closing arguments were made part of the record on appeal. "Where the appellant fails to include pertinent portions of the proceedings in the record on appeal, this court may not presume a fact not shown by the record and make it a ground for reversal." *Carden v. State*, 621 So. 2d 342, 345 (Ala. Crim. App. 1992) (citing *Montgomery v. State*, 504 So. 2d 370, 372 (Ala. Crim. App. 1987)).

instruction, which, she argues, would have remedied the problem:

> "I charge you, Ladies and Gentlemen of the jury, that any evidence that has been proffered related to the alleged intoxication of Ms. Stuart may only be considered with respect to Count 2 of the indictment wherein the Defendant is charged with Driving Under the Influence of Alcohol. Such evidence shall not be considered with respect to Count 1 of the Indictment charging the offense of Manslaughter."

(C. 84.) The circuit court denied the requested jury instruction, stating, "I think that if someone is acting reckless, that if the jury wants to consider that she was under the influence of alcohol, that that's certainly reckless." (R. 817-18.)

In *Jones v. State*, 217 So. 3d 947, 960 (Ala. Crim. App. 2016), this Court recognized:

> "'"A trial court has broad discretion in formulating its jury instructions, provided they are an accurate reflection of the law and facts of the case."' *Toles v. State*, 854 So. 2d 1171, 1175 (Ala. Crim. App. 2002) (quoting *Coon v. State*, 494 So. 2d 184, 186 (Ala. Crim. App. 1986)).
>
> > "'When reviewing a trial court's instructions, "'the court's charge must be taken as a whole, and the portions challenged are not to be isolated therefrom or taken out of context, but rather

> considered together.'" *Self v. State*, 620 So. 2d 110, 113 (Ala. Cr. App. 1992) (quoting *Porter v. State*, 520 So. 2d 235, 237 (Ala. Cr. App. 1987)); *see also Beard v. State*, 612 So. 2d 1335 (Ala. Cr. App. 1992); *Alexander v. State*, 601 So. 2d 1130 (Ala. Cr. App. 1992).'
>
> "*Williams v. State*, 795 So. 2d 753, 780 (Ala. Crim. App. 1999), aff'd, 795 So. 2d 785 (Ala. 2001). The trial court may refuse to give a requested jury charge when the charge is either fairly and substantially covered by the trial court's oral charge or is confusing, misleading, ungrammatical, not predicated on a consideration of the evidence, argumentative, abstract, or a misstatement of the law. *See Hemphill v. State*, 669 So. 2d 1020, 1021 (Ala. Crim. App. 1995); *see also Ex parte Wilhite*, 485 So. 2d 787 (Ala. 1986)."

As the circuit court stated, evidence of Stuart's intoxication could be properly considered by the jury in their assessing Stuart's alleged recklessness. *See Carden v. State*, 621 So. 2d 342, 349 (Ala. Crim. App. 1992) (a defendant who was convicted of reckless manslaughter created a unjustifiable risk, by virtue of voluntary intoxication, when he drove his truck into oncoming traffic). It would be inappropriate for the circuit court to limit the jury's consideration of the evidence merely because Stuart was alleged to have committed the additional offense of driving under the influence. Because Stuart's requested instruction was

a misstatement of the law, the circuit court did not abuse its discretion in denying the request.

Stuart also argues that because the circuit court failed to give her requested jury instruction, her convictions for criminally-negligent homicide and driving under the influence violate double jeopardy. Specifically, Stuart asserts again that the jury may have used her intoxication as the basis for both convictions. As the State points out on appeal, Stuart did not raise this objection after the jury returned its verdict. Stuart has countered in her reply brief on appeal that violations of double jeopardy are jurisdictional issues that this Court has a duty to notice. *See*, *e.g.*, *Brown v. State*, 171 So. 3d 102, 109 (Ala. Crim. App. 2014).

Even if this claim is properly before this Court for review, it would not entitle Stuart to any relief. In *Johnson*, this Court stated that "the statutory elements of the offenses and facts alleged in an indictment – not the evidence presented at trial or the factual basis provided at the guilty-plea colloquy – are the factors that determine whether one offense is included in another." *Johnson*, 922 So. 2d at 143. In that case, the only act of negligence alleged in the defendant's indictment for criminally-negligent homicide was the defendant's voluntary intoxication. *Id.* at 144. This Court held that the defendant's convictions for criminally-negligent homicide and driving under the influence violated double jeopardy because, based on the facts alleged in the indictment, driving under the influence was a lesser-included offense of criminally-negligent homicide. *Id*.

Here, the State did not specifically allege intoxication as the basis for Stuart's recklessness/negligence. *See* (C. 53.) As a result, driving under the influence is not a lesser-included offense of criminally-negligent homicide based on the facts alleged in the indictment. *See id*. at 143. Further, § 13A-6-4(c), Ala. Code 1975, states that criminally-negligent homicide "is a Class A misdemeanor, except in cases in which the criminally negligent homicide is caused by the driver or operator of a vehicle [driving under the influence]; in these cases, criminally negligent homicide is a Class C felony." Stuart was convicted of the misdemeanor offense.

Stuart asserts that her conviction for criminally-negligent homicide was tainted by the jury's consideration of her intoxication. First, when instructing the jury on the elements of manslaughter, the circuit court instructed the jury that, "A person who creates a risk but is unaware solely thereof by reason of voluntary intoxication acts recklessly with respect thereto." (R. 831-32.) The circuit court did not give a similar instruction when instructing the jury on the elements of criminally-negligent homicide. (R. 833-34.) "'[A]n appellate court "presume[s] that the jury follows the trial court's instructions unless there is evidence to the contrary.'" *Ex parte Belisle*, 11 So. 3d 323, 333 (Ala. 2008)." *Thompson v. State*, 153 So. 3d 84, 158 (Ala. Crim. App. 2012). Second, Stuart's claim is speculative. There is no evidence that the jury relied on her intoxication for proving negligence. Stuart's remedy, if any, would have been to request a special verdict form with respect to the charge of criminally-negligent homicide. Instead,

Stuart requested that the circuit court give an instruction that was a misstatement of the law with respect to recklessness.

The circuit court did not abuse its discretion in denying Stuart's requested jury instruction and the record does not support Stuart's claim that her convictions violate double jeopardy. As such, this issue does not entitle Stuart to any relief.

Accordingly, the judgment of the circuit court is affirmed.

AFFIRMED

Kellum, Burke, and Joiner, JJ., concur. Welch, J., concurs in the result.

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA

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[SEAL]

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January 12, 2018

CR-16-0752

Vanessa Stuart v. State of Alabama (Appeal from Baldwin Circuit Court: CC16-361)

NOTICE

You are hereby notified that on January 12, 2018, the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for Rehearing Overruled.

/s/ **D. Scott Mitchell**
D. Scott Mitchell, Clerk
Court of Criminal Appeals

cc: Hon. J. Clark Stankoski, Circuit Judge
Hon. Jody Campbell, Circuit Clerk
John W. Beck, Attorney
J Thomas Leverette, Asst. Atty. Gen.

IN THE SUPREME COURT OF ALABAMA

[SEAL]

March 16, 2018

1170363

Ex parte Vanessa Stuart. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Vanessa Stuart v. State of Alabama) (Baldwin Circuit Court: CC-16-361; Criminal Appeals: CR-16-0752).

CERTIFICATE OF JUDGMENT

WHEREAS, the petition for writ of certiorari in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on March 16, 2018:

Writ Denied. No Opinion. Bolin, J. – Stuart, C.J., and Shaw, Wise, and Sellers, JJ., concur.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the

foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 16th day of March, 2018.

/s/ Julia Jordan Weller
Clerk, Supreme Court
of Alabama