

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
Case No. 2014-CP-46-002349

RECEIVED

JUL 23 2015

SC Court of Appeals

LEE S. ALFORD, Circuit Court Judge

Appellate Case No. 2014-000130

City of Rock Hill,

Respondent,

v.

Neal A. Nesmiller,

Appellant.

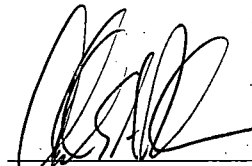
DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following be included in the Record on Appeal in addition to the material proposed by the Appellant:

1. Rock Hill Police Department Incident Report (Case number: 1303120532).

I certify that this designation contains no matter which is irrelevant to this appeal.

July 21, 2015



Christopher E. A. Barton
201 E. Main St., 3rd Floor
Rock Hill, South Carolina 29730
(803) 329-5692
Attorney for Appellant

South Carolina
SC0460380

INCIDENT REPORT

INFORMATION ONLY

CASE NUMBER

1303120532

NCIC

INQ. Y ENTD. N

EVENT

VICTIM NO. 1

SUBJECT NO. 1

NARRATIVE

PROPERTY EST.

ADMINISTRATIVE

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. 56-5-2930 DUI (1ST OFFENSE W/O BA) 90D DRIVING UNDER THE INFLUENCE	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	HIGHWAY/ROAD/ALLEY		<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst <input checked="" type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.
2.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			
3.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 1900 BLK INDIA HOOK RD, ROCK HILL, SC				ZIP CODE 29732-0000	WEAPON TYPE
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK
03/12/2013	20:26				DISP. DATE: 03/12/2013 DISP. TIME: 20:26 TIME ARRIVED: 20:30 DEPART. TIME: 21:10
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE SEX AGE ETH DAYTIME PHONE EVENING PHONE
		#1 #2 #3			
ADDRESS			CITY	STATE	ZIP CODE LOCATION NO.

VICTIM'S NAME (LAST, FIRST, MIDDLE) CITY OF ROCK HILL		RELATIONSHIP TO SUBJECT		RESIDENT	RACE SEX AGE ETH DAYTIME PHONE EVENING PHONE	
		#1 #2 #3		J	/	
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
ADDRESS			CITY	STATE	ZIP CODE LOCATION NO.	
155 JOHNSTON ST			ROCK HILL	SC	29730-0000 6	

VISIBLE INJURY (MCT:1) YES NO EXPLAIN- COMPLAINT OF ANY NON-VISIBLE INJURES YES NO

VICTIM (NO. 1) USING: ALCOHOL YES NO UNK. DRUGS: YES NO UNK. TYPE:

TWO MAN VEH <input type="checkbox"/>	ONE MAN VEH <input checked="" type="checkbox"/>	DETECTIVE/PLASMT <input type="checkbox"/>	OTHER <input type="checkbox"/>	ALONE <input checked="" type="checkbox"/>	ASSISTED <input type="checkbox"/>	*J-This Jurisdiction. S-State. O-Out of State. U-Unknown.							
<input checked="" type="checkbox"/> SUSPECT	NAME (LAST, FIRST, MIDDLE) NESSMILLER, NEAL, A				RACE W	SEX M	AGE 52	ETH. N	DATE OF BIRTH	HEIGHT 607	WEIGHT 280	HAIR 2	EYES 2
<input type="checkbox"/> RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.												
<input type="checkbox"/> WANTED	DAYTIME PHONE EVENING PHONE												
<input type="checkbox"/> WARRANT	ADDRESS CITY STATE ZIP CODE LOCATION NO.												
<input checked="" type="checkbox"/> ARREST	ROCK HILL SC 29732-0000												
<input type="checkbox"/> JAIL													
<input checked="" type="checkbox"/> SUMMONS	SUBJECT (NO. 1) USING ALCOHOL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/>		ARRESTED NEAR OFFENSE SCENE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		DATE/TIME OF OFFENSE 03/12/2013 08:26:00 PM			DATE/TIME OF ARREST 03/12/2013 08:56:00 PM					
	DRUGS <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input checked="" type="checkbox"/> TYPE		TOTAL # ARRESTED 1										

DAY OF THE WEEK		HOW REPORTED		A= OFFICER DISPATCHED ON CALL		D= COMPLAINT WRITTEN IN		DIFF. FACTOR		A= RESISTANCE/HOSTILITY		E= COMPLAINANT FRE-QUENTLY INTOXICATED	
S	M	T	W	T	F	S	UNK	A	B	C	D	E	F
1	2	3	4	5	6	7	8	A	B	C	D	E	F
				B= REPORT TAKEN BY PHONE		E= OFFICER INITIATED		N		B= WEAPONS		F= DOMESTIC	
				C= COMPLAINANT WALKED IN		F= OTHER				C= UNFOUNDED CALLS		N= NORMAL	

1303120532

On 3/12/13, at approximately 2026 hours, Officer Sizemore was dispatched to 1906 India Hook Rd (Beaver Chiropractic) regarding a collision. Upon arrival contact was made with Driver #1, Megan Hagler (11/18/86), who was driving a 2009 Chevy SUV. Contact was then made with Driver #2, Neal Nessmiller (10/9/60), who was driving a 2010 Ford Pick-up truck. Both drivers advised that Hagler was stopped at the redlight on Herlong at India Hook when Nessmiller struck her from behind. The vehicles then relocated to Beaver Chiropractic and called police. Officer Langley then arrived on scene.

While speaking to Nessmiller he was observed to have a strong odor of an alcoholic beverage coming from him. When asked,

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
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TYPE (GROUP)	TOTAL VALUE
STOLEN	\$0.00
DAMAGED	\$0.00
BURNED	\$0.00
RECOVERED	\$0.00
SEIZED	\$0.00

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>	SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>	S. F. <input type="checkbox"/> CN <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED UNDER 18 <input type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEAR UNDER 18 <input type="checkbox"/> EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1 <input type="checkbox"/> OFFENDER DEATH 2 <input type="checkbox"/> NO PROSECUTION 3 <input type="checkbox"/> EXTRADITION DENIED 4 <input type="checkbox"/> VICTIM DECLINES COOPERATION 5 <input type="checkbox"/> JUVENILE NO CUSTODY					
REPORTING OFFICER(S) SIZEMORE ERIK	DATE 03/12/2013 11:53:34 PM	UNIT NUMBER 05608	APPROVING OFFICER RAMSEY ROY	DATE 03/13/2013 01:20:05 AM	UNIT NUMBER 03966
FOLLOWUP INVESTIGATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>					

ADDITIONAL NARRATIVE

Agency Name: South Carolina	ORI #: SC0460300	Report Date/Time: 03/12/2013 20:26	OCA #: 1303120532
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1303120532

Nessmiller admitted he had just been drinking at the "End Zone" bar and that is where he was coming from. Nessmiller stated he had 3 Vodka drinks from the bar, and also stated he was on multiple prescription painkillers. Nessmiller appeared confused and disoriented. Nessmiller was also observed to have:

- Bloodshot eyes
 - Slurred speech
 - Trouble finding his license
 - Trouble finding his registration
 - Trouble exiting his vehicle
 - Slow and lethargic movements
 - The need for support to maintain his balance
 - A prosthetic left leg. The left leg was amputated just below the knee. Nessmiller stated it was amputated April, 2012.
- When asked by Officer Sizemore, Nessmiller agreed to submit to a series of field sobriety tests.

Horizontal Gaze Nystagmus Test

Prior to beginning the test it was determined Nessmiller was not wearing contacts. Nessmiller's eyes were checked and his eyes displayed equal tracking and his pupils were equal sizes. Nessmiller was instructed to following the stimulus with his eyes only, keeping his head still. After stating he understood the instructions Nessmiller attempted this test.

The results of this test displayed 6 of the 6 possible clues.

- A lack of Smooth Pursuit in his left eye.
- A lack of Smooth Pursuit in his right eye.
- A distinct and sustained nystagmus in the left eye at maximum deviation.
- A distinct and sustained nystagmus in the right eye at maximum deviation.
- An onset of nystagmus in the left eye prior to 45 degrees.
- An onset of nystagmus in the right eye prior to 45 degrees.

While performing the Horizontal Gaze Nystagmus test, it was observed that Nessmiller:

- Swayed while standing.

When asked Nessmiller stated he could not do the Walk-and-Turn test or the One-Leg-Stand test because of his left leg prosthesis and the fact that his right knee was "blown out."

Officer Sizemore was able to determine at this time that Nessmiller was clearly impaired and under the influence due to all of his observations, the defendant's statements, and performance on the standardized field sobriety tests. Officer Sizemore placed Nessmiller under arrest for driving under the influence. Officer Sizemore handcuffed Nessmiller in the rear, checked them for fit and double locked them. Nessmiller was read his Miranda rights on camera and then placed into Officer Sizemore's patrol vehicle. After sitting down on the rear passenger side of the patrol vehicle Nessmiller refused to slide back into the vehicle. Finally Nessmiller complied and slid back so Officer Sizemore could shut the door.

Officer Sizemore transported Nessmiller to the Rock Hill Law Center Jail. While en route to the jail Nessmiller stated that Officer Sizemore and all police are, "a bunch of pussy motherfuckers" and cursed at Officer Sizemore the entire way to the jail. Nessmiller also stated that Officer Sizemore has better things to do than to arrest a handicap person. At the jail Officer Sizemore offered Nessmiller a chance to use the restroom before offering him a DMT breath test. Nessmiller was advised that he was being video and audio recorded and was advised of his implied consent rights verbally and in writing. While in the DMT room Nessmiller refused the test. Nessmiller also refused to sign any documents. Nessmiller was given a copy of his implied consent rights / test results and was charged with driving under the influence 1st offense on citation 44893GH. The in car video will be placed into evidence once completed. Nessmiller's SC Driver's License was submitted to SCDMV regarding suspension (for refusal of DMT). Officer Langley completed the collision report and stood by until Carolina Collision arrived and towed Nessmiller's vehicle. The incident locations are within the city limits of Rock Hill in York County South Carolina.

AGENCY: South Carolina.
 ORI #: SC0460300
 Report Date / Time: 03/12/2013 20:26
 Incident #: 1303120532

ADDITIONAL VEHICLES

STATUS: 3		RELATED TO: NESSMILLER		VEHICLE TYPE: PU	
VIN AND/OR LICENSE NO. P274709			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE SC		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR 2010	MAKE FORD
MODEL	STYLE 4X4	COLOR RED		CID NO.	
COMMENTS TOWED BY CAROLINA COLLISION					
STATUS: 3		RELATED TO: HAGLER		VEHICLE TYPE: P	
VIN AND/OR LICENSE NO. HKS585			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE SC		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR 2009	MAKE CHEV
MODEL	STYLE SD	COLOR BLUE		CID NO.	
COMMENTS					
STATUS:		RELATED TO:		VEHICLE TYPE:	
VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE
MODEL	STYLE	COLOR		CID NO.	
COMMENTS					
STATUS:		RELATED TO:		VEHICLE TYPE:	
VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE
MODEL	STYLE	COLOR		CID NO.	
COMMENTS					
STATUS:		RELATED TO:		VEHICLE TYPE:	
VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE
MODEL	STYLE	COLOR		CID NO.	
COMMENTS					
STATUS:		RELATED TO:		VEHICLE TYPE:	
VIN AND/OR LICENSE NO.			BOAT HULL NO. AND/OR REG. NO.		
SERIAL AND/OR OWNER APPLIED NO.			STATE		
YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE
MODEL	STYLE	COLOR		CID NO.	
COMMENTS					

AGENCY : South Carolina
 ORI # : SC0460300
 Report Date/Time : 03/12/2013 20:26
 Incident # : 1303120532

**INCIDENT REPORT
 ADDITIONAL OTHERS**

PERSON TYPE VICTIM	NAME (LAST, FIRST, MIDDLE) HAGLER, MEGAN, ELIZABETH				RELATIONSHIP SUBJECT #1 #2 #3 RU			RESIDENT J	RACE W	SEX F	AGE 26 /	D.O.B. [REDACTED]	ETH N
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.								
	ADDRESS [REDACTED]				CITY FORT MILL	STATE SC	ZIP CODE 29715-0000	LOCATION NO.	DAYTIME PHONE [REDACTED]	EVENING PHONE [REDACTED]			
VSBLEINURY <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN-											COMPLANT OF ANY NON-VSBLEINURES <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		
USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> TYPE:													

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.								
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE	EVENING PHONE			
VSBLEINURY <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN-											COMPLANT OF ANY NON-VSBLEINURES <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		
USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> TYPE:													

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.								
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE	EVENING PHONE			
VSBLEINURY <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN-											COMPLANT OF ANY NON-VSBLEINURES <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		
USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> TYPE:													

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.								
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE	EVENING PHONE			
VSBLEINURY <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN-											COMPLANT OF ANY NON-VSBLEINURES <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		
USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> TYPE:													

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.								
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE	EVENING PHONE			
VSBLEINURY <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN-											COMPLANT OF ANY NON-VSBLEINURES <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		
USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> TYPE:													

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECUALIARITIES, ETC.								
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE	EVENING PHONE			
VSBLEINURY <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN-											COMPLANT OF ANY NON-VSBLEINURES <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		
USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> TYPE:													

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Court of Common Pleas
Case No. 2014-CP-46-2349

LEE S. ALFORD, Circuit Court Judge

Appellate Case No. 2015-000130

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Respondent,

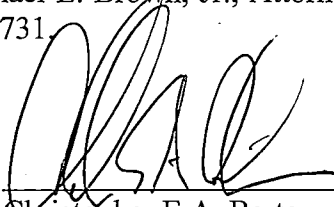
v.

Neal A. Nessmiller,

Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Initial Brief of Respondent and Designation of Matter has been served upon opposing counsel by mailing a copy via regular U.S. Mail to him on the 21st day of July, 2015, to Michael L. Brown, Jr., Attorney for Respondent, Post Office Box 1025, Rock Hill, South Carolina 29731.



Christopher E.A. Barton
201 E Main Street, 3rd Floor
Rock Hill, South Carolina 29730
(803) 329-5692
ATTORNEY FOR APPELLANT



ROCK HILL
SOUTH CAROLINA

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JUL 23 2015

SC Court of Appeals

July 21, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Neal A. Nessmiller, Appellant v. City of Rock Hill, Respondent

Dear Ms. Kitchings;

Enclosed for filing please find the original and 2 copies of our Initial Brief of Respondent and Designation of Matter in regards to the above referenced case.

Truly yours,

Christopher E.A. Barton
201 E. Main Street, 3rd Floor
Rock Hill, South Carolina 29730
(803) 329-5692
Attorney for Respondent

Cc: Michael L. Brown, Esquire
P.O. Box 1025
Rock Hill, SC 29731

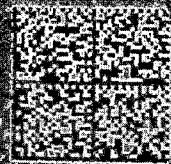
CITY OF ROCK HILL SOLICITOR'S OFFICE

201 E. MAIN STREET, 3RD FLOOR, ROCK HILL, SOUTH CAROLINA 29730
OFFICE 803/329-5619 FACSIMILE 803/326-3865



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ROCK HILL, SC 29730

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JUL 23 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



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