

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

THE STATE,

RESPONDENT,

V.

MICHAEL MCCRAW,

APPELLANT

APPELLATE CASE NO. 2013-002745

Appeal from Saluda County
Donald B. Hocker, Circuit Court Judge

Opinion No.

PETITION FOR REHEARING

RECEIVED

DEC 01 2015

SC Court of Appeals

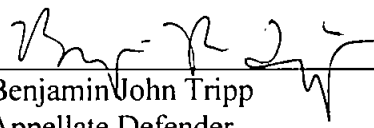
Pursuant to Rule 221(a), SCACR, Appellant respectfully petitions the Court for a rehearing of its Unpublished Opinion No. 2015-UP-540 issued on November 25, 2015 based upon the following points overlooked or misapprehended by the Court.

The Opinion cites *State v. Queen*, 264 S.C. 515, 517-19, 216 S.E.2d 182, 183-84 (1975) and *State v. Bellue*, 260 S.C. 39, 43, 194 S.E.2d 193, 195 (1973), for the rule that a trial judge does not abuse his discretion by denying a motion for mistrial where no evidence supports a finding that the defendant's absence was the involuntary result of a medical problem. This rule

does not apply because the probative evidence in the record shows Appellant was medically incapable of attending trial. First, before the court were “LMC Emergency Department” records form Michael W McCraw listed a visit date of October 9, 2013 and a diagnosis of “Fracture of multiple ribs. 3.” The examining doctor was Dr. Andrew Donato, MD. The form stated Appellant was given “RIB FRACTURE DISCHARGE INSTRUCTIONS (ENGLISH)” and was directed to take one to two Percocet tablets every four hours as needed for pain. R. 92. Second, the trial judge called the hospital and made a report on the record that the supervisor for the physician’s group at the emergency room located records reporting that Appellant sustained rib fractures in an altercation that took place on the day before Appellant’s first absence.

The only countervailing consideration was a bare suspicion that Appellant did not want to attend his trial, which was particularly weak considering he was present for the first day.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

This 1st day of December, 2015.

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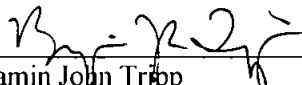
MICHAEL MCCRAW,

APPELLANT

APPELLATE CASE NO. 2013-002745

CERTIFICATE OF SERVICE

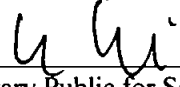
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, this 1st day of December, 2015.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 1st day
of December, 2015.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.