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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Edgefield County

SC Court of Appeals

Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GENE DONALD COOK, JR.,

APPELLANT

APPELLATE CASE NO. 2015-001922

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE 11TH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD) IN THE COURT OF GENERAL SESSIONS
) 2015-GS-19-00025
STATE OF SOUTH CAROLINA,)
))
PLAINTIFF,)
))
VERSUS)
))
GENE DONALD COOK, JR.,)
))
DEFENDANT.) JUNE 11, 2013
) EDGEFIELD, SOUTH CAROLINA

GUILTY PLEA

B E F O R E :

THE HONORABLE THOMAS A. RUSSO

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

H. FRANKLIN YOUNG, III, ESQUIRE
ATTORNEY FOR THE STATE

W. GREG SEIGLER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

PROVIDED FOR: SCCID - LORIENE FRENCH

COURT REPORTER: JO RICE
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SOUTH CAROLINA JUDICIAL DEPARTMENT

1 MR. YOUNG: Your Honor, this is Mr. Gene Donald Cook,
2 2013-GS-19-25. It is an indictment for grand larceny arising
3 from an August 19th, 2012, burglary of the residence of
4 Phillip Frew, in which a number of items of property were
5 taken. The State is accepting a plea of guilty of receiving
6 stolen goods from a \$1000.00 to \$5000.00 amount, as I
7 understand it. Mr. Cook is entering that plea as a regular
8 presentment on the indictment of receiving stolen goods. I'm
9 not sure, but I may have mis-stated. It's not a lesser
10 included offense. I believe that's appropriate. We will nolle
11 pros the burglary first degree.

12 (Clerk of Court administers the oath to Mr. Cook)

13 THE COURT: Sir, you are Gene Donald Cook, Jr.?

14 MR. COOK: Yes, sir.

15 THE COURT: Mr. Cook, indictment number 2013-GS-19-25 is
16 a true-billed indictment charging you with the offense of
17 grand larceny. However, it is my understanding that you are
18 before the Court on a charge of receiving stolen goods valued
19 at less than \$5000.00. That charge carries a maximum penalty
20 of up to five years. Do you understand that?

21 MR. COOK: Yes, sir.

22 THE COURT: Understanding the nature of the charge
23 against you and the possible punishment that is associated
24 with that offense, how do you plead to that charge, sir,
25 guilty or not guilty?

THE STATE OF SOUTH CAROLINA VERSUS GENE DONALD COOK, JR.

1 MR. COOK: Guilty.

2 THE COURT: Thank you, sir. And Mr. Seigler, you
3 represent Mr. Cook?

4 MR. SEIGLER: Yes, sir.

5 THE COURT: Have you explained the charge he's before the
6 Court on and his constitutional rights to a trial?

7 MR. SEIGLER: Many times, sir.

8 THE COURT: And I see that y'all discussed his waiver of
9 presentment to the grand jury. Is that correct?

10 MR. SEIGLER: We have, Your Honor.

11 THE COURT: Okay. Mr. Cook, am I correct that you are 51
12 years of age?

13 MR. COOK: Fifty-two, sir.

14 THE COURT: Fifty-two. And what type work did you do
15 before you got locked up?

16 MR. COOK: HVAC, heating and air.

17 THE COURT: Are you married or single?

18 MR. COOK: I'm single, but I have a two-year-old son.

19 THE COURT: Okay. And how long have you been in jail on
20 this charge, sir?

21 MR. COOK: Since November 27th, about six, going on seven
22 months.

23 THE COURT: November 27th of 2012, is that right?

24 MR. COOK: Yes, sir.

25 THE COURT: Six months and two weeks or twenty-eight

THE STATE OF SOUTH CAROLINA VERSUS GENE DONALD COOK, JR.

1 weeks or 196 days. All right. Mr. Cook, yesterday, were you
2 with the group of folks when I went over the constitutional
3 rights?

4 MR. COOK: Yes, sir. I certainly was.

5 THE COURT: All right. Did you understand those rights as
6 I went over them, sir?

7 MR. COOK: I did.

8 THE COURT: Do you have any question about those rights?

9 MR. COOK: No, sir.

10 THE COURT: Okay. Now, this charge -- I know that you've
11 talked to Mr. Seigler about it, but this charge is not
12 considered a lesser included offense that the grand jury
13 heard. This is a separate charge and so it has not been
14 before the grand jury. Do you understand that?

15 MR. COOK: Yes, sir.

16 THE COURT: And everyone has the right for the grand jury
17 to consider whether or not there is probable cause for a
18 charge to come to court. Do you know that?

19 MR. COOK: Yes, sir.

20 THE COURT: All right. Now, it's indicated here that you
21 wish to waive presentment to the grand jury and have this
22 case heard today. Is that correct?

23 MR. COOK: I do, sir.

24 THE COURT: Has anyone forced you or coerced you into
25 making that decision?

THE STATE OF SOUTH CAROLINA VERSUS GENE DONALD COOK, JR.

1 MR. COOK: No, sir.

2 THE COURT: Okay. The State has made a recommendation to
3 the Court that the Court consider a probationary sentence
4 that would involve some amount of restitution with the
5 understanding that once you've completed the payment of that
6 restitution, that that probation could end. Is that your
7 understanding of the recommendation?

8 MR. COOK: Yes, sir.

9 THE COURT: Other than that recommendation, has anybody
10 promised you anything, held out any hope of reward or
11 threatened you in any way to get you to enter this plea?

12 MR. COOK: Absolutely not.

13 THE COURT: Okay. Are you satisfied with the
14 representation and the advice that Mr. Seigler has provided?

15 MR. COOK: Very satisfied.

16 THE COURT: Any complaints against him or any member of
17 his office?

18 MR. COOK: No.

19 THE COURT: Mr. Cook, as you stand before the Court
20 today, are you under the influence of any substance that
21 would affect your ability to understand what you are doing?

22 MR. COOK: No, sir.

23 THE COURT: Are you pleading guilty on this charge of
24 your own free will, sir?

25 MR. COOK: I am, sir.

THE STATE OF SOUTH CAROLINA VERSUS GENE DONALD COOK, JR.

1 THE COURT: And are you guilty of this receiving stolen
2 goods charge?

3 MR. COOK: I am, sir.

4 THE COURT: All right, sir. I'm going to get the State to
5 go over the facts. If you would please listen carefully.

6 MR. YOUNG: Your Honor, this case is somewhat convoluted.
7 There was a burglary reported on Airport Road in Johnston. It
8 is a burglary in the first degree. This was a burglary
9 occurring during the period of time when the owner was absent
10 from the home, but during the course of the burglary,
11 shotguns and a variety of other items were taken. Since the
12 weapons were taken, it was treated as a burglary first. The
13 door had been pried open and there was an obvious clear
14 breaking and entering into the home documented.

15 Subsequent to that, investigation revealed that a person
16 in Aiken County had actually cashed a check that belonged to
17 the victim, Mr. Frew. F-R-E-W. Mr. Frew's check, of course,
18 when it was attempted to be cashed, contacted Mr. Frew. It
19 led back to a person named Williams. Williams was then
20 interviewed and it was found out that he got these checks
21 from a person named Green. Green said, yeah, I saw that and
22 some other stuff and this guy named Gene Donald Cook came by
23 my house and he had a tarp over the back of the truck and in
24 the time frame involved here right after it happened, he said
25 he had a way and maybe he might be interested in some of the

1 products he had. He saw the butt of a shotgun, what looked to
2 him to be something like that, and some signed Babe Ruth
3 baseballs, which was peculiar to the items of larceny taken
4 from the residence, relatively rare items. Those items, he
5 said, were in the back of the car. We, essentially, have
6 word-of-mouth connecting back to this man to the burglary,
7 but all we can demonstrate is that he actually had possession
8 of some of the same stolen property to which he is pleading
9 guilty to today. The long and short of it, that's what the
10 case amounts to and that would be the State's presentation of
11 evidence if this went to trial.

12 With regard to this gentleman's record, it's lengthy.
13 Mr. Cook, most of this arises in Aiken County. A DUI in '81,
14 which is minor in comparison. PWID marijuana in '88. A
15 shoplifting in '97. A grand larceny and burglary-third, two
16 counts, in '06, and the grand larceny being a car in '09 and
17 shoplifting in '11. In Georgia, some form of dangerous drugs
18 not otherwise mentioned in '87. Reckless driving, DUIs times
19 two, theft by receiving, a burglary in '95, a shoplifting in
20 '98. The parole violation in 2001 was, I believe, off of the
21 burglary and on that burglary he got a fifteen year sentence,
22 according to the rap sheet.

23 Your Honor, we are asking that Court delay and hold open
24 restitution. The victim is not present. He knows that we are
25 doing this. Under the circumstances, however, it would

1 probably be necessary to demonstrate the value of these items
2 taken because these particular baseballs are fairly rare.
3 They were, initially, and were a Babe Ruth original signature
4 according to the victim and he would like to present some
5 evidence about their value in seeking restitution.

6 MR. SEIGLER: Judge, if I could. Quite frankly, Mr. Cook
7 is guilty of receiving stolen goods, which he's pleading to
8 and that's about all they can prove, because Mr. Green has a
9 record about three times as long as Mr. Cook's and one of the
10 balls was recovered. The main reason we want to hold
11 restitution in abeyance makes sense so we can determine the
12 value of those, but I believe, based on the circumstances,
13 this is appropriate.

14 THE COURT: Well, if one of the balls were recovered, is
15 there any way that can be authenticated? Because I don't know
16 many people that have even one ball signed by Babe Ruth, but
17 to have several?

18 MR. YOUNG: I don't know how many. I used the word
19 "several", but he mentioned ---

20 MR. SEIGLER: It was two. One was recovered and one has
21 not been recovered and that will be the issue of restitution.

22 THE COURT: Well, the one that was recovered, you ought
23 to get that authenticated.

24 MR. YOUNG: That may be what we have to do in the
25 meantime.

1 THE COURT: That may be a ball that he signed. I don't
2 know that and I normally wouldn't question it, but I do
3 question someone who's got two of them, not that he can't
4 have two of them, but that would be very rare and odd, but I
5 understand, you just want to hold that issue open.

6 MR. YOUNG: Yes, sir.

7 MR. SEIGLER: Yes, sir.

8 THE COURT: All right. Mr. Cook, the facts the Solicitor
9 gave the Court, are those facts essentially correct? You were
10 in possession of these items?

11 MR. COOK: I didn't stole no baseball. This is the first
12 time I've heard it.

13 THE COURT: I want the record to be clear. Whether it was
14 the one item or other items, because that will be handled
15 through the restitution hearing, were you in possession of
16 items that you knew or should have known were stolen?

17 MR. COOK: Yes, sir.

18 THE COURT: All right. I find that the State has provided
19 a substantial, factual basis to support the charge that Mr.
20 Cook has pled guilty to and that his decision to enter this
21 plea of receiving stolen goods, that that decision has been
22 made freely, voluntarily and intelligently. He's had the
23 advice of counsel in an outstanding attorney in Mr. Seigler,
24 with whom Mr. Cook says he is satisfied and I think he
25 understands his rights regarding grand jury presentment and

1 his waiver of those rights, I think, is a knowing and
2 voluntary waiver, as well, and I'm going to accept his plea.
3 Mr. Seigler?

4 MR. SEIGLER: Your Honor, Mr. Cook is 52 as he indicated
5 earlier. He's been in jail since November 27th. I believe he
6 told the Court he has a two-year-old son. He was staying with
7 his 82-year-old father who is quite mobile for an 82-year-old
8 man, but they all three are going to stay together on Country
9 Club Hills drive. He graduated from North Augusta in '79.
10 Went to Aiken Tech for the HVAC stuff. He actually did a year
11 at USC, but never completed his pursuit of his bachelors
12 degree in Columbia.

13 Your Honor, he made a mistake. He understands he was
14 wrong. He intends on paying for the items he's responsible
15 for. We ask that you adopt the recommendation made by the
16 State of probation, PTUP, restitution hearing to determine
17 the amount of losses.

18 THE COURT: Anything further, Mr. Cook?

19 MR. COOK: No, sir.

20 THE COURT: On indictment 2013-GS-19-25, the sentence of
21 the Court is that you be committed to the State Department of
22 Corrections for a period of five years, provided however,
23 upon the service of 196 days, the balance is suspended. Put
24 you on probation for five years, give you credit for the 196
25 days that you have served. Special condition of probation is

THE STATE OF SOUTH CAROLINA VERSUS GENE DONALD COOK, JR.

1 that I'm going to order restitution in an amount to be
2 determined at a hearing to be held, but I'm going to provide
3 that once that amount is set, this probation can end,
4 terminated, once that restitution is paid in full. Good luck
5 to you, sir.

6 MR. COOK: Thank you.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE) CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TWELFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR EDGEFIELD COUNTY, SOUTH CAROLINA, SO GIVEN ON JUNE 11, 2013 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 14TH DAY OF NOVEMBER, 2015.

s/Jo Rice
 JO RICE
 OFFICIAL COURT REPORTER

THE STATE OF SOUTH CAROLINA VERSUS GENE DONALD COOK, JR.

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State of South Carolina)
County of Edgefield)
In the Court
Of General Sessions

Indictment No.: 2015-19-GS-01922

State of South Carolina,)
Plaintiff.)
vs.) Transcript of Record
Gene D. Cook, Jr.,)
Defendant.)

September 3, 2015
Edgefield, 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:

Ervin J. Maye, Assistant Solicitor
Attorney for the State

Bennett E. Casto, Assistant Public Defender
Attorney for the Defendant

Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 RESTITUTION HEARING

2 THE COURT: Mr. Casto?

3 MR. CASTO: Yes, sir, thank you, Your Honor. We're
4 prepared to go forward.5 THE COURT: All right, sir. I'll be glad to hear
6 from you.7 MR. CASTO: Yes, sir. Your Honor, we object to the
8 imposition of restitution in this case. Ultimately, just
9 to place on record what I was able to backtrack and find.
10 My client pled to receiving stolen goods and ultimately
11 that, by all accounts, appears to be what he was guilty of.
12 And he possessed a baseball signed by the legendary Babe
13 Ruth that was taken; but he had bought it from somebody
14 else, a fellow by the name of Chris Green. But he didn't
15 have anything to do with the burglary or grand larceny and
16 that's not what he pled to, Your Honor.17 THE COURT: He signed the sentencing sheet. He's
18 been sentenced by the judge. The judge indicates
19 restitution is ordered; amount to be determined, hearing to
20 be held. So that's already the Order of the Court. It's
21 not a matter of whether he objects or doesn't object; it's
22 a matter of how much. That's the Order of -- I don't know
23 what judge this is. That's already been ordered. If he
24 didn't appeal 10 days from the sentence, that -- that --
25 that ship's sailed.

1 MR. CASTO: Your Honor, just to place our argument
2 on the record, what he believe is that -- how we're
3 interpreting this is restitution and then the amount to be
4 determined at a hearing; and ultimately what I did, Judge,
5 was I looked at 17-25-322 under part (C) and it is at the
6 restitution hearing the defendant, victim, attorney
7 general, solicitor, and other interested party may object
8 to the imposition, amount, or distribution of restitution
9 or the method. And so under that language, Your Honor, we
10 would just place our objection on the record to this for
11 the previously mentioned argument.

12 THE COURT: Thank you. You may proceed, Mr. Casto.

13 MR. CASTO: Yes, sir.

14 THE COURT: Tell me that statute number again,
15 please.

16 MR. CASTO: Yes, sir, Your Honor. 17-25-322 and we
17 specifically referred to part (C), Judge.

18 THE COURT: All right.

19 Solicitor?

20 MR. MAYE: May it please the Court, Your Honor. My
21 understanding from the victim, he had \$23,249 in actual
22 losses. American Modern Insurance Group paid \$4,389 to
23 him. He was left with out-of-pocket losses of \$18,860. He
24 provided detailed documentation. Your Honor, basically
25 everything he had that had any value was taken.

1 I do want to bring one thing to the Court's
2 attention, I spoke with the victim again this morning and
3 he's been very patient and gracious in coming up here. He
4 told me that he did have some concerns. He said that when
5 he left the courthouse the other day, he was approached by
6 Mr. Cook, who should have had no contact with him,
7 whatsoever; and Mr. Cook stated that he didn't know what he
8 was doing up here because he got his baseball back already.

9 Of the nearly two-paged detailed items of all the
10 items that were cleaned out of his house, Your Honor, there
11 was an autographed baseball that showed up over at a pawn
12 shop/hardware store in Aiken and he got back one item; that
13 was the autographed baseball. But to someone that's been
14 extended the mercy that Mr. Cook was in getting a probated
15 sentence after his -- he had a horrible prior criminal
16 record. For him to approach a victim basically confronting
17 him when he got one item back out of this nearly a two-page
18 list of items that was cleaned out is a pretty audacious
19 thing in the midst of a restitution hearing for a victim
20 that came up here to talk about the items that were taken
21 from him.

22 He's concerned. He certainly wants Mr. Cook to
23 have no contact with him. It just is pretty unbelievable
24 given what -- the situation that he's in where he's on
25 probation to basically to be challenging the victim in this

1 case because he got one item back out of all the items that
2 were stolen.

3 THE COURT: Mr. Casto, I'm not sure I'm tracking
4 your objection. Mr. Cook intended to plead guilty, June
5 the 11th, 2013, for receiving stolen goods in a value of
6 not less than 2,000, nor more than \$10,000 under
7 16-13-180(2); 16-13-180(2) indicates, A person who violates
8 the provisions of this section is guilty of a felony and
9 upon conviction must be fined not less than \$1,000 and
10 imprisoned for not more than 5 years if the value of the
11 property is more than \$2,000 but less than \$10,000.

12 He stood before a judge and entered his plea of
13 guilty to at least having possession of stolen goods with a
14 value of 2,000 but not less (sic) than \$10,000. The judge
15 at the time indicated restitution is ordered. Payment
16 terms must be determined at a hearing to be held. There's
17 no indication as to any motion made at that time. This --
18 this is the order that the masses can appeal from; he had
19 10 days to appeal his guilty plea when the sentence was
20 ordered from June the 13th of 2013 forward.

21 It seems somewhat disingenuous to me for him to now
22 say, Oh well, I didn't accept it; I didn't steal it. And
23 the restitution statute that you cite, that at the
24 restitution hearing, the defendant, the victim, the
25 attorney general, the solicitor or other interested party

1 may object to the imposition amount or distribution of
2 restitution, or the manner or method of them, and the Court
3 shall allow all of these objections to be heard and
4 preserved as a matter of record.

5 I will be -- I heard the motion. I think it's out
6 of time because of the 10 days, but if there's anything
7 else, if there's any testimony you want me to hear or take,
8 I'm delighted to do so.

9 MR. CASTO: Yes, sir, Your Honor.

10 Ultimately, it's -- this plea, obviously, was
11 handled by the Honorable Judge Gregory Seigler and
12 ultimately I had to backtrack, but the best I can tell is
13 that the restitution issue was put out there to have a
14 hearing and I don't believe that -- that any aspect of --
15 of that was addressed and so that there's this hearing now,
16 you know, that was agreed upon to be held sometime in the
17 future. I don't know why it's come up now, but it has,
18 Judge. Ultimately looking at the statute that, that the
19 Court just read, 17-25-322, that we can place our
20 objections to the imposition of the restitution at that
21 hearing, Your Honor. And here's -- here's my point -- I
22 understand the Court's position with regard to a question
23 matter, with regard to it being disingenuous, but I want
24 to -- would like to flesh this out.

25 There was a burglary, there was litany of items

1 taken; and ultimately Mr. Cook did, in fact, come into
2 contact with the autographed baseball.

3 THE COURT: He didn't come in contact with it; he
4 possessed it as a stolen item which he then pled guilty to
5 that was of a value up to \$4,000.

6 MR. CASTO: Exactly. And that's exactly --

7 THE COURT: He didn't just walk down the street and
8 have to kick a can and it had a Babe Ruth baseball in it
9 and come into contact with it.

10 MR. CASTO: Exactly. And he knows that's the wrong
11 thing to do and that's exact -- he bought something he knew
12 to be stolen; he did.

13 THE COURT: If he'd wanted a trial, he should have
14 gone to trial.

15 MR. CASTO: Yes, sir. Well, he pled guilty to
16 doing that, Your Honor, and ultimately that's the only item
17 that -- that he came into contact out of all the things
18 taken.

19 Your Honor, point two, to bring up --

20 THE COURT: So what is the value of a Babe Ruth
21 baseball? And number one and number two, why did is he
22 contacting the victim? Why is he speaking to the victim?

23 MR. CASTO: I found out about that this morning,
24 Judge. I think that, he -- he needed to --

25 THE COURT: I think he wants to do what he wants to

Gene Donald Cook, Jr. - Direct Examination by Mr. Casto

1 do other than follow the authority of the Court and the
2 laws of the State of South Carolina is what I think.

3 MR. CASTO: He --

4 THE COURT: I think he doesn't think he took is
5 what I think. If he wants to offer any testimony on the
6 value of the restitution, I delighted to hear it.

7 MR. CASTO: Yes, sir, Your Honor.

8 THE COURT: Or if you want to call another witness,
9 you can call the victim, you can call anybody you want to
10 call. I'll be delighted to hear it.

11 MR. CASTO: Yes, sir.

12 Your Honor, at this time, we call Mr. Gene Donald
13 Cook, Jr. to the stand.

14 THE COURT: All right. Come around please and be
15 sworn.

16 GENE DONALD COOK, JR.

17 having been sworn, testified as follows:

18 THE CLERK: Please be seated. State your full
19 name; spell your last name for the record.

20 THE WITNESS: Gene Donald Cook, Jr. C-0-0-K.

21 THE CLERK: And sit up close to the microphone.

22 DIRECT EXAMINATION

23 BY MR. CASTO:

24 Q Mr. Cook, out of all the items that were taken out
25 of this -- this burglary, did you come into contact and

Gene Donald Cook, Jr. - Direct Examination by Mr. Casto

1 purchase an item that you knew to be stolen?

2 A Yes.

3 Q And what item was that?

4 A It was a baseball.

5 Q All right. Now what's the -- tell me about this
6 baseball; who was this, what was special about that
7 baseball?

8 A It was a -- it was a New York Yankees team signed
9 with Babe Ruth as the main signature.

10 Q Okay. And let me ask you this: How did you come
11 to purchase that stolen baseball?

12 A I was over at a friend's house in Graniteville.

13 Q Who's -- what's the friend's name?

14 A Dean Jay.

15 Q Okay. And then what happened?

16 A A guy come over there by the name of Chris Green
17 and he had -- he actually had two baseballs and -- and I
18 bought one and --

19 Q How much did you pay?

20 A He wanted \$500 for it; I paid \$400.

21 Q You paid \$400 for a baseball that was signed by
22 Babe -- Babe Ruth and the rest of the Yankee's team; is
23 that correct?

24 A Yes, sir.

25 Q From what year, give or take, was that baseball

Gene Donald Cook, Jr. - Direct Examination by Mr. Casto

1 from?

2 A 1930.

3 Q And you only paid \$400 for it?

4 A Yes, sir.

5 Q Okay. Did you purchase any other items -- any
6 other items beside that baseball that day?

7 A No, sir.

8 Q Did you purchase any other items that you knew to
9 be stolen out of this burglary at any other time?

10 A No, sir.

11 Q Now when you got that baseball, what did you do
12 with that baseball?

13 A I took it to -- to Wayne Harrison at Harrison
14 Hardware and sold it to him.

15 Q How much did you sell the baseball to Wayne for?

16 A \$1,000.

17 Q Okay. And ultimately what happened to that
18 baseball?

19 A The next time I seen it, they were questioning
20 me -- the investigators were questioning me here in
21 Edgefield. Apparently Wayne got in trouble and gave them
22 the baseball that I sold him back to them -- gave it back
23 to the police. And -- because they produced the baseball
24 that I sold him and, and a statement from Wayne saying that
25 I sold him the baseball.

Gene Donald Cook, Jr. - Cross-Examination by Mr. Maye

1 Q Okay. And because of your purchase of that stolen
2 baseball, you ultimately pled guilty to receiving stolen
3 goods; is that correct?

4 A Yes, sir.

5 MR. CASTO: Your Honor, we don't have anything
6 further from this witness.

7 THE COURT: Thank you.

8 Solicitor.

9 CROSS-EXAMINATION

10 BY MR. MAYE:

11 Q Unquestionably, you knew that item was stolen
12 because you pleaded guilty to it up here, correct?

13 A Yes, sir.

14 Q And as to your credibility, you say that you didn't
15 get any of the other items out of this, correct?

16 A No, I didn't.

17 Q Okay. As to your credibility; you've got prior
18 convictions for manufacturing marijuana; you've got --
19 you're great at that; you've got a manufacturing too?

20 A Yes, sir.

21 Q DUS in '94; shoplifting in '97; you agree to that?

22 A It -- it's -- if the record says that, yes, sir.

23 Q Two counts of burglary third in 2006; grand larceny
24 in 2006, right?

25 A Yes, sir.

Gene Donald Cook, Jr. - Cross-Examination by Mr. Maye

1 Q Grand larceny in 2009; breaking into an automobile
2 in 2009, right?

3 A Yes, sir.

4 Q 2011 shoplifting; you got theft by receiving stolen
5 property out of Florida in '95; is that right, four counts
6 of burglary?

7 A In Florida?

8 Q Out of another jurisdiction you were -- out of
9 Georgia; Richmond County, I'm sorry.

10 Shoplifting in 1998 out of Georgia; you got your
11 parole violated in 2001.

12 But as to your credibility, all that we have to go
13 on is you saying that's the only items that you received is
14 your -- correct?

15 A Yes, and I also told, told the investigators who
16 done the burglary, who I got it from. And so I tried to
17 help them as much as I could, all the information I had.
18 Only at that time, Mr. Duran, Randy Duran, I'm sure will
19 remember that. I mean it's the only thing I could do. I,
20 I bought a baseball; I shouldn't have. I sold it to try to
21 make some money and ultimately they got that same baseball
22 that I bought back. That's the only thing I know about.
23 But I told them who I got it from, you know, whatever
24 knowledge I had because I mean, I -- it's -- I couldn't do
25 anything else.

1 MR. MAYE: Nothing else, Your Honor. Thank you.

2 THE COURT: Redirect, Mr. Casto.

3 MR. CASTO: No, sir, Your Honor.

4 THE COURT: Thank you. You can step down.

5 You have any other witnesses?

6 MR. CASTO: No, sir, Your Honor.

7 THE COURT: All right. Solicitor, you have any
8 witnesses?

9 MR. MAYE: No, sir, Your Honor, I don't have
10 anything as to the -- any additional items. We would just
11 rely on the fact that the victim in this case has given an
12 itemized list of the items that were taken. I think that
13 the issue of restitution is an equitable consideration and
14 oftentimes co-defendants are jointly and severally liable
15 for restitution. I think there's an overwhelming amount of
16 circumstantial evidence in this case.

17 It's my understanding, I was just handed this, but
18 it's my understanding that they've intercepted
19 communications between this defendant and his girlfriend
20 where he's talking about guns that were stolen from it,
21 he's trying to direct her as to what to say anything about.
22 We believe that he was involved in total in this criminal
23 enterprise and it was not just limited to his possession of
24 that single stolen item. I think that that was just the
25 one thing they were able to conclusively put on him because

1 he took that one item over to that pawn shop, Your Honor.
2 But believe, we believe he was a part and parcel involved
3 in all of it and in equity, we would ask that the victim be
4 awarded restitution in at least the amount of \$18,860.

5 There's an insurance company that would have a
6 subrogation interest in the amount of \$4,389, Your Honor.
7 It's probably un-collectable and it may just be academic at
8 this point, but that's what we would seek in this case,
9 Your Honor.

10 THE COURT: Tell me, tell me about the phone
11 recordings; do you have them?

12 MR. MAYE: I was just handed this.

13 Officer Morris, was this a note that was passed
14 from him to someone else where he's talking about --

15 THE OFFICER: It was in a book that was being sent
16 back to a girlfriend from where they trade out books on at
17 the jail. They can trade one book for another one
18 ingoing/outgoing at the jail and that's on the writing that
19 was intercepted out of a book that we took out and he had
20 sent it to his girlfriend.

21 MR. MAYE: So this was communication he said they
22 intercepted from him leaving the jail. I was just handed
23 this but it purports to be information talking about the
24 guns that were taken and mentioning other items that were
25 taken out of the burglary, where he's directing his

1 girlfriend: It says, Say only this, that you went with me
2 to sell the ball that I got from Chris Green. I traded
3 some guns for the ball and you did not know it was stolen
4 from anywhere. Like I said, that's the first time I'd ever
5 seen this.

6 MR. CASTO: And, Your Honor --

7 MR. MAYE: And I don't know the validity of that at
8 all.

9 MR. CASTO: About -- we never -- this is the first
10 we've heard about this in regard to this hearing, Your
11 Honor; and ultimately we move this wasn't presented to us
12 beforehand that it be excluded in this case, Judge.

13 THE COURT: Mr. Casto, he's given up his right to
14 remain silent when he pled guilty.

15 MR. CASTO: Yes, sir.

16 THE COURT: He can't -- he can't have it both ways.
17 This -- this is not a discovery issue. It's not a Brady
18 issue. He -- when a Judge qualifies the plea he gives up
19 his right to remain silent, his right to a jury trial, his
20 right to confront the witnesses.

21 What's the value of the baseball?

22 MR. MAYE: \$5,000 was the value of the baseball, is
23 my understanding. And that was recovered.

24 Is that correct?

25 THE OFFICER: One of the two.

1 MR. MAYE: One of the two was recovered.

2 THE COURT: What was the baseball that wasn't
3 recovered?

4 MR. MAYE: The other baseball had a similar value.
5 (Conversation by Mr. Maye with the victim.)

6 MR. MAYE: He said that they had almost identical
7 fair market values, which just those two items would have
8 been \$10,000.

9 THE COURT: It takes me a while. I knew it was
10 here somewhere. 17-25-125, to my knowledge it is still the
11 law in South Carolina, entitled sentence for crimes
12 involving the unlawful taking or receiving of or malicious
13 injury to property may not be suspended unless restitution
14 is made. It states: Notwithstanding any other provision
15 of the law, in every case in which a person is sentenced
16 for a crime involving unlawful taking or receiving of or
17 malicious injury to another's property, and the judge
18 sentences such person less than the maximum sentence
19 prescribed by law, a portion of such sentence may be
20 suspended and the defendant placed on probation if he makes
21 restitution to the victim in an amount to equal to the
22 monetary loss sustained by the victim as determined by the
23 judge. If the defendant fails to make restitution in
24 accordance with the terms prescribed by the judge, the
25 suspension shall be revoked and the defendant shall serve

1 the original sentence.

2 Can I see that document y'all were referring to.

3 MR. MAYE: Yes, sir. And I apologize, Your Honor,
4 I didn't know we were going get into these matters. I was
5 unaware of the existence of this prior to now.

6 THE COURT: What about this, Mr. Casto?

7 MR. CASTO: Yes, sir, Your Honor. As best I can
8 tell, it looks like a -- a -- something that was written by
9 and ultimately just speaks to that one baseball, Your
10 Honor. What was traded for that baseball. My
11 understanding is out of this defense that there were others
12 believed to have been involved, but I don't know if they
13 were pursued for the actual burglary, Your Honor, is my
14 understanding.

15 THE COURT: What, tell me about co-defendants,
16 Solicitor.

17 MR. MAYE: There was a co-defendant named Chris
18 Green. The law enforcement officers believed that Mr. Cook
19 and Mr. Green were involved in this in total. Mr. Green
20 was convicted of the burglary; is that -- am I correct?

21 (Conversation between the solicitor and the
22 officer.)

23 MR. MAYE: Your Honor, there were multiple
24 burglaries in this area. He pleaded to some other ones and
25 ultimately this one was dismissed. We had Mr. Cook on

1 this, although they believed he was involved in all of it,
2 the only conclusive thing that they could prove in this
3 case was that he had conclusively been in possession of
4 that baseball and taken that over to the pawn shop. They
5 believed that he disposed of multiple items; and their
6 belief is that the guns that he's speaking of, there were
7 multiple guns that were taken for this were part and parcel
8 of his involvement in the whole burglary.

9 And like I said, Your Honor, that's only
10 circumstantial evidence, but what they can conclusive prove
11 to convict him of was the issue involving the baseball
12 because he took the stolen -- the items of stolen goods,
13 the baseball, over to this Harrison's which is kind of a
14 notorious place where people dispose of -- dispose of
15 property, of stolen property. And we recovered that one
16 item. So we can connect that to him although they believe
17 he was involved in all of it.

18 THE COURT: And the co-defendant, was he also
19 ordered to pay restitution?

20 MR. MAYE: Your Honor, I don't know that he was
21 ordered to pay restitution on this case.

22 Did he receive a active sentence?

23 (Conversation between the solicitor and the
24 officer.)

25 MR. MAYE: And, Your Honor, I think because he

1 received an active sentence and did not plead on this
2 particular one as receiving stolen goods, I don't think he
3 would have been jointly and severally ordered to pay
4 restitution on anything involving this particular incident,
5 Your Honor.

6 I'm not aware of that, Your Honor, off the top of
7 my head. I do remember that guy did go to prison.

8 THE COURT: And tell me his name again?

9 MR. MAYE: Chris Green was the co-defendant and I
10 think that's the guy he's referring to in that note.

11 THE COURT: Will you get me all those sentencing
12 sheets, Mr. Clerk?

13 THE CLERK: Yes, sir.

14 THE COURT: We'll be at ease until those sentencing
15 sheets come up.

16 MR. CASTO: Yes, sir.

17 (A brief recess was observed.)

18 THE COURT: As I'm looking at the indictments and
19 sentencing sheets on Mr. Green, it appears he was ordered
20 to pay restitution to victims other than the victims in
21 this case. And that the indictment as to the victim in
22 this case were dismissed. In this case being the Cook
23 case, 2013-GS-19-40.

24 What -- the \$18,000 figure, does that include or
25 not include the \$5,000 baseball that Mr. Cook -- is

1 connected to Mr. Cook?

2 MR. MAYE: I will find out, Your Honor.

3 (Conversation between the solicitor and the
4 victim.)

5 MR. MAYE: Your Honor, Mr. Frew tells me that he
6 did receive the baseball back, that he had multiple other
7 items that were not recovered in this case; but he said
8 that would leave \$13,859.04 if the baseball was backed out
9 of it that was returned.

10 THE COURT: And -- and so that \$5,000, that item
11 worth \$5,000 was recovered.

12 MR. MAYE: Was recovered. The only item recovered
13 from my understanding. Out of all of the -- they basically
14 cleaned out his household, Your Honor.

15 THE COURT: You know, part of the purpose of the
16 law was so a criminal is to make the victim whole both in
17 civil cases where somebody has a traffic accident, the
18 whole theory, as you all know, the lawyers are not always
19 allowed to get a victim back in the position the victim
20 would have been in prior to the traffic accident.

21 Of course, the victim of a crime that requires
22 restitution, the whole theory is to get the victim back in
23 a position the victim would have been in if -- if the items
24 weren't stolen, the house wasn't burglarized. And as we
25 all know, neither civilly or criminally, we never get

1 victims -- in civil torts or criminal offenses back whole.
2 Sometimes they have scars for life, sometimes the homes are
3 burglarized, you never feel total safe and secure.
4 Rightfully so, but they've been violated and there's no way
5 to get that back.

6 As to Mr. Cook, I question his credibility both
7 based on his prior criminal history of offenses involving
8 dishonesty and also given the note that was handed up.

9 However, what he pled to was receiving stolen goods
10 a value of -- I thought it was 1,000, I mean, excuse me,
11 2,000 to 10,000. Let me get my statute now. Let me find
12 it. 16-13-182.

13 He pled to a felony. The value of the property
14 more than 2,000 less than \$10,000.

15 I find that he shall be ordered to pay restitution
16 in the amount of \$9,999.99 to the victim named in the
17 indictment. Payment terms shall be set by Probation,
18 Pardon and Parole. Further on the indictments -- on the
19 sentencing sheet, there is no indication of no contact with
20 the victim. I specifically make that a condition of
21 probation. How the victim can be approached by the
22 defendant who received goods that were stolen from that
23 victim and is confronted concerning the fact that the
24 baseball recovered, Mr. Cook he had the social skills and
25 experience -- I'm ordering that as a condition of

1 probation. However, I do order as a condition of probation
2 and I order restitution in that amount.

3 Anything further from the Defense, Mr. Casto?

4 MR. CASTO: Yes, sir, I did have a question as to
5 whether that factored in the value of the baseball?

6 THE COURT: Well, it did. I asked the question and
7 it went to, it went from 18,000 to 13,000. So if I was
8 going to order full and total and complete restitution, I
9 would order only 13,000 --

10 MR. CASTO: Yes, sir.

11 THE COURT: -- however, seeing what he specifically
12 pled to, there's no indication there was a discussion about
13 restitution at the time. I have made my ruling based on
14 the statute itself being between 2,000 but less than
15 10,000. So, yes, I took that into consideration.

16 MR. CASTO: Yes, sir, Your Honor, thank you.

17 THE COURT: All right. He needs to get -- where's
18 probation?

19 THE CLERK: I'll call them.

20 THE COURT: All right. He needs to remain until
21 probation -- I'm just going to write this it on the
22 original sentencing sheet --

23 MR. CASTO: Yes, sir.

24 THE COURT: -- and I'll notate my signature on it.

25 MR. CASTO: Yes, sir, if I may, Your Honor, just so

1 the record is clear. We renew our original objection to
2 restitution just for the record, Judge, but we certainly
3 understand the Court's ruling.

4 THE COURT: Thank you. Thank you very much.

5 Mr. Cook, if you could remain over there until
6 probation can get with you.

7 MR. CASTO: Thank you, Judge.

8 THE COURT: Thank you and thank you for your coming
9 back and forth throughout this -- over two year period of
10 time. In sentencing, I'm not sure when the actual end will
11 be.

12 Thank you, Mr. Cook, good luck to you.

13

14 * * * * * END OF TRANSCRIPT * * * * *

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State of South Carolina)
County of Aiken) **Certificate of Reporter**

I, THE UNDERSIGNED, Brenda J. Sigwald, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that I reported the proceedings in the captioned case in the Court of General Sessions in and for the State of South Carolina on the 3rd day of September, 2015.

I FURTHER CERTIFY that the foregoing pages constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 14th day of December, 2015.

Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

WITNESSES

ECSO

MORRIS

ARREST WARRANT NUMBER

2012A1910100436

TRUE BILL

Lenore H. Myers

Foreperson of Grand Jury

Date: MAR 27 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-19- 240

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE

vs.

DONALD GENE COOK

CDR# 3421

Indictment for

GRAND LARCENY

DONALD V. MYERS, SOLICITOR

*A Waiver presentation
to the Grand Jury*

Gen Cook
Donald Gene Cook


STATE OF SOUTH CAROLINA)
)
 COUNTY OF EDGEFIELD)

INDICTMENT FOR
 GRAND LARCENY

At a Court of General Sessions, convened on March 27, 2013 the Grand Jurors of Edgefield County present upon their oath:

That DONALD GENE COOK, did in Edgefield County on or about August 19, 2012, willfully, knowingly and unlawfully take and carry away the personal goods of Phillip Frew, of the value of more than Ten Thousand Dollars, described as follows: 2 - 12 gauge shotguns, 1-9mm Ruger pistol, Signed baseballs, 1- 36" television, old coins, 1-laptop computer, dvd player, with intent to deprive the owner permanently of such goods, in violation of §16-13-30 (B), South Carolina Code of Laws, 1976, as amended, with punishment provided for in §16-13-30(B)(2), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Edgefield VS. STATE

Gene Donald Cook Jr

AKA:

Race: Sex: Age: 352

DOB: SS#:

Address: Country Club Hills Dr

City, State, Zip: North Augusta, SC 29860-9781

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: Receiving Stolen Goods \$7600 - \$5000

in violation of § 16-13-180(2) of the S.C. Code of Laws, bearing CDR Code # 0513

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

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: Shirley J. Newby 5736 SC Bar# Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 196 days/months/years and/or payment

of \$ plus costs and assessments as applicable*; the balance is suspended with probation for 5

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. Credit for 196 days Time Served.

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 once restitution is pd in full.

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Amount to be determined @ Hearing

Set by SCDPPS to be held.

Recipient: 9/3/15 m/m/m

*Fine:

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 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 \$ 500.00

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 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 \$ 5.00

3% to County (if paid in installments) \$ 18.90

TOTAL \$ 648.90

Clerk of Court/ Deputy Clerk: Shirley J. Newby

Court Reporter: Go Rice

SCCA/217 (03/2011)

Restitution pd in full in Amt. of \$ 9,999.00 to Phil's Forew

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-CS-19-240

A/W#: 2012A1910100436

Date of Offense: 8/19/2012

S.C. Code §: 16-13-0030(B)

CDR Code #: 3421

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-13-180(2) of the S.C. Code of Laws, bearing CDR Code # 0513

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

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: Shirley J. Newby 5736 SC Bar# Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 196 days/months/years and/or payment

of \$ plus costs and assessments as applicable*; the balance is suspended with probation for 5

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. Credit for 196 days Time Served.

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 once restitution is pd in full.

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Amount to be determined @ Hearing

Set by SCDPPS to be held.

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3% to County (if paid in installments) \$ 18.90

TOTAL \$ 648.90

Clerk of Court/ Deputy Clerk: Shirley J. Newby

Court Reporter: Go Rice

SCCA/217 (03/2011)

Restitution pd in full in Amt. of \$ 9,999.00 to Phil's Forew

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

Presiding Judge: [Signature]

Judge Code: 2141

Sentence Date: 6-11-2013

41
RECEIVED

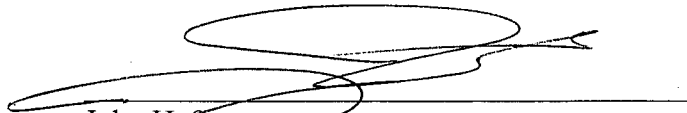
NOV 22 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of November, 2016.