

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Thomas A. Russo, Circuit Court Judge

RECEIVED

DEC 17 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JIMMY LEE DUNCAN,

APPELLANT

APPELLATE CASE NO. 2012-207966

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

INDEX

INDEX	i
TRANSCRIPT DATED JANUARY 30, 2012	1
MOTION FOR A BENCH TRIAL	3
RULING BY THE COURT	13
STATE'S EXHIBIT # 1 (SENTENCE SHEET)	16
STATE'S EXHIBIT # 2 (SENTENCE SHEET)	17
STATE'S EXHIBIT # 3 (NOTICE OF SEX OFFENDER REGISTRY)	18
STATE'S EXHIBIT # 4 (STANDARD SEX OFFENDER CONDITIONS)	20
RECONSTRUCTION HEARING DATED OCTOBER 28, 2013	21
TESTIMONY	
PATRICIA GRANT	25
JAY LEMACKS	28
CAMERON RAY TAYLOR	35
JOHN D. BRYAN	40
JIMMY DUNCAN	52
JAY LEMACKS	67
DEFENDANT'S EXHIBIT # 1 (BRIEF OF DEFENDANT)	87
DEFENDANT'S EXHIBIT # 2	89
INDICTMENT AND SENTENCE SHEET	91
CERTIFICATE OF COUNSEL	94

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF COLLETON) COURT OF GENERAL SESSIONS
3) No. 2011 GS 15 0689
4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 JIMMY LEE DUNCAN)
9 Defendant)
10) Walterboro, South Carolina
11) January 30, 2012
12 B E F O R E :
13 HONORABLE THOMAS A. RUSSO, Judge
14 A P P E A R A N C E S :
15 For the State: Assistant Solicitor
16)
17 For the Defendant: J. D. BRYAN, Esq.
18)
19 Reporter Present: DEBORAH EVERETT
20)
21)
22)
23)
24)
25)

HARRIET P. BENNETT
Reporter, S. C. Court Administration
46 Regency Oaks Drive
Summerville, S.C. 29485

I N D E X

1	
2	
3	
4	Motion for Bench Trial, p. 3
5	Ruling by the Court, p. 16
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

1 (The within matter came before the Court on January
2 30, 2012)

3 (The roll call and qualification of the entire jury
4 panel was done by the Court)

5 THE COURT: This is the case of the State of South
6 Carolina versus Jimmy Lee Duncan. Mr. Duncan is charged
7 under Indictment 2011 GS 15 689 with the offense of failing
8 to register as a sex offender.

9 Solicitor, I'm going to let you call the case.

10 SOLICITOR: This is 2011 GS 15 689, the State of South
11 Carolina versus Jimmy Duncan, indicted by the Colleton
12 County Grand Jury for failure to register as a sex offender.
13 It is indicted as a second offense, Your Honor.

14 If I could approach? (Indictment presented to the
15 Court)

16 He is here with his attorney, J. D. Bryan.

17 THE COURT: All right, Mr. Bryan, you represent Mr.
18 Duncan?

19 MR. BRYAN: I do, Your Honor.

20 THE COURT: For a second offense, the penalty is a
21 one year jail sentence (portion not audible) under 23 33 47D
22 two. You have indicated that Mr. Duncan wishes to have his
23 case heard as a bench trial and not by a jury.

24 Have you discussed with Mr. Duncan his right to a jury
25 trial?

1 MR. BRYAN: Yes, sir.

2 THE COURT: Mr. Duncan, you've heard the question that
3 I've asked.

4 DEFENDANT: Yes, sir.

5 THE COURT: You have indicated that you do not want a
6 jury trial?

7 DEFENDANT: Yes, sir.

8 THE COURT: I want the decision to be in your hands.
9 I want it to be your decision.

10 Do you understand that you have the right to a jury
11 trial?

12 DEFENDANT: Yes, sir.

13 THE COURT: Of course, anyone can always waive their
14 right, and if you do so and if you have a bench trial it
15 will be the same as a jury trial as far as the State's
16 burden of proof beyond a reasonable doubt.

17 The Judge would sit as both the Judge and Jury, and
18 we won't have jury folks sitting and listening to the tes-
19 timony and making the decision. It would be encumbent on
20 the Court to listen to all the evidence and determine whe-
21 ther or not you are guilty or not guilty, and then, obvi-
22 ously, if not guilty you would be free to go.

23 Of course, it would be the Court's decision, and you
24 understand that?

25 DEFENDANT: Yes, sir.

1 THE COURT: Now, this decision to waive your right to
2 a jury trial, is that a decision you made, Mr. Duncan?

3 DEFENDANT: Well, in a sense. I feel like I'm kind
4 of like pressured into doing it. I'm confused when it
5 comes down to the matter of law because the last time I
6 came here for a jury trial and I argued expo factor matter
7 -- whatever I do or whatever I did was eighteen months and
8 three months for contraband.

9 When I come back, I'm supposed to be a free man but I
10 filed a PCR and in the PCR I explained that the Department
11 of Corrections came up with this new law in 2006; that any-
12 body that got that right there, that type of charge, and
13 they got me on two years.

14 Let me back up. I'm getting a little confused.

15 THE COURT: You're not talking about this charge. You
16 are talking about another charge you had?

17 DEFENDANT: What I'm saying is I got a charge in 2000
18 and I did my time. Then they came up with this law, this
19 Act, for supervised release and conditional discharge for
20 a sex offender.

21 With that requirement, it states that you have to reg-
22 ister, and Judge Buckner took me out of that program before
23 when I came back in 2008.

24 THE COURT: Stop right there. What is the underlying
25 charge that you had?

1 SOLICITOR: Criminal sexual conduct, first degree,
2 with a minor less than eleven.

3 THE COURT: Under that conviction, that law has been
4 requiring registration for years. I mean, for years, always,
5 is my understanding.

6 DEFENDANT: So I'm not understanding what this commun-
7 ity supervision. I'm under community supervision for two
8 years.

9 THE COURT: Did he explain to you the community super-
10 vision?

11 DEFENDANT: When I came up the last time, I was told
12 to register. I did. Judge Buckner explained that wasn't
13 part of the requirement in 2000. The requirement was that I
14 graduate from high school, get my high school diploma, and
15 seek counseling. I did all that.

16 Okay, in 2003 I went to the jury on burglary, third
17 degree. Okay? I was sentenced. I did my sentence for
18 that. Seventy days -- I came back and the two year thing
19 the Department of Corrections had going on in 2006 -- now,
20 I supposed to be a free man then. Okay?

21 I filed a law suit contesting my constitutional rights
22 because expo factor, Jernigan versus State, expo factor.

23 THE COURT: I think you are crossing things up.

24 The requirement under -- to register as a sex offender
25 -- that requirement -- that is a lifetime requirement. It

1 has nothing to do with any subsequent charges you might
2 have gotten. It has nothing to do with any community sup-
3 ervision you might be serving.

4 If none of that had happened, you would still have to
5 register. The bottom line is that it is a lifetime required
6 registration situation.

7 So if none of that other stuff happened, you would have
8 to register.

9 DEFENDANT: Yes, sir.

10 THE COURT: You would still have to register. It does
11 not change that.

12 DEFENDANT: But it was never ordered by the Judge. It
13 was never ordered, the registration.

14 SOLICITOR: Your Honor, if I may, I think that we're
15 getting a little off track here.

16 THE COURT: I've got to confirm whether or not he is
17 knowingly waiving his right to a jury trial, and that is
18 what I'm trying to do right now.

19 Mr. Duncan, I'll hear from you however we end up doing
20 it about all this, but the bottom line is what I'm trying
21 to determine now is whether or not you want a jury trial or
22 a bench trial.

23 It has to be your decision. In other words, Mr.
24 Bryan can give you his opinion. He can give you his ad-
25 vice. That's what lawyers do, they give advice, but the

1 decision has to be yours. You don't have to agree with it
2 or you can agree with it, but it's got to be your decision.

3 DEFENDANT: I don't have no problem with registering,
4 but I have a problem with Your Honor.

5 THE COURT: Excuse me.

6 DEFENDANT: I didn't mean to do that. It's the two
7 years and the six months that . .

8 THE COURT: That's not before this Court. That has
9 nothing to do with what you're charged with here.

10 DEFENDANT: Yes, sir, and according to the documents I
11 signed in his office he can confirm -- that's where I vio-
12 lated in 2008, and that's where I violated here today.

13 THE COURT: Let me ask you this. This is what I'm try-
14 ing to get at. Do you want a jury trial or do you want a
15 bench trial, because we're getting into the facts of the
16 case, and we'll do that regardless of whether it's a jury
17 or bench trial?

18 This isn't a trial right now. You're going to get
19 one, but what I'm trying to figure out right now -- I've
20 got the jury outside there, if you want a jury trial, which
21 every person is entitled to.

22 I'll bring them in and we'll get started. If you do
23 not want a jury trial but you want a bench trial, you can
24 certainly make that request. If the State consents, we
25 can do it as a bench trial.

1 There are a lot of ways to look at that and it's got
2 to be your decision, Mr. Duncan. It's a constitutional right
3 that you have, so even though you have a lawyer who is a
4 good lawyer he can give you his advice, but the decision has
5 to be yours.

6 DEFENDANT: I'm going to take the bench trial. I'm
7 going to take the bench trial.

8 THE COURT: Has anyone forced you to make that decis-
9 ion?

10 DEFENDANT: Ain't nobody forced me. I just want to --
11 I don't want to take no trial. I just want to bring this
12 matter and see if we can resolve this matter. It's this
13 law that I'm concerned about, this two year thing. That's
14 the only thing.

15 I don't care nothing about registering. You want me
16 to register, I'll register.

17 It's just that two year thing. I don't even know it's
18 relevant. I don't know. I'm not contesting the register-
19 ing thing. I'm not contesting that.

20 My rights are being violated.

21 THE COURT: Let me ask you this, and, again, as far as
22 -- because you are charged on this case with failing to
23 register, you have options here.

24 You can plead guilty to that if you choose. If you
25 wanted to plead guilty, you can plead guilty to that, and

1 you can still contest the constitutionality of something
2 else. The constitutionality of that is not an issue in
3 this trial anyway.

4 So you don't give up your rights to argue the consti-
5 tutionality of the other matter. It's a separate matter.

6 Or you can have a trial on this charge, and that is
7 where I am, just trying to get that resolved.

8 Do you need a few minutes to talk to Mr. Bryan?

9 Why don't we do this? Mr. Bryan, you and Mr. Duncan
10 step back and you all can sit down. Explain what I'm try-
11 ing to figure out here, and, again, for my purposes I am
12 merely trying to figure out the jury trial issue and the
13 issue regarding this.

14 I may be wrong because I don't know everything right
15 now, but it will either end up being a plea or a trial.
16 Either one way or the other, but I think one of the con-
17 cerns you have, Mr. Duncan -- you tell me if I'm wrong, Mr.
18 Duncan, about the concerns -- one of the concerns you have
19 with a plea is you don't want to give up your rights re-
20 garding contesting that other matter.

21 If you can let that go right now . .

22 DEFENDANT: I ain't got no problem of doing what is
23 required, if that's what you all want me to do.

24 THE COURT: That is another matter.

25 MR. BRYAN: Let me go talk to him briefly.

1 THE COURT: In the meantime, I'm going to bring the
2 jury panel in.

3 (Jury panel brought into Courtroom and excused for
4 the balance of the day)

5 (Other matters taken up by the Court until this case
6 was resumed)

7 THE COURT: All right, we're back on the record with
8 Mr. Duncan and Mr. Bryan.

9 Mr. Bryan, have you discussed with Mr. Duncan the
10 issues we spoke about earlier?

11 MR. BRYAN: Yes, sir.

12 THE COURT: So we are simply dealing with the failure
13 to register?

14 MR. BRYAN: Yes, sir.

15 THE COURT: And in that case I need to know whether
16 you want a bench trial or a jury trial.

17 DEFENDANT: I'll take a bench trial. Like I said,
18 you know, I'm not really contesting the fact of whether or
19 not . . .

20 THE COURT: You are not contesting whether or not you
21 failed to register? You admit your failure to register?

22 DEFENDANT: Under circumstances that the reason why I
23 didn't do -- that's what I'm saying and I'm telling the
24 truth -- the reason why I didn't do it is because of the
25 simple fact when I got out they had me up on a 2000 Act

1 which I wasn't supposed to come under that Section.

2 THE COURT: Let me tell you what it sounds like, and
3 correct me if I'm wrong. In 2000 you received this convic-
4 tion that required registration.

5 DEFENDANT: Different Section.

6 THE COURT: I understand, but one of the things that
7 was required was that you register, and you register every
8 year?

9 DEFENDANT: Yeah.

10 THE COURT: Then you caught this other charge, and you
11 . . .

12 DEFENDANT: I did, and it involved this community su-
13 pervision stuff. I ain't never got the second . .

14 THE COURT: The other charge was burglary in the third
15 degree. I understand that is another charge. I didn't
16 mean it was another charge like the first one. You just
17 caught another charge, and on that other charge it involved
18 a (inaudible).

19 DEFENDANT: No, sir. What it was, I got seven years
20 and Judge Buckner revoked my probation, so I got probation
21 -- five years. Five years probation.

22 Okay. No, I registered. Right? In 2003, okay, I went
23 to trial on a burglary third and I got convicted. Judge
24 Buckner revoked five years of a fifteen year sentence and
25 gave me -- told me to do that counseling and that's it. Right.

1 Now, I'm still under the 2000 sanction. While I was
2 in prison they came up with the 2006 Act which has greater
3 sanctions, GPS monitoring, and all this kind of crazy stuff.

4 Now, the confines under that Act, it said I had to re-
5 gister, and the penalty for that was a year if you didn't
6 do it a second time.

7 So I refused the first time and I asked Mr. Beach who
8 was representing me at the time is this a fix for the one
9 in 2000, and to my understanding he said, yeah, but come to
10 find out it wasn't.

11 He said he was going to correct it because it wasn't a
12 part of my sentence, and one time he represented me before
13 Buckner and Buckner said that McGuire versus State is highly
14 unconstitutional.

15 So I reached this conclusion, and Beach can testify
16 about it. He represented me.

17 THE COURT: I'm going to stop you. Obviously, this
18 case needs to be tried. It needs to be tried, and you have a
19 right to try it in front of a jury or in front of a Judge.

20 So the only issue I want to deal with right now is . .

21 DEFENDANT: I'm going before you. That's what I will
22 do, go before you.

23 THE COURT: I want to just make the record clear that
24 you understand that you could have a jury trial if you
25 wanted one?

1 DEFENDANT: Oh, yes, sir. I ain't trying to
2 waste nobody's time.

3 THE COURT: You're not wasting anybody's time. You
4 are absolutely -- you have the constitutional right to have
5 a trial certainly, whether it be a bench trial or a jury
6 trial.

7 So you are not wasting anybody's time.

8 So what we're going to do is we're going to set this
9 for a bench trial.

10 Now, in light of other issues I just dealt with I've
11 got a jury coming back in the morning in a forgery case,
12 and so we will set this one for the end of the forgery
13 case.

14 (The Court took up other matters. This case was re-
15 sumed on January 31, 2012.)

16 TRANSCRIPTION NOTE: The Bench Trial cannot be tran-
17 scribed as it does not appear on disc.

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1 CERTIFICATE

2 I, HARRIET P. BENNETT, Official Court Reporter for
3 South Carolina Court Administration, do hereby certify
4 that the foregoing Transcript was prepared to the best of
5 my ability from the records of Deborah Everett, having
6 been heard in the Court of General Sessions for Colleton
7 County on January 30, 2012. This was a motion for a
8 bench trial.

9 The Bench Trial was not contained on the disc fur-
10 nished for January 31, 2012, and cannot be transcribed.

11 FURTHER, I certify that I am neither of kin nor coun-
12 sel to any party to this matter, nor do I have any
13 interest in the same.

14 April 3, 2013

15 *Harriet P. Bennett*
16
17
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25

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Colleton

INDICTMENT/CASE#:

STATE

VS.

00 -GS- 15 - 0726Jimmy Duncan, Jr.

AKA:

Race:

Sex:

DOB:

Age:

SSN:

DL#:

SID#:

A/W#: G307147Date of Offense: 8/25/00S.C. Code § : 16-3-655(1)CDR Code #: 0131815

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: CRIMINAL SEXUAL CONDUCT W/ MINOR 1ST DEGREEin violation of § 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 0131815☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 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 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

CERTIFIED TRUE COPIES OF RECORDS

Recipient:

Patricia C. Grant

*FEE CLERK OF COURT, CP & GS

COLLETON COUNTY, SOUTH CAROLINA

§ 14-1-206 - Assessments 100% \$

§ 14-1-211 - Surcharge \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI) \$

County (3%) \$ 3.00TOTAL \$ 103.00Clerk of Court/Deputy Clerk Eona O. ReedCourt Reporter: Ronda Cummings

(White - Clerk

Green - Courtroom

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: MUST BE REGISTERED ONthe Child Abuse Registry;MUST RECEIVE SEXUAL ABUSEMUST FINISH HIGH SCHOOL;PRESIDING JUDGE [Signature]Judge Code: 011212Sentence Date: 12/6/00

STATE OF SOUTH CAROLINA
COUNTY OF Colleton
STATE

IN THE COURT OF GENERAL SESSIONS

17

INDICTMENT/CASE#: 2008-GS-15-0320

VS.

JIMMY DUNCAN, JR.

AKA:

Race: B

Sex: M

Age: 27

DOB: [REDACTED]

SS#: [REDACTED]

Address:

City, State, Zip:

WALTERBOR

DL#

SID#

AW#: J771559

Date of Offense: 3/2/2008

S.C. Code §: 23-03-0470(A)

CDR Code #: 2606

SENTENCE SHEET

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

TO: **SEX OFFENDER REGISTRY VIOLATION, FAILURE TO REGISTER, 1st**
in violation of **23-03-0470(A)** of the S.C. Code of Laws, bearing CDR Code # **2606**

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC 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 B

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☒ County Detention Center,
for a determinate term of **90** 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: **2008 GS 15 00726**

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

Total: \$

plus 20% fee: \$

CERTIFIED TRUE COPIES OF RECORDS

Payment Terms:

☐ set by SCDPPPS

Patricia C. Grant
CLERK OF COURT, CP & GS

COLLETON COUNTY, SOUTH CAROLINA

DATE: 1-30-2012

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100 \$
\$56-5-2995 (DUI Assessment)	\$12 \$
\$35.13 (Public Def/Prob)	\$500 \$
\$73.3, 1B TP (Law Enforce. Funding)	\$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100 \$
\$50-21-114(BUI Breath Test Fee)	\$50 \$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$ 3.90
\$90.11 TP (SCCJA Surcharge)	\$5 \$ 5.00
TOTAL	\$ 133.90

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ Beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP

☐ Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

0 1 1 1 2 1 2

July 15, 2008

Court Reporter:

Patricia C. Grant
Clerk of Court/Deputy Clerk

Miss Perron

Persons sentenced to probation or new residents of the state who must be supervised by the Department of Probation, Parole and Pardon Services must register with the Sheriff's Office in their county of residence within one (1) business day of sentencing or moving to the State.

A person required to register under this program shall be required to register bi-annually or quarterly for life depending upon his/her classification pursuant to Title I of the Federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA). "Bi-annually" means each year during the month on his birthday and again during the sixth month following his birth month.

A person determined by a court to be a sexually violent predator is required to verify registration and be photographed every ninety (90) days by the Sheriff's Office in the county in which he resides unless he is committed to the custody of the State, whereby verification is held in abeyance until his release.

A person required to register under this program who changes his address within the same county must send written notice of a change of address to the Sheriff within three (3) business days of establishing a new residence. A person who changes his permanent or temporary address into another county must register with the Sheriff in the new county and send written notice of the change of address to the new county and the previous county within three (3) business days of establishing a new residence. A person who changes his address to a new state must send written notice of a change of address to the Sheriff of the new state and the last registered within three (3) business days of establishing a new residence. "Residence" means the location of the person's home or other place where the person habitually lives or resides, or where the person lives or resides for a period of ten (10) or more consecutive days. "Habitually lives or resides" means locations at which the person lives with some regularity.

A person required to register under this program who moves to South Carolina from another State, establishes residence, acquires real property, becomes employed, or begins attending, enrolls at, volunteers at, interns at, or begins carrying on a vocation at any public or private school within a county in this State, must register in each county where the residence, property, employment, or the private or public school is located within three (3) business days of acquiring the property, beginning employment, or attending, enrolling at, volunteering at, interning at, or carrying on a vocation at the school.

A person required to register under this program and who is employed by, attends, is enrolled at, volunteers at, interns at, or carries on a vocation at any public or private school must provide written notice to the Sheriff within three (3) business days of each change in attendance, enrollment, volunteer status, intern status, employment, or vocational status at any public or private school in this State.

A person required to register under this article is prohibited from living in campus student housing at a public institution of higher learning supported in whole or in part by the State.

Failure to register or provide notification as required, or knowingly and willfully giving false information when registering, is punishable by imprisonment for:

- (1) not more than 366 days and/or a fine of not more than \$1,000, for a first offense;
- (2) a mandatory period of 366 days, no part of which shall be suspended or probation granted, for a second offense; or
- (3) a mandatory period of 5 years imprisonment, 3 years of which shall not be suspended nor probation granted, for a third or subsequent offense.

I, (Print Offender's Name) Spring, Dora, understand that if I was convicted of any sex offense listed in Section 23-3-430 of the Code of Laws of South Carolina, I must abide by the registry conditions set forth in Title 23, Chapter 3, Article 7, and described above. I have received notice of these requirements both orally and in writing.

Offender's Signature

Date

SID #

Print Witness' Name

Witness' Signature

Original - Offender File

Copy - Offender

South Carolina Department of Probation, Parole and Pardon Services

Notice of Sex Offender Registry (NOSOR)

Pursuant to Sections 23-3-400 through -555 of the Code of Laws of South Carolina, any person residing in this State* who has been convicted of, adjudicated delinquent for, or pled guilty or nolo contendere to an offense described below** must register as a sex offender with the Sheriff's Office in each county where he resides, owns real property, is employed, or attends, is enrolled at, volunteers at, interns at, or carries on a vocation at any public or private school, including, but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school.*** The offenses set out below or similar offenses from other jurisdictions require registration as indicated.

16-3-815	Sexual Battery of a Spouse	16-15-342	Criminal solicitation of a minor if the purpose or intent of the solicitation or attempted solicitation was to: (a) persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16-15-375(5); or (b) perform a sexual activity in the presence of the person solicited (Section 16-15-342)
16-3-652	Criminal Sexual Conduct 1 st Degree	16-15-345	Disseminating Obscene Material to Any Person Under the Age of 18 Years
16-3-653	Criminal Sexual Conduct 2 nd Degree	16-15-355	Additional Penalty for Disseminating Obscene Material to any Minor 12 Years of Age or Younger
16-3-654	Criminal Sexual Conduct 3 rd Degree	16-15-365	Exposure of private parts in a lewd and lascivious manner (Misdemeanor)*****
16-3-655(A)	Criminal Sexual Conduct with Minors 1 st Degree	16-15-385	Dissemination of Obscene Materials to Minors is Unlawful
16-3-655(B)	Criminal Sexual Conduct with Minors 2 nd Degree (victim 11-14)****	16-15-387	Employing Person Under 18 to Appear in a Public Place in a State of Sexually Explicit Nudity
16-3-655(C)	Criminal Sexual Conduct with Minors 2 nd Degree (victim 14-16 and defendant is in position of authority or is older than the victim)****	16-15-395	Sexual Exploitation of a Minor 1 st Degree
16-3-656	Criminal Sexual Conduct: Assaults with Intent to Commit	16-15-405	Sexual Exploitation of a Minor 2 nd Degree
16-3-658	Criminal Sexual Conduct when the Victim is a Spouse	16-15-410	Sexual Exploitation of a Minor 3 rd Degree
16-3-810	Engaging a Child for Sexual Performance	16-15-415	Promoting Prostitution of a Minor
16-3-820	Producing, Directing, or Promoting Sexual Performance by a Child	16-15-425	Participating in the Prostitution of a Minor
16-3-910	Kidnapping of a person 18 years of age or older, unless the court finds it did not include a criminal sexual offense or an attempted criminal sexual offense	16-17-470	Peeping, voyeurism, or aggravated voyeurism
16-3-910	Kidnapping of a person under 18 years of age, except when committed by a parent	16-17-470(B)(1)	Sex/Voyeurism, violating place of privacy, views, photographs, records or films - 1 st offense
16-15-20	Incest	16-17-470(B)(2)	Sex/Voyeurism, violating place of privacy, views, photographs, records or films - 2 nd or sub.
16-15-120	Buggery	16-17-470(C)	Sex/Voyeurism aggravated, sells or distributes photograph, recording or film of person made in violation of section
16-15-130	Indecent Exposure (if the sentencing court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender)	44-23-1150(C)(1)	Sexual misconduct with inmate, patient, or offender 1 st degree
16-15-140	Committing or Attempting Lewd Act Upon a Child Under Sixteen	44-53-370(f)	Administering, distributing, dispensing, delivering, or aiding, abetting, attempting or conspiring to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate (GHB) to an individual with the intent to commit a crime listed in Section 44-53-370(f), except petit larceny or grand larceny
16-15-305	Disseminating, Procuring or Promoting Obscenity*****		
16-15-315	Requiring receipt of obscene material as precondition of sale of other material (Misdemeanor)*****		
16-15-325	Participation in preparation of obscene material prohibited*****		
16-15-335	Unlawful to Hire, Employ, Use or Permit any Person Under 18 to do anything Defined in statutes as Obscene		

Any other offense specified by Title I of the Federal Adam Walsh Child Protection and Safety Act of 2008 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA).

NOTE: All persons convicted, adjudicated or who have pled guilty or nolo contendere to "attempts to commit" and "accessory before the fact of" any crime enumerated above would be required to register. Also, for any offense not listed, the presiding judge may order as a condition of sentencing that the person be included in the registry if good cause is shown by the Solicitor.

* Any person who remains in South Carolina for a total of 30 days during a 12 month period is a resident.

** A defendant found not guilty by reason of insanity for an applicable offense is not required to register unless and until the person is declared to no longer be insane or is ordered to register by the trial judge.

*** This can be accomplished by reporting all such information to the Sheriff's Office in the primary county of registration, which is the defendant's county of residence unless he or she resides out of state.

**** Unless evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16-3-655(3) provided the offender is 18 years of age or less, or the offender and the victim are both under 16 years of age.

***** When a minor is involved.

Persons being released from the Department of Corrections at the completion of their sentence, to an early release program, to extended work release, to a community supervision program, or to parole must register with the Sheriff's Office in their county of residence within one (1) business day of release.

Standard Sex Offender Conditions

1. I will register as a sex offender with the sheriff's department in the county of my residence within 10 days of my sentence if my entire sentence is suspended during probation, or within 24 hours of my release from the South Carolina Department of Corrections. I will re-register annually as a sex offender with the sheriff's department in the county of my residence and if I change my residence I will register as a sex offender with the sheriff's department in the county of my new residence within 10 days of establishing that residence.
2. I will attend, actively participate in, not give cause to be terminated from, and successfully complete any counseling/treatment program, to which I am referred by my agent, which may include polygraph or other treatment related testing, all at my own expense. I waive all rights to confidentiality between myself and my treatment provider, and authorize my treatment provider to disclose to my agent, the Court, the Parole Board, the releasing authority, and/or the hearing officer, information about my attendance and participation in the program. (Must complete Referral Form 1054).
3. I will not have any contact with the victim(s) of my crime, directly or indirectly. This includes but is not limited to physical or face to face contact, contact through letters or written notes, telephone calls, or electronic mail (e-mail), or any contact through a third party, unless such contact is approved in writing by the Court, the Parole Board, or the releasing authority, or the hearing officer. I also will not enter into, travel past, or loiter near a victim's residence or workplace.
4. I will not have any contact with a person under the age of 18, with the exception of my immediate family members and then may only have such contact if approved in advance under conditions set by my treatment provider and my agent. If I have incidental contact with any child, I will be civil and courteous and immediately remove myself from the situation. I will discuss the contact at my next treatment session and will immediately report this contact to my agent.
5. I will not enter into, loiter or work within one thousand (1000) feet of any area or event frequented by people under the age of 18 including but not limited to: schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls, theaters, or and festivals, unless approved in advance by my agent.
6. I will not purchase, possess, or use any sexually stimulating or sexually explicit material or device, nor enter into, loiter or work within one thousand (1000) feet of any place where such material or device is sold or presented as entertainment. This includes but is not limited to adult book stores, sexually explicit internet sites, television services, or telephone services, sex shops, topless bars, strip clubs, and massage parlors. I will not possess or use a computer or any other electronic device which is enabled with internet access for any reason unless approved in advance under conditions set by my treatment provider and my agent. I understand this means that without prior approval, there may not be a computer of any type in my residence, and that I may not access any computer. If approved to use a computer I must sign the Computer Use Agreement for Sex Offenders (Form 1402). If my employer requires me to use a computer, I will provide a written statement from my employer stating the need for such use.
7. I will permit my agent or a representative of the Department, without a warrant and with or without the assistance of any other law enforcement officer, to search my person, residence, any vehicle I own or have permission to use, and any of my possessions, for the presence of sexually stimulating or sexually explicit materials or devices prohibited by these conditions, and to seize said materials. Such materials seized shall be considered property of the court, Parole Board, or releasing authority, and shall be safely kept by the Department or other law enforcement agency until any violations concerning the seized materials have been addressed.
8. I will abide by all curfews as directed by my agent.
9. I will at all times maintain a suitable residence, approved by my agent, which complies with all conditions of my supervision, which may not be within one thousand (1000) feet of any area frequented by people under the age of 18, including but not limited to schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls, or theaters. I will obtain approval from my agent of my residence and employment and shall obtain prior approval from my agent before changing my residence or employment. I will stay at my approved residence every night and will not sleep or stay overnight anywhere else without prior approval of my agent.
10. I will not consume alcoholic beverages and will submit to alcohol testing as instructed by my agent or treatment provider. I agree that any test results may be used as evidence in any hearing for the violation of the conditions of my supervision and I waive any right to challenge the validity of such results.
11. I will comply with the Department's requirements for any electronic monitoring program which I am ordered to participate in by the Court, the Parole Board, the releasing authority, the hearing officer, or my agent, or as required by statute, all at my own expense.

I have read, or had read to me, the above conditions and I understand their meaning. I have received a copy of these conditions. I accept and agree to these conditions and understand that any violation could result in the Court, Parole Board, or releasing authority revoking my supervision and reinstating my sentence or returning me to prison. If I refuse to accept these conditions, I must immediately ask my agent to issue legal process and bring my case before the Court, Parole Board, or releasing authority where I will request that my term of supervision be revoked and my sentence be reinstated or that I be returned to prison. I understand that, if I have objections to any of the above conditions but fail to timely take the actions described above, I will waive any right I may have to challenge these sex offender conditions at any future proceeding.

Offender Signature _____ Date _____

Offender Name (printed) _____

Agent Signature _____ Date 9/1/2011

Agent Name (printed) _____

1
2 STATE OF SOUTH CAROLINA)
3 COUNTY OF COLLETON) Court of General Sessions
4) Case No. 2011-GS-15-00689
5 STATE OF SOUTH CAROLINA) Reconstruction
6 vs.) of Hearing from
7 JIMMY LEE DUNCAN,) January 31, 2012

8
9 DATE: October 28, 2013

10 B E F O R E:

11 The Honorable Thomas W. Cooper, Jr.

12 A P P E A R A N C E:

13 Steven H. Knight, Assistant Solicitor
14 Attorney for the State

15 Susan B. Hackett, Appellate Defense
16 Attorney for the Defendant

17
18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

INDEX**EXAMINATION**

Witness Name	Page
PATRICIA GRANT	
Direct By Ms. Hackett.....	6
JAY LEMACKS	
Direct By Ms. Hackett.....	8
Re-Direct By Ms. Hackett.....	48
CAMERON RAY TAYLOR	
Direct By Ms. Hackett.....	15
JOHN D. BRYAN	
Direct By Ms. Hackett.....	21
JIMMY DUNCAN	
Direct By Ms. Hackett.....	32

EXHIBITS

Exhibit		I.D.	EVD
Defendant's Exhibit 1	Brief	25	30
Defendant's Exhibit 2	Trial Notes	30	31

1 MR. KNIGHT: This is a matter of Jimmy Lee Duncan.
2 This is the reconstruction of testimony of the case that we
3 tried here in this county, it looks like January 31, 2012.
4 I'm going to give the original file to you, State of South
5 Carolina vs. Jimmy Duncan.

6 Your Honor, we have Ms. Hackett from Appellate
7 Defense. Since I've never done this before --

8 THE COURT: That makes two of us.

9 MR. KNIGHT: That's sort of scary if you haven't
10 done it before, because I know I haven't. I'm going to turn
11 it over to her and let her call the witnesses.

12 THE COURT: Your name again, please?

13 MS. HACKETT: Susan Hackett.

14 THE COURT: Does that spell like it sounds?

15 MS. HACKETT: It is, like Buddy Hackett. I'm at the
16 Office of Appellate Defense. This is a
17 reconstruction hearing of a bench trial. The charge was
18 failure to register, second offense. The indictment number
19 is 2011-GS-15-689. I have an order from the Court of Appeals
20 for the reconstruction hearing if Your Honor needs it. Do
21 you have it already?

22 THE COURT: No, ma'am, I don't think that I have
23 it.

24 MS. HACKETT: Would Your Honor like a
25 copy of the order?

1 THE COURT: If you would just give me a copy to
2 refer to, it will find its way through the file, I'm sure.

3 MS. HACKETT: May I approach?

4 THE COURT: Yes, please. Thank you.

5 MS. HACKETT: Yes, sir.

6 THE COURT: All right. The order for reconstruction
7 was filed on June the 12th of this year. All right. And who
8 are the witnesses that testified then and will testify now?

9 MS. HACKETT: The witnesses who testified at trial
10 were Patricia Grant of the Clerk of Court's office, Jay
11 Lemacks, Cameron Ray Taylor, and Jimmy Duncan, the defendant.
12 We will also call J.D. Bryan, who represented Mr. Duncan at
13 trial.

14 It's my understanding that the solicitor who
15 prosecuted the case is out of the country and outside of our
16 subpoena power. So we will do our best to reconstruct with
17 what we have.

18 THE COURT: All right.

19 MR. KNIGHT: May it please the Court, that is, in
20 fact, correct. I have a copy of the witness list from the
21 Clerk of Court's office. I think we should put that in.

22 THE COURT: Let's do that. Let's --

23 MR. KNIGHT: There should be an original in the
24 file, Your Honor; that's where we got it from.

25 THE COURT: Yeah, all right.

1 MS. HACKETT: And I propose if it suits Your Honor,
2 the way I've done these in the past is just to call the
3 witnesses and ask them what they remember. We sort of have
4 to suspend the hearsay rule for these hearings. And I also
5 have copies of the exhibits that were admitted at trial. I
6 do not propose to admit them again, that would seem
7 redundant, but I will do what the Court asks, but I will use
8 them during the examination.

9 THE COURT: That will be fine. Ms. Hackett, and
10 since I think you are the only person in this room who has
11 ever done this before, we will yield to you from a procedural
12 standpoint. And certainly the outline that you've just given
13 us makes sense.

14 MS. HACKETT: That's frightening for me to have
15 that, but I have done two of these previously, so it's part
16 of the job that I have that we have to reconstruct these
17 records.

18 THE COURT: Thank you, ma'am.

19 MS. HACKETT: I will start then by calling Patricia
20 Grant.

21 THE CLERK: State your name for the record.

22 THE WITNESS: Patricia Grant.

23 PATRICIA GRANT,

24 having been duly sworn, testifies as follows:

25 DIRECT EXAMINATION

1 BY MS. HACKETT:

2 Q. Ms. Grant, what's your current occupation?

3 A. I'm clerk of court for Colleton County.

4 Q. And was that your occupation on January 31st,
5 2012?

6 A. Yes.

7 Q. Do you have any recollection of testifying at the
8 trial of Jimmy Lee Duncan, who is seated at defense table?

9 A. Vaguely.

10 Q. All right. Well, take me through a little bit of
11 what you remember, if anything.

12 A. The only thing that I would remember is, you know,
13 when you called me just to verify that I am the clerk of
14 court of Colleton County, I am the record keeper of the
15 documents, and more or less, I probably provided a certified
16 copy of the record if I was asked to do so.

17 Q. All right. Just to talk with you briefly about what
18 you believe may have been the substance of your testimony,
19 I'm going to show you two documents that were in the clerk of
20 court's file, your file, that may help refresh your
21 recollection.

22 MS. HACKETT: May I approach the witness?

23 THE COURT: Please do.

24 BY MS. HACKETT:

25 Q. These may be in the file that you have with you.

1 Those were State's Exhibits 1 and 2. Do those do anything to
2 refresh your recollection?

3 A. Yes. These are the certified copies of the original
4 records of Mr. Duncan's sentence.

5 Q. All right. Do you recall who called you to testify,
6 whether it was the solicitor or the defense attorney?

7 A. No.

8 Q. Okay. And do you recall whether there were any
9 objections made during your testimony?

10 A. No objection.

11 Q. There were no objections made during your
12 testimony?

13 A. No.

14 Q. Do you recall whether there were any motions made
15 during your testimony?

16 A. No.

17 Q. Do you recall the testimony of any other witnesses
18 during the trial?

19 A. No.

20 Q. And do you recall whether there were any other
21 motions or objections made while you were present in the
22 courtroom?

23 A. I do not.

24 Q. I'm going to take those documents back from you,
25 since we are not admitting them in this hearing. And do you

1 recall the result of the trial, if you stayed through to the
2 conclusion?

3 A. If it's the same that's in the record.

4 Q. But you don't have any independent recollection?

5 A. No, I don't have a memory, no.

6 MS. HACKETT: Those are all the questions that I
7 have. I turn it over to the Solicitor's Office.

8 MR. KNIGHT: I have no questions for Ms. Grant, Your
9 Honor. It's just amazing seeing her on the witness stand.

10 THE COURT: Ms. Grant, you can step down.

11 MS. HACKETT: Jay Lemacks.

12 THE CLERK: State your full name for the record.

13 THE WITNESS: Jay Lemacks, L-e-m-a-c-k-s.

14 JAY LEMACKS,

15 having been duly sworn, testifies as follows:

16 DIRECT EXAMINATION

17 BY MS. HACKETT:

18 Q. Mr. Lemacks, I apologize for pronouncing your name
19 incorrectly. What is your current occupation?

20 A. I'm a retired probation/parole agent.

21 Q. So currently you are not working; you are at home?

22 A. I have -- I work as an adjunct criminal justice
23 instructor for USC, and I'm also a reserve deputy, which is
24 an unpaid position.

25 Q. And in January -- excuse me, January 31st, 2012,

1 what was your occupation?

2 A. I was agent in charge of probation for Colleton
3 County.

4 Q. And in your position as the agent in charge, did you
5 know Mr. Duncan, the gentleman seated at the defendant's
6 table?

7 A. I've known Jimmy for many years.

8 Q. Do you recall his trial on January 31st, 2012?

9 A. Yes, ma'am.

10 Q. Okay. What was the charge that Mr. Duncan was
11 facing?

12 A. Failure to register. I believe it was second
13 offense.

14 Q. All right. And what was your involvement in that
15 trial?

16 A. He was under supervision. I don't recall if it was
17 probation or parole or community supervision; it was one of
18 the programs. And because of his conviction for a criminal
19 sexual conduct, one of his requirements was to register. And
20 we provided him with documentation, in addition to my oral
21 instructions for him to register. He was also provided two
22 forms that instructed him that he was required to register.

23 Q. So was your involvement in the trial as a
24 witness --

25 A. Yes.

1 Q. -- who testified? And do you remember who called
2 you to testify?

3 A. The State.

4 Q. And do you recall the substance of your testimony?
5 I think you may have been getting into that a little bit
6 previously, but do you recall what you testified to at his
7 trial?

8 A. I believe so, the fact that he was under
9 supervision, he was provided oral instructions to register,
10 and was provided written instructions. And not -- verified
11 to the solicitor and to the Court that the forms had my
12 signature, as well as Mr. Duncan's signature.

13 Q. I'm going to come right back to that. I want to
14 circle back to your testify. You testified he had been
15 instructed to register. Did you also testify that he had
16 failed to register?

17 A. I testified that he was instructed to register.

18 Q. And so that was your role in the whole registration
19 process, was to provide him with the instructions to
20 register?

21 A. To my recollection, that was my testimony.

22 Q. Okay. And turning to these documents that I believe
23 were used during your testimony, I'm going to show you what
24 was marked as State's Exhibit 3 and State's Exhibit 4 at the
25 trial.

1 MS. HACKETT: May I approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. HACKETT:

4 Q. Do those appear to be the documents that were used
5 during your testimony?

6 A. Yes, ma'am.

7 Q. And can you tell me what those documents are?

8 A. I will try to refer to them by number, but I cannot
9 read the exhibit number. But the first one is notice of sex
10 offender registry. This is a form that is produced by the
11 probation department, has a listing of all the sex offenses
12 that require registration. 16-3-652, I have an arrow
13 indicating that that is the
14 crime that required his registry.

15 On the back of that form, it looks like the form
16 number is 10-15, I have in my writing: Jimmy Duncan
17 understands that he's convicted of -- and has the sex offense
18 listed -- and I had received notice of these requirements
19 both orally and in writing.

20 And I signed it as well, as Mr. Duncan, on 9/1 of
21 2011.

22 The other form is the standard sex offender
23 conditions. And condition number one, the last part of that
24 says: I will register as a sex offender with Sheriff's
25 Department in the county of my new residence within 10 days

1 of establishing that residence.

2 And that was Form 1401 that we both signed on
3 September the 1st of 2011.

4 Q. Thank you. I apologize for the quality of the copy
5 of the State's exhibits, but those were 3 and 4 in the order
6 you provided them.

7 I want to ask you briefly regarding the arrow that
8 was drawn on Number 3, which is the notice of sex offender
9 registry. Do you recall if you were asked any questions
10 about that arrow?

11 A. I do not recall. I would say no.

12 Q. Okay. Turning to the next form, which is State's
13 Exhibit Number 4, the standard sex offender conditions, I
14 note that number one has some handwriting.

15 A. Yes, ma'am.

16 Q. Could you explain to me if this handwriting became
17 the subject of any direct examination or cross-examination?

18 A. I do not recall that being an issue for the State or
19 the defense.

20 Q. Were those handwriting changes, additions, part of
21 the case itself?

22 A. I made a change on the form because I believe the
23 registration requirements had changed since this form was
24 initially printed where it said: I will reregister annually.
25 And it looks like I wrote in bi-annually.

1 And also said -- wrote the word twice, that he was
2 required to register twice per year.

3 Q. And so just to make sure I understand, your
4 testimony at the trial would have been that you had provided
5 Mr. Duncan with notice of the requirement that he register on
6 September 1st -- excuse me, September 1st, 2011?

7 A. Yes, ma'am.

8 Q. Let's talk a little bit about the cross-examination.
9 What do you recall, if anything, regarding the
10 cross-examination of you by the defendant's attorney,
11 Mr. Bryan?

12 A. I cannot recall any specific questions, because I
13 believe in my testimony, it's pretty much straight-forward
14 that I gave him verbal and written
15 instructions to register.

16 Q. Do you recall any cross-examination concerning the
17 GPS monitor?

18 A. I do not recall that being an issue, because GPS
19 would have been a separate issue from the registry.

20 Q. Do you remember if Mr. Duncan was on GPS monitoring
21 at the time?

22 A. I believe he was.

23 Q. And were you present in the courtroom for the entire
24 trial?

25 A. I'm really -- I remember saying I do not believe

1 that I was sequestered.

2 Q. Were there any objections made during your
3 testimony?

4 A. None that I recall.

5 Q. Do you remember any motions being made?

6 A. Specifically, no, I can't.

7 Q. During the entire trial, do you recall any
8 objections or motions being made while you were present?

9 A. No, ma'am, I can't recall any other than I'm sure
10 that Mr. Bryan would have made the standard motions that all
11 attorneys make in a trial; but, specifically, I can't say.

12 MS. HACKETT: I believe those are all the questions
13 I have of you. I will turn it over to the Solicitor.

14 MR. KNIGHT: Nothing from the Solicitor, Your
15 Honor.

16 THE COURT: Thank you.

17 (Whereupon the witness is excused..)

18 MS. HACKETT: The next witness would be Mr. Ray
19 Taylor.

20 CAMERON RAY TAYLOR,
21 having been duly sworn, testifies as follows:

22 THE CLERK: State your name for the record.

23 THE WITNESS: Cameron Ray Taylor.

24 DIRECT EXAMINATION

25 BY MS. HACKETT:

1 Q. Mr. Taylor, you go by Ray; is that correct?

2 A. That's correct, yes.

3 Q. I will try to call you Mr. Taylor, but if I fail to,
4 I apologize.

5 What's your current occupation, sir?

6 A. I'm a sergeant with the Sheriff's Office and
7 currently still over the sex offender registry.

8 Q. And I take it by you using the word still, that was
9 your occupation January 31st of 2012?

10 A. Yes, ma'am.

11 Q. And were you involved in the trial of Mr. Duncan on
12 January 31st, 2012?

13 A. Yes, ma'am, I was.

14 Q. And can you tell me what your involvement in that
15 trial was?

16 A. I do the registration for the sex offender registry
17 with the Sheriff's Office. So Mr. Duncan was one of the
18 persons that I monitored or registered.

19 Q. All right. Were you called as a witness at his
20 trial?

21 A. Yes, ma'am, I was.

22 Q. And who called you to testify?

23 A. Solicitor's Office.

24 Q. Do you remember the gentleman's name who was the
25 assistant solicitor?

1 A. No, ma'am, I don't.

2 Q. Do you remember the substance of your testimony?

3 A. It was just in reference to whether or not he had
4 registered.

5 Q. And could you tell us what your testimony was, what
6 you independently recollect of that testimony?

7 A. I still have my paperwork from then. I was given a
8 copy of Mr. Lemacks's forms that he had provided to
9 Mr. Duncan on September the 1st of 2011, indicating that he
10 should have come and see me within a day of being released.
11 As of September the 26th, I had still not seen Mr. Duncan. I
12 had made several attempts to try to contact him without any
13 success. And so as of September the 26th, I obtained a
14 warrant for failing to register.

15 Q. And as part of your job at the Sheriff's Department,
16 you would have received forms of individuals who are required
17 to register?

18 A. Yes, ma'am. We work very closely with probation.
19 So when somebody is released either on probation or
20 supervision, once they go to probation, then probation would
21 forward us copies of their paperwork so that I would know who
22 was released and when, what day they had come in to see them,
23 to keep up with like that.

24 Q. And when you say released, do you mean from the
25 Department of Corrections?

1 A. Yes, ma'am, from the Department of Corrections.

2 Q. And does the probation office have any type of
3 information regarding where the person being released is
4 going to reside?

5 A. Yes, ma'am, they do.

6 Q. Okay. And so that information is given to you
7 because that person is going to reside in your county?

8 A. Yes, ma'am, correct.

9 Q. And the registration requirements are
10 county-specific; is that right?

11 A. Correct, they are.

12 Q. All right. Were any exhibits used during your
13 testimony?

14 A. I believe just the ones that you've already been
15 made aware of, which would have been the notice from
16 Mr. Lemacks. And then the other documents I have are the
17 ones that were introduced by Ms. Grant, which would have been
18 the original criminal sexual conduct and then the failure to
19 register first offense.

20 Q. But those were not introduced through you?

21 A. No, ma'am, they would have been introduced by Ms.
22 Grant or by the solicitor, yes.

23 Q. But they may have been used during your testimony?

24 A. Correct.

25 Q. Okay. Do you recall the cross-examination from

1 Mr. Bryan?

2 A. No, ma'am, I don't.

3 Q. I had wanted to ask you a question about the arrest
4 warrant.

5 MS. HACKETT: May I approach the witness, Your
6 Honor?

7 THE COURT: Yes, ma'am.

8 BY MS. HACKETT:

9 Q. Does this appear to be the arrest warrant that you
10 swore out for Mr. Duncan's arrest on September 26th, 2011?

11 A. It appears to be, yes, ma'am.

12 Q. And could you state what the arrest warrant number
13 is?

14 A. M104486.

15 Q. I want to ask you a question regarding the arrest
16 warrant. And I was a little bit confused when I read in the
17 warrant that -- let's see -- where it says that he was
18 supposed to register quarterly. Do you see that appearing in
19 the arrest warrant?

20 A. Yes, ma'am.

21 Q. And then the exhibits that Mr. Lemacks talked
22 about -- Lemacks, apologize again -- were bi-annually. Were
23 there any questions at the hearing regarding the discrepancy
24 between the warrant and the documents?

25 A. Not that I recall. Sometime during this process,

1 and I'm not sure exactly, I would have to go back to look to
2 see, the law changed where it went from a bi-annual
3 registration to a quarterly registration depending on their
4 original conviction. I'm not sure exactly. When I obtained
5 this warrant, it had changed from bi-annual to quarterly.

6 Q. Okay. But the charge -- was the charge regarding
7 quarterly or bi-annual registration, or was it something
8 separate?

9 A. His particular charge that he was -- he failed to
10 come in within the one-day period which was required once he
11 was released from the Department of Corrections.

12 Q. And let's just make sure the record is clear on
13 that. Mr. Duncan was released on what day from the
14 Department of Corrections?

15 A. I received notification that he was released on
16 September the 1st.

17 Q. Of what year?

18 A. 2011. I'm sorry.

19 Q. And he was required to register when?

20 A. Within one business day.

21 Q. And so the warrant alleged that he had failed to
22 register within that one business day?

23 A. Correct. He actually -- actually, it was 26 days up
24 until the time I got a warrant. Because sometimes, you know,
25 like I say, it says business day, and so we give -- normally

1 try to give them a couple of days.

2 Q. And I believe that you had said that you had tried
3 to make contact with Mr. Duncan?

4 A. Correct. I tried the phone numbers that were
5 available to me from his previous registrations, and was
6 unable to make any contact.

7 Q. Did you testify to that regard?

8 A. I don't recall.

9 MS. HACKETT: I believe those are all the questions
10 that I have, Your Honor.

11 MR. KNIGHT: None from the Solicitor's Office.

12 THE COURT: Thank you, sir.

13 (Whereupon the witness is excused.)

14 MS. HACKETT: Your Honor, I call Mr. Bryan to
15 testify.

16 JOHN D. BRYAN,

17 having been duly sworn, testifies as follows:

18 THE CLERK: State your full name for the record.

19 THE WITNESS: My name is John Douglas Bryan.

20 EXAMINATION

21 BY MS. HACKETT:

22 Q. Thanks, Mr. Bryan, for being here. Do you recall
23 representing Mr. Duncan?

24 A. I do.

25 Q. Do you recall representing him January 31st, 2012?

1 A. I do.

2 Q. And in what capacity were you representing him; what
3 was the charge?

4 A. I was his trial counsel. He was charged with
5 failure to register.

6 Q. And do you recall if it was a first offense, second
7 offense?

8 A. I believe it was a second.

9 Q. Had Mr. Duncan retained you to represent him?

10 A. I was appointed.

11 Q. And do you recall what type of trial it was?

12 A. It was a bench trial. The previous day we had had a
13 motion and got -- decided -- the Court ruled in favor of the
14 request for a bench trial.

15 Q. Do you recall who the judge was?

16 A. No, but I think it was Judge Cooper. Wasn't it? It
17 wasn't?

18 MR. KNIGHT: Judge Russo.

19 THE WITNESS: Huh?

20 MR. KNIGHT: Judge Russo.

21 THE WITNESS: Oh, okay. I don't remember. My
22 memory is --

23 MS. HACKETT: Doesn't happen so often that the
24 Solicitor's Office gives us the answers, but it was Judge
25 Russo. Thank you, Mr. Knight.

1 MR. KNIGHT: Just trying to assist.

2 THE WITNESS: My memory isn't very good. I did take
3 notes at the trial though.

4 BY MS. HACKETT:

5 Q. And we will certainly get to those as well.

6 Getting back to Mr. Duncan's trial, did you make any
7 motions prior to trial?

8 A. Other than the motion for the bench trial, I don't
9 think I made any motions.

10 Q. So there were no motions regarding a statement or
11 anything of that nature?

12 A. No.

13 Q. All right. And I believe you've already told us
14 that the judge ruled in favor of a bench trial?

15 A. Yes.

16 Q. And do you recall the solicitor's name?

17 A. No.

18 Q. Okay. Did you make an opening statement?

19 A. I don't remember.

20 Q. Okay. Do you remember if the prosecutor made an
21 opening statement?

22 A. I don't remember that either.

23 Q. All right. Do you recall any witnesses testifying
24 other than the witnesses we've had here today?

25 A. The defendant did testify afterwards, after the

1 State rested.

2 Q. And do you recall the substance of Ms. Grant's
3 testimony?

4 A. She was called to basically establish the
5 authenticity of certain records. And I did write that in my
6 notes.

7 Q. So you don't recall her testimony any differently
8 than what we've heard today?

9 A. No.

10 Q. And do you recall your cross-examination of Ms.
11 Grant?

12 A. I don't believe I did. It was a fairly short
13 trial.

14 Q. Did you make any objections during Ms. Grant's
15 testimony?

16 A. No.

17 Q. Do you recall the testimony of Mr. Lemacks?

18 A. Yes.

19 Q. Do you recall if there were any objections made
20 during his testimony?

21 A. No.

22 Q. And tell me what you remember about Mr. Lemacks's
23 testimony?

24 A. He basically testified that he met with the
25 defendant and informed him that he has to register. And

1 there were a couple of exhibits introduced, and that was
2 about it.

3 Q. How about your cross-examination of him?

4 A. I cross-examined him to a great extent on the nature
5 of the GPS device that he was forced to wear, as to its
6 dimensions, its weight, how long it takes to charge the
7 device. I think it has to be charged overnight, plugged into
8 a wall with a cord, the fact that it's on him, you know, 24
9 hours a day. There was a bit of cross-examination as to the
10 physical dimensions and weight and nature of the GPS
11 monitoring device.

12 Q. Do you remember what the dimensions were that he
13 testified to?

14 A. I don't remember.

15 Q. How about the weight?

16 A. I don't remember.

17 Q. And were there any other cross-examination questions
18 that you recall of Mr. Lemacks?

19 A. I believe that was it.

20 Q. We are going to move next to Mr. Taylor's testimony.
21 Do you recall his direct examination?

22 A. I believe that the State called him just to
23 establish that the defendant had not registered, and that was
24 pretty much the extent of it.

25 Q. Do you recall your cross-examination of

1 Mr. Taylor?

2 A. I don't believe I cross-examined Mr. Taylor.

3 Q. After the State rested, did you make any motion?

4 A. I moved for a directed verdict on the grounds that
5 the GPS monitoring made this requirement unconstitutional,
6 that it was a violation of the ex post facto clauses of the
7 state and federal constitutions, the federal constitution
8 coming in through the 14th Amendment. I had a two-page
9 brief, and I handed it to the Court.

10 Q. And the two-page brief concerned this argument that
11 you are making currently that was made at directed verdict
12 stage?

13 A. Right.

14 MS. HACKETT: All right. I'm going to ask the court
15 reporter to mark this as an exhibit.

16 (Defendant's Exhibit No. 1, Brief, was marked for
17 identification.)

18 BY MS. HACKETT:

19 Q. Mr. Bryan, I'm showing you what's been marked as
20 Defendant's Exhibit 1. I apologize to the Court; I only have
21 the one copy. Is this the brief that you were discussing in
22 your testimony?

23 A. Yes, it is.

24 Q. And I have shown opposing counsel that brief. If
25 you would hold on to that for me. I want to ask you a couple

1 of questions about it. In that brief, when did you hand that
2 to the Court?

3 A. I would have handed it when I made my motion for the
4 directed verdict at the conclusion of the State's case.

5 Q. In that brief, had you cited case law and
6 constitutional law to support your argument?

7 A. I did.

8 Q. And I believe you said that was a directed verdict
9 motion?

10 A. Yes.

11 Q. And what was Judge Russo's ruling on the motion?

12 A. He ruled against us.

13 Q. Do you recall any substance or anything that he may
14 have said in his ruling, the basis of the ruling?

15 A. I believe he acknowledged that, yes, it is a
16 restraint on him, but it doesn't arise to the level of an ex
17 post facto violation. His exact words I don't remember.

18 Q. But he did make a ruling on the constitutional issue
19 presented?

20 A. He did.

21 Q. Do you recall Mr. Duncan's testimony?

22 A. Yes.

23 Q. Can you tell us what you remember about his
24 testimony?

25 A. His testimony was largely a constitutional argument

1 against the constitutionality of the statute with which he
2 was charged. I think he did ex post facto and also double
3 jeopardy.

4 Q. And he made an argument regarding the failure to
5 register charge?

6 A. It was all pretty much the same to him.

7 Q. Okay. So he had, in his testimony itself, presented
8 a legal argument?

9 A. Right.

10 Q. Okay. Do you recall anything else of the substance
11 of Mr. Duncan's testimony?

12 A. Not offhand.

13 Q. All right. Do you recall if the judge engaged in a
14 colloquy with Mr. Duncan concerning his right to testify or
15 not to testify?

16 A. I don't remember, but I'm sure he would have done
17 that.

18 Q. Do you remember if there was any type of admonition
19 regarding prior victims being used to impeach Mr. Duncan?

20 A. I don't remember, but that's usually a standard
21 part.

22 Q. Do you remember if any prior convictions were used
23 by the State to impeach Mr. Duncan?

24 A. I don't remember. I don't think so, but I don't
25 remember.

1 Q. Do you remember what the State's cross-examination
2 of Mr. Duncan was?

3 A. I think they asked him if he had been convicted of
4 the sex offense and if he had failed to register.

5 Q. And do you recall Mr. Duncan's answers?

6 A. I believe he, in a round about way, admitted it.

7 Q. Did you make or did the State make any objections or
8 motions during Mr. Duncan's testimony?

9 A. Not that I recall.

10 Q. And at the conclusion of your case, did you make any
11 motions or objections?

12 A. I would have renewed my motion for directed
13 verdict.

14 Q. And was it based upon the same legal analysis
15 presented earlier?

16 A. Yes.

17 Q. And what ruling did you get?

18 A. Same.

19 Q. Did you make a closing argument?

20 A. I believe so, but if I did, it would have been
21 essentially the same argument I made for my motion.

22 Q. So a constitutional argument?

23 A. Yes.

24 Q. And did the State make a closing argument?

25 A. I don't remember.

1 Q. All right. Let's turn to the deliberations. Did
2 the judge engage in any type of charge conference, even
3 though it was a bench trial?

4 A. I don't think so.

5 Q. Did you ask that the judge use any particular
6 charges during his deliberations as the fact finder?

7 A. I don't believe so. I don't remember.

8 Q. Do you remember what the judge's verdict was?

9 A. Well, the judge came out and gave a -- he gave a
10 speech, and he convicted him.

11 Q. Concerning any remarks that Judge Russo may have
12 made, do you recall what those were, if they were rulings on
13 objections or --

14 A. I don't remember.

15 Q. Do you remember how long he deliberated?

16 A. I don't remember.

17 Q. Did he proceed immediately into sentencing of
18 Mr. Duncan?

19 A. I can't tell you.

20 Q. Did you make any type of presentation during the
21 sentencing?

22 A. I don't think so. I don't remember.

23 Q. Did the State make any presentation during
24 sentencing?

25 A. I don't remember.

1 Q. Were there any objections made at sentencing?

2 A. None that I recall.

3 Q. Was there an objection to the sentence at all?

4 A. Not to my memory.

5 Q. Because we are doing this record for appellate
6 purposes, I want to ask a general question of what do you
7 recall about any objections or motions that we haven't
8 covered in your testimony already?

9 A. I don't remember any others.

10 Q. Would the primary objection or motion have been the
11 directed verdict, constitutional argument?

12 A. Yes.

13 Q. All right.

14 MS. HACKETT: Your Honor, may I approach?

15 THE COURT: Yes, ma'am.

16 MS. HACKETT: I ask the court reporter to mark this
17 as Defendant's Number 2:

18 (Defendant's Exhibit No. 2, Trial Notes of Mr.
19 Bryan, was marked for identification.)

20 MS. HACKETT: I believe I failed to move in
21 Defendant's Number 1. I would move that in now.

22 THE COURT: Without objection?

23 MR. KNIGHT: Without objection, Your Honor.

24 (Whereupon Exhibit 1 is moved into evidence.)

25 BY MS. HACKETT:

1 Q. Mr. Bryan, I'm showing you what's been marked as
2 Defendant's Number 2. Can you identify that document?

3 MR. KNIGHT: Without objection.

4 A. That's a copy of my notes from the trial.

5 Q. And these are notes that you kept during the trial
6 and you placed into your file afterwards?

7 A. Yes.

8 MS. HACKETT: Your Honor, at this time I move
9 Defendant's Number 2 into evidence.

10 MS. HACKETT: Without objection, Your Honor.

11 THE COURT: Without objection, Exhibit 2 is in
12 evidence.

13 (Whereupon Defendant's Exhibit 2 is moved into
14 evidence.)

15 BY MS. HACKETT:

16 Q. I'm looking at these notes. Is there anything
17 additional that you need to tell the Court, if this in any
18 way refreshes your recollection regarding what transpired at
19 the trial?

20 A. Well, Exhibit 3 was a signed notice of registry.
21 And Exhibit Number 4 was probation form, standard sex
22 offender conditions. It looks like Number 1 was a sentence
23 sheet. And Exhibit Number 2 was a 2008 failure to register.
24 Whether that was a sentence sheet or some other form
25 indicating a conviction, I don't -- you know, I don't

1 remember straight offhand.

2 And it looks like Ray Taylor testified that he would
3 have gotten electronic notification of the release from SCDC.
4 That's about it.

5 On Patricia Grant's testimony, she testified that
6 she was clerk of court since 2001 and employee since 1974.
7 And solicitor handed her a case folder from 2000-GS-15-726,
8 and that was a sentence sheet. A true copy was admitted as
9 Number 1 for the plaintiff. And the 2008 failure to register
10 was admitted as Number 2. And that's about it.

11 MS. HACKETT: All right. Those are all the
12 questions that I have for Mr. Bryan.

13 THE COURT: Thank you.

14 MR. KNIGHT: None from the Solicitor's Office, Your
15 Honor.

16 THE COURT: Thank you, Mr. Bryan. You may step
17 down.

18 (Whereupon the witness is excused.)

19 MS. HACKETT: Mr. Jimmy Duncan.

20 JIMMY DUNCAN,

21 having been duly sworn, testifies as follows:

22 THE CLERK: State your full name for the record.

23 DIRECT EXAMINATION

24 BY MS. HACKETT:

25 Q. Mr. Duncan, if you would state your full name for

1 the record.

2 A. Jimmy D. Duncan.

3 Q. Mr. Duncan, were you tried in Colleton County on
4 January 31st, 2012?

5 A. Yes, ma'am.

6 Q. What was the charge?

7 A. Failing to register, I believe second offense.

8 Q. And who represented you at that trial?

9 A. Mr. Bryan, J.D. Bryan.

10 Q. And who represented the State?

11 A. I believe the Solicitor's Office.

12 Q. Do you recall the attorney's name or what the
13 gentleman looked like or woman looked like?

14 A. It was -- what's his name? Heavy-set dude.

15 Q. That's okay. If you don't remember, that's
16 perfectly fine; just trying to set the stage a little bit.
17 Do you recall who the judge was?

18 A. Yeah. Yes, ma'am, Judge Russo.

19 Q. And was the trial in this room?

20 A. Yes, ma'am.

21 Q. All right. Let's talk a little bit about the trial
22 itself. Do you remember any pretrial motions being made?

23 A. It was one made to contest the validation of the
24 indictment.

25 Q. All right. Tell us a little bit about what you

1 remember about that motion contesting the indictment.

2 A. Probable cause to see if the indictment was
3 sufficient.

4 Q. So there was a challenge to the sufficiency of the
5 indictment?

6 A. Yes, ma'am.

7 Q. Do you remember anything specific about the
8 challenge to the sufficiency of the indictment?

9 A. In regards to the change of the law, as in what they
10 spoke about, whether or not it would run into what they call
11 a conjoining indictment.

12 Q. Okay. What was the judge's ruling on that?

13 A. They never got to that. They were supposed to get
14 to it in the end result of the trial.

15 Q. So the judge never made a ruling?

16 A. Never made a ruling on it.

17 Q. All right. Tell me about any other pretrial motions
18 that you recall.

19 A. It was direct motion (sic).

20 Q. Would you be referring to a directed verdict?

21 A. Oh, yes, ma'am.

22 Q. Let's talk about anything that happened prior to the
23 trial. Do you remember waiving your jury trial?

24 A. Yes, ma'am.

25 Q. All right. So you waived your jury trial and had a

1 bench trial; is that right?

2 A. Yes, ma'am.

3 Q. Anything else that happened before the trial
4 started?

5 A. It was a motion, something about anything that
6 happened after 10 years, then they wouldn't bring that up.
7 Supposedly, they are not supposed to use that against you.

8 Q. Are you talking about prior convictions?

9 A. Yes, ma'am.

10 Q. All right. And so there was a motion to exclude any
11 prior convictions --

12 A. Yes, ma'am.

13 Q. -- that were over 10 years old?

14 A. Yes, ma'am.

15 Q. What was the judge's ruling on that?

16 A. He went with it. He asked the other party whether
17 they object to it or whatnot, but they went with it.

18 Q. So there was an agreement not to use convictions
19 older than 10 years --

20 A. Yes, ma'am.

21 Q. -- against you?

22 A. Yes, ma'am. It was a rule that they called, court
23 rule --

24 Q. Yes, sir. I believe that would be 609; does that
25 sound familiar?

1 A. Yes, ma'am.

2 Q. All right. Anything else happen in pretrial that
3 you remember?

4 A. It was another motion that he asked for. I believe
5 it's dealing with a clerical error, if I'm not mistaken,
6 something regards -- I think he said Rule 60B, and another
7 court rule in regards to that community supervision thing.

8 Q. So Mr. Bryan had moved the Court to do something in
9 light of community supervision?

10 A. Yeah, dealing with the indictment of the original
11 charge and the change in the law and these type things here,
12 he moved that motion to relieve me of the error, to relieve
13 me of the circumstances that I was up under at that time,
14 which I am now today.

15 Q. All right. Let's move into the actual trial itself.
16 Do you remember if the attorneys made opening statements?

17 A. The State made an opening statement with some
18 briefs, and that was that as far as I remember on that they
19 had right there.

20 Q. So doesn't sound like you remember much in regards
21 to opening statements; is that correct?

22 A. Yes, ma'am.

23 Q. Do you remember who testified at the trial?

24 A. Yes, ma'am. Mr. Ray Taylor, Mr. Lemacks, the clerk,
25 and also I did, and just as well as the solicitor.

1 Q. Okay. So the witnesses that we heard from today
2 testified, and I believe you are saying that the solicitor
3 participated in the trial?

4 A. Yes, ma'am. Yes, ma'am.

5 Q. Okay. No other witnesses that you recall?

6 A. Not to my knowledge.

7 Q. All right. During Ms. Grant's testimony, do you
8 remember if there were any objections or motions made?

9 A. Not as far as her behalf.

10 Q. All right. Let's turn next to Mr. Lemacks. Were
11 there any objections or motions made during the testimony of
12 Mr. Lemacks?

13 A. No, there weren't no objections.

14 Q. During Mr. Taylor's testimony, were there any
15 objections or motions made?

16 A. No, ma'am.

17 Q. During your testimony, were there any objections or
18 motions made?

19 A. From me?

20 Q. When you were testifying, did Mr. Bryan or the
21 Solicitor's Office make any motions or objections?

22 A. Not at that time, no.

23 Q. Let's turn to the substance of the testimony of
24 Mr. Lemacks. Do you recall Mr. Bryan testified a few moments
25 ago regarding his cross-examination of Mr. Lemacks; what do

1 you recall regarding that cross-examination?

2 A. Everything that Mr. Lemacks addressed, it took
3 place, but when -- he also stated on the record that when the
4 issue came up, you know, for the community supervision thing,
5 that I had maxed out. I did 100 percent of my time. And at
6 one time Judge Buckner, he had -- because I did that, he had
7 ruled that McGrier vs. State, or something like that, that
8 one time he had took me out that because I had completed the
9 maximum amount of time sentence, and it would be highly
10 unconstitutional for me to be subjected under a seating
11 sentence after the completion of maximum time sentence.

12 Q. This was Mr. Lemacks's testimony?

13 A. Yes, because an issue came up -- see, there's two
14 issues, one dealing with the charge itself, okay, the failure
15 to register. Okay? Now, when you come up under the
16 community supervision, you are required to register just as
17 well. So now when you run it in, then it's supporting the
18 same charge. That's why the motion that was filed, that was
19 motioned by my attorney about contesting the validation of
20 the indictment of a conjoining together, because you have the
21 community
22 supervision program here, and you've got the charge itself,
23 failing to register, both of it is requiring you to register.
24 You see what I'm saying?

25 Q. I'm going to interrupt you and I'm going to try to

1 get us back to the trial itself. Mr. Lemacks, who is sitting
2 over here, I want you to tell me what you recall from his
3 testimony.

4 A. He was just admitting to the record that I did -- at
5 one time, I did max out the completion of my sentence, and
6 that the judge, I think his name was Honorable Perry Buckner,
7 had released me of that program.

8 Q. When you said that program, what program are you
9 referring to?

10 A. Community supervision.

11 Q. So Mr. Lemacks had testified that you had maxed out
12 your sentence?

13 A. Yes, ma'am.

14 Q. And that Judge Buckner had released you from the
15 community supervision program?

16 A. Yes, ma'am, when I appeared before him one time; I
17 think it was a revocation thing.

18 Q. Do you recall Mr. Lemacks testifying that on
19 September 1st, 2011, he had advised you that you had to
20 register as a sex offender?

21 A. Yes, ma'am. And he also had testified that I maxed
22 out and went on a PCR, a hearing.

23 Q. Were there any objections or motions made during
24 Mr. Lemacks's testimony?

25 A. No, ma'am.

1 Q. Okay. Let's turn then to your testimony at trial.

2 Tell us what you remember about your personal testimony.

3 A. My testimony was pretty long. And one of the things
4 that I illustrated was that if we look at the original
5 sentence, it only required at that time, which is 2000, it
6 required that I go to high school and complete sex offender
7 counseling. I did that. It never required for me to
8 register, no community supervision program, none of these
9 things here that came down further later. And what I
10 illustrated was that it's ex post facto. And the reason why
11 it is ex post facto, because according to Jernigan vs. State,
12 it says that any time there's a change in the law, that
13 retroactively alternates the definition of a crime or
14 increases the punishment of a crime, then it becomes ex post
15 facto.

16 I also argued Elmore vs. State, that says that the
17 ex post facto, it don't justify -- or it don't deems to be ex
18 post facto, not at the existing of the law at the time, but
19 at the time that the offense may have occurred.

20 Q. So to clarify, your testimony at trial was that you
21 were not required to register as a sex offender because at
22 the time of your original conviction for criminal sexual
23 conduct in the first degree, registration was not a
24 requirement of the law?

25 A. And according to how I was sentenced.

1 Q. Okay. I think I understand. Was there any other
2 aspects of your testimony that you can recall?

3 A. Yes, ma'am. I also illustrated that for there to
4 come later, it would increase the punishment. And for me to
5 be up under these circumstances that I'm in, that's when the
6 lawyer right there, he filed that motion later on down when
7 it spokes about -- when they presented that case about them
8 placing it on animals and ruling it being unconstitutional,
9 and for them to place it on me, it
10 would be unconstitutional.

11 Q. When you are saying "it", are you referring to the
12 GPS monitor?

13 A. Yes, ma'am. And for me to be under those
14 circumstances when the judge had already had deemed me out of
15 that program, and Russo, that's one thing Judge Russo, he
16 granted, he granted in our favor.

17 Q. What specifically did Judge Russo rule in that
18 regard?

19 A. He said, well, on that motion there, I'm going to
20 grant that, I'm going to render that in your favor; talking
21 to my attorney.

22 Q. What was the specific motion that Judge Russo
23 granted?

24 A. The motion was -- what was that motion he filed
25 right there what you have?

1 Q. The brief that Mr. Bryan filed?

2 A. Yes, ma'am, that was granted; he granted that.

3 Q. All right. Let's turn to the additional aspects of
4 the trial. Do you recall any other motions or objections
5 made at the trial?

6 A. No, ma'am, no other than what I said from the
7 beginning.

8 Q. Okay. Do you recall the directed verdict motion
9 that Mr. Bryan spoke of earlier?

10 A. Yes, ma'am.

11 Q. All right. Do you recall in the end of the trial
12 when Judge Russo was prepared to make his sentencing
13 determination?

14 A. Uh-huh.

15 Q. Do you recall if you made any statements to the
16 Court concerning your sentence?

17 A. I did.

18 Q. Please tell us what those statements were.

19 A. I told them, number one, I was falsely imprisoned.

20 And I told them that the person that I was, I was a bad
21 person. And a lot of things that I did as far as armed

22 robbery and these kinds of things here, I was involved in
23 gang banging. And I said as I came to prison, I got real

24 close with God. And God showed me that he afflicted me. And

25 although he afflicted me, he showed me that he afflicted me

1 no longer. And this is the reason why I'm going through what
2 I'm going through, because he have purpose in my life. And
3 this is the reason why I changed.

4 And I told them, I said, you know, God told me the
5 same way that I feel is the same way how those people out
6 there in the world feel. When I was doing the things that I
7 was doing, they felt the same way. So on account of that, I
8 was convicted, not because of what man accused me of or what
9 I was accused of, I was convicted by the Holy Spirit. I was
10 convicted by God. So that I have turned my life around so
11 that he will use me for his purpose.

12 And I said -- he also told me that you had to be
13 mindful of when you do things to people, because not only
14 that they are people, but they are also my children. And so
15 right then and there, I felt guilty.

16 Q. All right. Let's talk a little bit -- that was the
17 sentencing portion I believe that you just described.

18 Did Judge Russo render a verdict in your case?

19 A. Yes, he found me guilty.

20 Q. All right. And did Judge Russo give you a
21 sentence?

22 A. After I told him, he gave me a sentence after I told
23 him this. I did say this, though. I say that I never
24 received proper notice, because at the time of the sentence,
25 it never required. If I was sentenced at the original

1 sentence in 2000 and the judge would have said, well, okay,
2 you've got to register according to law -- he instructed me
3 according to the sentence sheet on what to do, and I did
4 that.

5 Now, for them to come later, two years of community
6 supervision, requiring me to register, and these things that
7 never was according to the original sentence according to
8 that charge, that increases my punishment.. It's like I'm
9 being tried over and over and over again.

10 Q. Let's get back to my question. What did Judge Russo
11 render as a sentence?

12 A. He told me he would give me a year, and that's it.

13 Q. So you received a one-year sentence on the failure
14 to register --

15 A. Yes, ma'am.

16 Q. -- second offense?

17 A. Yes, ma'am.

18 Q. Did Judge Russo make any remarks during his
19 sentencing?

20 A. He told me that the community supervision, he was
21 going to relieve me of that, and which he did. And the ankle
22 bracelet thing, they took me to the office and they took it
23 off me. But he told me he was going to give me a year, and I
24 did that.

25 Q. Let's back up a little bit to the trial. Do you

1 remember if Mr. Bryan made a closing argument?

2 A. He did. He made up a final -- I don't know if it
3 was at the closing. Whatever he presented, at the time that
4 he presented that motion, that brief, I assumed that it was
5 in his closing argument, I assume, but I remember him telling
6 Judge Russo that it was in cases -- I don't remember what the
7 case was -- that when men who went hunting, they put trackers
8 around the dog's neck, and that's so that they would be able
9 to find the dog. Okay? The Court ruled that that was
10 unconstitutional. And so if it was unconstitutional for a
11 dog, then how the hell it is he's more valuable than a dog?

12 Q. Let's talk about your testimony again. Did the
13 Solicitor's Office ask you any questions?

14 A. Yes.

15 Q. What questions did the Solicitor's Office ask you?

16 A. They asked me when I got out of prison, did I
17 receive notice.

18 Q. And what was your response to the notice question?

19 A. And I told them they told me that if I didn't sign
20 this paperwork, then I wasn't going to get out of prison, so
21 I had to sign it; that's why I'm protesting. That's what I
22 told the solicitor.

23 Q. And did the solicitor ask you any other questions
24 other than the notice question?

25 A. The solicitor asked me -- oh, Murdaugh was his

1 name.

2 Q. Okay. What other questions did he ask you?

3 A. He asked me did Mr. Lemacks give me proper
4 notification. And I told him, well, he went over the
5 paperwork with me. And I told him, I said, well, I don't
6 agree to it. And he said, well, you still have to sign it.
7 So I signed it. I be obedient.

8 Q. Did the Solicitor's Office ask you if you had, in
9 fact, registered with the Colleton County Sheriff's Office?

10 A. No, they ain't never did that.

11 Q. The solicitor never asked you that question?

12 A. No, ma'am.

13 MS. HACKETT: All right. Those are all the
14 questions I have of Mr. Duncan, Your Honor.

15 THE COURT: Thank you. Mr. Knight?

16 MR. KNIGHT: Nothing from the Solicitor's Office.

17 THE COURT: Thank you, Mr. Duncan. You can step
18 down.

19 (Whereupon, the witness is excused.)

20 MS. HACKETT: In light of Mr. Bryan's testimony, I
21 would like to re-call Mr. Lemacks to see if he has any
22 additional testimony about the GPS monitoring.

23 THE COURT: Mr. Lemacks, you are still under oath,
24 of course.

25 THE WITNESS: Thank you, Your Honor.

1 JAY LEMACKS,
2 having been previously sworn, testifies as follows:

3 REDIRECT EXAMINATION

4 BY MS. HACKETT:

5 Q. Mr. Lemacks, you were present for the testimony of
6 Mr. Bryan; is that right?

7 A. Yes, ma'am.

8 Q. And I'm sure you heard Mr. Bryan testify regarding
9 some cross-examination questions regarding the GPS monitor;
10 is that correct?

11 A. Yes, ma'am.

12 Q. Can you tell me what you recall, if that refreshed
13 your recollection, or if you have any memory of that
14 cross-examination now?

15 A. Actually, after listening to him, I do remember the
16 defense asking me about the GPS monitoring. But as to the
17 specific questions, I don't recall.

18 Q. Do you recall if he did ask you about the weight or
19 dimensions?

20 A. I believe that he did.

21 Q. Can you tell me today what the weight of the GPS
22 monitor is?

23 A. No, ma'am, I can't, because I don't remember what
24 unit we were using in January of 2012. I know we've changed
25 two or three different types of units.

1 Q. Anything about the dimensions?

2 A. It would depend on which unit it was.

3 Q. How about whether it was -- had to be charged
4 overnight?

5 A. They do have to be charged for a couple of hours.

6 Q. And was this a unit that Mr. Duncan had to wear
7 24/7?

8 A. Yes.

9 Q. Would he even have to wear it while it was being
10 charged?

11 A. Yes.

12 Q. And was the GPS a product of the registration
13 requirement?

14 A. No.

15 Q. Can you explain to me a little bit about how the GPS
16 and this registration, how they go together, and if that came
17 out at trial, because I'm confused.

18 A. I believe the defense did make an issue of -- an
19 argument of the GPS monitoring and as to whether or not he
20 should, in fact, be monitored. But as it relates to the
21 failure to register, they were completely separate issues.

22 Q. And --

23 A. Go ahead.

24 Q. I apologize. I asked you the question and then I
25 interrupted you. That was terribly rude. I'm sorry.

1 A. But as to any specific questions that he asked, I
2 can't answer.

3 Q. Do you remember if Judge Russo made any rulings
4 regarding the GPS or the community supervision?

5 A. Not without reflecting on the notes. If he ordered
6 anything dealing with the GPS, it would be part of a court
7 order that would either be with the clerk of court or in
8 probation's document, in their files that I'm not privy to
9 any longer.

10 Q. But you don't have any independent recollection of
11 him making a ruling in that regard?

12 A. No.

13 MS. HACKETT: All right. Those are all the
14 questions I have. Thank you.

15 THE WITNESS: Yes, ma'am.

16 MR. KNIGHT: None from the solicitor.

17 THE COURT: Thank you. You may step down.

18 (Whereupon, the witness is excused.)

19 Ms. Hackett?

20 MS. HACKETT: This case is a little
21 bit different than other reconstructions that I've handled
22 because of the nature of the order. The order just remanded
23 it for reconstruction without really any instructions to the
24 Court or to us.

25 I have some cases that I can provide to the Court,

1 just some guidance. Some that are particularly helpful talk
2 about generally what's asked of the Court as to determine can
3 this be reconstructed or can it not be reconstructed. And
4 that's what the Court is asked to report back to the Court of
5 Appeals. If Your Honor would like, I can hand you up the
6 three case that I'm aware of that deal with reconstruction.

7 But, again, this order is rather vague to some
8 extent on our further instructions and what we are asked to
9 give to the Court of Appeals. I can share with Your Honor
10 what I've done in other cases if you would like.

11 THE COURT: I would like for you to do that, Ms.
12 Hackett. As I said, this is new ground for me. And if the
13 question is can it be reconstructed, I think that the process
14 itself is so heavy that it can be. Although there's a great
15 deal of folks that do not remember what went on at that
16 particular time, it does not seem that any of those omissions
17 would be critical to a finding in this regards. Of course,
18 I'm not aware what the grounds of the appeal are, so I can't
19 address that. But it appears that this is a proper case for
20 reconstruction, if that is an issue in this case at least.
21 But I will be glad to hear from you and look at those cases
22 if you would like for me to.

23 MS. HACKETT: If I may approach, I will hand you the
24 three cases I have dealing with reconstruction. And I will
25 provide copies to the Solicitor's Office as well.

1 Typically what happens in reconstruction cases is
2 that the order directs the Court to advise the Appellate
3 Court of whether the matter can be reconstructed or whether
4 it cannot be reconstructed.

5 Subsequent to that determination, the Court of
6 Appeals decides or the Supreme Court decides whether to order
7 a new trial or a new hearing. I suppose that's exactly what
8 the Court would be asking in this situation.

9 But if Your Honor wants to refer to some of the case
10 law regarding how courts have arrived at that and the
11 standard used of whether we have created a sufficient record
12 for meaningful review on appeal, that's certainly the way my
13 questions were directed when I was asking about objections
14 and motions and rulings, trying to determine what the grounds
15 for appeal could be.

16 THE COURT: All right. I take it the standard that
17 you just mentioned are set out in these cases; is that fair
18 to say?

19 MS. HACKETT: Yes, Your Honor. State vs. Ladson,
20 Blackhead vs. State, and Koon vs. State, all talk about the
21 necessity of having a record that provides for meaningful
22 review of direct appeal issues. And that is the standard.

23 THE COURT: Now, in the absence of a record in this
24 particular case, has there been anything filed at the
25 appellate level other than a notice of intent to appeal?

1 Have grounds for appeal and things of that nature been set
2 out before the Appellate Court?

3 MS. HACKETT: No, Your Honor. The only thing I have
4 filed with the Court of Appeals has been a petition for an
5 order to reconstruct. And the Court granted my petition
6 with -- I believe the Attorney General may have consented to
7 that, because we had no transcript at all from the bench
8 trial. And so I have not been able to file anything other
9 than -- or Mr. Bryan, in fact, filed a notice of appeal,
10 which we attempted to perfect by ordering the transcripts.

11 I do have the transcript from the waiver of the
12 bench trial, but I do not have the transcript of the trial
13 itself, which is the purpose of the order for us to
14 reconstruct.

15 THE COURT: All right. Ms. Hackett, I will be glad
16 to look at these cases. Of course, I have to intelligently
17 rule in this regard. But from Mr. Duncan's position, what
18 would he contend is missing from the reconstruction that we
19 have done today that would be essential to his appellate
20 efforts in this regard?

21 MS. HACKETT: Well, it seems that from what we've
22 heard today, there have been quite a bit missing. It was a
23 short trial, fortunately, for our purposes. But it does seem
24 that there has been a good bit missing of whether any
25 objections and additional motions may have been made

1 concerning particular testimony coming in or evidence coming
2 in.

3 We do have the directed verdict motion that has been
4 reconstructed, I believe, as well as the brief that Mr. Bryan
5 was able to find in his file that could help us with that
6 particular issue. But any other issues, I don't think we
7 would have a record that would provide for a meaningful
8 review.

9 THE COURT: Mr. Bryan's testimony was his
10 recollection of Mr. Duncan's testimony was that he
11 essentially admitted that he had failed to register.

12 MS. HACKETT: I agree that was certainly what
13 Mr. Bryan testified to.

14 THE COURT: And that the primary argument that he
15 had made and that Mr. Duncan had made, some through his
16 testimony, was a legal argument that apparently is preserved
17 in his motion.

18 MS. HACKETT: Yes, Your Honor, that there was a
19 legal argument made at the directed verdict and then renewal
20 at the directed verdict stage.

21 THE COURT: Beyond that, can you tell me what --
22 obviously, it's sort of like trying to prove a negative
23 because we don't know what's out there. I guess we are
24 trying to figure out what could there be out there that would
25 impact the decision made by Judge Russo, given the testimony

1 in this case that he was given notice, and even Mr. Duncan I
2 think acknowledged that, and that he failed to register.

3 So I'm trying to think what else could have come up
4 in the face of that testimony other than a legal argument
5 that would impact the decision.

6 MS. HACKETT: I would only be concerned -- well,
7 obviously, as Your Honor pointed out, proving a negative. I
8 don't know what else may have happened. So I don't know what
9 additional appellate grounds we may have. I have a little
10 bit of concern today regarding the preservation of that
11 constitutional argument, because we don't have a clear record
12 on what Judge Russo actually ruled. It said that he denied,
13 and there were multiple grounds. And so I think we would
14 have to attack all those grounds to make sure that we cover
15 the appeal. But I don't know what Judge Russo's actual
16 ruling regarding the motion itself was. I just know that he
17 denied it in general. And I would have a little bit of
18 concern about preservation in that regard.

19 THE COURT: Right. I'm trying to decide if there's
20 anything this Court can do on the issue of preservation of
21 that issue. And if a decision were made and the only
22 testimony before me today is that the issue was fully briefed
23 and fully argued -- is that fair to say?

24 MS. HACKETT: It appears, yes, sir.

25 THE COURT: And fully denied?

1 MS. HACKETT: Yes, sir.

2 THE COURT: What, other than the grounds for the
3 denial, that he did agree with it, which I suppose is
4 ultimately what we all say -- sometimes we take so long
5 saying it we trip up and say the wrong thing. So at least in
6 this case we have the benefit of brevity, I suppose, or at
7 least benefit of nothing other than deny.

8 As an appellate lawyer, is it necessary that the
9 judge fully describe the grounds for the denial, or can he
10 simply say, I find the argument without merit, and now take
11 it to the appeals?

12 MS. HACKETT: My argument to the Court of Appeals is
13 always that if there's a denial, it's a denial; the Court
14 understood the basis. However, we have seen an increase,
15 particularly in the Court of Appeals, of a desire for there
16 to be a basis of the ruling placed on the record. We see
17 this particularly with 403 arguments, 404B arguments, and 609
18 with the Colf factors.

19 We've had several cases in our office remanded for
20 an actual hearing to go over why the judge ruled a particular
21 way. I believe there is a published opinion -- and the name
22 doesn't come to my mind at the moment -- dealing with the
23 Colf factors through the Court of Appeals, remanded that case
24 for a hearing to determine what was the basis of the ruling,
25 and then it had to be appealed again.

1 THE COURT: Right.

2 MS. HACKETT: So we do run into that on occasion
3 where the Court will not accept just a denial
4 and will require there be some basis for it to be considered
5 preserved.

6 THE COURT: All right. Could you do me a favor?
7 Could you find that case for me, and let me see if I can
8 distinguish it from this particular case?

9 MS. HACKETT: Yes, sir.

10 THE COURT: All right. And I've got my computer
11 back here. I might be able to find it as well. Let me stand
12 it down in this case and take about 15 or 20 minutes to read
13 these cases and perhaps try to find that case to see if I
14 can't reach some resolution today that can be reached.

15 MS. HACKETT: Thank you, Your Honor.

16 MR. KNIGHT: May the witnesses be excused?

17 THE COURT: Surely. Ms. Hackett, any objection to
18 the witnesses being excused?

19 MS. HACKETT: No objection, Your Honor. And thank
20 you, Mr. Knight.

21 MR. KNIGHT: Certainly.

22 THE COURT: Mr. Knight, is there any more business
23 that --

24 MR. KNIGHT: Oh, yes, sir. I've got one I need to
25 call next when you come back.

1 THE COURT: We will be at recess for 15 minutes,
2 folks.

3 (Whereupon, recess transpired.)

4 THE COURT: Folks, I appreciate your patience. I
5 don't read quite as fast as I thought I could, so it took me
6 a little longer to go through these cases and to analyze this
7 matter.

8 The elements of the offense are quite simple; it
9 seems to say just failing to register. Case of State vs.
10 Latimore found at 390 South Carolina 88, 700 S.E. 2d 456,
11 which is a Court of Appeals case, said that even failing to
12 provide notice of a bi-annual requirement to register is not
13 a violation of due process because the law is a statewide law
14 having statewide effect.

15 I will note that the Supreme Court granted cert' in
16 that case, and I'm not sure what the eventual decision was as
17 to whether it decided that notice is a requirement.
18 Nonetheless, there does not seem to be a question in this
19 case that notice was, in fact, applied and given by Agent
20 Lemacks, who has testified in this case.

21 And the Court's exhibits that were introduced into
22 the record also are indicative of the fact that notice was
23 given.

24 And so then the next meaningful essential element of
25 the offense is that the defendant did not, in fact, register.

1 Mr. Duncan in his testimony did not deny the fact that he did
2 not register, but he said he did not think he was required to
3 register under these particular facts. And he gave the
4 reasons for that in his testimony today.

5 And Mr. Bryan had made a legal argument, which is
6 preserved as Defense Number 1, I think, the brief, which goes
7 to an ex post facto argument in this regard that we
8 understand was fully argued. Certainly it was briefed and
9 argued and denied.

10 So the testimony in this case insofar as the State's
11 elements are that he was required to register and he did not
12 register.

13 There's evidence, as I've said, that he was given
14 proper notice. And his testimony was that he did not think
15 he was required to register for reasons that he has given.

16 So I take it that that's what the record would
17 reveal if we had it in its entirety. And there doesn't seem
18 to be any serious question about those matters. Granted, the
19 record is devoid here today of any objections that might have
20 been made, any other meaningful motions that may have been
21 made, and the rulings on those matters.

22 But as to the elements of the offense, and the
23 defenses which were set out in this particular case, there
24 does not seem to be any question directed verdict motions
25 were made at the appropriate stage, they were denied.

1 Although no grounds were given, or at least we don't have any
2 grounds given for those matters here today, we do know that
3 they were denied.

4 One somewhat complicated factor is that I was not
5 the trial judge in that case. And so I obviously know
6 nothing about this case other than what I've learned today.
7 In some of the cases where record reconstruction has been
8 done and found to be improperly done, or at least not
9 completely done, the trial judge was actually the judge who
10 tried to reconstruct the record.

11 Specifically, the case of State vs. Ladson,
12 L-a-d-s-o-n, 373 South Carolina 320, was a serious case of
13 first-degree burglary. The defendant was convicted following
14 a three-day trial, sentenced to 25 years, no parole. Some 10
15 months later, it was discovered that the tapes had been lost
16 or did not operate correctly, and an attempt was made to
17 reconstruct the record.

18 The reconstruction in that particular case was
19 somewhat summary, as this one has been today. More
20 particularly, the trial judge was the judge who presided over
21 the reconstruction hearing, as I have indicated. There was
22 some clear omissions between, for example, the question as to
23 how many witnesses testified and who had testified in that
24 case. Not an issue here. There was a question in that case
25 as to whether the defendant even himself had testified.

1 There was a dispute over that. There was some questions
2 about the timing of certain things that were involved.

3 And as a result of that, the Appellate Court found
4 that the record simply was too incomplete for a meaningful
5 appeal -- for a meaningful appellate review, I should say. A
6 new trial was, therefore, appropriate because the incomplete
7 nature of the transcript prevents the Appellate Court from
8 conducting a meaningful appellate review.

9 In this particular case, we have a different factual
10 situation. First of all, we don't have a highly contested
11 factual situation in this case as far as the elements are
12 concerned. In that case, it was a burglary case. There was
13 serious questions about the defendant's involvement. And the
14 reconstruction left those questions unanswered. At least it
15 was impossible to tell what happened.

16 One of the things that concerned me about when I
17 read that case, Ms. Hackett, and I'm sure it occurred to you
18 too, because you mentioned it earlier, dealing with the fact
19 whether I actually have jurisdiction to do anything other
20 than to remand this and send this back up. Because in that
21 particular case, I will read the portion of then-Judge
22 Kittredge's opinion: We recognize that the excellent trial
23 judge did the best that he could to reconstruct this case
24 under difficult circumstances. Approximately ten months
25 transpired after the appeal was filed before the court

1 reporter notified the parties (for a reason that is unclear)
2 that her recording equipment failed and that no part of the
3 trial was recorded. The court reporter's delay in disclosing
4 the lack of a transcript made a bad situation worse, as the
5 passage of time clearly dimmed the recall of the
6 participants.

7 Frankly, that's the situation which occurred here as
8 well. I'm not exactly sure of the -- how the dates compare,
9 but it won't take me but a minute to figure out. January the
10 31st, 2012, to October 2013, is a longer period than existed
11 in this case. And so clearly, the recall of the participants
12 was impacted here today. The question is whether or not
13 those omissions, those things that are not remembered today,
14 are relevant.

15 But here's the point: We, too, must accept our
16 share of the blame, for the remand order of this court
17 required the trial court to reconstruct the record, with no
18 option given to simply conclude that the record could not be
19 reconstructed with the specificity to support meaningful
20 appellate review.

21 Well, that's exactly what this order says that is
22 before me today: After careful consideration, the
23 appellate's motion to remand for reconstruction of the record
24 is granted. Appellate shall provide this Court with a status
25 update in 30 days.

1 That suggests that in order for me to do anything
2 other than try to reconstruct the record, the order has to
3 tell me that I can do that. Because I note that in the other
4 cases cited, the option was given to the trial court to do
5 that.

6 But, I will -- I'm trying to say I will assume,
7 which is always a terrible thing for a trial judge to do,
8 assuming what might happen at the appellate level, but -- so
9 let me put it this way. I will proceed as if I had the
10 option to decide whether or not this record could be
11 reconstructed so as to provide meaningful appellate review.
12 And I find that it can be.

13 In this particular case, as I have said, the
14 elements of the offense are clear. It appears from the
15 record that the elements of the offense have been satisfied,
16 that is, even if notice is an element, notice was given.

17 And the second element, failure to register, is not
18 disputed. So those two things have been met.

19 The defenses in this case are legal defenses which
20 have been set out and fully briefed. And the brief is
21 preserved as a record here. The argument was based upon that
22 brief, according to Mr. Bryan. And the ruling denied the
23 motions that were made subsequent to that brief.

24 As a result, I find that the Appellate Court is
25 capable of reviewing the sufficiency of those legal arguments

1 in making its decision.

2 When I look at the other two cases handed up, the
3 case of Koon vs. The State, 358 South Carolina 359, which was
4 a PCR case obviously from the cite, and it involved whether
5 or not the defendant was entitled to a rehearing or
6 reconstruction of the record going back to a 1986 guilty
7 plea. The question is whether or not he had received
8 effective assistance of counsel, of course.

9 But in that guilty plea, the Court found that the
10 testimony was that he had admitted that he committed the
11 burglaries, that he entered the way that he entered, and that
12 he claimed that he was innocent but had witnesses and was
13 pleading guilty because he was facing a lot of criminal time.
14 The Court found that even given those protestations, there
15 was no evidence presented by the petitioner that his pleas
16 were not knowingly, intelligently, and voluntarily entered
17 into and,
18 therefore, they denied his request in that regard.

19 Likewise in this case, Mr. Duncan has acknowledged
20 that he argued or that his legal positions were firmly and
21 fully argued and preserved for the record.

22 And so, Ms. Hackett, if my jurisdiction is limited
23 to reconstructing the record, I've done that. If it goes
24 beyond that to allow me to determine whether or not the
25 record can be reconstructed, then I have done that as well.

1 And so I will note your exceptions, of course, to those
2 rulings, but I must respectfully deny.

3 MS. HACKETT: Thank you, Your Honor. Do you want me
4 to prepare an order or submit a letter to the Court? The
5 other two cases I reconstructed, the Supreme Court had
6 directed me to submit a letter, copying opposing counsel, of
7 course, informing the Court of the judge's decision. But if
8 you prefer an order, I will do whatever --

9 THE COURT: Letter is fine with me. Let's not make
10 this any harder than it is. Ms. Andersen has been taking
11 this down in real-time. She's got the transcript. It's a
12 wonderful transcript. I've been reading. I don't know if
13 there's a problem with it. Won't take her long to get it in
14 final form for them to review that as well. So I think that
15 that -- I think that the letter combined with this transcript
16 will satisfy those requirements.

17 MS. HACKETT: Sounds perfect. Thank you, Your
18 Honor.

19 THE COURT: Thank you. And I appreciate you
20 educating us how this should be done. If it's okay with you,
21 I'm going to keep these cases so that -- I've been doing this
22 23 years. This is the first time I ever had to do this. If
23 I stick it out for another 23 years, I may have to do it
24 again.

25 MS. HACKETT: That's about all we have in South

1 Carolina on reconstruction, which is why I provided those to
2 the Court. It's about all we have in terms of guidance.

3 THE COURT: I was guided and appreciated your
4 approach and how you examined the witnesses so I get an idea
5 of what's required to fully develop this as much as we can.

6 MS. HACKETT: Yes, sir. Thank you.

7 THE COURT: Thank you.

8 (Whereupon, proceedings are concluded.)

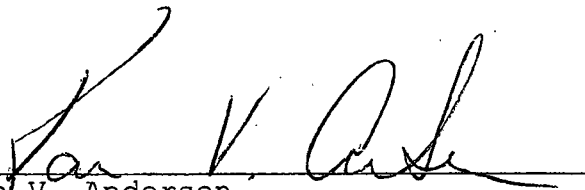
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 6th day of November, 2013 at Charleston, Charleston
County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

State of South Carolina,) In the Court of General Sessions.
County of Colleton.)

Sentence for Indictment Numbered

~~2000-GS-15-0726.~~

2011-22-15-7

The State of South Carolina)

versus)

Jimmy Lee Duncan.)

Brief of Defendant.

Requiring the Defendant to submit to electronic monitoring is a violation of the *ex post facto* clauses of the Constitutions of both the United States and South Carolina.

Both constitutions forbid the legislature from enacting *ex post facto* laws. No one may impose "a greater punishment, than the law annexed to the crime, when committed."¹

Originally, the sentence on this charge was 15 years suspended to 5 years' probation. At the time of the conviction in 2000, the defendant was required pursuant to S.C. Code Ann. § 23-3-400, *et seq.*, to register under the Sex Offender Registry.

The Sex Offender Registry, as originally enacted by the General Assembly, was designed not to be punitive.² However, in 2005, the General Assembly amended the act to require Global Positioning Monitoring (electronic monitoring).³ The courts of other states have held that such a requirement is an *ex post facto* enhancement of the penalty, because of the loss of privacy and the intrusiveness of the device.⁴

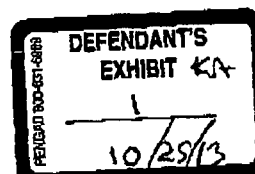
As the Supreme Court of Massachusetts observed: "The GPS device burdens liberty in two ways: by its permanent, physical attachment to the offender, and by its continuous surveillance of the offender's activities. . . . As

¹ *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390, 1 L.Ed. 648, 650 (1798).

² *State v. Wells*, 348 S.C. 26, 558 S.E.2d 524 (2002).

³ 2005 Act No. 141, § 8, now § 23-5-540.

⁴ *Commonwealth v. Cory*, 454 Mass. 559 (2009); *Riley v. New Jersey State Parole Board* (N.J. App. (Sept. 22, 2011)); *Witchard v. State*, 91 App. (Sept. 7, 2011)).



'continuing, intrusive, and humiliating' as a yearly registration requirement might be, a requirement permanently to attach a GPS device seems dramatically more intrusive and burdensome. There is no context other than punishment in which the State physically attaches an item to a person, without consent and also without consideration of individual circumstances, that must remain attached for a period of years and may not be tampered with or removed on penalty of imprisonment. Such an imposition is a serious, affirmative restraint."

As New Jersey court held: "The physical and practical realities of the [monitoring] program - the size and weight of the ankle bracelet and [tracking device], the requirement to remain in one place for six hours for daily recharging, the degree to which [monitoring interferes with everyday work and recreation activities, the degree to which the program impedes enrollees' freedom of travel, and its invasive requirement for consent to enter an enrollee's home - transform the effect of the scheme from regulatory to punitive."⁵

It should be noted that the United States Supreme Court recently held in the case of *United States v. Jones*⁶ that attachment of a GPS device to a suspect's automobile and use of the device to monitor the vehicle's movements constitutes a search or seizure within the meaning of the fourth amendment.

BY:

J.D. Bryan,
PO Box 1111
Walterboro, S.C. 29488
(843) 549-9455
Attorney for the Defendant.

Walterboro, S.C., Mon, Jan 30, 2012.

⁵ *Riley v. New Jersey State Parole Board* (N.J. App. (Sept. 22, 2011)).

⁶ *United States v. Jones*, 565 U.S. _____ (No. 10-1259; U.S. 2012, Decided Jan. 23, 2012).

DuncanColleton
31 Jan '129:20 @ ch
9:30 @ trial
31 Jan 2012

Bench Trial

11. Patricia Grant
 Clerk of Court since 2001
 Employee since 1974

Handed her a case folder.
 2008-88-15-726

Sentence Sheet
 True copy - admitted #1

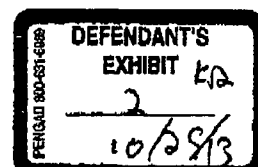
2008. forward to register #2

112 Jay Lemacks
 Dept of P & P

Exh #3: Signed Notice of Registry
 #4: Prob forms Std Sex Off Condition

X - Nature of deed

113 Ray Taylor.
 Investigator
 Own Sex Offender Registry



Electronic Notification of Release
from SCDP
1 Sept.

Did not register.
Gave him several days.

Motion to Dismiss - Denied

A1 Jimmy Lee Duncan

~~Constitutional~~

X - didn't register

Lemack told him to.

Motions denied.

(Break)

1. Guilty

→ 11:05

11:10 back

R Taylor CCSO

ARREST WARRANT NUMBER

M-104486

September 26, 2011

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date: 10/27/2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

October Term 2011

THE STATE

vs.

Jimmy Duncan

Indictment for

Sex Offender Registry Violation, fail to register -
2nd OffenseSC Code: 23-03-0470(A)
CDR Code: 2607COLLETON COUNTY
GENERAL SESSIONS COURT
2011 OCT 27 PM 12:17

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Colleton)

INDICTMENT

2011-GS-15-0689

At a Court of General Sessions, convened on October 27, 2011, the Grand Jurors of Colleton County present upon their oath:

Sex Offender Registry Violation, fail to register - 2nd offense

That in Colleton County, South Carolina, on or about September 26, 2011, the Defendant, Jimmy Duncan, did fail to register as a sex offender with the Colleton County Sheriff's Department after being instructed to do so, as required by Section 23-3-400, et. seq. of the Code of Laws of South Carolina, (1976, as amended); The defendant has been convicted of this same offense on at least one previous occasion. This all in violation of Section 23-3-470 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Isaac M. Stone
 Solicitor

TRUE BILL

COUNTY OF Colleton
STATE VS.
Jimmy Duncan

INDICTMENT/CASE#: 2011GS1500689A/W#: M104486Date of Offense: 9/26/2011S.C. Code §: 23-03-0470(A)CDR Code #: 2607

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

AKA:

Race: B Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: failure to Register 2ndin violation of § 23-03-0470(A) of the S.C. Code of Laws, bearing CDR Code # 2607☒ 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's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ballish, Charles77853
SC Bar#

Defendant

MBey
Attorney for Defendant5833
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 366 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: with Community Supervision violation☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Deborah Everett

SCCA/17 (03/2011)

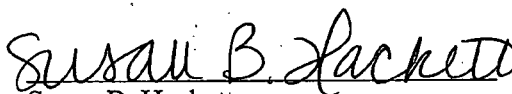
Presiding Judge

Judge Code: 2141Sentence Date: 1-31-2012

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

This 17th day of December,



Susan B. Hackett
Appellate Defender

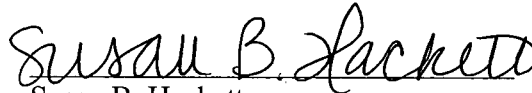
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

This 17th day of December,



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

RECEIVED

DEC 17 2013

SC Court of Appeals

Appeal from Colleton County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

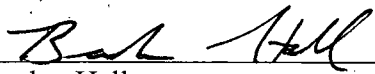
JIMMY LEE DUNCAN,

APPELLANT

APPELLATE CASE NO. 2012-207966

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire; at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of December, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 17th day of December, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022