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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2015-000613

RECEIVED  
SEP 23 2015  
SC Court of Appeals

Jeffrey Kennedy.....Respondent.

v.

Richland County School District Two, Eric Barnes and Chuck Earles.....Appellants,

**RESPONDENT'S MOTION TO SUPPLEMENT RECORD ON APPEAL**

Pursuant to Rule 212(b) of the South Carolina Appellate Court Rules, Respondent hereby moves to supplement the Record on Appeal to include additional records, specifically a certified copy of the Order of Expungement issued by the Richland County Summary Court dated May 29, 2014. A copy of which is attached for the Court's reference.

**Factual Background**

This case involved a security guard at Richland School District Two who was alleged by his supervisors to have stolen \$1,000 in cash from the athletic director's office while working the night shift on March 4, 2011. Respondent was never criminally charged with, or convicted of, this crime. Respondent brought a defamation action against his supervisors and the school district alleging that in the wake of the investigation of this theft, an email and related communications

inferring that Respondent was untrustworthy was disseminated by his supervisors to non-privileged individuals.

At trial, Appellant asserted truth as a defense to the defamation claim. In support of this defense, Appellant sought to introduce evidence that Respondent had been accused of a petty theft (\$10 cash and a pair of safety glasses) at a subsequent job three years later as evidence that he was more likely to have committed the theft in this case and that he did not have a reputation for truthfulness. At the time of trial September 29, 2014, Respondent had been criminally charged with the subsequent petty theft, but the case had not yet been adjudicated.

The trial court granted Respondent's Motion *in Limine* excluding evidence that Respondent had been accused of this subsequent petty theft under South Carolina Rules of Evidence 404, 405 and 403. The jury returned a favorable verdict for Respondent on the defamation claim and Appellant has raised in its Initial Brief the granting of Respondent's Motion *in Limine* as one of its grounds on appeal.

### Argument

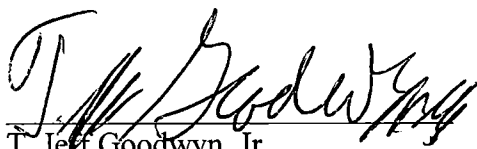
Respondent argues that the Motion *in Limine* on the admission of the subsequent petty theft accusation was decided correctly and is fully addressing this argument in its Initial Brief. Should the Court decide that the Motion *in Limine* was not properly granted, however, the documents Respondent is requesting be supplemented to the record significantly affect whether any potential error on this issue was harmless or not.

Since the trial in this case, Respondent's petty theft trial took place April 8, 2015 and Respondent was acquitted of the petty theft charge. Counsel for Respondent learned of Mr. Kennedy's subsequent acquittal in May 2015. The fact that Respondent was acquitted of the petty theft charges would be before any trial court at a re-trial of the case if this case were reversed and

remanded based on a finding that the Motion *in Limine* was improperly decided. Respondent can conceive of no circumstances where evidence of a theft three years later that Respondent was initially accused of committing, then tried and acquitted of, would be admissible at a new trial as evidence that Respondent was more likely to commit the theft in this case or generally untrustworthy. In short, Appellants would be in no better position in a subsequent trial than they were at the trial that has already taken place. Because of this, any potential error in deciding the Motion *in Limine* was harmless. See Rule 61, SCRPC; See also Bradley v. Keller, 250 S.C. 143 (1967).

Respondent believes that the Court has an interest in facts such as this, even if occurring after the trial, that affect the analysis as to whether or not any alleged error was harmless. For these reasons, Respondent respectfully requests that the Court allow him to supplement the Record on Appeal with the certified copy of the Order of Expungement showing the disposition of the subsequent petty theft case issued by the Richland County Summary Court dated May 29, 2014.

In addition, if the Court grants this motion, Respondent would ask he be allowed at least 10 days to amend his Initial Brief to include argument relating to the supplemented documents. Counsel for Respondent has consulted with Counsel for Appellant regarding this motion. While Appellant intends file a memorandum in opposition to this motion, should the court grant this motion, he would ask that, and Respondent consents to, allowing Appellant sufficient additional time, if needed, to include argument in his reply brief relating to the supplemented documents.



T. Jeff Goodwyn, Jr.

Rachel G. Peavy

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Attorneys for Respondent

September 23, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

THE STATE OF SOUTH CAROLINA

vs.

**Jeffery William Kennedy**  
272 Alexando Point  
Hopkins, SC 29061

Defendant

AKA

**IN THE SUMMARY COURT  
ORDER FOR DESTRUCTION OF ARREST RECORDS**

Race B Sex M

DOB \_\_\_\_\_ SSN \_\_\_\_\_

SID # \_\_\_\_\_ SC01028194

Charges were disposed of in the court indicated below:

Magistrate  Municipal

IT APPEARS that, pursuant to S.C. Code §§ 17-22-950 and 17-1-40, the defendant is entitled to have the court summons or arrest and booking records, associated bench warrant(s), mug shot(s), and any fingerprints relating to this offense expunged and destroyed at no cost to the defendant. In accordance with S.C. Code § 17-1-40(B) and (C), law enforcement, prosecution agencies, and detention and correctional facilities shall retain these records in the manner and for the time limits proscribed by the subsections. Summary court expungements pursuant to S.C. Code §17-22-950 have been preapproved by SLED.

Warrant/Ticket/Courtesy  
Summons / Charge(s):

2014A4010500053/Larceny / Petit or Simple Larceny - \$2,000 or less

Date of Arrest/Service 3/25/2014

Place of Arrest/Service County Of Richland S.C.

I hereby declare the above charge is eligible for expungement because it is a summary level offense and the charge was (check one)  dismissed,  nol prossed, or  the defendant was found not guilty on: 4/8/2015

I further certify compliance with Section 17-22-950 of the South Carolina Code of Laws as follows (check one):

- The defendant was fingerprinted and this order shall be sent to SLED.
- The defendant was not fingerprinted and this order shall not be sent to SLED.

IT IS ORDERED that all arrest and booking records or court summons, associated bench warrant(s), mug shot(s) and fingerprints relating to the above-referenced charge be expunged and immediately destroyed and that no evidence of such records be retained except as permitted by S.C. Code §§17-1-40 or 17-22-950 or other recognized legal authority. In accordance with S.C. Code § 17-1-40(B) and (C), law enforcement, prosecution agencies, and detention and correctional facilities shall retain these records in the manner and for the time limits proscribed by the subsections.

**CERTIFIED TRUE COPY THIS**

29th DAY OF May 20 15

Rose Scott  
CLERK OF COURT

Signed this 29th day of May, 2015

Melvin Wayne Maurer  
Melvin Wayne Maurer Summary Court Judge

Marsden Roe JR RCD  
Arresting Officer / Prosecutor / Affiant (circle one)

Miles Weaver (To Verify Accuracy of Disposition)

Expunged by SLED by: \_\_\_\_\_

Date: \_\_\_\_\_  
(For SLED internal use only)

## **DEFENDANT'S COPY**

Dear Sir/Madam:

The Dutch Fork Magistrate Office records indicate that, pursuant to Sections 17-22-950 and 17-1-140 of the South Carolina Code of Laws, you are entitled to have all records relating to the criminal/traffic offense (referenced in the enclosed Order) destroyed at no cost to you.

Enclosed, find your certified copy of the signed Order. Please retain this copy for your private records. **In compliance with SC State law, once the Order has been executed, no further information will be available to anyone.**

It has been ordered that all records relating to an expunged arrest/court summons and subsequent discharge, pursuant to the above-referenced section, be dismissed, expunged and immediately destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except nonpublic information retained by SC Law Enforcement Division (SLED).

Sincerely,

Richland County Dutch Fork Magistrate Office  
Order Division

THE STATE OF SOUTH CAROLINA  
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Honorable Alison Renee Lee, Circuit Court Judge SC Court of Appeals

Appellate Case No.: 2015-000613

Jeffrey Kennedy.....Respondent,

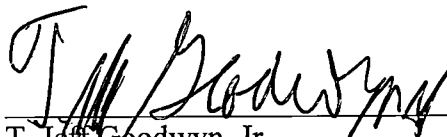
v.

Richland County School District Two, Eric Barnes and Chuck Earles.....Appellants.

**PROOF OF SERVICE**

I certify that I have served the **Respondent's Motion to Supplement Record on Appeal** on Thomas K. Barlow, Esquire and Kathryn Long Mahoney, Esquire, Attorneys for the Appellants, at the address listed below by depositing a copy of same in the United States Mail, postage prepaid, on September 23, 2015.

Thomas K. Barlow  
Kathryn Long Mahoney  
Childs & Halligan, PA  
P.O. Box 11367  
Columbia, SC 29211-1367



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Attorneys for Respondent

September 23, 2015

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Rachel G. Peavy

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\*Also Licensed in Georgia

September 23, 2015

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SC Court of Appeals

**VIA HAND DELIVERY**

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

RE: *Jeffrey Kennedy v. Richland County School District Two, Eric Barnes and Chuck Earles*  
*Appellate Case No.: 2015-000613*  
*Our File No.: 3000-0106*

Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of the Initial Brief of Respondent and Designation of Matter to Be Included in the Record on Appeal, along with the Proof of Service, in regard to the above-referenced matter.

Also, please find enclosed for filing an original and one copy of Respondent's Motion to Supplement Record on Appeal along with a check in the amount of \$25.00 for the filing fee. Please return a clocked-in copy of each of these filings with the courier.

By copy of this letter and as evidenced by the attached Proof of Service, I am serving a copy of the Initial Brief and Designation of Matter along with a copy of Respondent's Motion to Supplement Record on Appeal, on Thomas K. Barlow, Esquire, and Kathryn Long Mahoney, Esquire, attorneys for the Appellants.

Please accept my highest regards.

Sincerely,



T. Jeff Goodwyn, Jr.

TJG/ms  
Enclosures

cc: Thomas K. Barlow, Esquire  
Kathryn Long Mahoney, Esquire  
Jeffrey Kennedy