

VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Donald B. Hocker, Circuit Court Judge

RECEIVED

Jun 17 2026

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAVID DEMIAS WHITE,

APPELLANT

APPELLATE CASE NO. 2024-001528

RECORD ON APPEAL

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INDEX

INDEX	i
TRUE-BILLED INDICTMENTS	1
MOTION HEARING TRANSCRIPT DATED AUGUST 21, 2024	15
ARGUMENT ON MOTION TO SEVER	17
DEFENSE MOTION TO SEVER DATED AUGUST 16, 2024	31
DEFENSE MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS DATED AUGUST 23, 2024.....	32
TRIAL TRANSCRIPT DATED AUGUST 26, 2024.....	33
JURY VOIR DIRE	40
JURY SELECTION.....	73
RULING OF THE COURT DENYING DEFENSE MOTION TO SEVER	106
<u>JACKSON V. DENNO</u> HEARING.....	108
ARGUMENT REGARDING ADMISSIBILITY OF AUTOPSY PHOTOGRAPHS	128
TRIAL TRANSCRIPT DATED AUGUST 27, 28, 29, 2024.....	142
OPENING STATEMENT BY MS. CAMPBELL.....	158
OPENING STATEMENT BY MR. FRICK.....	174
TESTIMONY	
JANESSA CAMPBELL	
Direct Examination by Ms. Campbell	178
Cross Examination by Mr. Frick	188
PAUL BLAS	
Direct Examination by Ms. McGinnis	192
Cross Examination by Mr. Frick	199
ANDREW PORTE	
Direct Examination by Ms. McGinnis	207

DAVID DEMBY	
Direct Examination by Ms. McGinnis	214
Cross Examination by Mr. Frick	224
Redirect Examination by Ms. McGinnis	232
CHERYL LEWIS	
Direct Examination by Ms. Campbell	238
JOSEPH WHITAKER	
Direct Examination by Ms. McGinnis	241
Cross Examination by Mr. Frick	263
SUSAN LAMB	
Voir Dire Examination by Ms. Campbell	278
Voir Dire Examination by Mr. Frick	288
Direct Examination by Ms. Campbell	291
ALEXANDER VINUYA	
Direct Examination by Ms. McGinnis	346
Cross Examination by Mr. Frick	356
SUSAN LAMB (continued)	
Continued Direct Examination by Ms. Campbell	359
Cross Examination by Mr. Frick	374
Redirect Examination by Ms. Campbell	386
ERIN PRESNELL	
Voir Dire Examination by Ms. McGinnis	390
RULING OF THE COURT ADMITTING AUTOPSY PHOTOGRAPHS.....	
394	
KEITH WILLIAMS	
Direct Examination by Ms. Campbell	399
Cross Examination by Mr. Frick	405
ERIN PRESNELL (continued)	
Continued Direct Examination by Ms. McGinnis	407
Cross Examination by Mr. Frick	428
Redirect Examination by Ms. McGinnis	439
ANGIE WOODY	
Direct Examination by Ms. McGinnis	450
Cross Examination by Mr. Frick	452
SHONTESSA WYLIE	
Direct Examination by Ms. Campbell	454

ASHIKA WEEKES

Direct Examination by Ms. Campbell	461
Cross Examination by Mr. Frick	466

JENNIFER COLLINS

Direct Examination by Ms. Campbell	467
Cross Examination by Mr. Frick	491
Redirect Examination by Ms. Campbell	496

QUANITA CLYBURN

Direct Examination by Ms. McGinnis	498
Cross Examination by Mr. Frick	509

ALLISON DINWOODIE

Direct Examination by Ms. McGinnis	511
Cross Examination by Mr. Frick	517

STACY DAVIS

Direct Examination by Ms. McGinnis	519
Cross Examination by Mr. Frick	525

BRIAN SMALL

Direct Examination by Ms. Campbell	528
Cross Examination by Mr. Frick	584

DEMI GARVIN

Direct Examination by Ms. Campbell	594
Cross Examination by Mr. Frick	614
Redirect Examination by Ms. Campbell	619

ALEX CLARK

Direct Examination by Ms. McGinnis	621
Cross Examination by Mr. Frick	631

JESSICA KNIGHT

Direct Examination by Ms. Campbell	632
Cross Examination by Mr. Frick	639

DELORIS CROCKETT

Direct Examination by McGinnis	639
Cross Examination by Mr. Frick	647
Redirect Examination by Ms. McGinnis	648

MATTHEW SNODDY

Direct Examination by Ms. McGinnis	667
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Cross Examination by Mr. Frick.....	674
BRITNEY MAY	
Direct Examination by Ms. Campbell	691
Cross Examination by Mr. Frick.....	735
Redirect Examination by Ms. Campbell	750
THE STATE RESTS	750
MOTION FOR DIRECTED VERDICT.....	751
COURT’S RULING DENYING MOTION FOR DIRECTED VERDICT	752
COLLOQUY WITH THE DEFENDANT REGARDING HIS RIGHT TO TESTIFY	752
TESTIMONY	
CYNTHIA LOWERY	
Direct Examination by Mr. Frick.....	758
Cross Examination by Ms. Campbell	764
Redirect Examination by Mr. Frick	771
DAVID L. WHITE	
Direct Examination by Mr. Frick.....	772
Cross Examination by Ms. Campbell	780
TORI KENNEDY	
Direct Examination by Mr. Frick.....	790
Cross Examination by Ms. Campbell	795
Redirect Examination by Mr. Frick	801
SAKEENA HOWZE	
Direct Examination by Mr. Frick.....	808
Cross Examination by Ms. Campbell	814
Redirect Examination by Mr. Frick	828
DAVID D. WHITE	
Direct Examination by Mr. Frick.....	829
Cross Examination by Mr. Campbell.....	857
Redirect Examination by Mr. Frick	905
STATE'S REPLY WITNESS TESTIMONY	
BRITNEY MAY	
Direct Examination by Ms. McGinnis	910
Cross Examination by Mr. Frick.....	912
Redirect Examination by Ms. McGinnis	913

Recross Examination by Mr. Frick	914
CLOSING ARGUMENT BY MS. MCGINNIS	917
CLOSING ARGUMENT BY MR. FRICK	964
REPLY CLOSING ARGUMENT BY MS. MCGINNIS	996
CHARGE ON THE LAW	999
VERDICT	1014
MOTION FOR A NEW TRIAL	1021
COURT’S RULING DENYING MOTION FOR A NEW TRIAL.....	1022
SENTENCING	1038
NOTICE OF APPEAL.....	1040
CERTIFICATE OF COUNSEL	1042

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBITS #193-198 (AUTOPSY PHOTOGRAPHS);
STATE’S EXHIBITS #231-233 (PHOTOGRAPHS); STATE’S
EXHIBITS #236-246 (PHOTOGRAPHS)**

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 It is a substantial right to which every defendant is
2 entitled unless you, the jury, are satisfied from the
3 evidence of the defendant's guilt beyond a reasonable
4 doubt.

5 Once again, the State has the burden of
6 proving the defendant guilty beyond a reasonable doubt.
7 Some of you may have in the past served as jurors in
8 civil cases where you were told that it is only
9 necessary to prove that a fact is more likely true than
10 not true, such as by the greater weight or preponderance
11 of the evidence.

12 In criminal cases, the State's proof must be
13 more powerful than that. It must be beyond a reasonable
14 doubt.

15 Proof beyond a reasonable doubt is proof that
16 leaves you firmly convinced of the defendant's guilt.
17 There are very few things in this world that we know
18 with absolute certainty. And in criminal cases, the law
19 does not require proof that overcomes every possible
20 doubt.

21 If based on your consideration of the
22 evidence, you are firmly convinced that the defendant is
23 guilty of the crimes charged, you must find the
24 defendant guilty. If on the other hand, you think
25 there's a real possibility that the defendant is not

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 guilty, you must give the defendant the benefit of the
2 doubt and find him not guilty.

3 Madam forelady and ladies and gentlemen of the
4 jury, I remind you that during this trial you and I have
5 had certain duties to perform. As the trial judge, it
6 is my responsibility to preside over the trial of this
7 case and also have had the duty to rule on the
8 admissibility of evidence offered during this trial.

9 You are to consider only the competent
10 evidence before you. If there was any testimony ordered
11 stricken from the record in this case, I don't think
12 there was, but if there was during this trial, you must
13 disregard that testimony. You are to consider only
14 testimony which has been presented from the witness
15 stand, any exhibits which have been made a part of the
16 record in this case and any stipulations of counsel.

17 I have the additional duty to charge you with
18 the law that applies to this case. As a presiding
19 judge, I am the sole judge of the law in this case and
20 it is your duty as jurors to accept and apply the law as
21 I now state it to you.

22 If you already have any ideas of what the law
23 is or what the law ought to be and it does not agree
24 with what I now tell you the law is, you must abandon
25 your idea because were you sworn to accept the law and

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 apply the law exactly as I state it to you.

2 In every case tried in this court before a
3 jury, the jury becomes the sole and exclusive judge of
4 the facts in the case. A trial judge cannot intimate,
5 state, comment on or make any statement to a trial jury
6 about the facts in the case. Since you, the jury, are
7 the sole judge of the facts in this case, you're not to
8 infer from what I have said during the progress of this
9 trial and ruling upon the admissibility of evidence or
10 otherwise, or anything that I say now during the course
11 of this instruction to you, that I have any opinion
12 about the facts in this case.

13 The law does not allow me to have an opinion
14 about the facts in this case. This is a matter solely
15 for you, the jury, to determine. As jurors, it is your
16 duty to determine the effect, the value and the weight
17 of the evidence presented to you during this trial.

18 There are two types of evidence which are
19 generally presented during a trial, that being direct
20 evidence and circumstantial evidence.

21 Direct evidence directly proves the existence
22 of a fact and does not require deduction.

23 Circumstantial evidence is proof of a chain of
24 facts and circumstances indicating the existence of a
25 fact.

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 Crimes may be proven by circumstantial
2 evidence. The law makes no distinction between the
3 weight or value to be given to either direct or
4 circumstantial evidence.

5 However, to the extent the State relies on
6 circumstantial evidence, the circumstances must be
7 consistent with each other and when taken together,
8 point conclusively to the guilt of the accused beyond a
9 reasonable doubt. If these circumstances merely portray
10 the defendant's behavior as suspicious, the proof has
11 failed.

12 Once again, the State has the burden of
13 proving the defendant guilty beyond a reasonable doubt.
14 And this burden rests with the State regardless of
15 whether the State relies on direct evidence,
16 circumstantial evidence or some combination of the two.

17 Necessarily, ladies and gentlemen, you must
18 determine the credibility of witnesses who have
19 testified in this case and the evidence presented.
20 Credibility simply means "believability." It becomes
21 your duty as jurors to analyze and to evaluate the
22 witnesses and the evidence and determine the credibility
23 of the witnesses and the evidence.

24 In determining the credibility of the
25 witnesses who have testified in this case, you may

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 believe one witness over several witness or several
2 witnesses over one witness. You may believe part of the
3 testimony of a witness and reject the remaining part of
4 the testimony of that same witness. You may believe the
5 testimony of a witness in its entirety or reject the
6 testimony of a witness in its entirety.

7 You may consider whether any witness has
8 exhibited to you any interest, bias, prejudice or other
9 motive in this case. You may also consider the
10 appearance and manner of a witness while on the witness
11 stand.

12 In order to establish criminal liability,
13 criminal intent is required. For example, the mental
14 state required to be proven by the State for a
15 particular crime might be purpose, intent, knowledge,
16 recklessness or criminal negligence.

17 Criminal intent must be proven by the State
18 beyond a reasonable doubt. Criminal intent is always a
19 matter that must be determined by the jury from the
20 circumstances surrounding the situation. There is no
21 way to prove intent to a mathematical certainty. There
22 is no way medical science can dissect a person's brain
23 and determine what the person had in mind. So the law
24 says that criminal intent may be inferred from the
25 circumstances shown to have existed. This is how you

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 make a determination of whether or not the element
2 requiring intent was present.

3 It's not necessary to establish intent by
4 direct and positive evidence. But intent may be
5 established by inference in the same way as any other
6 fact, by taking into consideration the acts of the
7 parties and all the facts and circumstance of the case.

8 Criminal intent is a mental state, a conscious
9 wrongdoing. It is up to you, ladies and gentlemen, to
10 determine what the defendant intended to do based on the
11 circumstances shown to have existed. Criminal intent
12 may arise from the action or a failure to act. It may
13 arise from negligence, recklessness or an indifference
14 to duty or to consequences that is considered by the law
15 to be the equivalent of criminal intent.

16 Now, I want to talk to you about expert
17 witnesses. I gave a brief explanation the other day.
18 The rules of evidence ordinarily do not permit witnesses
19 to testify to opinions or conclusions. An exception to
20 this rule exist for witnesses we call "expert
21 witnesses."

22 A witness, who, by education and experience,
23 has become an expert in some art, science, profession or
24 calling, may state an opinion as to relevant and
25 material matter in which the witness claims to be an

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 expert and may also state the reasons for the opinion.

2 You should consider any expert opinion
3 received in evidence in this case and like any other
4 evidence, give it the weight you think it deserves. If
5 you decide that the opinion of an expert witness is not
6 based on sufficient education and experience or if you
7 conclude that the reasons given in support of the
8 opinion are not sound or that the opinion is outweighed
9 by other evidence, you may disregard the opinion
10 entirely.

11 An expert witnesses' testimony should be given
12 no greater weight than that of other witnesses simply
13 because the witness is an expert. Furthermore, you are
14 not required to accept an experts opinion even though it
15 may not be contradicted.

16 Now, let me talk to you about the two charges
17 involved in this case.

18 First, unlawful neglect of a child. The
19 defendant is charged with unlawful neglect towards a
20 child. The State must first prove beyond a reasonable
21 doubt that the defendant had charged or custody of the
22 child, was the parent or guardian of the child, or was
23 responsible for the care and support of the child.

24 A person responsible for a child's welfare
25 includes the child's parent, guardian, or foster parent,

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 an operator, employee, or caregiver of a public or
2 private residential home, institution, agency, or child
3 daycare center facility or adult who has assumed the
4 role or responsibility of a parent or guardian for the
5 child but does not necessarily have legal custody of the
6 child.

7 This does not include a person whose only role
8 is as a caregiver and whose contact is only incidental
9 with the child, such as a babysitter.

10 The State must also prove beyond a reasonable
11 doubt that the defendant placed the child at
12 unreasonable risk of harm affecting the child's life,
13 physical or mental health, or safety.

14 A "child" means a person under the age of 18
15 years.

16 Now, the other charge involved in this case is
17 homicide by child abuse or neglect. The defendant is
18 charged by homicide by child abuse or neglect. The
19 State must prove beyond a reasonable doubt that the
20 defendant caused the death of a child under the age of
21 11 while committing child abuse or neglect.

22 Child abuse or neglect is an act or failure to
23 act which causes harm to the child's physical health or
24 welfare. Harm to the child's physical health or welfare
25 means the that defendant either: One, inflicted or

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 allowed to be inflicted on the child, physical injury.

2 Two, failed to supply the child with adequate
3 food, clothing, shelter, or healthcare and this failure
4 caused a physical injury or condition which caused
5 death.

6 Or, three, abandoned the child causing the
7 child's death.

8 The State must also prove beyond a reasonable
9 doubt that the death occurred under circumstances
10 showing an extreme indifference to human life.

11 "Indifference has been likened to a conscious
12 act of disregarding a risk which a person's conduct has
13 created or a failure to exercise ordinary or due care.
14 ("Conduct of the parent which evinces a settle purpose
15 to forego parental duties may fairly be characterized as
16 willful because it manifest a conscious indifference to
17 the rights of the child to receive support and
18 consortium from the parent.")

19 "Extreme indifference is a mental state akin
20 to intent characterized by a deliberate act culminating
21 in death."

22 Now, madam forelady and ladies and gentleman
23 of the jury, your verdict as to each charge must be
24 unanimous among the 12 of you. When you have reached a
25 verdict as to each of the charges, you're to notify the

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 bailiffs so we can bring you back into the courtroom to
2 receive your verdict.

3 If at any time there is a division in the jury
4 vote, the Court does not want to know the actual
5 division of the vote if a division does or has occurred.

6 Now, two things: One, I realize what I just
7 read to you over these past 15, 20 minutes is a lot;
8 therefore, I provide a copy of this jury charge to you,
9 the jury, for your use in any manner, if any, that you
10 feel like you need to use it.

11 Secondly, Madam Forelady, there's a verdict
12 form. I'm going to step down in just one second -- and
13 it's very easy to complete but I'll explain it to you
14 and go through it step by step of what you're supposed
15 to complete.

16 This is what we call the "caption" of the case
17 and the "indictment numbers" and the first six parts
18 deal with the unlawful neglect charges. And we have
19 listed each child out. So you go through:

20 "We, the jury, unanimously find the defendant
21 on the charge unlawful neglect of," and then the name of
22 child. And you have "not guilty" or "guilty."

23 You will put your initials on the line
24 representing your verdict as to that charge and the
25 remaining charges concerning unlawful neglect of a

STATE OF SC V DAVID D. WHITE - JURY CHARGE BY THE COURT

1 child.

2 Then the last one concerns the homicide by
3 child abuse, and again:

4 "Your verdict must be unanimous as to that
5 charge," and you will put your initials on the line
6 indicating your verdict on that charge, not guilty or
7 guilty. You'll sign it and put today's date. Okay?

8 Now, I'm going to send all 14 of you back to
9 the jury room. Do not begin your deliberations yet. I
10 just want to go back over one more time with the lawyers
11 concerning my charge.

12 What I do is I provide to the lawyers my
13 charge in advance and get their input as to the charge,
14 so they've very familiar with what I just read to you.
15 I just want to make sure there's no need for any
16 additions or corrections to the charge. Okay?

17 Now, if there are none, when the bailiff
18 brings back all of the exhibits, a copy of my charge and
19 the verdict form, that will be your cue for two things
20 to happen:

21 One, I will need the two alternates to come
22 back in the courtroom for further instructions; and
23 secondly, you can begin your deliberations. Okay?
24 Don't start until that happens.

25 One thing to keep in mind is that when you're

1 engaged in your deliberations, certainly there are going
2 to need to be restroom breaks. If someone takes a
3 break, a restroom break, stop your deliberations. We
4 don't want deliberations to take place without all 12 of
5 you participating in that. Okay?

6 Go back to the jury room. Don't start yet.

7 (Jury exited.)

8 THE COURT: Does the State have any exceptions
9 or additions to the Court's charge?

10 MS. MCGINNIS: No exception or objections,
11 your Honor.

12 The only, I guess, request I'd make, the title
13 of unlawful neglect of a child, I think the statute
14 technically says, unlawful conduct "towards" a child.

15 THE COURT: And we titled it?

16 MS. MCGINNIS: Unlawful neglect of a child.

17 THE COURT: Would it be satisfactory to both
18 sides if I just pen through that and put "unlawful
19 conduct towards a child"?

20 MS. MCGINNIS: On the charge --

21 THE COURT: On the charge that I'll give to
22 the jury?

23 MS. MCGINNIS: Yes, sir. The verdict form
24 says unlawful neglect on each of those. So I would ask
25 if we could reprint the --

STATE OF SC V DAVID D. WHITE

1 LAW CLERK: I was moving through the --

2 MS. MCGINNIS: I know, but the statute says
3 "unlawful conduct." I just don't want any suggestion
4 that it was suggested towards the jury.

5 THE COURT: You want this one page? If we're
6 going to reprint the verdict form, then reprint page 10
7 and replace "neglect" with "conduct"?

8 MS. MCGINNIS: If it doesn't matter to the
9 defense. I just don't want any allegations that it's
10 suggested in anyway to the jury. That's the only reason
11 I'm worried about it.

12 MR. FRICK: That's what the indictment said,
13 isn't that right? Doesn't it say "neglect"?

14 THE COURT: When we prepared the verdict form,
15 we just went with the words used on the indictment.

16 MS. MCGINNIS: If Mr. Frick doesn't object.

17 MR. FRICK: I don't.

18 THE COURT: Leave it the way it is on the
19 verdict form and jury charge.

20 Now we're going off the record and we'll make
21 sure we've got all the exhibits ready to go back.

22 (Whereupon, jury deliberations began at
23 5:15 p.m.)

24 * * * * *

25 P R O C E E D I N G S

- VERDICT -

THE BAILIFF: All rise.

THE COURT: We're on the record. We have a note from the jury. It reads as follows:

"How do we view a video?" Signed by the forelady.

Then it says, "We want to see body cam of kids in living room."

I told Solicitor McGinnis and she is pulling it up. So whenever you've got it ready, we'll bring the jury out.

(Court's Exhibit 8, Jury Note, was marked for identification.)

THE COURT: That video was a part of something more. But I think and we'll clarify it when they come in, but I think they wanted to see that one excerpt because wasn't that a part of --

MS. MCGINNIS: Agent --

MR. FRICK: I think that was just a clip that she had because I think she just had it on for a little bit and then cut it off.

MS. MCGINNIS: Agent May didn't have --

MR. FRICK: It wasn't on all the whole time.

THE COURT: Okay.

MS. MCGINNIS: Correct. So it was a short

STATE OF SC V DAVID D. WHITE - VERDICT

1 video and I clipped it even shorter.

2 THE BAILIFF: Jury coming in.

3 (Jury entered.).

4 THE COURT: Okay. Let the record reflect, the
5 jury is back in.

6 Madam forelady, you wanted to see the body-cam
7 video of the kids in the living room. We're going to
8 play it for you.

9 MADAM FORELADY: Okay. Can I just say, we
10 only want to see -- we don't need to see the whole
11 video. Once the kids are out, that's all we need to
12 see.

13 THE COURT: Okay. And I think that's what
14 they're prepared to show you. But if it does go further
15 than what you want, just say, "hey, stop."

16 (Video played.)

17 (Video stopped.)

18 THE COURT: Go back to the jury room and
19 continue with your deliberations. Thank you.

20 (Jury exited.)

21 THE COURT: We'll be at ease.

22 (Whereupon, deliberations continued.)

23 THE BAILIFF: All rise.

24 THE COURT: Thank you. Have a seat.

25 We're back on the record. I have been

STATE OF SC V DAVID D. WHITE - VERDICT

1 informed that the jury has reached a verdict.

2 Ready to bring the jury out, from the State?

3 MS. MCGINNIS: Yes, sir.

4 THE COURT: Defense?

5 MR. FRICK: Yes, sir. I'm trying to recall,

6 do you make us stand for the verdict or remain seated?

7 THE COURT: I usually like for him to stand.

8 MR. FRICK: That's fine. Yes, sir.

9 THE COURT: Let's bring them out.

10 (Jury entered.)

11 THE COURT: Let the record reflect, the jury

12 is back in.

13 Madam forelady, without telling me what the
14 verdict is as to each charge, is the verdict unanimous
15 as to each charge?

16 MADAM FORELADY: Yes, sir.

17 THE COURT: Hand the verdict form to the clerk
18 please.

19 Thank you.

20 Madam clerk, if you will publish the verdict,
21 please.

22 MADAM CLERK: Yes, sir.

23 THE COURT: Please stand, Mr. White.

24 MADAM CLERK: The State of South Carolina vs.
25 David Demias White, Indictments 2021-GS-29-02056 through

STATE OF SC V DAVID D. WHITE - VERDICT

1 2062, we, the jury, unanimously find the defendant on
2 the charge of unlawful neglect of Child 6 guilty.

3 We, the jury, unanimously find the defendant
4 on the charge of unlawful neglect of Child 5 guilty.

5 We, the jury, unanimously find the defendant
6 on the charge of unlawful neglect of Child 3 White,
7 guilty.

8 We, the jury, unanimously find the defendant
9 on the charge of unlawful neglect of Child 4
10 guilty.

11 We, the jury, unanimously find the defendant
12 on the charge of unlawful neglect of David White, Jr.,
13 guilty.

14 We, the jury, unanimously find the defendant
15 on the charge of unlawful neglect of Child 1
16 guilty.

17 And we, the jury, unanimously find the
18 defendant on the charge of homicide by child abuse of
19 A.W. guilty.

20 Signed the foreperson, Tina Gammon.

21 Ladies and gentlemen of the jury, if this is
22 your verdict, say so by the raising of the right hand.

23 Your Honor, all jurors raised their right
24 hand.

25 THE COURT: Does the defense want individual

STATE OF SC V DAVID D. WHITE - VERDICT

1 polling of the jury?

2 MR. FRICK: Yes, sir.

3 THE COURT: Y'all can have a seat.

4 Madam clerk?

5 MADAM CLERK: I'm going to call them by their
6 juror numbers.

7 Juror 59, what this your verdict?

8 JUROR NO. 59: Yes.

9 MADAM CLERK: Is this still your verdict?

10 JUROR NO. 59: Yes.

11 MADAM CLERK: Juror 61, was this your verdict?

12 JUROR NO. 61: Yes.

13 MADAM CLERK: Is it still your verdict?

14 JUROR NO. 61: It is.

15 MADAM CLERK: Juror No. 93, was this your
16 verdict?

17 JUROR NO. 93: Yes.

18 MADAM CLERK: Is it still your verdict?

19 JUROR NO. 93: Yes.

20 MADAM CLERK: Juror 23, was this your verdict?

21 JUROR NO. 23: Yes.

22 MADAM CLERK: Is it still your verdict?

23 JUROR NO. 23: Yes.

24 MADAM CLERK: Juror 147, was this your
25 verdict?

STATE OF SC V DAVID D. WHITE - VERDICT

1 JUROR NO. 147: Yes, ma'am.

2 MADAM CLERK: Is it still your verdict?

3 JUROR NO. 147: Yes, ma'am.

4 MADAM CLERK: Juror 102, was this your
5 verdict?

6 JUROR NO. 102: Yes.

7 MADAM CLERK: Is it still your verdict?

8 JUROR NO. 102: Yes.

9 MADAM CLERK: Juror 79, was this your verdict?

10 JUROR NO. 79: Yes.

11 MADAM CLERK: It is still your verdict?

12 JUROR NO. 79: Yes.

13 MADAM CLERK: Juror 95, was this your verdict?

14 JUROR NO. 95: Yes.

15 MADAM CLERK: Is it still your verdict?

16 JUROR NO. 95: Yes.

17 MADAM CLERK: Juror 151, was this your
18 verdict?

19 JUROR NO. 151: Yes, ma'am.

20 MADAM CLERK: Is it still your verdict?

21 JUROR NO. 151: Yes, ma'am.

22 MADAM CLERK: Juror 41, was this your verdict?

23 JUROR NO. 41: Yes.

24 MADAM CLERK: Is it still your verdict?

25 JUROR NO. 41: Yes, ma'am.

STATE OF SC V DAVID D. WHITE - VERDICT

1 MADAM CLERK: Juror 117, was this your
2 verdict?

3 JUROR NO. 117: Yes.

4 MADAM CLERK: Is it still your verdict?

5 JUROR NO. 117: Yes.

6 MADAM CLERK: Juror 167, was this your
7 verdict?

8 JUROR NO. 167: Yes.

9 MADAM CLERK: Is it still your verdict?

10 JUROR NO. 167: Yes.

11 THE COURT: Thank you, Madam clerk.

12 Ladies and gentlemen, I want to thank you very
13 much for your jury service. You have done a lot of
14 things well. You were prompt everyday in the morning.
15 Then after the lunch break when we let you go and leave
16 the courthouse for lunch, you were prompt in getting
17 back on time. You were patient with us. You were
18 attentive throughout this trial.

19 One thing that I do, I keep my eye on the jury
20 pretty regularly and you were very attentive. You
21 performed your job efficiently, effectively and I
22 appreciate that.

23 Your verdict that you reached does not matter
24 to me. What matters is that my jury does perform its
25 job, its duty properly and efficiently, and you've done

STATE OF SC V DAVID D. WHITE - VERDICT

1 that.

2 What I like to do is talk with the jury about
3 -- and once you to go back to the jury room in just a
4 second -- not talk to you about the case, but just to
5 find out if there are things that you think we do well,
6 if there's things we can improve on, for just a few
7 minutes. And that's what I would want to do.

8 So if you can give us a little bit extra time,
9 just go back to the jury room and I'll back there in
10 just a minute. Okay?

11 (Jury exited.)

12 THE COURT: Do we want to have sentencing this
13 evening or wait until the morning? It's 6:30, it's not
14 terribly late, but I'm good either way.

15 MR. FRICK: Either way you want to do it,
16 Judge.

17 Judge, I do want to put a couple of motions on
18 the record.

19 THE COURT: Sure. Do that, please.

20 MR. FRICK: Yes, sir.

21 Your Honor, at this time I'd ask for a motion
22 -- request for a new trial in this case. I'm renewing
23 all my objections, my request for a continuance from
24 Monday of last week and all the matters that we've
25 discussed pretrial, motions and whatnot. I would ask

1 for the Court to grant us a request for a new trial.

2 THE COURT: Thank you very much. So noted for
3 the record in saying this respectfully, denied.

4 So y'all don't have a preference whether we do
5 sentencing this evening or tomorrow? If you don't -- go
6 ahead.

7 MS. CAMPBELL: I just saying that we have a
8 number of people here that want to see it. But I'm sure
9 they could come back tomorrow if that's your preference.

10 THE COURT: Well, I would like to do it in the
11 morning first up, about 9:30?

12 MR. FRICK: Yes, sir.

13 THE COURT: If that's okay with you guys?

14 We will handle that first thing in the morning
15 about 9:30.

16 People in the back, are y'all okay coming back
17 in the morning?

18 Very good. Thank you.

19 We will be adjourned until 9:30 in the
20 morning.

21 (Whereupon, Court was adjourned for the
22 evening.)

23 * * * * *

24 P R O C E E D I N G S

25 - Sentencing -

STATE OF SC V DAVID D. WHITE - SENTENCING

1 THE BAILIFF: All rise. Court is now in
2 session.

3 THE COURT: Thank you very much.

4 Good morning, everybody. Have a seat.

5 We're on the record this morning in State vs.
6 David White, sentencing phase in this case.

7 I'll hear from the State first.

8 MS. MCGINNIS: Thank you, Judge.

9 As for as a factual presentation, your Honor,
10 obviously, presided over the trial.

11 THE COURT: Sure.

12 MS. MCGINNIS: I believe you've heard all the
13 facts that there are. Mr. White does not have any prior
14 record. He does have a couple of other pending charges.
15 He was out on bond for a 2018 possession of a pistol
16 with an obliterated serial number at the time of this
17 offense.

18 While he was initially incarcerated on this
19 offense, he picked up a contraband and an assault and
20 battery, third, at the jail. He was released on bond.
21 No-showed for court and did have a bench warrant issued
22 for his arrest.

23 During that time, he picked up a DV, second
24 degree, at which time he was arrested and the bench
25 warrant was served. He's been incarcerated ever since

STATE OF SC V DAVID D. WHITE - SENTENCING

1 and he does not have any prior convictions.

2 THE COURT: Okay.

3 MS. MCGINNIS: If you would, I believe a DSS
4 representative would like to speak on behalf of the
5 children.

6 THE COURT: Sure.

7 MS. MCGINNIS: And law enforcement may or may
8 not wish to address the Court.

9 THE COURT: Okay. I need to have you sworn
10 in, ma'am.

11 THE CLERK: Can you raise your right hand,
12 please?

13

14 **KIMBERLY FUNDERBURK**, the Witness
15 herein, having been sworn by the Clerk of Court, was
16 examined and testified as follows:

17

18 THE COURT: Yes, ma'am, state your name for
19 the record.

20 MS. FUNDERBURK: Kimberly Funderburk.

21 THE COURT: Yes, ma'am, ms. Funderburk, I'd be
22 glad to hear from you.

23 MS. FUNDERBURK: I'm the foster care
24 supervisor.

25 First off, I would like to say, this case has

1 been a very heavy burden for all of us with the loss of
2 innocent 14-month-old sweet A.W. She will never be
3 forgotten. But on behalf the Agency and the six other
4 surviving children, Child 1 Child 2 Child 3 Child 4 Child 5
5 and Child 6 I would like to say a huge thank you.

6 Thank you to the every first responder, police
7 officer, doctor, solicitor or anyone who I may have left
8 out, who had a hand in preserving the life of these
9 innocent children so that they can grow to live happy
10 lives as all children should. And that they could be
11 productive members of society now, they can go out and
12 chase their dreams and live to the fullest and do
13 whatever they set their minds to.

14 These kids are the true definition of
15 resilient. They are thriving and doing well. They have
16 overcome so much in such a small, short time of their
17 lives. They no longer require any therapy or support
18 services. They are doing wonderful.

19 Child 2 is the only one who is still in need of
20 speech therapy but he's making great progress and doing
21 well.

22 Child 1 is in the fifth grade. Child 2 is in the
23 third grade. Child 3 is in the second and Child 4 is now
24 in kindergarten. Child 5 and Child 6 are both in preschool.

25 Child 1 and Child 2 are in a pre-adoptive home

1 and we are hopeful to have their adoption finalized by
2 the end of this year. Child 3 and Child 4 are thriving in
3 their foster home as well. Their foster parents are
4 both very interested in adopting them but hasn't moved
5 forward yet with the adoption. We're hopeful that that
6 will happen soon.

7 Child 5 and Child 6 adoption has officially been
8 finalized and they're no longer active on our caseload.

9 I just wish that you would consider these
10 children when making your ruling on sentencing today.

11 THE COURT: Thank you, ma'am.

12 Solicitor, anything further from the State?

13 MS. MCGINNIS: No. Judge, I just note,
14 obviously, as you're aware, we have tremendous support
15 from the State Law Enforcement Division, the Lancaster
16 County Police Department. There have been multiple
17 people here from both law enforcement agencies all week
18 from the trial and they are here on behalf the children
19 in this particular case.

20 The only thing I do not have for you, Judge,
21 right now is the days of time served credit. While
22 Mr. Frick makes his presentation, I will get this last
23 little bit calculated to have those for you.

24 THE COURT: I believe the information I
25 received is the mom pled guilty a year and a half ago

STATE OF SC V DAVID D. WHITE - SENTENCING

1 and she received a sentence of 28 years?

2 MS. MCGINNIS: 27 years, your Honor. She pled
3 straight up in front of Judge Gibbons.

4 THE COURT: Okay. Very good. Thank you.

5 Mr. Frick, I'd be glad to hear from you.

6 MR. FRICK: And, Your Honor, in her case, that
7 as also an *Alford* plea. And there is an issue I wanted
8 to address on that matter before I get into my
9 mitigation.

10 THE COURT: Sure.

11 MR. FRICK: I know your Honor will not take
12 this as criticism. I just need to put this on the
13 record.

14 THE COURT: Sure.

15 MR. FRICK: As your Honor is well aware, we
16 were in pretty serious plea negotiations Monday of last
17 week. I can't say that we had finalized a deal, but we
18 were extremely close to getting a deal.

19 My client had authorized me to pursue an
20 *Alford* plea. But your Honor's practice is not to accept
21 *Alford* pleas and I respect that.

22 THE COURT: Thank you.

23 MR. FRICK: In my years of practice, I've had
24 several judges who would not take certain pleas and I've
25 accepted that as the judge's discretion. I've had

1 federal judges who would not accept an *Alford* plea and
2 I've accepted that.

3 But as the week went along and colleagues were
4 discussing it, there was some discussion, an academic
5 discussion of whether or not a judge truly has the
6 discretion to do that. And in some quick legal research
7 I've done on that, I don't know that there's a bright
8 line rule in the State of South Carolina. I think
9 judges do have discretion but there are other places
10 that judges do not.

11 So I put that out there. We were pursuing
12 that. We were very close. Were we able to secure that,
13 we would have resolved that case on Monday rather than
14 going to trial.

15 THE COURT: Sure.

16 MR. FRICK: I put that out there for whatever
17 future use it may do for Mr. White and whomever else.
18 But for being able to secure that plea, we would have
19 not gone to trial if we could have secured that plea.
20 And I certainly recognize that the State, they can
21 withdraw the plea offer at any time. They don't have to
22 give us a plea offer. And I think you're aware of what
23 our time range was.

24 I know that the State is not asking for that
25 at this point and I'm not asking them to do that. But

STATE OF SC V DAVID D. WHITE - SENTENCING

1 we did have an offer in place that I think would be a
2 very reasonable offer that, of course, we were unable to
3 secure.

4 Judge, that being said, I want to talk a
5 little bit about Mr. White.

6 MS. MCGINNIS: Before you do that, William,
7 can I just put one other thing on the record?

8 MR. FRICK: Sure.

9 MS. MCGINNIS: As your Honor knows, at the
10 beginning of last week when we began the trial, Judge
11 Gibbons was also holding court here. Mr. Frick and I
12 did speak with Judge Gibbons to see if he would accept
13 an *Alford* plea. He indicated that based on the fact
14 that we were due to start trial with your Honor, he
15 would not accept the plea.

16 He did also tell us in chambers that he did
17 not feel comfortable accepting a plea on dad having also
18 accepted and sentenced mom's plea back in 2022.

19 So I just want the record to be clear on that.
20 We did speak with Judge Gibbons.

21 THE COURT: Mr. Frick?

22 MR. FRICK: Judge, it's been an extremely
23 rough and exhausting year for me as far as cases I've
24 had to deal with. This one quite frankly has been one
25 of the more difficult ones that I have dealt with, not

1 just subject matter alone.

2 I've got a client who simultaneously maintains
3 innocence but is very remorseful and feels a lot of
4 responsibility, as any parent would in this situation.

5 While he maintains that, he really didn't know
6 what was going on, he didn't really contribute to this.
7 He also recognizes he didn't do everything that he could
8 do and feels very responsible and is very upset about
9 this.

10 This was his baby that he lost. I think you
11 saw the emotion he showed in those videos. And I think
12 you saw the emotion that he shared on the stand. And I
13 can tell you that that was not a show on the stand, that
14 is the emotion that I'd seen from him when we talked
15 about these cases, when we talked about his children,
16 when I tried to prepare him for what he was going to see
17 because he had not seen those pictures of his daughter
18 on that autopsy table; nor did he want to. I offered
19 them to him and he did not want to see that.

20 And I certainly appreciate and understand and
21 would not have wanted to see that myself. From the very
22 beginning, Judge, my gut reaction was, I don't know how
23 I'm going to overcome that picture. I still feel that
24 way. I certainly understand the Court's ruling on
25 those, which is why I made the objections I did in those

STATE OF SC V DAVID D. WHITE - SENTENCING

1 cases. I think that compounded the difficulty in this
2 case.

3 Judge, again, this was an extreme tragedy. I
4 think you had folks who were just overwhelmed by their
5 circumstances. And Mr. White didn't help himself out by
6 making his life more complicated than he should have and
7 that was of his own doing and he recognizes that.

8 This is a 30-year-old-man who really has no
9 record, who was working. By all accounts was a hard
10 worker, a good worker who was trying to provide, but was
11 just simply overwhelmed. You've seen through this week
12 that he does have strong family support. His dad was in
13 here. I don't see him in here right now. We still have
14 family here right now that I think want to speak on his
15 behalf. You saw his mom testify. She was there for
16 him, continues to be there for him. His grandmother is
17 out there in the audience.

18 Judge, one of my favorite sayings in this line
19 of work is, "An innocent man asks for justice; a guilty
20 man asks for mercy."

21 And here, I have a man who maintains his
22 innocence and I'm asking for mercy, maybe even grace,
23 Judge. I ask for whatever you can show Mr. White. I
24 don't think anything that he did was intentional. I
25 certainly understand the result. I certainly understand

1 the jury's verdict and I'm not arguing with that at that
2 time, that's for another day.

3 But in light of all that, I just ask you to
4 show whatever mercy, compassion, grace, whatever the
5 appropriate term is, for Mr. White, for a young man who
6 suffered this tragedy as well and continues to suffer.

7 He sees this in his head everyday. As he
8 said, the last scene that he had was carrying his
9 daughter out of that room. And he didn't go to the
10 hospital because he didn't want -- he didn't go to the
11 room to see her in the hospital because he didn't want
12 that to be the last image.

13 I personally appreciate that. I've had
14 friends who have suffered and they want you to come by
15 and visit and I refuse to go because I don't want to
16 have that image in my head. I don't want that to be the
17 last thing that I see of people that I loved. So I
18 certainly understand why he felt that way.

19 Judge, with that, I'm going to turn it over to
20 whatever family members.

21 THE COURT: Sure. Be glad to hear from
22 anybody that wants to address the Court. Just come on
23 up, I need to have you sworn in, sir.

24 THE CLERK: Can you raise your right hand
25 please?

STATE OF SC V DAVID D. WHITE - SENTENCING

1
2 **K E N D A R I U S W H I T E**, the Witness herein, having
3 been sworn by the Clerk of Court, was examined and
4 testified as follows:

5 THE COURT: State your name please, sir.

6 MR. K. WHITE: I'm the brother, Kendarius
7 White.

8 THE COURT: Yes, sir. I'd be glad to hear
9 from you.

10 MR. K. WHITE: I was at the house mostly all
11 the time, like pretty much everyday. Like, early in the
12 morning I would wake up and walk to his house and check
13 on the kids everyday. And pretty much everyday they
14 were fine. Most of time, they would be asleep. Kids
15 might miss school because they overslept. But he always
16 made sure he had found a way to even take them or he
17 would find a ride to get them to school.

18 The mother, she would always be sleeping. He
19 pretty much did all the things for her. She couldn't
20 think on her own. Anytime he leave the kids with her,
21 she wouldn't know what to do. She would just leave them
22 in the room, lock the door and wait until he come back.

23 He would bring them food, he would bring
24 diapers, wipes, anything he needed for the kids. But
25 she would be absent-minded all the time when it comes to

1 the kids. She just be on the phone, sitting outside
2 minding her own business, ignoring them. Tuning it out.

3 I don't see how she did it with seven kids in
4 the house but she somehow found away to tune them out.

5 He practically did everything. When it came
6 to working, come home, changing diapers, feeding,
7 cleaning the house, he had to do it all. Only thing she
8 would do is just lay around and sleep.

9 I love both of them and I wouldn't say nothing
10 bad about her to make her seem like an evil person. I
11 wouldn't say nothing bad about him to make him seem like
12 an evil person. They both loved their kids. They did
13 everything they could, but she just couldn't do it. She
14 couldn't do the things she should as a mother.

15 That's all I have to say.

16 THE COURT: Thank you very much, sir.

17 Anybody else, Mr. Frick?

18 MR. FRICK: Judge, I know he's had other
19 family members. You've seen his father in here all
20 week.

21 THE COURT: The father, grandmomma.

22 MR. FRICK: Yes, sir.

23 THE COURT: And, of course, the mom testified.

24 MR. FRICK: I don't think father emotionally
25 could be here today. I know he strongly supports his

STATE OF SC V DAVID D. WHITE - SENTENCING

1 son. I don't know if Mr. White wants to address you,
2 but if he does, I'd ask you to hear from him at this
3 time.

4 THE COURT: I'll be glad to hear from you
5 Mr. White, if you would like to address the Court.

6 You certainly don't have to and I wouldn't
7 factor that in at all if you don't. I'll leave it up to
8 you.

9 THE DEFENDANT: Yes, sir. Your Honor, I would
10 like to address the Court.

11 THE COURT: Be glad to hear from you, sir.

12 THE DEFENDANT: It's been a long, difficult
13 trial and I'd like to apologize for any inconvenience
14 that I caused towards the jury or anybody in this
15 courtroom that deprived any of you guys from your time
16 or something that you could be doing.

17 Right now my life is in your hands. I have no
18 harsh feelings or ill feelings or ill-will towards the
19 solicitor, nor the prosecutor or the officers that were
20 involved in this case. I'd actually like to thank them
21 because they gave an outlet to my children when I
22 couldn't.

23 When things weren't going right between me and
24 their mother and she wouldn't allow me to see them, I
25 mean, I really didn't know what was going on with a few

1 of them because of the situation. But thanks to the
2 officers and the solicitor and the caseworkers, they was
3 able to find a good place for my children.

4 They've grown so much. I hate that I had to
5 miss out on their life and things they could have been
6 and things that they're going to be. At least they're
7 thriving better than where they were at our residence.

8 I would like to apologize to my children if I
9 could face to face, but right now, this will have to do,
10 that I couldn't be the father that they wanted me to be
11 or needed me to be.

12 I would like to apologize to my daughter **A.W.**
13 because I could have saved her, but my timing wasn't
14 perfect. I just ask, if you could, your Honor, just do
15 what you can. My life is in your hands and the jury has
16 already spoken, so I just ask that you do what you can.

17 Thank you, your Honor.

18 THE COURT: Thank you, sir.

19 Mr. Frick, Solicitor McGinnis, he has 590 days
20 jail credit. Does that sound about right to you?

21 MR. FRICK: Yes, sir, that's what I have to.

22 THE COURT: Anything further from your side?

23 MR. FRICK: No, sir.

24 THE COURT: And anything further from the
25 Solicitor?

STATE OF SC V DAVID D. WHITE - SENTENCING

1 MS. MCGINNIS: No, your Honor.

2 THE COURT: Everybody be at ease for a few
3 minutes. It's going to take a while to fill out all
4 these sentencing sheets.

5 MS. MCGINNIS: Yes, sir.

6 (Whereupon, a brief recess was taken.)

7 THE COURT: Once again, I commend the lawyers
8 for the excellent work that they did, the hard work that
9 they put into this case, both sides.

10 Mr. White, while the mom, Ms. Page, may have
11 been more involved in this overall situation involving
12 your children, you were involved a lot more than what
13 you tried to convince the jury yesterday when you
14 testified.

15 Quite frankly, it appeared to me that you were
16 wanting to try to convince the jury and everybody else
17 in this courtroom that you showed up on the day that she
18 passed away and you had not been there for quite some
19 time. You just didn't know anything that was going on
20 and I just don't buy that.

21 Even though, once again, I think probably
22 between the two of you, mom was more involved in this
23 overall thing than you were but your involvement was
24 more than you seem to take ownership of.

25 I've certainly factored in the fact that you

STATE OF SC V DAVID D. WHITE - SENTENCING

1 don't have a prior record, that's certainly important to
2 me. I am completely aware of the plea negotiations that
3 took place last week. I was privy to some of that, but
4 the fact still remains, we went to trial and it was
5 pretty much because you would not take ownership of what
6 happened to A.W. and the other six children. And I've
7 taken everything into conversation.

8 On the homicide by child abuse, Mr. White,
9 it's the sentence of the Court that you be committed to
10 the State Department of Corrections for a period of 25
11 years, 590 days credit. That will run concurrent with
12 the six unlawful neglect of a child charges, that will
13 be a 10-year sentence on all six of those, everything to
14 run concurrent. Same amount of credit, 590 days on each
15 one.

16 Good luck to you.

17 (End of Transcript of Record.)
18
19
20
21
22
23
24
25

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

Donald B. Hocker, Circuit Court Judge

FILED
OFFICE OF
CLERK OF COURT

2024 SEP -5 A 11: 56

Case No(s).: 2021-GS-29-2056, 2021-GS-29-2057,
2021-GS-29-2058, 2021-GS-29-2059,
2021-GS-29-2060, 2021-GS-29-2061,
2021-GS-29-2062

CLERK OF COURT
LANCASTER, SC

The State of South Carolina,

Respondent.

v.

David Demias White, Jr.,

Appellant.

NOTICE OF APPEAL

David Demias White, Jr., appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Donald B. Hocker, September 5, 2024.

PLEASE TAKE FURTHER NOTICE THAT this appeal shall be upon a case and exceptions to be served upon you and filed hereafter in accordance with the rules of the court and laws in such cases made and provided.

Date: September 5, 2024



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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM LANCASTER COUNTY
Court of General Sessions**

Donald B. Hocker, Circuit Court Judge

**Case No(s): 2021-GS-29-2056, 2021-GS-29-2057,
2021-GS-29-2058, 2021-GS-29-2059,
2021-GS-29-2060, 2021-GS-29-2061,
2021-GS-29-2062**

The State of South Carolina,

Respondent.

David Demias White, Jr.,

v.

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on September 5, 2024, addressed to Melissa D. McGinnis, Esquire, Deputy Solicitor, Office of the Solicitor, 6th Judicial Circuit, Post Office Box 607, Lancaster, SC 29721.

Date: September 5, 2024



William P. Frick, Esq.
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Post Office Box 1809
Lancaster, SC 29721

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SEP 11 2024
SC Court of Appeals

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Molly M Keegan
Appellate Defender

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Jun 17 2026

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of June, 2026.

