

FORM 13  
INITIAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Keith Kelly, Circuit Court Judge

Case No. 2015-000517

Courtney Mitchell,

Appellant,

v.

State of South Carolina,

Respondent.

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

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**STATEMENT OF ISSUES ON APPEAL**

- I. WHETHER THE STATE PROVED COURTNEY MITCHELL'S GUILT OF INTIMIDATING A WITNESS BEYOND A REASONABLE DOUBT
- II. WHETHER COURTNEY MITCHELL'S ARREST FOR BREACH OF PEACE WAS UNCONSTITUTIONAL
- III. WHETHER THE INTIMIDATION OF A WITNESS CHARGE WAS FRUIT OF THE POISONOUS TREE
- IV. WHETHER THE TRIAL COURT DENIED COURTNEY MITCHELL HIS RIGHT TO DUE PROCESS
- V. WHETHER THE TRIAL COURT DENIED COURTNEY MITCHELL HIS RIGHT TO A SPEEDY TRIAL

**STATEMENT OF THE CASE**

The following is Courtney Mitchell's, Appellant, Initial Brief in support of the reversal of his criminal conviction for Intimidation of a Witness.

Courtney Mitchell was initially arrested for Breach of Peace on June 21, 2013, hours after an incident that occurred when Mitchell was at lunch with four co-workers from United Parcel Service (UPS). After he delivered a package to UPS on July 25, 2013 that contained a leaf blower he had borrowed from a co-worker and a number of other nondescript items, Mitchell was arrested for Intimidating a Witness on July 29, 2013. This appeal stems from Mitchell's conviction for Intimidation of a Witness, and his receipt of the maximum sentence therefor, as a result of jury trial on February 12, 2015. Mitchell's Motion for Reconsideration and Motion for New Trial were denied on February 24, 2015. Courtney Mitchell timely served his Notice of Appeal on March 5, 2015.

## FACTS

On June 21, 2013, at around 12:30 p.m., Appellant Courtney Mitchell went to lunch with four of his co-workers from UPS. (See Incident Report and Supplemental Incident Report completed on June 21, 2013.) At the lunch, Mitchell made a number of odd statements that he and his undersigned attorney contend were the result of an episode caused by Mitchell's mental illnesses; indeed, his co-workers told Officer Erik Bryant that Mitchell was "not himself" during the incident. (See Supplemental Report completed on June 21, 2013; Mot. to Vacate Rest. Order Tr., 30:9-12.) One comment that Mitchell made during the lunch was that he wanted to see Ken Baca, a manager at UPS, "leave in a box." He immediately corrected and rephrased his statement, and said that he wanted to see Baca "carrying his box of stuff walking out beside me." (See Incident Report and Supplemental Incident Report completed on June 21, 2013.) Despite the acknowledgement of this correction in Officer Bryant's Supplemental Incident Report, the Arrest Warrant issued on June 26, 2013 for Mitchell's breach of peace charge simply states that Mitchell threatened "a co-worker being carried out in a box." (See Breach of Peace Warrant.) None of the coworkers at the lunch asked Mitchell to change his behavior or otherwise suggested that he was being disruptive. (Mot. to Vacate Rest. Order Tr., 27:13-25; 51:25-52:2.) The investigating officer made no attempt to interview any other patrons of the restaurant (Prelim. Hr'g Tr., 18:23-19:5); Courtney Mitchell was arrested based solely on the word of his coworkers.

On July 25, 2013, Mitchell delivered a package to UPS. The package included a leaf blower, three cell phones, and a number of other nondescript items. (See Incident Report and Supplemental Incident Report completed on July 26, 2013, p.2.) Mitchell had borrowed the leaf blower from Derrill Bailey and fixed it for him, and was attempting to return it. (Id.; Prelim.

Hr'g Tr. 26:18-20.) An envelope containing the cell phones and other items was given to Velma Jones, one of the UPS employees present during the June 21, 2013 incident. (Id.) Despite Jones's belief that Mitchell was "not attempting to single her out (Id. p.3.)," this package of nondescript items and a returned leaf blower was used to charge Mitchell with Intimidating a Witness. (See Intimidation of a Witness Warrant.) At the time, the officer that brought the intimidation of a witness charge also worked for, and was paid by, UPS. (Prelim. Hr'g Tr. 25:1-21.)

Jones, the purported victim of Intimidation of a Witness, had an obtuse explanation for every item in the package. Whereas Derrill Bailey took the leaf blower that was returned to him and simply placed it in his car (Tr. of Record 51:8), Jones believed the leaf blower was a bomb capable of being detonated with a cell phone. (See Statement of Velma Jones, p.2-3). Despite the fact that Mitchell did not know where her mother lived (Tr. of Record 85:8-13), Jones told authorities that she thought a receipt from a convenience store was a threat against her mother because the store was located in the same county as her mother's house. (See Statement of Velma Jones, p.2.) Over a year later, at trial, she told the jury that the receipt was a threat because it showed a purchase of her favorite beer. (Tr. of Record 64:10-11) She said that a business card from a nursery in Anderson, South Carolina was a threat against her well-being, because the nursery is near a house in which she had lived—over ten years ago. (See Statement of Velma Jones, p.2.) The fanciful explanations of the subject events concocted by Jones and the other purported "victims" has exposed Courtney Mitchell to a number of egregious injustices, as outlined below.

## ARGUMENT

### **I. THE STATE FAILED TO PROVE COURTNEY MITCHELL'S GUILT OF INTIMIDATION OF A WITNESS BEYOND A REASONABLE DOUBT**

The trial court erred when it held that the State proved the elements of intimidation of a witness beyond a reasonable doubt. In South Carolina, intimidation of a witness is a statutory offense that consists of (1) an unlawful threat or force to (a) intimidate or impede a witness in the discharge of his duty, or to (b) destroy, impede, or attempt to obstruct or impede the administration of justice in any court. S.C. Code Ann. § 16-9-340(A); State v. Preslar, 364 S.C. 466, 613 S.E.2d 381 (2005). The term “threat” is defined as “a communicated intent to inflict harm or loss on another.” Black’s Law Dictionary 1519 (8th ed. 2004). Further, “intimidation” has been defined as “caused by an act knowingly and intentionally done or statement knowing and intentionally made by the defendant, which was done or made in such a manner or under such circumstances that would produce such a reaction or such fear of bodily harm in a reasonable person.” U.S. v. Crosby, 416 Fed. Appx. 776 (10th Cir. 2011). Intimidation in the constitutional sense is a type of true threat, where a speaker directs a threat to a person with the intent of placing the victim in fear of bodily harm or death; true threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. See Virginia v. Black, 538 U.S. 343, 360 (2003). To support a conviction under § 16-9-340, there must be evidence that a defendant’s actions were an attempt to prevent the purported victim from continuing her activity. See Tucker v. Cherokee Cty. Veterans Affairs Office, No. 7:09-cv-193-HMH, 2009 U.S. Dist. LEXIS 66749, at \*6 (D.S.C. 2009).

In the case at bar, Courtney Mitchell did not use any threat or force, nor did he intimidate

Jones or attempt to impede her in the discharge of her duties as a witness. At the time the package was sent, Mitchell was unaware that Jones would be called as a witness to the breach of peace charge. Further, the State failed to establish that Mr. Mitchell made any threat to Jones. There was no note or letter directed to Jones containing any threatening statement. The package which Jones received contained trash and a leaf blower. Such nondescript items do not constitute a communicated intent to inflict harm or loss. Along the same lines, trash and a leaf blower would not produce fear of bodily harm in a reasonable person.

The State offered no evidence that Appellant threatened to physically injure the person or property of anyone, let alone Jones. No reasonable person could interpret receipts and a leaf blower as threatening or intimidating. Jones, the alleged victim, believed that the leaf blower was a bomb, and that two cell phones that found their way into the package were detonators. Darryl Bailey, Jones and Courtney Mitchell's coworker and the owner of the leaf blower, did not believe the leaf blower was a bomb; he nonchalantly placed it in his vehicle. Jones had some obtuse explanation for each item in the package, and even stated that she felt the leaf blower was a bomb because of something she had seen in the news. Jones is not a reasonable person. In addition, the supplemental report states, "Jones feels that Mitchell is not attempting to single her out." If that is the case, then how could Mitchell have been intimidating her? None of the other parties to the breach of peace charge felt threatened.

In short, Courtney Mitchell did not threaten to harm the person or property of any person, including Jones, nor did he attempt to impede the discharge of any witness's duties. Courtney Mitchell did not communicate an intent to "inflict harm or loss" upon Jones. Jones and Darryl Bailey had very different reactions to the leaf blower. Bailey placed the leaf blower in his vehicle

(Tr. of Record, 51:8); Jones believed that the leaf blower was a bomb capable of being detonated remotely using a cell phone. She based this belief on things she had seen in the news. Clearly, basing one's purported fear of bodily harm on what is seen on television is not reasonable. For these reasons, the evidence is insufficient to support the contention that Courtney Mitchell threatened or intimidated Jones, and this Court should reverse his conviction for intimidation of a witness accordingly.

**II. THE TRIAL COURT ERRED BY FAILING TO DECLARE THAT COURTNEY MITCHELL'S ARREST FOR BREACH OF PEACE WAS UNCONSTITUTIONAL**

Breach of peace is a violation of public order, a disturbance of tranquility, by any act or conduct inciting to violence, which includes any violation of any law enacted to preserve peace and good order. State v. Poinsett, 250 S.C. 293, 297, 157 S.E.2d 570, 571 (1967). Before one may be punished for spoken words, there must be evidence that the words tended to incite a person to respond in a violent manner. Downs v. State of Maryland, 366 A.2d 41, 46 (Md. Ct. Spec. App. 1976). The government is not permitted to assume that every expression of a provocative idea will incite a riot, but must determine whether the expression is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. Tex. v. Johnson, 491 U.S. 397, 409 (1989). Words may convey anger and frustration without rising to a level such as to provoke violence. Lewis v. City of New Orleans, 415 U.S. 130, 135 (1974) (Powell, J., concurring). It is not enough that the words merely arouse anger or resentment. Skelton v. City of Birmingham, 342 So. 2d 933, 937 (Ala. Crim. App. 1976).

The basis of the charge against Courtney Mitchell for intimidation of a witness stemmed from a prior breach of peace charge against him. On June 26, 2013, Mitchell was charged with breach of

peace for making allegedly threatening statements against a member of management at UPS. Mitchell was at a lunch with four co-workers outside of UPS property. During the lunch, he expressed his displeasure with a member of management named Ken Baca. Mitchell said that he “would like to see him go out in a box.” He immediately corrected himself and said that he would like to see his things go out in a box, with Baca walking next to it. Mitchell also stated that he had a file on all the mismanagement at the local UPS location that he was going to forward to the corporate headquarters of UPS in Atlanta. Mitchell and the co-workers finished their lunch without any evidence of concern about Mitchell’s behavior. Upon returning to work, the co-workers went to human resources at UPS and told them about what Mitchell had said. In order to protect their jobs, Ken Baca and others contacted a member of their security team, who was also a Greenville City police officer, to file a criminal complaint for breach of peace. Baca and others were afraid of what Mitchell was going to tell the corporate office, so they fabricated the charge.

To summarize, there is no basis in fact to establish that Mitchell’s conversation with his co-workers was a breach of peace. No statement by Mitchell was intended to incite violence by any co-worker or any person at the restaurant. He simply made a statement that he wanted to see a manager take his belongings out in a box. Not one of the four co-workers ever expressed any discomfort regarding Mitchell’s statements, and Mitchell did not say anything about, or addressed to, the four co-workers at lunch. Further, Mitchell was not arrested at the scene of the alleged breach of peace, but at a later time and at a different location.

Therefore, this Court should declare that Courtney Mitchell’s arrest for breach of peace was unlawful and in violation of his constitutional rights.

### III. THE TRIAL COURT ERRED BY FAILING TO HOLD THAT THE INTIMIDATION OF A WITNESS CHARGE WAS THE “FRUIT OF THE POISONOUS TREE”

The “fruit of the poisonous tree” doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (S.C. 1996). The doctrine applies to both primary evidence obtained as a direct result of an illegality, and to evidence discovered and found to be derivative of an illegality. See Segura v. United States, 468 U.S. 796, 804 (1984). It extends as well to the indirect as the direct products of unconstitutional conduct. *Id.* Courtney Mitchell contends that the intimidation of a witness charge is but the “fruit of the poisonous tree” that is the breach of peace charge. As detailed above, Mitchell’s arrest for breach of peace was unconstitutional. Mitchell contends that this case is distinguishable from cases such as State v. Nelson.

In Nelson, the Supreme Court of South Carolina held that the defendant’s charges were not “fruits of the poisonous tree,” but resulted from new and distinct criminal acts. State v. Nelson, 336 S.C. 186, 195, 519 S.E.2d 786, 790 (S.C. 1999). In that case, the court assumed, *arguendo*, that the police’s initial attempt to stop the defendant driver was unlawful. *Id.* at 194. After the police initially attempted to stop him, the defendant proceeded to run a stop sign and speed through a residential neighborhood. *Id.* at 189. The court reasoned, essentially, that running a stop sign and speeding were crimes committed independently of the attempted initial stop, and thus “purged the taint” of the attempted illegal stop. See id. at 195. Therefore, because running a stop sign and speeding “purged the taint” of the attempted illegal stop, the court held that those charges were not “fruit of the poisonous tree,” but were new and distinct crimes. See id.

This Court should distinguish the holding in Nelson and hold that Courtney Mitchell's charge of intimidation of a witness was "fruit of the poisonous tree." Like in Nelson, where the police's initial attempt to stop the defendant was illegal, Courtney Mitchell's initial charge of breach of peace was illegal, as detailed above. However, unlike in Nelson, where running a stop sign and speeding were crimes independent of the attempted initial stop, Courtney Mitchell's charge for intimidation of a witness is not independent of the breach of peace charge. Whereas running a stop sign and speeding are crimes regardless of the circumstances, there can be no charge for intimidation of a witness charge without a prior charge. Without the illegal breach of peace charge, there would be no "witness" to "intimidate." Thus, without the illegal breach of peace charge, mailing a package containing trash and a borrowed leaf blower would not constitute "intimidating a witness," as the individual receiving the package would not have been a "witness" to a crime. This Court should distinguish the reasoning in Nelson, which essentially held that the crimes committed by the defendant subsequent to the attempted illegal stop were independent of said stop, and thus "purged the taint" of the stop, and hold that Mitchell's intimidation of a witness charge was by definition dependent upon the illegal breach of peace charge, and thus could not have "purged the taint" of the charge. Therefore, because Mitchell's intimidation of a witness charge did not "purge the taint" of the illegal breach of peace charge, this Court should hold that the intimidation of a witness charge was "fruit of the poisonous tree," and reverse Courtney Mitchell's conviction thereof accordingly.

In conclusion, this Court should hold that Courtney Mitchell's charge of intimidation of a witness was the "fruit of the poisonous tree." The initial charge for breach of peace of was illegal. The charge of intimidation of witness, by definition, is dependent upon the illegal breach of peace charge; without the illegal breach of peace charge, there would be no "witness" to "intimidate." The

intimidation of witness charge was not independent of the illegal breach of peace charge, and thus did not “purge the taint” of the illegal charge. Therefore, the intimidation of a witness charge was the “fruit of the poisonous tree,” and Courtney Mitchell’s conviction thereof should be reversed.

#### **IV. THE TRIAL COURT ERRED BY DENYING COURTNEY MITCHELL HIS RIGHT TO DUE PROCESS.**

Courtney Mitchell contends that the trial court erred by denying him his right to due process, by failing to enforce his subpoenas of UPS employees and *Brady* discovery requests.

Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced. Rule 608(c), SCRE. Anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded to his or her testimony. State v. Baker, 390 S.C. 56, 66, 700 S.E.2d 440, 444 (S.C. Ct. App. 2010).

The trial court denied Courtney Mitchell’s discovery request for the personnel files of the co-workers that were present at the lunch. Mitchell believes that there is evidence that would show that Jones was having disciplinary problems at UPS, and initiated the breach of peace charge to deflect attention away from her poor work history. Jones became a victim in order for UPS to overlook her indiscretions. As discussed above, Jones likened a leaf blower to terroristic acts that she had heard of on television. She had some obtuse explanation for each and every item of trash in the package, to the extent that she believed the leaf blower was a bomb and the cellular phones were detonators. The owner of the leaf blower had no such fears of it being a bomb—he placed it in his vehicle. These are rantings of a delusional person. It is Mitchell’s belief that Jones’s personnel file would shed some light on her motivation for concocting such wild allegations. Certainly, any ulterior motives by Jones

to hide her troubled employment history would be relevant. It is clearly an abuse of discretion to deny evidence that may show the motive behind the outlandish statements made by Jones.

In addition, the State has a duty to disclose evidence favorable to a defendant. See generally Brady v. Maryland, 373 U.S. 83 (1963). Suppression of evidence favorable to an accused violates due process where the evidence is material. Id. at 87. There are three categories of *Brady* violations: (1) cases involving nondisclosed evidence or perjured testimony about which the prosecutor knew or should have known; (2) cases in which the defendant specifically requested the nondisclosed evidence; and (3) cases in which the defendant made no request or only a general request for Brady material. State v. Moses, 390 S.C. 502, 516-17, 702 S.E.2d 395, 403 (S.C. 2010). Evidence considered favorable to the defendant includes both exculpatory and impeachment evidence, and extends to evidence that is not in the actual possession of the prosecution, but also to evidence known by others acting on the government's behalf, including the police. Id. To show prejudice resulting from the exclusion of evidence, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof. State v. Lyles, 379 S.C. 328, 334, 665 S.E.2d 201, 204 (S.C. Ct. App. 2008).

A defendant has a right to all evidence that could prove his innocence. Respondent withheld *Brady* evidence. Respondent offered Mitchell the supplemental incident report on February 10, 2015 (two days before trial), or nearly a year and a half after the incident. Respondent offered a video of the July 25, 2013 incident on January 16, 2015. The video was roughly three minutes and fifty seconds long. There were two blank areas of film that were forty-eight and forty-nine seconds, respectively—nearly half the video was missing. Respondent hid evidence behind UPS by saying it “didn't have control” of UPS, despite the fact that the video was played for law enforcement and was

used to arrest Mitchell. UPS gave Respondent what they wanted. It is suspect that so much evidentiary material was withheld from Mitchell. There is no reason for two blank areas in the video. Similar to the eighteen and one-half minute gap in the Nixon White House Tapes, Respondent appears to have been hiding something. Where there is smoke, there is fire.

In sum, Courtney Mitchell was deprived of evidence critical to his defense. Employee records of UPS personnel would have shed light on a possible conspiracy to oust Mitchell from the company. Particularly, Jones's records would have shed light on the outlandish story that she told regarding the leaf blower. Further, Respondent entirely withheld some evidence, including portions of the video of the subject incident. Other evidence was withheld for so long as to prevent Mitchell from incorporating it in his defense, such as the parts of the video that were actually provided and the supplement to the incident report. Mitchell was prejudiced by these illegal withholdings. Therefore, this Court should reverse his conviction for intimidation of a witness.

**V. THE TRIAL COURT ERRED BY DENYING COURTNEY MITCHELL IS RIGHT TO A SPEEDY TRIAL.**

The right to a speedy trial is guaranteed by the Six Amendment to the United States Constitution, and is further imposed by the Due Process Clause of the Fourteenth Amendment. Barker v. Wingo, 407 U.S. 514, 515 (1972). A reviewing court should consider four factors when determining whether a defendant has been deprived of his or her right to a speedy trial: 1) length of the delay; 2) reason for the delay; (3) defendant's assertion of the right; and (4) prejudice to the defendant. State v. Evans, 386 S.C. 418, 423, 688 S.E.2d 583, 586 (S.C. Ct. App. 2009). The four factors must be considered along with any other relevant circumstances. Id. If the defendant shows actual prejudice, the court must consider the prosecution's reasons for the delay and balance the

justification for delay with any prejudice to the defendant. State v. Brazell, 325 S.C. 65, 72, 480 S.E.2d 64, 68-69 (S.C. 1997). Showing actual substantial prejudice only requires a reasonable probability that, absent the delay, the result of the proceeding would have been different. Jones v. Angelone, 94 F.3d 900, 908 (4th Cir. 1996). An indictment should be dismissed if a delay was an intentional device by the State to gain a tactical advantage. State v. Brazell, 325 S.C. at 72. If a court concludes that a defendant's right to a speedy trial has been violated, dismissal of the charges is the only possible remedy. State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (S.C. 2012).

The basis for Mitchell's intimidation of a witness charge was the unlawful breach of peace charge. As discussed above, there was no basis for the breach of peace charge. It focused on Mitchell's statement that he would like to see a UPS manager carrying his belongings in a box. Such a statement certainly would not tend to incite others to commit violence or any other illegal act.

Despite conceding that breach of peace is not a general sessions charge (See Mot. to Stay Tr., 5:1-3), the State removed the charge from the municipal court's jurisdiction. The State gave no further explanation for the interference. The State knew that the breach of peace charge was baseless, and did want the charge to be tried before the intimidation of a witness charge. If Mitchell were exonerated of the breach of peace charge, the State's case for the intimidation of a witness charge would have fall apart. The State was manipulating the docket to fit its own end. It refused to prosecute, despite Mitchell's requests for a speedy trial. Mitchell was prejudiced by the denial of a speedy trial because he had to defend himself against a charge—intimidation of a witness—which would have been without merit had he been exonerated of breach of peace.

In conclusion, Courtney Mitchell's right to a speedy trial was violated. The State removed the breach of peace charge from the jurisdiction of the municipal court, for the sole purpose of

preventing it from reaching trial. If Mitchell had been exonerated of the breach of peace charge, there would have been no grounds upon which to pursue the intimidation of a witness charge. The State disallowed the breach of peace charge from reaching trial in order to gain a tactical advantage over Mitchell, a reason for delay that the Supreme Court of South Carolina has explicitly denounced as prejudicial to a defendant. Therefore, because Mitchell was prejudiced in his defense of the intimidation of a witness charge by the State's unreasonable denial of his right to a speedy trial, this court should reverse his conviction of the same.

### CONCLUSION

In summary, the State did not prove Courtney Mitchell's guilt of intimidation of a witness beyond a reasonable doubt. Mitchell neither threatened nor intimidated Jones. In determining whether a defendant's acts did in fact cause intimidation, courts employ a reasonable person standard, and determine whether the acts would produce a fear of bodily harm in a reasonable person. The alleged victim, Jones, stated that her absurd beliefs (that the borrowed leaf blower was a bomb, and two cellphones its detonators) were based upon something that she had seen on television. Clearly, such a belief is not reasonable, and a reasonable person would not have been overcome with fear of bodily injury at the sight of a leaf blower.

Additionally, Courtney Mitchell's arrest for breach of peace was unlawful. The statements that Mitchell made regarding his desire to see a UPS manager carry his belongings out in a box was not directed to any of the co-workers present when the statement was made. None of the co-workers that heard the statements expressed any discomfort as the statements were being made. Such statements would not tend to incite violence or the commission of other unlawful acts by those who heard them. Essentially, Mitchell was arrested for a lawful exercise of his First Amendment rights.

What is more, Mitchell was not arrested for the alleged breach of peace until hours after the statements were made.

The intimidation of a witness charge that followed the unconstitutional breach of peace charge was “fruit of the poisonous tree.” By definition, the intimidation of a witness is dependent upon the prior commission of a crime. As opposed to a new and distinct crime, which would be committed independently and “purge the taint” of the illegal police activity, Mitchell could only be charged with intimidation of a witness because of the existence of the breach of peace charge. Without the breach of peace charge, there would not have been a “witness” to claim to have been “intimidated.”

Finally, the trial court erred in denying Courtney Mitchell his rights to due process. The trial court refused to enforce subpoenas and *Brady* requests that sought materials critical to Mitchell’s defense. The subpoenas sought UPS employee records of those involved, including Jones, would have shed light on issues such as the motive which drove Jones to concoct such fanciful suspicions of leaf blowers and cellphones. The State failed to produce the entire surveillance video of the incident at the restaurant on July 29, 2013, and withheld outright statements given to Mitchell’s psychiatric evaluator. Respondent withheld other crucial evidence, such as the supplemental incident report and snippets of the video, until it was too late to incorporate the materials in Mitchell’s defense. Further, Mitchell was prejudiced by the denial of his right to a speedy trial. The State manipulated the dockets and removed the breach of peace charge from the municipal court’s jurisdiction, knowing that Mitchell’s exoneration of the charge would eliminate the grounds for the intimidation of a witness.

Therefore, for the reasons stated herein, this Court should hold that the trial court erred by:

(1) holding that the State proved Courtney Mitchell's guilt of intimidating a witness beyond a reasonable doubt; (2) failing to declare Courtney Mitchell's arrest for breach of peace unconstitutional; (3) failing to declare that Courtney Mitchell's intimidating a witness charge was "fruit of the poisonous tree"; (4) denying Courtney Mitchell his rights to due process; and (5) denying Courtney Mitchell his right to a speedy trial.

Accordingly, this Court should reverse Courtney Mitchell's conviction for intimidating a witness.

August 12, 2015

Respectfully submitted,



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SC Court of Appeals

**FORM 7  
PROOF OF SERVICE OF APPELLANT'S  
INITIAL BRIEF AND DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Keith Kelly, Circuit Court Judge

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Case No. 2015-000517

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Courtney Mitchell,

Appellant,

v.

State of South Carolina,

Respondent.

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**PROOF OF SERVICE OF APPELLANT'S  
INITIAL BRIEF AND DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

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I certify that I have served Appellant's Initial Brief and Designation of Matter To Be Included in the Record on Appeal and Proof of Service for same upon The Honorable Jenny Abbott Kitchings, Clerk of Court for the South Carolina Court of Appeals, and James Price, Assistant Solicitor for the Thirteenth Judicial Circuit, 305 E. North Street, Suite 325, Greenville SC 29601, by depositing copies of them in the United States Mail, postage prepaid, on August 12, 2015.

{SIGNATURE PAGE TO FOLLOW}

August 12, 2015



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Donald L. Smith, Esquire  
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FORM 8  
LETTER TO CLERK OF COURT, SOUTH CAROLINA COURT OF APPEALS  
PROOF OF SERVICE OF APPELLANT'S INITIAL BRIEF  
AND DESIGNATION OF MATTER TO BE INCLUDED  
IN THE RECORD ON APPEAL

RECEIVED

August 12, 2015

AUG 17 2015

SC Court of Appeals

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

RE: Courtney Mitchell, Appellant v. State of South Carolina, Respondent  
Appellate Case No. 2015-000517

Dear Ms. Kitchings:

Please find enclosed a copy of Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal, as well as a Form 7 Proof of Service for the same. By copy of this letter, I am also serving these materials upon James Price, Assistant Solicitor for the Thirteenth Judicial Circuit. If you have any questions or concerns, please contact me.

Sincerely,



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Attorney for Appellant

cc:

James A. Price  
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13<sup>th</sup> Judicial Circuit  
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Attorney for Respondent