

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions

The Honorable Eugene C. Griffith, Jr. Circuit Court Judge

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Indictment № 2014-GS-24-0696

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State of South Carolina ..... Appellant,

v.

David Z. Ledford, ..... Respondent.

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Motion to Dismiss Appeal and Remand the Case

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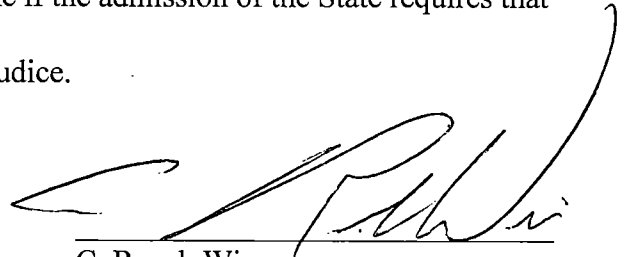
David Z. Ledford, the Respondent above named, hereby moves the Court to dismiss the Appeal filed by the State of South Carolina and to dismiss the underlying charge based upon the following:

1. The decision by the trial judge to charge the jury the definition of “willfully” as alleged in the indictment is not “an order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action” as required by S. C. Code § 14-3-330.

2. The State has represented to the trial court and to the South Carolina Court of Appeals by filing this appeal, that charging the jury the definition of “willfully” as alleged in the

indictment "determines the action" as required by S. C. Code § 14-3-330. By so doing, the State has acknowledged that the evidence in this case is insufficient to sustain a conviction for a willful violation of S. C. Code § 16-3-95 and therefore, in the event the appeal is dismissed, this Court should remand the matter to the trial court to determine if the admission of the State requires that the underlying criminal charge be dismissed with prejudice.

November 6, 2015



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Memorandum in Support of Motion to Dismiss Appeal and Remand the Case

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**Facts**

The State of South Carolina indicted David Zackery Ledford for “willfully and unlawfully inflicting great bodily injury upon a child; in that the said defendant did violently shake and/or hit the victim, Summer Avery Ledford, date of birth: August 28, 2013, which acts caused great bodily injury to the child, in violation of the provisions of Section 16-3-95 of the South Carolina Code of Laws, 1976, as amended.” See, Indictment attached as exhibit A. After over three days of testimony, the trial judge stated in a charging conference that he would charge the definition of “willfully” as proposed by defense counsel, with the exception that he would not

charge the last sentence of the proposed charge. See, Defendant's request to charge № 1 attached as Exhibit 2.<sup>1</sup> At that time the State represented to the trial judge that they would appeal based upon S. C. Code § 14-3-330. By doing so, the State, as an officer of the Court, represented to the trial court that the evidence was not strong enough to support a willful violation of the statute and therefore the charge "in effect determines the action" as required by S.C. Code § 14-3-330.

Defense counsel noted that the State elected to use a willful mens rea requirement in the indictment. The State contended that as the statute did not have a mens rea the court should impose the least mens rea of criminal negligence. The trial court, noting both that the statute did not have a mens rea and one was required, and that the State had indicted the Defendant with the mens rea of "willfully" agreed to charge a definition of "willful." The State never proposed a definition of willful.

The State then officially filed a Notice of Appeal. The Jury was not dismissed, but informed by the trial court that the trial would resume at a later date when the Court of Appeals ruled. The trial is officially in recess.

### **Motion to Dismiss the Appeal**

#### *The trial judge properly charged the definition of willful*

The trial judge in this matter has not suppressed any evidence that is the subject of this appeal. All he has done is tell the State they must prove what they alleged in the indictment. While the charge as to mens rea may make proving the case more difficult for the State, the charge hardly prevents the State from winning, unless the State has acknowledged that the

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<sup>1</sup> The trial judge who heard the testimony thought the charge was appropriate. The dismissal of this appeal should not need a transcript of the trial testimony to resolve the issue.

evidence does not establish willfulness in which case the State should dismiss the case in the event this appeal is denied.

Under S. C. Code § 17-19-90 Mr. Ledford would have been required to file a motion to quash the indictment if he believed the indictment to be vague or the statute to be over broad. By including the mens rea of “willfully” in the indictment, the State corrected any ambiguity in the statute as to the required mens rea and therefore a motion to quash the indictment would not be successful. The State apparently had no problem telling the grand jury they were going to prove Mr. Ledford acted willfully. The South Carolina Supreme Court has held “The indictment is a notice document.” *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) As such this indictment notified Mr. Ledford that the State intended to prove he willfully inflicted great bodily injury on the minor child. The State did not notify him they intended to prove he acted knowingly or he was negligent, grossly negligent or reckless in inflicting such injury.

The court in *Gentry* further stated the indictment must make sure “ the offense is stated with sufficient certainty and particularity to enable . . . the defendant to know what he is called upon to answer . . . .” *Id.* at 93, 102, 610 S.E.2d at 500. The State told Mr. Ledford he was called upon to answer an allegation that he willfully inflicted great bodily injury upon the child. Mr. Ledford took the State at its word.

At the trial conference Mr. Ledford and the trial court both agreed with the wording of the indictment. Only the State at that point disagreed with the wording of the indictment it had prepared and had presented to the grand jury. If the indictment as a notice document is to have any meaning, it cannot mean the state can tell Mr. Ledford one thing at the

start of the trial and then renege on what they said at the end.

*A ruling by the trial judge on a jury charge is not appealable by the state*

In the only case counsel for Mr. Ledford has been able to find, the Vermont Supreme Court has held an interlocutory appeal is not proper in a dispute over jury charges. *State v. Premo*, 168 Vt. 600, 719 A.2d 398 (1998). Counsel has found no case in South Carolina which permits an interlocutory appeal that did not involve the suppression of evidence that was critical to the prosecution of the case. Counsel has also not found any reported case in South Carolina that permits an interlocutory appeal after the jury is sworn. While granted the State will not be able to review in error on this charge on appeal, the same is true for any objection the State may have to any proposed jury charge. While the State argued below, and apparently will on this appeal, that the proposed jury charge defining willfulness, determines the action, the State could make a similar argument in virtually any interlocutory appeal involving a jury charge. Unless this Court desires to micro-manage trials by permitting the State to appeal rulings on jury charges, this Court should summarily dismiss this appeal and remand the case back to the trial court.

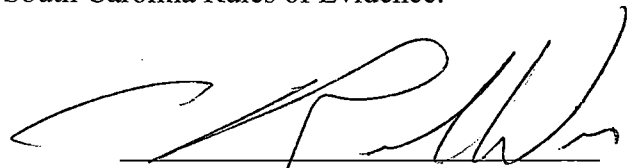
*The Court should remand the case to the trial court with instructions to dismiss the case.*

To comply with S.C. Code § 14-3-330, the State is required to establish that the ruling of the trial judge in this case “in effect determines the action.” Simply put, the State is required to establish that the ruling of the trial judge below prevents the State from winning this case. By filing this appeal, and with the comments made below, the state has admitted it cannot prevail if the State is required to prove Mr. Ledford acted willfully. The comments below and the requirements of S.C. Code § 14-3-330 constitute an admission of a party opponent under S.

C. Rules of Evidence 801 (2). Mr. Ledford request that this Court dismiss the appeal and remand the matter to the trial court to determine if this admission by the State necessitates the dismissal of the case against Mr. Ledford.

For the foregoing reasons, David Zackery Ledford requests that this Court dismiss this appeal and remand the matter back to the trial court to determine if the admissions of the State in filing this appeal require the trial court to dismiss the case because of the admission of a party opponent pursuant to Rule 801(2) of the South Carolina Rules of Evidence.

November 9, 2015



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Attorney for David Zackery Ledford

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NOV 12 2015

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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me Sandy Traynham who, after being duly sworn, deposes and says that she is the receptionist for C. Rauch Wise, Attorney for the Respondent in the above entitled case. That on November 9, 2015, she did deposit in the United States Mail with proper postage affixed thereto a copy of the Motion to Dismiss Appeal and Remand the Case and Memorandum in Support of Motion to Dismiss Appeal in the above case addressed to Elizabeth White, Solicitor's Office, P.O. Box 516, Greenwood, SC 29648.

SWORN to and Subscribed

*Sandy Traynham*

before me this 9 day

of November, 2015.

*Nancy Jane Hunter* (L.S.)  
Notary Public for South Carolina  
My Commission expires: 11/30/22

LAW OFFICE OF **RECEIVED**  
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NOV 12 2015

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C. Rauch Wise

November 9, 2015

Jenny Abbott Kitchings, Clerk  
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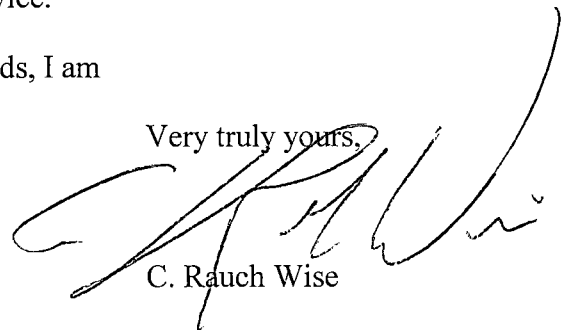
Re: State vs. David Z. Ledford 2014-GS-24-0696

Dear Ms. Kitchings:

Enclosed herewith is the original Motion to Dismiss Appeal and Remand the Case, and Memorandum in Support of Motion to Dismiss concerning the above referenced matter, together with the original Affidavit of Service.

With kindest regards, I am

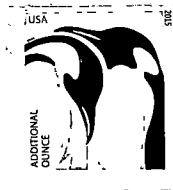
Very truly yours,



C. Rauch Wise

CRW/mjh  
cc: Elizabeth White

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