

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
Dominique Lavar Williams
AKA:
Race: BLACK Sex: M Age: 26
DOB: S#:
Address:
City, State, Zip:
DL#: SID#: SC01913500

INDICTMENT/CASE#: 2012GS1006872
A/W#: 2012A1010200451
Date of Offense: 7/24/2012
S.C. Code § : 16-23-0020, 0050(A)(2)
CDR Code #: 0044

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Unlawful Carrying of Pistol

CONVICED OF or PLEADS

in violation of § 16-23-0020, 0050(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0044
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The 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:
Lietzow, Chris SC Bar# 100521 Defendant
Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 2 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:
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. 2 days
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

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:

Recipient:

Table with 3 columns: Description, Rate, 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, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ca, Proviso 90.5 (SCCA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

RECEIVED

JUL 25 2014

Appointed PD or appointed the Counselor of Appeals § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Allison Heffernan
Court Reporter: Stacy Johnson
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 215
Sentence Date: 7/22/14

FILED

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

2014 JUN 27


) FOR THE NINTH JUDICIAL CIRCUIT

) Case No(s): 2012-GS-6872

JULIE J. ARMSWORTH
CLERK OF COURT

) Charge(s): Unlawful Carry Pistol

STATE OF SOUTH CAROLINA

BY 

vs.

DOMINIQUE LAVAR WILLIAMS,

Defendant

Motion for A New Trial

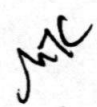
YOU WILL PLEASE TAKE NOTICE that Dominique Lavar Williams, the Defendant, respectfully requests this Court grant a new trial on the above captioned offense of Unlawful Carry of a Pistol pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. The Defendant, indicted for Unlawful Carry of a Pistol, proceeded to trial before the Honorable Kristi Lea Harrington on June 18, 2014. The jury returned a verdict of guilty on June 19, 2014. The Court delayed sentencing until July 22, 2014. The Defendant now respectfully moves for a new trial.

STATEMENT OF FACTS

On July 24, 2012 at approximately 12:37 A.M., while conducting foot patrol at 7550 Dorchester Road, Club Pulse, Officer James Greenawalt observed what he believed to be a handgun resting between the driver's seat and the passenger seat inside and unoccupied car. Officer Greenawalt testified that while he believed the item to be a handgun, he could not tell for certain by simply looking at the item. He was only able to confirm that it was a gun after he went into the car and seized it. The gun did not have an obliterated serial number. The gun was not stolen. It was a properly registered weapon to Dominique Williams.

Having seen what he believed to be a handgun in the unoccupied car, Officer Greenawalt backed away from the car and kept it in his unobstructed view. After appoximately an hour, two black males walked out of Club Pulse and headed towards the car. These two individuals were later identified to be Antonio Simmons and Dominique Williams. Officer Greenawalt testified that Mr. Williams had the keys to the car in his hand, unlocked the passenger door, and then unlocked driver's side door.

Once Mr. Williams unlocked the driver door and opened the door, Offier Greenawalt and Sargent Hill stopped Mr. Williams and Mr. Simmons. Neither individual ever entered the car. While displaying their department issued weapons, the officers ordered the two individuals to put their hands up. They placed Mr. Williams and Mr. Simmons in handcuffs and separated the two men, putting one at the font of the car and another at the rear of the car.



Without consent from either individual and without a warrant, Officer Greenawalt went into the car and retrieved what was later confirmed to be a handgun.

After being Mirandized and questioned by Detective Monroe, Mr. Williams told the detective that the gun belonged to him and was legally purchased from Money Man Pawn Shop.

The above facts were presented at Mr. Williams' trial. The defendant's pretrial 4th Amendment motion to suppress the handgun was denied. At the close of the State's case, the defendant's Motion for Directed Verdict was denied. The jury returned a verdict of guilty on the charge of Unlawful Carry of a Pistol.

ARGUMENT

I. The Verdict is Against the Greater Weight of the Evidence

The Court must grant a New Trial, because Mr. Williams' conviction is against the greater weight of the evidence. The trial judge has the authority to grant a new trial upon the facts. *See State v. Taylor*, 348 S.C. 152, 158m 558 S.E.2d 917, 920 (2001); *State v. Prince*, 316 S.C. 57, 447 S.E.2d 177 (1993). It is well settled that it is within the sound discretion of the trial judge to grant a new trial. *Id.*; *State v. Simmons*, 219 S.C. 165, 303 S.E.2d 857 (1983). "Where there is no evidence to support a conviction, an order granting a new trial should be upheld." *State v. Smith*, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993). "Criminal statutes must be strictly construed against the State and in favor of the Defendant." *Williams v. State*, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991). In interpreting a statute, the words must be given their plain and ordinary meaning without resort to subtle or forced construction that limit or expand the statute's operation. *Rowe v. Hyatt*, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996).

The indicted offense of Unlawful Carry of a Pistol is defined in S.C. Code section 16-23-20: "It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law." S.C. Code 16-23-20 (2013). The State must prove three elements to show and Unlawful Carry of a Pistol: (1) the item is, in fact, a handgun, (2) the defendant carried the handgun, (3) the carrying took place "about the person."

In the case at hand, the State was able to prove that the weapon was in fact a handgun. The weapon was introduced over defendant's Fourth Amendment objections. However, the State produced no evidence to show that the weapon was either (1) carried or (2) about the person of Mr. Williams.

There is no evidence in the record that Mr. Williams ever carried the handgun. Black's Law Dictionary defines the word *Carry* as "(1) to sustain the weight or burden of; to hold or bear (2) to convey or transport." *Blacks Law Dictionary* 227 (8th ed. 2007). As described above, the facts presented through testimony from law enforcement were that Mr. Williams walked out of Club Pulse and up to the car with the keys in his hand. He unlocked the passenger door for Mr.

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Simmons and then unlocked and opened the driver door. Before he entered the car whatsoever, Officer Greenawalt and Sargent Hill stopped Mr. Williams, placed him in handcuffs and moved him away from the side of the car.

Officer Greenawalt testified that he did not observe the defendant ever drive the vehicle. He did not know who was present in the vehicle when it arrived at Club Pulse. Even though Officer Greenawalt observed the car for approximately an hour after he saw the gun on the floorboard of the car between the seats, he did not have the car under surveillance prior to seeing the gun. He could not testify whether someone entered the car between it arriving at the club and his observing the interior of the car.

The handgun was not about the person of Mr. Williams. Officer Greenawalt testified that the gun was never actually on the person of Mr. Williams. Mr. Williams was arrested and charged for the gun on the floorboard of the unoccupied car. He was never actually in the car. The Court charged the jury that "it is about the person if it is readily accessible and convenient for immediate use. It need not be actually touching the person of the defendant." The quoted language is from an Attorney General Opinion construing the repealed code of 1962. Op. Atty. Gen, No 1704, p. 164. An exhaustive search of South Carolina case law produced no Appellate or Supreme Court opinions interpreting the statutory language of "about the person" for Unlawful Carry of a Pistol. Even if this standard applies, the gun was not readily accessible because Mr. Williams was detained by law enforcement before he was inside the vehicle where he would have had the opportunity to access the gun. The gun is not readily accessible when the Defendant was outside the car and the gun was inside the car.

The Unlawful Carry statute provides a statutory exception for persons in a vehicle. The Statute provides an exception for "a person in a vehicle if the handgun is: (a) secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle . . ." S.C. Code 16-23-20 (9)(a). This exception is a statutory defense available to persons charged with the unlawful carry of a pistol as described above. Interpreting the Unlawful Carry statute, our Supreme Court said, "[t]he statute clearly states that it is unlawful to carry a pistol, and the exceptions are not descriptive of the offense." *State v. Clarke*, 302 S.C. 423, 425, 396 S.E.2d 827, 828 (1990) (addressing which party bears the burden of proof for the enumerated statutory exceptions).

The exception does not expand the illegal behavior covered by the statute. That is, it is not illegal for a handgun to be outside of the prescribed constraints of a "closed glove compartment, closed console, etc." in an unoccupied vehicle. The statutory exception plainly applies when there is "a person in a vehicle." S.C. Code 16-23-20 (9). The statute provides that it is not unlawful to carry a handgun in a car when that gun is in a closed glove compartment or other listed closed compartment. The exception is enumerated because when a person is inside a vehicle and transporting the handgun, it may be "about the person" unless it falls within the prescribed methods within the exception.

However, in the case at hand, Mr. Williams was not in the car. The closest he was ever to the handgun was standing outside the car with the door ajar immediately before being detained

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by law enforcement.

Because no evidence was presented by the State that Mr. Williams carried the handgun or that the handgun was about his person, the Court must grant Mr. Williams a new trial. No reasonable juror could find that either he carried the handgun or that it was about his person.

Mr. Williams hereby incorporates all arguments orally presented during his Motion for Directed Verdict that are not presented above.

II. The Handgun Should Have Been Suppressed As an Illegal Search and Seizure Violating the Constraints of the Fourth Amendment.

Mr. Williams moves for a new trial because the Court should have suppressed the handgun pursuant to the Fourth Amendment of the United States Constitution as incorporated to the States. The State failed to show any exception to the warrant requirement.

Warrantless searches and seizures are per se unreasonable unless an exception to the warrant requirement applies. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *United States v. Place*, 462 U.S. 696 (1983); *State v. Bailey*, 276 S.C. 32, 274 S.E.2d 913 (1981). It is the State's burden to show that an exception to the warrant requirement is present. *State v. Dupree*, 319 S.C. 454, 462 S.E.2d 279 (1995).

The only exception offered by the State in Mr. Williams' case is the plain view exception. The plain view exception requires that the initial intrusion which afforded the authorities the plain view was lawful and the incriminating nature of the evidence was immediately apparent to the seizing authorities. *State v. Beckham*, 334 S.C. 302, 317, 513 S.E.2d 606, 613 (1999); *Arizona v. Hicks*, 480 U.S. 321 (1987) (finding that moving an object even few inches to confirm police suspicion of its illegality violates the Fourth Amendment).

Officer Greenawalt testified that he could not tell by looking through the window with his flashlight whether what he saw was a real handgun or not. He could not tell if it were a prop or a toy gun. He believed it to be a handgun, but he could not tell without seizing it and manipulating it to be certain.

Officer Greenawalt testified that he could not tell by looking at the gun whether it was stolen or otherwise an illegal weapon. In fact, the weapon was a legally owned firearm.

As discussed above and orally argued at the pretrial hearing on Defendant's Motion to Suppress, the handgun on the floorboard of an unoccupied car is not prohibited by any South Carolina law. The statutory exception for carrying a handgun in a vehicle is "not descriptive of the offense." *Clarke*, 302 S.C. at 425, 396 S.E.2d at 828. The handgun on the floorboard of an unoccupied car is no different than the stereo equipment from the *Hicks* case. There is no illegality readily apparent.

MC

The plain view doctrine was the only exception to the warrant requirement offered by the State. The State cannot show that this exception applies, because there is no incriminating nature that is immediately apparent with respect to the later discovered to be handgun on the floor of an unoccupied car. The search of the car and seizure of the handgun should have been suppressed as violating Mr. Williams Constitutional Rights under the Fourth Amendment.

III. The Jury Instructions Given Were Confusing and Misleading.

The Defendant moves for a new trial based on the confusing and misleading charges presented to the jury. The Court erroneously denied the Defendant's request to charge the jury on the rules of statutory interpretation cited above. See *Williams v. State*, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991); and see *Rowe v. Hyatt*, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996).

In reaching their verdict, the jury was forced to interpret the law of Unlawful Carry of a Pistol. The jury had to decide what it meant to "carry" the pistol and what it meant to be "about the person." The rules of statutory construction would have aided the jury in doing so. The requested charge is a fair statement of the law and failure to give the charge has prejudiced Mr. Williams.

The Court erroneously charged the jury on the above discussed language from the Attorney General's opinion of "about the person" from 1963. There is no South Carolina precedent stating that "about the person" means "readily accessible and convenient for immediate use." The statutory language makes it clear that the gun need not be actually on the defendant's person, because the General Assembly used the word *about* instead of the word *on*. However in charging the jury the above language, the Court violated a cardinal rule of statutory construction: the words must be given their plain and ordinary meaning without resort to subtle or forced construction that limit or expand the statute's operation. *Rowe v. Hyatt*, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996).

In addition, the Court erred by charging the jury on the statutory exception provided for carrying handgun in automobiles: "a person in a vehicle if the handgun is: (a) secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle . . ." S.C. Code 16-23-20 (9)(a). As argued above, this exception is a statutory defense available to persons charged with the unlawful carry of a pistol as described above. Interpreting the Unlawful Carry statute, our Supreme Court said, "[t]he statute clearly states that it is unlawful to carry a pistol, and the exceptions are not descriptive of the offense." *State v. Clarke*, 302 S.C. 423, 425, 396 S.E.2d 827, 828 (1990) (addressing which party bears the burden of proof for the enumerated statutory exceptions).

It is the Defendant's burden to raise the statutory exception and assert that defense. At no time did Mr. Williams request that the jury be charged the the statutory exception for automobiles. Charging the jury on the statutory exception created a misleading and confusing charge on the law of Unlawful Carry of a Pistol. The court did not charge any other exceptions

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included in the statute. By charging only the automobile exception enumerated in part (9)(a), the Court expanded the operation of the statute and violated a cardinal rule of statutory interpretation.

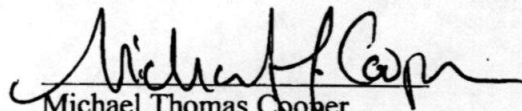
IV. The Defendant's Additional Grounds for a New Trial

The Defendant hereby moves for a new trial based on all Defense Motions made but denied and all Defense Objections made but overruled.


Additionally, the trial court erred in denying the Defense's Motion for a Directed Verdict, because the State did not meet its evidentiary burden of going forward. *See State v. Arnold*, 361 S.C. 386 (2004); *State v. Bostick*, 392 S.C. 134 (2011). The State presented no direct evidence in its case to show that Mr. Williams ever carried about his person the pistol. The State also failed to present substantial circumstantial evidence showing that the pistol was carried about his person by Mr. Williams.

THEREFORE, based on the above reasons and other grounds argued orally the Defendant respectfully requests this Court order a new trial on the above captioned matter.

Respectfully Submitted,


Michael Thomas Cooper
Attorney for Defendant

Dated: 6/27/14

FILED
2014 JUN 27 PM 3:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

ARREST WARRANT

2012A1010200451

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

THE STATE

against

Dominique Lavar Williams

Address:

Phone: SSN: Sex: M Race: B Height: 6 170 DL State: SC DL #: DOB: Agency ORI #: SC0100800 Prosecuting Agency: North Charleston Police Department Prosecuting Officer: James Greenawalt - 0149 Offense: Weapons / Unlawful carrying of pistol

Offense Code: 0044 Code/Ordinance Sec: 16-23-0020, 0050

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Charleston County Judicial Center 100 Broad Street, Suite 106 Charleston, SC 29401

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

Personally appeared before me the affiant James Greenawalt who being duly sworn deposes and says that defendant Dominique Lavar Williams did within this county and state on or about 7/24/2012 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Charleston) in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Unlawful carrying of pistol

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Charleston

Affiant's Address 2500 City Hall Lane North Charleston, SC 29406- Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/24/2012 defendant Dominique Lavar Williams did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Unlawful carrying of pistol

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me on 7/24/2012

Signature of Issuing Judge Linda Schwartz Lombard

Judge Code: 7004

Judge's Address 3870 Leeds Avenue, Suite 106 North Charleston, SC 29405-7469 Judge's Telephone (843)746-9822

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ORIGINAL

ORIGINAL

DAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 918

BAIL set by

Judge Lombard
on 9-2-12
Type and Amount: 25,000
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
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Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



2012 JUL 30 PM 12:48
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT

Inv. Officer Greenwalt

OCA# 2012026540

Personally appeared before me, a magistrate of this county, one RESTON
who, first being duly sworn, deposes and says that

DOMINIQUE LAVAR WILLIAMS

did within this County and State on the 24TH day of July 2012
violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

UNLAWFUL CARRYING OF A PISTOL
VIOLATION OF SECTION 16-23-20

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On July 24, 2012 at approximately 0107 hours, while at 7550 Dorchester Road (Club Pulse), which is located in the City of North Charleston, County of Charleston, and State of South Carolina, the defendant, **DOMINIQUE LAVAR WILLIAMS**, did commit the offense of **UNLAWFUL CARRYING OF A PISTOL** in violation of section 16-23-20 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully and unlawfully have in his possession and under his control a fully loaded black in color Hi-Point 9mm pistol (Model #C9/ Serial # P1633994/ Beemiller, inc./ Monefield, Ohio) loaded with 8 rounds of 9mm S&B ammo in the magazine

Facts to establish the aforesaid are that:

Facts to establish the aforesaid are that Pfc. Greenwalt was conducting foot patrol of the parking lot of 7550 Dorchester Road (Club Pulse). While doing so Pfc. Greenwalt observed the defendant's vehicle (SC tag #GZH830) in the parking lot. Pfc. Greenwalt observed inside this vehicle in plain view the above mentioned pistol next to the driver seat between the driver seat and the passenger seat. That the defendant was the only person in possession of the vehicle keys, and made a spontaneous utterance as to the ownership of the pistol. Pfc. Greenwalt is witness to prove the same. All this being against the form of the Statute and against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 24 day of July
2012

Signature of Judge [Signature]

RESTON

(AFFIANT)

Address: 2500 City Hall Ln

N. Chas. SC 29406

Phone: 843 554 5700

CERTIFICATE OF SERVICE BY HAND DELIVERY

I hereby certify that the Notice of Appeal regarding the case of Dominique Lavar Williams has been served on Christopher Leitzow, Assistant Solicitor for the Ninth Judicial Circuit on July 22, 2014.

Rebecca Williams
AFFIANT