

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

EUGENE G. GRIFFITH, JR., CIRCUIT COURT JUDGE

13GS24-101

Unpublished Opinion No. 2015-UP-266

The State, Respondent,

v.

Gary Eugene Lott, Appellant.

APPELLATE CASE NO. 2013-000494
2015 WL 3409053 (5-27-15)

RECEIVED

JUN 11 2015

SC Court of Appeals

PETITION FOR REHEARING WITH SUGGESTION
REHEARING EN BANC

Petitioner Gary E. Lott prays that this Court will grant the petition for rehearing with suggestion for rehearing en banc under South Carolina Appellate Court Rules (SCACR) 219(a)&(b) and 221(a) on the ground(s) overlooked which is set forth below herein:

I. THE CIRCUIT COURT LACKED JURISDICTION TO
PROCEED ON THE INDICTMENT SET FORTH HEREIN

Appellant's indictment which was true billed on 1-22-13 charged Lott with criminal sexual conduct with a minor-third degree (CSC 3rd with minor) was wrongfully amended on 2-25-13 under the number set forth above herein. (tr. p. 5 l. 20; p. 7 ll. 6-7) to charge or read "lewd act on a minor 16-15-140". Please see indictment annexed hereto.

see also State v. Myers, 438 S.E.2d 236 (1993) ("Amendments to indictment are permissible if they do not change nature of offense"); Brown v. State, 540 S.E.2d 846, 848 (2001); Hope v. State, 492 S.E.2d 76 (1997) but see State v. Nerton, 332 S.E.2d 531(1995) (Committing a lewd act upon a minor is not lesser included offense of first degree criminal sexual conduct on a minor).

Moreover, lewd act is not a lesser included offense of CSC 3rd on a minor even if CSC 3rd with a minor was an offense in October 2, or 3, 2011 for 2012 Act No. 255, §14 eff. 6-18-12 repealed §16-15-140 and the indictment could only have been amended through the Grand Jury of Greenwood County. Therefore, appellant's
28 FEBRUARY
January 2013 conviction and sentence must be vacated forthwith.

This 6 day of June 2015

Respectfully submitted,

1st Gary E. Lett

Gary E. Lett, 262345
RGI, CA-66, POB 2039
Ridgeland, S. C. 29936

CERTIFICATE OF SERVICE

Lett hereby certifies that he has caused true and correct copies of the petition for rehearing etc. and attachment(s) to be mailed, postage prepaid, to the government's attorney, Salley Elliott, POB 11549, Columbia, S. C. 29211

This 9 June 2015

Gary E. Lett

WITNESSES

Jeff Scott
Greenwood County Sheriff

WARRANT NUMBER

2012D2400100059
DIRECT INDICTMENT

John Biss

Jay W. Molden

Foreman of the Grand Jury

Date: *1/22/13*

VERDICT

Guilty

Michelle J. MacLeod

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWODO

COURT OF GENERAL SESSIONS

January Term, 2013
Indictment # 13GS24-*101*

THE STATE

vs.

Gary Eugene Lott

INDICTMENT FOR

**CRIMINAL SEXUAL CONDUCT
WITH A MINOR - ~~THIRD DEGREE~~ *ET AL***

16-03-0655(C)
16-15-140

ANGELA WOODHURST
CCCP ANL CS
GREENWOOD COUNTY
S.C.

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WITNESSES

Jeff Scott
Greenwood County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWODO

COURT OF GENERAL SESSIONS

January Term, 2013

Indictment # 13GS24-101

WARRANT NUMBER

2012D2400100059

DIRECT INDICTMENT

THE STATE

vs.

Gary Eugene Lott

John Biv

Jay W. Madson

Foreman of the Grand Jury

Date: 1/22/13

INDICTMENT FOR

**CRIMINAL SEXUAL CONDUCT
WITH A MINOR - ~~THIRD DEGREE~~ ^{2nd}**

16-03-0655(C)
16-15-140

VERDICT

Guilty

Michelle J. Madson

Foreman

ALL INFORMATION CONTAINED
HEREIN IS A TRUE COPY
ANGELA WOODHURST
CCCP AND CS
GREENWOOD COUNTY
S.C.