

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,
v.
Bryan Phillips, Appellant.

Appellate Case No. 2010-173307

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

Memorandum Opinion No. 2012-MO-049
Heard April 18, 2012 – Filed November 21, 2012

AFFIRMED

LaNelle Cantey DuRant, of South Carolina Commission
on Indigent Defense, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, Assistant
Attorney General William M. Blich, Jr., all of Columbia,
SC, and Solicitor Donald V. Myers, of Lexington, for
Respondent.

E. Charles Grose, Jr., of Greenwood, and Tara S. Waters,
of Laurens, for Amicus Curiae South Carolina Public
Defender Association.

Solicitor David M. Pascoe, Jr., of Columbia, for Amicus
Curiae Solicitors' Association of South Carolina.

PER CURIAM: Bryan Phillips was tried and convicted, along with his co-defendant K.C. Langford, III, for armed robbery, kidnapping, first degree burglary, and criminal conspiracy. Langford's convictions are affirmed in a published opinion issued today. *State v. Langford*, Op. No. 27195 (S.C. Sup. Ct. filed November 21, 2012). This case presents the same facts and raises the same questions as *Langford*, viz., whether Section 1-7-330 of the South Carolina Code (2005), which grants solicitors control of the General Sessions docket, violates the separation of powers doctrine, whether Phillips was denied due process because section 1-7-330 permits judge shopping, and whether he was denied his right to a speedy trial. In addition to the issues addressed in *Langford*, Phillips also argues the circuit court erred in qualifying the Chinese interpreter used during his trial and in not granting a mistrial due to comments made by the solicitor in closing arguments. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. Separation of Powers: *Langford, supra*.
2. Due Process: *Id.*
3. Speedy Trial: *Id.*
4. Interpreter Qualification: S.C. Code Ann. § 15-27-155(B) (2005) (setting forth qualifications for a foreign language interpreter)¹; *Melton v. Olenik*, 379 S.C. 45, 54, 664 S.E.2d 487, 492 (Ct. App. 2008) (applying abuse of discretion standard to qualification of interpreter).
5. Mistrial: *State v. Graddick*, 345 S.C. 383, 387, 548 S.E.2d 210, 211-12 (2001) ("As a corollary of the right to remain silent, a prosecutorial comment upon a defendant's failure to testify at trial is constitutionally impermissible."); *State v. Prince*, 316 S.C. 57, 67, 447 S.E.2d 177, 183

¹ We note this is the statute for interpreters in a civil case, not a criminal one. However, because it was the one applied by the circuit court and argued by the parties at trial and on appeal, we use it here.

(1993) (stating the decision to grant a mistrial is left to the discretion of the circuit judge); *State v. Rouse*, 262 S.C. 581, 585, 206 S.E.2d 873, 874 (1974) (determining that comment complained of was not actually a comment on the defendant's failure to testify).

AFFIRMED.

**TOAL, C.J., BEATTY, KITTREDGE and HEARN, JJ., concur.
PLEICONES, J., concurring in a separate opinion.**

JUSTICE PLEICONES: I concur in the result only for the reasons stated in my concurring opinion in *State v. Langford*, Op. No. 27195 (S.C. Sup. Ct. filed November 21, 2012).

SAVAGE LAW FIRM

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ANDREW J. SAVAGE, III
Certified Criminal Trial Advocate - NBTA

J. SCOTT BISCHOFF, II
THOMAS J. RODE

May 7, 2012

The Honorable Daniel F. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: State v. Bryan Phillips - Oral Argument Heard on April 18, 2012 at 10:00

Dear Mr. Shearouse:

I write to respectfully request a copy of the CD containing the oral argument heard on April 18, 2012, referenced above. I have enclosed a check for Twenty (\$20.00) Dollars representing payment for same.

Please call me if you have any questions or require additional information to process this request.

With best wishes, I remain

Sincerely,



Dora L. Bell
Paralegal to J. Scott Bischoff, II
/dlb
Enc: Check number: 4617 for \$20.00

check # 4617
\$20.00

RECEIVED

MAY 9 2012

S.C. SUPREME COURT



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 16, 2012

RECEIVED

APR 16 2012

The Honorable Daniel E. Shearouse
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

S.C. Supreme Court

Re: **State of South Carolina v. K.C. Langford and Bryan Phillips**

Dear Mr. Shearouse,

In anticipation of this Wednesday's oral arguments, appellants K.C. Langford and Bryan Philips respectfully request this Court take judicial notice, pursuant to South Carolina Rules of Evidence, Rule 201, of the following documents. The first is an order, signed by Chief Justice Toal on November 19, 2007, approving the proposed Administrative Order establishing local rules for the processing of criminal cases in Edgefield County. The additional documents are located in the Edgefield County Clerk of Court's office in the files assigned to KC Langford, Bryan Philips, and Alvin Philips. These documents are as follows:

- (1) Notice of Date and Time of Mandatory Court Appearances for KC Langford, dated October 3, 2008.
- (2) Order on Motion for Bond for KC Langford, signed by Judge McMahon, dated February 12, 2009.
- (3) Notice of Date and Time of Mandatory Court Appearances for Bryan Phillips, dated September 30, 2008.
- (4) Letter of representation, Demand for Disclosure pursuant to Rule 5 and Brady, and certificate of service for Alvin Phillips, filed by Michael Chessser, Esquire, on January 31, 2010.
- (5) Order of substitution of counsel, replacing Mr. Chessser with Ola Johnson, Esquire on March 10, 2010.
- (6) Letter of representation, Demand for Disclosure pursuant to Rule 5 and Brady, and certificate of service for Alvin Phillips, filed by Ola Johnson, on March 25, 2010.

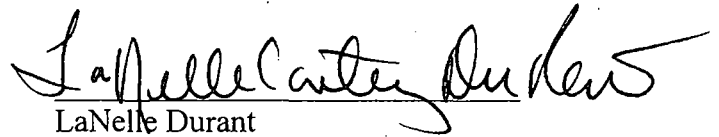
(7) Sentencing sheet for Alvin Phillips.

Counsel for appellants will serve copies of this letter and attached documents by email, sent today, April 16, 2012, and first class mail.

Sincerely,



Elizabeth A. Franklin-Best
Attorney for KC Langford, III
(803) 734-1573



LaNelle Durant
Attorney for Bryan Phillips
SCCID, Appellate Division
1330 Lady Street, Ste. 401
Columbia, SC 29201
(803) 734- 1343

cc: Salley W. Elliot, Esquire
David Spencer, Esquire
William H. Blitch, Jr., Esquire
Donald V. Myers, Esquire
E. Charles Grose, Esquire
Tara S. Waters, Esquire
David Michael Pascoe, Jr., Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Edgefield County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

K.C. LANGFORD, III.

APPELLANT

AND

THE STATE,

RESPONDENT,

V.

BRYAN PHILLIPS

APPELLANT

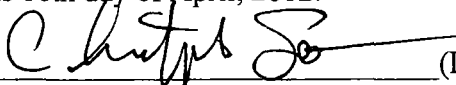
CERTIFICATE OF SERVICE

I certify that a true copy of this letter and attached documents in the above referenced case has been served upon Salley W. Elliott, Esquire, William M. Blicht, Jr., Esquire, and David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; Solicitor Donald V. Myers at P.O. Box 874, Lexington, SC 29072; E. Charles Grose, Esquire, at 600 Monument St. P-133, Greenwood, SC 29646; Tara S. Waters, Esquire, at Box P-133 P.O. Box 174, Laurens, SC 29360; and upon David Michael Pascoe, Jr., Esquire at P.O. Box 1525, Orangeburg, SC 29226; this 16th day of April, 2012.



Elizabeth A. Franklin-Best
Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 16th day of April, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 16, 2021.

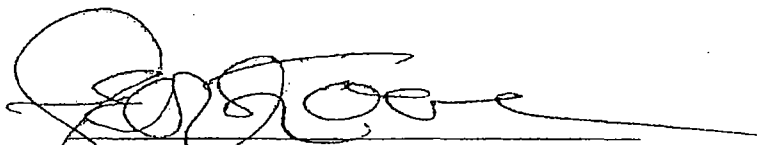
The Supreme Court of South Carolina

ORDER

The Honorable R. Knox McMahon, Chief Judge for Administrative Purposes for the Eleventh Judicial Circuit (Criminal) for the period of December 31, 2006 through January 5, 2008, has submitted for approval the attached proposed Administrative Orders establishing certain local rules for the processing of criminal cases in Edgefield, McCormick and Saluda Counties. Therefore,

Pursuant to the provisions of S.C. CONST. Art. V, §4, the attached proposed Administrative Orders are hereby approved for use in Edgefield, McCormick and Saluda Counties.

IT IS SO ORDERED.



Jean Hofer Toal
Chief Justice

November 19, 2007
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)
)
)
)
_____)

IN THE COURT OF GENERAL SESSIONS

**EXPEDITED CASE MANAGEMENT
SYSTEM ADMINISTRATIVE ORDER**

Pursuant to the authority vested in this Court by the attached Administrative Order issued by the Honorable South Carolina Supreme Court Chief Justice Jean Toal, the following Expedited Case Management System Administrative Order is hereby adopted by this Court for the General Sessions Court of Edgefield County.

~~This Court hereby declares and orders that all General Sessions cases arising or~~
pending on January 1, 2008, shall be processed through the Court under the principles of the Expedited Case Management System. In accordance with the requirements of this system, the following rules are hereby adopted.

The Court hereby directs that in each General Sessions case arising before the various Magistrates and Municipal Courts of this County, the following shall be done:

I. ARREST WARRANTS & CDR CODES

- A. Warrants shall be filled out completely and correctly. The section in the upper left hand corner that identifies the defendant shall be completed at the time the warrant is obtained from the Magistrate or Municipal Judge. This information includes, but is not limited to, defendant's correct full name, complete address, social security number, date of birth, sex, race, height, weight and any other information that is applicable. This information shall be added to the original warrant at the bond hearing should the information be unavailable at the time of the issuance of the warrant. Incomplete warrants will be returned by the Solicitors office to the issuing agency.
- B. Each citizen's warrant shall be accompanied by a detailed incident report and investigation from a law enforcement agency. This incident report shall be presented to the Magistrate or Municipal Judge prior to the issuance of the warrant. Said incident report shall be attached to the warrant and transmitted to the Clerk of Court's office. The Clerk of Court shall transmit the warrant and the incident report to the Solicitor's office pursuant to Rule 3 (b) of the South Carolina Rules of Criminal Procedure. An arrest warrant shall not be issued unless there has been an investigation by a law enforcement agency.

- C. Each charge has a CDR offense code assigned by the South Carolina Court Administration and provided to the Magistrate and the Municipal Judges. Each warrant shall reflect the current CDR offense code number from Court Administration on the face of the warrant in the space provided.

II. BOND HEARING

- A. The Magistrate or Municipal Judge shall serve the defendant with a Notice of Date and Time of Mandatory Court Appearances Form (see attached Form 1) at the time of the bond hearing. The defendant's attendance at the Initial Appearance and the Docket Appearance shall be made a condition of the defendant's bond by noting such in Section III of a Personal Recognizance Bond Form or Section D of a Surety Bond Form. The date of the Initial Appearance shall be at 9:00 a.m. the Thursday immediately preceding each term of General Sessions Court as established by Court Administration. The Docket Appearance shall be at 9:00 a.m. on the first day of General Sessions Court as established by Court Administration. Copies of the bond and Appearance Notices shall be transmitted to the Solicitor's Office and the Clerk of Court at the conclusion of each week.
- B. The bond paperwork shall be properly completed by the Judge setting the bond, including, but not limited to, the date and time of Initial Appearance, Docket Appearance, complete address and telephone number of the defendant, social security number, and the address and telephone number of the bondsman. Should a defendant have a case in General Sessions Court and any lower court simultaneously, then the bond paperwork shall reflect the appearances for both courts, along with the date and time, on the face of bond.
- C. The following restrictions shall appear on the bond paperwork:
1. The defendant shall appear in Court on the dates listed.
 2. A further condition of bond is: if the Public Defender is appointed, each defendant will appear at the Clerk of Court's office to pay the \$40 application fee for the Public Defender within 15 days from the date of release.
 3. Such "other conditions" shall appear on the bond as is appropriate.

4. The Defendant shall immediately notify the Solicitor's Office, in writing, of any change in address and/or telephone numbers, or change of attorneys.
 5. Failure to obtain and/or maintain any attorney is not a ground for delay and may result in the revocation of bond. All defendants representing themselves must be prepared to proceed with their case at the call of the Solicitor without delay.
- D. If a defendant is given a personal recognizance bond, there must be a complete address, at least two (2) contact telephone numbers, and one ~~(1) alternate address and telephone number of the nearest relative listed~~ on the bond paperwork.
- E. During the course of the bond hearing, the Magistrate or Municipal Judge shall inform the defendant, in writing and orally, of his or her right to a Preliminary Hearing as required by Rule 2 (a) of the South Carolina Rules of Criminal Procedure.
- F. All General Sessions defendants shall be screened by the Magistrate or Municipal Judge to determine if they qualify for appointment of counsel. Should the Magistrate or Municipal Judge determine that the defendant qualifies for court appointed counsel, the Judge shall appoint the Edgefield County Public Defender's Office to represent the defendant. The Magistrate's Court or the Municipal Court shall not accept the application fee from any defendant, but shall advise defendants that as a condition of the bond they shall pay such fee to the Clerk of Court within fifteen (15) days from the date of release. Any fees not paid at the time of the General Sessions Court appearance may be addressed by the presiding General Sessions Judge.
- G. For all defendants not qualified for appointed attorneys, the judge shall inform the defendant that failure to obtain an attorney and appear in court with the attorney at the Initial Appearance may result in the bond being revoked, being held in contempt of court, fines and/or jail.
- H. Copies of the Mandatory Court Appearances Form, arrest warrant, bond and incident report shall be transmitted to the Solicitor's Office at the conclusion of each week. If the Public Defender is appointed, copies shall also be transmitted to the Public Defender's Office.
- I. Magistrate and Municipal Judges shall transmit warrants, indigent screening forms, Mandatory Court Appearances Form, incident reports, bond paperwork, and all other documents to the Clerk of Court at the

conclusion of each week, but no later than 15 days as required by Rule 3(a) of the South Carolina Rules of Criminal Procedure.

- J. The Clerk of Court shall forward a copy of the arrest warrant, bond and other paperwork received from Magistrate and Municipal Judges to the Solicitor's Office within two (2) business days from the date of receipt, as required by Rule 3(b) of the South Carolina Rules of Criminal Procedure.
- K. Magistrate and Municipal Judges shall set or deny bonds in all cases with a sentence of less than life.
- L. For cases with a life sentence, defendants shall appear before Magistrate and Municipal Judges who shall inform the defendant of the charges, screen the defendant to determine if the defendant qualifies for appointment of counsel, advise the defendant of the right to apply for a bond hearing before a Circuit Court Judge and complete all of the procedures as in cases with less than a life sentence.

The Court hereby directs that for each General Sessions Court case, all law enforcement agencies shall perform the following:

III. LAW ENFORCEMENT AGENCIES

- A. All law enforcement agencies shall deliver COMPLETE copies of the investigative case reports, together with all witness statements, video and audio tapes, photographs and diagrams, RAP sheets, written statements made by the defendant, a full report of all oral statements made by the defendant, and all other materials included in the law enforcement case file, to the Solicitor's Office within fifteen (15) days of the arrest of the defendant. If the case file remains incomplete fifteen (15) days after the arrest, the chief investigating officer shall deliver to the Solicitor's Office all supplemental reports, additional statements, SLED Reports and all other materials completed or received by the investigating officers within three (3) days of completion or receipt. The law enforcement agency shall deliver its COMPLETE investigative file to the Solicitor's Office.
- B. The Solicitor's office may return any General Sessions warrant to the investigating agency for further investigation within ninety (90) days of receipt of the arrest warrant from the Clerk of Court. (See attached Form 2). Upon return, the Solicitor's office shall notify the Clerk of Court for Edgefield County of all returned warrants and such cases shall be removed from the State's pending case list and classified separately, until the investigation is completed and the case is accepted for prosecution by

the Solicitor's office. Upon request of the Solicitor's office, all warrants not accepted for prosecution within forty five (45) days of the date of return shall be administratively dismissed without prejudice by the Clerk of Court. Nothing in this section shall be construed to deprive any victim of the rights granted under Article 1, Section 24 of the South Carolina Constitution. The Solicitor's office must notify the Clerk of Court of a completed investigation and acceptance of prosecution by the Solicitor's office.

- C. All law enforcement agencies with outstanding un-served arrest warrants for any defendant incarcerated in the South Carolina Department of Corrections, any county jail, or any other jail, facility or prison in South Carolina shall serve the arrest warrants immediately.
- D. After the bond hearing, or any other appearance by a defendant before a Magistrate or Municipal Judge, the arresting law enforcement agency shall deliver a copy of the arrest warrant, and the Victim Information Form to the Solicitor's Office within two (2) days. The Victim Form shall contain the correct mailing address for each victim, and all telephone numbers to contact the victim(s).
- E. On the first of each month, the Edgefield County Detention Center shall deliver to the Solicitor a written list of all incarcerated defendants/inmates with pending General Sessions Court crimes. The list shall include: (1) only those defendants/inmates with General Sessions Court crimes; (2) the charges and arrest warrant numbers pending against each defendant/inmate; and, (3) the date the defendant/ inmate was committed to the Edgefield County Detention Center.

IV. DISCOVERY

- A. For defense attorneys of record who have filed a letter of representation along with a discovery request with the Solicitor's Office, the Solicitor's Office shall prepare defense discovery packets for those General Sessions cases. The discovery packets will be provided, or made available, to defense counsel of record at the Initial Appearance. If a defendant desires to retain new counsel after discovery has been provided to the original attorney of record, the new counsel must obtain leave of the Court to represent the defendant, and new counsel shall be responsible for obtaining the previously provided discovery materials from the defendant or prior counsel.

- B. At the Initial Appearance, the Solicitor's Office shall tender a plea offer, if any, to defense counsel who has filed a letter of representation along with the appropriate discovery requests with the Solicitor's Office.

V. INITIAL APPEARANCE

- A. The defendant and the defendant's attorney shall both appear in Court at the Initial Appearance.
- B. The Initial Appearance shall be held in the General Sessions Courtroom at the Edgefield County Courthouse at 9:00 a.m. on the Thursday immediately preceding each term of General Sessions Court as established by Court Administration. Roll call shall be conducted as necessary to ensure attendance. The Clerk shall, at the request of the Solicitor, issue bench warrants for those defendants who fail to appear or who have not been excused, in writing prior to the hearing by the Chief Administrative Judge for General Sessions Court.
- C. There shall be no continuances of Initial Appearances except by written Order of the Chief Administrative Judge for General Sessions Court.
- D. A representative of each law enforcement agency with pending warrants, tickets or indictments shall be present at the Initial Appearance.
- E. When available, the presiding Circuit Court Judge may hold status conferences during this appearance to assist the parties in negotiating agreements.
- F. The issue of legal representation shall be addressed at the Initial Appearance.
1. Defendants who do not qualify for appointed attorneys, appear without legal representation, and desire an attorney may have their bond revoked, held in contempt of court, fined and/or incarcerated.
 2. Any defendant who does not make bond prior to the date of Initial Appearance shall be presumed, in the absence of a letter of representation, to be represented by the Public Defender's Office. If a defendant qualifies for a Public Defender, but has retained private counsel prior to the Initial Appearance date, then the private attorney must file a general notice of representation with the Clerk of Court and serve a copy on the Solicitor. The Public Defender

shall be relieved of representation at that time and shall turn over all discovery materials to the new attorney of record.

3. If a defendant did not qualify for a Public Defender, and private counsel has been retained, a letter of representation must be filed with the Solicitor's Office on or before the Initial Appearance date.
 4. Defendants who appear without legal representation and desire to proceed pro-se shall be formally advised, on the record, of their right to counsel, the dangers of self representation, and that their trial date will not be continued because of last minute representation. These defendants must appear and remain in court until dismissed for each term of Edgefield County General Sessions Court and other Scheduled Court Appearances, as directed by the Solicitor's Office or the Judge until their case is disposed.
 5. In all cases where the defendant is represented by the Public Defender, the Public Defender shall assess the case for possible conflicts of interest and, if necessary, shall file an Affidavit of conflict with Clerk of Court at or prior to the Initial Appearance. The Clerk shall, upon receiving an Order Relieving Counsel, appoint the next attorney from the conflict list and advise, in writing, the defendant and the Solicitor's Office the identity of the new defense attorney. The newly appointed counsel shall also be notified by the Clerk of Court's office. The newly appointed attorney is responsible for obtaining discovery materials from the Public Defender's Office.
- G. Issues of competency shall be addressed at the Initial Appearance. When appropriate, defense counsel shall move for a competency evaluation. A hearing may be held or scheduled for the next term of General Sessions Court to determine if a competency evaluation is necessary.
- H. If it is feasible to do so at the Initial Appearance, the defendant and the State shall enter into negotiations concerning pleas and scheduling. All offers tendered at the Initial Appearance shall be accepted or rejected by the Docket Appearance date. If the plea is not accepted or is rejected at the Docket Appearance, all plea offers from the State shall be deemed null and void and thereafter given no consideration.
- I. In order to be prepared to respond to the State's plea offer in a timely manner, all Public Defenders and conflict Court-appointed counsel shall meet in person with their clients prior to the Docket Appearance for the purpose of discussing the State's plea offer and all other matters relating to the defendant's case. It is suggested that the Public Defender use the Initial Appearance to schedule appointments for this purpose.

- J. The Public Defenders, court-appointed counsel, and retained counsel shall meet with their incarcerated defendant(s) prior to each Appearance date or General Sessions term of Court.
- K. All cases shall be reviewed for application to Pretrial Intervention, Drug Court, or other appropriate channels of disposition.
- L. Any other issues will be addressed at the Initial Appearance that may affect the timely disposition of the case.

VI. INDICTMENTS

- A. Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the Solicitor's Office shall take action on the warrant in accordance with Rule 3 of the South Carolina Rules of Criminal Procedure. This Court recognizes that due to their nature or complexity certain cases may not be prepared or presented for submission to the Grand Jury within ninety (90) days and grants an extension in those instances.
- B. In accordance with South Carolina law, no preliminary hearings will be held by the Magistrate or Municipal Court for cases previously indicted by the Grand Jury, unless so ordered by a Circuit Court Judge.

VII. DOCKET (SECOND) APPEARANCE

- A. There shall be no continuance of the Docket Appearance. All defendants and defense attorneys shall both appear in Court at the Docket Appearance unless excused, prior to the hearing in writing, by the Chief Administrative Judge of General Sessions Court for good cause shown.
- B. The Docket Appearance shall be held at 9:00 a.m. in the General Sessions Courtroom on the first day of the term of General Sessions Court. Roll call will be conducted as necessary to ensure attendance. At the request of the Solicitor, the Clerk shall issue bench warrants for those defendants who fail to appear and who have not been excused by the Chief Administrative Judge of General Sessions Court.

- C. All parties shall engage in further plea negotiations. In those cases where a plea agreement is reached, the parties shall prepare the necessary paperwork, and obtain the necessary signatures for the plea.
 - D. Plea offers not accepted or rejected shall expire at the end of the Docket Appearance date, shall be null and void, and thereafter given no consideration.
 - E. Defendants who remain unrepresented on their Docket Appearance date and desire an attorney shall be present and remain in Court until excused. These defendants shall appear before the presiding judge to show cause why their bond should not be revoked, why they should not be held in contempt of court, fined, and/or incarcerated.
-
- F. If a plea offer is not accepted at the Docket Appearance, a trial date will be scheduled at the Solicitor's discretion. It is the objective of all parties to have every case concluded as soon as possible.
 - G. Cases shall be assigned to one of three (3) tracks. These tracks will be 90, 180 and 270 days. Assignment of cases to a track is the responsibility of the Solicitor's Office and performed at the sole discretion of the Solicitor's Office. Should the track date fall on a non-court week, it shall be extended to the next term of court. Homicide, Criminal Sexual Conduct cases, other major felony cases and multiple defendants cases deemed to be time consuming or complex or an exception to this system and may not be assigned a disposition track date at the Solicitor's discretion.
 - H. A representative of each law enforcement agency with pending cases shall be present in Court and thereafter at each term of General Sessions Court.
 - I. In all cases, attorneys for defendants must file a letter of representation. If discovery has been provided and a motion to relieve counsel is granted, it is the responsibility of the new counsel to obtain previously provided discovery from prior counsel. The retention of new counsel will not be justification for delay. New counsel shall accept cases with the understanding of such time limits.
 - J. All defendants whose cases are not resolved at the conclusion of any Appearance or General Sessions Court shall be required to return to any subsequent Appearance or any subsequent term of General Sessions Court until the case is resolved.
 - K. All other issues may be addressed that may affect the timely disposition of the case.

VIII. GENERAL SESSIONS COURT PRACTICE

- A. In accordance with Code §1-7-330, a trial roster shall be prepared for each term of General Sessions Court. The rosters shall be prepared and published at least seven (7) days prior to the term of Court and shall be posted in the Courthouse.
- B. The Solicitor's Office shall set the order of trials.
- C. All Motions for Bonds and Bond Reductions shall be made in writing and filed in the Clerk of Court's office and served on the Solicitor's office no later than one (1) week prior to the beginning of the General Sessions court term.
- D. All motions for continuance and requests for orders of protection shall be submitted to the presiding Judge and Solicitor's Office no later than seven (7) days prior to the commencement of the Court term. The Court will endeavor to hear and rule on the motions for continuance and requests for orders of protection before the commencement of the term of Court.
- E. Nothing in this order shall be construed by this Court or any other Court as a reason for a case to be judicially dismissed. This Order is intended to be strictly administrative in nature.

This Order has been reviewed by the Honorable William P. Keesley, Resident Judge of the Eleventh Judicial Circuit, and the Honorable James W. Johnson Jr., Chief Administrative Judge for the Eleventh Judicial Circuit Court of General Sessions for 2008, who will also enforce this Order.

IT IS SO ORDERED!

/s/ _____
Honorable R. Knox McMahon
Chief Administrative Judge for the
Eleventh Judicial Circuit Court of
General Sessions

Edgefield, South Carolina
November 9, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)
)
VS.)
)
Kc Langford III)
Defendant)

IN THE COURT OF GENERAL SESSIONS

NOTICE OF DATE AND TIME OF
MANDATORY COURT APPEARANCES

Warrant #(S) J595142, J605801, J605802, J605807, J605810, ...

*******THIS IS THE ONLY NOTICE YOU WILL RECEIVE*******
KEEP THIS COPY FOR YOUR RECORDS

You are a defendant in a criminal case. You are required to appear on two (2) separate occasions at:
The Edgefield County Courthouse, Edgefield, SC. The date and times of these appearances CANNOT be changed for any reason.

1. Your First, **INITIAL APPEARANCE** is set for the December 4, 2008 at 8:30 A.M. in the Edgefield County Courthouse.
2. Your second **DOCKET APPEARANCE** is set for the December 8, 2008 at 8:30 A.M. in the Edgefield County Courthouse.

You MUST be present at theses appearances. If you fail TO APPEAR on these dates and times, a BENCH WARRANT will be issued for your arrest. You will be placed in jail and may be held until the trial of your case. You must appear and remain in court until dismissed for each term of Edgefield County General Session Court and other Scheduled Court Appearances, as directed by the Solicitor's Office or the Judge until your Case is disposed.

() You have **qualified** for a Public Defender and the Public Defender is hereby appointed. You must pay \$40 to the Edgefield County Clerk of Court within 15 days from the date of your release. You should contact your Attorney as soon as possible at the Edgefield County Public Defender's Office, 864-852-9555.

() You have **not qualified** for a Public Defender. If you desire representation by counsel, you must obtain an attorney at your expense immediately, notifying the attorney of the dates you are required to appear.

I HAVE READ THIS FORM OR HAVE HAD IT READ TO ME. I UNDERSTAND THESE INSTRUCTIONS AND I HAVE BEEN GIVEN A COPY TO KEEP. TAKE THIS FORM WITH YOU TO YOUR ATTORNEY'S OFFICE

KC Langford
Defendant's Signature

Date:

Oct 3 08

Don A. Butler
Judge's Signature

Date:

Oct 3 08

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF EDGEFIELD 2009 FEB 12) PM 4:04

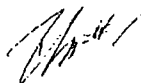
STATE OF SOUTH CAROLINA)
)
v.) ORDER ON MOTION FOR
) BOND
)
K.C. LANGFORD) Indictment Nos. 2008-GS-19-673;
) -674; -675; -676; -677; and -678
)

Defendant)

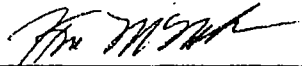
On February 11, 2009, the Defendant was before the Court for an initial setting of bond on charges of Burglary First Degree, Kidnapping (a single count involving as many as six persons), Assault and Battery With Intent to Kill (involving the use of a pistol), Armed Robbery (using the same pistol to effect the taking), Possession of a Weapon During Commission of a Violent Crime and Criminal Conspiracy with two other similarly indicted Defendants. On consideration of the following, bail is denied.

The facts alleged that this Defendant and two CoDefendants, all wearing face coverings or masks, attacked a local business owner outside his residence with a pistol. The pistol was used by one of the Defendants to bludgeon the business owner and to force him into his residence where other victims were held at bay. The owner retrieved a bag containing \$30,000.00 in cash, which was taken from the residence and later was split up by all three. The pistol was allegedly discarded in a trash can and has not been recovered.

The Defendant's prior criminal record includes South Carolina convictions for Use of Vehicle Without Permission (two counts arising from separate instances in two counties) in June 2002 and for which the probationary sentence was revoked in July 2003, and Receiving Stolen Goods (valued at \$5000 or more) in July 2006. His criminal record in Georgia includes convictions for Possession of an unspecified drug and Criminal Interference with Government Property in February 2003.



Given the circumstances, the Court finds the Defendant is a danger to the community and he is to be held without bail



R. KNOX McMAHON.
Presiding Judge
11th Judicial Circuit

Thursday, February 12, 2009
Edgefield, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)
VS.)
Bryan Jordan Phillips)
Defendant)

IN THE COURT OF GENERAL SESSIONS

NOTICE OF DATE AND TIME OF
MANDATORY COURT APPEARANCES

Warrant #(S) J605800, J605804, J605805, J605808, J595141,...

*******THIS IS THE ONLY NOTICE YOU WILL RECEIVE*******
KEEP THIS COPY FOR YOUR RECORDS

You are a defendant in a criminal case. You are required to appear on two (2) separate occasions at:
The Edgefield County Courthouse, Edgefield, SC. The date and times of these appearances CANNOT be changed for any reason.

1. Your First, **INITIAL APPEARANCE** is set for the December 4 08 at 8:30 A.M. in the Edgefield County Courthouse.
2. Your second **DOCKET APPEARANCE** is set for the December 8 08 at 8:30 A.M. in the Edgefield County Courthouse.

You MUST be present at theses appearances. If you fail TO APPEAR on these dates and times, a BENCH WARRANT will be issued for your arrest. You will be placed in jail and may be held until the trial of your case. You must appear and remain in court until dismissed for each term of Edgefield County General Session Court and other Scheduled Court Appearances, as directed by the Solicitor's Office or the Judge until your Case is disposed.

☒ **You have qualified** for a Public Defender and the Public Defender is hereby appointed. You must pay \$40 to the Edgefield County Clerk of Court within 15 days from the date of your release. You should contact your Attorney as soon as possible at the Edgefield County Public Defender's Office, 864-852-9555.

☐ **You have not qualified** for a Public Defender. If you desire representation by counsel, you must obtain an attorney at your expense immediately, notifying the attorney of the dates you are required to appear.

I HAVE READ THIS FORM OR HAVE HAD IT READ TO ME. I UNDERSTAND THESE INSTRUCTIONS AND I HAVE BEEN GIVEN A COPY TO KEEP. TAKE THIS FORM WITH YOU TO YOUR ATTORNEY'S OFFICE

Bryan Phillips
Defendant's Signature

David A. Carlson
Judge's Signature

Date: Sept 30 08

Date: Sept 30 08

Michael Chesser
Attorney at Law
PO Box 1018
104 Park Avenue, SW
Aiken, South Carolina 29802-1018
chesserlaw@gmail.com

Telephone: (803) 646-1166
Telefax: (803) 641-0766

January 31, 2010

Clerk of Court Edgefield County
Attn: Joanne Noack
PO Box 34
Edgefield, SC 29824

Re: PHILLIPS, Alvin A.
Warrants:
J 595143 Armed Robbery
J 605799 Burglary 1st
J 605803 Kidnapping
J 605806 ABWIK
Indictment:
2008-19-GS-712 Conspiracy §16-17-410

Dear Joanne:

Please be advised that I represent the Defendant. Enclosed for filing with your office please find the Defendant's Rule 5 and Brady request for disclosure. Thank you.

Sincerely,

Michael Chesser
Michael Chesser

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY E. NEWBY

COUNTY OF EDGEFIELD 2010 FEB -2 AMOUNT JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
State of South Carolina,

vs.

Alvin A. Phillips,

Defendant

IN THE COURT OF GENERAL SESSIONS

**DEMAND FOR DISCLOSURE
PURSUANT TO RULE 5 AND BRADY**

Warrants:

J 595143 Armed Robbery

J 605799 Burglary 1st

J 605803 Kidnapping

J 605806 ABWIK

Indictment:

2008-19-GS-712 Conspiracy §16-17-410

To: Ervin Maye, Ass't Solicitor 11th Circuit

YOU WILL PLEASE TAKE NOTICE that the Defendant above named, by and through his undersigned attorney, does hereby request and move the State to produce and make available to the attorney for the Defendant any and all documents, evidence and other information which is subject to disclosure, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure. This Defendant further requests that the Solicitor make available any and all evidence which may be favorable to the Defendant subject to disclosure pursuant to Brady vs. Maryland, 373 US 83 (1963), and subsequent cases, to include any and all information and evidence which is discoverable pursuant to Rule 5 or Brady, supra, and which is in the hands of agents for the prosecution, including police agencies.

January 31, 2010
Aiken, South Carolina

Michael Chesser

Michael Chesser
Attorney for Defendant
PO Box 1018
Aiken, South Carolina 29802-1018
(803) 641-0477

CLERK OF COURT
SHIPLEY F. NEWBY

2010 FEB -2 AM 10:01
COUNTY OF EDGEFIELD ELEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
State of South Carolina,

vs.

Alvin A. Phillips,

Defendant

CERTIFICATE OF SERVICE

Warrants:

J 595143 Armed Robbery
J 605799 Burglary 1st
J 605803 Kidnapping
J 605806 ABWIK

Indictment:

2008-19-GS-712 Conspiracy §16-17-410

I, Michael Chesser, attorney for the Defendant, do hereby certify that I have served the foregoing Rule 5 and Brady request on the State by depositing same in the United States mail on this January 31, 2010, postage prepaid, addressed as follows:

Ervin Maye, Ass't Solicitor
187 Saluda Airport Road
Saluda, SC 29138



Michael Chesser
Attorney for the Defendant
PO Box 1018
104 Park Avenue, SW
Aiken, SC 29802-1018
(803) 641-0477

COUNTY OF EDGEFIELD

ELEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA PH IN THE COURT OF GENERAL SESSIONS
State of South Carolina,

vs.

**ORDER OF SUBSTITUTION
OF COUNSEL**

Alvin A. Phillips,

Defendant

Warrants:

J 595143 Armed Robbery

J 605799 Burglary 1st

J 605803 Kidnapping

J 605806 ABWIK

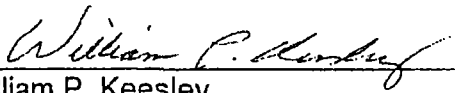
Indictment:

2008-19-GS-712 Conspiracy §16-17-410

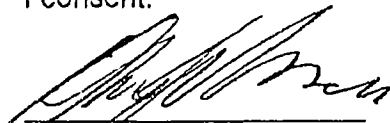
The Court has previously appointed Michael Chessser, Esq. as counsel for the Petitioner, on the basis of a conflict of interest on the part of the Office of the Public Defender. Counsel moves to be relieved on the basis of his caseload. Ola Johnson, Esq., consents to be named counsel. The Court notes that Mr. Johnson has over 8 years experience in the field of criminal law. Wherefore, with the consent of counsel, and upon due consideration, present counsel is hereby relieved and Ola Johnson, Esq., is appointed counsel for the Petitioner, to be compensated by the Office of Indigent Defense.

AND IT IS SO ORDERED.

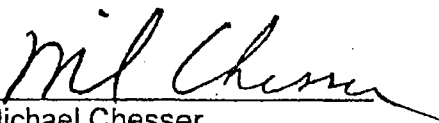
Edgefield, South Carolina
March 10, 2010


William P. Keesley
Chief Administrative Judge, 11th Circuit

I consent:


Ola Johnson

I so move:


Michael Chessser

Ola Johnson
Attorney at Law
PO Box 1810
104 Park Avenue, SW
Aiken, South Carolina 29802-1810
olajohnsonlaw@gmail.com

Telephone: (803) 226-0577
Telefax: (803) 226-0578

March 22, 2010

EDGEFIELD COUNTY
CLERK OF COURT
SHERIFF'S OFFICE

2010 MAR 25 AM 10:59

Clerk of Court
Attn: Criminal
PO Box 34
Edgefield, SC 29824

Re: Alvin A. Phillips
Warrant J-595143
Warrant J-605799
Warrant J-605803
Warrant J-605806
Indictment 2008-19-GS-712

Armed Robbery, Burglary 1st, Kidnapping, ABWIK, Conspiracy

Dear Sir or Madam:

Please be advised that I represent the Defendant. Enclosed for filing with your office please find the Defendant's Rule 5 request, a copy of which has been served upon the Solicitor's Office this date. Thank you.

Yours truly,



Ola A. Johnson

COUNTY OF EDGEFIELD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

ELEVENTH JUDICIAL CIRCUIT

State of South Carolina,

vs.

Alvin A. Phillips,

Defendant

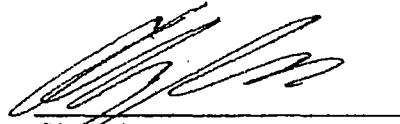
**DEMAND FOR DISCLOSURE
PURSUANT TO RULE 5 AND
BRADY**

Warrant J595143, J605799, J605803,
J605806, 2008-19-GS-712
Armed Robbery, Burglary 1st, Kidnapping,
ABWIK, Conspiracy

To: Ervin Maye, Ass't Solicitor

YOU WILL PLEASE TAKE NOTICE that the Defendant above named, by and through his undersigned attorney, does hereby request and move the Solicitor of the Second Judicial Circuit to produce and make available to the attorney for the Defendant any and all documents, evidence and other information which is subject to disclosure, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure. This Defendant further requests that the State make available any and all evidence which may be favorable to the Defendant subject to disclosure pursuant to Brady vs. Maryland, 373 US 83 (1963), and subsequent cases, to include any and all information and evidence which is discoverable pursuant to Rule 5 or Brady, supra, and which is in the hands of agents for the prosecution, including police agencies.

Aiken, South Carolina
March 22, 2010


Ola Johnson
Attorney for the Defendant
PO Box 1810
104 Park Avenue, SW
Aiken, SC 29802-1810
(803) 226-0577

2010 MAR 25 AM 10:59

COUNTY OF EDGEFIELD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

ELEVENTH JUDICIAL CIRCUIT

The State of South Carolina,

CERTIFICATE OF SERVICE

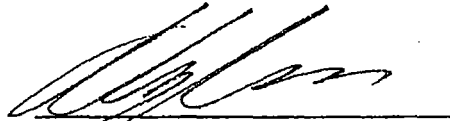
vs.

Alvin A. Phillips
Defendant

Warrant J595143, J605799, J605803,
J605806, 2008-19-GS-712
Armed Robbery, Burglary 1st, Kidnapping,
ABWIK, Conspiracy

I, Ola Johnson, attorney for the Defendant, do hereby certify that I have served the foregoing Demand for Disclosure Pursuant to Rule 5 and Brady on the State of South Carolina by depositing same in the US Mail, first class, to the attorney(s) of record addressed as follows:

Ervin Maye, Ass't Solicitor
Solicitor's Office, 11th Circuit
187 Saluda Airport Road
Saluda, SC 29138



Ola Johnson
Attorney for the Defendant
PO Box 1810
104 Park Avenue, SW
Aiken, SC 29802-1810
(803) 226-0577

2008/07/25 AM 10:59

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Edgefield

STATE VS.

Alvin Alexander Phillips

AKA:

Race: B Sex: M Age: 17

DOB: 12-18-1990 SS#:

Address: Sherrill Lane

Johnston, SC 29832

DL#: SID#:

INDICTMENT/CASE#: 2008-65-19-717

A/W#: J595143

Date of Offense: 8/14/2008

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: ALVIN ROBBERT

in violation of § 16-11-330 A of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar#

Plea of guilty accepted 8/10/2010. Sentencing deferred until later date. Wm. P. Haskins, Judge

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, # 2056for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$, provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. CREDIT 736 Days. Wm☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.90

§ 90.11 TP (SCEJA Surcharge) \$5 \$ 5.00

TOTAL \$ 133.90

Court Reporter: Stacy Sheppard

Solicitor

Solicitor

Court Reporter: Stacy Sheppard

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: Pay court costs @ \$25/mo.

beginning 120 after commencing

community supervision and in any

event before w/in 1 yr. of release

from actual confinement in prison

☐ Appointed PD or appointed other counsel § 35.13 TP

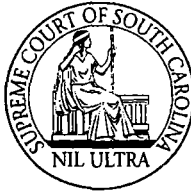
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2101510

Sentence Date: 08.15.2010

SCCA/217 (07/2008)



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 11, 2012

Appellate Defender LaNelle Cantey DuRant
South Carolina Commission on Indigent Defense
P. O. Box 11589
Columbia, SC 29211

Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General William M. Blicht, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Solicitor Donald V. Myers
11th Circuit Solicitor's Office
P.O. Box 874
Lexington, SC 29072

Ernest Charles Grose, Jr, Esquire
600 Monument St.
Box P-133
Greenwood, SC 29646

Tara Marie Schultz, Esquire
8th Circuit Public Defender's Ofc.
Box P-133
P.O. Box 174
Laurens, SC 29360

David Michael Pascoe, Jr., Esquire
First Circuit Solicitor's Ofc.
P.O. Box 1525
Orangeburg, SC 29116

Re: The State v. Phillips, Bryan

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellant	10 minutes
Public Defenders' Association	5 minutes
Respondent	10 minutes
Solicitor's Association	5 minutes
Appellant in Reply	5 minutes

This case is scheduled for hearing on Wednesday, April 18, 2012 at 10:00 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By Debbie M. Hopkins
Administrative Assistant

DES/dmh

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Edgefield County
William P. Keesley, Circuit Court Judge

RECEIVED
MAR 8 2012
S.C. Supreme Court

THE STATE,

RESPONDENT,

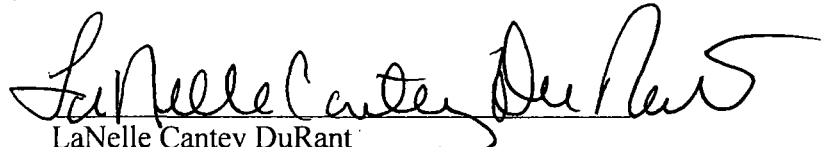
V.

BRYAN PHILLIPS

APPELLANT

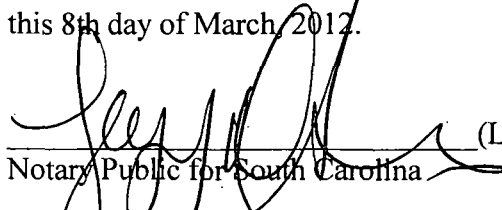
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and the Initial Reply Brief of Appellant in the above referenced case has been served upon E. Charles Grose, Attorney for South Carolina Public Defenders Association, at 600 Monument St. P-133, Greenwood, SC 29646; and upon Tara Marie Shultz, Attorney for South Carolina Public Defenders Association, at 100 Hillcrest Drive, Suite P, Laurens, SC 29360, this 8th day of March, 2012.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of March, 2012.



Notary Public for South Carolina (L.S.)

My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

RECEIVED

FEB 24 2012

S.C. Supreme Court

THE STATE,

RESPONDENT,

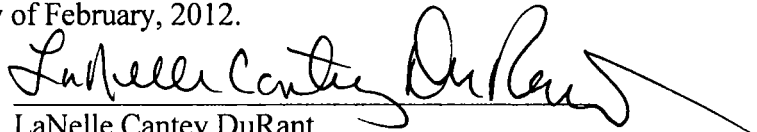
V.

BRYAN PHILLIPS

APPELLANT

CERTIFICATE OF SERVICE

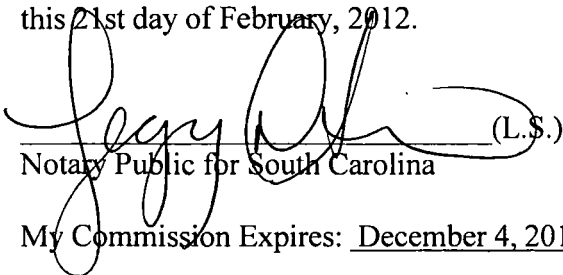
The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon William Blich, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and upon Bryan Phillips, #318212, McCormick Correctional Institution, 386 Redemption Way McCormick, SC 29899, this 21st day of February, 2012.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of February, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: December 4, 2017



ALAN WILSON
ATTORNEY GENERAL

February 8, 2012

LaNelle C. DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

Re: State v. Bryan Phillips

Dear Ms. DuRant:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General

RECEIVED

FEB 13 2012

S.C. SUPREME COURT

WMB:erd

Enclosures

cc: Honorable Daniel E. Shearouse (original and one enclosed)
Victim Services (enclosure)

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

The State,

Respondent,

v.

Bryan Phillips,

Appellant.

PROOF OF SERVICE

I, WILLIAM BLITCH, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 8th day of February, 2012.



WILLIAM BLITCH
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The Supreme Court of South Carolina

The State,

Respondent

v.

Bryan Phillips,

Appellant.

The Honorable William P. Keesley
Edgefield County
Trial Court Case No. 2008-GS-19-00718
2008-GS-19-00723
2010-GS-19-00274
2010-GS-19-00277

ORDER

The initial brief of respondent has been filed in this appeal. This case is hereby scheduled for oral argument on April 18, 2012. It will be argued in conjunction with the appeal filed by appellant's co-defendant, K.C. Langford.

To insure that this matter is ready for argument, any initial reply brief and designation of matter shall be served and filed by February 21,

2012. Further, the record on appeal shall be served and filed by March 2, 2012,¹ and the final briefs shall be served and filed by March 12, 2012.

Finally, the parties to this appeal are warned that no extensions of these time periods will be granted except for the most exceptional of circumstances. Counsel for the appellant and respondent should ensure that they are available to conduct arguments on April 18, 2012.

IT IS SO ORDERED.

Columbia, South Carolina

February 16, 2012


C.J.
FOR THE COURT

cc: Appellate Defender Lanelle Durant
Assistant Attorney General William M. Blich, Jr.

¹ Rather than filing two separate records on appeal, the parties in this case and in the co-defendant's case may wish to consider filing a single record on appeal that can be used in both cases.

The Supreme Court of South Carolina

The State,

Respondent

v.

Bryan Phillips,

Appellant.

The Honorable William P. Keesley
Edgefield County

Trial Court Case No. 2008-GS-19-00718
2008-GS-19-00723
2010-GS-19-00274
2010-GS-19-00277

ORDER

Respondent seeks an extension to serve and file the initial brief of respondent and designation of matter, and asserts that extraordinary circumstances justify this extension. The opposing party consents to the extension. The request for an extension is granted until February 8, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

January 11, 2012

cc: Appellate Defender LaNelle C. DuRant
Assistant Attorney General William M. Blich, Jr.

ALAN WILSON
ATTORNEY GENERAL



RECEIVED

JAN - 9 2012

January 9, 2012

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. Supreme Court

Re: State v. Bryan Phillips

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of Respondent's Motion for Fourth Extension of Time to Serve and File Respondent's Initial Brief along with proof of service for filing in the above-referenced appeal.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General

Enclosures

cc: LaNelle C. DuRant, Esquire
Victim Services

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

ORIGINAL

RECEIVED

JAN - 9 2012

The State,

S.C. Supreme Court
Respondent,

v.

Bryan Phillips,

Appellant.

**MOTION FOR FOURTH EXTENSION OF TIME
TO SERVE AND FILE RESPONDENT'S INITIAL BRIEF**

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

The Initial Brief of Respondent and Designation of Matter are due to be served and filed on January 9, 2012.

II.

Pursuant to RE: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings: Order of the South Carolina Supreme Court dated March 18, 2009, the Respondent moves for a fourth extension in the above referenced appeal. Due to work required in other cases pending before this Court and the South Carolina Supreme Court, I am unable to complete this Brief on time. In the past few weeks, the undersigned has submitted Initial Briefs in State v. Webb, State v. Saunders, State v. Kelly, State v.

Cameron, State v. Leggette, State v. Harrison, State v. Burton, and State v. Hawes. The undersigned has completed a Petition for Writ of Certiorari in In the Matter of the Care and Treatment of Way, State v. Watkins, State v. Hercheck, and State v. Sawyer, as well as a Return to the Petition for Writ of Certiorari in In the Matter of the Care and Treatment of Way. The undersigned has prepared for and participated in oral argument before the South Carolina Supreme Court in State v. Sterling, State v. Whitner, State v. Latimore, and State v. Binnarr, as well as in the Court of Appeals in State v. Phillip Miller, State v. Harlin, State v. Collins, and In the Matter of the Care and Treatment of Williams, and is currently preparing for argument tomorrow in the Court of Appeals in State v. Gregory.

III.

This extension request is not intended for purposes of delay, but rather to ensure that the Brief is properly researched and prepared. The undersigned is currently working on the Initial Brief of Respondent and hopes to have it completed in a timely manner. I would, therefore, request a fourth extension of time within which to serve and file the Initial Brief of Respondent and Designation of Matter.

WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, and extend the deadline for the service and filing of the Initial Brief of Respondent and Designation of Matter in this case for thirty (30) days from the date such relief is granted; and for such other and further relief as the Court may deem just and proper.

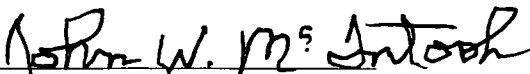
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General


JOHN W. McINTOSH
Chief Deputy Attorney General

fa 
SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General


WILLIAM M. BLITCH, JR.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 9, 2012

I consent.

LaNelle C. DuRant, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

The State,

Respondent,

v.

Bryan Phillips,

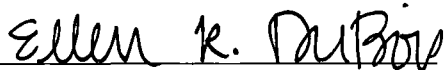
Appellant.

PROOF OF SERVICE

I, ELLEN R. DuBOIS, certify that I have served the within Motion for Fourth Extension of Time to Serve and File Respondent's Initial Brief on Appellant by depositing copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 9th day of January 2012


ELLEN R. DuBOIS
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

January 10, 2012

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: State v. Bryan Phillips

Dear Mr. Shearouse:

With signature below, opposing counsel consents to our request for a Fourth extension to file the Initial Brief of Respondent in the above referenced case.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General

WMB/erd

I consent:

LaNelle C. DuRant, Esquire

RECEIVED

JAN 10 2012

S.C. Supreme Court

The Supreme Court of South Carolina

The State,

Respondent

v.

Bryan Phillips,

Appellant.

The Honorable William P. Keesley
Edgefield County

Trial Court Case No. 2008-GS-19-00718

2008-GS-19-00723

2010-GS-19-00274

2010-GS-19-00277

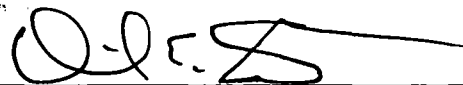
ORDER

For good cause shown, the request for an extension to serve and file the Initial Brief of Respondent and Designation of Matter is granted and extended until January 9, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

December 8, 2011

cc: Appellate Defender LaNelle Cantey DuRant
Assistant Attorney General William Blich

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

ORIGINAL

RECEIVED

OCT 28 2011

SC Court of Appeals

The State,

v.

Bryan Phillips,

Appellant.

**MOTION FOR THIRD EXTENSION OF TIME
TO SERVE AND FILE RESPONDENT'S INITIAL BRIEF**

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

The Initial Brief of Respondent and Designation of Matter are due to be served and filed on October 28, 2011.

II.

Pursuant to RE: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings: Order of the South Carolina Supreme Court dated March 18, 2009, the Respondent moves for a third extension in the above referenced appeal. Due to work required in other cases pending before this Court and the South Carolina Supreme Court, I am unable to complete this Brief on time. In the past few weeks, the undersigned has submitted Initial Briefs in State v. Johnson, State v. Cameron, State v. Leggette, State

v. Harrison, State v. Burton, and State v. Hawes. The undersigned has completed a Petition for Writ of Certiorari in In the matter of the Care and Treatment of Way; State v. Watkins and State v. Hercheck, as well as a Return to a Petition for Writ of Certiorari in In the Matter of the Care and Treatment of Thomas Simmons and State v. Ware. The undersigned has prepared for and participated in oral argument before the South Carolina Supreme Court in State v. Sterling and State v. Whitner, as well as in the Court of Appeals in State v. Phillip Miller. The undersigned is currently preparing for oral argument next week in the Court of Appeals in State v. Harlin and State v. Collins.

III.

This extension request is not intended for purposes of delay, but rather to ensure that the Brief is properly researched and prepared. The undersigned is currently working on the Initial Brief of Respondent and hopes to have it completed in a timely manner. I would, therefore, request a third extension of time within which to serve and file the Initial Brief of Respondent and Designation of Matter.

WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, and extend the deadline for the service and filing of the Initial Brief of Respondent and Designation of Matter in this case for thirty (30) days from the date such relief is granted; and for such other and further relief as the Court may deem just and proper.

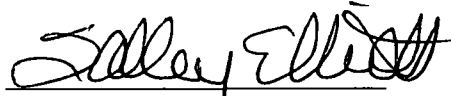
Respectfully submitted,

ALAN WILSON
Attorney General

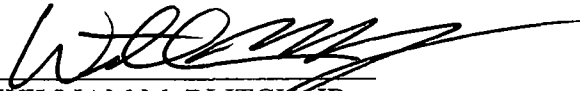
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General



SALLEY W. ELLIOTT
Assistant Deputy Attorney General



WILLIAM M. BLITCH, JR.
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 28, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

The State,

Respondent,

v.

Bryan Phillips,

Appellant.

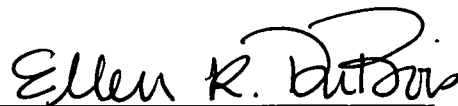
PROOF OF SERVICE

I, ELLEN R. DuBOIS, certify that I have served the within Motion for Third Extension of Time to Serve and File Respondent's Initial Brief on Appellant by depositing copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 28th day of October, 2011

RECEIVED
OCT 28 2011
SC Court of Appeals



ELLEN R. DuBOIS
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

October 28, 2011

VIA HAND DELIVERY

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Bryan Phillips

Dear Ms. Gee:

Enclosed please find the original and six (6) copies of Respondent's Motion for Third Extension of Time to Serve and File Respondent's Initial Brief along with proof of service for filing in the above-referenced appeal.

Sincerely,

William M. Blich, Jr.
Assistant Attorney General

Enclosures

cc: LaNelle C. DuRant, Esquire
Victim Services

RECEIVED
OCT 28 2011
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Edgefield County
Hon. William P. Keesley, Circuit Court Judge

The State,

Respondent,

v.

Bryan Phillips,

Appellant.

RECEIVED
OCT 25 2011

SC Court of Appeals

**RETURN TO MOTION TO CERTIFY, CONSOLIDATE, AND
INCORPORATE *AMICUS CURIAE* BRIEF**

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

Appellant has moved to certify this appeal to the Supreme Court pursuant to Rule 204(b), SCACR, consolidate this case with the case of Appellant's co-defendant, and to incorporate the Amicus Curiae brief filed in the co-defendant's appeal. It is the undersigned's understanding that the petition to certify the case of Appellant's co-defendant is still pending. As a result, this motion is premature until such time as the co-defendant's motion is granted and should be held in abeyance pending a ruling on that motion. If the co-defendant's motion is denied, this motion would clearly be rendered moot in the Supreme Court, and any decision to consolidate with the co-defendant's appeal and incorporate the Amicus brief would be made by the Court of Appeals as they would retain jurisdiction.

The undersigned is not aware of the procedural status of the co-defendant's case and whether there are any differences regarding whether motions were properly filed by both appellants. Further, Appellant in this case has raised three issues, and the undersigned's understanding is his co-defendant has only raised the issue regarding the speedy trial motion. As a result, this Court or the Court of Appeals may wish to simply hold this appeal in abeyance pending a resolution of the co-defendant's appeal as it will need to address two additional issues. Additionally, the undersigned has not been served with a copy of the *Amicus Curiae* brief, and as a result, I am unable to determine whether it is relevant, necessary, or beneficial in this appeal. If the co-defendant's motion to certify his case to the Supreme Court is granted, then the undersigned would leave the decision on whether to certify and consolidate this appeal with that of the co-defendant to the discretion of the Court. The State believes Appellant should be required to serve a copy of the *Amicus* brief on the undersigned and the undersigned.

WHEREFORE, Respondent asks this Court to hold this motion in abeyance pending a resolution of whether the appeal in State v. K.C. Langford is certified for consideration by this Court; require Appellant to serve on the undersigned a copy of the *Amicus Curiae* brief he believes should be incorporated into his appeal. Respondent leaves it to the discretion of this Court or the Court of Appeals whether to consolidate the two appeals or to hold this appeal in abeyance pending a resolution of Langford; and asks for such other and further relief as the Court may deem just and proper.

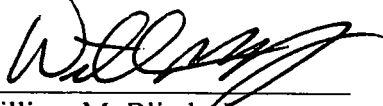
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 

William M. Blitch, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 24, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Edgefield County
Hon. William P. Keesley, Circuit Court Judge

The State,

Respondent,

v.

Bryan Phillips,

Appellant.

PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the Return to Motion to Certify, Consolidate, and Incorporate *Amicus Curiae* Brief on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
P. O. Box 11589
Columbia, South Carolina 29211

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

This 24th day of October, 2011.

RECEIVED
OCT 25 2011
SC Court of Appeals



ELLEN DuBOIS
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

October 24, 2011

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED
OCT 25 2011
SC Court of Appeals

Re: The State v. Bryan Phillips

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of a Return to Motion to Certify, Consolidate, and Incorporate *Amicus Curiae* Brief along with proof of service for filing in the above-referenced appeal.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General

Enclosures

cc: ~~Honorable Tanya A. Gee~~
LaNelle C. DuRant, Esquire
Victim Services

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Appeal from Edgefield County

Honorable William P. Keesley, Circuit Court Judge

RECEIVED
OCT 13 2011
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRYAN PHILLIPS,

APPELLANT

MOTION TO CERTIFY CASE TO THE SUPREME COURT,
TO CONSOLIDATE CASE WITH CO-DEFENDANT, AND INCORPORATE
AMICUS CURIAE BRIEF

Pursuant to SCACR Rule 204(b), Appellant petitions that his case be certified to the South Carolina Supreme Court. Appellant believes that his case is proper for certification because his case involves a legal principle of major importance – appellant’s right to a speedy trial which was hindered by the solicitor’s control of the docket. Simultaneously, Appellant moves to consolidate his case with that of his co-defendant, K.C. Langford, who has a Petition for Certification currently pending before the Supreme Court as they were tried jointly in the circuit court. As part of this consolidation, Appellant seeks to have the Initial Brief of *Amicus Curiae* submitted by the South

Carolina Public Defender Association in support of K. C. Langford, incorporated into Appellant's case. In support of this motion, Appellant shows this Court:

- (1) Bryan Phillips was arrested September 28, 2008 and his two co-defendants were arrested October 3, 2008 for alleging robbing a local restaurant owner at his home.
- (2) Phillips was indicted by the Edgefield County Grand Jury on December 3, 2008 for criminal conspiracy and armed robbery. On May 5, 2010, he was indicted for burglary first degree and kidnapping.
- (3) On January 14, 2010, Phillips' attorney filed a motion for a speedy trial alleging that Phillips was arrested in September 2008; was denied bond three times; and the third co-defendant, Alvin Phillips, had recanted his statement.
- (4) The state called the case to trial in May 2010, but received a continuance when the third co-defendant, who was testifying for the state, invoked his Fifth Amendment right against self-incrimination and refused to testify. The trial court judge issued an order on May 19, 2010 denying the motion for a speedy trial. The state waited twenty months from September 2008 until May 2010 before attempting to call Phillips' case to trial.
- (5) The state finally called the case to trial on September 9, 2010 trying Phillips and Langford in a joint trial.¹ The state waited twenty four months before calling Phillips to trial.
- (6) Phillips argues that the state denied his right to a speedy trial as Phillips had no control over the trial docket. This was prejudiced because he spent twenty-four months in jail without a trial or bond.

¹ The trial transcript states the trial was held January 23, 2011, but the sentencing sheet was signed September 9, 2010.

- (7) Phillips notes that a speedy trial is a right provided under the Sixth Amendment of the United States Constitution. Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966).
- (8) Pursuant to SCACR Rule 214, Phillips moves to consolidate his case with that of K.C. Langford, his co-defendant, because this was a joint trial; and the same question of a speedy trial is involved in both cases.
- (9) Because the same issue of a speedy trial denial is involved in both cases, Phillips moves the Court to incorporate the *Amicus Curiae Brief* of the South Carolina Public Defenders' Association, which was submitted on behalf of K.C. Langford, into Phillips' case also.

This petition is being filed in the South Carolina Supreme Court and a copy of Phillips' Initial Brief is attached. Phillips' Initial Brief was filed with the Court of Appeals on July 11, 2011. This petition is being filed with the Court of Appeals simultaneously with the filing in the Supreme Court.

WHEREFORE, Bryan Phillips respectfully requests this Court to accept this motion for certification, consolidate his case with that of his co-defendant, K.C. Langford; and incorporate the *Amicus Curiae Brief* of the South Carolina Public Defenders' Association into Phillips case.

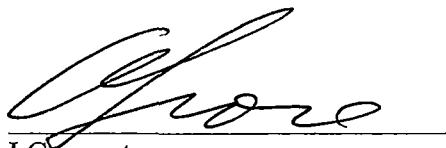
Respectfully submitted,

A handwritten signature in black ink, reading "LaNelle Cantey DuRant". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

LaNelle Cantey DuRant
Appellate Defender

Attorney for Appellant

This 5th day of October, 2011



I Consent:

E. Charles Grose

Attorney for *Amicus Curiae* Brief

South Carolina Public Defenders Association



I Consent:

Elizabeth A. Franklin-Best

Appellate Defender for K.C. Langford

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Edgefield County
Honorable William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

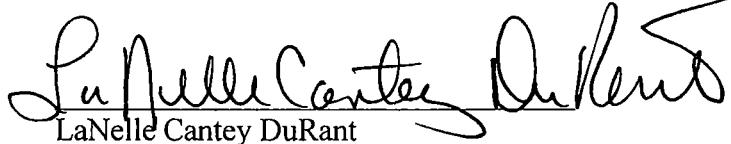
V.

BRYAN PHILLIPS,

RESPONDENT

CERTIFICATE OF SERVICE

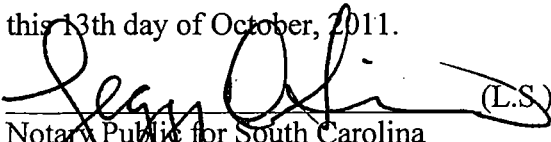
The undersigned attorney hereby certifies that a true copy of the motion for certification, consolidate his case with that of his co-defendant, K.C. Langford; and incorporate the *Amicus Curiae Brief* of the South Carolina Public Defenders' Association in the above referenced case has been served upon opposing counsel, William M. Blich, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and the Court of Appeals, this 13th day of October, 2011.



LaNelle Cantey DuRant
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 13th day of October, 2011.



(L.S.)
Notary Public for South Carolina
My Commission Expires: December 4, 2017.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 13, 2011

The Honorable Daniel E. Shearouse
Clerk of Court, S.C. Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

OCT 13 2011

SC Court of Appeals

Re: The State v. Bryan Phillips

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Motion to Certify to the Supreme Court, to consolidate case with co-defendant, and incorporate *Amicus Curiae* brief in the above-referenced case.

Please call me if you have any questions.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/pds

Enclosure

cc: South Carolina Court of Appeals

The South Carolina Court of Appeals

The State,

Respondent

v.

Brian Phillips,

Appellant.

The Honorable William P. Keesley
Edgefield County
Trial Court Case No. 2008-GS-19-00718
2008-GS-19-00723
2010-GS-19-00274
2010-GS-19-00277

ORDER

For good cause shown, the request for an extension to serve and file the Initial Brief of Respondent and Designation of Matter on October 28, 2011 is granted. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Appellate Defender Lanelle Durant
Assistant Attorney General William Blitch

FILED
10/4/11

Bellamy, Latrea

From: COA Extensions
Sent: Wednesday, September 28, 2011 4:27 PM
To: Bellamy, Latrea
Subject: FW: State v. Bryan Jordan Phillips

Index
Due 10/28/11

From: Ellen DuBois [mailto:EDuBois@scag.gov]
Sent: Wednesday, September 28, 2011 11:20 AM
To: COA Extensions
Cc: William Blitch; dsimons@sccid.sc.gov; ldurant@sccid.sc.gov
Subject: State v. Bryan Jordan Phillips

Clerk's Office
South Carolina Court of Appeals

RE: State v. Bryan Jordan Phillips

The Initial Brief of Respondent and Designation of Matter in the above appeal are due to be served September 29, 2011. However, due to a heavy workload, I am requesting a 30 day extension.

This is the **second** extension request in this case, and it is not intended for the purpose of delay. By copy of this email, I am asking that counsel for Appellant, LaNelle C. DuRant, Esquire, consent to this extension request.

Sincerely,
William M. Blitch, Jr.
Assistant Attorney General

WMB/erd

The South Carolina Court of Appeals

The State,

Respondent

v.

Bryan Phillips,

Appellant.

The Honorable William P. Keesley
Edgefield County
Trial Court Case No. 2008-GS-19-00718
2008-GS-19-00723
2010-GS-19-00274
2010-GS-19-00277

ORDER

The request for an extension to serve and file the Initial Brief of Respondent and Designation of Matter on September 28, 2011 is granted. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Appellate Defender Lanelle Durant
Assistant Attorney General William Blitch

FILED

Walter 9/2/11

Bellamy, Latrea

From: COA Extensions
Sent: Monday, August 29, 2011 3:25 PM
To: Bellamy, Latrea
Subject: FW: State v. Bryan Jordan Phillips

*1st ext.
Duerant
9/28/11*

From: Ellen DuBois [mailto:EDuBois@scag.gov]
Sent: Monday, August 29, 2011 2:33 PM
To: COA Extensions
Cc: William Blitch; dsimons@sccid.sc.gov; ldurant@sccid.sc.gov
Subject: State v. Bryan Jordan Phillips

Clerk's Office
South Carolina Court of Appeals

RE: State v. Bryan Jordan Phillips

The Initial Brief of Respondent and Designation of Matter in the above appeal are due to be served August 29, 2011. However, due to a heavy workload, I am requesting a 30 day extension.

This is the **first** extension request in this case, and it is not intended for the purpose of delay. By copy of this email, I am asking that counsel for Appellant, LaNelle C. DuRant, Esquire, consent to this extension request.

Sincerely,
William M. Blitch, Jr.
Assistant Attorney General

WMB/erd



ALAN WILSON
ATTORNEY GENERAL

July 18, 2011

LaNelle C. DuRant, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

Re: The State v. Bryan Phillips

Dear Ms. DuRant:

This letter is to confirm that our office received Appellant's Initial Brief and Designation of Matter in the above-referenced case and to advise you that I will be representing the State in this appeal. Please forward all future correspondence regarding this matter directly to me.

I look forward to working with you on this case.

Sincerely,

William M. Blich, Jr.
Assistant Attorney General

cc: The Honorable Tanya A. Gee
Victim Services

RECEIVED

JUL 20 2011

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 26, 2011

Appellate Defender Lanelle Durant
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Phillips, Brian

Dear Counsel:

The following Order has been endorsed on your Motion For an Extension of Time in Which to File the Initial Brief of Appellant and Designation of Matter in the above entitled case on appeal.

"Granted.

John Cannon Few, C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

The Appellant's Initial Brief and Designation of Matter have been received, accepted, and filed with the Court. The Initial Brief of Respondent and Designation of Matter is now due on August 29, 2011.

Very truly yours,

V. Claire Allen, Deputy
CLERK

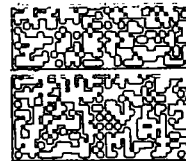
TAG/lb

cc: Assistant Deputy Attorney General Salley W. Elliott



POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



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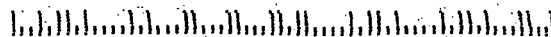
\$00.44⁰

07/18/2011

Mailed From 29201

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29211-1629 B012



STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

 ORIGINAL

RECEIVED

JUL 13 2011

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRYAN PHILLIPS

APPELLANT

INITIAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in not granting Phillips' motion for a mistrial after the solicitor commented on Phillips' not taking the stand in his own defense?
2. Did the trial court err in qualifying Ming Louie as an interpreter in Chinese and Mandarin Chinese when he had never been certified as an interpreter by any court and had never applied for certification, and was not trained in Mandarin Chinese?
3. Did the trial court err in not granting Phillips' motion to dismiss the case due to a violation of his right to a speedy trial in order for the state to have a continuance to determine if the cooperating co-defendant, who changed his mind and asserted his privilege under the Fifth Amendment not to testify, would change his mind again and choose to testify which he did and which was prejudicial to Phillips because the co-defendant was the only evidence the state had against Phillips?

STATEMENT OF THE CASE

On May 5, 2010, the Edgefield County Grand Jury indicted Bryan Jordan Phillips on the charges of burglary first degree; armed robbery; kidnapping; and criminal conspiracy. On January 23, 2011, Phillips and one of his co-defendants, K.C. Langford, proceeded to trial before the Honorable William P. Keesley and a jury. Phillips was represented by Randall D. Williams; the co-defendant was represented by Mark R. Calhoun; and the state was represented by Assistant Solicitor Ervin J. Maye. The jury returned verdicts of guilty on all charges as indicted. Tr. 524 – 526. Judge Keesley sentenced Phillips to twenty years on each of the kidnapping, burglary first degree, and armed robbery. The sentence on criminal conspiracy was five years; all sentences were to run concurrently. Tr. 549. Phillips' attorney filed a notice of appeal. This appeal follows.

ARGUMENT

I.

The trial court erred in not granting Phillips' motion for a mistrial after the solicitor commented on Phillips' not taking the stand in his own defense.

Ji Quing Chen and his wife and son were working in their Chinese restaurant, Hong Kong Restaurant, in Johnston, South Carolina on August 14, 2008. Tr. 158; Tr. 189; Tr. 187. They left the restaurant around ten o'clock and went to their home nearby. Tr. 187. Chen's wife and son went into the house but he went to the side of the house to water plants. Tr. 187; Tr. 189.

Three black men, who were hiding in the bushes, pointed a gun at his head, forced him down, and took his wallet. One hit him in the head. Tr. 189. His son came out, and saw his father in danger. His son told the men to go in the house and get the bag if they needed money. One man did go inside and took the money. Then the three men ran away. Tr. 190 – 191.

The son, Li Guan Xin, testified that he brought home from the restaurant a bag with \$3000 in it. Tr. 200 – 201. He gave the bag of money to the man that went into the house. He then called the police when the men ran away. Tr. 203. He nor his father could give a description of the men to the police. Tr. 205; Tr. 206; Tr. 192; Tr. 193. Police Investigator Lamaz Robinson testified that there was no forensic evidence to connect Phillips to the crime. Tr. 321; Tr. 319; Tr. 320.

Alvin Phillips, who was a senior at Strom Thurmond High School, at the time of this incident, testified that he and Bryan Phillips, who was his first cousin, watched this Chinese family come and go between their home and work at the restaurant. They allegedly thought

the Chinese family might be taking their money from the restaurant home with them because they did not see the family take the money to the bank after work, Tr. 223; Tr. 225; Tr. 228; Tr. 229. Alvin stayed with his sister much of the time who lived within walking distance of the Chinese restaurant. Bryan lived with his mother in the same apartment complex. Tr. 224; Tr. 225.

On August 14, 2008, Alvin and allegedly Bryan, decided to rob the Chinese family. Alvin got his gun from inside the house and met Bryan. Tr. 230; Tr. 231. K.C. Langford, who lived with Alvin's sister, decided to go with them. Tr. 231; Tr. 232; Tr. 233. Alvin said they waited outside in the bushes. When the father came out, Alvin jumped on him and pointed the gun at him. They could not understand what the man said. Tr. 234; Tr. 235. Then the son came out. Langford went in the house, and then came out running down the street. Alvin and Bryan then ran away also. Tr. 236.

Investigator Roosevelt Young with the Edgefield Sheriff's Office, testified that an acquaintance of his, Pat Stevens who had a family court bench warrant, gave him information about this incident. Tr. 369; Tr. 371; Tr. 373; Tr. 374. Stevens gave him the names of the three co-defendants. Tr. 375.

Investigator Lamaz Robinson was working with the Johnston Police Department in August 2008. Tr. 303. His testimony was that investigator Roosevelt Young told him of the information they received from Stevens. Investigator Young talked with Alvin Phillips who confessed to the incident. Alvin implicated Bryan Phillips and K.C. Langford. Tr. 308.

Alvin testified that gave a statement to the police confessing to the incident and implicating Bryan and Langford. Tr. 242. He gave a second statement stating that he was not in his right state of mind when he gave the first false statement implicating Bryan

Phillips and Langford, and asked that all charges against the two men be dismissed because his first statement was not true. Tr. 264; Tr. 265; Tr. 266; Tr. 267; Tr. 268. Alvin pled guilty to the armed robbery a few weeks before this trial, but the other charges of burglary first degree, conspiracy, kidnapping and assault and battery with intent to kill were still pending. Tr. 244; Tr. 245.

Bryan Phillips and K.C. Langford did not testify. Tr. 2 – 3; Tr. 364; Tr. 365.

In his closing argument, the solicitor stated:

This comment about don't snitch on anybody, don't tell anybody, this system breaks down when people get up here under oath and they don't tell the truth. The only way this system works is when people get up here and take that oath and tell the truth.

Tr. 490, ll. 18 – 23.

Langford's attorney made a motion for a mistrial, which Phillips' counsel joined in, based on the solicitor's comment at the end of his closing argument that this system only works if people get on the witness stand and tell the truth. Tr. 492. Counsel argued that the comment was a "distinct, pointed comment on the fact that Langford and Bryan Phillips did not take the stand.." Tr. 492.

The solicitor argued that he was referring to Alvin Phillips. He argued that he was talking about witnesses who take the stand and tell the truth. Defense counsel argued that the jury knew that the defendants did not take the stand. Tr. 492, ll. 22 – 25; Tr. 493. The judge denied the mistrial motion. Tr. 493; Tr. 494.

Solicitors must confine their closing arguments to evidence in the record, tailoring comments to the evidence presented and its reasonable inferences. State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (Ct. App. 2000). As a corollary of the right to remain silent, a

prosecutorial comment, whether direct or indirect, upon a defendant's failure to testify at trial is constitutionally impermissible. State v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004).

In State v. Weaver, Id., the Court of Appeals ruled that although it was improper for a solicitor to indirectly comment on a defendant's failure to testify, such comments did not necessarily mandate reversal of the conviction. The Court wrote that the comment did not require reversal in Weaver's case because defense counsel first asked the jury to contemplate why Weaver would have stood over the victim; the egregiousness of the solicitor's comment was mitigated by defense counsel's previous comment; and the trial court gave a curative instruction immediately after the improper comment.

Phillips' case is distinguished because defense counsel did not point out the issue first, and the trial judge did not issue a curative instruction as he did not believe the comment was inappropriate. Tr. 492 – 494.

Phillips was prejudiced by the comment because he chose not to testify. The only evidence the state had was the word of the biased co-defendant, Alvin Phillips.

ARGUMENT

II.

The trial court erred in qualifying Ming Louie as an interpreter in Chinese and Mandarin Chinese when he had never been certified as an interpreter by any court and had never applied for certification, and was not trained in Mandarin Chinese.

At the beginning of the trial, the solicitor asked the judge if he needed to go ahead and have the interpreter, Ming Louie, who was necessary because the Chinese family that was robbed did not understand English very well, sworn or put under oath. Tr. 116; Tr. 120; Tr. 191. The judge then asked if there were going to be any issues regarding the qualification of the interpreter. Phillips' attorney stated that he just wanted to know if the interpreter "fit the statute." Tr. 116. The attorney for Langford, the co-defendant, stated that if the interpreter was court certified, that he had no issues with him. Tr. 116, ll. 25; Tr. 117, ll. 1.

Phillips' counsel had not seen the interpreter's resume. The judge told the two attorneys to talk to the interpreter briefly which the attorneys did. Tr. 117. The following day, when court resumed, Phillips' counsel said he continued to have questions about the qualification of the interpreter. Tr. 118. Langford's attorney said the interpreter told him he thought he was certified but he was not sure in which state. Tr. 118, ll.21 – 25; Tr. 119. The judge allowed *voir dire* of the interpreter by the attorneys. Tr. 120.

During *voir dire*, the interpreter admitted that he was not certified in South Carolina in any language. Tr. 121. He admitted that he was not certified in Mandarin or Cantonese Chinese in any state, and was not certified as an interpreter in any state in any language. Tr. 121; Tr. 131. The interpreter explained that there was no program for this certification so he

had never applied for certification in any state. He did not know if court administration would allow him to be certified. Tr. 121; Tr. 122; Tr. 123.

The interpreter testified that he had served as an interpreter in Chinese in court approximately fifty times. Tr. 123. Later, he admitted that some of the fifty times were in law offices and police offices as well as court. Tr. 127. His education included a Masters Degree in chemistry from Penn State. He grew up in Canton, China and lived there about twenty years. He had been in the United States forty years. Tr. 125; Tr. 126.

Ming Louie said he had talked with the victims and they spoke Mandarin Chinese, but he could communicate with them. However, they spoke minimal English. Tr. 124.; Tr. 130. According to Louie, Mandarin was the national dialect, but the only difference in Cantonese and Mandarin was a different dialect. Tr. 125 – 129. He attended school in Hong Kong where Cantonese was mostly spoken. Tr. 130. The judge confirmed again that Louie was not certified as an interpreter in any state. Tr. 131.

Louie admitted that he had never read the ethical rules related to interpreters in South Carolina. Tr. 131. The judge had the rules printed and given to Louie to read. The judge cited S.C. Code Section 15-27-155 which provided that a person can still be qualified as an interpreter even if he was not on the list of certified interpreters if the person met the requirements of the statute. Louie told the judge that he could translate Mandarin or Cantonese into English. Tr. 132 – 134.

Phillips' attorney requested additional *voir dire* which the judge granted. Phillips attorney continued to object to the interpreter's qualification. Tr. 135 – Tr. 138. The judge certified Ming Louie as an interpreter in both Mandarin and Cantonese Chinese. Tr. 138 – Tr. 142.

S.C. Code Section (A) provides:

Notwithstanding any other provision of law, whenever a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.

S.C. Code Section 15-27-155 (B) provides:

(B)An “interpreter” means a person who:

- (1) is eighteen years of age or older;
- (2) is not a family member of the part or witness;
- (3) is an instructor of foreign language at an institution of education; or
- (4) has educational training or experience that enables him or her to fluently speak a foreign language and interpret the language of another person.

An “interpreter” shall not be a person confined to an institution.

The interpreter is considered a witness in the sense that the accuracy of her translation is a question of fact for the jury which may be disputed by counsel. State v. Perez, 334 S.C. 563, 514 S.E.2d 754 (1999).

Ming Louie did not meet the requirements for an interpreter pursuant to S.C. Code Section 15-27-155 because no evidence was presented to show that he had the educational

training or experience to enable him to translate Mandarin Chinese. According to

Wikipedia, http://en.wikipedia.org/wiki/Varieties_of_Chinese:

Chinese comprises many regional language varieties, the primary ones being Mandarin, Wu, Cantonese, and Min. These are not mutually intelligible, and even many of the regional varieties (especially Min) are themselves composed of a number of non-mutually-intelligible subvarieties.

Ming Louie's resume indicated no training in any language, and no training in Mandarin Chinese. His resume consisted of training in science or chemistry. He used the word "approved" to indicate his 15 years of experience in interpreting. Court Exhibit 1 Resume of Ming Louie.

Phillips was prejudiced because there was no way to know if the interpreter was translating correctly. The interpreter had not read the rules of ethics and had not tried to be certified. Phillips right to a fair trial was violated by not having a qualified translator to interpret the accusations of the Chinese family.

ARGUMENT

III.

The trial court erred in not granting Phillips' motion to dismiss the case due to a violation of his right to a speedy trial in order for the state to have a continuance to determine if the cooperating co-defendant, who changed his mind and asserted his privilege under the Fifth Amendment not to testify, would change his mind again and choose to testify which he did and which was prejudicial to Phillips because the co-defendant was the only evidence the state had against Phillips.

After the verdict, Phillips' co-defendant, Langford, told the court that he had been ready to go forward when the case was first called to trial in May 2010. He told the court that he felt prejudiced by the trial court's granting the State's continuance, and that he felt his right to a speedy trial had been violated. Tr. 533- 540. The trial court judge reiterated that his reasons for granting the continuance related to "the Bruton analysis." Tr. 547, ll. 3-7.

Bryan Phillips said to the judge that "he wanted to follow what Mr. Langford said about the charges not being dismissed when they came to court last term." Tr. 541, ll. 5 – 14. Phillips said that Alvin Phillips who testified against him, had waived and recanted his statement several times. Tr. 542.

Bryan Phillips' attorney filed a Motion for A Speedy Trial January 14, 2010. See Motion January 14, 2010. The attorney argued in his motion that Phillips was arrested September 28, 2008 and had been denied bond three times. He argued that the only witness, the co-defendant Alvin Phillips, had recanted his statement.

Alvin Phillips admitted at trial that he changed his mind and decided not to testify when the case was called for trial in May 2010. Tr. 260 – 263.

Judge William Keesley issued an order on May 19, 2010 denying Phillips' motion and granting the state a continuance. The judge wrote that the co-defendant had changed his mind and asserted his Fifth Amendment right to remain silent. The judge wrote that the state had gone to great effort to obtain an interpreter and needed time to determine whether to try Alvin Phillips. The judge stated that the state would have to try the defendant who gave the statement in order to avoid Bruton¹

In Doggett v. United States, 505 U.S. 647 (1992), the United States Supreme Court listed the factors required in order to assess speedy trial claims. There are four relevant inquiries: (1) whether delay before trial was uncommonly long, (2) whether the government or defendant is more to blame for the delay, (3) whether, in due course, the defendant asserted his right to a speedy trial, and (4) whether the defendant suffered any prejudice as to the delay's result. Id. at 651. See Barker v. Wingo, 407 U.S. 514 (1972). State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009);

In order to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial "has crossed the threshold dividing ordinary from "presumptively prejudicial" delay." Id. at 652 (*quoting Barker* at 530-531). The Supreme Court notes in footnote 1 that, depending on the nature of the charges, lower courts have generally found post-accusation delay "presumptively prejudicial" as it approaches one year. Id. The South Carolina Supreme Court found, in State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978), a two-year and four-month delay sufficient to trigger further review.

¹ Bruton v. United States, 391 U.S. 123 (1968).

Phillips was prejudiced by the delay between his arrest and trial dates as he spent over two years (twenty-eight months) in the county detention center without a bond just waiting to go to trial. Tr. 130.

The government did bear the blame for the delay as Phillips had no control over when the case was called. The state did not assure that the co-defendant was prepared to testify.

Phillips filed a motion for a speedy trial a year before the trial was held. Phillips was prejudiced because he stayed in jail for twenty eight months without a bond. He was denied his right to a speedy trial.

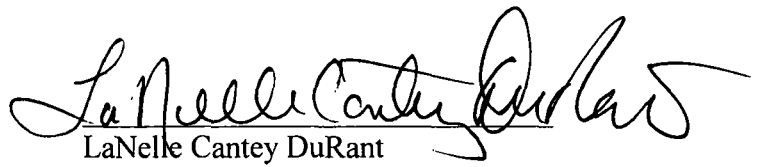
The trial court judge erred because this situation does not implicate Bruton. Even if all three codefendants had been tried together, Bruton would only have forced Alvin Phillips' statement to redact references to Bryan Phillips and Langford. What the judge characterized as a "Bruton problem" was really only the state's difficulty in securing a conviction against the co-defendants without Alvin Phillips' testimony. Granting a continuance based on their inability to prove Phillips' guilt at the time the state called the case to trial was a violation of Phillips' right to a speedy trial.

"Speedy trial" is part of due process of law to which every person accused of a crime is entitled under State and Federal Constitutions. Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966); citing U.S.C.A. Const. Amends. 6, 14. and S.C. Const. art. 1, Section 5.

CONCLUSION

Based on the above, Phillips' convictions and sentences should be reversed pursuant to Issue Three and the case remanded for a new trial pursuant to Issues One and Two.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of July, 2011.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

The State,

Respondent,

v.

Bryan Phillips,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly denied Appellant's motion for a mistrial based upon the comments of the solicitor during closing argument. Further, this issue is not properly preserved for review on appeal.
- II. The trial court properly qualified Mr. Louie as an interpreter in Chinese. Further, it is questionable whether the issue is properly preserved for review on appeal.
- III. The trial court did not err in denying Appellant's motion to dismiss the case due to a violation of his right to a speedy trial. Further, this issue is not preserved because it was not raised prior to the commencement of the trial.

STATEMENT OF THE CASE

The Edgefield County Grand Jury indicted Appellant on charges of burglary in the first degree, armed robbery, kidnapping, and criminal conspiracy. His case was initially called for trial in May 2010, but was continued. The Honorable William P. Keesley denied a motion to dismiss by Appellant and granted the State a continuance.

The State called the case again for trial on September 7, 2010. Appellant and his co-defendant K.C. Langford proceeded to trial before Judge Keesley and a jury. The jury found Appellant guilty on all charges. Judge Keesley sentenced him to twenty years for burglary, armed robbery, and kidnapping. He received five years for criminal conspiracy. All sentences were to run concurrent. Appellant filed a timely notice of appeal and this case was consolidated with the appeal filed by K.C. Langford and certified for consideration by the South Carolina Supreme Court.

STATEMENT OF FACTS

Alvin Phillips and Appellant noticed several individuals leaving a Chinese restaurant and believed it was possible they were taking money from the restaurant home. (T.228-229; R.____). Alvin Phillips and Appellant knew where the individuals lived and watched them carry a black bag to their house and noticed they never went to the bank when they left the restaurant. (T.229; R.____). The two had discussions of robbing the individuals at their home when they arrived from the restaurant. (T.229-230; R.____).

On August 14, 2008, Appellant called Alvin Phillips about robbing the individuals when they arrived home from the restaurant. Alvin Phillips retrieved his gun and K.C. Langford, the co-defendant tried with Appellant, changed into dark clothes. The two along with Appellant went to the residence to wait for the arrival of the individuals from the Chinese restaurant. (T.232-233; R.____).

When the victims arrived home, the father stayed outside while his son and wife went into the house. Appellant, Alvin Phillips, and K.C. Langford jumped out of the bushes and ordered the father to the ground. After he was down they demanded money, but could not understand what he was saying to them because he only spoke Chinese. (T.234-235; R.____). Alvin Phillips pointed a gun at the man. (T.189; 235; R.____).

The man's son came out of the house to find his father and was forced to the ground by the men. (T.189-190; 202; 235; R.____). They demanded money from the son as well. He directed the men to the house where he had placed the black bag containing approximately \$3000. (T.201; 203; R.____). K.C. Langford entered the house and obtained the black bag containing the money from the restaurant. (T.236-237; R.____). Appellant and

his co-defendants fled the scene and returned to Appellant's house. (T.236-238; R.____). There they divided up the money. (T.239; R.____).

The co-defendants were not immediately identified. Investigator Young received information from an acquaintance indicating Appellant, Alvin Phillips, and K.C. Langford were responsible for the robbery on August 14. (T.374-375; R.____). Alvin Phillips was asked to come in for questioning and he did so voluntarily. (T.381-382; R.____).

Alvin Phillips gave a statement in which he implicated himself and both Appellant and K.C. Langford in the robbery. (Statement of Alvin Phillips dated 9/29/08, Defendant Phillips Exhibit 4; R.____). Subsequent to the three defendants being arrested, they all were placed in Edgefield county detention. While there, Alvin Phillips was approached by K.C. Langford to sign a statement Alvin Phillips did not write that indicated K.C. Langford and Appellant were not guilty of the crime and attempting to retract his prior statement. (T.280-281; R.____).

The trial of Appellant and K.C. Langford was originally called in May 2010. Prior to calling the case for trial, the solicitor believed Alvin Phillips would testify against his co-defendants. Just prior to the hearing, he was presented the statement signed by Alvin Phillips in which he attempted to recant his prior statement and was told Alvin Phillips would not testify.

At the hearing, counsel for Appellant moved to dismiss the case or in the alternative for a low bond based on violation of his client's right to a speedy trial. He maintained twenty months "is a substantial enough period of time to give the State the opportunity to prepare its case and prosecute it." (May 17T.5; R.____).

The State maintained the case was ready to be called that day for trial until he found out Alvin Phillips changed his mind about testifying. (May 17T.6; R.____). He explained the belief that the change is the result of pressure being applied by Appellant and K.C. Langford. (May 17T.6-7; R.____). The State indicated Alvin Phillips was moved to Saluda detention facility because of the pressure by the other co-defendants. (May 17T.11-12; R.____). The State indicated significant effort was expended to obtain an interpreter who spoke Chinese and English fluently because South Carolina has no certified interpreters. (May 17T.9-10; R.____).

The trial court denied the motion to dismiss. The trial court considered the changed testimony of Alvin Phillips, the fact Alvin Phillips would have to be tried before the other two co-defendants but could not be tried in May, and the difficulty in obtaining the Chinese interpreter. (Order of the Court dated May 2010; R.____). Alvin Phillips subsequently pled guilty to armed robbery. (T.244; R.____).

Appellant and co-defendant K.C. Langford were brought to trial on September 7, 2010. Prior to trial, the trial court qualified an interpreter in Chinese to translate for the victims. (T.141-142; R.____). During trial, the victims testified about the events of the robbery. Alvin Phillips testified to the involvement of all three individuals charged. He also explained the pressure put on by K.C. Langford resulting in the statements recanting his initial confession implicating Appellant and K.C. Langford. (T.266-267; 279-282; R.____).

ARGUMENT

- I. The trial court properly denied Appellant's motion for a mistrial based upon the comments of the solicitor during closing argument. Further, this issue is not properly preserved for review on appeal.**

Appellant contends the trial court erred in denying his motion for a mistrial based on comments by the solicitor he alleges were comments on his right to remain silent and not take the stand in his defense. The issue is not properly preserved for review on appeal because a contemporaneous objection was not made. The issue is also without merit because the solicitor was discussing the testimony of Alvin Phillips and never commented on Appellant's right to remain silent.

Preservation

First, the issue is not properly preserved for review on appeal. In order to preserve an issue, an objection must be contemporaneously made. It is a fundamental principle that a contemporaneous objection is required at trial to properly preserve an error for appellate review. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994) (to preserve error for appellate review, defendant must make contemporaneous objection on specific ground). "A contemporaneous objection requirement enables trial judges to make reasoned decisions by appropriately developing issues by way of argument, both for or against any particular legal proposition. This, in turn, allows potential errors to be prevented or cured." State v. Torrence, 305 S.C. 45, 66, 406 S.E.2d 315, 327 (1991)(eliminating *in favorem vitae* review in death penalty cases and instead requiring a contemporaneous objection to preserve and issue for direct appeal)(emphasis added).

Appellant's failure to contemporaneously object to the alleged improper comments by the solicitor eliminated the trial court's ability to cure any prejudice. Normally a curative instruction would have cured any error if the contemporaneous objection was made. See Gill v. State, 346 S.C. 209, 221, 552 S.E.2d 26, 33 (2001) ("Furthermore, even if the solicitor makes an improper comment on the defendant's failure to testify, a curative instruction emphasizing the jury cannot consider [the] defendant's failure to testify against him will cure any potential error."). Instead, counsel waited until the conclusion of the closing argument and moved for a mistrial, a drastic remedy which may have been avoided by a curative instruction if one was even needed. As a result, by failing to object at the time of the improper comments by the solicitor, Appellant's issue is not preserved for review on appeal.

Merits

The issue raised is also without merit. Under the United States and South Carolina Constitutions, a defendant has a right to remain silent and to not testify during his trial. See U.S. Const. amend. V; S.C. Const. art. I, § 12. "An accused has the right to remain silent and the exercise of that right cannot be used against him. The State cannot, through evidence or the solicitor's argument, comment on the accused's exercise of his right to remain silent." State v. Smith, 290 S.C. 393, 394-95, 350 S.E.2d 923, 924 (1986) (citing Doyle v. Ohio, 426 U.S. 610 (1976); State v. Woods, 282 S.C. 18, 316 S.E.2d 673 (1984)).

A trial judge's ruling on a motion for a mistrial will not be disturbed absent an abuse of discretion amounting to an error of law. State v. Sparkman, 358 S.C. 491, 495, 596 S.E.2d 375, 377 (2004); State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). This Court favors the exercise of wide discretion of the trial judge in determining the merits of such

motion in each individual case. See State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 851 (Ct. App. 1999).

A mistrial should be declared only when absolutely necessary. In order to receive a mistrial, the defendant must show error and resulting prejudice. Harris, 340 S.C. at 63, 530 S.E.2d at 628; State v. Ward, 374 S.C. 606, 612, 649 S.E.2d 145, 148 (Ct. App. 2007). “A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons.” Patterson, 337 S.C. at 227, 522 S.E.2d at 851 (citing State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989); State v. Kirby, 269 S.C. 25, 236 S.E.2d 33 (1977) (power of court to declare mistrial ought to be used with greatest caution under urgent circumstances, and for very plain and obvious causes)). Granting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007) (citing State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 455, 460 (Ct. App. 2005)).

“The trial court has broad discretion when dealing with the propriety of the solicitor’s argument, including the question of whether to grant a defendant’s mistrial motion.” State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). “The trial court’s discretion will not be overturned absent a showing of an abuse of discretion amounting to an error of law that prejudices the defendant.” Id.

The commentary which formed the basis of Appellant’s motion for a mistrial was not a comment on Appellant’s right to remain silent. The prosecutor spent the majority of his closing argument discussing the statements given by Alvin Phillips, the co-defendant. He discussed the pressure to recant and the fact that he still came forward to testify even though

he did not want to testify against Appellant and K.C. Langford. The prosecutor was merely continuing this line of argument.

Specifically, the solicitor argued:

You saw what Alvin Phillips said. You saw what he told Roosevelt Young. The statements match. The timeline's there. He was with Bryan ahead of time. He was with K.C. Langford right afterwards. There wasn't anybody else. He told the truth up here. He didn't want to. He didn't want to tell on them. You know he's got genuine affection for them. And he didn't want to testify against them, but he did do the right thing. This comment about don't snitch on anybody, don't tell anybody, this system breaks down when people get up here under oath and they don't tell the truth. The only way this system works is when people get up here and take that oath and tell the truth.

(T.490; R.____). Clearly, the solicitor is talking about Alvin Phillips getting on the stand and telling the truth based on his statement to police and not commenting on Appellant's invoking his right not to testify. The trial court properly concluded this was the basis for the comment and that the comment did not warrant the drastic remedy of a mistrial. (T.493-494; R.____).

Further, even if the comment was a comment on Appellant's failure to take the stand, it was entirely harmless. If the comment is not read as applying to the testimony of Alvin Phillips, then the only other possible interpretation is a general comment on the need for the truth in testimony. This commentary does not prejudice Appellant, and is harmless, especially in light of the entire record including numerous reminders by the court as well as by the solicitor that Appellant is presumed innocent and has no burden of proof. (T.479; 488; 499-502; R.____). See State v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004).

II. The trial court properly qualified Mr. Louie as an interpreter in Chinese. Further, it is questionable whether the issue is properly preserved for review on appeal.

Appellant contends the trial court erred in qualifying Mr. Louie as an interpreter for the Chinese victims. The preservation of the issue is questionable in light of the very generic objection raised at trial. In any event, Mr. Louie was properly qualified as an interpreter in Mandarin Chinese by the trial court pursuant to section 15-27-155 of the South Carolina Code.

It is questionable whether this issue is properly preserved for review on appeal. Appellant in his brief contends Mr. Louie is not qualified to be an interpreter in Mandarin Chinese because he does not have the sufficient experience or training in the language and also maintains his primary dialect was Cantonese and not Mandarin. These specific issues were never raised to the trial court. At the end of voir dire regarding Mr. Louie's qualification as an interpreter, Appellant's counsel simply stated: "For the record, I do object to his qualification." He did not raise the issues to the trial court he now raises on appeal. As a result the issue should not be preserved for review. See State v. Jennings, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011) ("An objection must be made on a specific ground."); State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an issue not preserved when one ground is raised to the trial court and another ground is raised on appeal); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding issue not preserved when appellant did not object to testimony at trial on the grounds raised on appeal); State v. Varvil, 338 S.C. 335, 340, 526 S.E.2d 248, 251 (Ct. App. 2000) (finding "[a] general objection is ordinarily insufficient to preserve an issue for appeal.").

On the merits, section 15-27-155 governs the use and qualification requirements of an interpreter. The section provides:

- (A) Notwithstanding any other provision of law, whenever a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness.
- (B) An “interpreter” means a person who:
 - (1) is eighteen years of age or older;
 - (2) is not a family member of the party or witness;
 - (3) is an instructor of foreign language at an institution of education; or
 - (4) has educational training or experience that enables him or her to fluently speak a foreign language and interpret the language of another person.

An “interpreter” shall not be a person confined to an institution.

S.C. Code Ann § 15-27-155 (A) & (B) (Supp. 2010).

The trial court offered Appellant’s counsel the opportunity to talk with Mr. Louie during an overnight break in the trial. Counsel did so and indicated he had questions about his qualifications. (T.117-118; R.____). The court allowed voir dire of Mr. Louie regarding his qualifications. Mr. Louie acknowledged he was not certified by any state, including South Carolina. He stated there is no program for certification in Chinese in either Maryland or North Carolina. (T.121-122; R.____).

He testified he has served as an interpreter in the court system “[o]ver 50 times.” (T.123; R.____). He indicated he was required to translate from English to Chinese and back.

Further, he indicated he met with the victims and was able to communicate with them effectively and was able to understand them. He specifically indicated no problem in communication. (T.124; R.____).

On examination by Appellant's counsel, Mr. Louie indicated he learned both his local dialect, Cantonese, and the national dialect, Mandarin. (T.125-126; R.____). He indicated he began interpreting for the judicial system in 1996 and had always been qualified as an interpreter. (T.126-127; Court Exhibit 1, Resume; R.____). He again indicated he had no difficulty communicating with the victims and they had no problem communicating with him. (T.128; R.____).

The trial court then questioned Mr. Louie regarding his abilities to interpret. Mr. Louie indicated he lived in Hong Kong until he was twenty and graduated high school there speaking Cantonese and Mandarin. (T.130; R.____). Mr. Louie told the court he felt he was fluent in Chinese and Mandarin Chinese. (T.131; R.____). After having Mr. Louie read the ethical rules related to being an interpreter, the court ensured he understood his job was to interpret verbatim, and Mr. Louie indicated he understood. (T.136; R.____). The court further inquired into Mr. Louie's ability to be fair and accurate in his translation. (T.138-140; R.____). The court then recited significant and expansive findings of fact regarding Mr. Louie's qualification as an interpreter. (T.140-142; R.____).

Mr. Louie met the qualification requirements of section 15-27-155(B) and the trial court properly qualified him as an interpreter. Mr. Louie testified he was raised in China, the Canton province, and learned both Cantonese and Mandarin because Mandarin was the national language of the county. He lived in China for his first twenty years. This

experience, of living in and growing up speaking both Cantonese and Mandarin, sufficiently satisfies section 15-27-155(B)(4).

Further, even if there are differences in the Cantonese and Mandarin dialects, Mr. Louie was sufficiently questioned regarding his understanding and capabilities in Mandarin Chinese which is the dialect spoken by the victims. He indicated he could communicate with the victims, and vice versa, and he indicated he felt he was fluent in Mandarin Chinese. Accordingly, the trial court properly qualified Mr. Louie as an interpreter in Mandarin Chinese.

III. The trial court did not err in denying Appellant's motion to dismiss the case due to a violation of his right to a speedy trial. Further, this issue is not preserved because it was not raised prior to the commencement of the trial.

Appellant contends the trial court erred in denying his motion to dismiss the case as a result of a violation of his right to a speedy trial. The issue is not preserved for review on appeal. Additionally, the issue is entirely without merit as there is no evidence Appellant's right to a speedy trial was violated.

Factual Background

Appellant filed a motion for a speedy trial on January 14, 2010. (Motion for Speedy Trial dated January 14; R. ____). The State called the case for trial expecting it to go forward on May 17, 2010. Appellant moved to dismiss the case based on a violation of his speedy trial and because the State's main witness, Alvin Phillips, no longer was willing to testify as a cooperating co-defendant. Appellant argued he was ready to proceed to trial that day, and he "certainly believe[s] 20 months is a substantial enough period of time to give the State an opportunity to prepare its case and prosecute it." (May 17T.4-5; R. ____). No other grounds for granting the motion for a speedy trial were raised by Appellant.¹

The State learned Appellant and his co-defendant were actively seeking to influence co-defendant Alvin Phillips to not testify or testify falsely, which resulted in Alvin Phillips decision not to testify and the necessity of the May 2010 continuance. (May 17 T.6-8; T.279-284; R. ____). Further, the solicitor received a statement signed by Alvin Phillips on the day

¹Even a cursory review of the Record would reveal the issue raised by the *Amicus Curiae* Brief, the constitutionality of section 1-7-330 of the South Carolina Code, was never raised to the trial court. Further, no issue of impropriety on the part of the solicitor was ever articulated.

of the May hearing claiming the two co-defendants were not involved. This was provided by one of the defendants to their counsel. (May 17T. 12; R.____).

In responding to the Appellant's motion to dismiss, the solicitor advised the trial court law enforcement provided the solicitor with information the co-defendants were exhorting and pressuring Alvin Phillips to not testify because if he didn't testify, "none of them are going to be in trouble." (May 17 T. 6; R.____). The solicitor indicated Appellant and K.C. Langford would be brought to trial at the first opportunity and should not be rewarded for pressuring the younger co-defendant into exonerating them.

The solicitor attempted to prosecute Alvin Phillips at the May term, but could not because Alvin Phillips's prior attorney was relieved and the new attorney was appointed eight days in advance of the term. (May 17T. 9-10; R.____). Additionally, the court and the State discussed the difficulties in obtaining an interpreter that was capable of being qualified for translating Mandarin Chinese. The court ultimately denied the motion for dismissal and continued the case.

Preservation

First, the issue is not preserved for review on appeal. The State brought Appellant's case for trial September 7, 2010. Prior to trial, Appellant never renewed his motion to dismiss the case based on a violation of his right to a speedy trial. He allowed the trial to proceed to verdict without ever renewing his motion to dismiss based on violation of his speedy trial. As a result, he has waived this issue and it is not properly preserved for review on appeal. See State v. Burroughs, 328 S.C. 489, 496, 492 S.E.2d 408, 411 (Ct. App. 1997)

(finding motion to dismiss for violation of right to a speedy trial not properly preserved when no contemporaneous objection was made).

Appellant attempts to rely on a rambling diatribe against the trial court by his co-defendant in order to argue the motion to dismiss based on the violation of his right to a speedy trial was raised at the September 2010 trial. (T.533-539; R.____). Appellant stated: “I want to follow what Mr. Langford said, you know, about the charges not being dismissed, us coming to court last term.” (T.541; R.____). Even if the remonstration could be considered an objection based on his speedy trial motion or a renewal of the motion to dismiss, it came much too late to properly raise the issue for consideration on appeal. See State v. Pauling, 322 S.C. 95, 100, 470 S.E.2d 106, 109 (1996) (stating that “[h]aving denied the trial judge an opportunity to cure any alleged error by failing to contemporaneously object . . . , Appellant is procedurally barred from raising these issues for the first time on appeal”).

Additionally, Appellant’s trial counsel never raised an objection to how the Solicitor was administering the docket, the issue the Public Defender’s Association discusses in its *Amicus Curiae* Brief. Because this issue was never raised, it is clearly not preserved for review on appeal. See State v. Byram, 326 S.C. 107, 112-13, 485 S.E.2d 360, 362-63 (1997) (a constitutional issue must be presented to the trial court to be preserved for review). Further, this issue is not raised in Appellant’s brief or in the Statement of Issues on Appeal and should not be considered. See Rule 208(b)(1)(B), SCACR (“Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”); Rule 213, SCACR (amicus brief shall be limited to argument of the issues on appeal as presented by

the parties). As a result, neither the issue raised in Appellant's brief nor the one raised by the *amicus curiae* is preserved for review on appeal.

Merits

On the merits, an accused is entitled to a speedy trial under the Sixth and Fourteenth Amendments of the United States Constitution and under Article I, Section 14, of the Constitution of South Carolina.

Whether or not a person accused of crime has been denied his constitutional right to a speedy trial is a question to be answered in the light of the circumstances of each case. A speedy trial does not mean an immediate one; it does not imply undue haste, for the state, too, is entitled to a reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay.

Wheeler v. State, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966). The United States Supreme Court (USSC) has explained: "The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice." Beavers v. Haubert, 198 U.S. 77,87 (1905); see also, Barker v. Wingo, 407 U.S. 514, 522 (1972) (finding "any inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case").

The USSC, in Barker, identified several factors to be used in determining whether a defendant has been denied the right to a speedy trial including: (1) the length of delay, (2) the reason the government uses to explain the delay, (3) when and how the defendant asserted his speedy trial right, and (4) the prejudice to the defendant. Barker, 407 U.S. at 530; see also, State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) (citing factors for consideration). "The length of the delay is to some extent a triggering mechanism. Until

there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.” Barker, 407 U.S. at 530.

Even assuming the twenty month delay between Appellant’s arrest and when he raised the motion to dismiss or the twenty-four month delay between his arrest and trial is sufficient to warrant consideration of the remaining factors², the trial court properly denied the motion to dismiss. This case was not set for trial initially until May 2010 and finally tried on September 7, 2010, for two predominant reasons; the difficulty obtaining a qualified Chinese interpreter to assist law enforcement and to assist at trial with the victims who spoke little to no English, and the recantation and refusal to testify by Alvin Phillips resulting from the pressure and intimidation by Appellant and K.C. Langford.

At the May 2010 hearing, the trial court was aware the victims in the case spoke Chinese, and the State was having difficulties locating an interpreter to assist at trial. (T.9; R.____). The solicitor explained South Carolina did not have anyone on the certified interpreter’s list to speak Mandarin Chinese. He indicated they had to arrange to bring someone in from out of state to assist at trial. (T.9-10; R.____).

The trial court’s ruling on May 19, 2010, explains in part: “Some of the victims needed the services of an interpreter, and the State had gone to a great deal of time and expense in arranging an interpreter for Mandarin Chinese, having to bring the interpreter from another State since none are certified in South Carolina.” (Order dated May 20, 2010; R.____).

²See State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978) (wherein this Court found a twenty-eight month delay sufficient to trigger the remaining factors).

Prior to trial, the court had to qualify Mr. Louie as an interpreter in Mandarin Chinese. “The Clerk explained Court administration did not have any Chinese interpreters. South Carolina does not have any that are certified.” The Clerk explained they “searched diligently” for an interpreter. (T.135; R. ____). In making his ruling on the qualification of Mr. Louie, the trial court explained in pertinent part:

My conversations with the Clerk before this trial were very brief, but basically I understand there was difficulty in even locating someone. She has provided me a list of interpreters that she obtained from court administration. It’s a 2009 list, which is when this would have been - - the effort to obtain an interpreter would have been going on.

And it’s a situation where there’s nobody listed in there in Chinese. They’re almost all Spanish. There’s a few French and Haitian dialect, but there are no people on the list that we have for Chinese. I think the Clerk’s office did a diligent search and only came up with a grand total of about two names.

(T140-141; R. ____).

At trial, Investigator Lamaz Robinson indicated he could not obtain meaningful information during an interview with the victims because of the great language barrier. (T.304; R. ____). He testified he had difficulty finding a translator, and they did not find one to facilitate meaningful communications with the victims until over a year later (“a year and something”). (T.305; R. ____). The translator was finally found when a professor at the University of South Carolina in Columbia directed Investigator Robinson to a person who could assist. (T.306; R. ____). As a result, it is clear a significant cause of delay regarding the trial of this case was caused by the need to obtain qualified interpreters, a situation not of the State’s making.

Alvin Phillips' recantation and refusal to testify caused significant delays. As discussed above, the State did not learn of the recantation or receive a copy of the signed document alleging recantation until the case was called for trial in May 2010. Further, the State maintained the recantation was obtained by the use of pressure and threats by Appellant and his other co-defendant.

Alvin Phillips had to be moved from the Edgefield County jail to Saluda County detention because of the pressure the two defendants were exerting on him not to testify. (May 17T. 10; T.387; R.____). As the solicitor noted: "We are now faced with trying the individual that was going to previously be a testifying witness in this case." (May 17T. 7; R.____). The solicitor further advised the trial court: "We believe either through pressure or threats, they have been able to persuade him not to [testify] and we don't think that they should be rewarded for that. We'll try them at the very first opportunity." (May 17T. 8; R.____).³ As a result, the recantation as a result of improper influence and pressure by Appellant and K.C. Langford served as a significant factor in any delay that occurred.

In considering the fourth prong of the test, whether Appellant suffered prejudice, Barker is again instructive:

Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to

³It should be noted all of this information was ultimately corroborated by Alvin Phillips when he testified at trial against Appellant and K.C. Langford. (T.279-283; R.____). Additional corroboration came from Investigator Young who testified he had concerns Alvin Phillips was being intimidated and influenced into not testifying by Appellant and K.C. Langford so he made the decision to move Alvin Phillips to Saluda pending trial. (T.387; R.____).

limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past.

Barker, 407 U.S. at 532.

At the May 2010 hearing, Appellant advanced no prejudice suffered as a result of the delay other than the twenty months he was incarcerated without bond due to the seriousness of his charges. The time spent incarcerated pre-trial on very serious charges should not alone constitute sufficient prejudice to justify dismissal of the case. See State v. Kennedy, 339 S.C. 243, 250, 528 S.E.2d 700, 704 (Ct. App. 2000) (“We are unwilling, however, to hold that the prejudice he suffered by his pretrial incarceration is sufficient to warrant dismissal of his charges for a speedy trial violation.”). Appellant made no showing of the possibility his defense could be or was impaired by the delay. His main argument appears to be that he should be able to take advantage of the fact his victims barely spoke English and the State had to expend time and resources to obtain interpreters, and he should reap the benefit of the improper influence and pressure placed on the younger co-defendant resulting in a recantation later explained to be a lie made at the request of Appellant and K.C. Langford. As a result, Appellant has not demonstrated the prejudice required to warrant dismissal of his case for a violation of his right to a speedy trial.

To the extent the issue regarding the constitutionality of section 1-7-330 is before the Court the issue is also without merit.⁴ The *amicus* argues the statute violates the separation

⁴The State does not concede this issue is even possibly preserved for review on appeal.

of powers under Article I, Section 8 of the South Carolina Constitution. Further, the brief argues allowing the Solicitor to control the calling of cases violates due process. The arguments fail in light of the facts of this case and the remedies available to Appellant and other defendants.

Section 1-7-330 of the South Carolina Code provides:

The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. Provided, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term.

S.C. Const. Art. I, § 8, provides:

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

As stated by the Court in State ex rel. McLeod v. McInnis:

One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government. It prevents the concentration of power in the hands of too few, and provides a system of checks and balances. The legislative department makes the laws; the executive department carries the laws into effect; and the judicial department interprets and declares the laws.

278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982). The purpose of the separation of powers is carried out through the system established by section 1-7-330. The executive branch in the form of the Solicitors carry the laws into effect by deciding the cases to be brought to trial

and when. Further, the courts of the state maintain their right to oversee and provide the necessary check of the executive power through judicial remedies such as continuances, sanctions, and dismissal of cases.

As this Court pronounced:

We hold that the solicitor has authority to call cases in such order and in such manner as will facilitate the efficient administration of his official duties, subject to the overall broad supervision of the trial judge. If a defendant feels that his rights are prejudiced by reason of the calling of his case at any particular time, he may apply to the judge for a continuance beyond the term or for postponement to a date later within the term. In the calling of cases for trial the solicitor has a broad discretion in the first instance, and the trial judge has a board discretion in the final analysis.

State v. Mikell, 257 S.C. 315, 322, 185 S.E.2d 814, 817 (1971); see also, State v. Ridge, 269 S.C. 61, 64, 236 S.E.2d 401, 402 (1977) (“In this State, the entering of a nolle prosequi at any time before the jury is impaneled and sworn is within the discretion of the solicitor; the trial judge may not direct or prevent a nol pros at that time.”). This Court has recognized the separation of powers, with the executive branch in control of charging decisions including calling the case, and the judicial branch providing the oversight through remedies such as continuances, dismissal for violation of a right to a speedy trial, and sanctions or dismissal for other abuses by the Solicitors. This Court has acknowledged these fact appropriate checks and balances are in place with regard to administration of the docket.

Additionally, Article V, Section 4 of the South Carolina Constitution provides:

The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. . . . The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the

unified judicial system. . . . The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

This provision related to the administrative functions of the Supreme Court and the Chief Justice clearly presupposes the “rules governing the practice and procedure in all such courts” to be subject to statutory law, which would include the statutory rule under section 1-7-330 granting the power to Solicitors to decide which cases should be called for trial. See e.g., State v. Flood, 257 S.C. 141, 146, 184 S.E.2d 549, 552 (1971) (“The solicitor has a broad discretion deciding the order in which cases are called”).

Further, Article V, Section 4 allows and provides for the Chief Justice to set the terms of court that are available within a particular county and the judges to sit in any court. The *amicus* claimed the potential for judge shopping occurred. In this particular case, however, between the May 2010 hearing date and the September 2010 trial, there was only one other term of court and only one term of court not handled by Judge Keesley.⁵

In Williams v. Bordon’s, Inc., 274 S.C. 275, 262 S.E.2d 881 (1980), this Court determined the trial court has the inherent power to grant continuances so as to safeguard the rights of litigants. As a result, the Court found a statute purporting to limit or require when a court can exercise its inherent authority within the judiciary to grant or deny a continuance was unconstitutional. Nothing in section 1-7-330 prohibits, requires, or in any way affects

⁵It is likely this is the term of court in which Alvin Phillips pled guilty to armed robbery as it is the only term in between the May and September hearings.

the trial court's control and final say on whether a case goes forward through the grant or denial of a continuance. This check inherent to the judiciary remains in tact and remains a strong device for curbing any possible abuse by the Solicitor to require a defendant to trial before he has had a reasonable opportunity to prepare.

Further, another inherent judicial function can serve to prevent abuse by the Solicitor at the other end of the spectrum when he delays calling a case—a motion for speedy trial and ultimately a motion for dismissal based on a violation of the defendant's right to a speedy trial. While the facts of this case clearly do not support the grant of the motion, the judicial discretion to grant the motion can serve as a deterrence to the prosecutor who clearly delays a trial for vindictive or other improper purposes.

The *amicus* raises the purely speculative spectre of numerous abuses perpetrated by Solicitors in control of the docket. The vast majority are clearly remediable by the checks inherent in the judiciary such as the ability to grant a continuance and the ability to dismiss a case. Other potential abuses may only occur when one presumes bias on the part of the judiciary or assumes judges will take into consideration the factor a Solicitor chose to bring a case before that judge.

When one branch of government has a check which limits the other branch's ability to abuse its power, the separation of powers established in Article I, section 8 of the South Carolina Constitution effectuated. As a result, there is no separation of powers violation by having the executive branch responsible for charging decisions including what case to call, and the judicial branch having the final say on which cases move forward and whether any remedies are necessary to curtail abuse by Solicitors.

Further, there is no due process violation in the current system of administering the docket. Due process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property. State v. Brown, 182 S.E. 838, 841 (1935). The USSC has stated:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. At the same time, it preserves both the appearance and reality of fairness, “generating the feeling, so important to a popular government, that justice has been done,” by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.

Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980) (internal citation omitted). The procedure of administration of the dockets by the Solicitors subject to the judicial “final analysis” protects the due process rights of the defendant and ensures the right to a fair and impartial trial.

The federal courts examining whether a defendant’s due process rights have been violated by a particular method of assigning a case to a judge generally agree there is no due process violation with a proof of the prejudice suffered. See generally, United States v. Gallo, 763 F.2d 1504, 1532 (6th Cir.1985) (“a defendant does not have the right to have his case

heard by a particular judge,’ does not ‘have a right to have his case selected by a random draw,’ and ‘is not denied due process as a result of the error unless he can point to some resulting prejudice.’”) (quoting Sinito v. United States, 750 F.2d 512 (6th Cir.1984)); Sinito, 750 F.2d at 515 (same); United States v. Erwin, 155 F.3d 818, 825 (6th Cir.1998) (“Even when there is an error in the process by which the trial judge is selected, or when the selection process is not operated in compliance with local rules, the defendant is not denied due process as a result of the error unless he can point to some resulting prejudice.”); U.S. v. Forbes, 150 F.Supp.2d 672, 681-682 (D.N.J. 2001); Board of School Directors of City of Milwaukee v. Wisconsin, 102 F.R.D. 596, 598 (E.D.Wis.1984) (“Even a criminal defendant has no due process rights in the assignment of his case.”); United States v. Keane, 375 F.Supp. 1201, 1204 (N.D.Ill.1974) (concluding that “a defendant has no vested right to have his case tried before any particular judge, nor does he have the right to determine the manner in which his case is assigned to a judge”).

Further, public policy supports the current system of administration of the docket, especially in light of the lack of a violation of due process or the separation of powers.

The principal reasons prosecutors have been called upon to administer the dockets are fourfold: (1) neither circuit court judges nor clerks of court have the personnel, time or infrastructure to organize, publish and administer a criminal docket; (2) solicitors are elected to represent a hybrid of public safety and justice balanced with efficiency within their circuits; (3) prosecutors are uniquely well suited to know the nuances of individual cases and the availability of lay witnesses, law enforcement witnesses, as well as expert witnesses they routinely share with other circuits; and (4) since prosecutors are the ones called upon to provide an explanation for the current state of the criminal justice

system, the muses thought it only fair to provide them with a few tools to actually impact the administration of the justice.

“Criminal Dockets Administered by Prosecutors: Past Present and Future,” by Solicitor Trey Gowdy, *The South Carolina Lawyer*, (2010). Further, Solicitors are responsive and held accountable by two groups—the public who elects them and the judges before whom they practice. The Solicitor faces reelection and as such, his record in moving cases efficiently and without abuses can become an issue for the public’s consideration. Further, as discussed above the Solicitor must operate without abusing the system or the judge before whom he brings the case has numerous remedies at his disposal to provide a check on the Solicitor’s actions. No other entity has such checks and balances in place to provide for the administration of the docket.

Accordingly, Appellant has failed to demonstrate he was entitled to dismissal of his case based on a violation of his right to a speedy trial even if the issue is preserved for review on appeal. The delay in this case was reasonable in light of the victims involved and the recantation by a witness resulting from improper influence by Appellant and K.C. Langford. Additionally, neither the issue raised on appeal by Appellant, nor the completely different issue addressed in the Amicus Curiae Brief is preserved for review on appeal. Therefore, this Court should affirm Appellant’s conviction and sentence.

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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ATTORNEYS FOR RESPONDENT

February 8, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

The State,

Respondent,

v.

Bryan Phillips,

Appellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following to be included in the Record on Appeal:

- 1) True billed Indictments;
- 2) Transcript Dated May 17, 2010;
- 3) Transcript dated September 7, 2010⁶ pages 116-142; 154-180; 186-335; 368-393; 433-515; 524-549;
- 4) Order dated May 19, 2010;
- 5) Defendant's Exhibit 1, Statement dated 3/31/09;
- 6) Defendant's Exhibit 2, Statement dated 1/29/09;
- 7) Defendant's Exhibit 4, Statement dated 9/29/08;
- 8) Court Exhibit 1, Resume of Ming Louie.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers. Additionally, Respondent notes personal data identifiers and other sensitive information should be redacted from the transcript or other documents pursuant to the South Carolina Supreme Court Order dated August 13, 2007.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

⁶It appears the date on the front page of this transcript is January 23; however, the trial occurred on September 7 as stated on the first line of page 5).

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ATTORNEYS FOR RESPONDENT

February 8, 2012

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

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SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

BRYAN PHILLIPS

APPELLANT

INITIAL REPLY BRIEF OF APPELLANT

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FEB 24 2012

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ARGUMENT IN REPLY

The state's contention that Appellant's right to a speedy trial violation issue due to the state's control of the docket is not preserved exhibits a lack of recognition of the prejudicial consequences that result from the sole control of the docket by the state and the constitutional right that is violated because the control of the docket is inherent in the speedy trial motion.

The trial court erred in not granting Phillips' motion to dismiss the case due to a violation of his right to a speedy trial in order for the state to have a continuance to determine if the cooperating co-defendant, who changed his mind and asserted his privilege under the Fifth Amendment not to testify, would change his mind again and choose to testify which he did and which was prejudicial to Phillips because the co-defendant was the only evidence the state had against Phillips.

Bryan Phillips' attorney filed a Motion for A Speedy Trial January 14, 2010.¹ See Motion January 14, 2010; May 17, 2010 Tr. 4, ll. 4 –Tr. 5, ll. 23. The attorney argued in his motion that Phillips was arrested September 28, 2008 and had been denied bond three times. He argued that the only witness, the co-defendant Alvin Phillips, had recanted his statement.

Alvin Phillips admitted at trial that he changed his mind and decided not to testify when the case was called for trial in May 2010. Tr. 260 – 263.

Judge William Keesley issued an order on May 19, 2010 denying Phillips' motion and granting the state a continuance. The judge wrote that the co-defendant had changed his

¹ The trial transcript mistakenly had the trial date of January 23, 2011. The trial was held September 9, 2010 based on the sentencing sheets. Bryan Phillips was arrested September 28, 2008. He had been incarcerated sixteen months when the Motion for a Speedy Trial

mind and asserted his Fifth Amendment right to remain silent. See Judge Keesley's Order On Motion For Speedy Trial and Regarding Bond.

Based on Rule 17, SCRCrimP, it was not necessary for Appellant Phillips to continue to object or raise the speedy trial issue again. Rule 17, SCRCrimP provides:

If an objection has been made at any stage to the admission of evidence, it shall not be necessary thereafter to reserve rights concerning the objectionable evidence.

The objection was raised in January 2010, and again at the start of the trial in May 2010. The judge's order of dismissal was issued in May 2010. Because the trial was "continued", all of the proceedings are stages of the case, and another objection was not necessary.

Rule 18(a), SCRCrimP, provides that counsel shall not attempt to argue any matter after he has been heard and the ruling of the court has been pronounced.

In State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994), the Supreme Court held that female defense counsel's failure to raise objection to the trial judge's comments to jury as to counsel's age and gender did not waive issue of propriety of the judge's comments on appeal because the tone and tenor of the judge's remarks were such that any objection would have been futile.

Inherent in the speedy trial motion is the state's control of the docket.² The admission of the co-defendant's testimony, which was the only evidence against Appellant

was filed in January 2010; twenty months in May 2010; and twenty-four months when the trial was held in September 2010.

² S.C. Code Ann. §1-7-330 (1976): Attendance at circuit courts; preparation and publication of docket: The solicitors shall attend the courts of general sessions for their respective circuits. Preparations of the docket for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in

Phillips, was the direct result of the state controlling the docket to their advantage which was prejudicial to Appellant. Alvin Phillips admitted at trial that he changed his mind and decided not to testify when the case was called for trial in May 2010. Tr. 260 – 263.

The state asking for a continuance, which the judge granted, was based on the state's inability to prove Appellant Phillips' guilt at the time the state called the case to trial, and this was a violation of his right to a speedy trial.

"Speedy trial" is part of due process of law to which every person accused of a crime is entitled under State and Federal Constitutions. Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966); citing U.S.C.A. Const. Amends. 6, 14. and S.C. Const. art. 1, Section 5.

Appellant Phillips did not know if the co-defendant was definitely going to testify at the September 2010 trial because the co-defendant had changed his mind at the last minute before as he did in May 2010. After the verdict, Appellant Phillips did raise the speedy trial violation again. His co-defendant, Langford, told the court that he had been ready to go forward when the case was first called to trial in May 2010. He told the court that he felt prejudiced by the trial court's granting the state's continuance, and that he felt his right to a speedy trial had been violated. Tr. 533- 540. The trial court judge reiterated that his reasons for granting the continuance related to "the Bruton analysis." Tr. 547, ll. 3-7.

Appellant Phillips said to the judge that "he wanted to follow what Mr. Langford said about the charges not being dismissed when they came to court last term." Tr. 541, ll. 5

exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. Provided, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term. (emphasis in original).

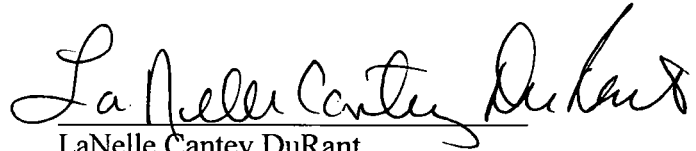
– 14. Appellant Phillips said that Alvin Phillips who testified against him, had waived and recanted his statement several times. Tr. 542.

Appellant Phillips objected when the prejudice occurred. Therefore, the convictions should be vacated based on the state's violation of Appellant's constitutional right to a speedy trial.

CONCLUSION

By reason of the arguments in Appellant's brief, and this reply brief, Appellant Phillips' convictions and sentences should be reversed pursuant to Issue Three, and the case remanded for a new trial pursuant to Issues One and Two.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of February, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRYAN PHILLIPS

APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in not granting Phillips' motion for a mistrial after the solicitor commented on Phillips' not taking the stand in his own defense?
2. Did the trial court err in qualifying Ming Louie as an interpreter in Chinese and Mandarin Chinese when he had never been certified as an interpreter by any court and had never applied for certification, and was not trained in Mandarin Chinese?
3. Did the trial court err in not granting Phillips' motion to dismiss the case due to a violation of his right to a speedy trial in order for the state to have a continuance to determine if the cooperating co-defendant, who changed his mind and asserted his privilege under the Fifth Amendment not to testify, would change his mind again and choose to testify which he did and which was prejudicial to Phillips because the co-defendant was the only evidence the state had against Phillips?

STATEMENT OF THE CASE

On May 5, 2010, the Edgefield County Grand Jury indicted Bryan Jordan Phillips on the charges of burglary first degree; armed robbery; kidnapping; and criminal conspiracy. On January 23, 2011, Phillips and one of his co-defendants, K.C. Langford, proceeded to trial before the Honorable William P. Keesley and a jury. Phillips was represented by Randall D. Williams; the co-defendant was represented by Mark R. Calhoun; and the state was represented by Assistant Solicitor Ervin J. Maye. The jury returned verdicts of guilty on all charges as indicted. Tr. 524 – 526. Judge Keesley sentenced Phillips to twenty years on each of the kidnapping, burglary first degree, and armed robbery. The sentence on criminal conspiracy was five years; all sentences were to run concurrently. Tr. 549. Phillips' attorney filed a notice of appeal. This appeal follows.

ARGUMENT

I.

The trial court erred in not granting Phillips' motion for a mistrial after the solicitor commented on Phillips' not taking the stand in his own defense.

Ji Quing Chen and his wife and son were working in their Chinese restaurant, Hong Kong Restaurant, in Johnston, South Carolina on August 14, 2008. Tr. 158; Tr. 189; Tr. 187. They left the restaurant around ten o'clock and went to their home nearby. Tr. 187. Chen's wife and son went into the house but he went to the side of the house to water plants. Tr. 187; Tr. 189.

Three black men, who were hiding in the bushes, pointed a gun at his head, forced him down, and took his wallet. One hit him in the head. Tr. 189. His son came out, and saw his father in danger. His son told the men to go in the house and get the bag if they needed money. One man did go inside and took the money. Then the three men ran away. Tr. 190 – 191.

The son, Li Guan Xin, testified that he brought home from the restaurant a bag with \$3000 in it. Tr. 200 – 201. He gave the bag of money to the man that went into the house. He then called the police when the men ran away. Tr. 203. He nor his father could give a description of the men to the police. Tr. 205; Tr. 206; Tr. 192; Tr. 193. Police Investigator Lamaz Robinson testified that there was no forensic evidence to connect Phillips to the crime. Tr. 321; Tr. 319; Tr. 320.

Alvin Phillips, who was a senior at Strom Thurmond High School, at the time of this incident, testified that he and Bryan Phillips, who was his first cousin, watched this Chinese family come and go between their home and work at the restaurant. They allegedly thought

the Chinese family might be taking their money from the restaurant home with them because they did not see the family take the money to the bank after work, Tr. 223; Tr. 225; Tr. 228; Tr. 229. Alvin stayed with his sister much of the time who lived within walking distance of the Chinese restaurant. Bryan lived with his mother in the same apartment complex. Tr. 224; Tr. 225.

On August 14, 2008, Alvin and allegedly Bryan, decided to rob the Chinese family. Alvin got his gun from inside the house and met Bryan. Tr. 230; Tr. 231. K.C. Langford, who lived with Alvin's sister, decided to go with them. Tr. 231; Tr. 232; Tr. 233. Alvin said they waited outside in the bushes. When the father came out, Alvin jumped on him and pointed the gun at him. They could not understand what the man said. Tr. 234; Tr. 235. Then the son came out. Langford went in the house, and then came out running down the street. Alvin and Bryan then ran away also. Tr. 236.

Investigator Roosevelt Young with the Edgefield Sheriff's Office, testified that an acquaintance of his, Pat Stevens who had a family court bench warrant, gave him information about this incident. Tr. 369; Tr. 371; Tr. 373; Tr. 374. Stevens gave him the names of the three co-defendants. Tr. 375.

Investigator Lamaz Robinson was working with the Johnston Police Department in August 2008. Tr. 303. His testimony was that investigator Roosevelt Young told him of the information they received from Stevens. Investigator Young talked with Alvin Phillips who confessed to the incident. Alvin implicated Bryan Phillips and K.C. Langford. Tr. 308.

Alvin testified that gave a statement to the police confessing to the incident and implicating Bryan and Langford. Tr. 242. He gave a second statement stating that he was not in his right state of mind when he gave the first false statement implicating Bryan

Phillips and Langford, and asked that all charges against the two men be dismissed because his first statement was not true. Tr. 264; Tr. 265; Tr. 266; Tr. 267; Tr. 268. Alvin pled guilty to the armed robbery a few weeks before this trial, but the other charges of burglary first degree, conspiracy, kidnapping and assault and battery with intent to kill were still pending. Tr. 244; Tr. 245.

Bryan Phillips and K.C. Langford did not testify. Tr. 2 – 3; Tr. 364; Tr. 365.

In his closing argument, the solicitor stated:

This comment about don't snitch on anybody, don't tell anybody, this system breaks down when people get up here under oath and they don't tell the truth. The only way this system works is when people get up here and take that oath and tell the truth.

Tr. 490, ll. 18 – 23.

Langford's attorney made a motion for a mistrial, which Phillips' counsel joined in, based on the solicitor's comment at the end of his closing argument that this system only works if people get on the witness stand and tell the truth. Tr. 492. Counsel argued that the comment was a "distinct, pointed comment on the fact that Langford and Bryan Phillips did not take the stand.." Tr. 492.

The solicitor argued that he was referring to Alvin Phillips. He argued that he was talking about witnesses who take the stand and tell the truth. Defense counsel argued that the jury knew that the defendants did not take the stand. Tr. 492, ll. 22 – 25; Tr. 493. The judge denied the mistrial motion. Tr. 493; Tr. 494.

Solicitors must confine their closing arguments to evidence in the record, tailoring comments to the evidence presented and its reasonable inferences. State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (Ct. App. 2000). As a corollary of the right to remain silent, a

prosecutorial comment, whether direct or indirect, upon a defendant's failure to testify at trial is constitutionally impermissible. State v. Weaver, 361 S.C. 73, 602 S.E.2d 786 (Ct. App. 2004).

In State v. Weaver, Id., the Court of Appeals ruled that although it was improper for a solicitor to indirectly comment on a defendant's failure to testify, such comments did not necessarily mandate reversal of the conviction. The Court wrote that the comment did not require reversal in Weaver's case because defense counsel first asked the jury to contemplate why Weaver would have stood over the victim; the egregiousness of the solicitor's comment was mitigated by defense counsel's previous comment; and the trial court gave a curative instruction immediately after the improper comment.

Phillips' case is distinguished because defense counsel did not point out the issue first, and the trial judge did not issue a curative instruction as he did not believe the comment was inappropriate. Tr. 492 – 494.

Phillips was prejudiced by the comment because he chose not to testify. The only evidence the state had was the word of the biased co-defendant, Alvin Phillips.

ARGUMENT

II.

The trial court erred in qualifying Ming Louie as an interpreter in Chinese and Mandarin Chinese when he had never been certified as an interpreter by any court and had never applied for certification, and was not trained in Mandarin Chinese.

At the beginning of the trial, the solicitor asked the judge if he needed to go ahead and have the interpreter, Ming Louie, who was necessary because the Chinese family that was robbed did not understand English very well, sworn or put under oath. Tr. 116; Tr. 120; Tr. 191. The judge then asked if there were going to be any issues regarding the qualification of the interpreter. Phillips' attorney stated that he just wanted to know if the interpreter "fit the statute." Tr. 116. The attorney for Langford, the co-defendant, stated that if the interpreter was court certified, that he had no issues with him. Tr. 116, ll. 25; Tr. 117, ll. 1.

Phillips' counsel had not seen the interpreter's resume. The judge told the two attorneys to talk to the interpreter briefly which the attorneys did. Tr. 117. The following day, when court resumed, Phillips' counsel said he continued to have questions about the qualification of the interpreter. Tr. 118. Langford's attorney said the interpreter told him he thought he was certified but he was not sure in which state. Tr. 118, ll.21 – 25; Tr. 119. The judge allowed *voir dire* of the interpreter by the attorneys. Tr. 120.

During *voir dire*, the interpreter admitted that he was not certified in South Carolina in any language. Tr. 121. He admitted that he was not certified in Mandarin or Cantonese Chinese in any state, and was not certified as an interpreter in any state in any language. Tr. 121; Tr. 131. The interpreter explained that there was no program for this certification so he

had never applied for certification in any state. He did not know if court administration would allow him to be certified. Tr. 121; Tr. 122; Tr. 123.

The interpreter testified that he had served as an interpreter in Chinese in court approximately fifty times. Tr. 123. Later, he admitted that some of the fifty times were in law offices and police offices as well as court. Tr. 127. His education included a Masters Degree in chemistry from Penn State. He grew up in Canton, China and lived there about twenty years. He had been in the united States forty years. Tr. 125; Tr. 126.

Ming Louie said he had talked with the victims and they spoke Mandarin Chinese, but he could communicate with them. However, they spoke minimal English. Tr. 124.; Tr. 130. According to Louie, Mandarin was the national dialect, but the only difference in Cantonese and Mandarin was a different dialect. Tr. 125 – 129. He attended school in Hong Kong where Cantonese was mostly spoken. Tr. 130. The judge confirmed again that Louie was not certified as an interpreter in any state. Tr. 131.

Louie admitted that he had never read the ethical rules related to interpreters in South Carolina. Tr. 131. The judge had the rules printed and given to Louie to read. The judge cited S.C. Code Section 15-27-155 which provided that a person can still be qualified as an interpreter even if he was not on the list of certified interpreters if the person met the requirements of the statute. Louie told the judge that he could translate Mandarin or Cantonese into English. Tr. 132 – 134.

Phillips' attorney requested additional *voir dire* which the judge granted. Phillips attorney continued to object to the interpreter's qualification. Tr. 135 – Tr. 138. The judge certified Ming Louie as an interpreter in both Mandarin and Cantonese Chinese. Tr. 138 – Tr. 142.

S.C. Code Section (A) provides:

Notwithstanding any other provision of law, whenever a party or witness to a civil legal proceeding does not sufficiently speak the English language to testify, the court may appoint a qualified interpreter to interpret the proceedings and the testimony of the party or witness. However, the court may waive the use of a qualified interpreter if the court finds that it is not necessary for the fulfillment of justice. The court must first make a finding on the record that the waiver of a qualified interpreter is in the best interest of the party or witness and that this action is in the best interest of justice.

S.C. Code Section 15-27-155 (B) provides:

(B)An “interpreter” means a person who:

- (1) is eighteen years of age or older;
- (2) is not a family member of the part or witness;
- (3) is an instructor of foreign language at an institution of education; or
- (4) has educational training or experience that enables him or her to fluently speak a foreign language and interpret the language of another person.

An “interpreter” shall not be a person confined to an institution.

The interpreter is considered a witness in the sense that the accuracy of her translation is a question of fact for the jury which may be disputed by counsel. State v. Perez, 334 S.C. 563, 514 S.E.2d 754 (1999).

Ming Louie did not meet the requirements for an interpreter pursuant to S.C. Code Section 15-27-155 because no evidence was presented to show that he had the educational

training or experience to enable him to translate Mandarin Chinese. According to Wikipedia, http://en.wikipedia.org/wiki/Varieties_of_Chinese:

Chinese comprises many regional language varieties, the primary ones being Mandarin, Wu, Cantonese, and Min. These are not mutually intelligible, and even many of the regional varieties (especially Min) are themselves composed of a number of non-mutually-intelligible subvarieties.

Ming Louie's resume indicated no training in any language, and no training in Mandarin Chinese. His resume consisted of training in science or chemistry. He used the word "approved" to indicate his 15 years of experience in interpreting. Court Exhibit 1 Resume of Ming Louie.

Phillips was prejudiced because there was no way to know if the interpreter was translating correctly. The interpreter had not read the rules of ethics and had not tried to be certified. Phillips right to a fair trial was violated by not having a qualified translator to interpret the accusations of the Chinese family.

ARGUMENT

III.

The trial court erred in not granting Phillips' motion to dismiss the case due to a violation of his right to a speedy trial in order for the state to have a continuance to determine if the cooperating co-defendant, who changed his mind and asserted his privilege under the Fifth Amendment not to testify, would change his mind again and choose to testify which he did and which was prejudicial to Phillips because the co-defendant was the only evidence the state had against Phillips.

After the verdict, Phillips' co-defendant, Langford, told the court that he had been ready to go forward when the case was first called to trial in May 2010. He told the court that he felt prejudiced by the trial court's granting the State's continuance, and that he felt his right to a speedy trial had been violated. Tr. 533- 540. The trial court judge reiterated that his reasons for granting the continuance related to "the Bruton analysis." Tr. 547, ll. 3-7.

Bryan Phillips said to the judge that "he wanted to follow what Mr. Langford said about the charges not being dismissed when they came to court last term." Tr. 541, ll. 5 – 14. Phillips said that Alvin Phillips who testified against him, had waived and recanted his statement several times. Tr. 542.

Bryan Phillips' attorney filed a Motion for A Speedy Trial January 14, 2010. See Motion January 14, 2010. The attorney argued in his motion that Phillips was arrested September 28, 2008 and had been denied bond three times. He argued that the only witness, the co-defendant Alvin Phillips, had recanted his statement.

Alvin Phillips admitted at trial that he changed his mind and decided not to testify when the case was called for trial in May 2010. Tr. 260 – 263.

Judge William Keesley issued an order on May 19, 2010 denying Phillips' motion and granting the state a continuance. The judge wrote that the co-defendant had changed his mind and asserted his Fifth Amendment right to remain silent. The judge wrote that the state had gone to great effort to obtain an interpreter and needed time to determine whether to try Alvin Phillips. The judge stated that the state would have to try the defendant who gave the statement in order to avoid Bruton¹

In Doggett v. United States, 505 U.S. 647 (1992), the United States Supreme Court listed the factors required in order to assess speedy trial claims. There are four relevant inquiries: (1) whether delay before trial was uncommonly long, (2) whether the government or defendant is more to blame for the delay, (3) whether, in due course, the defendant asserted his right to a speedy trial, and (4) whether the defendant suffered any prejudice as to the delay's result. Id. at 651. See Barker v. Wingo, 407 U.S. 514 (1972). State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009);

In order to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial "has crossed the threshold dividing ordinary from "presumptively prejudicial" delay." Id. at 652 (*quoting* Barker at 530-531). The Supreme Court notes in footnote 1 that, depending on the nature of the charges, lower courts have generally found post-accusation delay "presumptively prejudicial" as it approaches one year. Id. The South Carolina Supreme Court found, in State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978), a two-year and four-month delay sufficient to trigger further review.

¹ Bruton v. United States, 391 U.S. 123 (1968).

Phillips was prejudiced by the delay between his arrest and trial dates as he spent over two years (twenty-eight months) in the county detention center without a bond just waiting to go to trial. Tr. 130.

The government did bear the blame for the delay as Phillips had no control over when the case was called. The state did not assure that the co-defendant was prepared to testify.

Phillips filed a motion for a speedy trial a year before the trial was held. Phillips was prejudiced because he stayed in jail for twenty eight months without a bond. He was denied his right to a speedy trial.

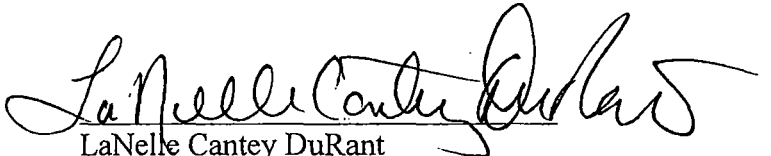
The trial court judge erred because this situation does not implicate Bruton. Even if all three codefendants had been tried together, Bruton would only have forced Alvin Phillips' statement to redact references to Bryan Phillips and Langford. What the judge characterized as a "Bruton problem" was really only the state's difficulty in securing a conviction against the co-defendants without Alvin Phillips' testimony. Granting a continuance based on their inability to prove Phillips' guilt at the time the state called the case to trial was a violation of Phillips' right to a speedy trial.

"Speedy trial" is part of due process of law to which every person accused of a crime is entitled under State and Federal Constitutions. Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966); citing U.S.C.A. Const. Amends. 6, 14. and S.C. Const. art. 1, Section 5.

CONCLUSION

Based on the above, Phillips' convictions and sentences should be reversed pursuant to Issue Three and the case remanded for a new trial pursuant to Issues One and Two.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of July, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRYAN PHILLIPS

APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Court Exhibit 1 – Louie’s Resume
- (3) Trial Transcript pages 2, 3, 116 – 131, 132 – 142, 158, 187, 189 – 193, 200, 201, 203, 205, 206, 223 – 225, 228 – 236, 242, 244, 245, 260 – 263, 264 – 268, 303, 308, 319 – 321, 364, 365, 369, 371, 373 – 375, 490, 492 – 494, 524 – 526, 533- 549.
- (4) Phillips’ Motion dated January 14, 2010
- (5) Judge Keesley’s Order May 2010.

I certify that this designation contains no matter which is irrelevant to this appeal.

July 13th, 2011.


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

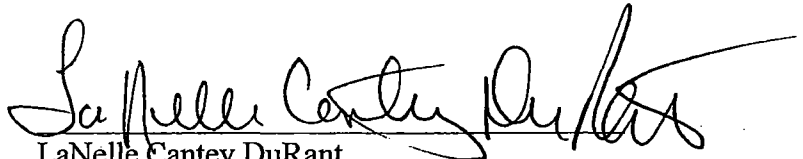
V.

BRYAN PHILLIPS

APPELLANT

CERTIFICATE OF SERVICE

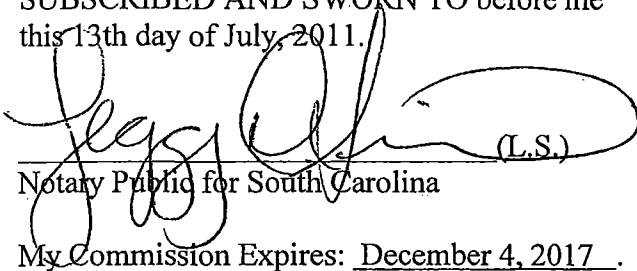
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201; and upon Bryan Phillips, #318212, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 13th day of July, 2011.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of July, 2011.



(L.S.)
Notary Public for South Carolina
My Commission Expires: December 4, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

K.C. LANGFORD,

APPELLANT

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Statement of Issue on Appeal

Did the trial court judge err when he did not dismiss Langford's case in May, 2010 when Langford motioned for dismissal for violating his right to a speedy trial, and when the state sought a continuance of that trial so it could further pressure a formerly cooperating co-defendant, who elected to assert his right to remain silent under the 5th Amendment of the federal Constitution, into testifying for the state at the subsequent trial?

Statement of the Case

The State arrested K.C. Langford on October 3, 2008. The Edgefield County Grand Jury indicted Langford for Conspiracy in December 2008.

Langford moved for a speedy trial on June 29, 2009.

The Edgefield County grand jury indicted K.C. Langford for first degree burglary, armed robbery, and kidnapping on May 5, 2010.

The case was initially noticed for trial on May 17, 2010, but the solicitor continued the trial. On May 20, 2010 the Honorable William P. Keesley denied Langford's motion to dismiss for denial of his right to a speedy trial. On May 25, 2010, Langford again moved for the charges to be dismissed for denial of his right to a speedy trial.

The State tried Langford before the Honorable William P. Keesley and a jury on September 6, 2010. After the jurors convicted, the judge sentenced to concurrent sentences of twenty (20) years for kidnapping, armed robbery, and burglary. The judge also imposed a concurrent sentence of five (5) years for conspiracy.

This appeal follows.

Statement of Facts

The victims are a Chinese family that owned a Chinese restaurant in Edgefield. They speak the Mandarin dialect. At 10:30 p.m. on August 14, 2008, three people attacked this family after they had left their restaurant to go home for the day. One attacker struck the father in the head while he watered plants outside the house, and another attacker went inside and stole a black bag. One of the perpetrators attacked the son when he came outside to check on his father. Two women remained in the house during the crimes.

An undisclosed, confidential informant seeking assistance with a Family Court bench warrant helped law enforcement develop Langford, Alvin Phillips, and Bryan Phillips (brothers) as suspects. Tr. 374. According to the State's theory, the three defendants observed the victims over a period of time and noticed the family usually left the restaurant carrying the black bag, likely containing money.

Both Langford and Bryan Phillips exercised their right to remain silent. Alvin Phillips, however, made multiple statements. He signed two statements saying neither Langford nor his brother was involved in the crimes. Tr. 262, 266-67. Other statements made by Alvin Phillips, however, constituted *the only evidence* linking Langford to these crimes.

On June 22, 2009, Langford moved for the solicitor and presiding judge to give him a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution. R. *

The solicitor scheduled Langford's case for trial to begin on May 17, 2010 and planned for Alvin Phillips to testify for the State. However, the solicitor ultimately elected not to call Langford's case to trial because "[a]t the last moment, the cooperating witness

changed his mind and declared that he was not going to testify and would assert his privilege under the 5th Amendment to the Constitution of the United States.” Langford moved for his charges to be dismissed “based on the State’s failure to provide a speedy trial.” The judge expressly found that “the case hinge[d] almost *exclusively on the testimony of the cooperating defendant*” who had “declared that he was *not going to testify* and would assert his privilege under the 5th Amendment of the Constitution of the United States.” Despite finding Langford had been “incarcerated for 20 months” and being “deeply concerned about the length of time that [Langford had] been incarcerated,” the trial court judge denied the motion to dismiss and ordered Langford’s continued pre-trial detention “without bail.” Order, R. * (emphasis added). *See also* Tr. 262 (Phillips confirmed his refusal to testify in May, 2010).

After the court filed the order denying the motion to dismiss, Langford filed a second motion for a speedy trial on May 25, 2010. This second motion for a speedy trial referenced Langford’s first speedy trial motion. R. *.

The state finally called this case to trial in September, 2010, after the solicitor had once again secured Alvin Phillips’ cooperation. Phillips testified against Langford and his brother, claiming that the three committed the crimes together and split the proceeds of the robbery. Tr. 222-91. Phillips admitted he “rehearsed” his testimony with the solicitor. Tr. 276. Before testifying Phillips had pleaded guilty to one count of armed robbery with the other indictments still pending, Tr. 244-45, 277, and his sentence was deferred until after he

testified. Judge Keesley ultimately sentenced Phillips to the minimum sentence for armed robbery of ten (10) years¹ with the solicitor dismissing the other charges.

Both prior to and subsequent to trial, Langford complained about the prior continuance and reasserted his speedy trial motions. Langford told the judge he had been prejudiced by the delay and denial of his right to a speedy trial. However, the trial court judge reaffirmed the rulings contained in the May 20, 2010 order. Tr. 105, 533-40, 547.

¹<http://publicindex.sccourts.org/edgefield/publicindex/PICaseDetails.aspx?County=19+&Casenum=J595143&CourtType=G&CaseType=Criminal&CourtAgency=19001&LastName=Phillips&FirstName=Alvin><http://publicindex.sccourts.org/edgefield/publicindex/PICaseDetails.aspx?County=19+&Casenum=J595143&CourtType=G&CaseType=Criminal&CourtAgency=19001&LastName=Phillips&FirstName=Alvin> (last viewed July 25, 2011).

Argument

The trial court judge erred when he did not dismiss Langford's case in May 2010 when Langford motioned for dismissal for violating his right to a speedy trial, and when the state sought a continuance of that trial so it could further pressure a formerly cooperating co-defendant, who elected to assert his right to remain silent under the 5th Amendment of the federal Constitution, into testifying for the state at the subsequent trial.

The State delayed 673 days before calling Langford's case to trial. The order denying the motion to dismiss incorrectly found, "None of this delay was occasioned by any impropriety on the part of the State." R. *. In reality, the solicitor, who has exclusive control of the criminal docket, was responsible for *all of the delay* and this solicitor docket control denied Langford his right to a speedy trial. In order to establish the Solicitor's responsibility for the delay, it is necessary to understand the Solicitors' and the courts' respective roles in administering the General Sessions Court dockets, including the judiciary's historical deference to solicitor control.

Tension exists between the South Carolina Supreme Court's constitutional authority to oversee the unified court system and the sixteen elected solicitors' statutorily authorized control of the criminal docket. Our Supreme Court has the exclusive authority to "make rules governing the administration of all the courts" and "[s]ubject to the statutory law . . . make rules governing the practice and procedure in all such courts." S.C. Const. Art. V, §4. Yet, solicitors have exclusive authority to prepare criminal dockets and to "determine the order in which cases on the docket are called for trial." S.C. Code Ann. §1-7-330 (1976). The solicitors cite public policy to justify their authority:

[H]istorically, solicitors have published and administered the criminal dockets in South Carolina, and in turn, solicitors have been called to explain burgeoning caseloads, decide whether to concentrate on jail cases in hopes of obviating the need for jail expansion construction, or call the cases of

defendants out on bond before they reoffend. Solicitors are expected to schedule guilty pleas as well as explain to crime victims when their case will be reached and why it has taken so long.

“Criminal Dockets Administered by Prosecutors: Past, Present and Future,” by Solicitor Trey Gowdy,² *The South Carolina Lawyer*, March 2010, p. 28.

As seen in Langford’s case, the actual practice can be quite different. This justification fails to consider a defendant’s due process right to be treated fairly by the courts. To fully understand how the systemic shortcomings prejudiced Langford, it is necessary to: (1) review the evolution of the Supreme Court’s and solicitors’ roles in administering General Sessions Court, (2) identify the potential for solicitors to abuse control of the docket with particular emphasis on the abuses in petitioner’s case, (3) consider the constitutional doctrines of Separation of Powers and Due Process, and (4) argue why this Court should reverse the trial court and dismiss the charges against Langford.

I. Evolution of the South Carolina Supreme Court’s and solicitors’ roles in administering General Sessions Court.

Some version of §1-7-330 has appeared in the South Carolina code since at least the 1932 edition of the code of laws. The cases challenging solicitor control of the docket can generally be grouped into two categories: (1) those arising from requests for continuances and (2) those arising from speedy trial motions.

First, prosecutors might attempt to call a case to trial before a defendant or defense counsel is prepared to defend the charges. Because “[t]he solicitor has a broad discretion deciding the order in which cases are called,” the fact that much older cases remain on

² In November 2010, Solicitor Gowdy was elected to the United States House of Representatives for the Fourth Congressional District.

the docket³ does not show prejudice or establish grounds to continue the newer case, and a defendant must show an inadequate opportunity to prepare. *State v. Flood*, 257 S.C. 141, 145-45, 184 S.E.2d 549, 552 (1971). The solicitor's discretion is "subject to the overall broad supervision of the trial judge. If a defendant feels that his rights are prejudiced by reason of the calling of his case at any particular time, he may apply to the judge for a continuance." *State v. Mikell*, 257 S.C. 315, 322, 185 S.E.2d 814, 817 (1971). As practitioners can attest, trial courts sometimes continue cases when a defendant demonstrates a need for additional time to prepare a defense. The trial court's supervisory authority to continue cases is codified by Rule 7, SCRCrimP.

Second, the solicitor might intentionally delay calling a case, thereby denying someone a speedy trial. This type of intentional delay is precisely what happened to Langford. In these situations, our courts are reluctant to exercise supervisory power. In fact, neither the Supreme Court nor the Court of Appeals has ever dismissed a case because the solicitor denied a defendant a speedy trial.⁴ See *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007) (Both state and defense gave reasonable explanations for the delay); *State v. Kennedy*, 339 S.C. 243, 251, 528 S.E.2d 700, 704-05 (Ct. App. 2000) ("Given the complexity of the case, supplying the State with a legitimate reason for the delay, and the lack of prejudice to the defendant, we conclude the trial court properly denied Kennedy's motion to dismiss based on his assertion of a speedy trial violation."); *State v. Robinson*, 335 S.C. 620, 518 S.E.2d 269 (Ct. App. 1999) ("There is no evidence the delay was

³ In the order denying Langford's motion to dismiss, the trial court judge recognized Langford was seeking to have his case resolved before older cases. R. *.

⁴ The Supreme Court recently dismissed a case based on pre-indictment delay. *State v. Lee*, 375 S.C. 394, 653 S.E.2d 259 (2007).

wilful or intentional,” and appellant did not assert right until ten months before trial); *State v. Smith*, 307 S.C. 376, 415 S.E.2d 409 (C. App. 1992) (delay resulted from state’s decision to try defendant on another charge for which he was sentenced to death, and state dismissed this charge until Supreme Court vacated the other conviction); *State v. Brazell*, 325 S.C. 65, 480 S.E.2d 64 (1997) (“Although the delay was lengthy and the justification was unsatisfactory,” appellant did not establish prejudice.); *State v. Chapman*, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) (“The delay was not caused by any willful neglect on the state’s part.”); *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (“there is no record of an actual demand by Waites for a speedy trial”); *State v. Tyson*, 283 S.C. 375, 378, 323 S.E.2d 770, 770 (1984) (“Nothing in the record suggests the State caused unnecessary delay. It appears that everything possible was done to expedite the case while protecting appellant’s rights considering the serious nature of the charges. Furthermore, part of the delay was caused by his initial failure to accept appointed counsel.”).

There is not a court rule authorizing the trial court to dismiss charges for a denial of the right to a speedy trial. Our Supreme Court traditionally attempted other means to oversee the orderly disposition of General Sessions Court cases. For almost three decades, the Supreme Court has been urging solicitors to resolve cases within 180 days of arrest.

On August 17, 1983, Chief Justice Lewis ordered “all criminal cases in the State of South Carolina shall be disposed within 180 days from the date of the defendant’s arrest.” The order provided that a case could be continued by written order “if the Court determines that exceptional circumstances exist in the case.” To accomplish the purpose of the order, the Chief Justice provided:

[T]he Chief Circuit Court Judge for Administrative Purposes shall be in overall charge of and responsible for the criminal roster in order to develop a procedure for expediting the disposition of criminal cases, including the setting of rosters of cases for disposition, if such be necessary to accomplish the timely disposition of criminal cases.

This order also required the trial courts to continue cases pending for less than 180 days until such time no cases older than 180 days were pending for trial. “The order [did] not create or define a right of a defendant to a speedy trial.” By order dated January 13, 1984, Chief Justice Lewis would clarify that orders continuing cases beyond 180 days for exceptional circumstances “shall not be valid for more than thirty (30) days from the date of issuance.”⁵

Illustrating the tension between the Supreme Court’s constitutional oversight of the courts and the solicitors’ statutorily authorized control of the criminal dockets, Chief Justice Lewis’ orders, very arguably, were in direct conflict with Supreme Court precedent that seemingly supported solicitor docket control. *See Flood, supra*.

On March 5, 1999, Chief Justice Finney rescinded Chief Justice Lewis’ orders dated August 17, 1983 and January 13, 1984. Chief Justice Finney retained the 180 day benchmark, ordering “all criminal cases in the State of South Carolina [to] be disposed of within 180 days from the date of the defendant’s arrest.” Similar to Chief Justice Lewis’ orders, Chief Justice Finney’s order provided for cases to be continued “beyond 180 days by written order if the court determines that exceptional circumstances exist in the case” and explicitly “[did] not create or define a right of a defendant to a speedy trial.” However, in apparent deference to the solicitors, Chief Justice Finney’s order deleted

⁵ Copies of Chief Justice Lewis’ orders dated August 17, 1983 and January 13, 1984 are attached as Appendices A and B.

language regarding the trial court's oversight of criminal dockets and authority to set rosters.⁶

Consistent with the Chief Justice Finney's removal of the trial court's authority to set General Sessions rosters, the current order setting forth the authority of the Chief Administrative Judge is limited to granting continuances and setting "hearings on bonds, motions, probation revocations and other nonjury general sessions matters and to designate which presiding judge shall hear these matters."⁷

Chief Justice Toal implemented oversight of her predecessor's order by tracking whether the solicitors dispose of eighty percent (80%) of the cases within 180 days. Each month, the Judicial Department publishes reports including a graph of circuits meeting this benchmark. A copy of the graph for July 31, 2011 is attached as Appendix C.⁸ None of the sixteen solicitors currently meet the benchmark. The Sixteenth Circuit Solicitor is most successful, disposing of sixty-six percent (66%) of the cases within 180 days. The other fifteen solicitors disposed of forty-six percent (46%) or less of the cases within 180 days. The Eleventh Circuit, where Langford was tried, disposed of only thirty-three percent (33%) of the cases within 180 days.

In addition, in 2002 Chief Justice Toal began a differentiated case management pilot program in Richland County. Each case was assigned to one of three tracks, 120 days, 180

⁶ Order of Chief Justice Earnest A. Finney, Jr. dated March 5, 1999 (available at <http://www.judicial.state.sc.us/courtOrders/displayOrder.cfm?orderNo=1999-03-05-01>), (last viewed July 31, 2011)

⁷ Order of Chief Justice Toal, dated February 4, 2010, <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2010-01-13-01>) (setting authority of Chief Administrative judges) (last viewed July 31, 2011)

⁸ http://www.judicial.state.sc.us/monthlyReports/Jul2011/cr75_mon_graph.pdf (last viewed August 14, 2011).

days or 270 days, based on the complexity of the case. Circuit Court Judge Henry Floyd managed the tracks with the goal of processing the cases within the deadline. During calendar year 2002, the criminal case backlog in Richland County was reduced by nearly one third. Based on the success of the program, the system was adapted for use in Greenville, Horry, and Orangeburg Counties.⁹ The program has spread state-wide. On March 1, 2007, “[T]he sixteen Judicial Circuit Solicitors agree[d] to develop with the Chief Justice and implement criminal case management systems in each county throughout the State of South Carolina.”¹⁰

The Supreme Court continues to exercise more supervision of the criminal dockets. In the February 25, 2009 State of the Judiciary address, Chief Justice Toal discussed the backlog of General Sessions Court cases. She told the General Assembly that while the solicitors control the docket, there should be deadlines for disposition of cases. The Chief Justice acknowledged a practice of some solicitors allowing defendants to linger in jail until the solicitor determines the person has served enough time before offering a time served plea.¹¹

Also in 2009, Chief Justice Toal formed a task force to draft proposed South Carolina Criminal Rules (SCCR). Retired Circuit Court Judge Howard King chaired the task force that included prosecutors, public defenders, and private criminal defense

⁹ Efficient South Carolina Court Management Produces Result, Press Release for 1/22/2003, <http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=132>, (last viewed July 31, 2011)

¹⁰ Consent Order of Chief Justice Toal dated March 1, 2007 and sixteen Circuit Solicitors, <http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=371>, (last viewed July 31, 2011).

¹¹ <http://www.judicial.state.sc.us/whatsnew/displayWhatsNew.cfm?indexId=503> (last viewed August 14, 2011).

lawyers. The proposed rules were published on December 2, 2009.¹² The proposed rules provide for all cases to “be governed by a docket management system pursuant to Supreme Court docket management orders that now exist or may be implemented or amended by the Supreme Court.” Proposed Rule 101, SCCR. Continuing the current system, a defendant would receive discovery and a plea offer at the initial appearance. Proposed Rule 119, SCCR. By the second appearance, a defendant would have to accept the offer or be placed on a trial docket. Proposed Rule 120, SCCR. The proposed rules provide for judicial oversight, allowing the Chief Administrative Judge to hold status conferences to monitor the progress of the case or if a pretrial detainee’s case is not disposed of during the track. *See* Proposed Rules 121, 122 and 124 SCCR.

The proposed rules, however, only minimally enforce a defendant’s right to a speedy trial. Rule 121(b) would provide:

Cases should be disposed of within the track to which they are assigned. **Failure to dispose of a case within the track is not grounds for dismissal** but may be considered by the chief administrative judge in determining remedies or sanctions.

(Emphasis added). There is no further specification of “remedies or sanctions.” Reconsideration of bond is the only remedy listed anywhere in the proposed rules, but “unreasonable delay” is only one factor the court “may” consider. Proposed Rule 106(g), SCCR. However, the proposed rules expressly exclude dismissal as a remedy.

The rules, likewise, would not provide for a meaningful trial order. Although the solicitor would be required to prepare a trial roster fourteen (14) days before a term of

¹² Request for Written Comments and Notice of Public Hearing on Proposed SCCR, <http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=602> (last viewed July 31, 2011).

court, the solicitor is not required to specify the order the cases would be called for trial. Defendants would be required to be in court within two hours of oral notification, and failure to appear would result in a bond revocation. Proposed Rule 123, SCCR. The solicitor also would retain the authority to select the trial judge.

The Supreme Court received comments on the proposed criminal rules.¹³ The Court convened a public hearing on the proposed rules on January 5, 2009.¹⁴ Although the solicitors did not provide written comments concerning the proposed rules, the President of the Solicitors' Association appeared and opposed the Supreme Court being able to issue docket management orders pursuant to Rule 101, SCCR without the solicitors' consent. The Supreme Court is currently conducting a "comprehensive review" of the proposed rules. "Full vetting of the proposed new rules will be conducted in 2010 with submission to the General Assembly planned for the 2011 [or 2012] session."¹⁵ In February 2011, the Supreme Court announced the formation of a Docket Management Task Force chaired by the Honorable Kaye Hearn with a General Sessions Court Committee chaired by the Honorable Costa Pleicones.¹⁶

¹³ Comments received by Supreme Court on Proposed SCCR, <http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=612> (last viewed July 31, 2011).

¹⁴ See Request for Written Comments and Notice of Public Hearing on Proposed SCCR, <http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=602> (last viewed July 31, 2011)

¹⁵ Chief Justice Toal's Presentation to the S.C. Bar, January 22, 2010, PowerPoint slide 12, <http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=621> (last viewed July 31, 2011).

¹⁶ <http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=714> (last viewed July 25, 2011).

II. Identify the potential for solicitors to abuse control of the docket.

Unchecked authority to control the flow of criminal cases through General Sessions court hands solicitors a license to exploit this control to disadvantage defendants in several ways.¹⁷ First, solicitors use their control of the docket to call cases to trial when the defense is ill-prepared or unable to present the most complete defense possible. Second, solicitors use their control to leverage guilty pleas from those who would otherwise exercise their rights to a jury trial. Third, solicitors can repeatedly and unnecessarily request the appearance of defendants who have made bond. Fourth, solicitor docket control essentially cuts off judicial involvement with trial cases until the morning of trial. Fifth, docket control allows the solicitors to “judge shop.” Sixth, unchecked docket control allows solicitors to call a case when the State has the best possible opportunity to convict. Each of these abuses will be discussed in detail below, along with how these abuses affected Langford.

A. Solicitors use their control of the docket to call cases to trial when the defense is ill-prepared or unable to present the most complete defense possible.

Whether they are public defenders or members of the private bar, criminal defense lawyers juggle dozens, even hundreds, of clients at any given time, and the solicitors are adept in using this to their advantage. There is no method to be used in guessing which cases solicitors will call to trial during any given term of court.

Since solicitors have total discretion in formulating a trial docket, they have the ability to stack the list with a number of cases all handled by a specific defense lawyer.

¹⁷ For a discussion of these abuses, *see* Siegel, Andrew M., When Prosecutors Control Criminal Court Dockets: Dispatches on History and Policy from a Land Time Forgot, 32 Am. J. Crim. L. 325 (2005).

That lawyer would then have a choice to make: divide time between all of their cases appearing on the trial docket or attempt to prioritize and prepare a select few. Neither of these options provides the defendant with effective assistance of counsel. Under the first scenario, the lawyer is unable to devote the necessary time and attention to each case, falling short of being fully prepared for any one case. Under the second scenario, some cases will be neglected, and since the lawyer does not know which cases will actually be called to trial, it is possible the lawyer would be wholly unprepared for the right case. Further, solicitors may call cases of one lawyer to trial in consecutive weeks which would wear down that lawyer and leave little time to prepare for upcoming trial cases or manage other clients. This is not the only way solicitors can use their docket control to sabotage the defense. Solicitors can also schedule trials when strong defense witnesses may not be unavailable. The defense would be in a position to either utilize weaker witnesses, who may not present well to a jury or be highly impeachable, or forgo presenting crucial evidence all-together.

While each of the scenarios above lend themselves to a request for a continuance, that is not a surefire way to combat solicitor docket control. A continuance is never automatic because the decision of whether or not to reschedule a trial lies solely within the discretion of the presiding judge. This problem is often exacerbated by the fact that in our current judicial rotation system, a motion for continuance may not be heard until the proposed trial judge is on the bench, on the date the trial is slated to start. Defense lawyers seeking a continuance due to unpreparedness or unavailable witnesses may still have to spend precious time doing their best to get ready for a trial that may later be continued. That time could surely be spent tending to other matters.

B. Solicitors use their control to leverage guilty pleas from those who would otherwise exercise their right to a jury trial.

Not all defendants make bond after being arrested. Some defendants, like Langford, are held without bail. *See* S.C. Const. Art. 1, §15. Those who remain in pretrial detention face a difficult decision – remain in jail until the solicitor sees fit to call their case to trial or take a plea offer that would either release them or send them to the Department of Corrections. In many situations, there is no true choice to be made; the plea offer is taken. Langford, however, asked the trial court to enforce his constitutional right to a speedy trial.

Each day people are arrested for things they are not guilty of and cases full of legal or evidentiary issues come into being. Unless the solicitor exercises his or her discretion and dismisses the charge, the only way to raise legal or evidentiary challenges or assert claims of actual innocence is to take the case to a jury trial. The right to a jury trial is central to our system of justice, yet cannot be freely exercised in South Carolina because the power to schedule the trial lies solely with the prosecution.

Often defendants, like Langford, request a jury trial but have to wait months, sometimes even years, for the solicitor to call the case to trial. In the interim, many defendants decide, regardless of how strong their case may be, to take a plea offer rather than languish in jail. The solicitor's power to refuse to call a case trial goes unchecked by the judiciary and sends a message to the defendant that the only way to resolve the pending charges is a guilty plea. In other cases, the solicitor holds someone like Langford in pre-trial detention until the prosecutor removes the weaknesses in the State's case and gains the maximum possible strategic advantage.

C. Solicitors can repeatedly and unnecessarily request the appearance of defendants who have made bond.

Prior to the implementation of county or circuit-wide case management systems, it was common for the state to require all defendants with pending charges to appear each and every term of court. These mass roll calls served little purpose other than harassing the defendants who were fortunate enough to make bond and jeopardize employment that the defendants may have secured.

Even after these case management orders have been put into place, the solicitors can, and have, compelled the appearance of defendants, both represented and *pro se*, under threat of bench warrant. Most times, these appearances are used merely to insure that the defendants are available at the beck and call of the state.

D. Solicitor docket control essentially cuts off judicial involvement with trial cases until the morning of trial.

Under the current system of solicitor docket control, judges are not assigned to cases prior to the case being called for trial.¹⁸ Thus, it is nearly impossible to address pretrial matters, such as exclusion of evidence, in advance of trial. In a case where there is a strong argument for the exclusion of evidence the state will heavily rely on, the defendant has no choice but to request a jury trial, wait for the state to call the case to trial, and then gamble away any plea offer by pressing forward with jury selection and pretrial hearings. If the defendant loses and the evidence in question is found to be admissible, the defendant has often lost any favorable plea offers that may have previously been extended and must either plead guilty and receive a harsher sentence or continue on with trial and risk the maximum punishment.

¹⁸ However, judges are assigned to capital cases once the defendant is served with notice of the state's intention to seek the death penalty.

In larger jurisdictions, this lack of judicial involvement can lead to judges being unfamiliar with cases. The absence of a judge who will be familiar with the peculiarities of a given case and be in a position to rule on pretrial matters removes options from the defendant's menu of possible resolutions to his or her case.

Langford's case was tried in one of the smallest counties of the state. While the same circuit court judge was involved in multiple proceedings, Langford did not receive the benefit of any judicial supervision. The solicitor, however, used docket control to manipulate the judicial proceedings to the state's benefit. When Alvin Phillips refused to cooperate in May, 2010, the solicitor declined to go forward, despite claiming "great...expense" to the state in preparing the case for trial during that term of court. Order R. *. Once the state again secured Alvin Phillips cooperation, the solicitor increased his leverage over the witness by securing a guilty plea and deferring sentencing until after Langford's trial. In addition to presiding over Langford's trial, Judge Keesley also sentenced Phillips on October 5, 2010.¹⁹

E. Docket control allows the solicitors to "judge shop."

Because cases may be called for plea or trial entirely at the whim of the solicitor, the prosecution has the unique ability to unilaterally select which judge will hear a given case. With the increased ability to communicate with other prosecutors around the state, especially those who practice regularly in front of a particular judge, prosecutors can learn which judges will be likely to rule favorably on evidentiary issues and sentence defendants to the maximum allowed by statute.

¹⁹<http://publicindex.sccourts.org/edgefield/publicindex/PICaseDetails.aspx?County=19+&Casenum=J595143&CourtType=G&CaseType=Criminal&CourtAgency=19001&LastName=Phillips&FirstName=Alvin> (last viewed July 31, 2011).

Defendants can do little to escape the wrath of an unfavorable judge. If there is a plea offer extended by the solicitor, they have the unfettered ability to revoke the offer at any time, leaving the defendant with no choice but to plead guilty in front of the state's judge of choice. If the defendant has elected to exercise his or her right to a jury trial, their case will be tried in front of the judge selected by the state unless a continuance is granted. However, a continuance can only be sought if meritorious grounds exist and even then, the sole discretion in granting the continuance lies with the trial judge.

In Langford's case, the solicitor used the same circuit court judge to ensure Alvin Phillips cooperation. Judge Keesley continued Langford's case in May, 2010 when "the cooperating witness changed his mind" about testifying for the state. Next, the solicitor arranged for Alvin Phillips to plead guilty before Judge Keesley with sentencing deferred until after he testified for the state. Finally, the solicitor called Langford's case to trial before Judge Keesley in September, 2010, correctly predicting he would allow the state to proceed to trial since he had denied Langford's motion to dismiss in May, 2010.

III. Solicitor control of the docket is unconstitutional because it violates the Separation of Powers doctrine and Due Process.

Solicitor control of the docket is not constitutional. First, solicitor control of the docket violates the constitutional doctrine of separation of powers. Second, solicitor control of the docket violates the due process clauses of the United States and South Carolina Constitutions. Each are discussed below.

A. The constitutional doctrine of Separation of Powers.

The South Carolina Constitution explicitly divides the government into three branches and prohibits encroachment of one branch into the purview of another:

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever

separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties or any other.

S. C. Const., Art.1, §8.

Judges are inherently members of the judicial branch and solicitors are statutorily defined as members of the executive branch. S.C. Code Ann. §1-1-110 (Supp.). However, the South Carolina Code of Laws bestows on the solicitor the power to control dockets for General Sessions Court:

The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial.

S.C. Code Ann. §1-7-330 (Supp.).

The South Carolina Supreme Court has held that managing the court docket is an inherently judicial function, at least in the Court of Common Pleas. *Williams v. Bordon's, Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980). Section 1-7-330 takes a judicial function, control of the court docket, and places it in the hands of an executive officer. This statute violates the Separation of Powers clause of the South Carolina Constitution. Judicial oversight should include the authority for the trial court to prevent solicitors from abusing their control of the docket to gain a strategic and tactical advantage over a defendant. Through separation of powers, a judicial officer should have decided when Langford's case was set for trial.

B. Due Process²⁰

Judges are not fungible; they cover the constitutional spectrum; and a particular judge's emphasis may make a

²⁰ U.S. Const. Am. 5 and 14 and S.C. Const. Art. I, §3.

world of difference when it comes to rulings on evidence, the temper of the courtroom, the tolerance for a proffered defense, and the like. Lawyers recognize this when they talk about ‘shopping’ for a judge; Senators recognize this when they are asked to give their ‘advice and consent’ to judicial appointments; laymen recognize this when they appraise the quality and image of the judiciary in their own community.

Laird v. Tatum, 409 U.S. 824, 834-35 (1972) (Rehnquist, J.) (quoting *Chandler v. Judicial Council of the Tenth Circuit of the United States*, 398 U.S. 74, 137, 90 S.Ct. 1648, 26 L.Ed.2d 100 (1970) (Douglas, J., dissenting)).

Solicitor control of the docket includes the awesome power to select the trial judge. This practice “raises substantial due process concerns.” *U.S. v. Pearson*, 203 F.3d 1243, 1257 (10th Cir. 2000). “Any criminal justice system in which the prosecutor alone is able to select the judge of his choice, even in limited types of cases, raises serious concerns about the appearance of partiality, irrespective of the motives of the prosecutor in selecting a given judge.” *Francolino v. Kuhlman*, 224 F.Supp.2d 615, 630 (S.D.N.Y. 2002). In fact, our Supreme Court recently observed, “[T]he practice of the prosecutor selecting the trial judge is inappropriate and troubling” and “is no longer possible . . . in death penalty cases.” *Rosemond v. Catoe*, 383 S.C. 320, 326, fn. 1, 680 S.E.2d 5, 8, fn. 1 (2009). This practice is just as inappropriate and troubling in non-capital cases.

At least two states hold it violates due process for the prosecutor to assign the trial judge. *State v. Simpson*, 551 So.2d 1303 (La. 1989) (“To meet due process requirements, capital and other felony cases must be allotted for trial to the various divisions of the court, or to judges assigned criminal court duty, on a random or rotating basis or under some other procedure adopted by the court which does not vest the district attorney with power to choose the judge to whom a particular case is assigned.”) and *McDonald v.*

Goldstein, 191 Misc. 863, 83 N.Y.S.2d 620 (948) (“A court dealing with the life and liberty of the people must be free from outside control. . . . That a judge should ever be burdened with the thought that his assignments depended on the district attorney’s appraisal of his court work is unthinkable in American jurisprudence.”).

As a result of the judiciary’s historical deference to solicitor control of the docket, the circuit courts have developed a systemic bias against enforcing the right to a speedy trial. In Langford’s case, the solicitor recognized the state had an advantage in front of Judge Keesley. The solicitor arranged for all the proceedings to be in front of this judge. The state obtained a favorable ruling from Judge Keesley, denying Langford’s motion to dismiss for denial of a speedy trial. This order also granted the solicitor and additional “9 months” before Langford could “reassert his motions.” R. *. The solicitor then manipulated the docket for Judge Keesley to be the trial judge and to later sentence the cooperating co-defendant. Judicial supervision in this manner allowed the solicitor additional time to pressure Alvin Phillips into testifying against Langford and then to reward Phillips when he complied.

IV. This Court should reverse the trial court and dismiss the charges against Langford.

The Court should reverse the trial court judge and order Langford’s case be dismissed. This section will review the law applicable to speedy trial claims and argue why dismissal is necessary for judicial supervision of the criminal docket.

A. Law applicable to speedy trial claims.

There is a four part test for analyzing a speedy trial claim: (1) whether delay before trial was uncommonly long, (2) whether the government or defendant is more to blame for the delay, (3) whether, in due course, the defendant asserted his right to a speedy

trial, and (4) whether the defendant suffered any prejudice as to the delay's result. *Doggett v. United States*, 505 U.S. 647, 651 (1992).

First, the delay here was uncommonly long. In his May 20, 2010 order, the trial court judge found that Langford had been "incarcerated for 20 months" and was "deeply concerned about the length of time [Langford had] been incarcerated." R. *. "[B]ecause of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case." *Barker v. Wingo*, 407 U.S. 514, 530-31 (1972). The length of delay in Langford's case, however, is consistent with delays that have triggered further judicial review. "[A] delay of nine months [is] overly long, absent a good reason, in a case that depended on eyewitness testimony." *Id.* at 531 (fn. 31) (citing *U.S. v. Butler*, 426 F.2d 1275 (1970)). The South Carolina Supreme Court has held a twenty-eight month delay triggers further review. *State v. Waites*, 270 S.C. 104, 240 S.E.2d 651 (1978). The 673 day delay in Langford's case, therefore, is uncommonly long, and likewise, triggers further review.

Second, the government was solely at fault for the delay in petitioner's case. The solicitor delayed indicting petitioner until May 5, 2010, when a grand jury indictment is required to prosecute these offenses. S.C. Const. Art. I, §11 and S.C. Code Ann. §17-19-10. The prosecution alone decides when a case is presented to the grand jury. Thus, the entire delay is attributable to the state. *Vermont v. Brillon*, ___ U.S. ___, 129 S.Ct. 1283, 173 L.Ed.2d 231 (2009). "Deliberate delay to hamper the defense weighs heavily against the prosecution." *Id.* 129 S.Ct. at 1290. The trial court, therefore, erred by concluding, "None of the delay was occasioned by any impropriety on the part of the State." R. *.

Third, Langford asserted his right to a speedy trial by filing his first speedy trial motion on June 22, 2009 and moving to dismiss the charges in May, 2010. After this motion was denied, Langford filed a second speedy trial motion on May 25, 2010, even though the trial judge ordered him to wait “9 months” before he “may reassert his motions.” R. *.

Turning to the fourth prong, Langford was prejudiced by the solicitor’s intentional delay. Langford was ready to go to trial on May 17, 2010, the very day the solicitor had noticed him for trial. “[T]he State claimed it had gone to a great deal of time and expense” to give Langford a trial on this date. The state’s decision not to proceed with the trial was entirely strategic – they needed additional time in order to gain an evidentiary advantage by securing the cooperation of Alvin Phillips. The so-called “*Bruton*”²¹ problems and confrontation clause issues” are red herrings. Since Phillips’ statement implicating Langford could have been redacted in a joint trial, the judge erred in relying on *Bruton*. In reality, proceeding to trial on May 17, 2010 would have resulted in Langford being acquitted because the solicitor’s “case [against Langford] hinge[d] almost exclusively on the testimony of the cooperating codefendant” who had “declared that he was not going to testify.” Solicitors using docket control to gain this type of strategic advantage violates Due Process. See Section III(B), *supra*. By filing a speedy trial motion and moving for the charges to be dismissed, Langford was seeking judicial oversight to enforce his right to a speedy trial. See Section III(A), *supra*. In addition to being the presiding judge for the May 17, 2010 term of court, Judge Keesley was also the Chief Administrative Judge for General

²¹ *Bruton v. United States*, 391 U.S. 123 (1968).

Sessions Court in the Eleventh Circuit.²² Rather than dismissing the charges against Langford, Judge Keesley became a *de facto* instrument of the prosecution by denying the motion and giving the solicitor up to nine months to re-secure the cooperation of the “cooperating codefendant.”

With Langford establishing a violation of his speedy trial right, dismissal is “the only possible remedy.” *Baker*, 407 U.S. at 522.

B. Dismissal is necessary for judicial supervision of the criminal docket.

As pointed out in Section I, *supra*, the appellate courts in South Carolina have never ordered a case to be dismissed for violation of a defendant’s right to a speedy trial. There is no statute or court rule providing guidance to the bench and bar about enforcement of the right to a speedy trial in this state. Dismissal may be unprecedented in South Carolina, but it is not unprecedented in Sixth Amendment jurisprudence. As the United States Supreme Court observed in *Baker*:

The amorphous quality of the [speedy trial] right also leads to the unsatisfactorily severe remedy of **dismissal of the indictment** when the right has been deprived. This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free, without having been tried. Such a remedy is more serious than an exclusionary rule or a reversal for a new trial, but it is **the only possible remedy**.

Baker, 407 U.S. at 522 (emphasis added).

²² <http://www.judicial.state.sc.us/adminJudges/changeTermsCir.cfm> (last viewed July 30, 2011).

The prosecution's flagrant disregard for Langford's right to a speedy trial is exactly what the Sixth Amendment was designed to prohibit. Judicial oversight and intervention is not only appropriate but also constitutionally required.²³

The current scheme of administrative orders, *see* Section I, *supra*, does not provide sufficient judicial oversight of a defendant's right to a speedy trial. Even though Judge Keesley was the Chief Administrative Judge at the time, he very likely believed that his administrative authority did not include the power to dismiss the charges against Langford. Intervention by this Court is necessary to recognize dismissal as an appropriate remedy for denying a defendant the right to a speedy trial.

Dismissal is a necessary remedy for the courts in South Carolina to provide meaningful oversight of General Session Court. As discussed in Section II, *supra*, solicitor control of the docket may lead to unacceptable abuses of defendants' rights. The threat of dismissal will ensure solicitors do not use their control of the criminal docket to deny the right to a speedy trial. Based on the proposed South Carolina Criminal Rules, it appears this state may retain solicitor control of the docket but with increased judicial oversight. Such oversight of the constitutional right to a speedy trial is an essential addition to the case management orders and the proposed rules of criminal procedure. As a result, the courts would exercise the authority to administer the criminal dockets, a defendant would receive due process, and the separation of powers would be preserved. *See* Section III, *supra*.

This Court, therefore, should dismiss petitioner's charges with prejudice.

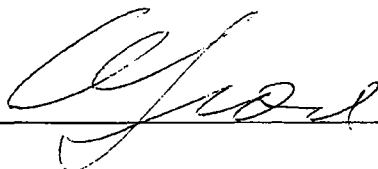
²³ Other States have developed procedures for enforcing the right to a speedy trial. *E.g. State v. Godfrey*, 309 Ga.App. 234, 709 S.E.2d 572 (2011) (trial court was required on remand to balance speedy trial factors under proper standard).

Conclusion

Langford demanded a speedy trial. Instead of providing him a speedy trial, the solicitor delayed calling Langford's case for trial until the state obtained a strategic advantage. Rather than enforcing Langford's right to a speedy trial by dismissing the charges, the trial court judge deferred to solicitor control of the docket. The trial judge's deference to solicitor control of the docket in this case is representative of a larger, systemic problem.

This Court should reverse the trial court judge and dismiss the charges against Langford. In the process, this Court should provide guidance to the bench and bar for enforcing the right to a speedy trial.

Respectfully submitted,

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August 15, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

K.C. LANGFORD,

APPELLANT

CERTIFICATE OF SERVICE

I certify that I served two copies of the proposed initial *amicus curie* brief of the South Carolina Public Defender Association on the date reflected below on counsel by United States Mail, postage prepaid, addressed as follows:

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August 15, 2011

Appendix A

The Supreme Court of South Carolina

O R D E R

Effective Date: October 1, 1983

Pursuant to the provisions of Section 4, Article V,
South Carolina Constitution,

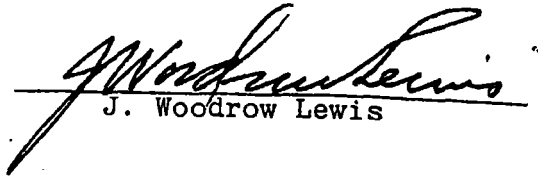
IT IS ORDERED that all criminal cases in the State of South Carolina shall be disposed within 180 days from the date of the defendant's arrest. Provided, however, that the Circuit Court may continue a criminal case beyond 180 days by written order if the Court determines that exceptional circumstances exist in the case.

IT IS FURTHER ORDERED that the Chief Circuit Court Judge for Administrative Purposes shall be in overall charge of and responsible for the criminal roster in order to develop a procedure for expediting the disposition of criminal cases, including the setting of the roster of cases for disposition, if such be necessary to accomplish the timely disposition of criminal cases.

IT IS FURTHER ORDERED that each circuit court judge is to continue any and all criminal matters which have been pending for a period of less than 180 days from date of arrest until such time as there are no cases exceeding 180 days from date of arrest pending and awaiting trial. This shall not include the taking of guilty pleas nor cases in which capital punishment is being sought or cases

[Handwritten signature]

in which the circuit court judge by written order determines that exceptional circumstances exist which require the disposition of the case in advance of a case pending for more than 180 days. This order does not create or define a right of a defendant to a speedy trial.


J. Woodrow Lewis

Columbia, South Carolina

August 10³, 1983

Appendix B

The Supreme Court of South Carolina

O R D E R

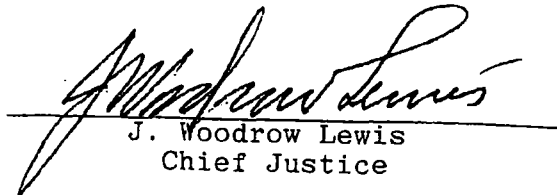
RECEIVED
JAN 17 1984
S.C. SUPREME COURT

I find that there currently exists some misunderstanding concerning the scope and compliance requirements of my August 17, 1983 order establishing a 180-day time limitation for the disposition of criminal cases, particularly as it relates to the contingent docket and the duration of an exceptional circumstances order.

Therefore, pursuant to the provisions of Section 4, Article V, South Carolina Constitution,

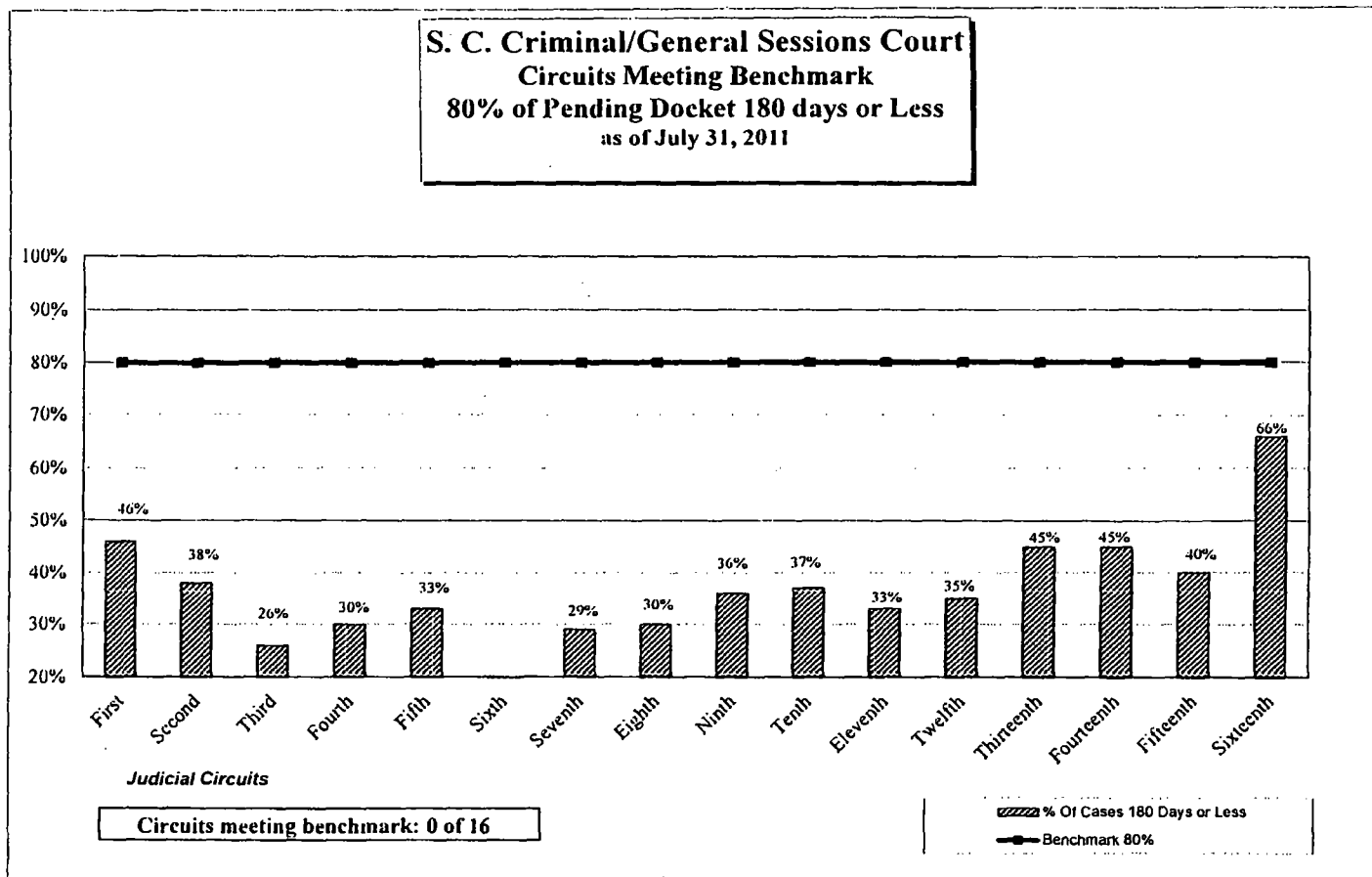
IT IS ORDERED that all criminal cases, including contingent docket cases, are subject to the requirements of my August 17, 1983 order, a copy of which is attached to and made a part of this Order.

IT IS FURTHER ORDERED that any exceptional circumstances orders shall not be valid for more than thirty (30) days from the date of issuance.


J. Woodrow Lewis
Chief Justice

Darlington, South Carolina

January 13, 1984



Source: S.C. Court Administration, CRM75, July 31, 2011. Run Date: August 11, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRYAN PHILLIPS

APPELLANT

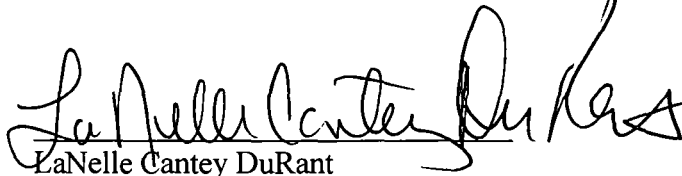
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Court Exhibit 1 – Louie’s Resume
- (3) Trial Transcript pages 2, 3, 116 – 131, 132 – 142, 158, 187,
189 – 193, 200, 201, 203, 205, 206, 223 – 225, 228 – 236,
242, 244, 245, 260 – 263, 264 – 268, 303, 308, 319 – 321,
364, 365, 369, 371, 373 – 375, 490, 492 – 494, 524 – 526,
533- 549.
- (4) Phillips’ Motion dated January 14, 2010
- (5) Judge Keesley’s Order May 2010.

I certify that this designation contains no matter which is irrelevant to this appeal.

July 13th, 2011.


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

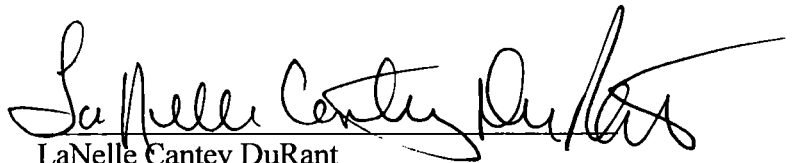
V.

BRYAN PHILLIPS

APPELLANT

CERTIFICATE OF SERVICE

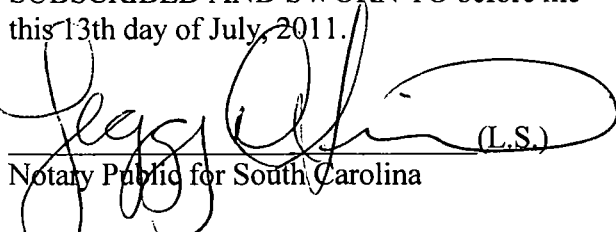
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201; and upon Bryan Phillips, #318212, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 13th day of July, 2011.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of July, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

BRYAN PHILLIPS,

APPELLANT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Bryan Phillips respectfully requests **a final extension of thirty (30) days** in which to file the Initial Brief of Appellant and Designation of Matter in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a fourth request for an extension of time in this case. In support of this request, counsel shows:

In support of this request, counsel shows:

(1) The initial brief of appellant and designation of matter are due to be served and filed today, July 11, 2011.

(2) Counsel for Mr. Phillips respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions

LHert
ORIGINAL

RECEIVED

JUL 11 2011

SC Court of Appeals

previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.

(3) On July 5, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Ernest Evans. On June 30, 2011, counsel filed the petition for writ of certiorari to the Court of Appeals in the cases of In the Matter of Thomas Simmons and State v. Barry Evans. On June 27, 2011, counsel filed the petition for writ of certiorari and appendix in the case of John Chancy v. State. On June 23, 2011, counsel filed the petition for rehearing in the case of In the Matter of Vince Neal Way. On June 21, 2011 counsel had an oral argument in the case of State v. Christopher Commander in the Supreme Court. On June 13, 2011, counsel filed the initial brief of appellant and designation of matter in the cases of State v. Craig Rolen and State v. David Sheriff in this Court. On June 6, 2011, counsel filed the brief of petitioner in the case of State v. Reginald Latimore in the Supreme Court. On May 31, 2011, counsel filed the petition for writ of certiorari and appendix in the cases of Kenney Sowell v. State, Hernando Johnson v. State, and Braxton Bell v. State.

(4) Counsel respectfully asks this Court for an additional 30 day extension of time to file the initial brief of appellant and designation of matter. Counsel understands that the Court has granted three previous extensions in this case, and is striving to limit the number of extensions requested.

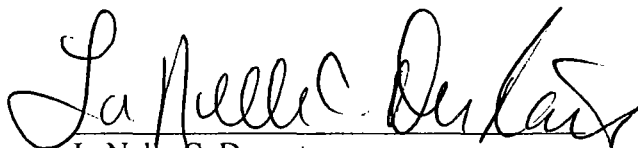
(5) Counsel makes this request in good faith and not for purpose of delay.

(6) Counsel for the Attorney General's office consents to this request as shown by signature.

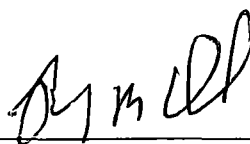
WHEREFORE, the undersigned counsel would respectfully request **a final extension of thirty (30) days** in which to file the initial brief of appellant and designation of matter in this

case based upon the above exigent circumstances. Counsel requests that time limits for filing the brief be held in abeyance pending a ruling on this motion.

Respectfully submitted,



LaNelle C. Durant
Appellate Defender



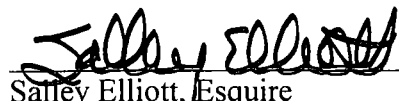
Robert M. Dudek
Chief Appellate Defender



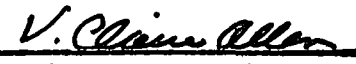
Patton Adams
Executive Director

This 11th day of July, 2011.

I Consent:


Sally Elliott, Esquire

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: 
(Clerk) (Deputy Clerk)

FILED
2/25/11 



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 9, 2011

Appellate Defender Lanelle Durant
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Phillips, Brian

Dear Counsel:

The following Order has been endorsed on your Motion For Extension of Time in Which to File the Initial Brief of Appellant and Designation of Matter in the above entitled case on appeal.

"Granted.

John Cannon Few, C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

For good cause shown, the request for an extension to serve and file the Initial Brief of Appellant and Designation of Matter on July 11, 2011, 2011 is granted. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/lb

cc: Assistant Deputy Attorney General Salley W. Elliott

Original

3rd ext
HTA

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

BRYAN PHILLIPS,

APPELLANT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

RECEIVED
MAY 27 2011
SC Court of Appeals

Counsel for Bryan Phillips respectfully requests an additional extension of thirty days, in which to file the Initial Brief of Appellant and Designation of Matter in this case. This motion is made pursuant to the Order of the South Carolina Supreme Court dated March 18, 2009. This is a third request for an extension of time in this case. In support of this request, counsel shows:

In support of this request, counsel shows:

(1) The initial brief of appellant and designation of matter are due to be served and filed today, May 27, 2011.

(2) Counsel for Mr. Phillips respectfully submits that extraordinary circumstances exist which warrant the granting of an additional extension of time. Given the number of extensions

previously granted and the order in which counsel attempts to manage her caseload, counsel hopes that no further extension requests will be required.

(3) On May 23, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Israel Colecio. On May 18, 2011, counsel filed initial brief of appellant and designation of matter in the case of State v. Shakeia Butler. On May 16, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Angela Cowart and the petition for writ of certiorari and appendix in the case of Otis Culbreath v. State. On May 9, 2011, counsel filed the initial brief of appellant and designation of matter in the case of State v. Jimmy Cuttino and the petition for writ of certiorari and appendix in the case of Dexter Tucker v. State. On May 5, 2011, counsel filed the brief of petitioner in the case of Demetrius Jones v. State and the initial brief of appellant and designation of matter in the case of State v. Steve Conder. On April 28, 2011, counsel filed the petition for rehearing in the case of State v. Randolph Frazier. On April 27, 2011, counsel filed the brief of petitioner in the case of Marcus Hyman v. State and the initial brief of appellant and designation of matter in the case of State v. Steven Hewitt. On April 26, 2011, counsel filed the petition for writ of certiorari and appendix in the case of Keith Drayton v. State and the petition for rehearing in the case of State v. Barry Evans.

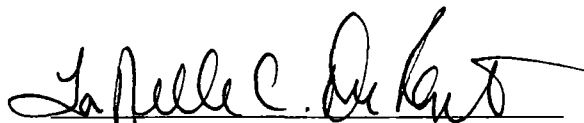
(4) Counsel respectfully asks this Court for an additional 30 day extension of time to file the initial brief of appellant and designation of matter. Counsel understands that the Court has granted three previous extensions in this case, and is striving to limit the number of extensions requested.

(5) Counsel makes this request in good faith and not for purpose of delay.

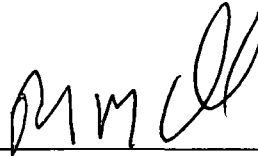
(6) Counsel for the Attorney General's office consents to this request as shown by signature.

WHEREFORE, the undersigned counsel would respectfully request an extension of thirty days in which to file the initial brief of appellant and designation of matter in this case based upon the above exigent circumstances. Counsel requests that time limits for filing the brief be held in abeyance pending a ruling on this motion.

Respectfully submitted,



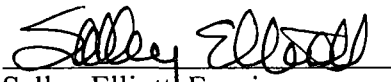
LaNelle C. Durant
Appellate Defender



Robert M. Dudek
Chief Appellate Defender

This 27th day of May, 2011.

I Consent:



Salley Elliott, Esquire

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

6/9/11 **FILED**

The South Carolina Court of Appeals

The State,

Respondent

v.

Brian Phillips,

Appellant.

The Honorable William P. Keesley
Edgefield County
Trial Court Case No. 2008-GS-19-00718
2008-GS-19-00723
2010-GS-19-00274
2010-GS-19-00277

ORDER

For good cause shown, the request for an extension to serve and file the Initial Brief of Appellant and Designation of Matter on May 27, 2011 is granted. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Appellate Defender Lanelle Durant
Assistant Deputy Attorney General Salley W. Elliott

5/9/11 **FILED**

Bellamy, Latrea

From: COA Extensions
Sent: Thursday, April 28, 2011 4:21 PM
To: Bellamy, Latrea
Subject: FW: Bryan Phillips

2nd ext.
Due 5/27/11

From: Angela Bennett [mailto:ABennett@scag.gov]
Sent: Thursday, April 28, 2011 3:42 PM
To: COA Extensions; Simons, Peggy D.
Cc: DuRant, LaNelle C.; Elliott, Salley; Graham, Sharon A.
Subject: Re: Bryan Phillips

we consent.

Angela S. Bennett
Administrative Assistant
SC Attorney General's Office
(803) 734-0368

>>> "Peggy D. Simons" <dsimons@sccid.sc.gov> 4/27/2011 1:39 PM >>>
Clerk's Office
South Carolina Court of Appeals

Re: The State v. Bryan Phillips

Dear Ms. Gee:

The Initial Brief of Appellant and Designation of Matter in the above case are due to be served and filed with the Court April 27, 2011. However, due to my heavy work-load, I am requesting a thirty day extension in which to serve and file this brief.

By copy of this email, I am informing Salley Elliott, Esquire, of my request.

Sincerely,

LaNelle C. Durant
Appellate Defender

--- Scanned by M+ Guardian Messaging Firewall ---

The South Carolina Court of Appeals

The State,

Respondent

v.

Brian Phillips,

Appellant.

The Honorable William P. Keesley
Edgefield County
Trial Court Case No. 2008-GS-19-00718
2008-GS-19-00723
2010-GS-19-00274
2010-GS-19-00277

ORDER

ORDER

The request for an extension to serve and file the Initial Brief of Appellant and Designation of Matter on April 27, 2011 is granted. Pursuant to the Supreme Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Appellate Defender Lanelle Durant
Assistant Deputy Attorney General Salley W. Elliott

FILED

4/7/11

Bellamy, Latrea

From: COA Extensions
Sent: Monday, March 28, 2011 4:19 PM
To: Bellamy, Latrea
Subject: FW: Bryan Phillips

*1st ext
Due 4/27/11*

From: Peggy D. Simons [mailto:dsimons@sccid.sc.gov]
Sent: Monday, March 28, 2011 3:57 PM
To: COA Extensions
Cc: Salley Elliott; Angela Bennett; LaNelle C. DuRant; Sharon A. Graham
Subject: Bryan Phillips

Clerk's Office
South Carolina Court of Appeals

Re: The State v. Bryan Phillips

Dear Ms. Gee:

The Initial Brief of Appellant and Designation of Matter in the above case are due to be served and filed with the Court today, . However, due to my heavy work-load, I am requesting a thirty day extension in which to serve and file this brief.

By copy of this email, I am informing Salley Elliott, Esquire, of my request.

Sincerely,

LaNelle C. Durant
Appellate Defender



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 26, 2011

The Honorable Tanya A. Gee
Clerk, S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
JAN 26 2011
SC COURT OF APPEALS

Dear Ms. Gee:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

The State v. Bryan Phillips

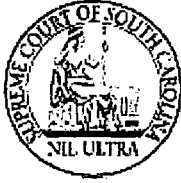
1/26/2011

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Sharon A. Graham
Administrative Coordinator



The Supreme Court of South Carolina

(State of South Carolina
(
(
(
TITLE OF (V. 2008GS19718A
CASE (
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(
(Bryan Phillips
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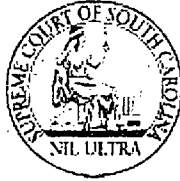
Notice

Upon request and for good cause shown, Stacy Sheppard, Court Reporter, is hereby granted an extension up to and including February 08, 2010 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
01/04/2011

cc: Division of Appellate Defense
Stacy Sheppard



The Supreme Court of South Carolina

(State of South Carolina
(
(
(
TITLE OF (V. 2008GS19718A
CASE (
(
(
(Bryan Phillips
(
(

RECEIVED

DEC 08 2010

SC Court of Appeals

Notice

Upon request and for good cause shown, Stacy Sheppard, Court Reporter, is hereby granted an extension up to and including January 08, 2011 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
12/06/2010

cc: Division of Appellate Defense
Stacy Sheppard



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

October 7, 2010

Ms. Stacy L. Sheppard
Circuit Court Reporter
100 Lunsford Lane
Lexington, SC 29072

RECEIVED
OCT 07 2010
SC Court of Appeals

Dear Ms. Sheppard:

Our office has been requested to perfect the appeal arising out of:

The State v. Bryan Phillips

Case #:

08-GS-19-718, 723,
10-GS-274, 277

County: Edgefield

Date of Trial: September 9, 2010

Presiding Judge: William P. Keesley

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

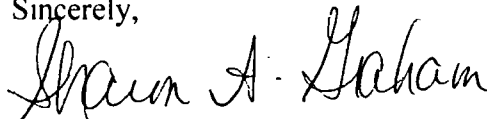
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

Ms. Stacy L. Sheppard
October 7, 2010
Page Two

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon A. Graham". The signature is fluid and cursive, with the first name "Sharon" being more prominent.

Sharon A. Graham
Administrative Coordinator

cc: S.C.Court of Appeals
Attorney General's Office



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 13, 2010

Randall DeWitt Williams, Esquire
The Williams Law Firm
P.O. Box 70
Edgefield, SC 29824

Re: The State v. Phillips, Brian

Dear Mr. Williams:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Please be advised that pursuant to Rule 602, SCACR and the order of the Chief Justice dated December 12, 1997, if you expect the Office of Indigent Defense to pursue this appeal, you must provide that office with all information required to proceed with this appeal, failing which, this office will consider you counsel of record.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within thirty (30) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,
Tanya A. Gee
CLERK

TAG/lb

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 13, 2010

Randall DeWitt Williams, Esquire
The Williams Law Firm
P.O. Box 70
Edgefield, SC 29824

Re: The State v. Phillips, Brian
Case No. 2010173307

Dear Mr. Williams:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/lb

cc: Chief Appellate Defender Robert M. Dudek
Assistant Deputy Attorney General Salley W. Elliott



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 13, 2010

MEMORANDUM

To: Loriene French/Sharon Graham/Angela Bennett

From: Latrea Bellamy

Re: Notice of Filing of Notice of Appeal

Case Name: The State v. Phillips, Brian

Case Number: 2008-GS-19-718, 2008-GS-19-723, 2010-GS-274, 2010-GS19-277

County: Edgefield

Date of Filing: September 20, 2010

Proof of Service: September 17, 2010

Filed by: Attorney Randall Dewitt Williams

Judge: The Honorable William P. Keesley

Hearing Date: September 9, 2010

Guilty Plea: No

POS- 9/17/10
PM- 9/17/10

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

2010 SEP 17 PM 2:17

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

RECEIVED

SEP 20 2010

SC Court of Appeals

William P. Keesley, Circuit Court Judge

CASE NO.(S): 2008-GS-19-718
2008-GS-19-723
2010-GS-19-274
2010-GS-19-277

The State of South Carolina..... Respondent,

v.

Brian Jordan Phillips, ... Appellant.

NOTICE OF APPEAL

Brian Jordan Phillips appeals the conviction and sentence in this case. The sentence was imposed by the Honorable William P. Keesley on September 9, 2010.

September 17, 2010


Randall DeWitt Williams

201 Buncombe Street
Post Office Box 70
Edgefield, South Carolina 29824
(803) 637-4902
Attorney for Appellant

Other Counsel of Record
Deputy Solicitor, Ervin Maye
187 Saluda Airport Road
Saluda, SC 29138
(803) 275-5609
Attorney for Respondent

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
WHICH IS ON FILE IN THE OFFICE OF THE
CLERK OF COURT OF EDGEFIELD COUNTY, SC


SHIRLEY F. NEWBY, CLERK OF COURT
OF GENERAL SESSIONS AND
COMMON PLEAS, E.C.S.C.
9-17-10
DATED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

2010 SEP 17 PM 2:17

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

William P. Keesley, Circuit Court Judge

RECEIVED

SEP 20 2010

SC Court of Appeals

CASE NO.(S): 2008-GS-19-718
2008-GS-19-723
2010-GS-19-274
2010-GS-19-277

The State of South Carolina..... Respondent,

v.

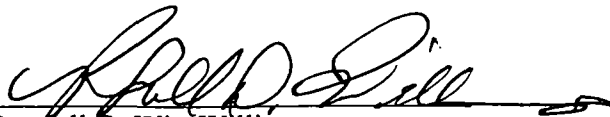
Brian J. Phillips, ... Appellant.

PROOF OF SERVICE

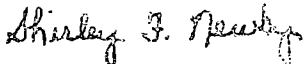
I certify that I have served Notice of Appeal on the State of South Carolina by depositing a copy of the Notice in the United States Mail, postage prepaid, on September 17, 2010, addressed to the Attorney of record:

Office of the Solicitor
Deputy Solicitor, Ervin Maye
187 Saluda Airport Road
Saluda, SC 29138

September 17, 2010


Randall DeWitt Williams
Attorney for Appellant

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
WHICH IS ON FILE IN THE OFFICE OF THE
CLERK OF COURT OF EDGEFIELD COUNTY, SC



9-17-10 SHIRLEY F. NEWBY, CLERK OF COURT
OF GENERAL SESSIONS AND
COMMON PLEAS, E.C.S.C.
DATED

STATE OF SOUTH CAROLINA

County of EDGEFIELD

STATE OF SOUTH CAROLINA

Petitioner

vs.

BRYAN JORDAN PHILLIPS

Defendant

IN THE COURT OF
General Sessions

11TH Judicial Circuit

ORDER OF APPOINTMENT
FOR LEGAL COUNSEL

☒ Public Defender Conflict
AND ATTORNEY GREG ANDERSON

Case Number 2008 -GS- 19 - 541
J605578; J605808; J605805; J605804;
J605800; J595141; 2008-GS-19-718

The Defendant contends that he or she is indigent and in need of services of an attorney as contemplated by law. THEREFORE, the Defendant is appointed RANDALL W. WILLIAMS, ESQ, Attorney-at-Law, for representation in the above captioned matter pursuant to Rule 608, SCACR.

This 20TH day of JULY, 20 09 at _____.

Shirley J. Newby
Judge/Clerk of Court

Attorney Contact Information

RANDALL DEWITT WILLIAMS, ESQ.

Name

POST OFFICE BOX 70

Address

EDGEFIELD, SC 29824

City, State, Zip Code

803-637-4902

Phone Number

J-605800

CLERK OF COURT
SUDLEY NEWBY☒ County/☐ Municipality of

AFFIDAVIT

April 21, 2003
SCCA 618

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Edgefield

THE STATE
against

Bryan Jordan Phillips

Address: 1275 St

Johnston, SC 29832-

Phone: _____ SSN: _____
Sex: M Race: B Height: 6 Weight: 200DL State: SC DL #: 101568486DOB: 7/2/1989 Agency ORI #: SC0190200Prosecuting Agency: Johnston Police DepartmentProsecuting Officer: Inv. Lamaz Robinson - 0082Offense: Burglary / Burglary (After June 20, 1985) - First degreeOffense Code: 0079Code/Ordinance Sec: 16-11-0311This warrant is **CERTIFIED FOR SERVICE** in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant Bryan Jordan Phillipson 9/30/08Marcus Smith
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
129 Courthouse Square
P O Box 34
Edgefield, SC 29824

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Edgefield

Personally appeared before me the affiant Inv. Lamaz Robinson whobeing duly sworn deposes and says that defendant Bryan Jordan Phillipsdid within this county and state on or about 08/14/2008

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality ofEdgefield)

in the following particulars:

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degreeI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:In that on or about August 14, 2008 during the night time and while armed with a black 40 Cal. Highpoint Pistol, the Def. along
with others did commit the offense of section 16-11-0311 in that he did willfully, unlawfully, and feloniously enter the dwelling of
Mr. Ji Quing Chen without owners consent and take, steal, and carry away apporimately \$3,000.00 in U.S. currency with intent to
permanently deprive the owner. This incident occurred at 708 Academy Street Johnston, S.C., same being in Edgefield County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Edgefield

Affiant's Address 500 Mims AveJohnston, SC 29832-Affiant's Telephone (803)275-2488

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/14/2008defendant Bryan Jordan Phillips

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality ofEdgefield

) as set forth below:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degreeHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 09/30/2008Davis Rhett Parkman (L.S.)
Signature of Issuing Judge

Davis Rhett Parkman

Judge Code: 5754Judge's Address Post Office Box 664Edgefield, SC 29824Judge's Telephone (803)637-4090

Issuing Court:

☒

Magistrate

☐

Municipal

☐

Circuit

J-605804

CLERK OF COURT
SHIRLEY L. NEWBY☒ County/
Edgefield)
☐ Municipality of)

AFFIDAVIT

S.C. Attorney General
April 21, 2003
SCCA 518

STATE OF SOUTH CAROLINA

☒ County/
Edgefield)
☐ Municipality of)

2008 OCT -8 AM 10:58

THE STATE
against

Bryan Jordan Phillips

Address: Ouzts St

Johnston, SC 29832-

Phone: _____ SSN: _____
Sex: M Race: B Height: 6 3 Weight: 200
DL State: SC DL #: 101568486
DOB: 7/2/1989 Agency ORI #: SC0190200
Prosecuting Agency: Johnston Police Department
Prosecuting Officer: Inv. Lamaz Robinson - 0082
Offense: Kidnapping / KidnappingOffense Code: 0095
Code/Ordinance Sec: 16-03-0910This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Bryan Jordan Phillips
on 9/30/08Marcus Smith
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
129 Courthouse Square
P O Box 34
Edgefield, SC 29824

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Personally appeared before me the affiant Inv. Lamaz Robinson who
being duly sworn deposes and says that defendant Bryan Jordan Phillips
did within this county and state on or about 08/14/2008 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Edgefield)
in the following particulars:DESCRIPTION OF OFFENSE Kidnapping / KidnappingI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:In that on or about August 14, 2008, the defendant along with other did commit the offense of kidnapping in that he did willfully,
knowingly, unlawfully, intentionally, and feloniously while armed with a deadly weapon to wit: a black 40 caliber highpoint
pistol, confine and hold against his/her will, Ji Qing Chen, Ai Ming, Guang Xing Li, Lin Yan Fung, Selina Li, and/ or Winsen Li,
from leaving there residence during an armed robbery This incident occurred at 708 Academy Street in Johnston, S.C. same being
in Edgefield County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Edgefield

Affiant's Address 500 Mims Ave
Johnston, SC 29832-

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/14/2008 defendant Bryan Jordan Phillips

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Edgefield) as set forth below:DESCRIPTION OF OFFENSE: Kidnapping / KidnappingHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 09/30/2008Davis Rhett Parkman (L.S.)
Signature of Issuing Judge

Davis Rhett Parkman

Judge Code: 5754Judge's Address Post Office Box 664
Edgefield, SC 29824Judge's Telephone (803)637-4090Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

STATE OF SOUTH CAROLINA

COUNTY OF Edgefield
STATE VS.

Mr. Bryan Jordan Phillips

AKA:

Race: B Sex: M Age: 19DOB: 07-21-1989 SS#:Address: Juzts StreetJohnston, SC 29832DL#: 0101568486 SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-65-19-718A/W#: DIRECTDate of Offense: 7/8/2008S.C. Code §: 16-17-410 C/LCDR Code #: 0049

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: CRIMINAL CONSPIRACYin violation of § 16-17-410 C/L of the S.C. Code of Laws, bearing CDR Code # 0049☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.90§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.90

Shirley J Newby
Clerk of Court/ Deputy Clerk

Court Reporter: Stacy Sheppard

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: PAY COURT COSTS W/IN1 yr. OF RELEASE FROM PRISON☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2101510Sentence Date: Sept. 9, 2010

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF Edgefield

STATE VS.

Mr. Bryan Jordan Phillips

AKA:

Race: B Sex: M Age: 19

DOB: 07-21-1989 SS#:

Address: Ozuts Street

Johnston, SC 29832

DL#: 101568486 SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-LS-19-723

A/W#: J595141

Date of Offense: 8/14/2008

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: ARMED ROBBERY

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCJA Surcharge)

TOTAL

\$100 \$100.00

\$100 \$

\$12 \$

\$500 \$

\$25 \$2500

\$100 \$

\$50 \$

\$40/ea \$

\$3.90

\$5 \$5.00

\$133.90

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: Pay court costs w/in 1 yr of release from prison

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2191510

Sentence Date: Sept. 9, 2010

Shirley A. Newby

Clerk of Court/ Deputy Clerk

Court Reporter:

Stacy Sheppard

SCCA 12/17/07/2009

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Edgefield

VS.

Mr. Bryan Jordan Phillips

(KA:

Race: Sex: M Age: 20

DOB: 07-21-1989 SS#:

Address: Ouzts Street

City, State, Zip: Johnston, SC 29832

DL# 0101568486* SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary in the First DegreeIn violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Random Drug/Alcohol Testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender FundOther: Pay court costs w/in 1 yr. of release from prison☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/Deputy Clerk
Court Reporter: Shirley J Newby
Stacy SheppardPresiding Judge William P. ClardyJudge Code: 2050Sentence Date Sept. 9, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Edgefield

VS.

Mr. Bryan Jordan Phillips

AKA:

Race: Sex: M Age: 20

DOB: 07-21-1989 SS#:

Address: Ouzts Street

City, State, Zip: Johnston, SC 29832

DL# 0101568486* SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: KIDNAPPING

In violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lawd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*, the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$47.12 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$100	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
\$90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Random Drug/Alcohol Testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ Beginning
\$ Paid to Public Defender FundOther: pay court costs w/in 1 yr.
of release from prisonDEF. IS NOT REQUIRED TO
REGISTER AS A SEX OFFENDER☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk
Court Reporter:Presiding Judge
Judge Code:
Sentence Date

WITNESSES

ROBINSON

JPD

DOCKET NO. 2008-GS-19- 718

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE

vs.

BRYAN JORDAN PHILLIPS

ARREST WARRANT NUMBER

ECT

ACTION OF GRAND JURY

Th. Hill
Person of Grand Jury
DEC 3 2008

VERDICT

TRUE BILL

Person of Petit Jury

CDR# 0049

Indictment for

CRIMINAL CONSPIRACY

DONALD V. MYERS, SOLICITOR

WITNESSES
ROBINSON

JPD

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

m. Williams
Foreperson of Grand Jury

Date:

MAY 05 2010

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-19- 274

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MAY TERM 2010

THE STATE

vs.

BRYAN JORDAN PHILLIPS

CDR# 0079

Indictment for

BURGLARY
1ST Degree

DONALD V. MYERS, SOLICITOR

WITNESSES

ROBINSON

JPD

DOCKET NO. 2008-GS-19- 723

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE

vs.

BRYAN JORDAN PHILLIPS

ARREST WARRANT NUMBER

141

ACTION OF GRAND JURY

[Signature]
Person of Grand Jury
DEC - 3 2008

VERDICT

TRUE BILL

Person of Petit Jury

CDR#0139

Indictment for

ARMED ROBBERY

DONALD V. MYERS, SOLICITOR

WITNESSES
ROBINSON

JPD

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

M. J. Williams
Foreperson of Grand Jury

Date:

MAY 05 2010

VERDICT

TRUE

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-19- 277

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MAY TERM 2010

THE STATE

vs.

BRYAN JORDAN PHILLIPS

CDR#0095

Indictment for

KIDNAPPING

DONALD V. MYERS, SOLICITOR

WITNESSES

ROBINSON

JPD

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

m. Williams
Foreperson of Grand Jury

Date:

MAY 05 2010

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-19- 274

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MAY TERM 2010

THE STATE

vs.

BRYAN JORDAN PHILLIPS

CDR# 0079

Indictment for

BURGLARY
1ST Degree

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

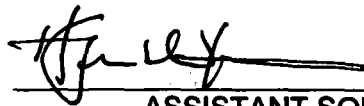
INDICTMENT FOR

BURGLARY
1ST Degree

At a Court of General Sessions, convened on May 5, 2010 the Grand Jurors of Edgefield County present upon their oath:

That BRYAN JORDAN PHILLIPS, along with one or more other persons did in Edgefield County on or about August 14, 2008, willfully and unlawfully enter, during the night time, without consent and with the intent to commit a crime therein, the residence of J. Quing Chen, in violation of §16-11-0311(A) of the South Carolina Code of Laws, as amended, with penalties provided for in 16-11-311(b) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES
ROBINSON

JPD

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

M. Williams
Foreperson of Grand Jury

Date:

MAY 05 2010

VERDICT

TRUE

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-19- 277

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MAY TERM 2010

THE STATE

vs.

BRYAN JORDAN PHILLIPS

CDR#0095

Indictment for

KIDNAPPING

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

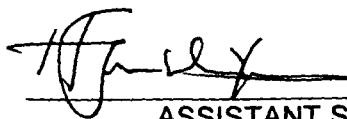
INDICTMENT FOR

KIDNAPPING

At a Court of General Sessions, convened on May 5, 2010 the Grand Jurors of Edgefield County present upon their oath:

That BRYAN JORDAN PHILLIPS, along with one or more other persons did in Edgefield County on or about August 14, 2008, unlawfully seize, and confine, inveigle, decoy, kidnap, abduct, or carry away one Ji Quing Chen, Ai Ming, Guany Xing Li, Lin Yan Fung, Selina Li, and/or Winson Li, without authority of law and without consent, by the following means, to wit: the defendant, with the use of a firearm and/or physical force did hold them against their will and would not let them leave their residence, in violation of §16-3-910 Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

The Williams Law Firm

201 Buncombe Street - Post Office Box 70
Edgefield, South Carolina 29824

(803) 637-4902 (Telephone)
Randall DeWitt Williams*

September 17, 2010

(803) 637-9634 (Facsimile)
*also admitted in North Carolina

The Honorable Kenneth A. Richstad
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: STATE OF SOUTH CAROLINA VS. BRYAN PHILLIPS

CASE NO.(S): 2008-GS-19-718
2008-GS-19-723
2010-GS-19-274
2010-GS-19-277

RECEIVED
SEP 20 2010
SC Court of Appeals

Dear Mr. Richstad:

Enclosed for filing is a Notice of Appeal in the above criminal case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondent; and,
2. A copy of the Order/Sentencing Sheet which is to be challenged on appeal.
3. Self-addressed stamped envelope.

I would appreciate your filing the Notice of Appeal, as well as the Proof of Service, and returning to me the date-stamped copies in the enclosed self-addressed stamped envelope.

If you have any questions concerning this matter, please contact me.

Sincerely,


Randall DeWitt Williams
The Williams Law Firm
Post Office Box 70
Edgefield, SC 29824
(803) 637-4902

RDW/
Enclosures:



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The Williams Law Firm
Post Office Box 70
Edgefield, South Carolina 29824

The Honorable Kenneth A. Richstad
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

