

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Sumter County

G. Thomas Cooper, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**  
AUG 24 2016  
SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

MICHAEL SPANN,

APPELLANT.

APPELLATE CASE NO. 2015-002317  
\_\_\_\_\_

MOTION FOR A NEW TRIAL  
OR, IN THE ALTERNATIVE, AN ORDER TO  
RECONSTRUCT THE RECORD OF APPELLANT'S TRIAL  
\_\_\_\_\_

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order setting aside his convictions and ordering a new trial. In the alternative, Appellant requests an order requiring the parties to reconstruct Appellant's trial transcript.

In accordance with Rule 240(c), SCACR, Counsel submits the following documents to support his motion: indictment (2010-GS-43-0034) for armed robbery (Exhibit #1); sentence sheet for armed robbery (Exhibit #2); partial trial transcript dated November 14, 2012, totaling 34 pages (Exhibit #3); sentencing transcript dated February 2, 2016, totaling 5 pages (Exhibit

#4); letter from Harriet P. Bennett dated March 28, 2016 (Exhibit #5); letter from Harriet P. Bennett dated March 17, 2016 (Exhibit #6); letter to Sumter County Clerk of Court dated July 5, 2016 (Exhibit #7); and letter to John P. Britton, Esquire, dated July 5, 2016 (Exhibit #8).

A Sumter County grand jury indicted Appellant on December 30, 2009 for armed robbery. Exhibit #1. The state, represented by J. Corbett, called the case to trial on November 14, 2012, before the Honorable William J. Young and a jury. Exhibit #3 at 1.<sup>1</sup> J. Britton is listed as the attorney who represented Appellant. Exhibit #3 at 1.<sup>2</sup> It appears the jury returned a guilty verdict on the following day, November 15, 2012. Exhibit #2. Judge Young sentenced Appellant to thirty years' imprisonment. Exhibit #2. The sentence was opened and read on November 3, 2015, by the Honorable R. Knox McMahon. Exhibit #2. Ernest A. "Chip" Finney, III, represented the state, and Appellant appeared *pro se*. Exhibit #4 at 1. During the imposition of the sentence, Appellant expressed his confusion and dismay regarding the proceedings. Exhibit #4 at 4. In response, the judge appointed the public defender to represent Appellant. Exhibit #4 at 4. The public defender filed the notice of appeal.

The available partial trial transcript includes jury *voir dire*; however, it is incomplete as it contains numerous indications that colloquies between the judge and jurors were not audible.

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<sup>1</sup> The Attorney Information System lists four attorneys with the last name of Corbett. None are listed as working at the solicitor's office. Of the four listed, William Jason Corbett is the only one with a Sumter address. The sentence sheet has the typed name of "Corbett, Jason W.," where the solicitor's name would generally appear; however, the name "John P. Meadors" appears handwritten below the typed name. On page 5 of the transcript, the solicitor identified himself as "Jason Corbett," and stated that "John Meadors" was assisting him. Exhibit #3 at 5. Counsel believes that William Jason Corbett is no longer employed by the solicitor's office, but was the attorney who prosecuted the case.

<sup>2</sup> On page 7 of the trial transcript, the judge identified the attorney for Appellant as John Britton. Exhibit #3 at 7. There is a John P. Britton listed in the Attorney Information Search with an address in Sumter. Counsel believes John P. Britton represented Appellant at the trial.

Exhibit #3. After jury selection, the state moved to try Appellant in his absence. Upon hearing the motion, the judge requested a bench conference with counsel. That bench conference was not transcribed. Exhibit #3 at 14. The available transcript does contain the testimony of a witness concerning the state's motion to proceed to trial in Appellant's absence and the judge's ruling on that motion. Exhibit #3 at 15-20.

During a hearing on pre-trial motions, trial counsel relayed information to the judge concerning a witness's statement, but the court reporter was unable to transcribe it because the recording was inaudible. Exhibit #3 at 24. There was another bench conference that was not transcribed prior to a lunch break on the first day. Exhibit #3 at 25. Immediately after the lunch break, a bench conference occurred that was also not transcribed. Exhibit #2 at 26. According to the court reporter's note, the opening statements were not audible and could not be transcribed. Exhibit #2 at 33-34. The only other portion of the transcript available is the state calling a witness named Arthur McDaniel, Jr. Exhibit #3 at 34. The solicitor and the witness exchange pleasantries and no further testimony is transcribed. Exhibit #3 at 34.

Thereafter, the court reporter's note indicates as follows: "The balance of the record in the within matter cannot be produced as there is a defect in the hard drive." Exhibit #3 at 34. In letters dated March 17, 2016, and March 28, 2016, the court reporter confirmed her inability to produce the transcript. Exhibits # 5 & #6.

Upon receipt of the assignment of this case, undersigned counsel advised Appellant of her assignment, the unavailability of the transcript, and the next steps, including the necessity of gathering information in order to prepare the instant motion. Thereafter, undersigned counsel sought records from the Sumter County Clerk of Court and trial counsel. Exhibits #7 & #8.

The file from the Clerk of Court included the sentence sheet, verdict form, indictment, arrest warrant, State's Exhibit #2, which is a mugshot of an individual, State's Exhibit #3, which is a two-page handwritten statement by Justin Rogers, State's Exhibit #4, which is a waiver of rights form concerning Jacovedell D. Carter, State's Exhibit #5, which is a handwritten statement by Jacovedell D. Carter, and Court's Exhibit #1, which is a bail proceeding form.

Undersigned counsel has been unable to speak to trial counsel, John Britton, directly. Based upon counsel's knowledge and belief, Mr. Britton is suffering from serious health problems and unable to communicate with counsel concerning this matter.

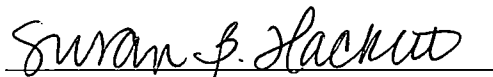
When a trial transcript has been lost or destroyed, the Court may vacate the conviction and sentence and remand for a new trial if meaningful appellate review is not possible. See Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007). In Deaton, supra, the defendant's convictions were set aside and a new trial had where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing Deaton, this Court denied a request for reconstruction in State v. Serrette, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant's absence for a ten-year period, which this Court explained was "not a situation where the court reporter's equipment malfunctioned at trial leading to a loss of the trial transcript." Appellant was not at fault for the absence of the vast majority of his transcript; rather, the transcript is not available due to a defect with the court reporter's hard drive. In light of the court reporter's

inability to produce a transcript of Appellant's trial, Appellant requests this Court order a new trial in his case. Appellant cannot obtain meaningful appellate review based upon the very small portion of the transcript available.

In the alternative, when a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. Whitehead, supra; China, supra; Koon, supra; Dolive, supra; Ladson, supra. The vast majority of Appellant's trial transcript cannot be produced and is no longer available through no fault of Appellant based on the defect of court reporter's machinery. Therefore, meaningful review of the record below is not possible with the current transcript. In the event this Court denies Appellant's motion for a new trial, Appellant seeks reconstruction of the record to permit meaningful appellate review of his trial.

WHEREFORE, the undersigned counsel requests this Court set aside his convictions and remand for a new trial. In the alternative, Appellant requests an order for the reconstruction of Appellant's trial transcript in order to perfect Appellant's direct appeal in the case. While this petition is pending, Appellant asks this Court to hold the timelines for filing his initial brief and designations in abeyance.

Respectfully submitted,



Susan B. Hackett  
Appellate Defender

Attorney for Appellant

This 24th day of August, 2016.

# **EXHIBIT # 1**





# **EXHIBIT # 2**

COUNTY OF Sumter
STATE VS. Michael Antwan Spann
AKA:
Race: 2 Sex: M Age: 27
DOB: SS#:
Address:
City, State, Zip: Lynchburg, SC 29080
DL#: SID#:

10-30

INDICTMENT/CASE#: 2010-GS-43-0034
A/W#: M194108
Date of Offense: 6/24/2009
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Corbett, Jason W SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$390, TOTAL \$133.90

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk James C. Campbell
Court Reporter: Margaret Sullivan
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2156
Sentence Date: 12/06/2012
11-3-15 by Judge R. Knox McMahon

# **EXHIBIT # 3**

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF SUMTER ) COURT OF GENERAL SESSIONS  
3 ) No. 2010 GS 43 0034

4 STATE OF SOUTH CAROLINA )  
5 )  
6 versus ) TRANSCRIPT OF RECORD  
7 )  
8 MICHAEL A. SPANN )  
9 Defendant )

10 Sumter, South Carolina  
11 November 14, 2012  
12

13 B E F O R E :

14 HONORABLE WILLIAM J. YOUNG, Judge, and a Jury

15 A P P E A R A N C E S :

16 For the State: J. CORBETT, Esq.  
17 Assistant Solicitor

18 For the Defendant: J. BRITTON, Esq.

19 Reporter Present: PAM CARTEE  
20

21  
22  
23 HARRIET P. BENNETT  
Reporter, S. C. Court Administration  
24 46 Regency Oaks Drive  
Summerville, S.C. 29485  
25

I N D E X

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1 (The within matter came before the Court for hearing  
2 on November 14, 2012)

3 SOLICITOR: Your Honor, this is the State of South  
4 Carolina versus Michael A. Spann. The State is represented  
5 by myself, Jason Corbett, and John Meadors. If I may, Your  
6 Honor, I would hand up the original Indictment.

7 THE COURT: Ladies and gentlemen of the jury, this is  
8 the State versus Michael A. Spann, under Indictment Number  
9 2010 GS 43 034.

10 The Indictment reads that Michael A. Spann did in  
11 Sumter County on or about June 24th, 2009, violate Section  
12 16 11 330 of the South Carolina Code of Laws, 1976, as  
13 amended, while armed with a deadly weapon; to wit, a gun,  
14 did feloniously take from Arthur Lee McDaniel, Junior, or  
15 in the presence of Arthur Lee McDaniel, Jr., by means of  
16 force or intimidation, goods or moneys from the said Arthur  
17 Lee McDaniel.

18 Ladies and gentlemen, let me remind you that the fact  
19 that the Defendant was arrested and charged in an Indict-  
20 ment is in no way indicative that he is guilty of this  
21 charge contained in the Indictment.

22 The Defendant has pled not guilty and, therefore, the  
23 State has the burden of proving each and every allegation of  
24 the Indictment beyond a reasonable doubt.

25 Ladies and gentlemen, the Indictment is in no way any

1 evidence of his guilt but it is merely the charging paper  
2 to bring this case into Court. You are not to infer any  
3 guilt from that.

4 Now, ladies and gentlemen, before we select the jury  
5 for this case there are several questions I need to ask you  
6 under your oath.

7 (Whereupon, the jury panel was sworn by the Clerk)

8 Ladies and gentlemen, since you are under oath in this  
9 case and since it is such a crucial stage of the trial, it  
10 is just like a building. There must be a firm foundation  
11 for the strong protection of those who live in it; so must  
12 a jury be a strong basis of a fair and impartial trial for  
13 those who participate.

14 The Solicitor for the State has introduced the Defen-  
15 dant who is on trial. Your answers to these questions are  
16 the foundations on which the attorneys will build, and as  
17 the jury they are relying on your truth answers to help  
18 them to strike an unbiased jury who will diligently listen  
19 to the facts and deliver a just verdict.

20 Again, thank you for your complete truthfulness as I  
21 ask you these questions.

22 Now, ladies and gentlemen, the first question is has  
23 anyone ever been related by blood or marriage, or had any  
24 close business or personal relationship with the Defendant,  
25 Michael A. Spann, or with the alleged victim, Arthur Lee

1 McDaniel? If so, please stand.

2 (No response from jurors)

3 Thank you. No one is standing.

4 Ladies and gentlemen, this will be a list of possible  
5 witnesses in this case.

6 Investigator Melissa Addison of the Sumter County Sher-  
7 iff's Department; Arthur McDaniel; Symeon Graham or Deputy  
8 Symeon Graham of the Sumter County Sheriff's Department;  
9 Deputy Craig Pomichalek of the Sumter County Sheriff's Of-  
10 fice; Investigator Tommy Harron of the Sumter County Sher-  
11 iff's Department; Deputy Ronald Dodson of the Sumter County  
12 Sheriff's Department; Anthony Carter; Justin Rogers; and  
13 Jacovodel Rogers.

14 Does any member of the jury panel have any personal or  
15 business relationship with these people, or feel that they  
16 couldn't be fair and impartial to the State or the Defendant  
17 in this case? If so, please stand.

18 SOLICITOR: I'm sorry, Your Honor. I believe I have  
19 amended the list to show Jacovodel Carter instead of  
20 Jacovodel Rogers.

21 THE COURT: Does anybody know Jacovodel Carter?

22 (No response)

23 Now, ladies and gentlemen, the attorneys in this case  
24 are Jason Corbett from the State and Mr. John Britton for  
25 the Defense.

1 I will allow them each to introduce their law firms.  
2 Mr. Corbett?

3 SOLICITOR: The Sumter County Solicitor's Office. y  
4 This is is Assistant Solicitor John Meadors.

5 THE COURT: Mr. Britton?

6 MR. BRITTON: Your Honor, ladies and gentlemen, I am  
7 John Britton, and I represent Michael Spann.

8 THE COURT: Has any member of the jury panel been rep-  
9 resented by any of these attorneys or the law firm that  
10 they represent, or if you have a close personal or business  
11 relationship with any of these attorneys -- if so, please  
12 stand.

13 (Juror standing)

14 THE COURT: Yes, sir.

15 JUROR: John Barr. Your Honor, John Britton is a good  
16 friend, a close friend of mine.

17 I value my service on the jury but it's fair to say  
18 we are good friends.

19 THE COURT: I need to ask you this question. The fact  
20 that you know John Britton very well, could you set that  
21 aside and be a fair and impartial juror and make a decis-  
22 on based upon the evidence?

23 JUROR: I think I could be impartial.

24 THE COURT: Very well. Thank you, sir.

25 (Another juror standing)

1 THE COURT: Yes, maam.

2 JUROR: Frances Chandler.

3 THE COURT: Number 23. Yes, maam.

4 JUROR: I was represented by Mr. Britton.

5 THE COURT: That was in his private practice?

6 JUROR: Yes, sir, some two years ago.

7 THE COURT: The fact that you were represented by him

8 two years ago, would that prevent you from being a fair and

9 impartial juror in this case, and could you make a decision

10 based upon evidence presented?

11 JUROR: I believe so.

12 THE COURT: Could you be fair and impartial?

13 JUROR: Yes, sir.

14 THE COURT: Thank you. Have you or any member of your

15 family ever been the victim of or accused of a violent

16 crime? If so, please stand.

17 Please come down and speak to me privately.

18 (Jurors coming forward individually to the bench)

19 THE COURT: What's your name and juror number?

20 JUROR: Warren Slater.

21 THE COURT: What's your number?

22 JUROR: One twenty.

23 (Colloquy with the Court not audible)

24 (Another juror coming forward)

25 JUROR: Emma Hawthorne.

1 THE COURT: Yes, maam. Juror number?  
2 JUROR: Number 62.  
3 (Colloquy with the Court not audible)  
4 (Another juror coming forward)  
5 JUROR: Patsy Lordy, 92.  
6 THE COURT: Good morning, Ms. Lordy.  
7 (Colloquy with the Court not audible)  
8 (Another juror coming forward)  
9 THE COURT: Yes, sir.  
10 JUROR: Willie Dennis, 33.  
11 THE COURT: Good morning, Mr. Dennis.  
12 (Colloquy with Court not audible)  
13 (Another juror coming forward)  
14 JUROR: Allen Heyward, 64.  
15 (Colloquy with the Court not audible)  
16 (The Court having colloquy at the bench with counsel  
17 off the record)  
18 THE COURT: Is there any member of the jury panel who  
19 is biased or prejudiced either for the State or the Defen-  
20 dant in this case? If so, please stand.  
21 (No response)  
22 No one is standing.  
23 Is there any member of the jury panel who was also a  
24 member of the Grand Jury that indicted the Defendant? If so,  
25 please stand.

1 (No response)

2 Is there any member of the jury panel who is a member  
3 of or contributor to any group that has as its primary con-  
4 cern the promotion of law enforcement or victim's rights,  
5 and these would certainly include Mothers Against Drunk  
6 Drivers, Citizens Against Violent Crime? If so, please  
7 stand.

8 (No response)

9 Does any member of the jury panel know of any reason  
10 whatever why he or she should not serve as a juror in this  
11 case, with particular emphasis being placed on being fair  
12 and impartial to both the State and the Defendant? If so,  
13 please stand.

14 (No response)

15 THE COURT: Thank you. Does the State have any addi-  
16 tional questions?

17 SOLICITOR: Nothing from the State, Your Honor.

18 THE COURT: From the Defendant?

19 MR. BRITTON: No, sir.

20 THE COURT: Ladies and gentlemen, what will happen now  
21 is that the computer will come up with a list of names.

22 If your name is called, please come up and bring your  
23 personal items with you. Come up to the bar and turn around.  
24 The attorneys will then ask to strike you or to seat you  
25 on this jury panel.

1 Juror Number 70, Percilla Holmes, excused by the  
2 Defendant;

3 Juror Number 67, Raymond L. Hodge, excused by the  
4 State;

5 Juror Number 34, William A. Dewil, seated;

6 Juror Number 50, Timothy Grant, seated;

7 Juror Number 101, Cynthia Morris, excused by the De-  
8 fense;

9 Juror Number 120, Warren Slater, seated;

10 Juror Number 73, Margo Jacobs, excused by the State;

11 Juror Number 114, Naomi Robinson, excused by the De-  
12 fense;

13 Juror Number 151, Lafonda Habersham, seated;

14 Juror Number 141, Torrie Vickers, excused by the De-  
15 fendant;

16 Juror Number 137, John Timmons, seated;

17 Juror Number 62, Emma Hawthorne, seated;

18 Juror Number 24, Dillon Chapman, seated;

19 Juror Number 23, Frances Chandler, seated.)

20 (Alternate juror seated was Juror 94, Jennifer  
21 Marshall)

22 (Juror Random Strike Sheet attached)

23 CLERK: Please raise your hands as I call your names.

24 (Names of seated jurors were called by the Clerk)

25 THE COURT: Thank you, Mr. Clerk.

## Sumter County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : 2010-GS-43-34

JRTROOM CTR1

DESCRIPTION : 2010-GS-43-34 State VS Spann

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Ewing, Roger L	37	B	M	(✓)	(✓)	( )	1
2 Griffin, Robert E	53	W	M	(✓)	(✓)	( )	2
3 Warren, Thomas K	143	W	M	(✓)	(X)	( )	
4 Lowder, Thomas M II	92	W	M	(✓)	(✓)	( )	3
5 June, Monique R	79	B	F	(X)	(-)	( )	
6 Guilds, John W	55	W	M	(X)	(-)	( )	Ally 2. Mand 2 Cy
7 Smith, Victor K	124	W	M	(✓)	(✓)	( )	4
8 Holmes, Percilla A	70	B	F	(✓)	(X)	( )	
9 Hodge, Raymond L	67	W	M	3 (X)	(-)	( )	
10 Dewil, William A	34	W	M	(✓)	(✓)	( )	5
Grant, Timothy R	50	B	M	(✓)	(✓)	( )	6
12 Morris, Cynthia A	101	W	F	(✓)	(X)	3 ( )	
13 Slater, Warren W JR	120	W	M	(✓)	(✓)	( )	7
14 Jacobs, Margo	73	B	F	4 (X)	(-)	( )	
15 Robinson, Naomi D	114	B	F	(✓)	(X)	4 ( )	
16 Habersham, Lafonda S	151	B	F	(✓)	(✓)	( )	8
17 Vickers, Torrie L	141	W	F	(✓)	(X)	5 ( )	
18 Timmons, John R	137	W	M	(✓)	(✓)	( )	9
19 Hawthorne, Emma B	62	W	F	(✓)	(✓)	( )	10
20 Chapman, Dillon M	24	N	M	(✓)	(✓)	( )	11
21 Chandler, Frances Y	23	W	F	(✓)	(✓)	( )	12
22 Marshall, Jennifer D	94	W	F	(✓)	(✓)	( )	al Verneatz
Ouellette, Paul M	104	W	M	( )	( )	( )	
24 Choice- Benson, Ellie Ree	26	B	F	( )	( )	( )	

1 Ladies and gentlemen of the jury who are seated on the  
2 case, I'm going to send you back to your jury room for a  
3 little while.

4 We have a few matters to take up, and while you are in  
5 the jury room you may talk among yourselves about anything  
6 you want to talk about but not the case.

7 I'll send you back for a few minutes, and then we will  
8 start the case. You may want to select a Foreperson.

9 Thank you.

10 (Jury excused from Courtroom)

11 (Jury panel members not selected for the case were ex-  
12 cused by the Court)

13 THE COURT: Any exceptions to the jury as has been se-  
14 lected, or the manner in which they were selected?

15 SOLICITOR: None from the State, Your Honor.

16 MR. BRITTON: No, sir.

17 THE COURT: Thank you.

18 Are there any motions to take up before we get into  
19 the trial?

20 SOLICITOR: The State is ready to proceed, Your  
21 Honor. We would ask to proceed T.I.A.

22 THE COURT: Let me see the attorneys up here for just  
23 a moment.

24 (Conference at the bench between counsel and the Court  
25 off the record)

1 THE COURT: Bring the jury.

2 (Jury returned to Courtroom)

3 THE COURT: Ladies and gentlemen, I'm going to excuse  
4 you now for lunch. Please be back here at two o'clock, in  
5 your jury room. Do not discuss this matter with anyone.

6 Have a nice lunch and be back at two. Thank you.

7 (Jury excused from Courtroom)

8 (Court took brief recess, after which the matter was  
9 resumed)

10 THE COURT: Yes, sir.

11 SOLICITOR: Your Honor, may it please the Court?

12 At this time, Your Honor, we would proceed with the  
13 trial in absence of the Defendant.

14 The State would call to the witness stand Lilly Britt.

15 LILLY BRITT, being duly sworn,  
16 testified as follows, out of the presence of the jury:

17 DIRECT EXAMINATION

18 BY SOLICITOR:

19 CLERK: Have a seat on the witness stand and state  
20 your full name, spelling your last name.

21 WITNESS: Lilly Britt, B R I T T.

22 Q. Ms. Britt, how are you this morning?

23 A. I'm good.

24 Q. Ms. Britt, where are you employed?

25 A. Sumter County Courthouse in the Clerk's Office.

L. BRITT IN CAMERA

1 The Clerk of Court's Office.

2 Q. And in the Clerk's Office, what is your area or where  
3 do you work?

4 A. In the General Sessions Department.

5 Q. And in the General Sessions Department, do you keep  
6 the records for the General Sessions Court?

7 A. Yes, sir.

8 Q. Ms. Britt, in your work there do you have in your pos-  
9 session currently a file bearing the name of Michael A.  
10 Spann?

11 A. Yes, I do.

12 Q. Does it also bear the Indictment Number of 2010 GS 43  
13 dash 34?

14 A. Yes, it does.

15 Q. Okay, does the file also contain a warrant?

16 A. Yes, it does.

17 Q. And is that Warrant Number MS 5154108?

18 A. Yes.

19 Q. Now, Ms. Britt, just to get right to it, I believe that  
20 your file contains as well a bond form?

21 A. Yes.

22 Q. And did I ask you to make me a copy of that form and  
23 have it certified?

24 A. Yes, sir.

25 THE COURT: Show it to Defense Counsel.

L. BRITT IN CAMERA

1 MR. BRITTON: Yes, sir.

2 BY SOLICITOR:

3 Q. And, Ms. Britt, if I may, I'm going to ask you -- I'll  
4 hand you this form and ask you if it is a certified copy  
5 of the original warrant in your file?

6 A. Yes, sir.

7 SOLICITOR: So that it needs to be marked as a Court's  
8 Exhibit.

9 MR. BRITTON: No objection.

10 THE COURT: Please mark it.

11 (Bond form marked Court's Exhibit 1 for purposes of  
12 the hearing)

13 BY SOLICITOR:

14 Q. Now, Ms. Britt, if you would look at the bond form,  
15 it contains a lot of information?

16 A. Yes, sir.

17 Q. And if you would look at the first page, three quart-  
18 ers of the way down, . . .

19 A. Yes, sir.

20 Q. . . do you see it says the Defendant shall appear at?

21 A. Yes, sir.

22 Q. And the first box is checked?

23 A. Yes.

24 Q. Would you read the remainder of that?

25 A. It says, the Defendant shall appear at the term of

L. BRITT IN CAMERA

1 Court of General Sessions beginning on November 2nd, 2009,  
2 at eight o'clock A.M. at Sumter County General Sessions,  
3 121 North Main Street, Room 308, Sumter, South Carolina,  
4 29150, and remain there throughout that term of Court.

5 If no disposition is made at that term, the Defendant  
6 shall appear at each succeeding term of Court until final  
7 disposition is made of his case, unless otherwise ordered  
8 by the Court.

9 Q. And if you would turn on the back side of the form.  
10 There at the top of that page is there an acknowledgment  
11 by the Defendant?

12 A. Yes.

13 Q. And if you would tell me what it says there? What is  
14 that information?

15 A. I understand that if I violate any conditions of this  
16 Order a warrant for my arrest will be issued.

17 I understand and have been informed that I have the  
18 right and obligation to be at trial, and should I fail to  
19 attend the Court that the trial will proceed in my absence.

20 It has been explained to me that if I fail to attend  
21 Court a warrant for my arrest will be issued.

22 Q. And does the lower portion bear his signature?

23 A. Right. Michael Spann.

24 SOLICITOR: Judge, that's all I would have of Ms.  
25 Britt.

L. BRITT IN CAMERA

1 THE COURT: All right. Do you have any questions of  
2 her at this point, Mr. Britton?

3 MR. BRITTON: I have no questions, Your Honor.

4 THE COURT: All right, you may step down.

5 (Witness excused from stand)

6 SOLICITOR: Your Honor, with that showing for the trial  
7 in the absence of the Defendant, we would ask that the trial  
8 proceed at this time.

9 Your Honor, in addition to that form we have filed  
10 an Administrative Order with the Court. The Solici-  
11 tor's Office produced what's called a trial list, and it  
12 is sent to the attorneys of record the week before.

13 Your Honor, this document is entitled Sumter County  
14 General Sessions, November 12, 2012 trial week, and the  
15 second block indicates Case 2010 GS 34, Michael Spann, and  
16 it indicates CoDefendants, the attorneys and the charge.

17 Your Honor, it is my information and belief that this  
18 trial list went out to the attorneys of record in this case.

19 THE COURT: Do you have any objections to this, Mr.  
20 Britton?

21 MR. BRITTON: No objections.

22 THE COURT: I understand that the Defendant was here  
23 yesterday, is that correct?

24 MR. BRITTON: That's correct, Your Honor.

25 THE COURT: Would you like to proceed without the

1 Defendant present?

2 SOLICITOR: Yes, sir, Your Honor.

3 MR. BRITTON: Yes, I would, Your Honor.

4 (Brief pause in the proceeding)

5 MR. BRITTON: I was appointed to Mr. Spann to repre-  
6 sent him, and I have talked with Mr. Spann at least six or  
7 eight times in the past week about the trial. Mr. Spann  
8 was here yesterday, and I asked Mr. Spann to meet  
9 with me today, to be here at eight o'clock and no later  
10 than nine o'clock.

11 I asked his sister as well to assist him in getting  
12 here, and Mr. Spann assured me he would be here. I am sur-  
13 prised he is not here and I do not know where he is.

14 I had waited first downstairs for Mr. Spann but he did  
15 not appear. Mr. Spann is aware of my cell number, and he  
16 lives here. I have not heard from him today and it is now  
17 past mid-day.

18 THE COURT: The trial will proceed in the Defendant's  
19 absence. His attorney has said he was here yesterday and  
20 he is supposed to be here today.

21 So, counsel, for whatever reason he has decided not to  
22 show up here, but that will not stop the wheels of justice.  
23 We will proceed with his case and it will be tried in his  
24 absence.

25 All right, are there any other motions we need to take

1 up at this time?

2 MR. BRITTON: I clearly told Mr. Spann that if he was  
3 not here that a warrant would be issued for his arrest. Of  
4 course, there could be an emergency situation that I am not  
5 aware of or he could be in the hospital but no one has con-  
6 tacted me.

7 THE COUR: We will proceed with the trial at this  
8 time.

9 Are there any other pre-trial matters?

10 Of course, his bond will be forfeited and a warrant  
11 will be issued for him.

12 MR. BRITTON: Your Honor, . . .

13 THE COURT: Yes, sir.

14 MR. BRITTON: . . . there is a video that was taken and  
15 they are going to provide that video so that I can review  
16 it.

17 That is the only discovery issue as far as I am con-  
18 cerned or that I'm aware of.

19 THE COURT: Is it your understanding that you all  
20 have provided him with everything that you all have that  
21 you need to turn over to him?

22 MR. CORBETT: Yes, sir. We made some still shots from  
23 that video, Judge, and I will tell you that we do not in-  
24 tend to introduce that but we will certainly make every  
25 effort to have that video for him.

1 THE COURT: Very well.

2 MR. BRITTON: Your Honor, there may be some issues  
3 connected with that and so . . .

4 THE COURT: You will be able to look at it. All  
5 right, sir.

6 Any other motions?

7 MR. BRITTON: I just wanted to raise that one issue.

8 THE COURT: All right. Any other motions?

9 MR. BRITTON: Yes, sir. I had -- there are some ques-  
10 tions that may arise in the case-- some issues that pertain  
11 to the State's witnesses.

12 All the witnesses have signed statements, and some of  
13 the information in the statements are not going to the issues  
14 before the Court today, and it would be negligent to my cli-  
15 ent, Mr. Spann.

16 What I would like to do, Your Honor, is to go through  
17 these and have the State . . .

18 THE COURT: Well, let me ask you this. Do you intend  
19 to put those statements into the record?

20 MR. CORBETT: Your Honor, it is our position -- well,  
21 first of all, under the Rules the only way they can come  
22 in is if they take the witness stand and identify them.

23 THE COURT: Yes, sir.

24 MR. CORBETT: And he can cross examine . . .

25 THE COURT: I think you are correct, and, Mr. Britton,

1 it is not for you to decide, and you can do what you can  
2 on cross examination.

3 MR. BRITTON: Yes, Your Honor.

4 THE COURT: I can't do anything about that until they  
5 testify. In live testimony you are welcome to cross examine  
6 but I cannot get information about them until they have been  
7 presented to the Court.

8 I understand they are saying they don't intend to put  
9 it in.

10 MR. BRITTON: If I may, Your Honor, . . .

11 THE COURT: Yes, sir.

12 MR. BRITTON: . . . in the statement of Anthony Carter  
13 which was taken on July the 29th, 2009, Mr. Carter says  
14 -- if I could respectfully give the Court the facts?

15 THE COURT: Yes, sir.

16 MR. BRITTON: In the statement of Anthony Carter, Mr.  
17 Carter said that on the way to Sumter Michael Spann got a  
18 phone call on his cell phone (reading from statement) . . .

19 THE COURT: But I can't rule on that because I don't  
20 know what they're going to testify to. The statement is  
21 not coming in.

22 I mean, I'm going to be looking at the testimony from  
23 the witness stand, and I don't know what the objection to  
24 the statement is going to be.

25 MR. BRITTON: All right.

1 THE COURT: If they testify and you think it's objec-  
2 tionable, make your objections. I am not going to box them  
3 in on it.

4 MR. BRITTON: It is the type of information that should  
5 not come out . .

6 THE COURT: The State understands that I could decide  
7 to grant a mistrial because information has come out that  
8 shouldn't have. That's a different matter, but I cannot pre-  
9 try the case entirely on information that I don't know is  
10 going to be presented from the witness stand.

11 MR. BRITTON: I just want the record to reflect when a  
12 particular witness is called to testify the information that  
13 is offered may call for that. I'm just trying to avoid  
14 that particular event from happening.

15 THE COURT: But then it is possible I may know what  
16 context it is going to be presented in, so I will be able  
17 to rule on it.

18 MR. BRITTON: I just wanted to put it on the record,  
19 Your Honor, and the second thing is along that same line.  
20 That witness is Anthony Carter, and in the statement of  
21 Jacovodell Carter he said (portion inaudible).

22 (Mr. Britton reading from statement)

23 Now, once again, the statement -- if this particular  
24 witness took the stand and said somebody told him that or  
25 if he tries to bring it up, that should not come before

1 the jury.

2 I think there is one more thing -- let me make sure.

3 THE COURT: That is denied at this time.

4 MR. BRITTON: Okay, thank you. Some of those state-  
5 ments are not at issue in this particular case, and . .

6 THE COURT: Like, I said, I don't know what the wit-  
7 nesses are going to testify to. You may be right that it  
8 should not be allowed, but I can't make a ruling just now.

9 MR. BRITTON: Also, I would ask the Court to allow  
10 me to request a Jackson v. Denno hearing.

11 THE COURT: I will, of course, allow you whatever is  
12 needed to be done.

13 Anything further?

14 SOLICITOR: Nothing from the State, Your Honor.

15 MR. BRITTON: No, sir.

16 THE COURT: All right, this case is in recess until  
17 two P.M.

18 (Court stood in recess as to this matter until two  
19 o'clock P.M. when it was resumed)

20 THE COURT: If you wish to, you may come up for a  
21 minute. We may need to have a brief discussion before we  
22 stop.

23 (Conference at the bench off the record between the  
24 Solicitor, Mr. Britton and the Court, which was off the  
25 record)

1 THE COURT: Anything further to take up before we  
2 bring in the jury. I just want to be sure.

3 Is the State ready to proceed?

4 SOLICITOR: Yes, Your Honor.

5 THE COURT: Defense ready to proceed?

6 MR. BRITTON: Yes, sir. May we approach?

7 THE COURT: Please approach just briefly.

8 (Conference at the bench between counsel and the  
9 Court off the record)

10 THE COURT: All right, bring in the jury.

11 (Jury returned to Courtroom)

12 THE COURT: Please swear the jury.

13 (Whereupon, the jury was sworn for the trial of the  
14 within matter)

15 THE COURT: Thank you, Mr. Clerk.

16 Ladies and gentlemen, the Foreman will be the only  
17 one of you who will be seated in the same place each time  
18 you come in and go out. It will be easier if the jurors  
19 will stand up until all the jurors are in place so you  
20 do not have to step over anyone.

21 Thank you again for your promptness in being here when  
22 you were instructed to be here.

23 Now, ladies and gentlemen, as we begin this trial I  
24 will tell you that this trial might be different from what  
25 you might expect.

1           I don't know how many of you have had the opportunity  
2 to actually participate in a trial in General Sessions  
3 Court, but you may have seen a trial in watching TV where  
4 there were riveting circumstances in a trial, but I tell  
5 you that this is not for entertainment purposes. This  
6 trial is not for entertainment.

7           This is a real trial, and it is a search for the  
8 truth. We are here to see that justice is done.

9           In searching for the truth and ensuring that justice  
10 is done, you will have to listen to everything that is  
11 said in this Courtroom, and you may see that the opposite  
12 is done than what you may have seen on television or in  
13 movies or may have read about in books.

14           Now, ladies and gentlemen, this Courtroom is a place  
15 of honor, and it is dedicated to the protection of the  
16 rights of citizens. It is the greatest justice system  
17 ever created.

18           The attorneys who will appear before you are advo-  
19 cates for the parties that they represent. They are offi-  
20 cers of this Court who are sworn to uphold and protect  
21 the fairness of our judicial system.

22           Ladies and gentlemen, your role is to listen to the  
23 evidence and to reach what is a fair verdict, and you are  
24 expected to be professional, reasonable and equitable in  
25 this process.

1           We are thankful for your service and appreciate your  
2 contribution throughout the process.

3           Now, ladies and gentlemen, after you have heard the  
4 facts in the trial of this case, I will give you a charge  
5 on the law at the end of the case.

6           There are procedures we will follow throughout the  
7 process. You will not be allowed to take notes and it is  
8 very important that you listen closely throughout this  
9 trial.

10           This Defendant is charged by Indictment 2010 GS 43  
11 034, and an Indictment is simply the piece of paper that  
12 brings a case to Court. It is not in any way evidence of  
13 the charge against him, and the fact that he has been so  
14 charged is not to be considered by you.

15           The State must prove beyond a reasonable doubt all of  
16 the elements of the charge, and you will be the judges  
17 to decide whether the State has met that burden.

18           Ladies and gentlemen, your purpose is to determine  
19 the facts of the case from evidence you will hear from  
20 the witness stand and any other evidence that is submitted  
21 in the case.

22           You should listen carefully and conscientiously, as  
23 ordinarily there is no way to overturn a jury's determina-  
24 tion of facts by a jury.

25           On the other hand, the same law that makes you the

1 judges of the facts makes me the judge of the law, and  
2 the law that I give to you at the end of the case is the  
3 only law that you may consider. You must accept the law  
4 as I give it to you even though you may not agree with the  
5 law or think it should be some other way.

6 Just as I cannot tell you what the facts are, you  
7 cannot differ with me about what the law is that I give  
8 to you. Your job is to take the law as I give it to you  
9 and apply it to the facts as you find them to be from the  
10 testimony and evidence presented.

11 After determining the facts and applying the law as  
12 I give it to you, your role is to arrive at a verdict that  
13 speaks the truth in the matter.

14 Now, ladies and gentlemen, you are not to begin your  
15 deliberations until you are told to do so after the evi-  
16 dence is presented and you hear the law that you must ap-  
17 ply to those facts. You must hear all of the evidence  
18 and not begin to come to any decision until that time.

19 Now, I instruct you that when you are at lunch or  
20 when you go home in the evening you are not allowed to  
21 discuss with anyone what you may have been doing here or  
22 anything about this matter.

23 You must decide this case only upon the evidence  
24 given to you in this Courtroom and not from any outside  
25 source, so do not discuss the case or allow anyone to discuss

1 it with you . You should not even discuss the case with  
2 your fellow jurors until you are told that you can begin  
3 deliberating.

4 You are not to do any research on any topic relating  
5 to the case. Ladies and gentlemen, you may only take into  
6 consideration information presented to you through the  
7 testimony and evidence, and you may discuss it only when  
8 you are told to do so.

9 The parties and attorneys in this case have been told  
10 that they are not to talk with you, so if you see one of  
11 them outside of the Courtroom and they do not even say  
12 hello to you, they are not being unfriendly, but they are  
13 just doing their jobs.

14 It is very important that you keep an open mind and  
15 not decide any issue in this case until all the evidence  
16 has been presented and the attorneys have made their clos-  
17 ing arguments to you and I have instructed you the law  
18 that you are to apply to the facts of the case.

19 It is your solemn responsibility, ladies and gentle-  
20 men, to determine the guilt or the innocence of this  
21 Defendant in the case solely upon the evidence that has  
22 been presented to you in this trial and the law that I  
23 will instruct to you at the close of the trial.

24 Now, ladies and gentlemen, in just a moment the at-  
25 torneys may make opening statements to you and explain to

1 you what the issues are in this case. The State will make  
2 an opening statement through its attorney, and the attorney  
3 for the Defendant may also make an opening statement al-  
4 though he is not required to do so.

5 What the attorneys tell you in opening statements is  
6 not evidence in this case, and it is only their contention  
7 as to what they believe the issues are in the case.

8 Ladies and gentlemen, at some time during the trial  
9 an attorney may say something like, Your Honor, I have a  
10 question, or I have a matter of law, at which time I may  
11 have the attorneys approach the bench. It may, however, be  
12 necessary to excuse you from the Courtroom to determine  
13 the matter which is merely a matter of law.

14 At that time, it may be necessary to discuss or go  
15 into the facts of the case in order to decide a matter of  
16 law, and I am not supposed to in any way speak to you  
17 about the facts of the case. So I may excuse you from the  
18 Courtroom while these discussions take place.

19 Also, at times an attorney may make an objection to  
20 certain evidence that might be presented, and if I allow  
21 the evidence to come in or if I decide it should not come  
22 in you must not think that is to let you know how I feel  
23 about the case, or that we are trying to hide something  
24 from you.

25 The attorneys have an obligation to their client to

1 make such objections as they feel are necessary in the  
2 trial of a case. You may not consider that as making a  
3 statement to you about what the evidence is that you are  
4 to consider or make any inference from whatever my ruling  
5 on such objection may be.

6 You must determine the facts of this case by deciding  
7 what evidence you feel is believable, and you must not  
8 consider any ruling by the Court on a matter of law as a  
9 comment on the facts.

10 You determine the facts, as I said, based on what is  
11 considered by you to be believable. You have a right to  
12 consider anything you hear from the witness stand, and as  
13 well you may consider the bias of any witness, the preju-  
14 dice of any witness.

15 In that regard, you are to observe the manner which  
16 the witness may testify as well as anything they may tes-  
17 tify to. That being said, it is your responsibility to  
18 pay close attention to the testimony of the witnesses and  
19 consider what is said in determining the truth of this  
20 matter.

21 When you have heard and seen all of the testimony  
22 and evidence to be presented in this case, as well as my  
23 charge to you on the law, you will then be in a position  
24 to render a true and just verdict.

25 Now the Foreman is to preside in the jury room when

1 you are deliberating on your verdict and to be the spokes-  
2 person for the jury during the trial. You will be also  
3 the person who will write out the verdict of the jury at  
4 the close of the case, and you will hear further instruc-  
5 tions as to that.

6 Ladies and gentlemen, the Defendant has pled not  
7 guilty, and the State must prove his guilt beyond a rea-  
8 sonable doubt. It will be your duty to decide whether the  
9 State has met that burden.

10 You are to determine the facts from the testimony  
11 and the evidence presented from the witness stand together  
12 with any other evidence that may be introduced here in Court.  
13 It is up to you as jurors to determine the emphasis that is  
14 to be placed on that evidence.

15 Now, before we hear the opening statements, let me  
16 ask this. Does the State have any objection to any of my  
17 remarks to the jury?

18 SOLICITOR: No objection, Your Honor.

19 THE COURT: Does the Defense have any objection?

20 MR. BRITTON: No, Your Honor.

21 THE COURT: All right, we will now hearing the open-  
22 ing statement from the attorney for the State.

23 (Whereupon, opening statements were made before the  
24 jury by Mr. Corbett for the State and by Mr. Britton for  
25 the Defendant. Opening statements were not audible on the

1 record and could not be transcribed. No objections were  
2 noted during opening statements by either counsel.)

3 THE COURT: The State may call its first witness.

4 SOL. CORBETT: The State calls Arthur McDaniel.

5 ARTHUR McDANIEL, being duly  
6 sworn, testified as follows:

7 CLERK: Be seated and state your name, spelling your  
8 last name for the record, please.

9 WITNESS: Arthur McDaniel, Junior. M C D A N I E L.

10 DIRECT EXAMINATION

11 BY SOLICITOR CORBETT?

12 Q. Mr. McDaniel, good afternoon.

13 A. Good afternoon, sir.

14 Q. Mr. McDaniel, please tell the jurors where you live?

15 A.

16 (Transcription note: The balance of the record in the  
17 within matter cannot be produced as there is a defect in the  
18 hard drive)

19

20

21

22

23

24

25

# **EXHIBIT # 4**

STATE OF SOUTH CAROLINA) )  
COUNTY OF SUMTER ) ) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)  
STATE, )

v. ) TRANSCRIPT OF RECORD  
MICHAEL SPANN, ) 10-GS-43-0034  
DEFENDANT. )

November 3, 2015  
Sumter, South Carolina

**B E F O R E :**

THE HONORABLE R. KNOX MCMAHON, JUDGE

**A P P E A R A N C E S :**

ERNEST A. "CHIP" FINNEY, III, ESQ.  
Solicitor

MICHAEL SPANN  
Pro Se defendant

FRANCES B. RAY, RPR  
Circuit Court Reporter

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(There were no exhibits submitted.)

1                   SOLICITOR FINNEY: Your Honor, we have a  
2 case we'd like to call. It's a sealed sentence from  
3 2012, a trial in absence, the State versus Michael  
4 A. Spann, indictment number 2010-GS-43-344. This is  
5 a result of a jury verdict on November 15th, 2012.  
6 We'd ask you to open the sealed sentence.

7                   THE COURT: When was this case tried,  
8 Solicitor?

9                   SOLICITOR FINNEY: November 15, 2012.

10                  THE COURT: All right, this envelope is  
11 marked the State versus Michael A. Spann. You're  
12 Michael Spann?

13                  THE DEFENDANT: Yes, sir.

14                  THE COURT: All right. It has an  
15 indictment number, charge of armed robbery, tried  
16 before the Honorable W. Jefferey Young, has the name  
17 of the court reporter. The solicitor was  
18 Mr. Corbett, the defense attorney Mr. Britain. The  
19 trial began the 14th of November of 2012 and ended  
20 the 16th of November, 2012, found guilty. I have  
21 unsealed the envelope. There's a sentencing sheet  
22 therein. Indictment 2010-GS-43-0034, Michael Antwan  
23 Spann, armed robbery, having been found guilty of  
24 armed robbery, the defendant is committed to the  
25 State Department of Corrections for a determinate

1 term of 30 years. Signed W. Jeffrey Young, 15  
2 November, 2012. Anything further, Solicitor?

3 SOLICITOR FINNEY: No, Your Honor.

4 THE COURT: Thank you. Thank you, Mr.  
5 Spann. Good luck to you.

6 THE DEFENDANT: Could I say anything?

7 THE COURT: Yes, sir.

8 THE DEFENDANT: There's, I was just won--  
9 I don't understand what's going on here. They said  
10 I was found guilty in a jury trial in my absence;  
11 but I never, I don't understand, I don't understand  
12 none of this.

13 THE COURT: I'm gonna appoint the public  
14 defender to represent Mr. Spann in this matter.  
15 There are procedures they have to follow to try an  
16 individual in their absence, Mr. Spann.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I will appoint the public  
19 defender to represent you since the opening of this  
20 sealed sentence, all right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right, thank you. Good  
23 luck to you.

24 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

25



# **EXHIBIT # 5**

HARRIET P. BENNETT  
46 Regency Oaks Drive  
Summerville, S.C. 29485

March 28, 2016

Ms. Paula Murdoch  
Administrative Coordinator  
Division of Appellate Defense  
P. O. Box 11589  
Columbia, S. C. 29211-1589

IN RE: State v. Michael A. Spann  
Sumter County Court of G.S.  
2010 GS 43 0034

Dear Ms. Murdock:

As you requested, I am attaching the portion of the above trial that can be produced. As I told you in my letter of March 17th, the record submitted by the reporter who took the case, Pam Cartee, cannot be produced from her hard drive

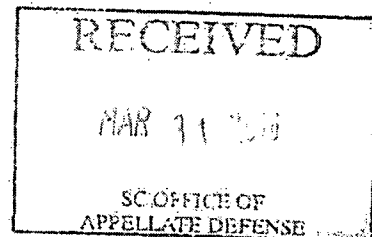
If you have any further questions, please contact Ms. Desiree Allen at Court Administration.

I am sorry I am unable to help you with this.

Sincerely,



copy to Court Admin.



# **EXHIBIT # 6**

RB

HARRIET P. BENNETT  
Reporter, S. C. Court Administration  
46 Regency Oaks Drive  
Summerville, S. C. 29485

March 17, 2016

Ms. Paula Murdoch  
Administrative Coordinator  
Division of Appellate Defense  
P O. Box 11589  
Columbia, S. C. 29211 1589

RE: State v. Michael A. Spann  
Sumter County Court of G.S.  
2010 GS 43 0034

Dear Ms. Murdoch:

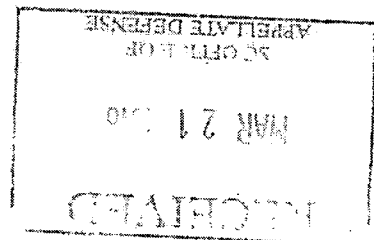
I am sorry to have to inform you that a record is not able to produced from the record in the above case as taken by Pamela Cartee.

This was sent to me for transcription by Court Administration. The date of hearing was November 13, 2012.

Very truly yours,

*Harriet*

copy to Ms. Desiree Allen, Court Admin.



# **EXHIBIT # 7**



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

July 5, 2016

Hon. James C. Campbell  
Clerk of Court, Sumter County  
215 North Harvin Street  
Sumter, S.C. 29150-4974

Re: State v. Michael Spann, 2010-GS-43-0034

Dear Mr. Campbell:

I am representing Michael Spann in his direct appeal. Please provide me with a complete copy of the exhibit file and pleadings file in Mr. Spann's case. I greatly appreciate your assistance in this matter.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Susan B. Hackett  
Appellate Defender

SBH/

cc: Michael Spann

# **EXHIBIT # 8**



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

July 5, 2016

Mr. John P. Britton, Esquire  
Britton Law Offices  
730 Creekside Drive  
Sumter, S.C. 29150

Re: State v. Michael Spann

Dear Mr. Britton:

I am representing Michael Spann in his direct appeal. Unfortunately, we are missing transcripts in his case. It is my understanding that you were stand-by counsel during his trial. Due to the missing transcripts, I will likely have to file a motion to reconstruct the record. In order to do that, I need as many documents as I can obtain in order to prepare. Therefore, I am requesting a complete copy of your file regarding Mr. Spann. I greatly appreciate your assistance in this matter.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Susan B. Hackett  
Appellate Defender

SBH/

cc: Michael Spann

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

AUG 24 2016

SC Court of Appeals

\_\_\_\_\_  
Appeal from Sumter County

G. Thomas Cooper, Circuit Court Judge  
\_\_\_\_\_

STATE OF SOUTH CAROLINA,

RESPONDENT,

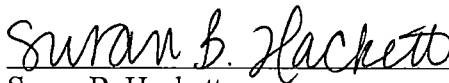
V.

MICHAEL SPANN,

APPELLANT.

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_


The undersigned attorney hereby certifies that a true copy of the motion for a new trial, or in the alternative, an order to reconstruct the record of appellant's trial in the above referenced case has been served upon opposing counsel, J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Michael A. Spann, #307775, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 24th day of August, 2016.



Susan B. Hackett  
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me  
this 24th day of August, 2016.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.

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Handwritten text in the center of the page.

Handwritten text in the bottom right corner.



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Acting Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender  
Joseph L. Savitz, III, Senior Appellate Defender

August 24, 2016

**RECEIVED**

AUG 24 2016

SC Court of Appeals

The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

Re: State v. Michael Spann, Appellate Case No. 2015-002317

Dear Ms. Kitchings,

Please find enclosed the original and six copies of appellant's motion for a new trial, or in the alternative, an order to reconstruct the record of appellant's trial in the above-captioned case.

Thank you for your assistance in this matter.

Sincerely,

Susan B. Hackett  
Appellate Defender

SBH/smf

Enclosure

cc: J. Benjamin Aplin, Esquire  
Michael Spann #307775