

**JAMES L. GOLDSMITH, JR., P.A.**

**ATTORNEY-AT-LAW**

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12 March 2014

Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

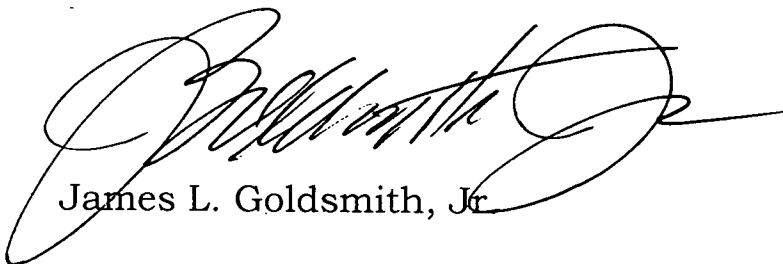
Re: *State of South Carolina v. David Jamar Benjamin*  
Appellate Case No. 2013-001496

Dear Sir or Madam:

In response to your letter of 5 March 2014, I have enclosed Appellant's Designation of Matter to be Included in the Record on Appeal and Proof of Service upon Respondent's attorney, Donald J. Zelenka.

I have also enclosed a signed original of page 40 of Appellant's Brief and a revised cover indicating Donald J. Zelenka as attorney for the Respondent.

Sincerely,



James L. Goldsmith, Jr.

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MAR 13 2014

cc: Donald J. Zelenka  
Office of the Attorney General

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CALHOUN COUNTY  
Court of General Sessions

Diane Schafer Goodstein, Circuit Court Judge

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CASE NO.: 2013-001496

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

v.

David Jamar Benjamin, .....Appellant.

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APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED  
IN THE RECORD ON APPEAL

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James L. Goldsmith, Jr.  
Brownstone, P.A.  
P.O. Box 2047  
Winter Park, Florida 32790  
(855) 776-2773  
Attorney for Appellant

Donald J. Zelenka  
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(803) 734-3601  
Attorney for Respondent

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**SC Court of Appeals**

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

Appellant, pursuant to Rule 210, hereby designates the following matter to be included in the record on appeal:

**Pleadings**

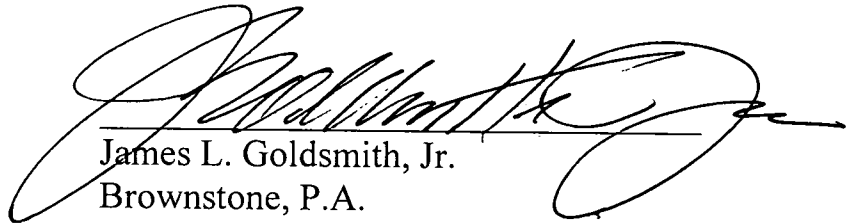
Document Description	Date
Arrest Warrant	10/04/2011
Indictment	02/25/2013
Verdict	03/07/2013
Motion for New trial	03/15/2013
Motion to Reconsider Sentence	03/15/2013
Order Denying Motion to Reconsider	07/01/2013
Notice of Appeal	07/10/2013

**Transcript of Record**

Document Description	Date	Page(s) Cited
Trial Transcript – Vol. I	03/04/2013	109-112; 120-121; 123-124; 127-128; 131-135; 137-139; 144
Trial Transcript – Vol. II	03/05/2013	203-205; 207; 209; 211-216; 218- 219; 260-262, 264-266; 268-280; 282-285; 287-288; 290-293; 304-304; 306-308; 317-319; 332; 343; 345- 346; 370-378; 386-387; 389; 397; 405; 409-411; 414; 423-426; 429-432
Trial Transcript – Vol. III	03/06/2013	448; 454-457; 459; 464-468; 476; 479; 484-485; 490; 494; 498; 500- 505; 530-531; 534-538; 541; 558; 560-561; 563-564; 572; 578; 583-585
Trial Transcript – Vol. IV	03/07/2013	682-683; 687-688; 692-693

CERTIFICATE OF COMPLIANCE

I, James L. Goldsmith, Jr., counsel for Appellant David Benjamin, hereby certify that the foregoing Designation of Matter to be Included in the Record on Appeal does not contain any matter which is irrelevant to the instant appeal and that this Designation of Matter includes those portions of the transcript, pleadings, orders, exhibits, or other materials which are properly included in the Record on Appeal pursuant to Rule 210(c).



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Attorney for Appellant

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CALHOUN COUNTY  
Diane Schafer Goodstein, Circuit Court Judge

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Case No. 2013-001496

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

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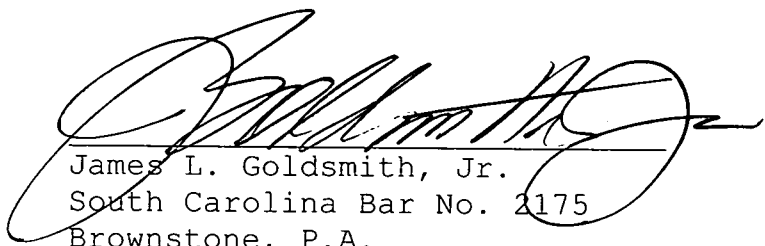
David Jamar Benjamin.....Appellant.

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PROOF OF SERVICE

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I certify that I have served the foregoing Designation of Matter to be Included in the Record on Appeal on the Respondent by depositing a copy of the Brief in the United States Mail, postage prepaid, on March 12, 2014, addressed to Respondent's attorney of record, Donald J. Zelenka, Assistant Attorney General, Post Office Box 11549, Columbia, South Carolina 29211.



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MAR 13 2014

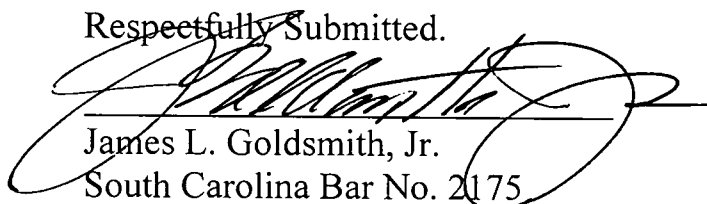
**SC Court of Appeals**

for new trial on this basis. The Court abused its discretion when it determined, contrary to established case law, the jury's verdict was supported by sufficient evidence when it was clear no such sufficient circumstantial evidence existed. The State's evidence, articulated in Point One, supra., was insufficient to support the jury's verdict and the Court abused its discretion in denying the motion for new trial. The verdict should be vacated and the indictment dismissed.

### CONCLUSION

For all of the foregoing reasons, and in light of the legal authority herein cited, it is respectfully submitted that this Court should vacate Defendant Benjamin's conviction and dismiss the indictment; and to provide such other and further relief as the Court deems just, fair and equitable.

Respectfully Submitted.



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Winter Park, Florida 32790-2047  
Attorney for Appellant

February 6, 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CALHOUN COUNTY  
Court of General Sessions

Diane Schafer Goodstein, Circuit Court Judge

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CASE No.: 2013-001496

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

v.

David Jamar Benjamin, .....Appellant.

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**BRIEF OF APPELLANT**

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Attorney for Appellant

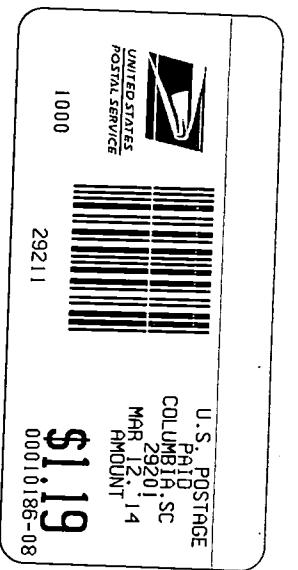
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**RECEIVED** Attorney for Respondent

MAR 13 2014

SC Court of Appeals

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