

STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2011-CP-40-1921
Appellate Case No. 2013-001269

DAYDRIAN ROUSE, 342518,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

**PETITIONER'S MOTION
TO STAY PCR APPEAL**

THIS MATTER comes before the Court by way of an appeal from a Post-Conviction Relief Order. The Petition for Writ of Certiorari is due for filing on September 6, 2013. An exhibit introduced during the Applicant's evidentiary hearing was not filed with the Clerk of Court's office. This exhibit, a copy of the discovery materials provided to trial counsel by the Solicitor's Office, remains missing. The Court Reporter does not have the exhibit in her records, and the Clerk of Court's Office advises that they do not have it inasmuch as it was never filed by the Court Reporter after the evidentiary hearing. Counsel for the Respondent has expressly agreed with Counsel of Petitioner concerning the fact that this exhibit was introduced during the evidentiary hearing. Counsel for the Petitioner issued a subpoena to the Fifth Circuit Solicitor's Office requesting a duplicate copy of this discovery package on May 2, 2013. *See Attachment.* To date, Counsel for the Petitioner has not been provided with this material.

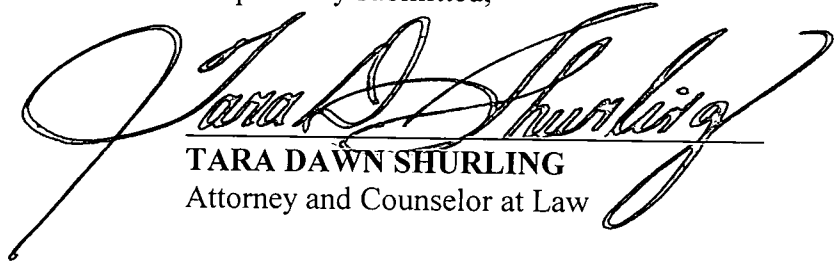
Counsel has sought and received two previous extensions on the due date for this Petition for Writ of Certiorari due to other considerations. Counsel, however, is unable to complete and file her Petition for Writ of Certiorari by the current deadline due to the fact that she has yet to receive this exhibit which is necessary for the Appendix and for the Certiorari Petition to be filed in this case. At this time Counsel would ask that the deadline for filing this



Certiorari Petition be stayed pending Counsel's receipt of these missing materials. Counsel would ask that she be given fifteen (15) days from her receipt of a copy of this missing exhibit in which to serve and file the Petition for Writ of Certiorari and Appendix in this Post-Conviction Relief appeal. By agreement of the parties, once the Fifth Circuit Solicitor's Office provides Counsel with this discovery package it will be filed with the Clerk of Court's Office as Applicant's Exhibit 4. Three other exhibits, introduced during this PCR hearing, were properly filed by the Court Reporter and are indexed in the transcript from the PCR proceeding.

Opposing counsel's consent to the within request is verified by her signature below.

Respectfully submitted,

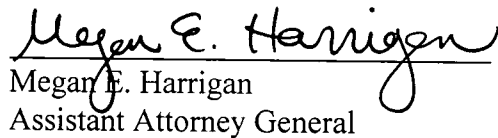


TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER

September 5, 2013

I Consent:



Megan E. Harrigan
Assistant Attorney General

STATE OF SOUTH CAROLINA

ISSUED BY THE CIVIL COURT IN THE COUNTY OF RICHLAND

DAYDRIAN J. ROUSE, #342518, Plaintiff

v.

SUBPOENA DUCES TECUM IN A CIVIL CASE

State Of South Carolina, Defendant

Case Number: 2011-CP-40-1921

Pending in Richland County

TO: Katherine Luck Campbell, Assistant Solicitor or her Designee

YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

| | |
|--------------------|-----------------|
| PLACE OF TESTIMONY | COURTROOM |
| | DATE AND TIME : |

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

| | |
|---------------------|---------------|
| PLACE OF DEPOSITION | DATE AND TIME |
|---------------------|---------------|

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects): a complete copy of all discovery materials that were provided to Attorney George Johnson in the matter of State v. Daydrian Rouse, Indictments No. 2009-GS-40-3721, 2009-GS-40-3722, and 2009-GS-40-3723

| | |
|--|--|
| PLACE Law Office of Tara Dawn Shurling, P. A. 3614 Landmark Drive, Suite A, Columbia, SC 29204 | DATE AND TIME May 10, 2013 at 5:00 p.m. |
|--|--|

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

| | |
|----------|---------------|
| PREMISES | DATE AND TIME |
|----------|---------------|

ANY SUPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

ISSUING OFFICERS NAME, ADDRESS AND PHONE NUMBER
TARA DAWN SHURLING, ATTORNEY AT LAW 3614 LANDMARK DRIVE, SUITE A, COLUMBIA, SC 29204 (803)738-8622

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULES 45(C) (1) AND THAT NOTICE AS REQUIRED BY RULE 45(b) HAS BEEN GIVEN TO ALL PARTIES.

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE
Tara Dawn Shurling May 2, 2013
REPLICA OF SCCA FORM 254 (7/95) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse)

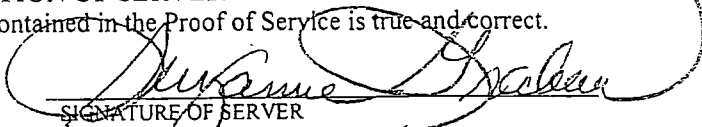
PROOF OF SERVICE

| | | |
|--|-------|--|
| SERVED | DATE | FEES AND MILEAGE TENDERED TO WITNESS <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ _____ |
| | PLACE | |
| SERVED ON (PRINT NAME) Katherine Luck Campbell, Asst. Solicitor | | MANNER OF SERVICE U. S. Certified Mail and Regular U. S. Mail |
| SERVED BY (PRINT NAME) Suzanne Graham | | TITLE Paralegal |

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 5/2/113
DATE


SIGNATURE OF SERVER
Law Office of Tara Dawn Shurffing, PA
3614 Landmark Dr., Suite A Columbia, SC 29204
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings, and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel production. Such an order to compel production shall protect any person who is not a party or an officer from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which the subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed at a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed, or regularly transacts business in person, except that, subject to the provision of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena:

- (i) requires disclosure of a trade secret or other confidential research, development or commercial information, or
- (ii) requires disclosure of an un-retained expert's opinion or information not describing in specific words events or occurrences in dispute and resulting from the experts study made not at the request of any party, or

(iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed, or regularly transacts business in person, the court may, to protect a person subject to or affected by a subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature or the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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| Certified Fee | 3.10 |
| Return Receipt Fee (Endorsement Required) | 2.55 |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | \$ 6.11 |

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 Street, Apt. No.,
 or PO Box No. P.O. Box 192
 City, State, ZIP+4 Columbia SC 29202

PS Form 3811, August 2006 See Reverse for Instructions

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Luck Campbell
 Solicitor's Office
 P.O. Box 192
 Columbia, SC
 29202

2. Article Number
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] Agent Addressee
 B. Received by (Printed Name) [Signature] C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below

MAY 07 2013

3. Service Type
 Certified Mail Express Mail
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4. Restricted Delivery? (Extra Fee) Yes

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