

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

K.C. Langford, III, Appellant.

Appellate Case No. 2010-173128

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

Opinion No. 27195
Heard April 18, 2012 – Filed November 21, 2012

AFFIRMED

Elizabeth Anne Franklin-Best, 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
Deputy Attorney General David A. Spencer, all of
Columbia, 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.

JUSTICE HEARN: We must determine whether Section 1-7-330 of the South Carolina Code (2005), which vests control of the criminal docket in the circuit solicitor, violates the separation of powers principle embodied in Article 1, Section 8 of the South Carolina Constitution. In 1980, we recognized that "[t]he authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases." *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980). "This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." *Id.* The time has now come for us to acknowledge that section 1-7-330 is at odds with this intrinsically judicial power. We therefore hold that section 1-7-330 violates the separation of powers and therefore is unconstitutional. However, because K.C. Langford, III, the Appellant herein, suffered no prejudice as a result of section 1-7-330, we affirm his convictions.

FACTUAL/PROCEDURAL BACKGROUND

On August 14, 2008, Ji Quing Chen, along with his son, Li Guan Xin, and wife, Li Ai Ming, left the Chinese restaurant they own in Johnston, South Carolina, shortly after 10:00 p.m. and headed home. With them was a black bag containing the day's earnings. When they arrived home, Ji Quing stayed outside to water some plants while his wife and son entered the house. As he was tending to his garden, three men wearing masks came out from the bushes, forced him to the ground, hit him, and took his wallet. Concerned that his father had not yet come inside, Li Guan stepped out onto the porch to check on him. Once he was outside, the men forced Li Guan to the ground and asked where the restaurant's money was. He told them it was in the house, and one of the men went inside to find it. That man returned shortly with the black bag, and all three of them ran off. Because the men wore masks, the victims were unable to provide a useful description to law enforcement. Moreover, it does not appear the men left any forensic evidence during the commission of these crimes.

Investigators eventually met with Alvin Phillips, who in a statement dated September 28, 2008, confessed that he was one of the men who robbed the family. He further identified his cousin and Langford as the two remaining suspects. In the absence of an eye-witness identification and forensic evidence, Phillips' statement

was the only evidence implicating the other men. Langford was arrested shortly thereafter on October 3, and he was indicted for criminal conspiracy a few months later in December 2008. However, he was not indicted for armed robbery, first degree burglary, and kidnapping until May 5, 2010, nineteen months following his arrest. He would remain incarcerated until his trial.

The State attributed the delay in procuring these indictments to difficulties in finding Chinese interpreters to translate what Ji Quing and his family, none of whom spoke English well, were relaying to investigators. Furthermore, Phillips retracted his statement implicating Langford while the two of them were housed in the same detention facility. He did so first in a signed statement dated January 29, 2009. On March 31, 2009, he signed another statement wherein he attested that the original statement he made to police in September 2008 was not true and he was not in the "right state of mind" when he made it. According to the State, Langford and his co-defendant pressured Phillips into recanting. In fact, Phillips testified Langford even brought him these later statements to sign. To avoid further intimidation, Phillips was moved to another facility. At some point thereafter, although it is not clear when, Phillips again agreed to testify against Langford.

On June 29, 2009, nearly nine months after he was taken into custody, Langford made what appears to be a *pro se* motion for a speedy trial. A hearing was held on May 17, 2010, and Langford renewed his motion at that time and joined it with a motion to dismiss.¹ This was the date on which the State originally planned to try Langford and his co-defendant, with Phillips serving as a cooperating witness who would testify against them. But the State received word that morning that Phillips decided to invoke his privilege against self-incrimination and would not testify at the trial. Allegedly, this was due to pressure Langford and Phillips' cousin continued to exert on him even after his transfer. Phillips now would not be available for cross-examination at trial, and the State therefore could not use his prior statement implicating Langford.² Because the State's case against

¹ It does not appear the court ever ruled on Langford's ostensibly *pro se* motion prior to this hearing. Moreover, the record suggests that the hearing was held upon the motion of Langford's co-defendant, Phillips' cousin. This motion was styled as a motion to dismiss or, in the alternative, a motion for a speedy trial.

² See *Bruton v. United States*, 391 U.S. 123, 126 (1968) (holding the Confrontation Clause bars the admission of a statement of a co-defendant who remains silent which is to be used against the other defendant at trial).

Langford rested almost exclusively on Phillips' statement, without it the State effectively was prevented from going forward.

To remedy the situation, the State needed to try Phillips first or, presumably, obtain a guilty plea with the attendant waiver of his right to remain silent. However, Phillips had retained new counsel just eight days prior to the hearing who understandably was not ready to move forward during that term of court. The State therefore requested a continuance so it could proceed against Phillips at the next available opportunity, at which point it would then be able to try Langford. Although the court was "deeply concerned" by the twenty-month delay in the case, it found that "[n]one of this delay was occasioned by any impropriety on the part of the State." It also recognized that, for all intents and purposes, the State could not proceed in the absence of Phillips' testimony. The court accordingly denied Langford's motion to dismiss and granted the State a continuance. However, cognizant of the delays which had already accrued, the court ordered the State to try Langford within nine months, and it further directed that Langford could renew his motion at that time if the State failed to do so.³

Phillips pled guilty in August 2010 and once again agreed to testify for the State. Langford's case was then called for trial on September 7, 2010, nearly two years after his arrest.⁴ The jury convicted Langford on all four charges, and the court sentenced him to twenty years' imprisonment on the armed robbery, kidnapping, and first degree burglary charges, and five years' imprisonment on the civil conspiracy charges, all to run concurrently. This appeal followed. After the appeal was perfected, the court of appeals granted permission for the South Carolina Public Defender Association to file an amicus curiae brief challenging the constitutionality of section 1-7-330. This case subsequently was certified to us pursuant to Rule 204(b), SCACR.

³ The court would have set an earlier deadline, but there were scheduling conflicts with a pending death penalty trial and a visiting judge. Additionally, while Langford did file what seems to be another *pro se* motion to dismiss on May 25, 2010, it does not appear the court ruled on it.

⁴ This was only the second General Sessions term of court for Edgefield County after May 17, 2010, the term in which the State received the continuance.

ISSUES PRESENTED

- I. Is section 1-7-330 constitutional?
- II. Did Langford suffer any prejudice as a result of the solicitor controlling when his case would be called for trial?

LAW/ANALYSIS

I. SECTION 1-7-330

We agree with the Public Defender Association that section 1-7-330 is unconstitutional. Before we reach the merits of this question, however, we must first address the State's position that it is not preserved for our review.

Constitutional questions must be preserved like any other issue on appeal. *In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001). As the State correctly notes, this issue was not raised to or ruled upon by the circuit court. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (stating an issue must have been raised to and ruled upon to be preserved for review). Moreover, Langford's statements of the issue on appeal do not raise this question. *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."). Indeed, this issue is only before us by way of the amicus brief filed by the Public Defender Association, and our rules provide that an amicus brief "shall be limited to argument of the issues on appeal *as presented by the parties*." Rule 213, SCACR (emphasis added).

Nevertheless, we previously have considered arguments raised only by an amicus when they concern a "matter of significant public interest." *Ex parte Brown*, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011). We stress that this exception to Rule 213 must be applied narrowly and only under the appropriate circumstances so as not to eviscerate the long-standing preservation requirements in our jurisprudence. However, we have little trouble concluding that who decides when criminal defendants in this State should be tried is a matter of significant

public interest as envisioned by *Brown*.⁵ We therefore proceed to analyze the constitutionality of section 1-7-330.

Section 1-7-330 states in full:

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.

In reviewing the validity of this statute, we are reluctant to find it unconstitutional. *See In re Treatment and Care of Luckbaugh*, 351 S.C. 122, 134, 568 S.E.2d 338, 344 (2002). We will therefore make every presumption in favor of its validity. *Id.* The party challenging the statute bears the heavy burden of proving that "its repugnance to the constitution is clear and beyond a reasonable doubt." *Id.* at 134-35, 568 S.E.2d at 344.

The Public Defender Association contends section 1-7-330 violates the separation of powers by impermissibly conferring judicial responsibilities upon a member of the executive branch. Our constitution mandates that "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." S.C. Const. art. I, § 8.

⁵ We do not take lightly the dissent's concern that by addressing the merits of the Public Defender Association's argument we offend our rules of preservation, but remain convinced this issue falls easily within our exception. Moreover, if the issue is truly unpreserved, as the dissent contends, we are at a loss to understand why the dissent addresses the merits. Preservation in South Carolina is a threshold issue and if an issue is unpreserved, it is not properly before the court and the merits should not be reached. *See State v. Roach*, 377 S.C. 2, 3, 659 S.E.2d 107, 107 (2008) (noting that issues not preserved for review should not be addressed); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (same).

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.

State ex rel. McLeod v. McInnis, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982).

We begin by ascertaining where in our system of government solicitors fall. We note the only reference to solicitors in the constitution is in the article creating the judicial department. *See* S.C. Const. art. V, § 24. However, this section also provides that "[t]he General Assembly shall provide by law for their duties." *Id.* To that end, Section 1-1-110 of the South Carolina Code (2005) squarely places solicitors in the executive branch. Moreover, the Solicitors' Association of South Carolina unequivocally states in its own amicus brief defending section 1-7-330, "The Office of Solicitor is part of the Executive Branch of our state government." Accordingly, we conclude solicitors are members of the executive branch.

We must next determine whether vesting solicitors with the exclusive authority to prepare the dockets for General Sessions is an infringement on the court's powers. "[A] usurpation of powers exists, for purposes of [the] constitutional separation of powers doctrine, when there is a significant interference by one branch of government with the operations of another branch." 16A Am. Jur. 2d *Constitutional Law* § 246. This rule is not fixed and immutable, however, as there are grey areas which are "tolerated in complex areas of government." *McInnis*, 278 S.C. at 313, 295 S.E.2d at 636 (1982). There consequently is "some overlap of authority and some encroachment to a limited degree." *Id.*; *see also* 16A Am. Jur. 2d *Constitutional Law* § 244 ("Separation of powers does not require that the branches of government be hermetically sealed; the doctrine of separation requires a cooperative accommodation among the three branches of government; a rigid and inflexible classification of powers would render government unworkable."). At its core, the doctrine therefore "is directed only to those powers which belong exclusively to a single branch of government." 16A Am. Jur. 2d *Constitutional Law* § 246.

As we noted at the outset of this opinion, a court's power to hear and decide cases "carries with it the inherent power to control the order of its business." *Williams*, 274 S.C. at 279, 262 S.E.2d at 883. Setting the trial docket therefore is the prerogative of the court. Section 1-7-330, on the other hand, states,

"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." (emphasis added). Vesting a member of the executive branch with the exclusive authority to perform an inherently judicial function unquestionably is a violation of separation of powers. See *Hagy v. Pruitt*, 331 S.C. 213, 222, 500 S.E.2d 168, 173 (Ct. App. 1998) (Howard, J., concurring) ("[A] statute which attempts to exercise ultimate authority over the inherent power of the court is unconstitutional because it violates the separation of powers doctrine"), *aff'd*, 339 S.C. 425, 529 S.E.2d 714 (2000). This is not a grey area where some encroachment can be tolerated, but rather a complete invasion into the court's domain.

The dissent, however, takes a different approach and contends that finding the statute unconstitutional will somehow permit courts to infringe upon the powers of the solicitor.⁶ Nevertheless, the dissent correctly acknowledges that the discretion afforded the solicitor "does not mean that the solicitor's authority is unrestrained by judicial oversight. The trial judge has the ultimate authority to determine whether a case called by the solicitor will be tried at a particular juncture." Thus, it appears the dissent truly believes the court has always had the authority to control the docket. In light of that position, we are at a loss as to why it believes our holding today infringes on the solicitor's power.

In fact, we believe our holding is consistent with the dissent's support for the importance of judicial restraint on prosecutorial power. However, unlike the dissent, we recognize that by providing that the "[p]reparation 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" (emphasis added), the plain and unambiguous language of section 1-7-330 cannot be squared with this oversight. The statute must therefore yield.

⁶ Undoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain. True too is the fact that he must grapple with marshaling witnesses, ranging from victims, to police officers, to experts. Because the State bears the burden of proof, the solicitor also does not want to call the case before he himself is ready. Moreover, he is the person most knowledgeable about the status of the case. These are all truisms we cannot dispute, and they are prerogatives of the solicitor (and, to a large degree, of defense counsel as well) and are unaffected by our decision.

Accordingly, we hold section 1-7-330 is unconstitutional beyond a reasonable doubt.

II. PREJUDICE

Our determination that section 1-7-330 violates separation of powers is not dispositive of Langford's appeal. To warrant reversal, Langford must demonstrate that he sustained prejudice as a result of the solicitor setting when his case was called for trial. As this case comes to us, two different forms of prejudice are alleged: (1) Langford was denied his right to due process because section 1-7-330 permitted the solicitor to judge shop, and (2) Langford was denied his right to a speedy trial. We disagree that Langford's trial suffered from any infirmities as a result of section 1-7-330 and therefore affirm his convictions.

A. Due Process

We consider first whether the power impermissibly granted to the solicitor by section 1-7-330 enabled him to violate Langford's due process rights. Although many different violations are discussed anecdotally, the only due process violation said to have occurred in this case is that section 1-7-330 permitted the solicitor to select the judge who would preside over Langford's trial. Although we question the extent to which section 1-7-330 actually permitted judge shopping, we proceed assuming *arguendo* that it did so.

A criminal defendant has a due process right to have his case heard by a fair and impartial judge. See *Schweiker v. McClure*, 456 U.S. 188, 195 (1982) ("[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities."). Similarly, he has the right to have a judge assigned to his case "in a manner free from bias or the desire to influence the outcome of the proceedings." *Cruz v. Abbate*, 812 F.2d 571, 574 (9th Cir. 1987) (Kozinski, J.). On the other hand, he does not have a right to "any particular procedure for the selection of the judge." *Id.* Thus, there is no right to have one's judge selected randomly, nor is there one to have a case heard by any particular judge. *Sinito v. United States*, 750 F.2d 512, 515 (6th Cir. 1984). Moreover, a defendant has "no vested right in the order in which cases are assigned for trial." *Levine v. United States*, 182 F.2d 556, 559 (8th Cir. 1950).

Accordingly, a state may use any method to select judges so long as it is impartial and not geared towards influencing the trial's outcome. Without a doubt, permitting solicitors—who represent a party in the case—to select the judge raises

the specter of partiality and calls the validity of the entire system into question. See *United States v. Pearson*, 203 F.3d 1243, 1257 (10th Cir. 2000) ("In our view, if the assignment of a case to an individual judge should not be based on 'the desire to influence the outcome of the proceedings,' then allowing a prosecutor to perform that task raises substantial due process concerns." (quoting *Cruz*, 812 F.2d at 574)); *Tyson v. Trigg*, 50 F.3d 436, 442 (7th Cir. 1995) (Posner, J.) ("The practice of allowing the prosecutor to choose the . . . trial judge is certainly unsightly, as the Indiana court of appeals opined; it does lack the appearance of impartiality . . ."); *Cruz*, 812 F.2d at 574 ("The suggestion that the case assignment process is being manipulated for motives other than the efficient administration of justice casts a very long shadow, touching the entire criminal justice system . . ."). Some courts have therefore struck down their systems of permitting prosecutors to select judges. *State v. Simpson*, 551 So. 2d 1303, 1304 (La. 1989) (doing so on due process grounds); *McDonald v. Goodstein*, 83 N.Y.S.2d 620, 625 (Sup. Ct. 1948) (holding that granting prosecutors control over choosing the judge threatens the independence of the judiciary); see also *Rosemond v. Catoe*, 383 S.C. 320, 326 n.1, 680 S.E.2d 5, 8 n.1 (2009) ("We acknowledge the practice of the prosecutor selecting the trial judge is inappropriate and troubling.").

However, as Judge Posner wrote, "[t]he presumption that judges are unbiased is more than a pious hope." *Tyson*, 50 F.3d at 439. Furthermore, "[t]he right to a judge who is free from the mere *appearance* of partiality is not part of due process at all." *Id.* at 442. Hence, we will not presume the judge is partial simply because he was selected by the prosecutor, for adopting such a rule would "conflate[] the appearance of partiality with actual partiality." *Francolino v. Kuhlman*, 224 F. Supp. 2d 615, 636 (S.D.N.Y. 2002), *aff'd*, 365 F.3d 137 (2d Cir. 2004); see also *Pearson*, 203 F.3d at 1262 ("[W]e cannot presume that a federal judge selected by the prosecutor will be his agent or henchman."). In order to be entitled to relief, a defendant therefore must establish actual partiality and prejudice on the part of the judge. *Pearson*, 203 F.3d at 1263 (finding prosecutorial selection of judge harmless error because there was no evidence the judge decided any issue in a manner more favorable to the prosecution than other judges would have); *Tyson*, 50 F.3d at 442 (holding permitting the prosecutor to choose the judge "does lack the appearance of impartiality[,] but that is all, so far as the record of this case discloses, and it is not enough"); *Sinito*, 750 F.2d at 515 ("Even when there is an error in the process by which the trial judge is selected . . . the defendant is not denied due process as a result of the error unless he can point to some resulting prejudice."); *Francolino*, 224 F. Supp. 2d at 636 ("While the Court agrees that the former system gave the appearance of partiality, maintaining that Justice

Snyder was in fact partial is a separate matter."); *State v. Huls*, 676 So. 2d 160, 167 (La. Ct. App. 1996) (noting a showing of prejudice was required even after the Louisiana Supreme Court struck down the practice of prosecutorial selection of judges on due process grounds).

The only support offered for the allegation of bias by the presiding judge in this case, Judge Keesley, is the simple fact that he ruled in favor of the State on previous issues that arose. Yet, there is not a shred of evidence that he did so out of any animus towards Langford or allegiance to the State. The contention that a judge was biased *solely* because he ruled against a defendant is untenable and insulting towards the court, and it would set a dangerous precedent were we to sanction it. Moreover, Judge Keesley ordered in May 2010 that the State try the case within nine months, and he would have ordered the State to do so sooner but for scheduling conflicts. Simply put, there is no suggestion that Judge Keesley conducted Langford's trial in anything but a fair and impartial fashion. We therefore find no evidence of actual prejudice in the record.

Undoubtedly, section 1-7-330 leaves room for abuses which can deny a defendant due process. Not only can the State theoretically pick a judge to preside because he will favor the prosecution, but the Public Defender Association's brief contains very troubling examples of abuses occurring in other cases and in other forms. Andrew M. Siegel, *When Prosecutors Control Criminal Court Dockets: Dispatches on History and Policy from a Land Time Forgot*, 32 Am. J. Crim. L. 325, 351-69 (2005) (detailing the potential ills of prosecutorial control of the docket). Perhaps this is why South Carolina until today has stood alone amongst our sister states in permitting the prosecutor to control the docket. *See id.* at 327 (noting that South Carolina is the only state with such a system). Of course, the vast majority of solicitors operate the criminal courts in a fair and even-handed manner, and the abuses cited generally are not associated with any nefarious intent. They do, however, inevitably stem from the nature of a system that allows the prosecution to control the criminal docket.

Nevertheless, we cannot equate the potential for abuse with it actually occurring in this case. Indeed, whether the statute may be unconstitutional in other circumstances has no bearing on whether it has been unconstitutionally applied in the case at hand. *See Simeon v. Hardin*, 451 S.E.2d 858, 871 (N.C. 1994) (holding prosecutorial control of the docket is facially constitutional and must be attacked on an as-applied basis). We must therefore determine whether Langford's rights were infringed based on the record before us. Under the lens of the only

deprivation alleged to have occurred in this case, we find no evidence that Langford's due process rights were violated even if the State was able to select Judge Keesley to preside.

B. Speedy Trial

Langford also contends the State's dilatory practices in calling his case deprived him of his right to a speedy trial.⁷ The Sixth Amendment to the United States Constitution provides, in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial." U.S. Const. amend. VI. Similarly, the South Carolina Constitution guarantees that "[a]ny person charged with an offense shall enjoy the right to a speedy . . . trial." S.C. Const. art. I, § 14. The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense. *State v. Waites*, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978).

The Supreme Court of the United States has deemed this right "generically different from any of the other rights enshrined in the Constitution for the protection of the accused." *Barker v. Wingo*, 407 U.S. 514, 519 (1972). This is due in large part to the reality that "[d]elay is not an uncommon defense tactic" and "deprivation of the right to a speedy trial does not per se prejudice the accused's ability to defend himself." *Id.* at 521. More important, however, is the vagueness of this right, which makes it nearly impossible to determine when it has been violated. *Id.* Indeed, the various procedural safeguards built into the criminal process require that it "move at a deliberate pace." *United States v. Ewell*, 383 U.S. 116, 120 (1966). Thus, "there is no fixed point . . . when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial." *Barker*, 407 U.S. at 521.

⁷ We reject the State's argument that this issue is not preserved for review due to Langford's failure to renew his motion to dismiss when his case was called for trial. In its May 2010 order denying Langford's original motions, the court required the State to try the case within nine months. It then said Langford could renew his motion to dismiss at that time if the State failed to do so. Because nine months had not yet passed when the case was tried, it would have been futile for Langford to raise the issue again. See *State v. Pace*, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994) (finding appellant did not waive an objection by not presenting it to circuit court because it would have been futile to do so).

Accordingly, "[t]he right to a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances." *Beavers v. Haubert*, 198 U.S. 77, 87 (1905). Stated differently, "[a] speedy trial does not mean an immediate one; it does not imply undue haste, for the [S]tate, 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). Because of the vagaries of this unavoidably ad hoc inquiry, the Supreme Court has acknowledged that it "can do little more than identify some of the factors" for courts to examine. *Barker*, 407 U.S. at 530. These factors include the length of the delay, the reason for it, the defendant's assertion of his right to a speedy trial, and any prejudice he suffered.⁸ *Id.*; see also *Waites*, 270 S.C. at 107, 240 S.E.2d at 653 (recognizing the same factors apply under South Carolina law).

The Supreme Court has counseled further that none of these factors is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Barker*, 407 U.S. at 533. Instead, they are all related and must be considered along "with such other circumstances as may be relevant." *Id.* Thus, the Supreme Court created a balancing test which is a rejection of "inflexible approaches" and weighs "the conduct of both the prosecution and the defense." *Id.* at 529-30. If a court concludes that this right has been violated, dismissal of the charges "is the only possible remedy." *Id.* at 522. A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion. See *State v. Edwards*, 374 S.C. 543, 571, 649 S.E.2d 112, 126 (Ct. App. 2007) (applying abuse of discretion standard to speedy trial claim), *rev'd on other grounds*, 384 S.C. 504, 682 S.E.2d 820 (2009); see also *State v. Redding*, 561 S.E.2d 79, 80 (Ga. 2002) (noting the inquiry is whether court abused its discretion under *Barker*). "An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008)

We begin our analysis with the "triggering mechanism" of a speedy trial claim, which is the length of the delay. *Barker*, 407 U.S. at 530. We should not even examine the remaining factors "[u]ntil there is some delay which is

⁸ The circuit court did not cite to *Barker* or explicitly apply any of these factors. However, the court's analysis largely tracks the substance of the test, and no party has contended the court did not use the proper legal framework when ruling on Langford's motions.

presumptively prejudicial." *Id.* The clock starts running on a defendant's speedy trial right when he is "indicted, arrested, or otherwise officially accused," and therefore we are to include the time between arrest and indictment. *United States v. MacDonald*, 456 U.S. 1, 6 (1982). The Supreme Court was quick to remind in *Barker*, however, that even the length of time necessary to trigger the full inquiry "is necessarily dependent upon the peculiar circumstances of the case." 407 U.S. at 530-31. Thus, a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case. *Id.* at 531; *see also id.* at 531 n.31 (suggesting that a delay of nine months could have been presumptively prejudicial in a case that depended on eyewitness testimony (citing *United States v. Butler*, 426 F.2d 1275, 1277 (1st Cir. 1970))).

In the case before us, Langford's speedy trial clock began when he was arrested on October 3, 2008, and ran until he was tried twenty-three months later on September 7, 2010. Moreover, while the charges against him were serious, the factual proof was not complicated. Thus, this length of time is presumptively prejudicial and triggers the remaining *Barker* inquiry. *See Waites*, 270 S.C. at 108, 204 S.E.2d at 653 (holding a two-year-and-four-month delay in a prosecution for assault and battery of a high and aggravated nature and for pointing and presenting a firearm implicated the rest of the *Barker* analysis); *see also Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992) ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."); *Brooks v. State*, 674 S.E.2d 871, 873-74 (Ga. 2009) (finding a nineteen-month delay presumptively prejudicial in trial for murder, aggravated assault, and firearms offenses).

Turning to the second element, the Supreme Court has stated that "different weights should be assigned to different reasons" for the delay. *Barker*, 407 U.S. at 531. A deliberate attempt by the State to delay the trial as a means of impairing the accused's ability to defend himself "should be weighted heavily against the government." *Id.* Neutral reasons, which could include overcrowded dockets or negligence, are "weighted less heavily" but still count against the State because it bears the ultimate responsibility for these circumstances. *Id.*; *see also State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) ("The ultimate responsibility for the trial of a criminal defendant rests with the State."). Delays occasioned by the defendant, however, weigh against him. *Vermont v. Brillon*, 129 S. Ct. 1283, 1290 (2009). This is not only in accord with the reality that delay may be a defense tactic, but it is also a recognition that a defendant should not be able to procure a dismissal of the charges against him due to delays he caused. *See id.*

The State advances two different reasons for the delays in Langford's prosecution. First, it argues that the initial twenty-month delay in indicting him was due to its inability to have a "meaningful" conversation with the victims because it could not find an interpreter. Although we are not persuaded the State used its best efforts to secure an interpreter, there is no evidence that it intentionally tarried in finding one. At most, the State was negligent, and this is a neutral reason for delay which does not weigh heavily against it.

Next, the State contends the final four-month delay in trying Langford, running from May 2010 to September 2010, was the result of Langford coercing Phillips to not testify. From our review of the record, there is evidence that Langford and his co-defendant persuaded Phillips to remain silent. So long as he did so, he would be unavailable for cross-examination. Thus, the State would be unable to use Phillips' original statement as evidence against Langford. *See Bruton*, 391 U.S. at 126. The loss of this crucial piece of evidence therefore effectively gutted the State's case on the day of trial.

The State consequently needed to first procure a waiver of Phillips' right to remain silent, and then it could try Langford using the statement. Because Phillips' attorney was not ready to proceed during that term of court, however, a continuance was required for this to happen.⁹ From that point on, the State moved with reasonable haste given the few General Sessions terms scheduled for Edgefield County during that time. We agree with the circuit court that the delays already incurred are troubling, but we cannot ignore the fact that this additional delay is the product of Langford's efforts to spoil the State's evidence. Therefore, we will not count it against the State. *See United States v. Loud Hawk*, 474 U.S. 302, 316 (1986) (holding a defendant who causes delays in his trial "should not be able upon return to the district court to reap the reward of dismissal for failure to receive a speedy trial").

⁹ Langford's argument that the State simply could have redacted Phillips' references to him in the statement to avoid *Bruton* misses the point. Phillips was the key prosecution witness, and his testimony was essential to the State's case. Holding that the State was required to forego the use of Phillips' statement against Langford without consideration of why Phillips changed his mind would allow Langford to benefit from his tampering with the State's star witness.

The third factor in the *Barker* analysis is the defendant's assertion of his right to a speedy trial. While Langford first filed what seems to be a *pro se* speedy trial motion in June 2009, the record suggests that he never sought a ruling on it until the May 2010 hearing. Moreover, while Langford did file a *pro se* motion for a speedy trial/motion to dismiss days after the court issued its May 2010 order, it was never ruled upon and he never renewed his motion when the case was called for trial. Although it may have been futile for him to raise the issue again from an error preservation standpoint, the "failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *See Barker*, 407 U.S. at 532.

Finally, we must consider the prejudice Langford suffered. The Supreme Court has identified three different types of prejudice the right to a speedy trial seeks to prevent: (1) oppressive pre-trial incarceration; (2) anxiety stemming from being publicly accused of a crime; and (3) the possibility that the accused's defense will be impaired due to the death or disappearance of witnesses or the loss of memory with the passage of time. *Id.* "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." *Id.*

Langford was in jail for nearly two years pending trial. "The time spent in jail awaiting trial has a detrimental impact on the individual" through its attendant job loss, disruption of family life, and encouragement of "idleness." *Id.* While we are cognizant of not minimizing the deleterious effects of lengthy pre-trial incarceration, the two-year delay in bringing this case to trial does not amount to a constitutional violation in the absence of any actual prejudice to Langford's case.¹⁰ *See State v. Kennedy*, 339 S.C. 243, 250, 528 S.E.2d 700, 704 (Ct. App. 2000) ("While Kennedy may have been slightly prejudiced by the twenty-six month pretrial incarceration, the more important question is whether he was prejudiced because the delay impaired his defense."). To that end, Langford has not demonstrated how his own defense was prejudiced by the delay. Although he does argue the final delay enabled the State to secure Phillips' testimony and thereby bolster its case against him, he fails to recognize that the State only had to do so

¹⁰ While extreme delays may warrant relief based solely on pre-trial incarceration, this case has not crossed that threshold. *See Doggett*, 505 U.S. at 657 ("[T]o warrant granting relief, negligence unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice.").

because of his interference. Moreover, he cannot point to any evidence of anxiety caused by the stigma of being accused of these crimes.

Looking at these factors and the case as a whole, and taking into account the balance of the State's interests and Langford's, we do not believe the circuit court abused its discretion in finding Langford was not denied a speedy trial in the constitutional sense.

CONCLUSION

For the foregoing reasons, we hold section 1-7-330 is unconstitutional under the separation of powers clause of our constitution. The General Sessions docket will henceforth be managed pursuant to the administrative order issued in conjunction with this opinion. Nevertheless, we affirm Langford's convictions because he has not shown he was prejudiced by the solicitor's control over calling his case for trial. In particular, we find no due process violation or a denial of his right to a speedy trial.

TOAL, C.J., BEATTY and KITTREDGE, JJ., concur. PLEICONES, J., dissenting in a separate opinion.

JUSTICE PLEICONES: I respectfully dissent from that part of the opinion that finds S.C. Code Ann. § 1-7-330 (2005) unconstitutional.

As explained below, the constitutionality of the statute is not before us. It is axiomatic that this Court will not address a constitutional issue unless it is necessary to a resolution of the case. *E.g.*, *S.C. Dep't of Soc. Servs. v. Cochran*, 356 S.C. 413, 589 S.E.2d 753 (2003). It is also axiomatic that we sit to review the lower court's order based upon the issues properly presented by the parties for our consideration. *E.g.*, *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011). Constitutional issues are not exempt from issue preservation requirements. *Id.* Further, our rule restricts amicus to the issues presented by the parties, Rule 213, SCACR: to strike down a statute as unconstitutional based upon an amicus brief is tantamount to a *sua sponte* declaration. Unless a statute infringes upon our jurisdiction, we may not *sua sponte* declare it unconstitutional. *See State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). We should not decide the constitutionality of § 1-7-330 on this record.

Even if the constitutionality of § 1-7-330 were before us, under our existing precedents I find that the statute does not offend the separation of powers doctrine. I agree that solicitors are executive officers. S.C. Code Ann. § 1-1-110 (2005). Further, I agree that § 1-7-330 vests the exclusive authority to prepare the general sessions docket in the solicitor, and also authorizes her to determine the order in which the docketed cases are called. Finally, I do not disagree with the majority that by vesting exclusive authority in the solicitor to prepare the general sessions docket, and by permitting the solicitor to call cases from that docket in his desired order, § 1-7-330 could lead to unnecessary delay, oppressive haste, and other abuses. As I interpret the statute, however, I do not believe that it violates the South Carolina Constitution.

We have recently addressed a separation of powers challenge to prosecutorial authority:

Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. Both the South Carolina Constitution [footnote 5 citing S.C. Const. art. V, § 24] and South Carolina case law [footnote 6 citing *McLeod v. Snipes*, 266 S.C. 415, 223 S.E.2d 853 (1976)] place

the unfettered discretion to prosecute solely in the prosecutor's hands. The Attorney General as the State's chief prosecutor may decide when and where to present an indictment, and may even decide whether an indictment should be sought. Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety. The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion

State v. Thrift, 312 S.C. 282, 291-292, 440 S.E.2d 341, 346-347 (1994) cited with approval in *State v. Needs*, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998); *State v. Burdette*, 335 S.C. 34, 40, 515 S.E.2d 525, 528 (1999).

Further, "[a]ll the authorities agree that, in the exercise of a discretionary official act, an executive officer cannot be restrained, coerced, or controlled by the judicial department." *State v. Ansel*, 76 S.C. 395, 57 S.E. 185 (1907).

Subject to the limitations discussed below, the solicitor has the discretion to decide when to prosecute and how to prosecute a case. This does not mean that the solicitor's authority is unrestrained by judicial oversight. The trial judge has the ultimate authority to determine whether a case called by the solicitor will be tried at a particular juncture. *See State v. Mikell*, 257 S.C. 315, 185 S.E.2d 814 (1971) ("In the calling of cases for trial the solicitor has a broad discretion in the first instance, and the trail [sic] judge has a broad discretion in the final analysis."). This is so because the trial judge has "the inherent power to control the order of [the court's] business to safeguard the rights of litigants" through her discretion to grant a continuance. *Williams v. Bordon's Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980). In *Williams*, the Court held the General Assembly violated the separation of powers doctrine by enacting a statute which purported to limit the court's discretion to grant a continuance in any case which involved an attorney-legislator as "attorney of record, witness, or otherwise." If we read § 1-7-330 as preventing a trial judge from exercising her discretion to require a solicitor to place a case upon a future docket if necessary to safeguard the rights of the defendant, then we would render the statute unconstitutional. Such an interpretation would create a separation of powers issue, not between the executive and the judiciary, but between the legislative branch and the judicial branch since we would find the

statute unconstitutionally infringes upon judicial authority. *Williams, supra*. Nothing in § 1-7-330 affects the court's inherent authority to safeguard litigants' rights; rather, the statute represents the reasonable delegation of preparing the general sessions docket to the solicitor.

The solicitor is a party to every general sessions proceeding, and has the information and resources necessary to determine when a case is ready to be called. If the solicitor is perceived to be unlawfully delaying the call of a case, the defendant has available the remedy of a speedy trial motion: If it is called with undue haste, the defendant may seek a continuance. It is only logical to have the solicitor initially set the docket since he knows the status of the law enforcement investigation, of the examination of the forensic evidence, of any codefendant's case, and of the defendant's other charges. *See State v. Mikell, supra* ("A prosecuting attorney normally has many cases for disposition. He must plan ahead to expedite the work of the court . . ."). The solicitor bears the burden of proof in every case and should not ordinarily be compelled to call his case before he is ready. *Id.* ("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 broad discretion of the trial judge.**") (emphasis supplied). In my opinion, there is no separation of powers problem with § 1-7-330. *E.g., State v. Thrift, supra*.

Finally, I disagree with the premise of the majority's opinion, "that section 1-7-330 is at odds with [the courts'] intrinsically judicial power." Even if one were to grant that the statute creates some overlap of executive and judicial authority, it cannot be said that preparing a docket and calling cases from that docket usurps the judicial power vested in the unified judicial system under S.C. Const. art. V, § 1 (1977). *See Carolina Glass Co. v. Murray*, 87 S.C. 270, 291-292, 69 S.E. 391, 399 (1910) *overruled in part on other grounds McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985).

In my opinion, however, we cannot reach the constitutionality of that statute in this case. Were we to reach the issue, I would interpret the statute in a way that does not offend the separation of powers doctrine. If the Court is nonetheless determined to declare § 1-7-330 unconstitutional, then we must both deal with our precedents and describe the new system in sufficient detail that the parties most intimately involved in the process can implement the necessary changes.

I concur in the majority's decision to affirm this appeal and in the sentiment that our General Sessions docketing system needs reform, but dissent from so much of that opinion as reaches and decides the constitutionality of § 1-7-330.

The Supreme Court of South Carolina

RE: DISPOSITION OF CASES IN GENERAL SESSIONS

ORDER

Pursuant to the provisions of S.C. CONST. Art. V §4, and in furtherance of this Court's decision in *State v. Langford*,

IT IS ORDERED that:

Cases in General Sessions Court shall proceed as follows:

- (A) All cases shall be assigned to a 180 day track consistent with the Uniform Differentiated Case Management Order which is incorporated herein and made a part hereof by reference. The Chief Judge for Administrative Purposes (CJAP) may entertain motions to remove any case from the track and establish a scheduling order where appropriate.
- (B) Cases within the 180 day track or cases that have exceeded the 180 day track by less than one (1) year, shall remain under the control of the Solicitor, subject to the provisions set forth below:
 - (1) General Docket. The General Docket consists of all pending General Sessions matters. Absent the grant of a speedy trial motion, the Solicitor shall have the initial responsibility for designating when a case is ready for trial. Upon determining that a case is ready for trial, the Solicitor shall file with the Clerk of Court a "NOTICE OF COURT DOCKETING" on a form prescribed by the Supreme Court and shall serve all parties and counsel of record. Upon receiving such notice, the Clerk shall place the case on the Court Docket and the matter may be called for trial any time after thirty (30) days from the filing of the NOTICE OF COURT DOCKETING. The Court Docket consists of all matters that the Solicitor has deemed ready for trial. Once

the case is placed on the Court Docket, the Court assumes the responsibility for setting a trial date and the Clerk, under the direction and supervision of the CJAP, shall publish a trial roster from the Court Docket of cases subject for trial at least twenty-one (21) days before each term of court. Publication shall be effected once the Clerk makes the trial roster available in the Clerk's office or on the Clerk's internet site. The Clerk shall also distribute the trial roster to those attorneys listed upon it by Fax, US Mail, hand delivery, or electronic delivery. Cases on the trial roster not reached for trial will be subject to being called for the next two terms of court before being republished. It is the responsibility of each defense attorney to notify the defendant that the case is scheduled for trial and to remind the defendant of the right and obligation to be present at trial. Motions for continuance or other relief from a published trial roster shall be made in accordance with Rule 7, SCRCrimP. The CJAP or presiding judge shall rule on the motion.

- (2) Nothing herein shall affect the Court's ability to schedule motions or other pretrial proceedings as may be appropriate, or the right of the CJAP to add cases to any trial roster or designate cases for a day certain as the CJAP deems appropriate, subject to the notification requirements set forth in paragraph B(1), above.

(C) Cases more than one year beyond their 180 day track will be automatically transferred to the CJAP's supervision as follows:

- (1) Judicial Docket. If the Solicitor has not filed a NOTICE OF COURT DOCKETING in accordance with Paragraph (B) (1) above for any case more than one (1) year beyond its assigned track, it will be automatically transferred to the Judicial Docket, which the Clerk shall maintain separate and apart from the regular Court Docket. The CJAP will administer and supervise the Judicial Docket. The Solicitor must notify the Clerk within fifteen (15) days after expiration of this period of time of all cases that are in this category and furnish the following information: (1) Indictment number; (2) Defendant's name; (3) Date of Arrest; (4) Assigned Assistant Solicitor; (5) Defense Counsel; (6) Date of Indictment (True Bill); (7) Track

expiration date; (8) Prior request(s) for continuance. The Clerk will maintain the Judicial Docket which will include this information.

(2) Upon placement on the Judicial Docket, the CJAP shall arrange for the scheduling of trial or other disposition of the case. Additionally, the CJAP may upon the request of any party transfer the case to the trial roster in accordance with Paragraphs (B) (1) and (2).

(3) If the case has not been disposed of more than one (1) year following its transfer to the Judicial Docket, the CJAP will dismiss the case, absent the Solicitor establishing good cause. Both the Solicitor and the defendant shall be notified of the pending dismissal and be given an opportunity to be heard. Cases dismissed pursuant to this provision will be without prejudice, unless otherwise specified by the CJAP. The Solicitor will notify the victim(s) of cases dismissed pursuant to this provision.

(D) Non-Track Cases:

The Solicitor shall furnish to the CJAP a quarterly status report of all non-track cases. The report shall contain information regarding the progress of the case and the expected disposition date.

(E) Old Case Disposition:

Any case, including non-track cases, pending four (4) or more years from the date of indictment by the Grand Jury shall be dismissed by the CJAP, unless the Solicitor shall show good cause why it should not be dismissed. Such dismissal is without prejudice, unless otherwise specified by the CJAP and the Solicitor shall have the right to re-present the matter to the Grand Jury. Before ordering dismissal, the Clerk of Court shall notify the Solicitor and the defendant of the Court's intention to dismiss the case. The Solicitor shall: (1) within ten (10) days of receiving the notice from the Court, notify the victim(s) in writing of the Court's intended disposition and invite the victim(s) to file a written response with the Solicitor within ten (10) days; and (2) within thirty (30) days file a written response with the Court setting forth in detail the reasons, including the response(s) of the victim(s), why the case should

not be dismissed and advising the court of the expected time of disposition. The defendant may submit a written response within thirty days of the Solicitor's filing. The CJAP may schedule a hearing, dismiss the case without a hearing, or take such further action as may be appropriate. Failure to respond as set forth herein will result in the matter being dismissed pursuant to this provision. If the Solicitor shows good cause, the case shall automatically be transferred to the Judicial Docket.

This order shall be effective February 4, 2013.

s/ Jean H. Toal C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Because I dissent from the opinion,
I respectfully do not join in this order.

s/ Costa M. Pleicones J.

November 21, 2012

Columbia, South Carolina

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CHARLESTON, SC 29402
TEL. (843) 720-7470 FAX (843) 720-7478
<http://www.savlaw.com>

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. K.C. Langford, III - Oral Argument Heard on April 18, 2012 at 9:30

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

Dora L. Bell
Paralegal to J. Scott Bischoff, II
/dlb
Enc: Check number: 4618 for \$20.00

check #4618
\$20.00
RECEIVED
MAY 9 2012
S.C. SUPREME COURT

South Carolina Solicitors' Association
Post Office Box 11251
Columbia, South Carolina 29211-1251

April 17, 2012

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

RECEIVED

APR 17 2012

S.C. Supreme Court

Re: State v. K.C. Langford and State v. Bryan Phillips

Dear Mr. Shearouse:

Enclosed for filing please find the original and fourteen (14) copies of the Brief of *Amicus Curiae* South Carolina Solicitors' Association served on Petitioners, Respondent, and the *Amicus Curiae* South Carolina Public Defenders' Association in the above-referenced appeals. I have enclosed the original Proofs of Service indicating service of the Brief on today's date – the brief has been served by email and U.S. Mail.

Thank you for your attention to this matter. If you have any questions or any further guidance in this matter, please do not hesitate to contact me (in Sumter at 803-436-2185) or Amie Clifford (in Columbia at 343-0765).

Sincerely,



David M. Pascoe, Jr.
President, Solicitors' Association of South Carolina

Enclosures (as stated)

cc: Elizabeth A. Franklin-Best, Counsel for K.C. Langford
LaNelle C. DuRant, Counsel for Bryan Phillips
Honorable David Spencer, Counsel for the State (in State v. Langford)
Honorable William Blich, Counsel for the State (in State v. Phillips)
E. Charles Grose, Jr., Counsel for *Amicus Curiae* South Carolina Public Defenders' Association

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties

Suite 203, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104

E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

April 16, 2012

Via e-mail and U.S. Mail

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

Re: State v. K.C. Langford & State v. Bryan Phillips
Amicus Curie Brief of S. C. Public Defender Association

Dear Mr. Shearouse:

These cases are scheduled for oral argument on Wednesday, April 18, 2012 beginning at 9:30 a.m. Pursuant to Rule 208(b)(7), SCACR, the Public Defender Association (PDA) calls the Court's attention to the following case:

Newman v. Old West, Inc., 286 S.C. 394, 397, 334 S.E.2d 275, 276 - 277 (1985)
("There was a day when counsel had much influence and/or control over the docket. This was conducive to delay, waste of judge time and waste of court time. Since the adoption of the new Judicial Article V to the South Carolina Constitution in 1973, a new system of operation has come into being such that in the interest of judicial economy and disposition of cases for all litigants, the administrative judge must have control of the trial docket.").

This citation supports Section III(A), pp. 23-24, of the PDA's *amicus* brief and responds to the State's briefs in Mr. Langford's case, pp. 20-25, and Mr. Phillips' case, pp. 22-26.

By copy of this letter by e-mail and U.S. Mail, I am advising all interested parties of this communication.

Thank you for your attention to this matter.

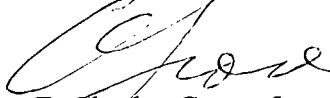
U.S. SUPREME COURT

APR 17 2012

RECEIVED

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Christopher Scalzo, Esquire
President, South Carolina Public Defender Association

Elizabeth A. Franklin-Best, Esquire
Attorney for Appellant K.C. Langford

LaNelle C. Durant, Esquire
Attorney for Appellant Bryan Phillips

Salley W. Elliott, Esquire
Senior Assistant Attorney General

David Spencer, Esquire
Attorney for Respondent

William M. Blitch, Jr., Esquire
Attorney for Respondent

The Honorable Donald V. Myers
Solicitor, Eleventh Judicial Circuit

The Honorable David Michael Pascoe
Attorney for S.C. Solicitor's Association

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E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

April 16, 2012

RECEIVED

APR 16 2012

S.C. SUPREME COURT

Via e-mail and U.S. Mail

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

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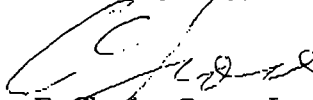
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By copy of this letter by e-mail and U.S. Mail, I am advising all interested parties of this communication.

Thank you for your attention to this matter.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Christopher Scalzo, Esquire
President, South Carolina Public Defender Association

Elizabeth A. Franklin-Best, Esquire
Attorney for Appellant K.C. Langford

LaNelle C. Durant, Esquire
Attorney for Appellant Bryan Phillips

Salley W. Elliott, Esquire
Senior Assistant Attorney General

David Spencer, Esquire
Attorney for Respondent

William M. Blitch, Jr., Esquire
Attorney for Respondent

The Honorable Donald V. Myers
Solicitor, Eleventh Judicial Circuit

The Honorable David Michael Pascoe
Attorney for S.C. Solicitor's Association

Charles Grose

From: Charles Grose [cgrose@pdgreenwood.com]
Sent: Monday, April 16, 2012 1:49 PM
To: 'LaNelle C. DuRant'; 'Elizabeth A. Franklin'; 'Salley Elliott'; 'David Spencer'; 'dpascoe@scsolicitor1.org'; 'gharrison@lex-co.com'; 'William Blitch'
Cc: 'Scalzo, Christopher'; 'Tara Waters'
Subject: State v. KC Langford and State v. Bryan Phillips
Attachments: Langford & Phillips, fax, SC Supreme Court, April 16, 2012.PDF

Dear all,

Attached please find a copy the letter that I am sending to the Supreme Court regarding these cases. Although the letter indicates I am e-mailing this letter to the Clerk of the Supreme Court, I was not able to find an e-mail address for Mr. Shearouse, so I am faxing the letter to him along with a copy of this transmittal e-mail.

Thank you for your attention to this matter.

Best,
Charles

E. Charles Grose, Jr.
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E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

FACSIMILE TRANSMITTAL SHEET

To: The Honorable Daniel E. Shearouse From: Charles Grose

Company: SC Supreme Court

Date: April 16, 2012

Fax Number: 803-734-1499

Total No. of Pages Including Cover: 4

Phone Number: 803-734-1080

Sender's Reference Number:

RE: State v. Langford & State v. Phillips

Your Reference Number:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

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APR 16 2012

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL



April 16, 2012

HAND-DELIVERED

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

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APR 16 2012

S.C. Supreme Court

Re: State v. K.C. Langford
State v. Bryan Phillips

Dear Mr. Shearhouse:

This concerns the above cases, scheduled for oral argument on April 18, 2012. Pursuant to Rule 208(b)(7) SCACR, Respondent respectfully wishes to bring this Court's attention the following additional authority:

City of Rock Hill v. Harris, 391 S.C. 149, 705 S.E.2d 53 (2011) (on standards and presumptions in determining if a statute complies with the South Carolina Constitution);

State v. Charles, 183 S.C. 188, 190 S.E. 466 (1937) (concerning the separation of powers);

State v. Tootle, 330 S.C. 512, 500 S.E.2d 481 (1998) (same);

State of North Carolina v. John Braver Friend, 2012 WL 595996 (N.C. Ct. App.; March 6, 2012) (same).

Respondent believes these authorities are directly relevant to argument and should be considered by this Court in both cases. By copy of this letter, I am notifying opposing counsel of the submission of this supplemental authority.



ALAN WILSON
ATTORNEY GENERAL

The Honorable Daniel E. Shearhouse
Page 2 of 2
April 16, 2012

Sincerely,

David Spencer
Assistant Deputy Attorney General

William Blitch,
Assistant Attorney General

cc: Elizabeth Franklin, Esquire (by e-mail)
Lanelle Durant, Esquire (same)
E. Charles Grose, Esquire (same)

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties
Suite 203, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104

E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

April 16, 2012

Via e-mail and U.S. Mail

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

RECEIVED

APR 16 2012

S.C. SUPREME COURT

Re: State v. K.C. Langford & State v. Bryan Phillips
Amicus Curie Brief of S. C. Public Defender Association

Dear Mr. Shearouse:

These cases are scheduled for oral argument on Wednesday, April 18, 2012 beginning at 9:30 a.m. Pursuant to Rule 208(b)(7), SCACR, the Public Defender Association (PDA) calls the Court's attention to the following case:

Newman v. Old West, Inc., 286 S.C. 394, 397, 334 S.E.2d 275, 276 - 277 (1985)
("There was a day when counsel had much influence and/or control over the docket. This was conducive to delay, waste of judge time and waste of court time. Since the adoption of the new Judicial Article V to the South Carolina Constitution in 1973, a new system of operation has come into being such that in the interest of judicial economy and disposition of cases for all litigants, the administrative judge must have control of the trial docket.").

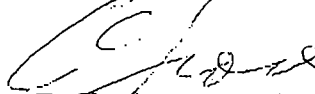
This citation supports Section III(A), pp. 23-24, of the PDA's *amicus* brief and responds to the State's briefs in Mr. Langford's case, pp. 20-25, and Mr. Phillips' case, pp. 22-26.

By copy of this letter by e-mail and U.S. Mail, I am advising all interested parties of this communication.

Thank you for your attention to this matter.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Christopher Scalzo, Esquire
President, South Carolina Public Defender Association

Elizabeth A. Franklin-Best, Esquire
Attorney for Appellant K.C. Langford

LaNelle C. Durant, Esquire
Attorney for Appellant Bryan Phillips

Salley W. Elliott, Esquire
Senior Assistant Attorney General

David Spencer, Esquire
Attorney for Respondent

William M. Blitch, Jr., Esquire
Attorney for Respondent

The Honorable Donald V. Myers
Solicitor, Eleventh Judicial Circuit

The Honorable David Michael Pascoe
Attorney for S.C. Solicitor's Association

Charles Grose

From: Charles Grose [cgrose@pdgreenwood.com]
Sent: Monday, April 16, 2012 1:49 PM
To: 'LaNelle C. DuRant'; 'Elizabeth A. Franklin'; 'Salley Elliott'; 'David Spencer';
'dpascoe@scsolicitor1.org'; 'gharrison@lex-co.com'; 'William Blitch'
Cc: 'Scalzo, Christopher'; 'Tara Waters'
Subject: State v. KC Langford and State v. Bryan Phillips
Attachments: Langford & Phillips, fax, SC Supreme Court, April 16, 2012.PDF

Dear all,

Attached please find a copy the letter that I am sending to the Supreme Court regarding these cases. Although the letter indicates I am e-mailing this letter to the Clerk of the Supreme Court, I was not able to find an e-mail address for Mr. Shearouse, so I am faxing the letter to him along with a copy of this transmittal e-mail.

Thank you for your attention to this matter.

Best,
Charles

E. Charles Grose, Jr.
Circuit Defender, Eighth Judicial Circuit
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, SC 29646
864.229.9505
864.227.1104 (fax)
E-mail: cgrose@pdgreenwood.com

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
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APR 16 2012

S.O. SUPREME COURT



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

April 16, 2012

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

RECEIVED

APR 16 2012

S.C. Supreme Court

Re: The State v. K.C. Langford and Bryan Phillips

Dear Mr. Shearouse:

In preparing for oral argument in the above-referenced case on April 18, 2012, counsel for Bryan Phillips realized that the dates of the indictment for Bryan Phillips were not corrected in the Final Brief of Appellant. In the Motion to Certify to the Supreme Court and to Consolidate the Case with Co-defendant and Incorporate Amicus Brief, counsel correctly stated that Bryan Phillips was indicted in December 2008 for armed robbery and conspiracy and in May 2010 for kidnapping and burglary first. This correction was not made in the Final Brief of Appellant. Please note the correct dates.

By copy of this letter, counsel for the Attorney General's Office and the South Carolina Public Defenders Association have been notified of this matter.

If you have any questions, please feel free to contact me.

Thank you.

Sincerely,

LaNelle C. Durant
Appellate Defender

LCD:pds

cc: William Blitch, Attorney General's Office
Salley W. Elliott, Attorney General's Office
E. Charles Grose, Jr., South Carolina Public Defenders Association
Tara Marie Schultz, South Carolina Public Defenders Association
David M. Pascoe Jr., First Circuit Solicitor
Donald V. Myers, Eleventh Circuit Solicitor
Elizabeth A. Franklin-Best, Division of Appellate Defense



ALAN WILSON
ATTORNEY GENERAL

April 16, 2012

HAND-DELIVERED

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

RECEIVED

APR 16 2012

S.C. Supreme Court

Re: State v. K.C. Langford
State v. Bryan Phillips

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State v. Charles, 183 S.C. 188, 190 S.E. 466 (1937) (concerning the separation of powers);

State v. Tootle, 330 S.C. 512, 500 S.E.2d 481 (1998) (same);

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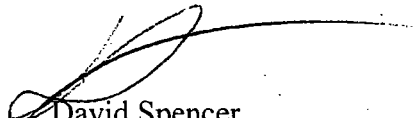
Respondent believes these authorities are directly relevant to argument and should be considered by this Court in both cases. By copy of this letter, I am notifying opposing counsel of the submission of this supplemental authority.



ALAN WILSON
ATTORNEY GENERAL

The Honorable Daniel E. Shearhouse
Page 2 of 2
April 16, 2012

Sincerely,



David Spencer
Assistant Deputy Attorney General



William Blitch,
Assistant Attorney General

cc: Elizabeth Franklin, Esquire (by e-mail)
Lanelle Durant, Esquire (same)
E. Charles Grose, Esquire (same)



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

 ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
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Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 16, 2012

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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.

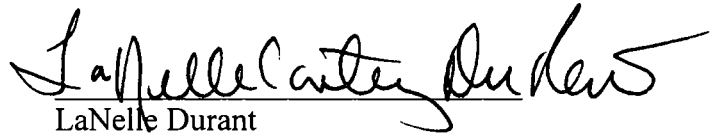
(7) Sentencing sheet for Alvin Phillips.

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

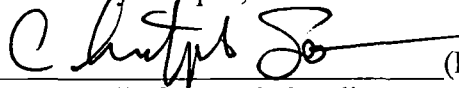
CERTIFICATE OF SERVICE

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. Blich, 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.

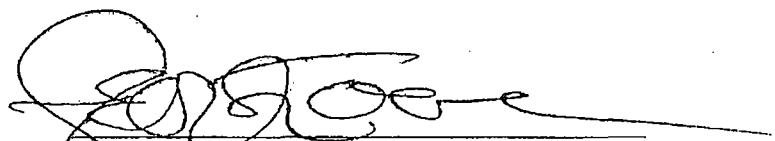
The Supreme Court of South Carolina

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 these 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)
) ORDER ON MOTION FOR
v.) 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.

[Handwritten signature]

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)

IN THE COURT OF GENERAL SESSIONS

VS.)

Bryan Jordan Phillips)

Defendant)

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 R. 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 ~~RECEIVED~~ 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
Attorney for Defendant
PO Box 1018
Aiken, South Carolina 29802-1018
(803) 641-0477

CLERK OF COURT
SHIPLEY E. NEWBY

COUNTY OF EDGEFIELD 2010 FEB -2 AM 10:01 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 IN THE COURT OF GENERAL SESSIONS
State of South Carolina,

vs.

Alvin A. Phillips,

Defendant

**ORDER OF SUBSTITUTION
OF COUNSEL**

Warrants:

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

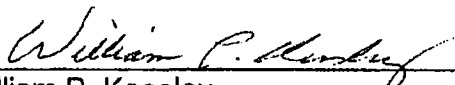
Indictment:

2008-19-GS-712 Conspiracy §16-17-410

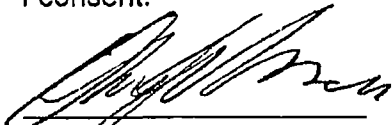
The Court has previously appointed Michael Chesser, Esq. as counsel for the Petitioner, on the basis of a conflict of interest on the part of the Office of the Public Defender. Counsel moves to be relieved on the basis of his caseload. Ola Johnson, Esq., consents to be named counsel. The Court notes 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 Chesser

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
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 23 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

2018/11/25 6:10:53

STATE OF SOUTH CAROLINA

COUNTY OF Edgefield

STATE

VS.

Alvin Alexander Phillips

AKA:

Race: B Sex: M Age: 17

DOB: 12-18-1990 SS#

Address: Merrill Lane

Johnston, SC 29832

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

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: ARMED ROBBERY

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. Clardy, Judge

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, # 2058

for 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

Sulda Clerk of Court/ Deputy Clerk

Court Reporter: Stacy Sheppard

PRESIDING JUDGE

Judge Code: 2101510

Sentence Date: 08.5.2010

SCCA/217 (07/2008)



SCCID

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

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

RECEIVED

APR 17 2012

S.C. Supreme Court

Re: The State v. K.C. Langford and Bryan Phillips

Dear Mr. Shearouse:

In preparation for oral argument in the above-referenced case on April 18, 2012, counsel for Bryan Phillips respectfully wishes to bring to this Court's attention the following additional authority:

S.C. Code Ann. § 17-1-50

By copy of this letter, counsel for the Attorney General's Office has been notified of this matter.

If you have any questions, please feel free to contact me.

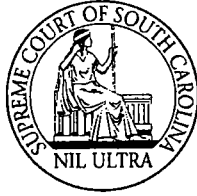
Thank you.

Sincerely,

LaNelle C. Durant
Appellate Defender

LCD:pds

cc: William Blitch, Attorney General's Office



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 Elizabeth A. Franklin-Best
South Carolina Commission on Indigent Defense
P. O. Box 11589
Columbia, SC 29211

Senior Assistant Deputy Attorney General Salley W. Elliott
Assistant Deputy Attorney General David Spencer
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 S. Waters, Esquire
8th Circuit Public Defenders
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. Langford, III, K.C.

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	15 minutes
Public Defenders' Association	15 minutes
Respondent	15 minutes
Solicitor's Association	15 minutes
Appellant in Reply	5 minutes

This case is scheduled for hearing on Wednesday, April 18, 2012 at 9:30 a.m.

Very truly yours,

Daniel E. Shearouse, Clerk

By *Debbie M. Hepner*
Administrative Assistant

DES/dmh

ALAN WILSON
ATTORNEY GENERAL



March 22, 2012

RECEIVED
MAR 22 2012
SC Court of Appeals

VIA HAND DELIVERY

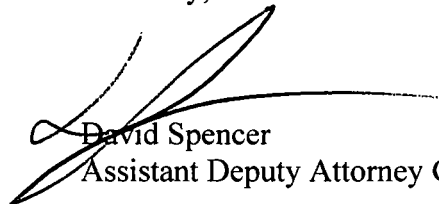
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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

Dear Ms. Gee:

Enclosed please find the original and nine (9) copies of the **Final Brief of Respondent** in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this brief today.

Sincerely,


David Spencer
Assistant Deputy Attorney General

DS/nb

Enclosures

cc: Elizabeth A. Franklin-Best, Esquire (2 copies enclosed)
Trisha Allen, Victim Services (1 copy enclosed)

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties

Suite 203, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104

E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

March 19, 2012

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

RECEIVED

MAR 22 2012

S.C. Supreme Court

Re: State v. K.C. Langford & State v. Bryan Phillips
Amicus Curie Brief of S. C. Public Defender Association

Dear Mr. Shearouse:

Enclosed please find the original and fifteen copies of the final *amicus curiae* brief of the South Carolina Public Defender Association (PDA). An additional, unbound copy is also enclosed. The PDA had previously filed this brief in the Court of Appeals, but I understand it had not been received by this Court. This is the same brief filed in the Court of Appeals, except that the citations to the record have been conformed to the Record on Appeal.

By copy of this letter to Ms. Franklin-Best, Ms. Durant, Mr. Spencer, and Mr. Blitch, I am serving two (2) copies of this brief on the Appellants and Respondents. The certificate of service is found at pages 32 and 33 of the brief, and the Rule 211(b) certification is found at page 34.

Finally, I would ask that all the parties note that Ms. Schultz got married in 2011 and is going by her married name, Tara S. Waters. I understand the Court's records already reflect this change.

Thank you for your attention to these matters. Please let me know if I can provide any additional information.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Christopher Scalzo, Esquire
President, South Carolina Public Defender Association

Elizabeth A. Franklin-Best, Esquire
Attorney for Appellant K.C. Langford

LaNelle C. Durant, Esquire
Attorney for Appellant Bryan Phillips

David Spencer, Esquire
Attorney for Respondent

William M. Blich, Jr., Esquire
Attorney for Respondent



SCCID

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

March 13, 2012

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

RECEIVED
MAR 13 2012
S.C. Supreme Court

Re: The State v. K.C. Langford, III

Dear Mr. Shearouse:

The record on appeal in the above referenced case was served and filed with the Court on March 2, 2012. However, the order on motion for speedy trial and regarding bond, which was designated in the initial brief of appellant, was inadvertently left out of the record. Therefore, counsel is requesting that the Court accept this supplemental record on appeal containing this order.

As indicated by signature below, David Spencer, of the Attorney General's Office, consents to this request.

Sincerely,

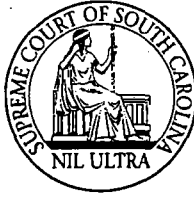
Elizabeth A. Franklin-Best
Appellate Defender

EAF/cms

I consent:

Harold M. Gombert, Jr.
FOR

David Spencer, Esquire



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

March 5, 2012

Assistant Deputy Attorney General David Spencer
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Langford, K.C.

Dear Counsel:

The following Order has been endorsed on your Motion for Correction of Trial Transcript in the above entitled case on appeal.

“Granted.

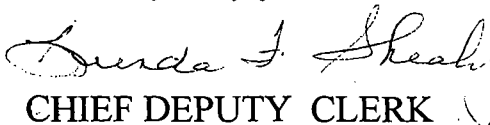
Jean H. Toal C.J.
For the Court

By s/ Brenda F. Shealy
Chief Deputy Clerk

March 5, 2012.”

By copy of this letter we are advising opposing counsel of the action of the Court in this matter.

Very truly yours,


CHIEF DEPUTY CLERK

The State v. Langford, K.C.

Page two

March 5, 2012

cc: Appellate Defender Elizabeth A. Franklin-Best
Ernest Charles Grose, Jr., Esquire
Tara Marie Schultz, Esquire



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

FEB 28 2012

February 28, 2012

S.C. Supreme Court

VIA HAND DELIVERY

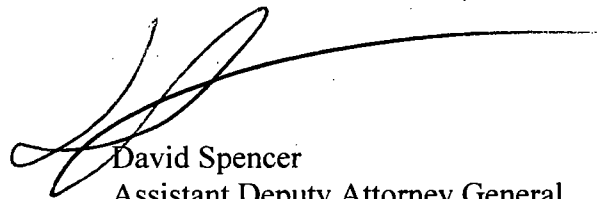
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. K.C. Langford

Dear Mr. Shearouse:

Enclosed for filing are the original and six copies of Respondent's Motion For Correction of Trial Transcript in the above-referenced case.

Sincerely,



David Spencer
Assistant Deputy Attorney General

DS/nb

Enclosures

cc: Elizabeth A. Franklin-Best
Lanelle C. Durant
Ms. Trisha Allen

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

FEB 28 2012

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

THE STATE,

Respondent,

vs.

K.C. LANGFORD,

Appellant.

**RESPONDENT'S MOTION FOR
CORRECTION OF TRIAL
TRANSCRIPT**

Respondent State, by and through undersigned counsel, now moves for this Court pursuant to Rule 607, SCACR, to require the correction of the date appearing on the trial transcript.

1. Appellant and co-defendant Bryan Phillips were tried and convicted for multiple charges in connection with the robbery of three Chinese-speaking victims outside their restaurant in Edgefield County. The case was tried before the Honorable William P. Keesley on September 7, 2010. Tr. p. 5. The front of the transcript provided to Respondent by the Office of Appellant defense incorrectly states the date of trial as January 23, 2011. The issue raised in the present case is whether Appellant's speedy trial rights were violated. Accordingly, the scrivener's error suggests a longer delay when in actuality Appellant was tried four months earlier at the earliest opportunity following a continuance in May 2010.

2. Correction of the title page of the trial transcript is appropriate to avoid confusion

as to relevant dates in this Court's analysis of the speedy trial claims. Note Appellant's Statement of the Case in the initial brief stated the trial was in January 2011, but Appellant noted on page 9 of the brief that the sentencing sheet was dated "9-9-10" in concluding the case was actually called for trial on September 6, 2010.

Under Rule 607, SCACR, a transcript should be prepared in a manner prescribed by the Court Reporters Manual published by Court Administration. The Court Reporters Manual requires court reporters to provide parties with accurate records of proceedings. Manual part II.D. at p. 7. The aforementioned discrepancy is isolated and the transcript is indicative of the high standards of professionalism of the court reporter. However, the mistake should be corrected due to the relevance of trial dates to this particular case.

3. Respondent would request this Court require Appellant to ensure that the title page of the trial transcript therefore be corrected by the Court Reporter to indicate the correct trial date.

WHEREFORE, having made this motion, Respondent requests that this Court require Appellant to ensure the Court Reporter correct the title page of the transcript; and for such other relief as this 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

DAVID SPENCER
Assistant Deputy Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 28, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

THE STATE,

Respondent,

vs.

K.C. LANGFORD,

Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served Respondent's Motion For Correction of Trial Transcript on Petitioner's Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to Elizabeth A. Franklin-Best and Lanelle C. Durant. P.O. Box 11589, Columbia, SC 29211-1589.

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

This 28th day of February, 2012.


Norma Bigbee
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF EDGEFIELD

3
4
5 STATE)

6)
7 V.)

TRANSCRIPT OF RECORD

08-GS-19-673

10-GS-19-272, 273, 278

8 K.C. LANGFORD AND)

08-GS-19-718, 723

9 BRYAN JORDAN PHILLIPS)

10-GS-19-274, 277

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24
25
DEFENDANTS.)

JANUARY 23, 2011

EDGEFIELD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A
JURY.

A P P E A R A N C E S:

ERVIN J. MAYE, ASSIST. SOLICITOR
ATTORNEY FOR THE STATE

MARK R. CALHOUN, ESQUIRE
ATTORNEY FOR DEFENDANT K.C. LANGFORD

RANDALL D. WILLIAMS, ESQUIRE
ATTORNEY FOR DEFENDANT BRYAN JORDAN PHILLIPS

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

1 (The following proceedings were held on
2 September 7, 2010.)

3 **THE COURT:** All right. The jury panel is
4 qualified.

5 Ladies and gentlemen, what we're going to do
6 now is we're going to turn from the more general
7 things that we covered this morning to specific
8 cases.

9 Now, what will happen is that the prosecutor
10 will advise me about any case that he may have to
11 call that involves a jury trial and I'll be asking
12 you questions. The purpose of these questions is to
13 find out from you any information that you may be
14 able to share with us about any possible connection
15 you may have to the case or anybody in it, any
16 knowledge you may have about the case, whether
17 anybody's discussed anything with you, whether
18 you've been exposed to any media coverage of the
19 case, if you're connected, related to anybody in the
20 case. If you keep in mind that the goal of all of
21 this is for us to have a jury serving that is fair
22 and impartial, I think the questions will make more
23 sense to you.

24 Remember that you're under oath. Remember that
25 this is a court of record, so everything you say is



ALAN WILSON
ATTORNEY GENERAL

February 28, 2012

VIA HAND DELIVERY

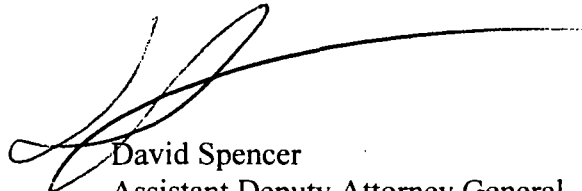
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. K.C. Langford

Dear Mr. Shearouse:

Enclosed for filing are the original and six copies of Respondent's Motion For Correction of Trial Transcript in the above-referenced case.

Sincerely,



David Spencer
Assistant Deputy Attorney General

DS/nb

Enclosures

cc: Elizabeth A. Franklin-Best
Lanelle C. Durant
Ms. Trisha Allen

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

THE STATE,

Respondent,

vs.

K.C. LANGFORD,

Appellant.

**RESPONDENT'S MOTION FOR
CORRECTION OF TRIAL
TRANSCRIPT**

Respondent State, by and through undersigned counsel, now moves for this Court pursuant to Rule 607, SCACR, to require the correction of the date appearing on the trial transcript.

1. Appellant and co-defendant Bryan Phillips were tried and convicted for multiple charges in connection with the robbery of three Chinese-speaking victims outside their restaurant in Edgefield County. The case was tried before the Honorable William P. Keesley on September 7, 2010. Tr. p. 5. The front of the transcript provided to Respondent by the Office of Appellant defense incorrectly states the date of trial as January 23, 2011. The issue raised in the present case is whether Appellant's speedy trial rights were violated. Accordingly, the scrivener's error suggests a longer delay when in actuality Appellant was tried four months earlier at the earliest opportunity following a continuance in May 2010.

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as to relevant dates in this Court's analysis of the speedy trial claims. Note Appellant's Statement of the Case in the initial brief stated the trial was in January 2011, but Appellant noted on page 9 of the brief that the sentencing sheet was dated "9-9-10" in concluding the case was actually called for trial on September 6, 2010.

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3. Respondent would request this Court require Appellant to ensure that the title page of the trial transcript therefore be corrected by the Court Reporter to indicate the correct trial date.

WHEREFORE, having made this motion, Respondent requests that this Court require Appellant to ensure the Court Reporter correct the title page of the transcript; and for such other relief as this 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

DAVID SPENCER
Assistant Deputy Attorney General

Granted.

Jean H. Toal
For the Court

By Brenda J. Shady
Clerk
Chief Deputy

March 5, 2012

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 28, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

THE STATE,

Respondent,

vs.

K.C. LANGFORD,

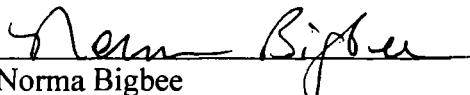
Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served Respondent's Motion For Correction of Trial Transcript on Petitioner's Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to Elizabeth A. Franklin-Best and Lanelle C. Durant. P.O. Box 11589, Columbia, SC 29211-1589.

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

This 28th day of February, 2012.


Norma Bigbee
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF EDGEFIELD

3
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5 STATE)

6 V.)

TRANSCRIPT OF RECORD

08-GS-19-673

10-GS-19-272, 273, 278

7 K.C. LANGFORD AND)

08-GS-19-718, 723

8 BRYAN JORDAN PHILLIPS)

10-GS-19-274, 277

9 DEFENDANTS.)

10
11 JANUARY 23, 2011

EDGEFIELD, SOUTH CAROLINA

12
13 B E F O R E:

14 THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A
15 JURY.

16
17 A P P E A R A N C E S:

18 ERVIN J. MAYE, ASSIST. SOLICITOR
ATTORNEY FOR THE STATE

19 MARK R. CALHOUN, ESQUIRE
20 ATTORNEY FOR DEFENDANT K.C. LANGFORD

21 RANDALL D. WILLIAMS, ESQUIRE
22 ATTORNEY FOR DEFENDANT BRYAN JORDAN PHILLIPS

23
24 STACY L. SHEPPARD
25 CIRCUIT COURT REPORTER

1 (The following proceedings were held on
2 September 7, 2010.)

3 **THE COURT:** All right. The jury panel is
4 qualified.

5 Ladies and gentlemen, what we're going to do
6 now is we're going to turn from the more general
7 things that we covered this morning to specific
8 cases.

9 Now, what will happen is that the prosecutor
10 will advise me about any case that he may have to
11 call that involves a jury trial and I'll be asking
12 you questions. The purpose of these questions is to
13 find out from you any information that you may be
14 able to share with us about any possible connection
15 you may have to the case or anybody in it, any
16 knowledge you may have about the case, whether
17 anybody's discussed anything with you, whether
18 you've been exposed to any media coverage of the
19 case, if you're connected, related to anybody in the
20 case. If you keep in mind that the goal of all of
21 this is for us to have a jury serving that is fair
22 and impartial, I think the questions will make more
23 sense to you.

24 Remember that you're under oath. Remember that
25 this is a court of record, so everything you say is



 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

RECEIVED

March 2, 2012

MAR 2 2012

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

S.C. Supreme Court

RE: State v. K.C. Langford

Dear Mr. Shearouse,

Please accept this letter in lieu of a formal return to the Respondent's Motion for Correction of Trial Transcript. Appellant agrees there is a scrivener's error indicating that the trial of this case was held on January 23, 2011 instead of the actual date, September 6-9, 2010. Counsel will contact the court reporter and request that this be corrected. Appellant asserts that the correct date of the trial was used in the brief, and that the scrivener's error does not, in any manner, impact appellant's claims.

Additionally, appellant notes that the inaccurate date is noted in Appellant's Statement of the Case, but will correct this when the final brief is filed.

Counsel will forward the corrected title page to the Court upon our receipt of it

Sincerely,



Elizabeth A. Franklin-Best
Appellate Defender

EAF/cms

cc: David Spencer, Esquire



ALAN WILSON
ATTORNEY GENERAL

February 27, 2012

RECEIVED

FEB 27 2012

S.C. Supreme Court

VIA HAND DELIVERY

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

Re: **State of South Carolina v. K.C. Langford**
2008-GS-19-673 and 2010-GS-19-272, 273, 278

Dear Mr. Shearouse:

Enclosed please find the original of the **Initial Brief of Respondent and Designation of Matter** in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this brief today.

Sincerely,


David Spencer
Assistant Deputy Attorney General

DS/nb
Enclosures

cc: Elizabeth Franklin-Best, Esquire (2 copies enclosed)
Trisha Allen, Victim Services (1 copy enclosed)

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

RECEIVED

FEB 27 2012

S.C. Supreme Court

THE STATE,

Respondent,

vs.

K. C. LANGFORD,

Appellant.

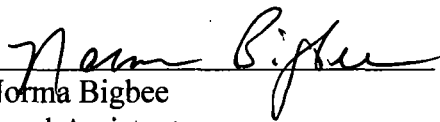
PROOF OF SERVICE

I, Norma Bigbee, 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:

**Elizabeth Franklin-Best, Esquire
SC Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211**

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

This 27th day of February, 2012.



Norma Bigbee
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.

K.C. Langford,

Appellant.

The Honorable William P. Keesley
Edgefield County
Trial Court Case No. 2008-GS-19-00673
2010-GS-19-00272
2010-GS-19-00273
2010-GS-19-00278

ORDER

Respondent seeks an extension of thirty days to serve and file its initial brief and designation of matter. The extension is granted in part as indicated below.

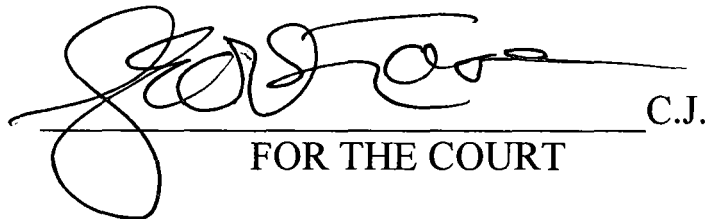
This case is hereby scheduled for oral argument on April 18, 2012. It will be argued in conjunction with the appeal filed by appellant's co-defendant, Bryan Phillips.

To ensure that this matter is ready for argument, the initial brief and designation of the respondent shall be served and filed by February 27,

2012, and any initial reply brief and designation of matter must be served and filed March 8, 2012. Further, the record on appeal shall be served and filed by March 15, 2012,¹ and the final briefs shall be served and filed by March 22, 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.


C.J.
FOR THE COURT

Columbia, South Carolina

February 16, 2012

cc: Appellate Defender Elizabeth A. Franklin-Best
Senior Assistant Attorney General David Spencer
Ernest Charles Grose, Jr., Esquire
Tara Marie Schultz, Esquire

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.



ALAN WILSON
ATTORNEY GENERAL

February 8, 2012

VIA HAND DELIVERY

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

**Re: State of South Carolina v. K.C. Langford
2008-GS-19-673 and 2010-GS-19-272, 273, 278**

Dear Mr. Shearouse:

The Initial Brief of Respondent and Designation of Matter in the above appeal are due to be served and filed today. Due to work required in other cases pending before this Court, and the Court of Appeals and having to prepare for thirty scheduled PCR hearings last week, I am unable to complete this Brief on time. I would therefore request a 30-day extension of time within which to serve and file the Initial Brief of Respondent and Designation of Matter.

This extension request is not intended for the purpose of delay, but is necessitated by my heavy workload.

Sincerely,

David Spencer
Assistant Deputy Attorney General

DS/nb

cc: Elizabeth Franklin-Best, Esquire

RECEIVED

FEB - 8 2012

S.C. Supreme Court

RECEIVED

FEB - 8 2012

S.C. Supreme Court

The Supreme Court of South Carolina

The State,

Respondent

v.

K.C. Langford,

Appellant.

The Honorable William P. Keesley

Edgefield County

Trial Court Case No. 2008-GS-19-00673

2010-GS-19-00272

2010-GS-19-00273

2010-GS-19-00278

ORDER

The request for an extension to serve and file the Initial Brief of Respondent is granted and extended until February 8, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

January 10, 2012

cc: Appellate Defender Elizabeth Franklin-Best
Senior Assistant Attorney General David Spencer
Ernest Charles Grose, Jr., Esquire
Tara Marie Schultz, Esquire

ALAN WILSON
ATTORNEY GENERAL



January 9, 2012

RECEIVED

JAN - 9 2012

VIA HAND DELIVERY

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

S.C. Supreme Court

Re: State of South Carolina v. K.C. Langford
2008-GS-19-673, 272, 273, 278

Dear Mr. Shearouse:

The Initial Brief of Respondent and Designation of Matter in the above appeal are due to be served and filed today. However, due to an unusually heavy workload, I am requesting a 30-day extension.

By copy of this letter, I am advising counsel for Appellant, Elizabeth A. Franklin-Best of this extension request.

Sincerely,

David Spencer
Assistant Deputy Attorney General

DS/nb

cc: Elizabeth A. Franklin-Best, Esquire

The South Carolina Court of Appeals

The State,

Respondent

v.

K.C. Langford,

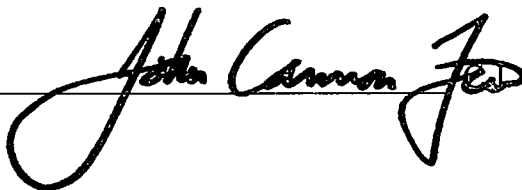
Appellant.

The Honorable William P. Keesley
Edgefield County
Trial Court Case No. 2008-GS-19-00673
2010-GS-19-00272
2010-GS-19-00273
2010-GS-19-00278

ORDER

The State requests rehearing of the October 13, 2011 order granting the South Carolina Public Defender Association's motion to file an Amicus Curiae Brief. Pursuant to Rule 221(c), SCACR, this court will not entertain rehearing of a motion unless "the action of the court on the motion . . . has the effect of dismissing or finally deciding the party's appeal." However, in the State's rehearing request, it explains that my decision was made prior to it having the opportunity to file a return to the Public Defender Association's motion. Accordingly, the October 13, 2011 order is hereby rescinded.

After having now considered both the motion and return, the Public Defender Association's motion to file an Amicus Curiae Brief is granted.



FILED

11/10/11

Columbia, South Carolina

cc: Appelalte Defender Elizabeth Franklin-Best
Senior Assistant Attorney General David Spencer
Ernest Charles Grose, Jr, Esquire
Tara Marie Schultz, Esquire



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

November 9, 2011

Senior Assistant Attorney General David Spencer
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Langford, K.C.

Dear Counsel:

Enclosed is a copy of an Order of the Court regarding the above case.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/lb

cc: Appellate Defender Elizabeth Franklin-Best
Ernest Charles Grose, Jr, Esquire
Tara Marie Schultz, Esquire

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties

Suite 203, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104

E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

October 21, 2011

The Honorable Tanya Gee
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

OCT 24 2011

Re: State v. K.C. Langford
Petition for Leave to File *Amicus Curie* Brief

SC Court of Appeals

Dear Ms. Gee:

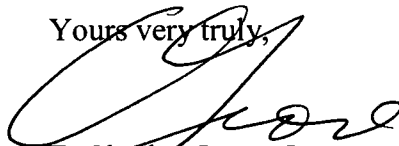
Pursuant to Chief Judge John Few's order of October 13, 2011, enclosed for filing, please find the original and fourteen (14) bound copies and one (1) unbound copy the South Carolina Public Defender Association's final *amicus curie* brief. The rule 211(b), SCACR Certification is found at page 34 of the brief.

By copy of this letter to Ms. Franklin-Best and Mr. Spencer, I am serving two (2) copies of this brief on the Appellant and Respondent. The certificate of service is found at pages 32 and 33 of the brief.

Thank you for your attention to this matter.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Christopher Scalzo, Esquire
President, South Carolina Public Defender Association

Elizabeth A. Franklin-Best, Esquire
Attorney for Appellant

David Spencer, Esquire
Attorney for Respondent

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties
Suite 203, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104

E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

October 21, 2011

The Honorable Tanya Gee
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State v. K.C. Langford
Petition for Leave to File *Amicus Curie* Brief

Dear Ms. Gee:

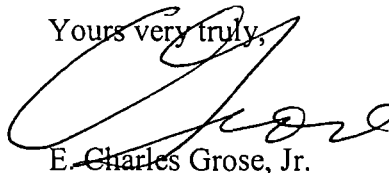
Pursuant to Chief Judge John Few's order of October 13, 2011, enclosed for filing, please find the original and fourteen (14) bound copies and one (1) unbound copy the South Carolina Public Defender Association's final *amicus curie* brief. The rule 211(b), SCACR Certification is found at page 34 of the brief.

By copy of this letter to Ms. Franklin-Best and Mr. Spencer, I am serving two (2) copies of this brief on the Appellant and Respondent. The certificate of service is found at pages 32 and 33 of the brief.

Thank you for your attention to this matter.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Christopher Scalzo, Esquire
President, South Carolina Public Defender Association

Elizabeth A. Franklin-Best, Esquire
Attorney for Appellant

David Spencer, Esquire
Attorney for Respondent

RECEIVED
OCT 24 2011
SC Court of Appeals

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties
Suite 203, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104

E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

October 21, 2011

The Honorable Tanya Gee
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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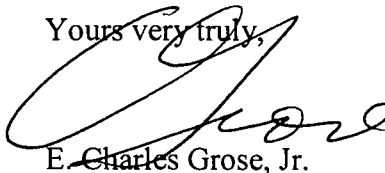
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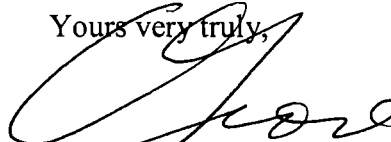
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President, South Carolina Public Defender Association

Elizabeth A. Franklin-Best, Esquire
Attorney for Appellant

David Spencer, Esquire
Attorney for Respondent

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 19 2011

SC Court of Appeals

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

THE STATE,

Respondent,

vs.

K.C. LANGFORD,

Appellant.

**RESPONDENT STATE'S RETURN
TO PETITION OF SOUTH CAROLINA
PUBLIC DEFENDER ASSOCIATION
TO FILE AN AMICUS BRIEF**

Respondent State, by and through undersigned counsel, objects to the Public Defender Association's motion to submit an amicus brief on the issue of the Solicitor's duties administering the General Sessions docket. Respondent attaches to this return the entire transcript of the May 2010 motions and the portions of the September 2010 trial transcript cited herein. The copy of the September transcript received by Respondent misstates the trial date on the cover as being in January 2011, as noted in Appellant's Brief.

1. Appellant, on appeal, raises an issue of whether Appellant's rights to a speedy trial were violated. However, the issue raised in the Amicus Curie brief, the constitutionality of S.C. Code § 1-7-330, was not raised in trial court. Further, the constitutionality of § 1-7-330 is not raised in the Statement of the Issue on Appeal by Appellant and, therefore, should not be considered. Rule 208(b)(1)(B), SCACR.

Appellant was arrested on October 3, 2008. Appellant filed a pro se motion for a

speedy trial on June 29, 2009. Appellant's counsel did not attempt to raise a speedy trial motion until the State moved for a continuance on May 17, 2010. Appellant's counsel did not offer any significant argument except adopting co-defendant counsel's argument that "20 months is a substantial enough period of time to give the State an opportunity to prepare its case and prosecute it." and also to adopt, almost a year after the fact, Appellant's *pro se* filing. May 17, 2010 transcript (May Tr.) pp. 5-6.

Appellant's counsel did not renew the speedy trial motion at the September 2010 trial.¹ At the end of trial, after he was convicted, Appellant, but not his counsel², remonstrated at the trial court for all manner of imagined injustices levied upon him by the trial court and the State, including the delay in being tried. September 2010 trial transcript (Sept Tr.) pp. 533-539.

Appellant's issue is extremely weak and Appellant is unlikely to prevail. Appellant's trial counsel never presented any evidence or argument that the delay in prosecution prejudiced Appellant. Barker v. Wingo, 407 U.S. 514 (1972). Appellant only makes perfunctory arguments as to prejudice in his brief.

Further, no allegation was made at trial that the delay was an intentional delay on the part of the State to impede the defense. See State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007). However, as discussed below, valid reasons were presented due to the need

¹ Appellant in his brief, incorrectly claims that he raised the issue himself before trial. The statement was his co-defendant's statement. Sept. Tr. pp. 103-107.

² State law does not permit or recognize "hybrid representation," that is, representation that is partially by counsel and partially *pro se*. See, e.g., Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). This would also apply to Appellant's subsequent *pro se* motion filed after the May hearing.

for interpreters and delay occasioned by Appellant's efforts to obstruct justice. Id.

More significantly, Appellant's trial counsel never raised an objection to how the Solicitor was administering the docket, the issue the Public Defender's Association wants to discuss in its brief. 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).

As to the Appellant's brief, Appellant discusses the Solicitors' control of the docket in two paragraphs. The inclusion of these two paragraphs appears to be an attempt to assist the Public Defender Association to succeed in the instant motion.

2. This matter was not set for trial until May 2010 due to difficulties in attaining a translator so law enforcement could even interview the victims and to attain another translator to act as a certified court translator.

At trial, Investigator Lazaz Robinson indicated he could not interview the victims because of the language barrier. He testified that he had tremendous difficulty finding a translator and did not find one until over a year later ("a year and something"). The translator was finally found when Investigator Robinson contacted the University of South Carolina in Columbia. Sept. Tr. pp. 303-311. The State does not get to chose the victims, and therefore, this delay was not the fault of the State.

Also contributing to the delay were the difficulties in finding a Chinese translator to be certified for the testimony by the victims. The Clerk of Court, at trial, advised the trial court that it took a diligent search to find an interpreter. She advised the trial court that Court Administration did not have any Chinese interpreters and that there were no certified translators for Chinese in South Carolina. Sept. Tr. pp. 134-135.

The trial court, over the defendants' dubious objections, found the interpreter

certified. In so ruling, the trial court noted as follows:

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.

Sept. Tr. p. 140, line 25 - p. 141, line 14.

In the trial court's order on the speedy trial motion, the trial court noted: "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." (See attached order dated May 20, 2010).

3. Appellant and his co-defendant were actively seeking to influence co-defendant Alvin Phillips to not testify or testify falsely, which resulted in the necessity of the May 2010 continuance. Sept. Tr. pp. 279-284. In responding to the defendants' motions and in seeking a continuance, the solicitor advised the trial court that law enforcement provided the solicitor with information that the defendants were exhorting and pressuring Alvin Phillips to not testify and that if he did not, "none of them are going to be in trouble." May Tr. p. 6, lines 12-23. 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 Tr. p. 7, lines 15-19. The solicitor further advised the trial court: "We believe either through pressure or threats, they have been

able to persuade him not to do so and we don't think that they should be rewarded for that. We'll try them at the very first opportunity." May Tr. p. 8, lines 1-5.

The solicitor attempted to prosecute Alvin Phillips at the May term, but could not because Alvin's prior attorney was relieved and the new attorney had only been appointed eight days in advance of the term. May Tr. pp. 9-10. Alvin needed to be moved from the Edgefield County jail because of the pressure the two defendants were putting on Alvin not to testify. May Tr. p. 10. Further, the solicitor received a statement signed by Alvin on the day of the May hearing which claimed the two co-defendants were not involved. This was provided by one of the defendants to their counsel. May Tr. p. 12.

Gustave Sawvell testified for the State during an in-camera proffer. He was incarcerated at the Edgefield County jail with all the defendants. He testified that Appellant was telling Alvin to lie and that this occurred the whole time he was there, occurring multiple times a week. Appellant drafted paperwork and attempted to coach Alvin as what to say. Appellant also tried to convince Alvin not to testify. After Alvin was moved to another county jail, Appellant made phone calls through Alvin's sister trying to influence Alvin not to show up at trial and telling Alvin that if he did not show up, he would go "scot-free". Tr. pp. 404-410.

4. The South Carolina Public Defender Association has moved for this Court to accept its *Amicus Curie* Brief based largely on heated allegations that the prosecution was gaming the docket to deprive Appellant of a fair trial. Essentially, *amicus curiae* is improperly attempting to divert the issue raised by Appellant concerning speedy trial rights and instead claim that S.C. Code § 1-7-330 is unconstitutional. The events of the actual trial have no resemblance to the issue discussed in the *Amicus Curie* Brief, as delay was

occasioned by difficulty in attaining interpreters for investigation and for court, and by Appellant's obstruction. The issue in the Amicus brief was never raised below and despite the rhetoric of the amicus brief, no impropriety of the solicitor was ever raised to the trial court, nor should it have been.

WHEREFORE, Respondent requests that this Court deny the Public Defender Association's motion.

Respectfully submitted,

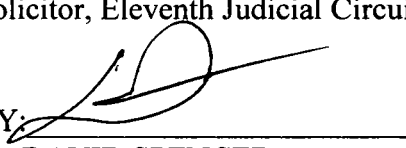
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DAVID SPENCER
Senior Assistant Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 19, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE

Respondent,

v.

K. C. LANGFORD,

Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Respondent State's Return to Petition of South Carolina Public Defender Association to File An Amicus Brief** has been served upon the applicant by mailing two (2) copies in the United States mail, postage prepaid, addressed to:

Elizabeth Franklin-Best, Esquire
P.O. Box 11589
Columbia, SC 29211

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

This 19th day of October, 2011.


NORMA BIGBEE
LEGAL ASSISTANT
FOR RESPONDENT

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD) IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
-vs-) ORDER ON MOTION FOR SPEEDY TRIAL
AND REGARDING BOND

KC LANGFORD,)
Defendant.) Case Numbers: 2008-GS-19-0673; 0674;
0675; 0676; 0677; & 0678

The defendant is before the court on a motion to dismiss these cases based on the State's failure to provide a speedy trial, which is denied. In the alternative, the defendant moves to have the court issue an order directing that the State try this case expeditiously. That motion is granted. The defendant also moves to be released on bail. That motion is denied.

The defendant is charged with Criminal Conspiracy (08-GS-19-0673); Burglary in the 1st Degree (2008-GS-19-0674); Possession of a Weapon During the Commission of a Violent Crime (2008-GS-19-0675); Kidnapping (2008-GS-19-0677); ABWIK (2008-GS-19-0676); and, Armed Robbery (2008-GS -19-0678).

It is alleged that this defendant, along with two co-defendants, concocted a scheme to rob a family that runs a Chinese restaurant. They waited outside the home until the local business owner came out to water his garden. All of the defendants allegedly wore masks, and one of the defendants had a gun. They forced the store owner into his home and took approximately \$3,000 in cash, bludgeoning the victim with the gun.

EDGEFIELD COUNTY
CLERK OF COURT
SHERI L. BROWN

2008 MAY 20 PM 3:30

WPK
#1

The case was scheduled to be tried beginning Monday of this week. This defendant and one other co-defendant were facing a jury trial, and a third co-defendant had agreed with the State to testify against them. All three defendants have been incarcerated for 20 months, and only the cooperating witness had given any statement. Since the defendants wore masks, the case hinges almost exclusively on the testimony of the cooperating defendant. Some of the purported 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.

At 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. That created Bruton problems and confrontation clause issues that necessitate that the defendant who was formerly cooperating now has to be tried first. However, the State could not go forward with the trial of the defendant who formerly had been cooperative because the attorney for that defendant had just received an appointment to the case by substitution of counsel and had only had the discovery for 8 days. The State agreed that the new attorney had not had sufficient time to adequately prepare for trial.

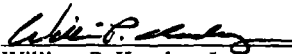
None of this delay was occasioned by any impropriety on the part of the State. While the court is deeply concerned about the length of time that these defendants have been incarcerated, there does not appear to be sufficient reason to dismiss the charges for failure to provide a speedy trial. The court is aware that there is a death penalty case scheduled for the Fall of 2010 and that there is an older conflict case that a visiting judge

is trying to set for the August term. Therefore, unless this case is tried within 9 months, the defendant may reassert his motions.

As for the issue of bail, the court finds that the defendant is a danger to the community and should be held without bail. If the case is not tried within 9 months, the defendant may reassert his request for release on bail.

AND IT IS SO ORDERED.

May 20, 2010


William P. Keesley, Judge

#3

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WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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E X H I B I T S

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1 (The following proceedings were held on May
2 17, 2010.)

3 **THE COURT:** Did y'all have a motion?

4 **MR. WILLIAMS:** Yes, sir, Your Honor. As the
5 Court is likely aware, I filed a written motion, I
6 believe, it was January the 14th of 2010. At which
7 time, we requested a speedy trial on behalf of my
8 client, Mr. Bryan Jordan Phillips, as it pertained
9 to several indictments under which he stood accused.

10 Furthermore, Judge, I was appointed to
11 Mr. Phillips July 20th of 2009. And there have been
12 a number of communications between myself, as well
13 as the Solicitor's office, as well as the Court with
14 regard to having his case tried.

15 Based upon my calculation, he's been in jail
16 since September of 2008. I believe it was September
17 20th -- 28th of 2008, and to date, he has no bond.
18 And, essentially, we were prepared to defend his
19 case on this date. And beyond no control of our
20 own, the State has been unable to bring this case
21 before the Court.

22 Judge, we would ask that the Court would
23 consider two things on behalf of my client:
24 Initially, we would ask the Court to consider that
25 even the penalty of dismissal is appropriate when

1 the case is not brought in a timely manner. We
2 certainly believe 20 months is a substantial enough
3 period of time to give the State an opportunity to
4 prepare its case and prosecute it.

5 If the Court sees not fit to dismiss the case,
6 we would ask certainly that a bond that's affordable
7 be given to my client. It's my understanding he is
8 a person of humble means and these are somewhat
9 serious charges. However, he is a lifetime resident
10 of Edgefield County and he's substantially supported
11 by his mother, who is present here today, Ms. Janie
12 Robinson. She has been in touch with my office on a
13 couple of different occasions and I've talked to her
14 as well.

15 Judge, we would ask the Court to consider
16 imposing a bond that would be sufficient to insure
17 his return to court and one that would also be
18 affordable in that he will be able to actually get
19 out on these charges.

20 Additionally, we would like to renew our motion
21 for a speedy trial in the event the Court does not
22 see fit to grant a bond. And that's the substance
23 of our motions, Your Honor.

24 **THE COURT:** Do you have similar motions?

25 **MR. CALHOUN:** Yes, Your Honor. My two motions

1 mirror those of Mr. Williams with the exception that
2 my client had filed his own speedy trial motion, so
3 we would like to renew that motion.

4 In regards to the bond, he also has been in
5 jail since September of 2008. He feels that he
6 might be able to post a 20,000, ten percent bond,
7 but he is asking the Court for a personal
8 recognizance bond until the Solicitor's office is
9 able to move the -- or decide what they're going to
10 do with the Alvin Phillips case.

11 **THE COURT:** What's the State's position?

12 **MR. MAYE:** Your Honor, the State was prepared
13 to call these two cases for trial today. Obviously,
14 the codefendant in this case, he's 19 years of age,
15 he's younger than these two individuals, had no
16 prior record, had previously -- had given a
17 statement implicating both himself and these two
18 individuals. He has indicated, law enforcement has
19 provided information to us, that these two
20 individuals had been exhorting him and pressuring
21 him not to testify and telling him if he just keeps
22 his mouth shut, none of them are going to be in
23 trouble.

24 Both of these individuals have records. Mr.
25 Langford has records for use of vehicle without

1 owner's consent. He got three years. His probation
2 was revoked in 2003. He got a three year sentence.
3 In July of '06, he got a receiving stolen goods
4 \$5,000 or more, five years suspended on a year with
5 five years probation. He has a Richmond County,
6 Georgia record, possession of drugs and criminal
7 interference with government property out of '03.

8 Mr. Bryan Phillips has a record for
9 distribution of cocaine and distribution of
10 proximity that he received a YOA in 2006.

11 Your Honor, we believe that the defendant's
12 decision to reverse his initial decision to
13 cooperate is brought on in large part because of
14 pressure brought to bear because of these two
15 individuals. We are now faced with trying the
16 individual that was going to previously be a
17 testifying witness in this case. We're already
18 setting that for the next term of court, Your Honor,
19 to try him.

20 We still intend to go forward with the cases
21 against Mr. Phillips and Mr. Langford. The victims
22 are very much afraid of these two individuals. We
23 believe that they are at the root of the cooperating
24 witness' decision not to testify against them, to
25 reverse his previous decision to testify and

1 cooperate against them. We believe either through
2 pressure or threats, they have been able to persuade
3 him not to do so and we don't think that they should
4 be rewarded for that. We'll try them at the very
5 first opportunity.

6 **MR. WILLIAMS:** Your Honor, in the face of what
7 the Solicitor just said, I just have to say this:
8 The codefendant has an inviolate right to remain
9 silent pursuant to the Fifth Amendment as the
10 Solicitor well knows.

11 Furthermore, Judge, he's been in Saluda
12 County's Detention Center and I don't know what
13 pressure my client, who's in Edgefield County, could
14 bring to bear on an inmate in the Saluda Detention
15 Center some 20 miles away. So I would suggest to
16 the Court that there has been no such threats, no
17 such pressures have been brought to bear on his
18 decision, not from my client.

19 **MR. CALHOUN:** Your Honor, I'd like to add that
20 the victims in this case could not identify any of
21 the three defendants. And they're really of no help
22 in the prosecution of this case as far as
23 determining who the three people were that robbed
24 them, so I don't believe that they're at any risk
25 from our folks by providing their testimony because

1 their testimony is largely unhelpful in regards to
2 prosecuting him and the three defendants. I don't
3 feel that there's a risk to the victims in this case
4 in this regard.

5 **THE COURT:** Is there some interpreter issue in
6 this trial that you all mentioned to me last week --
7 or mentioned to my law clerk last week?

8 **MR. MAYE:** No, sir, Your Honor. We had an
9 interpreter come. We have someone that's assisting
10 us with talking with the victims. And we have a
11 certified court interpreter that does not know any
12 of the facts, is not associated with either us or
13 the defense that the Court -- that the Clerk of
14 Court arranged to come here.

15 And we just -- having someone -- that South
16 Carolina didn't have anybody that was on the court
17 reporter -- I mean, the interpreter's list for
18 Mandarin/Chinese and we had to get someone from out
19 of state, that's been the only issue. But we've
20 arranged to have that individual appear for Alvin
21 Phillips', who's neither one of their clients, trial
22 at the very next term of court, which is our first
23 opportunity.

24 We've attempted obviously to call Alvin's case
25 at this term of court, but the lawyer that had been

1 appointed to him had only had his case for
2 approximately eight days and obviously the posture
3 of that changed at the last minute. He is not
4 prepared to go forward or we would try his case at
5 this term of court.

6 **THE COURT:** But you had to get an interpreter
7 from some other state was my point.

8 **MR. MAYE:** Yes, from Georgia.

9 **THE COURT:** It's not like you've got 25 Spanish
10 interpreters you can call upon.

11 **MR. MAYE:** No, we had to get someone. But we
12 have made arrangements, he indicates at the very
13 next term of court, he can come and is going to put
14 that on his calendar to be here for us to proceed
15 against Alvin Phillips because this all -- Your
16 Honor, all this changes is the order in which we
17 intend to proceed against these defendants. We're
18 going to try Alvin Phillips first and then these
19 other two defendants.

20 **THE COURT:** And this codefendant, he's housed
21 in Saluda?

22 **MR. MAYE:** We moved him, Your Honor, because
23 law enforcement received information from the jail
24 that these two individuals were putting pressure on
25 him not to testify and we moved him to Saluda at the

1 request of local law enforcement who moved him to
2 Saluda for that very purpose.

3 **THE COURT:** When?

4 **MR. MAYE:** He was moved to Saluda -- I do not
5 know the date, Your Honor, but I can find out when
6 he was moved.

7 **MR. WILLIAMS:** Your Honor, I can tell you. I

8 believe he was put in Saluda County May 28th of
9 2009, just about a year ago.

10 **THE COURT:** Has he been housed in Edgefield at
11 all in preparation of the trial, Mr. Williams?

12 **MR. WILLIAMS:** Your Honor, it's my
13 understanding he was, but according to my client,
14 they were segregated from one another. I believe
15 each of them were segregated one from the other so
16 that there wouldn't be the possibility to bring that
17 kind of pressure.

18 **MR. MAYE:** Your Honor, it was my understanding
19 they were all housed here in Edgefield. I have no
20 idea how they were segregated.

21 Law enforcement received information that they
22 were pressuring that cooperating codefendant and, as
23 a result, he was moved to Saluda and that's all of
24 the information that I had. But they did receive
25 some active information that that was taking place

1 because we moved him for that very purpose and asked
2 that Edge -- I mean, that Saluda keep Alvin Phillips
3 at that point in time, Your Honor. But we're going
4 to try him as quickly as the Court schedule allows
5 for us to do so, Your Honor.

6 Your Honor, I was provided with some sort of
7 statement that was purported to be by the
8 cooperating witness, Alvin Phillips, today that was
9 not obtained by either of the attorneys in this
10 case, Your Honor, is my understanding. I don't
11 think it was obtained by any of the attorneys, but
12 was obtained by one of the two defendants in this
13 case, Your Honor, a statement that looks like it was
14 drafted in -- I don't know where it was drafted, but
15 it is a very poorly written statement that indicates
16 that these individuals were not involved that I was
17 provided today. And I don't know who that was
18 obtained by, but I don't think it was obtained by
19 either of the attorneys. I think it was obtained by
20 one of these two individuals.

21 And like I said, I was not aware of that until
22 today the absolute -- the content of it. And I was
23 unaware that they extracted any information, but
24 like I said, that's the only information that I had
25 regarding any contact between them.

1 **THE COURT:** You all had told me just before the
2 break that you were notified, the State was notified
3 at the last moment that this codefendant was not
4 going to testify. And you put on the record that
5 the attorney had asked for a continuance and had
6 only had the discovery for eight days.

7 You had something, Mr. Williams?

8 **MR. WILLIAMS:** Your Honor, I just had one
9 thing, it was more of a procedural or administrative
10 kind of issue. If the Court considers bond, I did
11 want to bring it to the Court's attention that there
12 were a number of indictments against my client that
13 I don't think were offered for trial. I think it
14 was only the armed robbery and burglary that were
15 offered for trial or that you were going to call for
16 trial.

17 **MR. MAYE:** And kidnapping and some other
18 charges. It was kidnapping and possession of a
19 weapon during the commission of a violent crime,
20 assault and battery with intent to kill. There were
21 a number of charges that were potentially against
22 all of them.

23 They've been indicted on a multitude of
24 offenses, some of those overlap. And I was going --
25 intended to proceed today for burglary first and

1 armed robbery in this case, Your Honor, mainly
2 because I had some problem with the wording of the
3 indictments. And so if they're tried in a
4 subsequent term of court, I'm not sure exactly what
5 series of indictments we'd try. All of them arise
6 out of the same incident.

7 I think criminal conspiracy was also indicted.
8 There were a number of charges all flowing from this
9 August 14, 2008 incident.

10 **THE COURT:** But the motions relate to all of
11 the charges that's pending against --

12 **MR. WILLIAMS:** All charges, yes, sir.

13 **THE COURT:** And both motions relate to all of
14 the charges that are pending?

15 **MR. CALHOUN:** Yes, Your Honor.

16 **THE COURT:** Well, I need that paperwork because
17 when I do the orders, I have to recite all of the
18 cases that it refers to and I just wrote these down
19 that were handed to me, that's all I knew about.

20 **MR. WILLIAMS:** Your Honor, and if I have an
21 opportunity to make a copy of this, you know, as it
22 relates to the charges and which ones purport to
23 represent each indictment, I'll do that.

24 **THE COURT:** All right. Is KC Langford, is it K
25 and C? Are those abbreviations or is his name just

1 KC?

2 DEFENDANT: KC.

3 THE COURT: Like Harry S Truman, there's
4 nothing for the S.

5 DEFENDANT: Yes, sir.

6 THE COURT: I just wanted to make sure because
7 I didn't see anything anywhere except KC, I didn't
8 see a full name. So that is his actual name, those
9 two letters, KC?

10 MR. CALHOUN: Yes, sir.

11 THE COURT: All right. I'll notify you of a
12 decision in writing. Y'all get me those indictment
13 numbers and everything. Thank you.

14 MR. MAYE: Thank you, Your Honor.

15

16 END OF PROCEEDINGS

17

18

19

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C E R T I F I C A T E

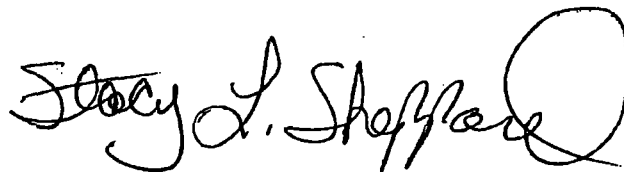
STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Edgefield County, South Carolina, on the 17th of May, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 23, 2011

A handwritten signature in black ink, reading "Stacy L. Sheppard". The signature is stylized with a large, circular flourish at the end.

Stacy L. Sheppard, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF EDGEFIELD

3
4
5 STATE)

6 V.)

7 K.C. LANGFORD AND)
8 BRYAN JORDAN PHILLIPS)

9 DEFENDANTS.)

TRANSCRIPT OF RECORD

08-GS-19-673

10-GS-19-272, 273, 278

08-GS-19-718, 723

10-GS-19-274, 277

10
11 JANUARY 23, 2011

12 EDGEFIELD, SOUTH CAROLINA

13
14 B E F O R E:

15 THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A
16 JURY.

17 A P P E A R A N C E S:

18 ERVIN J. MAYE, ASSIST. SOLICITOR
19 ATTORNEY FOR THE STATE

20 MARK R. CALHOUN, ESQUIRE
ATTORNEY FOR DEFENDANT K.C. LANGFORD

21 RANDALL D. WILLIAMS, ESQUIRE
22 ATTORNEY FOR DEFENDANT BRYAN JORDAN PHILLIPS

23
24 STACY L. SHEPPARD
25 CIRCUIT COURT REPORTER

1 seeing now is a reining in of where that thing was
2 headed. Now, I've given my little lecture, that's
3 all I've got to say except the motion is denied.

4 All right. You said you had something you need
5 to bring up with me.

6 **MR. WILLIAMS:** Yes, sir.

7 **THE COURT:** What is it?

8 **MR. WILLIAMS:** Your Honor, as it relates to my
9 client's position, he indicates to me that he does
10 have some concerns about your ability to fairly and
11 earnestly try the issues joined in the cases against
12 him.

13 As this Court is well aware, my client has been
14 incarcerated on this charge for just about two
15 years, almost two years, and we have made a number
16 of motions regarding bond. And my client has
17 indicated to me that it's his position that based on
18 the facts, there has been no identification by any
19 of the victims regarding himself, furthermore there
20 has been no prior history of his crimes in his past
21 which indicate any violence and your refusal to
22 allow him to have a bond or to continue to deny his
23 bond he has indicated to me that he believes that
24 somehow perhaps you are biased against him. And he
25 has indicated to me that based upon his right to

1 have a fair and impartial trial, he would ask that
2 this Court would recuse itself.

3 **THE COURT:** Does the State want to be heard?

4 **MR. MAYE:** Yes, sir, Your Honor. Beyond the
5 fact, Your Honor, that some judge has got to hear
6 motions for bond is just a function of who the chief
7 judge is in this case. And like I said, I think
8 that that's something that any criminal defendant
9 could lodge because bail is going to have to be
10 addressed by someone, Your Honor.

11 We certainly would not, based on our experience
12 and -- or mine in being around Your Honor for nearly
13 20 years in the courtroom here, I've never seen any
14 evidence of Your Honor's bias in setting bond or
15 anything that would indicate a lack of fairness by
16 this Court. And I think that that would just open
17 Pandora's box to allow someone that they can assert
18 that I was denied bond and that somehow means that
19 the court is biased. I think that's an invalid
20 argument, especially knowing the history of Your
21 Honor in setting bonds and the Court's reputation
22 for fairness and we would certainly maintain that
23 that's a specious reason to have His Honor recuse
24 himself in this case.

25 **THE COURT:** Anything else, Mr. Williams?

1 **MR. WILLIAMS:** No, sir, Your Honor.

2 **THE COURT:** Do you want your client to say
3 anything?

4 **DEFENDANT:** Yes, sir, Your Honor. Judge
5 Keesley, it have been two years I've been
6 incarcerated, bond denied, pose a danger to my
7 community, no evidence, DNA, no photo lineup. The
8 State have an unreliable witness. I don't
9 understand how I pose a danger to my community. My
10 charge is not dismissed due to unduly dilatory
11 circumstances. I came to court last, the court term
12 in May and they needed an interpreter, which is --
13 he was unuseful. He wouldn't do no good for them.

14 **THE COURT:** That's not what I understood. The
15 interpreter was here at great expense to the county.

16 **DEFENDANT:** Well, my understanding the
17 continuance was for an interpreter. But my
18 co-defendant was not willing to testify, pleading
19 the fifth. The charge was not dismissed. That's
20 all, Your Honor.

21 **THE COURT:** The order that I issued at that
22 time was that issues arose. It was scheduled to be
23 tried. There was an interpreter in Mandarin Chinese
24 who had been brought in from another state, that
25 there was some change in -- what I was being told

1 was there was some change related to a witness and
2 that that witness had to have an attorney and that
3 that attorney had just been appointed and had only
4 had eight days of discovery and that that's why the
5 trial did not go forward and -- well, I mean it's
6 set forth in the order. I'm sure you've got a copy
7 of it.

8 I don't expect there to be agreement, but I
9 mean I haven't got anything against you. There's no
10 bias against you. I just have to make calls. And
11 the fact that there's no DNA and no photo lineup,
12 probably well over 70 percent of the cases I do
13 don't have any DNA or photo lineups.

14 So if I were in your position, I'd probably be
15 extremely upset about sitting in jail for two years
16 and wouldn't understand why the judge wouldn't let
17 me out of jail, but it's not anything directed
18 towards you personally.

19 And if the motion is for me to recuse myself,
20 the motion is denied. It's preserved for the
21 record. If there is some issue, you can take it up
22 with the court above me, but what I understood there
23 was a co-defendant who had given statements that
24 implicated the other two co-defendants.

25 **DEFENDANT:** Yes, sir, Your Honor --

1 **MR. WILLIAMS:** Thank you, Your Honor.

2 **THE COURT:** Do y'all have pretrial issues other
3 than what we just did?

4 **MR. MAYE:** Nothing that I'm aware of, Your
5 Honor.

6 **THE COURT:** There's no need for a Denno
7 hearing? There's no need for a Neil versus Biggers
8 hearing on identity, there's none of that?

9 **MR. WILLIAMS:** Your Honor, I believe I know my
10 colleague well enough, but I would certainly trust
11 that based on the information of the victims, there
12 will not be an in-court identification which he will
13 solicit from them because we would object to it on
14 the basis that we don't believe there is any
15 evidence of an identification that they will be able
16 to offer. And I believe and I trust that the
17 Solicitor would not seek to have that done in the
18 course of this trial and certainly I would object to
19 it.

20 **THE COURT:** Well, they can't. If there's going
21 to be an in-court identification by anybody other
22 than a co-defendant who knew these two men
23 beforehand, you've got to have a Biggers hearing.

24 **MR. MAYE:** We do not have that issue, Your
25 Honor.

1 things that they expect you to do ethically if you
2 perform this function.

3 And there is one section that I'll go ahead and
4 mention here so the attorneys can be prepared to
5 argue it to me, but there is a section in there that
6 if an interpreter is utilized as part of the
7 investigation, that can create a conflict of
8 interest. So I've looked at the statute, and the
9 statute is 15-27-155, if an interpreter is not on a
10 list, the court can still qualify that person to
11 serve if the interpreter meets the requirements of
12 subsection (B).

13 Subsection (B) is that the person has to be 18
14 years of age or older. He's not a family member of
15 the party or a witness. He is an instructor of a
16 foreign language at an institution of education; or
17 that he has educational training or experience that
18 enables him to fluently speak a foreign language and
19 interpret the language of another person. He cannot
20 be confined to an institution.

21 You're not in jail anywhere, are you?

22 **INTERPRETER:** No.

23 **MR. MAYE:** Your Honor, may I question the Clerk
24 of Court briefly?

25 Madame Clerk, where were you able to obtain his

1 information from in seeking an interpreter?

2 **THE CLERK:** I'm really not sure. I can't
3 remember if I called Greenville, South Carolina, the
4 clerk's office, because we searched diligently for a
5 Chinese interpreter.

6 **MR. MAYE:** I just could not remember if you got
7 it from court administration or where you
8 obtained --

9 **THE CLERK:** No. Court administration did not
10 have any Chinese interpreters. South Carolina does
11 not have any that are certified.

12 **MR. MAYE:** Thank you.

13 **THE COURT:** All right. We're at ease.

14 During the break, Mr. Louie, during this break,
15 I'm going to give you this piece of paper, but I
16 don't want you talking to anybody about your
17 testimony, okay?

18 **INTERPRETER:** Okay.

19 **THE COURT:** We have to get it printed out
20 before I can give it to you.

21 (Brief Recess.)

22 (Court's Exhibit Number 1, résumé of Ming
23 Louie, marked for identification purposes.)

24 **THE COURT:** All right. Mr. Louie, have you had
25 a chance to read through those ethical rules?

1 defense?

2 **INTERPRETER:** No.

3 **THE COURT:** All right. The way I read those
4 ethical rules, it listed certain things that could
5 disqualify a person, would be a conflict of
6 interest, but at the end, it had an explanation, I
7 don't have it in front of me, but it had an
8 explanation that the mere fact that one of those
9 things might exist is not in and of itself proof of
10 a conflict of interest.

11 I find beyond a reasonable doubt that Mr. Ming
12 Louie is qualified as an interpreter and translator
13 from Chinese and Mandarin Chinese to English and
14 vice versa, that he has the requisite requirements
15 even though he's not listed on the list of qualified
16 interpreters. He's over 18 years of age. He's not
17 related as a family member or otherwise to any party
18 or witness. And he has educational training and
19 experience that enables him to fluently speak both
20 languages or all languages that are an issue here
21 and interpret the language for the persons involved
22 including the Court. He's been qualified previously
23 in other courts. He's never been denied
24 qualification.

25 My conversations with the Clerk before this

1 trial were very brief, but basically I understood
2 there was difficulty in even locating someone. She
3 has provided me a list of interpreters that she
4 obtained from court administration. It's a 2009
5 list, which is when this would have been -- the
6 effort to obtain an interpreter would have been
7 going on.

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

15 And this gentleman when he was checked out,
16 came out to be highly qualified. He has advanced
17 degrees which would require him to be able to be
18 fluent in both languages in order to practice his
19 profession in the United States and to get his
20 education. These languages are his -- of Chinese,
21 Mandarin Chinese are his native tongue.

22 I used some different words during my
23 questioning of him that were not routine sort of
24 easy words and he never in any way hesitated. The
25 only time he hesitated was when I asked stupid

1 **Q** In these statements, you said you hereby
2 solemnly swear; is that right? In this statement,
3 I, Alvin Phillips, do hereby solemnly swear. Isn't
4 that what you said?

5 **A** (No response.)

6 **Q** In this statement, you just admitted to me that
7 you signed this freely.

8 **A** Yes, sir.

9 **Q** Okay. Now, when you swear, you swear to tell
10 the truth, don't you?

11 **A** Yes, sir.

12 **Q** Okay. How many truths are there?

13 **A** One.

14 **Q** There's only one truth, isn't it?

15 **A** Yes, sir.

16 **Q** Okay.

17 **MR. WILLIAMS:** Court's indulgence.

18 **THE COURT:** Yes, sir.

19 (Pause.)

20 **MR. WILLIAMS:** Thank you, Your Honor.

21 **THE COURT:** Redirect.

22 **MR. MAYE:** Just a couple.

23 REDIRECT EXAMINATION

24 **BY MR. MAYE:**

25 **Q** Who wrote out that statement that -- these two

1 right here that the defense gave you saying they
2 didn't do this, who wrote these out?

3 A I don't know.

4 Q Where did you get them from? What were the
5 circumstances of those statements being generated?
6 Did you write them?

7 A No, sir.

8 Q These are not your words at all, are they?

9 A No, sir.

10 Q Someone else wrote this. Where were you and
11 what were the circumstances about that?

12 A I was in Edgefield County.

13 Q Okay.

14 A In my room.

15 Q And how did those get presented to you?

16 A K.C. Langford.

17 Q K.C. Langford brought those to you?

18 A Yes, sir.

19 Q Why did he want you to sign those?

20 A Keep him and Bryan Phillips from getting in
21 trouble.

22 Q Keep them from getting in trouble?

23 A Yes, sir.

24 Q Okay. What did he tell you would happen if you
25 signed those statements?

1 **A** That nobody will be in trouble.

2 **Q** That no one would be in trouble?

3 **A** Yes, sir.

4 **Q** Alvin, at the time that this happened in
5 August, were these two men your friends?

6 **A** Yes, sir.

7 **Q** You never wanted anybody to get in trouble with
8 this, did you, especially not your friends, did you?

9 **A** No, sir.

10 **Q** And it's not been easy having to testify
11 against them, has it?

12 **A** No, sir.

13 **Q** So they asked you to sign those statements
14 there telling you no one would get in trouble?

15 **A** Yes, sir.

16 **Q** Are those true, the ones that you signed here?
17 Who was with you when you did the robbery?

18 **A** Bryan Phillips and K.C. Langford.

19 **Q** Is what you've told the jury up here under oath
20 today testifying live before them is that true? Are
21 these the two gentlemen that were with you when you
22 did the robbery?

23 **A** Yes, sir.

24 **Q** Then those statements they asked you to sign
25 they're false, aren't they?

1 **A** Yes, sir.

2 **Q** Did you sign them to please them? Were they
3 pressuring you to sign those?

4 **A** No, sir.

5 **Q** They told you if you sign them, nobody would be
6 in trouble?

7 **A** Yes, sir.

8 **Q** Didn't end up being good advice, did it?

9 **A** No, sir.

10 **Q** But you've had the advice of a lawyer, haven't
11 you? And you've entered a guilty plea, haven't you?

12 **A** Yes, sir.

13 **Q** At this point in time, all you can do is hope
14 for the best. Are you telling the truth?

15 **A** Yes, sir.

16 **Q** Were you ever asked by anybody from the
17 prosecution's side or the police to tell any lies?

18 **A** No, sir.

19 **Q** Is this statement that K.C. Langford gave to
20 you is that a lie?

21 **A** Yes, sir.

22 **Q** It's a lie because who was with you when you
23 did the robbery?

24 **A** Bryan Phillips and K.C. Langford.

25 **Q** You've never wanted to tell on them at all,

1 have you?

2 A No, sir.

3 Q In fact, you wish this whole thing would go
4 away for all of you, don't you?

5 A Yes, sir.

6 Q When you were preparing for your testimony or
7 when you were interviewed by Roosevelt Young or when
8 you were interviewed by SLED or anybody else, did
9 anybody ever ask you to say anything other than the
10 truth?

11 A No, sir.

12 Q Were you informed to tell the truth no matter
13 what it was when you were preparing for your
14 testimony?

15 A Yes, sir.

16 Q Have you told the truth up here in front of
17 this jury?

18 A Yes, sir.

19 Q You were previously asked in this case kind of
20 a two part question. Who hit the man when y'all
21 were out there at the scene there in the dark, who
22 hit him?

23 A Bryan Phillips.

24 Q Okay. Did you ever hit him with a gun?

25 A No, sir.

1 **Q** Was he ever hit with a gun?

2 **A** No, sir.

3 **Q** Okay. So when you were asked about who hit him
4 with a gun, no one ever hit him with a gun, did
5 they?

6 **A** No, sir.

7 **Q** The only blow that was struck on either one of
8 the Chinese people were struck by who?

9 **A** Bryan Phillips.

10 **Q** Okay.

11 **MR. MAYE:** That's all I have. Thank you.

12 **THE COURT:** Mr. Calhoun, do you have any other
13 questions of the witness?

14 **MR. CALHOUN:** I do, Your Honor.

15 RECROSS-EXAMINATION

16 BY MR. CALHOUN:

17 **Q** Mr. Phillips, I noticed when you were just
18 testifying with Mr. Maye, you weren't looking over
19 at us, were you?

20 **A** No, sir.

21 **Q** Because you knew what to say when Mr. Maye was
22 asking the questions, right?

23 **A** Sir?

24 **Q** You knew what to say when Mr. Maye was
25 suggesting the answers to the questions to you,

1 LAMAZ ROBINSON,

2 having been duly sworn, testified as follows:

3 **THE CLERK:** State your full name and spell your
4 last name, please.

5 **THE WITNESS:** It's Lamaz Robinson,
6 R-o-b-i-n-s-o-n.

7 DIRECT EXAMINATION

8 BY MR. MAYE:

9 **Q** Investigator Robinson, tell the ladies and
10 gentlemen of the jury about your background in law
11 enforcement, where all you've worked, where you were
12 employed back in August, where you're currently
13 employed.

14 **A** I've been in law enforcement for approximately
15 seven years now. I worked in Johnston for the last
16 past six years. I worked in Saluda County for a
17 year. I was employed at Johnston Police Department
18 in the capacity of investigator back in August the
19 14th of 2008.

20 **Q** Okay. Let me ask you this. August the 14th of
21 2008, did you respond out to 708 Academy Street
22 where the Chinese people live?

23 **A** I did.

24 **Q** Okay. Were you able to meaningfully
25 communicate with the people beyond getting a bare

1 framework of what was going on?

2 **A** No. There was a great language barrier that
3 was there.

4 **Q** Okay. What were you able to do once you got
5 out to the scene? What were you able to do other
6 than to find out they got robbed basically?

7 **A** Yeah. I found out they got robbed and they
8 were able to just tell me that it was three black
9 men and they had a gun and that they ran. At that
10 point in time, I notified Chief Aston and went
11 through all the protocols of notifying the sheriff
12 and his command staff through dispatch and asked for
13 a dog team.

14 **Q** Investigator Robinson, were you familiar with
15 the Chinese people? I mean, did you know their
16 names or anything like that?

17 **A** I don't know their names. I am familiar with
18 them.

19 **Q** Had you been eating in the restaurant and been
20 ordering in there and at least had exposure to them
21 through being in Johnston for all that time?

22 **A** Yes, sir.

23 **Q** Okay. When you were confronted with trying to
24 communicate with them, what information were you
25 able to glean? I mean, what were you able to get

1 given the language barrier?

2 **A** Like I said, I wasn't able to get much other
3 than the fact that they had been robbed, said three
4 black males had a gun and took the money and ran.

5 **Q** Were you able to get anything about whether or
6 not their faces were being able to be seen or
7 anything like that? Were you able to get anything
8 like that?

9 **A** No, sir. Officer Campbell is the one who
10 initially responded. I came out of Edgefield to
11 respond to his request.

12 **Q** As to questions like did they have watches,
13 jewelry, facial hair, all of those details, the
14 normal questions that you would be able to ask a
15 victim that spoke English, were you able to ask them
16 those sorts of questions?

17 **A** No.

18 **Q** Were you -- when was the first time that you
19 were ever able to have any meaningful communication
20 between you and the victims? How long after the
21 fact was that?

22 **A** That was over a year and something after the
23 fact when we found someone from USC.

24 **Q** Was there a difficulty in finding anybody that
25 could translate to talk to them at all?

1 **A** Yes.

2 **Q** Okay. Were you finally able to find someone
3 and how were you able to do that to have any
4 communication with them?

5 **A** Yes, we were able to find someone by calling a
6 professor over at the University of South Carolina
7 in Columbia and he directed us to someone who could
8 speak Chinese. We attempted to call someone that
9 night, but the lady that we called, she can only
10 speak Spanish.

11 **Q** Okay. Was that very limiting in what
12 information that you were able to obtain as opposed
13 to what you would have been able to obtain typically
14 based on your experience and training?

15 **A** Yes.

16 **Q** How was that different? What differences would
17 there have been if you had responded to a normal
18 investigation given the fact that your --

19 **MR. CALHOUN:** Objection to leading the witness,
20 Your Honor.

21 **THE COURT:** State your question in a nonleading
22 fashion, please.

23 BY MR. MAYE:

24 **Q** What differences were there in between this
25 investigation and a normal investigation?

1 **A** This investigation is due to the fact that the
2 language barrier, most people that we come in
3 acquaintance with we can speak English, they can
4 translate back and forth from English with us. We
5 can ask them questions in English, they can give us
6 answers in English. With these particular
7 individuals, they were speaking Chinese. We wasn't
8 able to ask them any questions or receive any
9 answers from them that we would have understood what
10 they were saying.

11 **Q** What were you able to accomplish or do that
12 night then given that barrier?

13 **A** Very little. Like I said, the only thing we
14 did was when they said they was robbed by three
15 black males, had a gun, at that point in time, the
16 only thing we could do is call out the dog team and
17 see if we was able to track and get anything on the
18 tracking.

19 **Q** Were you able to have any success with the dog
20 team?

21 **A** No, sir.

22 **Q** Were you able to have any success with anything
23 that you did there that night?

24 **A** No, sir.

25 **Q** Okay. When was the first time that you got any

1 movement on this case after the time of the incident
2 on August the 14th of 2008?

3 **A** The first time that we ever got any type of
4 leeway on this case is I was approached by
5 Investigator Roosevelt Young and SLED Agent Michael
6 Perry on September the 29th of 2008. And they
7 informed me that they had some information and they
8 talked to some people and that's when they spoke
9 with Mr. Alvin Phillips and he confessed to this.

10 **Q** Who else did he implicate other than himself?

11 **A** He implicated Mr. K.C. Langford and Bryan
12 Phillips.

13 **Q** Okay. What about Alvin Phillips implicating
14 himself -- what did you do based on getting his
15 statement? Did you get the statement that's already
16 in evidence here?

17 **A** Yes. I received that statement from
18 Investigator Young.

19 **Q** Who did you first talk to that night, what were
20 the circumstances? Who did you first talk to?

21 **A** On the day of this statement that was given?

22 **Q** Yes.

23 **A** I never actually had any talks with anyone.
24 The first person that came to our office to be
25 interviewed was Veronica Phillips.

1 **Q** Okay. So Veronica Phillips was there?

2 **A** Yes.

3 **Q** When and how much later did Alvin Phillips come

4 up there?

5 **A** Approximately maybe an hour later if so.

6 **Q** Okay. Were you provided with a copy of the

7 statement that Alvin Phillips gave?

8 **A** I was. I actually read Alvin his Miranda

9 rights and then Investigator Young and Agent Perry

10 talked to him, then Investigator Young by himself.

11 **Q** Did y'all threaten him or coerce him in any way

12 in order to try to get him to talk?

13 **A** No, sir.

14 **Q** Were any promises made to him in order to try

15 to induce him to give a statement?

16 **A** No, sir.

17 **Q** Okay. But as a result of that, he gave you the

18 statement; is that correct?

19 **A** Yes.

20 **Q** Okay. What charges did you cause to be

21 instituted based on your responsibilities as an

22 investigator in this state -- in this case, what

23 charges?

24 **A** All three subjects was charged with armed

25 robbery, burglary in the first degree, kidnapping,

1 assault and battery with intent to kill, possession
2 of a weapon during the commission of a crime and
3 criminal conspiracy.

4 Q Okay. What about that statement --

5 A And kidnapping. I'm sorry.

6 Q What about that statement gave it any special
7 significance to you when Alvin gave that statement?
8 I mean, what about it gave you significant -- did
9 you think was significant?

10 A Well, during my course of the investigation,
11 often times when someone is involved in something,
12 they don't normally implicate themselves. He
13 implicated himself and these other two, Bryan and
14 K.C., in this that happened, that was of
15 significance to me --

16 MR. CALHOUN: Objection, Your Honor. He's ask
17 -- he's giving an expert witness to the jury,
18 "normally what happens on these cases", there's no
19 normal on a criminal case. If he's going to
20 establish himself as some sort of expert, a
21 foundation needs to be laid.

22 MR. MAYE: He's not giving an opinion, Your
23 Honor. He's not issuing any opinion. I asked him
24 what was significant about that investigation in
25 regard to him getting charges.

1 **THE COURT:** It sounds to me like he's
2 attempting to bolster or offer evidence about the
3 credibility of another witness, which is improper.
4 That witness testified, the jury can evaluate
5 whether that witness was credible or not, whether
6 this man believed him or not is irrelevant. Go
7 ahead.

8 **BY MR. MAYE:**

9 **Q** Was the statement that he gave, Alvin Phillips,
10 did it implicate himself?

11 **A** It did.

12 **Q** Who else did it implicate?

13 **A** K.C. Langford and Bryan Phillips.

14 **Q** What else were you able to do on the case,
15 Investigator Robinson?

16 **A** That's all -- after I charged these
17 individuals, I did nothing else until we got an
18 interpreter that was able to speak and we went back
19 and spoke with the victims in further detail.

20 **Q** Was there ever any attempt on your part to get
21 Alvin Phillips to color his testimony in any
22 direction? Did you ever ask him to do anything?

23 **A** No, sir.

24 **MR. MAYE:** Answer any questions the defense
25 has.

1 moving the gentleman to Saluda County in his
2 cross-examination. I never raised that when I had
3 Mr. Young on direct -- on direct examination.

4 **MR. MAYE:** Your Honor, I am certain that
5 Investigator Young was directly asked about his
6 waffling. In fact, he was asked more than one time
7 about this witness waffling in this case.

8 **MR. CALHOUN:** He was, Your Honor. He was asked
9 by me. I remember asking the question, but this is
10 not a new issue. This was raised in great detail by
11 myself yesterday with Alvin Phillips. It was a huge
12 subject of cross-examination and it's not a new
13 issue. And Roosevelt Young wasn't asked to shed any
14 new light on that issue. He was just asked to
15 acknowledge that it had existed. His answer was a
16 yes and that's all he said.

17 **THE COURT:** All right. Make your proffer so I
18 can know what this is all about.

19 **MR. MAYE:** Okay.

20 **THE COURT:** Swear him in please, Madame Clerk.

21 GUSTAV PAUL SAWVELL,

22 having been duly sworn, testified as follows:

23 **THE CLERK:** State your full name and spell your
24 last.

25 **THE WITNESS:** Gustav Paul Sawvell. Last name

1 is S-a-w-v-e-l-l.

2 DIRECT EXAMINATION

3 BY MR. MAYE:

4 Q Mr. Sawvell, did you have an occasion during
5 both 2009 and up till this year in May to be
6 incarcerated in the Edgefield County Detention
7 Center with Alvin Phillips, Bryan Phillips and K.C.
8 Langford?

9 A Yes, sir.

10 Q Okay. During the time that you were
11 incarcerated, what did you hear from the, I guess,
12 the co-defendants of Alvin Phillips in this case?
13 What did you hear and which co-defendant did you
14 hear, what did you hear them say in regard to Alvin
15 Phillips testifying as to whether or not they wanted
16 him to testify and what they wanted him to do while
17 you were in the detention center?

18 A That they were going to write some letters to
19 somebody about them not doing the crime that they
20 were going to do, telling Alvin basically to lie.

21 Q They were telling him to lie?

22 A Yes, sir.

23 Q Okay. How often did this behavior occur that
24 they were trying to influence him -- or which one
25 was trying to influence him to lie and not to

1 testify?

2 **A** Mr. Langford.

3 **Q** Okay. What access did you have with
4 Mr. Langford?

5 **A** He'd come down to my room almost every night.

6 **Q** How often did this behavior about him trying to
7 get Alvin Phillips not to testify and to lie, how
8 often did that occur?

9 **A** About the whole time he was there.

10 **Q** Did it occur during a given week? Did it occur
11 multiple times during a given week?

12 **A** Multiple times, yes, sir.

13 **Q** Let me show you what's been marked Defense
14 Exhibit 1 and 2. Let you look at those.

15 **A** (Witness reviewing documents.)

16 **Q** During the time that you were a cellmate with
17 K.C. Langford did you observe him preparing
18 documents in the name of Alvin Phillips dealing with
19 that same subject matter?

20 **A** Yes, sir.

21 **Q** Describe to the Court in detail what you saw
22 and observed and what he was doing and how you got
23 access to see that.

24 **A** They had some paperwork that they had filled
25 out just statements letting Alvin know what to say

1 when it was time to go to court, kind of like
2 coaching him, putting him on -- but the letters
3 weren't these here.

4 **Q** Did you see him working on other letters of the
5 same subject matter?

6 **A** Yes, sir.

7 **Q** Statements that purported to be from Alvin
8 Phillips that he was preparing?

9 **A** Yes, sir.

10 **Q** Okay. Was he trying to convince Alvin Phillips
11 not to testify in this case?

12 **A** Yes, sir.

13 **Q** Okay. Was Alvin Phillips moved to Saluda
14 County as a result of that?

15 **A** Yes, sir.

16 **Q** Okay. About when was he moved to Saluda
17 County; do you remember?

18 **A** About July.

19 **Q** In about July --

20 **A** Of '09.

21 **Q** You think it was about that time?

22 **A** Roughly.

23 **Q** Okay. Let me ask you this. What efforts did
24 he continue to do in order to influence him over in
25 Saluda County? What was he doing and what did he

1 share with you in regard to his attempts to continue
2 to influence him once he was moved over to Saluda?

3 A Phone calls through other people on the
4 outside, mainly his -- Alvin's sister.

5 Q What was he telling you that he was attempting
6 to do and what advice did he seek from you?

7 A He was -- kept telling his sister to let Alvin
8 know to not show up, tell them that he wasn't going
9 to be a witness to the case.

10 Q Okay. Right at the last term of court in May
11 in between the first week and the second week when
12 this trial was imminent, what steps was he taking
13 specifically to try to reach Alvin and get this
14 information to him and what, if any, statements or
15 documents did you see him preparing in preparation
16 for that?

17 A I didn't see any paperwork at that time. I
18 only heard the phone calls that he was making,
19 calling --

20 Q What was he saying?

21 A I didn't hear the whole conversation, just bits
22 and pieces telling his sister that, let Alvin know
23 that -- to say, hey, write up a piece of paper let
24 your lawyer know that you don't want to be a
25 witness, that you don't want to show up. If you

1 don't show up, we get to go scot-free.

2 Q He was telling him that if he didn't testify or
3 he didn't show up, he got to go scot-free?

4 A Yeah.

5 Q Okay. What advice did he seek from you or what
6 advice did you give him in regard to how he should
7 contact him with him in Saluda, it being at the 11th
8 hour right before trial?

9 A I really didn't give him much what to do.

10 Q You were not able to give him any advice as to
11 that?

12 A Yeah.

13 Q Was he attempting to do it in a written
14 fashion? Did you suggest to him that he do it in an
15 oral fashion or make a phone call rather than try to
16 do it in writing?

17 A He was going to write a letter to him and --

18 Q Who was he going to give that letter to?

19 A That I'm not sure of. I know he was going to
20 make a phone call, though, because I gave him a card
21 to make a call.

22 Q You gave him a card so he could make a call for
23 that purpose?

24 A Yeah. And he called up his -- Alvin's sister.

25 Q So you personally heard K.C. Langford attempt

1 on a repeated basis to get Alvin Phillips not to
2 testify and to lie?

3 A Yes, sir.

4 Q When -- let me ask you this. At the time that
5 you pleaded guilty in May, did you relate any of
6 this information or try to get any of this
7 information to law enforcement prior to pleading
8 guilty?

9 A No, sir.

10 Q After you pleaded guilty, how did you get the
11 information that you had? Had you already been
12 sentenced and pled guilty at that time?

13 A I've already been sentenced and pled guilty.

14 Q How did you get word to the State that you had
15 any information or that you had anything involved in
16 this, who did you contact?

17 A I talked it over with my lawyer on my way out.
18 I said something to my lawyer.

19 Q On your way out of here?

20 A On my way out.

21 Q But you had already been sentenced?

22 A Already sentenced.

23 Q Who was your attorney?

24 A Andy Anderson.

25 Q Okay. When is the first time that you and I

1 believe that there wasn't sufficient evidence in
2 this matter in which the jury could find guilt of my
3 client and any decision that they made we believe
4 that it was made out of passion or prejudice. We
5 would ask the Court to grant a new trial. If not,
6 direct a verdict of not guilty.

7 **THE COURT:** Do you adopt the same arguments as
8 well, Mr. Calhoun?

9 **MR. CALHOUN:** Yes, Your Honor.

10 **THE COURT:** The jury acted within its province.
11 There's no indication that the jury's verdicts are
12 the product of any passion, prejudice, caprice or
13 any improper or undue influence. The motions are
14 respectfully denied.

15 **MR. WILLIAMS:** Thank you, Your Honor.

16 **THE COURT:** I don't see a sentence sheet on --

17 **MR. MAYE:** They would have been taken off the
18 indictments at the time that they were passed up,
19 Your Honor, I would imagine.

20 **THE COURT:** I've got sentence sheets on
21 everything except this kidnapping charge on K.C.
22 Langford.

23 **MR. MAYE:** I'll retrieve them, Your Honor. You
24 have one on everything but kidnapping on K.C.
25 Langford?

1 **THE COURT:** Yes.

2 We're a ease.

3 (Brief Recess.)

4 **THE COURT:** Do you have anything on sentencing,
5 Mr. Calhoun?

6 **MR. CALHOUN:** Your Honor, you're aware of what
7 he has on his record and the age that he was when
8 this occurred and I just please ask you to take that
9 into consideration.

10 **THE COURT:** Does the State have anything on
11 sentencing on Mr. Langford?

12 **MR. MAYE:** No, sir, Your Honor. You've heard
13 all of the facts. You're very familiar with this
14 case over a long period of time. I leave it to the
15 wise discretion of the Court.

16 **THE COURT:** Mr. Langford, do you want to say
17 anything?

18 **DEFENDANT LANGFORD:** Yes, sir. As of now, I
19 understand that I'm under your leniency. I just
20 like to direct it to you about me being found guilty
21 in the eyes of the jurors by one statement that was
22 made on the behalf of a co-defendant who wavered
23 back and forth. I don't think was reliable.

24 I don't understand how I got put in this crime.
25 I don't know why he placed me there. I do know he

1 tried to remove me. I do know that he didn't want
2 to testify. I do know that the last court term, he
3 pled the Fifth and didn't want to testify. And it's
4 just, I feel that it's some type of prejudice
5 because of my charges didn't get dropped last court
6 term.

7 I came to court term -- I came to court last
8 May facing the same thing that I was facing today,
9 these same charges. I came taking the same chances
10 today of being found guilty and not guilty.

11 The last court term I don't feel that I got the
12 proper justice because Alvin Phillips came to court
13 that morning to testify for the State the way he did
14 on yesterday, but he also that morning informed them
15 that he was not going to testify that morning. And
16 I just -- I filed at the time for a motion of fast
17 and speedy, in the alternative to dismiss. And my
18 trial was not granted that day because of unduly,
19 dilatory, laziness of the State and I was ready to
20 go forth at that time.

21 If Mr. Phillips wanted to testify at that time,
22 he had the right to do so, but he did not. So it
23 just doesn't amaze me. And I wrote my lawyer and
24 asked him at the time why didn't my trial get
25 dismissed when I filed for an alternative to

1 dismissal along with a fast and speedy trial.

2 And I knew in my mind the same tactic that the
3 Solicitors was going to use this court term by
4 allowing him to be applied pressure by his lawyer
5 and the Solicitors, I knew that they were going to
6 threaten him if you don't testify to -- with a
7 larger sentence over his head. I understand that
8 it's -- and I don't know the deal that he has
9 gotten, but I do know, Your Honor, as you've heard
10 for yourself, that it's charges that's being held
11 over his head that relied on what happened in this
12 trial this court term.

13 I feel some type of prejudice because my trial
14 didn't go for h the last court term. I feel that my
15 trial should have got heard, that if Mr. Phillips
16 didn't come to testify last court term, what enabled
17 him to come to court term -- this court term to
18 testify? What was the difference from last court
19 term to this court term? Was it last court term
20 that they did not apply enough pressure to him to
21 get him to testify? I mean, I just want you to take
22 that into consideration, Your Honor.

23 I talked to my lawyer. He told me what I was
24 facing. He obviously at one time thought that my
25 co-defendant was going to testify.

1 Your Honor, as you see, I came out on faith
2 with unexper ence (sic) in the law accepting my
3 lawyer on my behalf to be my defense, but I walked
4 out on faith last court term trusting in my God to
5 touch Alvin eart and not to testify. And God
6 touched him ast court term to not allow him to
7 testify. I eel last court term that I was supposed
8 to walk free

9 I know hat my other co-defendant, Mr. Bryan
10 Phillips, he filed for bias, a motion to relief
11 (sic) you off this case. I also felt that it was in
12 your hands last court term to dismiss these charges.

13 At that time, I was in the county for
14 approximately 20 months. And I was there them 20
15 months without the investigator of my case,
16 Mr. Lamaz Robinson, never coming to investigate or
17 talk to me period to get my side of the story or to
18 see what happ ned on the night of the crime. I know
19 that it was i your hands, Your Honor, last court
20 term to bring about justice to just do your job the
21 way that you ee fit and that you saw fit.

22 It's no oublet in my mind that the Solicitors
23 has coerced Mr. Alvin Phillips. They have pressured
24 Mr. Alvin Phillips. They have been working back and
25 forth with his lawyer to negotiate a plea bargain

1 with him if he testified or he didn't testify.

2 And I just want you to think about it, Your
3 Honor, and everyone else, it's Alvin trying to save
4 his hide himself. I don't doubt in my mind that if
5 it was his sister, if it was his mother up here that
6 he had to testify against to keep from getting 60
7 years, 50 years, 30 years what my charges carry,
8 possibly life, I don't doubt in my mind that he
9 would have testified against them.

10 But I just want you to take into consideration,
11 Your Honor, that last court term I was prepared to
12 go to court and get tried and I did not get that. I
13 don't know what type of justice that is in your
14 eyes.

15 I have been -- I filed a motion of -- for a
16 fast and speedy trial, in the alternative to dismiss
17 in June or July 2009 and my case didn't come to
18 court until May 2010, 20 months later. I don't know
19 the limitations on how long or fast a speedy trial
20 is to be granted in the State of South Carolina, but
21 I have done everything that I can on my behalf to
22 come to court to get this issue before a court and
23 get it out of the way.

24 And I don't feel that it's justice on the
25 circumstances of evidence and the direct evidence

1 for me to be found guilty. I understand that it was
2 no follicle hair, no DNA, no blood, of course, Your
3 Honor, but it's just on the statement of one
4 co-defendant who's been wavering back and forth,
5 who's been, don't think, reliable.

6 Last court term I discussed it with my lawyer
7 about going to trial. And it was -- like I said at
8 the time, he was informed that Alvin was going to
9 testify. And he asked me did I want to get a deal
10 and I didn't because I didn't feel like I was
11 guilty. I didn't feel like that I should take a
12 plea bargain for something that I did not do. I
13 wasn't at the crime. I wasn't caught at the crime.
14 I wasn't investigated about the crime. I wasn't
15 questioned by any investigators about the crime. I
16 was only placed there by a co-defendant.

17 This co-defendant also removed me away from
18 this crime on two different occasions, not only did
19 he write one statement, he wrote two statements.
20 Two statements in my eyes, it always is more than
21 one with the one statement that he gave to law
22 officials. He also indicated that he wanted to
23 testify last court term, but he also indicated that
24 he did not want to testify last court term. Why did
25 the State get a continuance in that case, I don't



ALAN WILSON
ATTORNEY GENERAL

October 19, 2011

VIA HAND DELIVERY

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

RE: The State v. K.C. Langford
2008-GS-19-673 and 2008-GS-19-272, 273, 278

Dear Ms. Gee:

Enclosed please find the original and six (6) copies of the **Respondent State's Return to**
Petition of South Carolina Public Defender Association to File An Amicus Brief, along with
a **Proof of Service**, in the above referenced case, which I am today serving upon opposing
counsel as shown below.

nd six (6) copies of the **Respondent State's Return to**
Defender Association to File An Amicus Brief, along with
eferenced case, which I am today serving upon opposing

Sincerely,

David Spencer
Senior Assistant Attorney General

DS/nb

Enclosures

cc: Elizabeth Franklin-Best, (2 copies)
E. Charles Grose, Esquire, (2 copies)
Trisha Allen, Victim Services (copy)

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OCT 19 2011

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 19 2011
SC Court of Appeals

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

THE STATE,

Respondent,

vs.

K.C. LANGFORD,

Appellant.

**PETITION FOR REHEARING REGARDING
PETITION OF SOUTH CAROLINA PUBLIC
DEFENDER ASSOCIATION TO FILE AN AMICUS
AND MOTION TO ACCEPT RESPONDENT'S RETURN
TO THE PUBLIC DEFENDER ASSOCIATION'S PETITION**

Pursuant to SCACR Rule 240, Respondent, the State of South Carolina, asks for rehearing on the grant of the South Carolina Public Defender Association's petition to file an *amicus curie* brief and further requests this Court to accept and consider the Respondent's return attached to this Petition.

(1) This matter was previously held in abeyance pending Respondent's motion for Appellant to order the transcript of a May 2010 motion hearing and hold all due dates in abeyance. Without a ruling from this Court on the matter, Appellant ordered the transcript. When the transcript was received by Respondent, Respondent sent this Court a letter indicating its receipt of the transcript and noted that the Court had never ruled on Respondent's motion. Respondent concluded that if the motion for abeyance was granted that the due date would potentially be October 10, 2011.

(2) Respondent, due to work on other pending matters before this and other courts, was not able to complete the return by October 10, 2011. On October 7 or 10, at undersigned counsel's request, counsel's legal assistant, Norma Bigbee, contacted the Court of Appeals and spoke with the case manager, Latria Bellamy, to determine if a due date was determined by this Court and whether an extension request was needed to attain additional time to complete the return. Ms. Bigbee also called and left a phone message for the Honorable Tanya Gee, who transferred the call to Ms. Bellamy. Ms. Bellamy indicated again that this Court had not ruled on the previous motion so it appeared that the time for the return was still held in abeyance. In reliance on this information, Respondent did not request an extension for the return.

(3) This Court issued an order dated October 13, 2011 granting the petition to file the *amicus curie* brief.

(4) Respondent respectfully requests this Court to accept Respondent's Return and for the reasons argued in the Return, to deny the Public Defender Association's petition to file an *amicus curie* brief.

CONCLUSION

Respondent respectfully requests this Court to grant the petition for rehearing, to accept the Return to the Petition to file an *amicus curie* brief, and pursuant to the arguments presented in Respondent's Return, deny the Petition to file an *amicus curie* brief.

Respectfully submitted,

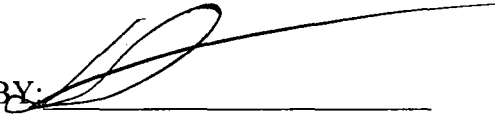
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DAVID SPENCER
Senior Assistant Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 19, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Edgefield County
Honorable K.C. Langford, Circuit Court Judge

RECEIVED

OCT 19 2011

SC Court of Appeals

THE STATE.

Respondent,

vs.

K.C. LANGFORD,

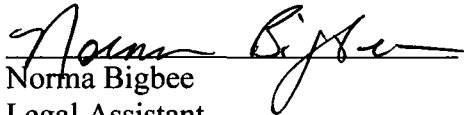
Appellant.

PROOF OF SERVICE

I, Norma Bigbee certify that I have served the Petition for Rehearing Regarding Petition of South Carolina Public Defender Association to File An Amicus and Motion To Accept Respondent's Return To The Public Defender Association's Petition on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Elizabeth Franklin-Best, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211 and E. Charles Grose, Esquire, 600 Monument St., Box P-133, Greenwood, SC 29646.

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

This 19th day of October, 2011.


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



ALAN WILSON
ATTORNEY GENERAL

October 19, 2011

VIA HAND DELIVERY

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

RE: State v. K.C. Langford

Dear Ms. Gee:

Enclosed please the original and (6) copies of the Petition for Rehearing Regarding Petition of South Carolina Public Defender Association to File An Amicus and Motion To Accept Respondent's Return To The Public Defender Association's Petition on in the above case.

Sincerely,

David Spencer
Senior Assistant Attorney General

DS/ab
Enclosures

cc: Elizabeth Franklin-Best, Esquire
E. Charles Grose, Esquire
Ms. Trisha Allen

RECEIVED
OCT 19 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
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FAX: (803) 734-1839
www.sccourts.org

October 13, 2011

Senior Assistant Attorney General David Spencer
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Langford, K.C.

Dear Counsel:

The following Order has been endorsed on your Respondent's Motion for Appellant to Order Transcript of Entire Proceedings Pursuant to Rule 207 (a)(1), SCACR and to Hold Response Dates to All Other Filings in Abeyance in the above entitled case on appeal.

"Granted.

John Cannon Few, C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

Please be the timelines are no longer being held in abeyance. The Initial Brief of Respondent and Designation of Matter are now due on November 14, 2011.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/lb

cc: Appellate Defender Elizabeth Franklin-Best



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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October 13, 2011

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
Laurens Cnty. Courthouse
100 Hillcrest Dr., Ste. P
Laurens, SC 29320

Re: The State v. Langford, K.C.

Dear Counsel:

The following Order has been endorsed on your Petition of The South Carolina Public Defender Association for Leave to File Amicus Brief in the above entitled case on appeal.

"Granted.

s/ John Cannon Few, C.J.
For the Court

This office is in receipt of your Amicus Brief. Please be advised that the brief must be filed in its final form, in compliance with Rules 211 and 267 of the South Carolina Appellate Court Rules. Therefore, please provide fourteen (14) bound copies of the brief in final form and the green covers for the original brief within ten (10) days of the date of this letter.

Briefs filed in response to the amicus brief are due to be served and filed within thirty (30) days of the date of this letter. The response to the amicus brief should be bound in red covers, titled Brief of (party filing response) in Response to Amicus Brief of (party filing the amicus brief). Any reply to the response(s) must be served and filed within fifteen (15) days of the date of service of the Response briefs and should be bound in grey covers.

All briefs must be in their final form, an original and fourteen (14) copies, and must comply with Rules 211 and 267 of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allan, Deputy
CLERK

TAG/lb

cc: Appellate Defender Elizabeth Franklin-Best
Senior Assistant Attorney General David Spencer

ALAN WILSON
ATTORNEY GENERAL



September 30, 2011

RECEIVED
SEP 30 2011
SC Court of Appeals

VIA HAND DELIVERY

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

Re: State of South Carolina v. K.C. Langford

Dear Ms. Gee:

The State filed a motion to compel Appellant to order the transcript of the May 17, 2010 proceedings and to hold all response dates in abeyance. The Court of Appeals has not ruled on this motion, but in the interim, Appellate Defense did order the transcript of the proceedings. Opposing counsel provided me with the transcript yesterday, September 29, 2011. This seems to make the motion to compel ordering the transcript moot. I would ask that the time to hold the due dates in abeyance be granted. By my calculations, the time to respond to the motion to submit an amicus brief filed by the South Carolina Public Defender Association is October 10, 2011. I am unclear as to whether the time to file the Initial Brief of Respondent and Designation of Matter would be held in abeyance pending the aforementioned motion of the Public Defender Association and the motion pending before the Supreme Court to certify this case, and would seek clarification. In an abundance of caution, I will calendar the due date for the Initial Brief and Designation for November 14, 2011.

Please feel free to contact me with any questions or comments.

Sincerely,

David Spencer
Senior Assistant Attorney General

cc: Elizabeth Franklin-Best, Esquire
E. Charles Grose, Esquire



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

August 30, 2011

RECEIVED
AUG 30 2011
SC Court of Appeals

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

Dear Ms. Sheppard:

Please provide us with the following transcript:

The State v. K. C. Langford

Case #:

08-GS-19-00673,
10-GS-19-00272, 00273,
00278

County: Edgefield

Date of Trial: May 20, 2010

Presiding Judge: William P. Keesley

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include 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.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,

Christopher M. Sanchez
Legal Assistant

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

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

By: _____

(Clerk) (Deputy Clerk)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 24 2011

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

SC Court of Appeals

THE STATE,

FILED

10/13/11

K.C. LANGFORD,

Petitioner,

vs.

Respondent.

**RESPONDENT'S MOTION FOR
APPELLANT TO ORDER TRANSCRIPT
OF ENTIRE PROCEEDINGS PURSUANT
TO RULE 207(a)(1), SCACR AND TO
HOLD RESPONSE DATES TO ALL
OTHER FILINGS IN ABEYANCE**

Respondent, by and through undersigned counsel, moves for this Court to require Appellant to order the transcript of the entire proceedings below, including, but not limited to the proceedings held during the May 20, 2010 term of Court in which this matter was originally tried:

1. Appellant alleges, as part of an allegation that his speedy trial rights were violated, that the trial court erred in granting the State's motion for continuance on May 20, 2010 made after a co-defendant originally cooperating with the State refused to testify. The State contends that co-defendant's refusal to testify resulted from harassment or intimidation by Appellant and his other co-defendant. Appellant did order and provide this office with

a copy of the September 2010 trial.

2. Undersigned counsel conferred first with the prosecutor in the case and then, with Appellant's trial counsel. While the prosecutor could not recall any proceedings being held during that term, trial counsel believes that a hearing was held addressing the continuance and the request for a reduced bond. The order from the motion for continuance supports trial counsel's recollection (see attached order). Assuming trial counsel's recollection is correct, the transcript of the proceeding likely will be relevant to the issues raised. A transcript of the proceedings during May 2010 was not ordered by Appellant.

Pursuant to Rule 207(a)(1), SCACR: "Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below." Respondent has not received a request from appellant for less than the entire proceedings to be transcribed and further believes that the entire proceedings, including the transcript of the proceedings from May 2010, must be transcribed for a sufficient record to be produced for proper appellate review.

3. Appellant has challenged the written order by the trial court that was issued following the oral ruling on the State's motion for continuance as part of Appellant's arguments that his speedy trial rights were violated. The transcript of these proceedings is necessary to determine if the trial court's ruling is supported by the record.

4. It appears, on information and belief, that Appellant filed two written *pro se* motions for a speedy trial and generally complained about those motions not being granted after the verdict from his trial in September 2010; but that the motion was never raised before

the trial court or ruled upon. The May 2010 transcript will be necessary to determine if the matter should even be reviewed by this Court.

5. The South Carolina Public Defender Association has moved for this Court to accept its *Amicus Curie* Brief based largely on heated allegations that the prosecution was gaming the docket to deprive Appellant of a fair trial. This allegation was not raised in the September 2010 trial, and the May 2010 transcript will be necessary to determine if the *Amicus* Brief should be accepted as the issue may not have been properly raised to the trial court.

6. Appellant has also moved before the Supreme Court for this matter to be certified for review. Respondent would expect to respond to that motion, in part, by contending that this matter is not suitable for certification as the issue raised is not preserved for review and a sufficient record does not exist to review the alleged error. The May 2010 transcript is likely necessary to determine whether the issue was even raised.

7. Undersigned counsel at this point in time is unaware of any other hearings that might have been held, but out of an abundance of caution, would request that the transcript of those proceedings be provided.

8. Respondent requests that this Court hold the time for responding to the Public Defender Association's motion to submit its *Amicus Curie* Brief and for the time for Respondent to file its Initial Brief and Designation of Matter in abeyance while this Court considers the Respondent's motion and until the May 2010 transcript is provided to Respondent.

WHEREFORE, having made this motion, Respondent requests that this Court require Appellant to order the transcript of the May 2010 proceedings and any other proceedings not yet transcribed; hold all other filing deadlines in abeyance while this motion is pending and until the necessary transcript or transcripts are received; and for such other relief as this 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

DAVID SPENCER
Senior Assistant Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 24, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

vs.

K. C. LANGFORD,

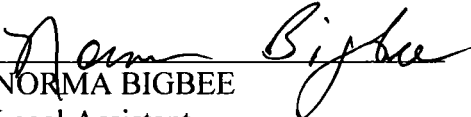
Appellant.

PROOF OF SERVICE

I, Norma Bigbee certify that I have served the Respondent's Motion For Appellant To Order Transcript Of Entire Proceedings Pursuant To Rule 207(a)(1), SCACR And To Hold Response Dates To All Other Filings In Abeyance by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Elizabeth Franklin-Best, Esquire, 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 August, 2011.


NORMA BIGBEE
Legal Assistant

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

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD) IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA,)
- vs-) ORDER ON MOTION FOR SPEEDY TRIAL
AND REGARDING BOND
KC LANGFORD,)
Defendant.) Case Numbers: 2008-GS-19-0673; 0674;
0675; 0676; 0677; & 0678

2018 MAY 20 PM 2:30

EDGEFIELD COUNTY
CLERK OF COURT
SHERYL L. BERRY

The defendant is before the court on a motion to dismiss these cases based on the State's failure to provide a speedy trial, which is denied. In the alternative, the defendant moves to have the court issue an order directing that the State try this case expeditiously. That motion is granted. The defendant also moves to be released on bail. That motion is denied.

WAL
#1

The defendant is charged with Criminal Conspiracy (08-GS-19-0673); Burglary in the 1st Degree (2008-GS-19-0674); Possession of a Weapon During the Commission of a Violent Crime (2008-GS-19-0675); Kidnapping (2008-GS-19-0677); ABWIK (2008-GS-19-0676); and, Armed Robbery (2008-GS -19-0678).

It is alleged that this defendant, along with two co-defendants, concocted a scheme to rob a family that runs a Chinese restaurant. They waited outside the home until the local business owner came out to water his garden. All of the defendants allegedly wore masks, and one of the defendants had a gun. They forced the store owner into his home and took approximately \$3,000 in cash, bludgeoning the victim with the gun.

The case was scheduled to be tried beginning Monday of this week. This defendant and one other co-defendant were facing a jury trial, and a third co-defendant had agreed with the State to testify against them. All three defendants have been incarcerated for 20 months, and only the cooperating witness had given any statement. Since the defendants wore masks, the case hinges almost exclusively on the testimony of the cooperating defendant. Some of the purported 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.

At 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. That created Bruton problems and confrontation clause issues that necessitate that the defendant who was formerly cooperating now has to be tried first. However, the State could not go forward with the trial of the defendant who formerly had been cooperative because the attorney for that defendant had just received an appointment to the case by substitution of counsel and had only had the discovery for 8 days. The State agreed that the new attorney had not had sufficient time to adequately prepare for trial.

None of this delay was occasioned by any impropriety on the part of the State. While the court is deeply concerned about the length of time that these defendants have been incarcerated, there does not appear to be sufficient reason to dismiss the charges for failure to provide a speedy trial. The court is aware that there is a death penalty case scheduled for the Fall of 2010 and that there is an older conflict case that a visiting judge

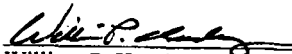
*Exhibit
#2*

is trying to set for the August term. Therefore, unless this case is tried within 9 months, the defendant may reassert his motions.

As for the issue of bail, the court finds that the defendant is a danger to the community and should be held without bail. If the case is not tried within 9 months, the defendant may reassert his request for release on bail.

AND IT IS SO ORDERED.

May 20, 2010


William P. Keesley, Judge

#3

ALAN WILSON
ATTORNEY GENERAL



August 24, 2011

VIA HAND DELIVERY

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

Re: The State v. K.C. Langford

Dear Ms. Gee:

Enclosed please find the original and six (6) copies of the Respondent's Motion For Appellant To Order Transcript Of Entire Proceedings Pursuant To Rule 207(a)(1), SCACR And To Hold Response Dates To All Other Filings In Abeyance with proof of service in the above-referenced case.

Sincerely,

David Spencer
Senior Assistant Attorney General

DS/nb

Enclosures

cc: Elizabeth Franklin-Best
Ms. Trisha Allen

RECEIVED

AUG 24 2011

SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL



August 17, 2011

Elizabeth A. Franklin-Best, Esquire
Appellate Defender
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

Re: The State v. K. C. Langford

Dear Ms. Franklin-Best:

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,

David Spencer
Senior Assistant Attorney General

DS/nb

cc: ~~The Honorable Tanya A. Gee~~
Victim Services

RECEIVED
AUG 18 2011
SC COURT OF APPEALS

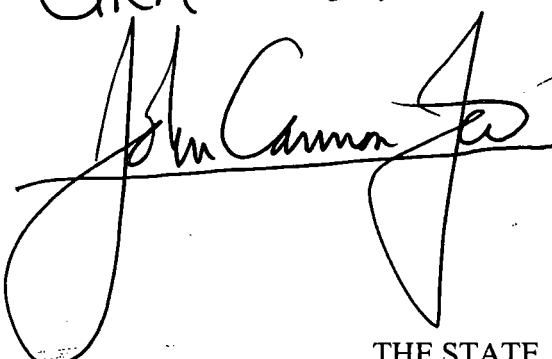
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RECEIVED
AUG 18 2011

GRANTED.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 , C.J.
Appeal from Edgefiled County
William P. Keesley, Circuit Court Judge

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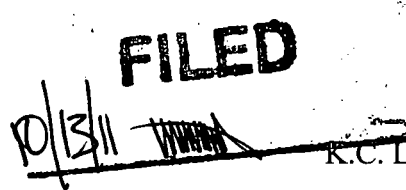
AUG 17 2011

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

 K.C. LANGFORD,

APPELLANT

Petition of the South Carolina Public Defender Association
for Leave to File and *Amicus Curie* Brief

The South Carolina Public Defender Association petitions this Court for leave to file an amicus curie brief in support of the appellant, K.C. Langford.

Statement of Interest of *Amicus Curie*

The South Carolina Public Defender Association (PDA) is a non-profit corporation created to promote and support advancement of indigent defense in the State of South Carolina. Membership in the ADA is open to all attorneys whose statutory job responsibility is providing defense to indigents accused of criminal offenses in Federal, State, County, Magistrate, and Municipal Courts in South Carolina. Membership is open to attorneys working in Circuit Public Defender offices, the Appellate Defense Division, and the Capital Trail Division. Public Defenders represent the majority of the people accused of crimes in General Sessions Court. A

report from the Budget and Control Board estimated that Public Defenders handled eighty-five percent (85%) of the cases disposed of in General Sessions Court in 2006.

In addition to providing direct representation, the PDA sponsors continuing legal education for its members and members of the private criminal defense bar who accept court appointments to represent indigent defendants. This training focuses on substantive criminal law, constitutional safeguards, procedural rules, and lawyers' ethical responsibilities.

To promote the advancement of indigent defense, the PDA offers its knowledge and experience to the courts and the General Assembly. For over two decades, courts have accepted *amicus curie* briefs from the PDA. *E.g. Binney v. State*, 384 S.C. 539, 683 S.E.2d 478 (2009); *Johnson v. Catoe*, 336 S.C. 354, 520 S.E.2d 617 (1999); *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); and *South Carolina v. Gathers*, 490 U.S. 805 (1989) *overruled by Payne v. Tennessee*, 501 U.S. 808 (1991). The PDA regularly appears before the General Assembly¹ and has provided public comments regarding proposed changes to the South Carolina Rules of Evidence² and the proposed South Carolina Criminal Rules.³

Reasons Why an Amicus Curie Brief from the PDA is Desirable

In this case, the appellant, K.C. Langford, demanded the Solicitor and trial court provide him with a speedy trial. The Solicitor, however, delayed twenty (20) months before indicting

¹ *E.g. Scalzo, et. al., Strategies for Successful Sentencing Reform: A Report by the S.C. Public Defenders to the S.C. Commission on Sentencing Reform*, March 5, 2009, <http://www.scstatehouse.gov/citizensinterestpage/SentencingReformCommission/SentencingReform.html> (last viewed July 31, 2011).

² <http://www.judicial.state.sc.us/whatsnew/ruleChanges/ruleChangeSSpeakersList.htm> (list of presenters for public hearing on July 9, 2009) (last viewed July 31, 2011).

³ <http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=612> (written comments received by the Supreme Court on Proposed South Carolina Criminal Rules) (last viewed July 31, 2011).

Langford for first degree burglary, armed robbery, and kidnapping. The Solicitor, exercising control over the criminal docket, further delayed Langford's trial in order to pressure a codefendant into cooperating with the Solicitor and testifying for the State. Langford moved to dismiss the charges because the State denied him a speedy trial. In apparent deference to Solicitor control of the docket, the trial court judge denied the motion, gave the state an additional nine (9) months to call the case to trial before Langford could renew his motion, and ordered Langford held in jail without bail. See order on motion for speedy trial and regarding bond dated May 20, 2010, a copy of which is attached.

Langford's request on appeal for this Court to dismiss the charges against him is significant for two reasons. First, the South Carolina appellate courts have *never* enforced the right to a speedy trial by dismissing criminal charges. Second, this state's unique practice of allowing the Solicitor to control the criminal docket is intertwined with the State denying Langford a speedy trial. The bench and bar, accordingly, will monitor this appeal with great interest.

An *amicus curie* brief from the PDA is desirable for three reasons. First, Public Defenders represent the majority of the defendants who will be impacted by this Court's ruling on the right to a speedy trial. Second, this issue inherently involves South Carolina's unique procedure where the Solicitor's control the criminal court docket. By representing the majority of criminal defendants, Public Defenders are in a unique position to review the practical considerations of Solicitor control of the docket on the disposition of criminal cases. Third, Public Defenders can assist this Court in understanding the evolution of continually increasing judicial supervision of General Sessions Court dockets and explain why additional supervision is necessary to enforce the right to a speedy trial.

Conclusion

This Court, therefore, should grant leave for the South Carolina Public Defender Association to file an *amicus curie* brief.

IT IS SO MOVED.

Respectfully submitted,

By



E. Charles Grose, Jr.
600 Monument St., Box P-133
Greenwood, SC 29646
(864) 229-9505

Tara Marie Schultz
P.O Box 174
Laurens, South Carolina 29360
(864) 984-8807

**Attorneys for *Amicus Curiae*
South Carolina Public Defender Association**

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 petition of the South Carolina Public Defender Association for Leave to File and *Amicus Curie* Brief on the date reflected below on counsel by United States Mail, return receipt, addressed as follows:

Elizabeth A. Franklin-Best, Esquire
Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589

ATTORNEY FOR APPELLANT

Salley W. Elliott, Esquire
Assistant Deputy Attorney General
SC Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

Respectfully submitted,

By



E. Charles Grose, Jr.
600 Monument St., Box P-133
Greenwood, SC 29646
(864) 229-9505

Tara Marie Schultz
P.O. Box 174
Laurens, South Carolina 29360
(864) 984-8807

Attorneys for *Amicus Curiae*
South Carolina Public Defender Association

August 15, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

-vs-

ORDER ON MOTION FOR SPEEDY TRIAL
AND REGARDING BOND

KC LANGFORD,

Defendant.

Case Numbers: 2008-GS-19-0673; 0674;
0675; 0676; 0677; & 0678

2010 MAY 20 PM 3:30

EDGEFIELD COUNTY
CLERK OF COURT
SHERIFF'S OFFICE

The defendant is before the court on a motion to dismiss these cases based on the State's failure to provide a speedy trial, which is denied. In the alternative, the defendant moves to have the court issue an order directing that the State try this case expeditiously. That motion is granted. The defendant also moves to be released on bail. That motion is denied.

WPK #1
The defendant is charged with Criminal Conspiracy (08-GS-19-0673); Burglary in the 1st Degree (2008-GS-19-0674); Possession of a Weapon During the Commission of a Violent Crime (2008-GS-19-0675); Kidnapping (2008-GS-19-0677); ABWIK (2008-GS-19-0676); and, Armed Robbery (2008-GS -19-0678).

It is alleged that this defendant, along with two co-defendants, concocted a scheme to rob a family that runs a Chinese restaurant. They waited outside the home until the local business owner came out to water his garden. All of the defendants allegedly wore masks, and one of the defendants had a gun. They forced the store owner into his home and took approximately \$3,000 in cash, bludgeoning the victim with the gun.

The case was scheduled to be tried beginning Monday of this week. This defendant and one other co-defendant were facing a jury trial, and a third co-defendant had agreed with the State to testify against them. All three defendants have been incarcerated for 20 months, and only the cooperating witness had given any statement. Since the defendants wore masks, the case hinges almost exclusively on the testimony of the cooperating defendant. Some of the purported 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.

Case #2
At 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. That created Bruton problems and confrontation clause issues that necessitate that the defendant who was formerly cooperating now has to be tried first. However, the State could not go forward with the trial of the defendant who formerly had been cooperative because the attorney for that defendant had just received an appointment to the case by substitution of counsel and had only had the discovery for 8 days. The State agreed that the new attorney had not had sufficient time to adequately prepare for trial.

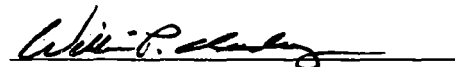
None of this delay was occasioned by any impropriety on the part of the State. While the court is deeply concerned about the length of time that these defendants have been incarcerated, there does not appear to be sufficient reason to dismiss the charges for failure to provide a speedy trial. The court is aware that there is a death penalty case scheduled for the Fall of 2010 and that there is an older conflict case that a visiting judge

is trying to set for the August term. Therefore, unless this case is tried within 9 months, the defendant may reassert his motions.

As for the issue of bail, the court finds that the defendant is a danger to the community and should be held without bail. If the case is not tried within 9 months, the defendant may reassert his request for release on bail.

AND IT IS SO ORDERED.

May 20, 2010


William P. Keesley, Judge

#3

PUBLIC DEFENDER

Circuit Defender for the Eighth Judicial Circuit
Abbeville, Greenwood, Laurens, and Newberry Counties
Suite 203, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: 864-229-9505 Fax: 864-227-1104

E. Charles Grose, Jr.
Circuit Defender
Eighth Judicial Circuit
E-mail: cgrose@pdgreenwood.com

August 15, 2011

The Honorable Tanya Gee
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State v. K.C. Langford
Petition for Leave to File *Amicus Curie* Brief

Dear Ms. Gee:

Tara Schultz and I represent the South Carolina Public Defender Association.

Enclosed for filing, please find the original and six (6) copies of the petition of the South Carolina Public Defender Association for leave to file an *amicus curie* brief.

Pursuant to Rule 213, SCACR, also enclosed for provisional filing please find the original Initial Brief of *Amicus Curie* South Carolina Public Defender Association.

Thank you for your attention to this matter.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Christopher Scalzo, Esquire
President, South Carolina Public Defender Association

Elizabeth A. Franklin-Best, Esquire
Attorney for Appellant

Salley W. Elliott, Esquire
Attorney for Respondent

RECEIVED
AUG 17 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

August 11, 2011

Appellate Defender Elizabeth Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Langford, K.C.

Dear Counsel:

The following Order has been endorsed on your Petition For Extension to File 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 is now due on August 26, 2011. 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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

5th ext.
RECEIVED

JUL 27 2011

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

K. C. LANGFORD,

APPELLANT

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

Counsel for K. C. Langford respectfully petitions this Court for a **final 15 days** to file the initial brief of appellant and designation of matter on behalf of her client. In support of this petition, counsel shows:

1. The initial brief of appellant and designation of matter is due today. The Court has granted four previous extensions.
2. Counsel respectfully submits that extraordinary circumstances exist to warrant the granting of an additional extension of time.
3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. *See Evitts v. Lucey*, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair). *See also Ezell v. State*, 345 S.C. 312, 548 S.E.2d 852 (2001); *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999); South

Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

4. Counsel diligently works to keep up with her case load. On July 20, 2011 counsel filed the brief of respondent in State v. Syllester D. Taylor and the petition for writ of certiorari and appendix in State v. Leroy Bennett in the Supreme Court. On July 14, 2011 counsel filed the petitions for writ of certiorari and appendices in Herbert Bell v. State and Yahya Muquit v. State in the Supreme Court. On July 11, 2011 counsel filed the initial brief of appellant and designation of matter in State v. Walter James Greene with this Court. On June 29, 2011 counsel filed the petition for writ of certiorari and appendix in State v. Darrell Efird, in the Supreme Court and the initial brief of appellant and designation of matter in State v. Octavious O. Collins and State v. Melvin Webb with this Court. Also counsel filed the petition for writ of certiorari in the Court of Appeals and appendix in State v. Paris Avery. On June 23, 2011 counsel filed the initial brief and designation of matter in Lavario Hampton v. State with this Court and the petition for writ of certiorari and appendix in Demetrius Smalls v. State in the Supreme Court. On June 22, 2011 counsel filed the petition for writ of certiorari and appendix in Timothy Wallace v. State. Also, on June 22, 2011 counsel filed the petition for writ of certiorari and appendix in the death penalty case Bayan Aleksey v. State in the Supreme Court. The Appendix is that case is over **6,000 pages long**, and there are at least **97 exhibits** involved. On June 20, 2011 counsel filed the petition for writ of certiorari and appendix in Dexter Lawrence v. State in the Supreme Court. On June 15, 2011 counsel filed the petition for writ of certiorari and appendix in Raheem J. Singletary v. State in the Supreme Court.

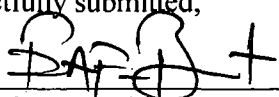
5. In the month of July, counsel is assigned to file 27 briefs and writ of certioraris.

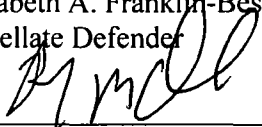
6. As indicated by the signature below, the Attorney General's Office does not oppose the request.

7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a **final 15 day extension** in which to file her client's initial brief of appellant and designation of matter.

Respectfully submitted,

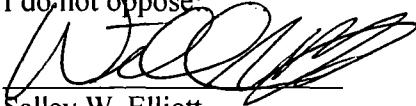

Elizabeth A. Franklin-Best
Appellate Defender


Robert M. Dudek
Chief Appellate Defender

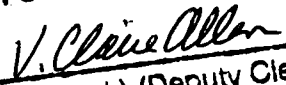
T. Patton Adams
Executive Director/
J. Hugh Ryan, III
General Counsel

July 27, 2011

I do not oppose:


for Salley W. Elliott

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

By: 
(Clerk) (Deputy Clerk)


FILED

*Give her 15
days from
date of filing
or we will just
get another one.*



SCCID

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

July 27, 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, South Carolina 29211

RECEIVED
JUL 27 2011
SC Court of Appeals

Dear Mr. Gee:

In absence of Patton Adams, Executive Director of the South Carolina Commission on Indigent Defense and Hugh Ryan, Deputy Attorney and General Counsel for the South Carolina Commission on Indigent Defense and pursuant to instructions from Mr. Ryan, I ask that you accept this cover letter as an attempt to comply with the Court's order dated March 18, 2009, in regard to extension requests.

In the attached motion for an extension of time, Appellate Defender, Elizabeth A. Best-Franklin seeks a **final fifteen day extension** of time to file the return to petition for writ of certiorari. Based on that and his extremely heavy case load, as outlined in the motion, he was unable to complete the initial brief and designation.

Thank you for allowing me to bring this to your attention. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Lisa Campbell
Assistant Director
South Carolina Commission on
Indigent Defense



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 11, 2011

Appellate Defender Elizabeth Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Langford, K.C.

Dear Counsel:

The following Order has been endorsed on your Petition For Extension to File 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 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.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/lb

cc: Assistant Deputy Attorney General Salley W. Elliott

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

RECEIVED

JUN 27 2011

SC Court of Appeals

4th ext
Due 7/27/11

THE STATE,

RESPONDENT,

V.

K. C. LANGFORD,

APPELLANT

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

Counsel for K. C. Langford respectfully petitions this Court for a **final 30 days** to file the initial brief of appellant and designation of matter on behalf of her client. In support of this petition, counsel shows:

1. The initial brief of appellant and designation of matter is due today. The Court has granted three previous extensions.
2. Counsel respectfully submits that extraordinary circumstances exist to warrant the granting of an additional extension of time.
3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. *See* Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

4. Counsel diligently works to keep up with her case load. On June 15, 2011 counsel filed the petition for writ of certiorari and appendix in Raheem J. Singletary v. State. On June 20, 2011 counsel filed the petition for writ of certiorari and appendix in Dexter Lawrence v. State. On June 22, 2011 counsel filed the petition for writ of certiorari and appendix in Timothy Wallace v. State. On June 23, 2011 counsel filed the initial brief and designation of matter in Lavario Hampton v. State and the petition for writ of certiorari and appendix in Demetrius Smalls v. State.

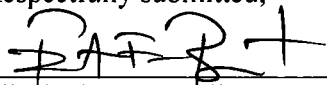
5. In the month of June, counsel is assigned to file **28** briefs and cert petitions not including her substantial work on the following capital case Bayan Aleksey. The Appendix in this case is over **6,000 pages long**, and there are at least **97 exhibits** involved. Counsel and co-counsel have been to the Courthouse in Orangeburg in an attempt to ensure that all exhibits are in the appendix and they have met with the client on death row to go over the exhibit list. A second trip to the Courthouse is needed to ensure all exhibits have been located, and likely a second trip to death row as well.

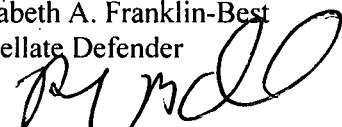
6. As indicated by the signature below, the Attorney General's Office does not oppose the request.

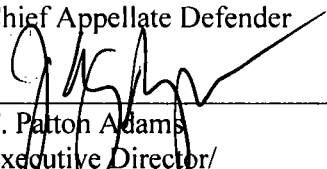
7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a **final 30 day extension** in which to file her client's initial brief of appellant and designation of matter.

Respectfully submitted,

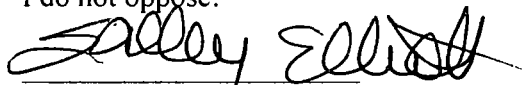

Elizabeth A. Franklin-Best
Appellate Defender


Robert M. Dudek
Chief Appellate Defender


T. Patton Adams
Executive Director/
J. Hugh Ryan, III
General Counsel

June 27, 2011

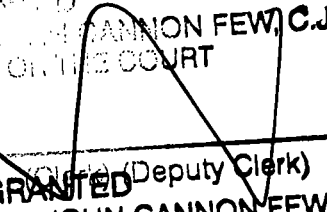
I do not oppose:


Salley W. Elliott

FILED

Marked 7/11/11

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

By:  (Deputy Clerk)
JOHN CANNON FEW, C.J.
FOR THE COURT

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



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 Elizabeth Franklin-Best
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Langford, K.C.

Dear Counsel:

The following Order has been endorsed on your Petition 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 June 27, 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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

Honorable William P. Keesley, Circuit Court Judge

Original
2k ext
Due 6/27/11
RECEIVED
MAY 27 2011
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

K. C. LANGFORD,

APPELLANT

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

Counsel for K. C. Langford respectfully petitions this Court for an additional 30 days to file the initial brief of appellant and designation of matter on behalf of her client.

In support of this petition, counsel shows:

1. The initial brief of appellant and designation of matter is due today. The Court has granted two previous extensions.
2. Counsel respectfully submits that good cause exists to warrant the granting of an additional extension of time.
3. Specifically, counsel, because of her substantial caseload, has not had the time to complete her client's case, consistent with her duty to provide effective assistance of counsel as guaranteed by the U.S.C.A. 6, 14. See Evitts v. Lucey, 469 U.S. 387 (1985) (to be effective appellate counsel must give assistance of such quality as to make

appellate proceedings fair). *See also* Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); South Carolina Bar Ethics Advisory Committee, Advisory Op. 04-12 (2004) (citing the 2002 ABA maximum caseload standards of 25 appeals). *See generally* Polk County v. Dodson, 454 U.S. 312 (1981); Gideon v. Wainwright, 372 U.S. 335 (1963). Counsel has prioritized her caseload to complete the cases with the largest number of extensions first.

4. Counsel diligently works to keep up with her case load.
5. In the month of May, counsel is assigned to file 28 briefs.
6. As indicated by the signature below, the Attorney General's Office does not oppose the request.
7. Counsel makes this request in good faith and not for purposes of delay.

Respectfully, counsel requests a 30 day extension in which to file her client's initial brief of appellant and designation of matter.

Respectfully submitted,

DAF-BT
Elizabeth A. Franklin-Best
Appellate Defender

R M Dudek
Robert M. Dudek
Chief Appellate Defender

May 27, 2011

I do not oppose:

Salley W. Elliott
Salley W. Elliott

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.

K.C. Langford,

Appellant.

The Honorable William P. Keesley
Edgefield County
Trial Court Case No. 2008-GS-19-00673
2010-GS-19-00272
2010-GS-19-00273
2010-GS-19-00278

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 Elizabeth Franklin-Best
Assistant Deputy Attorney General Salley W. Elliott

FILED

5/9/11

Bellamy, Latrea

From: COA Extensions
Sent: Friday, April 29, 2011 1:59 PM
To: Bellamy, Latrea
Subject: FW: K.C. Langford
Attachments: Salley Elliott.vcf

*Int. ext.
Done 5/27/11*

From: Salley Elliott [mailto:Selliott@scag.gov]
Sent: Friday, April 29, 2011 8:50 AM
To: Felicia K. Berry; COA Extensions
Cc: Angela Bennett
Subject: Re: K.C. Langford

I consent.

Salley W. Elliott
Assistant Deputy Attorney General
South Carolina Attorney General's Office
(803) 734-3727
selliott@scag.gov

>>> "Felicia K. Berry" <FBerry@sccid.sc.gov> 4/28/2011 5:18 PM >>>
Clerk's Office
South Carolina Court of Appeals

Re: The State v. K. C. Langford

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 on 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 out of time.

By copy of this email, I am requesting that Salley Elliott, Esquire, of the Attorney General's Office, forward her consent.

Sincerely,

Elizabeth A. Franklin-Best
Appellate Defender

EAF/fkb

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

The South Carolina Court of Appeals

The State,

Respondent

v.

K.C. Langford,

Appellant.

The Honorable William P. Keesley
Edgefield County
Trial Court Case No. 2008-GS-19-00673
2010-GS-19-00272
2010-GS-19-00273
2010-GS-19-00278

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 Elizabeth Franklin-Best
Assistant Deputy Attorney General Salley W. Elliott

FILED

4/7/11

Bellamy, Latrea

From: COA Extensions
Sent: Monday, March 28, 2011 11:03 AM
To: Bellamy, Latrea
Subject: FW: K.C. Langford

1st ex
Due 4/27/11

From: Felicia K. Berry [mailto:FBerry@sccid.sc.gov]
Sent: Monday, March 28, 2011 8:15 AM
To: COA Extensions
Cc: Salley Elliott; Angela Bennett
Subject: K.C. Langford

Clerk's Office
South Carolina Court of Appeals

Re: The State v. K.C. Langford

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 the Attorney General's office of my request.

Sincerely,

Elizabeth A. Franklin-Best
Appellate Defender



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. K. C. Langford

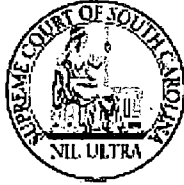
1/26/2011

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. 2008GS19673B
CASE (
(
(
(K.C. Langford
(
(

Notice

Upon request and for good cause shown, Stacy Sheppard, Court Reporter, is hereby granted an extension up to and including February 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
01/04/2011

cc: Division of Appellate Defense
Stacy Sheppard



The Supreme Court of South Carolina

TITLE OF CASE (State of South Carolina
(
(
(
(V. 2008GS19673B
(
(
(
(K.C. Langford
(
(

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



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
Joseph L. Savitz, III, Senior Appellate Defender

October 7, 2010

RECEIVED

OCT 07 2010

SC Court of Appeals

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

Dear Ms. Sheppard:

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

The State v. K.C. Langford

Case #:

08-GS-19-00673,
10-GS-19-00272, 00273,
00278

County: Edgefield

Date of Trial: September 7-9, 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.

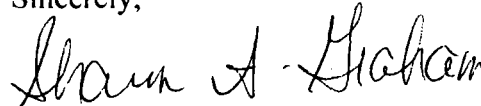
If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's 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 cursive script, appearing to read "Sharon A. Graham".

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

September 29, 2010

Mark Reagan Calhoun, Esquire
Calhoun Law Firm
714 E. Main St.
Lexington, SC 29072

Re: The State v. Langford, K.C.

Dear Mr. Calhoun:

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

September 29, 2010

Mark Reagan Calhoun, Esquire
Calhoun Law Firm
714 E. Main St.
Lexington, SC 29072

Re: The State v. Langford, K.C.
Case No. 2010173128

Dear Mr. Calhoun:

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 STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

William P. Keesley , Circuit Court Judge

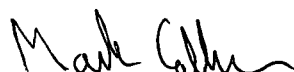
Case No. 2008-GS-19-00673
2010-GS-19-00272
2010-GS-19-00273
2010-GS-19-00278

The State,.....Respondent,
v.
K.C. Langford.....Appellant.

NOTICE OF APPEAL

K.C. Langford appeals his conviction and sentence in this case. The sentence was imposed by the Honorable William P. Keesley on September 9, 2010. [This appeal is taken from the order of the Honorable William P. Keesley dated September 9, 2010, which denied Appellants motion for a new trial. Appellant received written notice of entry of this order on September 9, 2010.]

September 13, 2010


Mark R. Calhoun
714 East Main Street
Lexington, SC 29072
(803) 957-8401
Attorney for Appellant

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SEP 16 2010
SC Court of Appeals

BS - 9/13/2010
PM - 9/16/2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

SEP 16 2010

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

SC Court of Appeals

William Keesley , Circuit Court Judge

Case No. 2008-GS-19-00673
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2010-GS-19-00278

The State,.....Respondent,
v.
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CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee at CALHOUN LAW FIRM, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Lexington County Solicitors office
Attn: Solicitor Ervin May
205 East Main St.
Lexington, SC 29072

The Honorable William P. Keesley
P.O. Box 10
Edgefield, SC 29824

Edgefield County Clerk of Court
Attn: Clerk of Court Shirley Newby
P.O Box 34
Edgefield, SC 29824

DOCUMENT: Notice of Intent to Appeal

DATE OF MAILING: September 13, 2010



Carmen Morales