

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

James R. Barber, III, Circuit Court Judge

RECEIVED

JUN 04 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTHONY C. JOHNSON,

APPELLANT

APPELLANT CASE NO. 2013-001918

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	GENERAL SESSIONS
)	
County of Richland)	2008-GS-23-07787
)	

STATE OF SOUTH CAROLINA,)	
)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
ANTHONY JOHNSON,)	
)	
DEFENDANT,)	

September 4TH, 2013
Columbia, South Carolina

BEFORE:

THE HONORABLE JAMES R. BARBER, JUDGE.

APPEARANCES:

PROBATION AGENT RUSH

STEPHEN F. KRZYSTON, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. We've got here Mr. Anthony
2 Johnson. Mr. Johnson was here a couple of weeks ago, and
3 he's been violated for failing to pay restitution; is that
4 correct?

5 PROBATION AGENT: Yes, sir.

6 THE COURT: And let's see. He owes \$26,391.

7 MR. KRZYSTON: It's on one account, Your Honor. The
8 other account he owes approximately \$7,000.

9 PROBATION AGENT: And, Your Honor, he was brought
10 back because of Judge Benjamin. Her order stated that he
11 was to come back if he failed to continue to pay. So
12 that's why he was brought back before the Court.

13 THE COURT: Fail to continue to pay. He hadn't paid
14 much, has he?

15 MR. KRZYSTON: And, Your Honor, just by way of
16 background, this was, again, just to refresh your memory,
17 this was the 12th of July that we heard this.

18 Mr. Johnson cashed a check for some building supplies
19 anticipating a closing fee coming from a house. The house
20 never closed. The cash was -- the check was cashed. He,
21 thereby, incurred all those -- or caused all those
22 damages.

23 When we were here in July, there was a question as to
24 whether or not Mr. Johnson was fully employed during the
25 time of 2009 through approximately 2012.

1 When we were before you in July, we indicated that
2 Mr. Johnson did not file any type of tax return
3 until 2012.

4 We also indicated that he was unable to pay prior to
5 2012, however, had obtained full employment in November of
6 2012. You had ordered Mr. Johnson to get employment
7 verification records, and he has done so to the best of
8 his ability.

9 I believe Agent Rush just handed you his records, and
10 I have a copy of, which he brought me. I also have an
11 additional receipt for \$750.00 on each of the respective
12 accounts that he paid yesterday, Your Honor.

13 The time that we addressed this in July, the
14 financial arrearage on --

15 THE COURT: Hold on. Hold on a minute.

16 (Pause).

17 All right. Let's see here. In January, February,
18 March, April, May, June, July, you paid 11 -- you made
19 \$7,700; is that right?

20 THE DEFENDANT: Sir, I apologize. I didn't hear you.
21 I'm sorry.

22 THE COURT: You made \$1,100 a month for seven months?

23 THE DEFENDANT: Draw, yes, sir; correct.

24 THE COURT: Well, you made anything above and beyond
25 the draw?

1 THE DEFENDANT: Yes, sir. If you'll look in the
2 commission column.

3 THE COURT: All right. So you get the draw and the
4 commission?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. So in July, you made 2,016,
7 14, 12, 13, 13.

8 Tell me -- tell me what he paid in January.

9 PROBATION AGENT: Nothing.

10 THE COURT: Huh?

11 PROBATION AGENT: Nothing.

12 THE COURT: February?

13 PROBATION AGENT: Nothing.

14 THE COURT: March?

15 PROBATION AGENT: Nothing.

16 THE COURT: April?

17 PROBATION AGENT: Nothing.

18 THE COURT: May?

19 PROBATION AGENT: Nothing.

20 THE COURT: June?

21 PROBATION AGENT: Nothing.

22 THE COURT: July?

23 PROBATION AGENT: Nothing. Every time he would see
24 me, I would ask him, "Did you make a payment today?"

25 He would say, "I don't have any money." So I mean,

1 that's just what we went on, and then when he got to, you
2 know, being six months in arrears is when we have to do
3 some kind of action, so we brought him back.

4 His last payment was made on -- as you can see from
5 the violation report, September 10th, 2012. That was on
6 his -- on his supervision fees. He made a payment on
7 March 25th on the restitution but nothing -- nothing since
8 then.

9 He made the payment since yesterday, which I'm
10 assuming to, you know, help out what he was doing today.
11 He would have been 1,275 in arrears on both accounts as of
12 yesterday. So when you subtract the 650 from that, he is
13 still grossly behind on the restitution. Like I said --

14 THE COURT: Who is supposed to give the restitution
15 to?

16 MR. KRZYSTON: To the bank, Your Honor. I'm not sure
17 of the actual -- it sounds like it's not a bank but just
18 actually -- a bank. I remember that.

19 I mean, Your Honor, just for the record, he did pay
20 \$1,500. That was yesterday. \$750 on each account, so if
21 he was down 1,275 as of yesterday in arrearage for his
22 restitution fees, he is down to about 400 right now on
23 each of those two accounts.

24 THE COURT: Here is what bothers me, Counsel:
25 Working January, not paying a dime.

1 MR. KRZYSTON: I understand that, Your Honor.

2 THE COURT: February.

3 MR. KRZYSTON: I understand that, Your Honor.

4 THE COURT: March, doesn't pay a dime.

5 MR. KRZYSTON: I would just ask the --

6 THE COURT: What?

7 MR. KRZYSTON: I would just ask the Court take notice
8 that yesterday he had saved money. He did put five months
9 of restitution payments.

10 THE COURT: Didn't you -- didn't you tell me his
11 father was helping him get some money?

12 MR. KRZYSTON: His father did help him get some
13 money, Your Honor, and that's -- his father gave him
14 approximately \$300 just for that, so he had \$1,200 saved
15 up from his work that he had been doing, and he got \$300
16 from his father. He evened it out to make it five months'
17 payment on each of the -- each of the restitution
18 accounts.

19 In addition to the restitution accounts, he was
20 mandated to pay \$50 a month on supervision fees and part
21 of a --

22 THE COURT: I don't know what that means, he was
23 mandated.

24 MR. KRZYSTON: Well, the monthly payment that was
25 set.

1 THE COURT: Well, everybody pays that.

2 MR. KRZYSTON: Certainly, Your Honor, certainly, but
3 I just wanted you to be aware that he did also have that
4 burden upon him.

5 He was unaware that he could direct payment towards
6 supervision fees and restitution, and there weren't a lot
7 of payments made. I do think it said something that he
8 has gotten stable employment.

9 THE COURT: It's very difficult to direct phantom
10 payments.

11 MR. KRZYSTON: It is, Your Honor.

12 PROBATION AGENT: And, Your Honor, when they make
13 payments, the cashier always asks them, "What do you want
14 to have paid?"

15 They have -- there are only two things that can be
16 paid at the office --

17 THE COURT: Look --

18 PROBATION AGENT: -- are supervision fees and
19 restitution.

20 THE COURT: Well, if you don't pay, how are you
21 directing something?

22 PROBATION AGENT: Well, I'm -- yeah. I'm just
23 saying, when they do pay, they are asked what they would
24 like to pay on.

25 THE COURT: You know, if he paid something.

1 MR. KRZYSTON: And, Your Honor, I do believe that
2 Mr. Johnson is trying, has been trying as of late. I do
3 believe he's been saving money.

4 THE COURT: What does "as of late" mean, since July?

5 MR. KRZYSTON: Certainly since July and certainly he
6 was --

7 THE COURT: He's been on probation since 2009.

8 MR. KRZYSTON: I understand that, Your Honor. He has
9 been through some tough times. He does have his pastor,
10 Mr. Aaron Goins, who would like to speak a few things on
11 his behalf. Mr. Goins actually married Mr. Johnson and
12 his wife.

13 Mr. Johnson's house was just foreclosed upon. I
14 mean, for all intents and purposes, Mr. Johnson's
15 financial trouble seems to be coming to a head. He seems
16 to be getting to crash and kind of able to rebound, to get
17 on his feet steadily.

18 I don't think incarceration at this period would
19 either serve the interest of Mr. Johnson or the State in
20 fully refunding the victim in this matter.

21 THE COURT: He is not going to fully refund the
22 victim under any circumstance.

23 How much has he paid totally on restitution?

24 PROBATION AGENT: Totally?

25 THE COURT: How much did you say, \$1,500?

1 MR. KRZYSTON: Yes, Your Honor.

2 PROBATION AGENT: Totally paid, that would make 175
3 plus the 750, so what's that, like a little over \$1,000?

4 THE COURT: That's eight, nine and a quarter?

5 PROBATION AGENT: Yeah.

6 THE COURT: But he paid -- how much over in four
7 years has he paid?

8 PROBATION AGENT: That's what he has paid in the four
9 years.

10 THE COURT: I thought he paid \$1500 yesterday.

11 MR. KRZYSTON: He did, Your Honor.

12 PROBATION AGENT: He paid seven -- 750 on each one.

13 THE COURT: All right. So you're just violating him
14 on one?

15 PROBATION AGENT: Well, no. It's both. It's on
16 there.

17 THE COURT: So he's paid 175 and 1,500?

18 PROBATION AGENT: Right.

19 THE COURT: All right. So that would be 1,675.
20 That's -- that's about \$420 a year.

21 MR. KRZYSTON: And, Your Honor, he has --

22 THE COURT: He has another year. Well, tell me
23 what's accurate.

24 THE DEFENDANT: I don't have it in front of me, but
25 1,500 which was paid yesterday. What I paid prior to

1 that, there was more than \$400 that was paid, which she is
2 quoting it.

3 THE COURT: Restitution?

4 THE DEFENDANT: I asked -- yes, restitution. I'm
5 sorry. I'm sorry. That is wrong. I made an error when I
6 made the payment of \$600 or something like that. I think
7 I put it all on something else, the first payment, the
8 \$600 payment. That was actually right.

9 PROBATION AGENT: That was --

10 THE DEFENDANT: That happened once. I think I got
11 the same --

12 THE COURT: All right. So that's \$1,675. That's
13 about \$420 a year restitution, and how much does he owe
14 total? He's got 26 on one and how much on the other?

15 PROBATION AGENT: Seventy-six.

16 THE COURT: \$33,000. But you say if he's going to
17 pay, make full restitution, we need to leave him out.

18 MR. KRZYSTON: Well, I think if we have any hope to
19 make restitution, he has just landed stable employment.
20 He has just landed a stable source of income. If we were
21 to incarcerate him now and convert that to a civil
22 judgment, I don't think the victim would ever see that
23 money.

24 At least here, we're asking 420-something dollars a
25 year. We tell the defendants on probation routinely, "If

1 you can't pay a lot, pay a little," and that's certainly
2 what he has accomplished, albeit recently.

3 Again, I would -- I would argue if you look at all
4 the records, Your Honor, if you look at all the records,
5 he has had an extremely tough go of it.

6 I would argue that his violations are not willful.
7 Again, I would remind you that his pastor, Mr. Goins,
8 would like to speak briefly on his behalf.

9 THE COURT: Anything you want -- he has ten years,
10 huh?

11 MR. KRZYSTON: Yes, sir.

12 THE COURT: What kind of record does he have?

13 MR. KRZYSTON: He has got no prior convictions and
14 has had no subsequent convictions after being put on
15 probation. He also had no prior period.

16 THE COURT: All right. Now, what do you want me to
17 hear?

18 Tell me your name, please, sir?

19 THE PASTOR: Aaron Goins.

20 THE COURT: I'm sorry?

21 PASTOR: Aaron Goins.

22 THE COURT: All right. Mr. Goins, what do you want
23 to tell me?

24 PASTOR: Well, I've known Anthony for approximately
25 15, 16 years, and I've always known him to be honest and

1 upstanding. I know he fell on hard times, and he has
2 really been struggling. We have -- we in the community --

3 THE COURT: Were you --

4 PASTOR: We all want him out.

5 THE COURT: Were you aware that he stole \$33,000?

6 THE PASTOR: Yes, sir. I know the circumstances
7 surrounding that.

8 THE COURT: And what were the circumstances?

9 THE PASTOR: Well, he -- he thought he was going to
10 have a closing and...

11 THE COURT: And didn't and then even though he
12 didn't, he went and got the money and used it for his own
13 benefit. That's called stealing.

14 I think -- isn't there -- isn't there some sort of
15 commandment, thou shalt not steal?

16 THE PASTOR: Yes, sir, there is. I don't -- just,
17 you know, knowing him the way I do, I would ask you
18 just -- I believe going forward, he would really put forth
19 all of this effort to get this paid if you could have
20 mercy on him.

21 THE COURT: He owes \$32,000. He has paid \$1,600 in
22 four years.

23 PROBATION AGENT: And, Your Honor, this is his fifth
24 violation. The State -- there's nothing else that we can
25 do except to keep bringing him back to court when he

1 doesn't pay.

2 I mean, just like Mr. Krzyston said every month I see
3 him, I ask him, "Have you made a payment?" He could have
4 made \$2.00, and I have expressed that to him. You can't
5 sue him. He needs to at least try, make something so...

6 THE COURT: Well, that's what concerns me. This man,
7 for at least the seven months of this year, first seven
8 months of this year, he made 2,000, \$3,600 and 70 -- let's
9 see, 77 -- let's see, 97 -- \$10,000. He didn't pay a
10 dime.

11 MR. KRZYSTON: Your Honor, he has been dealing with a
12 mortgage that's collapsing. He has got a family. He has
13 got two children. I think that --

14 THE COURT: Let me ask you. What -- what one of
15 those obligations if he didn't pay would put him in jail?

16 MR. KRZYSTON: None, Your Honor. This arguably
17 should not either. He has paid five months on the eight
18 months that he has completed this year, this calendar
19 year.

20 I would argue that these do not rise to a willful
21 violation. He has been trying since the reconstruction --

22 THE COURT: All right.

23 MR. KRZYSTON: -- in November of 2012.

24 THE COURT: Well, I'm going to find he violated. His
25 violation is willful. In the first seven months of this

1 year, he didn't pay a dime when he made \$10,000.

2 He only seemed to be able to get up some money after
3 borrowing it from his father, which I guess he could have
4 done in January, February, March, April, May, June, July,
5 after he came here and under threat of how I can't pay it.

6 I asked for his records. He, one, brings me some
7 records that shows he's working; and two, manages to go
8 get some money from some source. I find that is willful
9 violation of failing to pay an obligation of money that he
10 has as a condition of his probation. As such, I'm going
11 to revoke five years and terminate his probation and
12 convert to a civil judgment.

13 PROBATION AGENT: Thank you, Your Honor.

14 (Whereupon, the proceedings were concluded.)
15
16
17
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23
24
25

WITNESSES

DOCKET NO. 2008-GS-23-^{DGS} 007707

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

DOA. 9/23/2008 B/M

TERM 2008

PLEAD GUILTY THE STATE
vs.

ARREST WARRANT NUMBER
I405773

ANTHONY C. JOHNSON

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Roseman
Indictment for
0800

FRAUDULENT CHECK

VIOLATION § 34-11-0080

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FRAUDULENT CHECK

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That ANTHONY C. JOHNSON did in Greenville County, on or about the 31st day of December, 2007, with intent to defraud, willfully and unlawfully draw, utter, or deliver to SEPPALA FORM & GRADING dba CHAD SEPPALA a check, draft or written order, in exchange for goods, money, services or anything of value which is not paid upon presentment or following appropriate notice, to wit: a check #1378 in the amount of Six Thousand and Five Hundred Dollars and No Cents (\$6,500 00) drawn on Bank of America. The check was returned for: Stop Payment. This being in violation of 34-11-0080 of the South Carolina Code of Laws (1976) as amended.

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

Dennis Sims
SOLICITOR

WITNESSES

DOCKET NO. 2008-GS-23-
DGS

007700

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2008

DOA: 9/23/2008 B/M DOB:

THE STATE

vs.

ANTHONY JOHNSON

PLEAD GUILTY

ARREST WARRANT NUMBER

1380633

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

0800

Indictment for

FRAUDULENT CHECK

VIOLATION § 34-11-0060

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FRAUDULENT CHECK

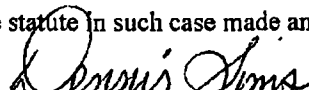
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That ANTHONY JOHNSON did in Greenville County, on or about the 5th day of June, 2008, with intent to defraud, willfully and unlawfully draw, utter, or deliver to STOCK BUILDING SUPPLY a check, draft or written order, in exchange for goods, money, services or anything of value which is not paid upon presentment or following appropriate notice, to wit: a check #1449 in the amount of Twenty Two Thousand One Hundred Thirty Nine Dollars and No Cents (\$22,139.00) drawn on Bank of America. The check was returned for: NSF. This being in violation of 34-11-0060 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS. Anthony C Johnson
AKA:
Race: B Sex: M Age: 45
DOB: SS#:
Address:
DL#: SID#:

INDICTMENT/CASE#: 2008GS2307787
A/W#: I405773
Date of Offense: 12/31/2007
S.C. Code § : 34-11-0060, 0090(
CDR Code #: 0800

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Checks / Fraudulent check, or stop payment, \$1000.00 or more - 1st offense

in violation of § 34-11-0060, 0090(of the S.C. Code of Laws, bearing CDR Code # 0800
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: Dennis Sims 5121 Defendant
Attorney for Defendant 15915 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3 yr

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: 2008GS2307788
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 PTUP upon complete Rest. but
Total: \$ plus 20% fee: \$
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:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, § 47.12 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$100, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, § 90.7 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$.

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

Clerk of Court/ Deputy Clerk
Court Reporter: Kemon
SCCA/217 (06/2009)

Paul B. Wickens

PRESIDING JUDGE
Judge Code:
Sentence Date: 4-3-09

prob. begins today

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of RICHLAND

Personally appeared before me, Tivona Taylor Rice, who first being duly sworn, deposes and says that ANTHONY C JOHNSON, Anthony Johnson, Anthony C Johnson did within this county and State on the 3 day of June, 2013, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

Anthony Johnson violated conditions 7, 9, 10 and 11 as ordered in Cause Numbers 08-GS-23-7788 and 7787 by the Greenville County Court of General Sessions on 9/3/09 and the Continuation Orders dated 8/23/10, 6/25/11, and 11/20/12 and the Consent Order dated 4/12/17.

The Affiant states that there is probable cause to believe the defendant named committed the violations set forth and that such probable cause is based on the following facts:

Anthony Johnson failed to follow the advice and instructions of his agent in that he: failed to pay supervision fees being \$550 in arrears with a balance of \$1,300; failed to pay restitution being \$825 in arrears with a balance of \$7,625 on ind 7787 and being \$825 in arrears with a balance of \$26,391.80 on ind 7788.

Sworn to and subscribed
before me this 3 day of
June, 2013

[Signature]
Affiant

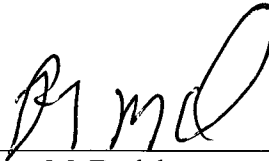
[Signature]
Signature of Notary Public

My Commission Expires: 1-29-2013

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."

June 4, 2014



Robert M. Dudek
Chief 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

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

James R. Barber, III, Circuit Court Judge

RECEIVED

JUN 04 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTHONY C. JOHNSON,

APPELLANT

APPELLANT CASE NO. 2013-001918

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Tommy Evans, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 4th day of June, 2014.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 4th day of June, 2014.

Rhonda Demese Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021 .