

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge
Appellate Case No. 2013-002534

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APR 08 2016

SC Court of Appeals

THE STATE,

Respondent,

vs.

JAMECO ABDUL TONEY,

Appellant.

**MOTION TO PERMIT THE INCLUSION
OF A COPY OF AN EXHIBIT
IN THE RECORD ON APPEAL**

Respondent ("the State"), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In November of 2010, Appellant Jameco Abdul Toney was arrested after a law enforcement officer located roughly fifteen pounds of marijuana during the course of a routine traffic stop inside of a rental vehicle Appellant was driving at the time of the stop. In July of 2011, the Darlington County Grand Jury indicted Appellant for one count of trafficking in marijuana in an amount between ten and one hundred pounds. In November of 2013, a jury trial was commenced in the Darlington County Court of General Sessions with the Honorable R. Ferrell Cothran, Jr., circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a term of

imprisonment of nine years. Thereafter, Appellant appealed his conviction and filed an Initial Brief of Appellant with this Court in February of 2015.

II.

After receiving Appellant's Initial Brief of Appellant, the State began preparing the Initial Brief of Respondent. While preparing that brief, the State submitted a request to the Darlington County Clerk of Court's Office for a copy of State's Exhibit # 1, which was a D.V.D. recording of the traffic stop at issue in Appellant's appeal that was admitted into evidence during Appellant's trial. In March of 2015, the Darlington County Clerk of Court's Office provided the State with what was purported to be a true, accurate, and complete copy of State's Exhibit # 1.

III.

In June of 2015, the State filed its Initial Brief of Respondent and Designation of Matter. In its Designation of Matter, the State designated State's Exhibit # 1 for inclusion in the Record on Appeal. Subsequently, this Court issued an order directing the Darlington County Clerk of Court's Office to release State's Exhibit # 1 to the State so it could be transported to the Court for consideration on appeal.

IV.

Subsequent to the issuance of the transportation order, the State attempted to obtain the original copy of State's Exhibit # 1 from the Darlington County Clerk of Court's Office. However, the Darlington County Clerk of Court's Office was unable to locate State's Exhibit # 1 during a search for that particular exhibit and has indicated the exhibit may have been placed into the wrong file and cannot currently be located. Accordingly, the Darlington County Clerk of Court's Office has been unable to comply with this Court's order, and the State has been unable to transport the original copy of State's Exhibit # 1 to this Court for consideration on appeal.

V.

As State's Exhibit # 1 has properly been designated for inclusion in the Record on Appeal and is relevant to the resolution of Appellant's appeal, the Record on Appeal cannot be properly completed without its inclusion. See Rule 210(c), SCACR ("The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267."). However, the original copy of State's Exhibit # 1 has apparently been lost or misplaced and cannot currently be located. Therefore, in order to enable the proper completion of the Record of Appeal, the State asks this Court to permit the parties to include the copy of State's Exhibit # 1 obtained by the State from the Darlington County Clerk of Court's Office during the preparation of the appeal and which appears to be a true, accurate, and complete reproduction of the D.V.D. recording admitted during trial. The State has spoken with appellate counsel for Appellant, and Appellant's counsel consents to this request.

WHEREFORE, Respondent prays that the Court will allow the inclusion of what is believed to be a complete and accurate copy of State's Exhibit # 1 in the Record on Appeal in place of the missing original copy of State's Exhibit # 1; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

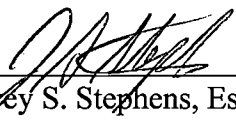
By: 

Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

April 8, 2016

I consent:

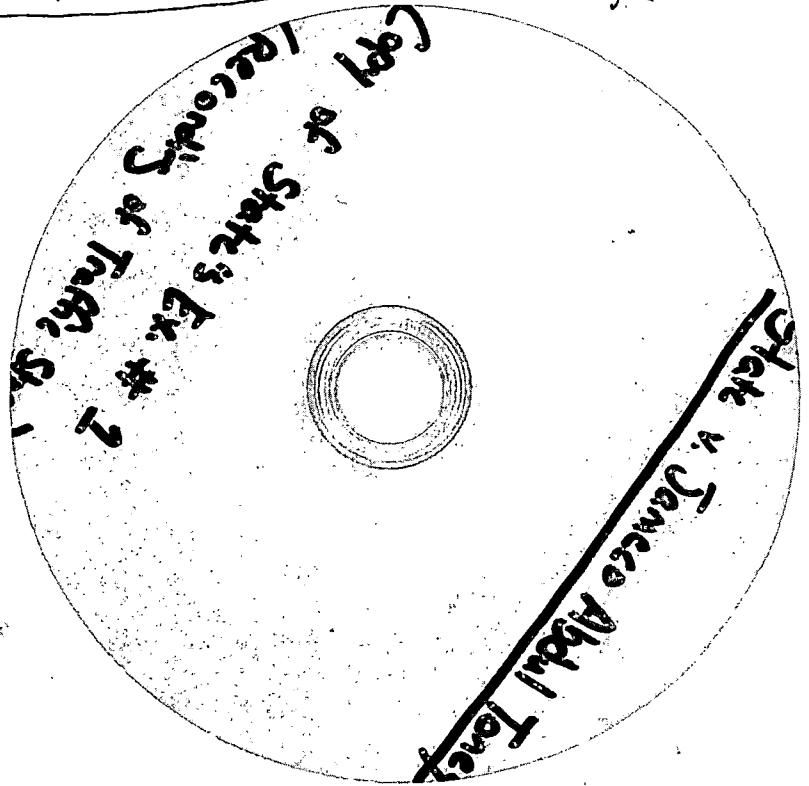
By: 
Jeffrey S. Stephens, Esquire

State v. Jameco Abdul Toney

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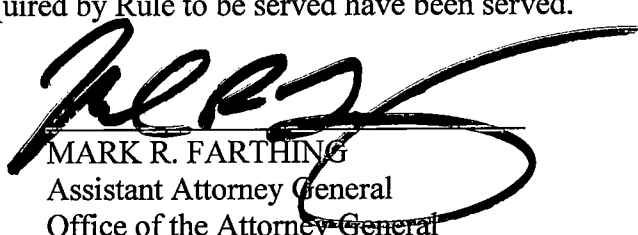
PROOF OF SERVICE

I, Mark R. Farthing, certify that I have served the within Motion to Permit the Inclusion of a Copy of an Exhibit in the Record on Appeal by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jeffrey S. Stephens, Esquire
Quindlen Law Firm, P.A.
Post Office Box 2450
Beaufort, South Carolina 29901

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 8th day of April, 2016.


MARK R. FARTHING
Assistant Attorney General
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Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

April 8, 2016

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SC Court of Appeals

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

RE: State v. Jameco Abdul Toney – Appellate Case No. 2013-002534

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion to Permit the Inclusion of a Copy of an Exhibit in the Record on Appeal, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Jeffrey S. Stephens, Esquire
Robert M. Dudek, Esquire
Victim Services

Date: 4/8/16
Exhibit(s) Delivered By: Mark R. Farthing
Exhibit(s) Received By: Jenisha Auler
Verified By: Shelby Swell