

**FORM 15
RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In The Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517

RECEIVED

MAR 21 2017

SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Appellant.

RECORD ON APPEAL

March 16, 2017



Donald L. Smith (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Jennifer Ellis Roberts
Assistant Attorney General
Attorney for Respondent
PO Box 11549
Columbia, SC 29211

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Motion to Quash (02/09/15)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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GREENVILLE SC IN THE COURT OF GENERAL SESSIONS
PAUL B. WICKENSIMMER

2014 AUG 12 PM 3:13
THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina,

Plaintiff,

vs.

Courtney Ray Mitchell,

Defendant.

Case No. 2013-A2320602021

**UNITED PARCEL SERVICE'S
MOTION TO QUASH DEFENDANT'S
SUBPOENAS**

United Parcel Service (hereinafter "UPS"), by and through their undersigned counsel, respectfully move this Court to quash ten (10) subpoenas recently directed to UPS by Courtney Ray Mitchell (hereinafter "Mitchell" or "Defendant") and his attorney, Donald L. Smith. (See subpoenas attached hereto as **Exhibit A**). This is the third round of subpoenas directed to UPS by Defendant's counsel. This Court declined to enforce the previous subpoenas, and should likewise quash these subpoenas for the same reasons: because they seek irrelevant documents, are intended to harass and intimidate the victims and witnesses in this case, and were not served properly¹.

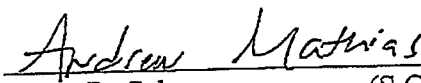
Furthermore, in Defendant's counsel's cover letter transmitting the subpoenas to undersigned counsel he states: "Pursuant to Judge Miller, I have pared down the materials requested to include the complete contents of each personnel file." (See letter attached hereto as **Exhibit B**.) Undersigned counsel does not recall this Court requesting that counsel "pare[] down the materials requested," but rather thinks that the Court simply denied Mitchell's motion to

¹ Without asking whether service would be accepted, the subpoenas were simply mailed to undersigned counsel. This is not effective service of process under Rule 13(a), South Carolina Rules of Criminal Procedure.

compel compliance with the subpoenas. Undersigned counsel has ordered a copy of the hearing transcript to clarify what this Court did—or did not—order.

Accordingly, UPS respectfully requests that this Court quash the subpoenas and grant any other relief this Court believes is necessary and appropriate under the circumstances. This motion is based upon the statutory and case law of the State of South Carolina, the South Carolina Rules of Criminal Procedure and any affidavits or other evidence which may be submitted by UPS prior to a hearing on the instant motion as well as any argument advanced by counsel.

Respectfully submitted,



James D. Galyean (S.C. Bar No. 15955)

Andrew A. Mathias (S.C. Bar No. 76220)

NEXSEN PRUET, LLC

55 East Camperdown Way, Suite 400 (29601)

Post Office Drawer 10648

Greenville, South Carolina 29603-0648

864.370.2211

Attorneys for United Parcel Service

August 12, 2014
Greenville, South Carolina

Transcript of Motion to Quash (02/09/15)

COURT OF GENERAL SESSIONS
2013-GS-23-08607

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TRANSCRIPT OF RECORD

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February 9, 2015
Greenville, South Carolina

THE HONORABLE KEITH R. KELLY, JUDGE;

DONALD L. SMITH, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

P R O C E E D I N G S

THE COURT: Mr. Smith, your motion.

MR. SMITH: May it please the Court.

THE COURT: Yes, sir.

MR. SMITH: The defendant has made ---

MR. MATHIAS: Your Honor, actually, I think it's my motion.

THE COURT: Oh, I'm sorry.

MR. MATHIAS: I don't believe he has anything pending.

THE COURT: Okay. All right. Your motion then.

MR. MATHIAS: I'll hand up a motion to quash filed by UPS on August 12, 2014. My name is Andrew Mathias from Nexsen Pruet on behalf of UPS.

THE COURT: Thank you.

MR. MATHIAS: I don't know what, if anything, you know about this matter.

THE COURT: I don't know anything about it.

MR. MATHIAS: Then I'll start at the beginning but be quick. Mr. Smith represents Courtney Ray Mitchell. Mr. Mitchell used to be employed by UPS. He went out on disability. At a lunch in the summer of 2013, he ate with four employees of UPS, and the allegations are that he threatened to kill the superiors and actually made threats against the people at the lunch and was disrupting the restaurant. He was arrested for breach of peace. I think

1 there was a mental evaluation done. He was released
2 sometime thereafter.

3 He sent a package -- the allegations are, again, he
4 sent a package to UPS directed to one of the individuals
5 that was at the lunch. That was part of the reason he was
6 arrested. It contained things such as a concealed weapons
7 permit, receipts from locations that were nearby the
8 individual's homes and some of the family members' homes.
9 He is going to be tried on Thursday this week February 12th
10 for intimidation of a state's witness. He was arrested for
11 that subsequent to sending the package to UPS.

12 If I can, I've had about three hours' notice for this
13 and I'm glad to be here, but there's quite a bit of history
14 to this issue of the subpoenas so I figured I'd distill it
15 down as much as possible. Right there you've got the trial
16 of this matter is on February 12th of this week, the
17 statute regarding the intimidation of a witness elements,
18 and then if you flip to the next page, this is sort of a
19 timeline.

20 On August 28th, that's just after I was retained to
21 represent the victims in this case, we petitioned for eight
22 restraining orders for the victims. Those were issued by
23 Judge Fisher on September 23rd. Two days later, Don Smith,
24 Mr. Smith, serves eight subpoenas directed to UPS,
25 purporting to serve them. I just received it in the mail.

1 I don't know if it went anywhere else.

2 And he asks for -- there's a description right there.
3 I don't need to go into it, but back on the first page
4 there's a description of all the information he is seeking.
5 And then he also filed a motion to vacate the orders of
6 protection. UPS filed a motion to quash. It seemed to me
7 that that was just harassment for having received the
8 restraining orders. I don't know what his motivations
9 were.

10 But then Mr. Smith filed a motion to compel, UPS filed
11 an amended motion to quash, that should say, and then the
12 defendant filed a second amended motion to compel. And
13 then there was a hearing held before Judge Miller on
14 July 11th. I'd be happy to hand up that entire transcript,
15 if you like, but I don't think I need to. Page 4 has the
16 pertinent excerpts from the transcript. That was where
17 Judge Miller took up Mr. Smith's motion to compel.

18 And if you'll just look at the bottom after Mr. Smith
19 explained why he wanted what he wanted, Mr. Galyean, who's
20 my co-counsel, said, "I think the defendants need to show
21 some sort of reasonable showing of why all these people's
22 401(k) information and things of that sort would have some
23 bearing on this case."

24 And the Court, Judge Miller, just said, "Yes. I would
25 agree with them. This is way overbroad, so I'm going to

1 deny your motion." That's the end of the transcript. I've
2 got the original if you want to see it.

3 Then 11 days later I got a letter with the same
4 subpoenas. The language has changed a little bit. Page 1
5 shows you the differences. And Mr. Smith represented to
6 me, I wasn't at the hearing, that pursuant to Judge Miller,
7 he is paring down his materials requested. I went back and
8 read the transcript. That's not in there anywhere. So I
9 filed the motion to quash on August 12, 2014, which is the
10 only pending motion. So that's why we're here on my
11 motion.

12 Then fast-forward to January 27th. I guess that was
13 two weeks ago. I know this case is set for trial this
14 coming Thursday. Again, I received just in the mail, not
15 will you accept service, nothing, just in the mail two
16 subpoenas, one which is the exact same subpoena he had
17 filed -- or not filed, he had sent to me for Gina Jones.
18 She's one of eight victims. And he's seeking the exact
19 same stuff in that subpoena that Judge Miller had before
20 him and he denied.

21 So I said, "That's off limits." And I e-mailed him
22 the day I received them, said, "That's off limits. I'm
23 confused. Tell me what's going on." And, again, if you
24 want to see the correspondence, you can flip to page 5 and
25 6. This is cut and pasted for your ease of reading.

1 But the day I received the subpoenas, knowing that the
2 trial was coming up fast, I said, "I got your subpoenas.
3 You -- still you have to serve them. Please let me know if
4 I'm missing something."

5 He e-mails back and says, "You do that, you're a joke.
6 I can't ask for the accuser's personnel file?" some more
7 uncivil stuff. He says that I'm a marionette.

8 I say in response to him 12 minutes later, "I remain
9 willing to discuss the issues."

10 He replies back, "There's no excuses this time."

11 I reply back, "Let's talk about Mitchell's file when
12 you've -- Mitchell's file, which you never asked for until
13 today." I then later said, "Please call me tomorrow to
14 discuss."

15 He says, "There's no negotiation with regards to these
16 two items. I care about one person and one person only.
17 Good night, sir." That was the 27th.

18 The subpoena purported to have a due date of
19 February 2nd, so I reached out to him again, said, "I'm
20 touching base," and lists, you know, UPS's position, the
21 third one being, "I'm ready, willing and able to discuss
22 the subpoena regarding Mitchell's personnel file but
23 haven't heard from you on that topic." And then there's
24 some more fairly uncivil banter. And he hasn't reached out
25 to me.

1 UPS is not standing in anybody's way. We're ready,
2 willing and able to discuss responding to validly issued
3 subpoenas seeking relevant information. The one, Gina
4 Jones, has already been ruled on. The Mitchell isn't --
5 well, his client, I just haven't gotten a call back.

6 THE COURT: All right.

7 MR. SMITH: May it please the Court. I appreciate
8 opposing counsel going through out interaction.

9 I'll begin by saying first there were nine motions
10 filed that Judge Miller ruled on, I believe, and his order
11 says "it." That's not plural. That's one. In addition,
12 when he said it was overbroad, I had subpoenaed Aetna, UPS
13 and all -- a lot of things that I believe are pertinent to
14 this, because I believe that this is backed by UPS and UPS
15 is the driving force behind it. I mean, the idea that this
16 particular arrest was performed by, oh, a Greenville
17 officer but who was working for UPS at that time, so
18 they're one and the same, the government and UPS, and I
19 want to see that.

20 So the breach of peace case that he spoke of earlier,
21 they never brought that to trial because there's no breach
22 of peace. And I've asked for speedy trials and everything
23 all along, never given the opportunity to do that. Now I
24 understand they're not going to bring that. So the case
25 that he's allegedly intimidating a witness they're not even

1 pursuing.

2 The victim, intimidation of a witness, is so --
3 there's nothing there. And, Your Honor, I've prepared some
4 excerpts from the preliminary hearing wherein the officer
5 says, "I don't know what the things meant," and then
6 there's ten pages of transcript. Reading this, this lady
7 goes off. I think she's been watching too much TV.
8 There's assertions that there may be a bomb in a leaf
9 blower, and on and on and on. There's a -- there was a
10 nursery card -- a business card that she alleged that she
11 lived in Anderson County ten years ago near that place, so
12 that means that he's coming to get me. It's so attenuated,
13 it's mind-boggling.

14 So with that in mind, no evidence, the officer says, I
15 don't know. It's all about what she says. The idea of not
16 being able to see what her personnel file is like, the idea
17 of maybe she's been passed over several times, never been
18 promoted, and now she's helping out the team getting rid of
19 a guy on disability.

20 Now, I've done research and research in cases. UPS is
21 not very pleased with ADA and things of that nature and
22 have a lot of suits going on with those. So that plays
23 into my idea that UPS is -- excuse me, please -- just put
24 -- backing this sham of a case. I mean, that's the way I
25 see it. Why would you need to intimidate a witness of a

1 breach of peace, meaning it's a ticket, first of all? I
2 mean, that's the logical question. But then when there's
3 other people that were involved and he specifically tells
4 them by letter and by no trespass, he says, "You're not my
5 friend anymore because you were part of that -- part of
6 those people that allegedly said I was breaching the
7 peace," and he doesn't send it to this person who he refers
8 to as his sister, where is the intimidation? There's no
9 one who can say anything. They don't know, so we'll just
10 charge him with intimidation of a witness. I'm ready to
11 try that case.

12 However, the idea that I can't see what's behind her
13 makes it impossible for me to defend. I mean, there's no
14 information, you know. And I believe that it's certainly
15 related to her position because my client was getting
16 commendations. She wasn't, you know. And so at the very
17 least, it's touching and concerning, and my client has a
18 right, I believe, of due process.

19 And I don't understand how anybody's going be
20 prejudiced by him having his own file -- his own file. And
21 I did request -- I subpoenaed his file when I subpoenaed
22 everybody else's file, so I don't know where that's coming
23 from. But ---

24 MR. MATHIAS: I don't believe that's true. I'm happy
25 to be corrected.

1 THE COURT: He's indicated -- and I'm not ruling, but
2 he's indicated that he's willing to discuss your client's
3 file, but he hasn't heard back from you. Is there a
4 problem with him getting his own personnel file?

5 MR. MATHIAS: I think UPS's hesitation -- and this is
6 a conversation I would have liked to have had -- is not
7 giving him his own personnel file. I think it's we don't
8 want to create a precedent of turning things over without
9 validly served subpoenas and things of that nature. It's
10 certainly the same scope that he was seeking for the other
11 employees, but I do recognize the distinction between his
12 own client's file and the witness's file.

13 I just want this put to bed so the trial can go
14 forward on Thursday. I wanted to talk. I have no idea
15 what to do.

16 THE COURT: Go ahead, Mr. Smith. I didn't mean to cut
17 you off.

18 MR. SMITH: First of all, I guess, the not serving
19 right, obviously, I'm ignorant. I've served them -- served
20 the subpoenas certified mail to the attorney for the people
21 he represents, so I guess I don't understand.

22 MR. MATHIAS: I never got anything certified. Do you
23 have a receipt?

24 MR. SMITH: I don't have it, but I did the last time.
25 I'll bring it to trial.

1 THE COURT: I'll tell you what to do. Anybody who
2 wants to give me anything, get it to me this afternoon or
3 tomorrow. We've already started the trial, and the jury's
4 back there behind the doors waiting on us right now. So if
5 anybody wants us to have anything, send it to Adrienne, my
6 law clerk, on the e-mail and I'll consider it and we'll get
7 you a decision one way or the other up or down. I guess if
8 you can get it by tomorrow -- you can hand up anything you
9 like, Mr. Smith, but make sure you give a copy to opposing
10 counsel.

11 MR. SMITH: I gave Mr. Price one earlier.

12 THE COURT: All right.

13 MR. MATHIAS: I think he meant me, Your Honor. What
14 is that?

15 THE COURT: It's called a motion to compel.

16 MR. MATHIAS: Is that a new one?

17 THE COURT: It looks like a subpoena. Looks like
18 several subpoenas and maybe a piece of a transcript.

19 MR. MATHIAS: Are these new subpoenas or are these ---

20 MR. SMITH: No. These are two that I just -- Mr. --
21 Ms. Jones.

22 That was part of my thing. I issue a subpoena, and he
23 wants to talk about it. Well, a subpoena is very clear. I
24 don't understand what we've got to talk about.

25 MR. MATHIAS: Mr. Smith, I can't just turn over UPS

1 documents without a validly served subpoena, and I was open
2 to talk about it.

3 MR. SMITH: Sure. Understood.

4 THE COURT: Well, more than that, Mr. Smith, I'm going
5 to go look, and as you well know, I was a criminal defense
6 lawyer for 25 years before coming to this job. But we
7 don't have discovery in state court. We have it in Federal
8 court for criminal defense, but you don't have discovery in
9 state court. Do you understand that? I mean, you don't
10 have subpoena power so that you -- I know I'm on the record
11 so I'm going to go out here, but I've got some good defense
12 lawyers in the back back here. You can subpoena something
13 through the courtroom, but you don't have -- you can't
14 subpoena documents in discovery as I'm aware of.
15 Gentlemen, you have to be careful with that.

16 Jake?

17 MR. ERWIN: Judge, I think we have clocked -- I don't
18 know. We take our subpoenas and get them clocked at the
19 clerk's office. I think they're valid once the clerk signs
20 off on them or if you sign off on them at that time.
21 That's all I got.

22 THE COURT: But not a signed by a lawyer. That's in
23 civil court, not in criminal court.

24 MR. SMITH: Those are clocked.

25 MR. MATHIAS: These were signed by the clerk.

1 THE COURT: The clerk? Okay. But even still, you
2 can't go out like -- anyway. I'll be quiet till I do some
3 research. Send it to me. But it's limited. It's very
4 limited in state court. It's not in Federal court. I
5 never understood why three streets down I can do a lot of
6 things I couldn't do in state court. I see the solicitor's
7 office smiling back there.

8 Can you get it to me by tomorrow?

9 MR. SMITH: Yes, sir.

10 THE COURT: No later than the end of the day. How
11 about that? I'll give you a little time here. And make
12 sure you swap back and forth anything. Whatever I get,
13 I'll look at tomorrow.

14 MR. SMITH: Yes, sir.

15 THE COURT: Anything else?

16 MR. SMITH: Thank you, sir.

17 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 9th day of February, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 6, 2015

Cheryl A. Smith, CVR-M
Court Reporter

1 chance to use the facilities, get that last phone call in,
2 whatever you need to do. We're going to come back in 15
3 minutes, and I'm going to speak to the jury for a few
4 minutes, and we're going to call the first witness, okay?
5 Thank you, gentleman.

6 MR. SMITH: Your Honor?

7 THE COURT: Yes, sir.

8 MR. SMITH: I filed a motion late in the game here, a
9 motion for dismissal.

10 THE COURT: I did see it. You want to argue that,
11 Mr. Smith?

12 MR. SMITH: I do, sir.

13 THE COURT: I'll tell you what. We'll argue when we
14 get back. Let's take 15 minutes.

15 (WHEREUPON, a recess is taken at 10:28 a.m.)

16 MR. SMITH: Yes, sir. This motion is based on
17 difficulties getting the discovery from the State. And to
18 point out specific instances where I was given a video,
19 let's see, on January 15th for something that occurred
20 July 26, 2013, and when I was provided it, there's gaps in
21 the video, and they didn't offer me the entire video. They
22 just gave me the gapped segments. Also, with regard to the
23 video surveillance, it was my understanding that because it
24 was UPS -- and it wasn't the State, but, of course, I did
25 get it, so why can't I get all of it?

1 The other thing is, UPS is essentially an agent of the
2 State in this instance. The officer that got the warrant
3 for my client was working for UPS and was being paid by UPS
4 and did their bidding by offering or dealing with the
5 warrant on my client. So he also said in his deposition or
6 in the preliminary hearing that he, in fact, used that
7 video as a part of his investigation. So with that in
8 mind, it's clearly discoverable.

9 THE COURT: Mr. Price?

10 MR. PRICE: Yes, sir, Your Honor. The State had
11 actually requested that video long ago. It was not until I
12 was preparing for trial that I realized that I had not
13 received it since asking for it. I called up UPS. I asked
14 them for a copy of the video, and they gave it to me. And
15 as soon as I received a written copy of it, I turned it
16 over to Mr. Smith. It was not in the State's possession.
17 It was not in the solicitor's office possession. It was
18 not in the possession of law enforcement. It was in the
19 possession of UPS.

20 THE COURT: But he does have it now?

21 MR. PRICE: He does, Your Honor. He has the same
22 exact copy I have. He sees the same things I see. To my
23 knowledge, there is no other video out there and no other
24 information.

25 THE COURT: Okay. And he was given that on

1 January 15, is that right, of 2015?

2 MR. SMITH: Your Honor, as I said, there's two gaps in
3 this four-minute video, and they are 48 and 49 seconds
4 apiece. Why do we have to take that out?

5 THE COURT: I don't know. Let me ask Mr. Price.

6 Mr. Price, is there some reason it has a gap in it?
7 Do you know that?

8 MR. PRICE: I don't know, Your Honor. I'm not
9 familiar with this system. I plan to put up a witness who
10 is familiar with it, and he can testify on cross to that.

11 THE COURT: Okay. But that's all you have. You're
12 not withholding anything?

13 MR. PRICE: No, sir, Your Honor.

14 THE COURT: I wouldn't think you would, Mr. Price. I
15 just have to ask you. You have given the defendant
16 everything that you have.

17 MR. PRICE: Yes, sir, Your Honor.

18 MR. SMITH: And staying with that, the officer who
19 testified at the preliminary hearing stated that he saw the
20 leaf blower and the package or whatever being exchanged.
21 That's not on that video.

22 THE COURT: Oftentimes testimony differs from the
23 video, but we'll get to the facts on that. That's a
24 factual issue. At this point, the motion is denied as to
25 the video. I mean, it certainly goes to the credibility of

1 it and to the weight of it, and I'm going to allow you to
2 argue that, Mr. Smith, certainly.

3 MR. SMITH: Yes, sir.

4 THE COURT: All right.

5 MR. SMITH: I received a supplemental incident report
6 on February 10th for the incident that happened -- or that
7 was released, signed off on August 1, 2013.

8 THE COURT: Okay.

9 MR. SMITH: So 18 months it took him to give me the
10 rest of the incident report.

11 THE COURT: But tell me you do have it, though, right?

12 MR. SMITH: Sure. We got it 48 hours ago.

13 THE COURT: Got it how much?

14 MR. SMITH: 48 hours ago.

15 THE COURT: Okay. You've reviewed it?

16 MR. SMITH: Yes, I have.

17 THE COURT: Okay. Mr. Price?

18 MR. PRICE: Your Honor, just for clarification, the
19 exhibit that I have in my motion for Mr. Smith is the
20 original incident report, not the one we turned over. The
21 one that we turned over was actually the extraction report
22 that literally just says on July 29, 2013, two officers
23 picked up the listed subject from Abbeville County, and has
24 the starting and ending mileage. This was not in my
25 investigating officer's file. The Greenville City Warrant

STATE OF SOUTH CAROLINA VS COURTNEY RAY MITCHELL

1 Division didn't even have a physical copy in their file.
2 It was in the computer system. Just I try to be very
3 diligent. As soon as I got a copy of that, I faxed it and
4 mailed it to Mr. Smith.

5 THE COURT: And that's the February 10th?

6 MR. PRICE: Yes, sir. And I can pass up a copy of
7 that to you if you'd like to see it just to review.

8 THE COURT: Well, he says he's had it and he's
9 reviewed it.

10 MR. PRICE: All right.

11 MR. SMITH: And it also says that my client was on
12 drugs.

13 THE COURT: Again, I don't know the testimony --
14 whatever the testimony is, you certainly can use it to
15 cross-examine.

16 MR. SMITH: I understand that, sir, but the idea of
17 having that discovery so I can do my own discovery, that
18 was just nonexistent. They keep it for a year and a half.
19 I don't care who has it. The State had it, and I don't.

20 THE COURT: Who says in the report that he was on
21 drugs?

22 MR. SMITH: The little check where it says "drugs."

23 THE COURT: Okay. And the check person on that report
24 is some kind of law-enforcement person, I'm assuming?

25 MR. SMITH: Yes, sir.

1 THE COURT: And that person is going to testify,
2 Mr. Price?

3 MR. PRICE: No, sir, Your Honor. Not to the
4 extraction. This was the Warrant Division, so when the
5 Greenville City went up to Abbeville where this defendant
6 resides to get him and bring him down to Greenville, that's
7 all this report is.

8 THE COURT: Okay. But if that person is not going to
9 testify, then they're not going to be testifying about any
10 drugs, right?

11 MR. PRICE: That's correct, Your Honor.

12 THE COURT: Okay. So, Mr. Smith?

13 MR. SMITH: I understand, sir.

14 THE COURT: The jury is not going to hear that.

15 MR. SMITH: I understand. But once again, who says
16 it? I don't find anything discoverable if I don't receive
17 this stuff like I should have.

18 THE COURT: Okay. Well, I'm going to caution the
19 solicitor's office in the future to be a little more
20 diligent about getting things to the defense. But it's
21 still admissible. Now, it's not admissible if you don't
22 have a witness to that, Mr. Price.

23 MR. PRICE: I don't plan to introduce this, Your
24 Honor.

25 THE COURT: He's not going to introduce it, Mr. Smith.

1 MR. SMITH: Yes, sir.

2 The idea that my client has spent like 246 days, I
3 believe, now, to me, that -- in jail, they wouldn't consent
4 to a bond until the Simpsonville mayor apparently tried to
5 intimidate someone, that he got a bond, so they felt like
6 they had to give my guy a bond. The reason I bring this up
7 is because these things that are just accidental or -- they
8 happen, and they're happening to my guy. To me, it goes a
9 long way in showing the purpose. That's probably too
10 strong a word. But the bottom line is, on all these
11 incidents, there's an excuse for every time. Why don't I
12 have this? Why don't I have this in discovery a year and a
13 half into the game?

14 THE COURT: I don't know anything about him not having
15 a bond or --

16 MR. SMITH: Yes, sir.

17 THE COURT: That's certainly not before me. He's on
18 bond now or no? I don't know.

19 MR. SMITH: No.

20 THE COURT: He's not on bond?

21 MR. SMITH: No, sir.

22 THE COURT: But one was set?

23 MR. SMITH: Yes, sir.

24 THE COURT: Okay. I don't have a thing to do with
25 that, but I'm sure a magistrate or a circuit court judge

1 set that.

2 MR. PRICE: I can kind of fill in the blanks, if you'd
3 like, Your Honor.

4 THE COURT: Okay.

5 MR. PRICE: All right. This defendant was -- I
6 believe originally came before Judge Verdin asking for a
7 bond. That's when we had the -- it was held, a mental
8 health evaluation, competency evaluation. We got that and
9 we were in front of, I believe it was, Judge Gibbons. I
10 can't really remember. This was so long ago. I just know
11 it was a visiting judge. That judge denied bond. He was
12 held without bond until, I believe, April of 2014 when we
13 reached an agreement where he would be out on GPS
14 monitoring, agreed to take his medication follow-up. Well,
15 in, I believe, September of 2014, he was arrested for
16 discharging a firearm right outside a convenience store in
17 Anderson, after seeing this, made a motion to revoke his
18 bond and placed him on the trial docket as soon as
19 possible.

20 THE COURT: Okay. And obviously, that was granted.

21 MR. PRICE: That's correct, Your Honor.

22 THE COURT: Okay. All right. Mr. Smith, he was
23 before the Court on various times when he was not held
24 without being brought before the Court, right?

25 MR. SMITH: Certainly.

STATE OF SOUTH CAROLINA VS COURTNEY RAY MITCHELL

1 THE COURT: Okay. So different judges along the way
2 have made rulings on that, and I'm in no position
3 whatsoever, nor would I ever second-guess one of my
4 brothers or sisters on the bench. That's totally
5 inappropriate.

6 MR. SMITH: I'm not questioning that a bit, sir. What
7 I'm saying is they consented, they could have consented all
8 along, and these accidental holes with regard to discovery,
9 I mean, at what point is it not an accident?

10 THE COURT: I understand some of your frustration
11 about discovery, Mr. Smith. As you well know, for 25 years
12 I was a criminal defense lawyer and tried many cases in
13 this very courthouse. But discovery in criminal court and
14 discovery in civil court are two different animals, as we
15 both know.

16 MR. SMITH: Yes, sir.

17 THE COURT: And I can't help you there. I call your
18 attention to State vs. Miller, State vs. Matthews, State
19 vs. Flood and a TCI case that Judge Mike Nettles heard
20 here. It was upheld. A very good discussion about that in
21 that case. I'm sorry. I can't remember the part of that
22 case. It doesn't matter. I reviewed that early one
23 morning. I was an early riser, and I did some research
24 about 5 a.m., 5:15 a.m. while I was drinking my coffee.
25 But I thought I was right on that, and I submit that I am.

1 But if I'm not, somebody at some point can tell me that I'm
2 wrong. But I feel comfortable that I am.

3 That TCI case, Judge Mike Nettles was upheld after
4 somebody was indicted in Federal Court in Ohio and then
5 came here and filed a civil case for the purpose of using
6 the civil discovery rules to obtain information in e-mails,
7 as a matter fact, to be used in a criminal case. And our
8 court has said that was absolutely prohibited and
9 inappropriate.

10 So I understand your frustration to some level, but I
11 understand you have everything that Mr. Price has.

12 MR. SMITH: I guess.

13 THE COURT: Well, he certified that, and he's an
14 officer of the Court.

15 MR. SMITH: Yes, sir.

16 THE COURT: So if he withheld something and it comes
17 in, then Mr. Price will have to deal with that with Gervais
18 Street. But he's an officer of the Court, and I have no
19 reason to believe he's not telling me straight.

20 MR. SMITH: Yes, sir.

21 THE COURT: All right.

22 MR. SMITH: There's also -- there was communication
23 between the sheriff's office -- or the city police and the
24 psychiatrist. There were things submitted to the
25 psychiatrist that I wasn't privy to as well as a written

STATE OF SOUTH CAROLINA VS COURTNEY RAY MITCHELL

1 statement -- a written note that referenced a
2 psychiatrist's evaluation. I didn't get that stuff.

3 MR. PRICE: As far as I know, Judge, I don't have it.

4 THE COURT: Well, what is it supposed to say?

5 MR. SMITH: It just says that it came from officer
6 so-and-so, a written note from him, and then there was
7 another one, as well. So both of these were taken into
8 account and are discussed in the doctor's evaluation, yet I
9 don't have them.

10 THE COURT: You don't have the note? You don't have
11 the note either, Mr. Price?

12 MR. PRICE: No, sir, Your Honor. Not that I know of.

13 THE COURT: Is the doctor going to testify?

14 MR. PRICE: The doctor is not going to testify. And
15 like I said, we're not even going to go into the
16 defendant's mental health.

17 THE COURT: Okay. The jury won't know anything about
18 that, Mr. Smith.

19 MR. SMITH: Yes, sir.

20 THE COURT: Are you challenging his competency?
21 Because if you are ---

22 MR. SMITH: I'm not challenging his competency, Your
23 Honor. I'm just challenging the fact that I didn't get
24 discovery.

25 THE COURT: Okay. Anything further?

STATE OF SOUTH CAROLINA VS COURTNEY RAY MITCHELL

1 MR. PRICE: Nothing from the State.

2 THE COURT: Anything from defense?

3 MR. SMITH: No, sir.

4 THE COURT: Okay. We'll have our jury, please.

5 (WHEREUPON, the jury entered the courtroom at 11:00 a.m.)

6 THE COURT: Madam Forelady, any matters from the jury?

7 FORELADY: No, sir.

8 THE COURT: Everything's good?

9 FORELADY: Yes, sir.

10 INTRODUCTORY REMARKS

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, we are about to begin the case of the State of South
13 Carolina vs. Courtney Ray Mitchell. As I told you earlier,
14 Mr. Mitchell is charged with the offense of intimidation of
15 a witness and that this did occur in Greenville County,
16 South Carolina on or about the 26th day of July of 2013. I
17 will explain more about the elements of that offense later
18 in this trial.

19 I also remind you that the charging instrument is the
20 indictment, and that's all it is is a charging instrument.
21 It is of no evidence whatsoever against Mr. Mitchell. None
22 whatsoever. He has entered a plea of not guilty and he is
23 presumed not guilty as he sits here today and will be
24 presumed not guilty until the end of this trial and should
25 you find him guilty beyond a reasonable doubt.

Motion for A Stay (01/14/15)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

State of South Carolina,
Plaintiff,

vs.

Courtney Ray Mitchell,
Defendant.

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

Warrant No.: 2013A2320602021

MOTION FOR A STAY

FILED
PAUL E. COOK
CLERK
GREENVILLE CO. S.C.
2015 JAN 14 AM 9:09

TO: JAMES A. PRICE, ASSISTANT SOLICITOR, THIRTEENTH JUDICIAL CIRCUIT
YOU WILL PLEASE TAKE NOTICE THAT the undersigned will move before the
Presiding Judge of the Thirteenth Judicial Circuit for an order of the Court granting the following
relief:

1. For an Order granting the defendant a stay in this case, which is the alleged intimidation of a witness in a Breach of Peace case that is being prosecuted in Municipal Court against the same defendant. Forcing the defendant to try a case in which he is alleged to have intentionally intimidated, or attempted to intimidate, a witness in another crime is highly prejudicial. The charge itself relates to the defendant being a defendant in another case. The prejudicial effect far outweighs the need to try this case first.
2. The State is bringing this case first so as to taint the jury with the charge of breach of peace. The undersigned requested a speedy trial in the municipal case well over a year ago. Court administration said that the case had been removed from that venue. The defendant deserves the right to have the cases tried in chronological order. If there is no crime, there is no witness. Thus, whether the defendant is guilty of the initial charge is a necessary prerequisite to trying this case.

WHEREFORE, the undersigned counsel respectfully requests that a trial date be stayed until such time as the municipal court charge can be resolved.

Respectfully Submitted,



Donald L. Smith
Attorney for the Defendant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
January 14, 2015.

Transcript of Motion to Stay

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2013-A-23-20602021

STATE OF SOUTH CAROLINA)

PLAINTIFF))

vs.)

TRANSCRIPT OF RECORD

COURTNEY RAY MITCHELL)

DEFENDANT)

ORIGINAL

January 16, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

JAMES A. PRICE, ESQ.
Attorney for the State

DONALD L. SMITH, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

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There were no witnesses.

There were no exhibits.

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Certificate of Reporter 8

1 THE COURT: All right, I'll be happy to hear
2 from you.

3 MR. SMITH: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. SMITH: Your Honor, I'm here on behalf of
6 Courtney Mitchell who is the Defendant in an
7 intimidation of a witness case. The case that he's
8 alleged to have intimidate the witness on is a breach
9 of peace case that was brought in Municipal Court in
10 Greenville.

11 THE COURT: Yes, sir.

12 MR. SMITH: That was a year and a half ago. I
13 requested a speedy trial but every time I talked to
14 Municipal Court, it had disappeared from their
15 records. I don't know why or how.

16 THE COURT: Yes, sir.

17 MR. SMITH: But I will say that I feel very
18 confident in that case. And I don't believe there
19 was probable cause for that case. And I don't
20 believe there's probable cause for this case based on
21 the fact, the breach of peace, no one ever told him
22 that they were offended by what he was talking about
23 or anything of this sort. In this case, no one --
24 the lady that's alleged to have been intimidated
25 never told her coworker, friend, that she didn't want

1 him texting or her calling her. So, if that's not
2 the case, I don't know how my client is to know that
3 he's not allowed to text her, not allowed to call
4 her. And when I say friend, I mean that's a term
5 that's used loosely. However, he had had a company
6 kind of picnic in which she was at his house two
7 weeks before. He had no reason to believe that he
8 was not allowed to call.

9 The whole purpose of this hearing, however, is
10 to simply stay the intimidation case until after the
11 breach of peace case. Because inherently the
12 witness -- the intimidation case says that there's
13 another case involved. And I believe it's highly
14 prejudicial. Second of all, there is no prejudice to
15 the State whatsoever in allowing the chronological
16 events to take place. I.E. either breach of peace
17 first and then the second being the intimidation
18 case. I don't see any reason why that can't be
19 accomplished.

20 THE COURT: Okay.

21 What's the position of the State?

22 MR. PRICE: Judge, Your Honor, first I can clear
23 up the breach of peace charge. It was originally
24 charged as breach of peace high and aggravated and it
25 was up in general sessions. You know, depending on

1 who you ask, breach of peace high and aggravated
2 either doesn't exist or it does but it's only a 30
3 day offense.

4 THE COURT: Yes, sir.

5 MR. PRICE: Anyway, that is still pending in the
6 solicitor's office. It's not in Municipal Court.
7 The State does not intend to go forward on the breach
8 of peace charge because it's only a 30 day offense
9 when we have the intimidation charge which is 10
10 years. Obviously, we're going to go after the bigger
11 fish.

12 THE COURT: Yes, sir.

13 MR. PRICE: On the breach of peace, just want to
14 let you know that we will dismiss it as part of a
15 plea agreement and try to kill two birds with one
16 stone so to speak. And in terms of the Defendant's
17 guilt or innocence in the breach of peace charge,
18 Judge, it doesn't matter. The fact that there was a
19 witness in a pending criminal charge against the
20 Defendant, he sent some threatening text and also
21 packet that -- with some items that the victim
22 determined to be threatening with him saying I have
23 guns and I know where you live and I know where your
24 family lives.

25 THE COURT: Okay. So, the solicitor's office is

1 prosecuting both the breach of peace and the
2 intimidating of a witness?

3 MR. PRICE: We have both cases up in general
4 sessions, Your Honor.

5 THE COURT: All right.

6 MR. PRICE: The solicitor's office has both but
7 we only intend to go forward on the --

8 THE COURT: I know --

9 MR. PRICE: Intimidation charge.

10 THE COURT: I understand.

11 MR. PRICE: I just want to clarify.

12 THE COURT: I understand exactly what you're
13 saying. But y'all are handling both cases?

14 MR. PRICE: Yes, sir.

15 THE COURT: Okay. All right. And I recognize
16 they can exercise that prosecutorial discretion and
17 what to proceed with and when to proceed with it.

18 Mr. Smith, I'm going to respectfully deny the
19 motion. You know, I do think that it's a matter of
20 prosecutorial discretion as to which case and what
21 order they bring it. Particularly, when they have
22 them both in general sessions court. I'm not
23 necessarily -- I don't necessarily disagree with the
24 way you would like to proceed. But I think
25 ultimately it's a matter of discretion by the

1 prosecution and what order they wish to proceed on
2 the outstanding charges.

3 MR. SMITH: I was under the impression from what
4 he just said that they're not pursuing the breach of
5 peace.

6 THE COURT: That's what I heard. That's what I
7 heard. And, you know, that may give you some
8 indication of which case you need to prepare on.

9 MR. SMITH: Yes, sir.

10 THE COURT: Okay. All right. Good luck to you,
11 sir.

12 MR. PRICE: Thank you, Your Honor.

13 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER

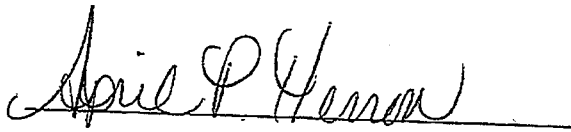
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 16th day of January, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 16, 2015



APRIL P. HERRON, Court Reporter

Transcript of Motion to Dismiss (02/12/15)

1 MR. SMITH: I don't know when he approached her.
2 That's why I asked.

3 THE COURT: All right. Answer the question.

4 THE WITNESS: Clarify your question, please.

5 BY MR. SMITH:

6 Q What time did you go to Ms. Jones and ask her to go to
7 another room?

8 A After I came back inside. I put the leaf blower in my
9 car, and then I came back inside with the envelope.

10 Q So you had an opportunity to leave the envelope in
11 your car?

12 A No, I did not.

13 Q You did not have the opportunity to do that?

14 A I had the opportunity, but I did not.

15 Q Yes, sir. And so you took it back upstairs to
16 Ms. Jones?

17 A I did.

18 Q And how did that proceed with regard to opening up the
19 envelope and taking inventory?

20 A We went into a private office, and we opened the
21 envelope and looked at what was inside. And at that point,
22 Gina said she was going to take it downstairs to HR. And
23 she left to go down, and I went back to my desk.

24 Q And what was the necessity of taking it down to HR?

25 A Because this has information that was given to her

1 that was in direct relation to incidents that happened
2 earlier.

3 Q Is there anything wrong with the cell phones?

4 A I have no idea. We didn't open the cell phones.

5 Q Did you ever learn anything about them?

6 A No.

7 Q What about that leaf blower? How was that?

8 A The leaf blower was never worked on.

9 Q Not worked on at all, right?

10 A No.

11 Q No additives or anything special?

12 A Nothing. Got it back exactly as I gave it.

13 MR. SMITH: I don't have anything further, Your Honor.

14 THE COURT: Anything?

15 MR. PRICE: Nothing further from the State, Your
16 Honor.

17 THE COURT: Thank you, sir. You may step down.
18 Please be careful.

19 MR. PRICE: Your Honor, at this time the State calls
20 Gina Jones.

21 THE COURT: All right.

22 THE CLERK: Ms. Jones, please come forward to be sworn
23 in.

24 ///

25 ///

Transcript of Trial Hearing
(Testimony of Velma Jones, 02/12/15)

1 A That he has a gun, and he knows where I live, he knows
2 where my family lives.

3 Q All right. I've already said this before, and I
4 apologize. How did you arrive at that message?

5 A Because of the history with Mr. Mitchell, the
6 environment that we worked in was very close, so we talked
7 a lot. As a team, we talked a lot. And he knew things of
8 me. We talked about our family, we talked about things
9 that we did. And it's not just specifically with Ray, but
10 just as a team, just group camaraderie. And Ray was aware
11 of my favorite beer, which is on that receipt, Stella beer.

12 Q Ms. Jones, are you okay?

13 A I'm all right. I'm sorry. I'm just . . .

14 Q Let me know if you need to take a few minutes.

15 A No. I want to get this over with.

16 So he was aware of different things about me, that on
17 the receipt, you know, there's my favorite beer. I was
18 very upset that he took this method of trying to let me
19 know that he knew these things and it all was in relation
20 to the events that happened in June. He scared me. He
21 scared my family.

22 Q Ms. Jones, after receiving these items, were you
23 afraid to testify against the defendant?

24 A Yes.

25 Q All right.

1 your answer?

2 A I do not remember, sir.

3 Q Do you recall saying, "I know where -- I know where he
4 lives"?

5 A Yes. I knew where he lived.

6 Q That didn't answer my question.

7 A I visited his house.

8 Q That didn't answer my question, though, did it?

9 A I guess not. This question that you're asking me now?

10 Q Yes, ma'am. The nursery card, where is that from?

11 A Whitten's in Anderson.

12 Q Where do you live, county?

13 A Currently?

14 Q Yes.

15 A Brooksville, Florida.

16 Q Where did you live at the time of this incident?

17 A Anderson County.

18 Q How far away from that nursery did you live?

19 A At the time of the incident?

20 Q Yes.

21 A 15, 30 -- 20, 30 miles.

22 Q So you're not trying to tell us that because you lived
23 next to it, what, ten years prior to that?

24 A Yes.

25 Q And that's part of the message?

1 A Absolutely.

2 Q I know where you lived ten years ago?

3 A Absolutely.

4 Q So is there anyplace he could have gone and not been
5 close to you?

6 A Sure.

7 Q You did an incident report, right?

8 A Yes.

9 Q What did you say on that incident report about what
10 happened?

11 A For the incident of the package?

12 Q Yes.

13 A Do you want me to go into specific detail of the day?

14 Q Sure.

15 A Okay. So I received a text message, 12:30, 1:00 in
16 the morning from Mr. Mitchell on my cell phone in reference
17 to accepting an \$80,000 offer from his attorney. "I hope
18 you have the balls to give us a call, that any sister of
19 mine would have loved the shark. By the way, please send
20 my f'ing belongings to Pecan Drive in Abbeville."

21 Q Can I stop you right there, ma'am?

22 A Sure.

23 Q At this point, you're not scared, right?

24 A Actually, yes, I am. I had a long discussion with my
25 mother in the middle of the night as to why I've been

1 contacted by a gentleman 30 days after the incident.

2 Q I thought you were friends for over a year.

3 A I did not say we were friends. He was a co-worker of
4 mine, sir.

5 Q So you talked about personal things with a co-worker?

6 A Absolutely.

7 Q So what did you talk to your mother about? . You built
8 your mother up with this story, didn't you? Is your mother
9 scared now?

10 A I built --

11 Q Is your mother scared now?

12 A Currently?

13 Q Yeah.

14 A No. She's in Florida.

15 Q Did she become scared?

16 A She'd become extra vigilant, and she was scared for my
17 safety.

18 Q Did you ever see him around your house ever?

19 A No.

20 Q You found two trespass notices, right, in the
21 envelope?

22 A Yes.

23 Q What did those trespass notices say?

24 A I don't know. To be honest, it wasn't given to me.
25 They weren't written to me.

1 A No. Because ---

2 MR. PRICE: Objection, Your Honor. I really don't see
3 a point in this.

4 THE COURT: He's on cross. He can make it relevant.
5 Go ahead.

6 THE WITNESS: No, it doesn't. Because I was making a
7 statement of what happened to me.

8 BY MR. SMITH:

9 Q Okay. So in this, do you talk about how people were
10 coming up to you and were concerned about you? Do you want
11 to refresh your memory?

12 A Absolutely. Please ask the question again, sir.

13 Q Were people coming up to you and asking how you were
14 doing? Were they concerned for you?

15 A In regards to this?

16 Q Yeah.

17 A That day? No.

18 Q No.

19 A Because no one was aware of what was going on except
20 for Mr. Bailey and my supervisor.

21 Q What color was that leaf blower?

22 A I have no idea.

23 Q Didn't you see it?

24 A I saw it on the video.

25 Q So you never saw it?

1 A Physically, no.

2 Q I thought it was a bomb. Was it a bomb?

3 A To my knowledge, it wasn't a bomb.

4 Q Did you think it was a bomb?

5 A Yes. I said there was the potential of it. That is
6 why I wouldn't power up the other two cell phones. I had
7 no idea what the purpose of the cell phones were.

8 Q Did you know about any of these things, what their
9 purpose was?

10 A Absolutely.

11 Q Based on what?

12 A Based on what I felt.

13 Q But what did Mr. Mitchell do to give you that feeling?

14 A He sent me the package.

15 Q What does this Whitten's card mean?

16 A That is a location near the home I used to live at.

17 Q When did you live there?

18 A Ten years ago.

19 Q Plaintiff's Exhibit 10, \$80,000 plus Blue Cross, Blue
20 Shield, what's that for?

21 A That's in reference to the text messages that he sent
22 to my cell phone at 12:30, 1:00 in the morning on the 26th.

23 Q Is this a threat?

24 A The text message was a threat. That is in relation to
25 it, not to mention the hunting club reference.

1 Q So did you create this or did he send that?

2 A I didn't create that.

3 Q 7-Eleven?

4 A Uh-huh.

5 Q And what's the importance of this?

6 A It's located near my mother's home.

7 Q What county does your mother live in?

8 A Greenwood.

9 Q Are you aware that Greenwood is five times the size of
10 Abbeville?

11 A Sure.

12 Q So you go to a bigger city, don't you?

13 A Sure.

14 Q How do you get to Columbia from Abbeville?

15 A There's multiple ways you can get to Columbia from
16 Abbeville.

17 Q Could you go through Greenwood?

18 A Certainly.

19 Q When did this come again? What date?

20 A The 26th of July.

21 Q This concealed weapons permit, when did it expire?

22 A I have no idea. Whatever is on the card, sir.

23 Q February 15, 2003?

24 A Okay.

25 Q So it was ten years old.

1 Cash for \$50, what's that mean?

2 A I have no idea what that was for.

3 Q So you weren't scared of that?

4 A No.

5 Q 401 Woolridge Way or something. Do you know what that
6 is?

7 A That's Mr. Bailey's address.

8 Q So Mr. Mitchell went out of his way or he made sure
9 that the leaf blower went back to Mr. Bailey, right?

10 A I assume so. I had nothing to do with the leaf
11 blower, sir.

12 Q Did the trespass notices scare you?

13 A No.

14 Q Were they a threat in any way?

15 A No.

16 Q So once again, what did Mr. Mitchell do to threaten
17 you?

18 A He sent me a package with a message.

19 Q Where's the message? I don't understand.

20 A The message is, is I have a gun, I know where you
21 live, I know where your family lives.

22 Q But he didn't know where you lived, did he?

23 A Yes.

24 Q You're sure?

25 A Yes.

1 Q The 7-Eleven was by your mother's house?

2 A It's down the road from my mother's house, yes.

3 Q Did you say before it was next door to your mother's
4 house?

5 A No. It's not next door to her house.

6 Q I didn't ask you that. Did you say that before?

7 A Not to my knowledge, sir. No.

8 Q Did he know where your mother lives?

9 A Yes. I know where my mother lives.

10 Q No. Did he?

11 A No. He's never -- I've never talked about my mother,
12 where she lives to Ray, so I do not know what Mr. Mitchell
13 knows as far as my mother's.

14 Q So he went to 7-Eleven and got beer. What's the
15 relevance of your mother if he doesn't know where she
16 lives?

17 A Because it's down the street from my house -- my
18 mother's house.

19 Q Did you turn on any of the cell phones?

20 A No. There was only one powered on. The other two
21 were powered down.

22 Q Do you remember the hearing we had for your order of
23 protection?

24 A I remember it. Not specific details of the hearing,
25 but I do remember the hearing, yes.

1 One second please, Your Honor.

2 (Pause in proceedings.)

3 BY MR. PRICE:

4 Q After that telephone call, have you had any other
5 contact with Mr. Mitchell?

6 A No.

7 MR. PRICE: Thank you. Please answer any questions
8 the defense attorney may have for you.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: Mr. Smith?

11 MR. SMITH: May it please the Court.

12 CROSS EXAMINATION

13 BY MR. SMITH:

14 Q Mr. Bailey, do you consider yourself a reasonable man?

15 A I do.

16 Q With regard to that envelope, did you say it was open?

17 A It was.

18 Q So it wasn't taped up or anything like that?

19 A No.

20 Q Where did you receive it?

21 A In the lobby of our office building.

22 Q What precautions did you take?

23 A No precautions.

24 Q Why not?

25 A At that time, I saw no reason to.

1 Q Do you remember saying that you went and powered up
2 the phones?

3 A I did not power up phones. One phone was powered up,
4 sir. Two were powered down.

5 MR. SMITH: Yes, ma'am. One moment, please.

6 May I approach the witness, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. SMITH:

9 Q You said you didn't power up the phones?

10 A I did not power up the phone.

11 Q Would you read line 11, please.

12 A Which line 11, sir? There's four.

13 Q Page 22.

14 A Here? "I went and powered up the phones because being
15 that it was a leaf blower I was like, you know, this thing
16 could be a bomb." Do you want me to keep reading?

17 Q No. That's fine. Thank you.

18 Are you sure you didn't say you didn't turn on the
19 phones?

20 A I did not turn on the phones. And the reason I did
21 not turn on the phones, because I was worried that the leaf
22 blower could have been a bomb and the phone could have been
23 a trigger. So why would I do that?

24 Q Mr. Mitchell never said anything negative to you, did
25 he?

1 A To me or about me, sir?

2 Q To you, ma'am.

3 A Yes. He said plenty of negative things to me.

4 Q Like what?

5 A Like repoing people, and carrying people out in a box,
6 and sniper rifles, and military grade, and how extensive my
7 sniper training is.

8 Q Did he talk about that at lunch?

9 A That's part of the negative things that he said to me,
10 yes.

11 Q But when you went to HR, went to the police, did you
12 tell them about your 9 millimeter?

13 A No.

14 Q But that was part of the discussion that day, wasn't
15 it?

16 A I don't recall.

17 Q You painted a pretty nice picture of Mr. Mitchell,
18 didn't you?

19 A Pardon?

20 Q You painted a nice picture of Mr. Mitchell, didn't
21 you?

22 A In regards to what, sir?

23 Q In regards to his tendencies, if you will.

24 A I spoke the truth, sir. So whatever that is is what
25 it is.

1 Q You spoke the truth about what?

2 A Whatever picture you're asking to paint, I spoke the
3 truth. So whatever I'm trying to do is tell the truth,
4 sir.

5 Q Was Derrill concerned about the envelope or the
6 contents of the envelope before he talked to you?

7 A I have no idea what Mr. Bailey did before he talked to
8 me.

9 Q Where did Mr. Bailey first see you with the envelope?

10 A He came to my desk.

11 Q Where is that located?

12 A On -- in inside sales on the team.

13 Q What floor?

14 A Sixth. Well, it was sixth.

15 Q So he was so concerned, he came up to the sixth floor
16 with this envelope?

17 A He came up with the envelope and said, "I was told to
18 give this to Ms. Gina Jones."

19 Q Did he take it to the police or the bomb squad?

20 A Not to my knowledge. I don't know what he did.

21 Q He referred to you as his sister. What does that mean
22 to you?

23 A I have no idea, sir, what that means to me. He --
24 Mr. Mitchell started to reference me as a little sister
25 months before this incident happened, which made me very

1 uncomfortable because I'm in a professional setting. So I
2 have no idea why he started calling me his little sister.

3 Q Did you believe that was negative?

4 A It made me uncomfortable. So yes, that would be
5 negative for me. Did I mean -- did I think that Ray was
6 being negative referring to me as a sister? No.

7 Q The lunch, how was his conduct? What was his conduct
8 like?

9 A He was very erratic. He was there when I arrived. he
10 was very loud. Multiple conversations going on at one time
11 between the group. It was embarrassing and unsettling.

12 Q And what did you tell him so he would relax?

13 A I don't recall.

14 Q You didn't tell him anything, did you?

15 A Not to my knowledge.

16 Q Nobody at that table said a word to him, did they?

17 A Not to my knowledge.

18 Q So tell me, how are they supposed to know that he's
19 not acting right?

20 A Because other tables moved away from us.

21 Q Where are they?

22 A I mean, he's an adult, sir. He's responsible for his
23 own actions.

24 Q Yes, ma'am.

25 Where are the people that moved away?

1 A Where are they?

2 Q Yeah.

3 A I have no idea. They were at the restaurant.

4 Q You recall doing the incident report?

5 A Yes.

6 Q There was no mention of families moving away from your
7 table, was there?

8 A In -- not in my recollection. Not in my incident
9 report, no. Not that I remember. I would have to read it
10 again.

11 Q Did anybody talk to anybody other than UPS people? Do
12 you know if there's any witnesses other than UPS people?

13 A Not to my knowledge.

14 Q And your position got elevated in May?

15 A May of this past year, yes, 2014.

16 Q How long -- prior to this incident, how long had you
17 been in your position?

18 A Three -- three years. Two and a half, three years, to
19 the best of my knowledge.

20 Q When you got back from the lunch, you felt it was your
21 duty to go to HR?

22 A Yes.

23 Q Why is that?

24 A Because that's the way we were trained.

25 Q Trained about what?

1 A About incidents in the workplace, incidents with
2 people, that basically we were trained if things were not
3 right or things that were said, that we were to report it
4 to HR and they handle it as they see fit.

5 Q So he got three months in a row employee of the month.
6 And you weren't going anywhere, right, in your job track or
7 whatever? It's been three years.

8 A Actually, I had transferred different -- different
9 jobs from different teams.

10 Q But now you're at a higher position?

11 A Yes.

12 Q And once again, at that lunch, no one felt a need to
13 say anything to him, but then you went back to HR and told
14 on him?

15 A We did not say anything to him. He was already
16 erratically -- he was acting erratic and agitated --
17 extraordinarily agitated enough. Why would any -- I mean,
18 personally, I think you're responsible for your own
19 actions. I'm not a babysitter. I'm not going to -- you
20 know, you're embarrassing yourself when you're doing these
21 things in public. That's your choice. But it was my
22 responsibility as a worker at UPS to report what
23 Mr. Mitchell said at that lunch.

24 Q And then you couched it as him threatening Ken Baca;
25 is that right?

1 A He directly threatened Ken Baca.

2 Q What was the direct threat again?

3 A "My soul fixation is for that man to leave there in a
4 box -- I mean, with the stuff beside me carrying a box."

5 Q He said "my soul fixation"?

6 A To the best of my recollection. I can read my
7 statement through, if you want.

8 Q And the text message was threatening, and it talked
9 about \$80,000 or what?

10 A No. The text message was out of the blue after I
11 hadn't heard anything, and -- at 12:30, 1:00 in the
12 morning, and he referenced himself as the shark, which is
13 not necessarily a friendly animal. It was menacing.

14 Q Did you know what he meant at all?

15 A Pardon?

16 Q Did you know what he meant at all?

17 A I mean, I knew -- I had no idea what the
18 attorney/\$80,000 thing is. I had nothing to do with any of
19 that. I knew what he meant by sending his belongings
20 because his stuff was at work from when he went out on
21 disability.

22 Q How do you know what his intent was?

23 A I only know the perception of what the package that
24 was given to me stated by Mr. Bailey that he was instructed
25 to give to me said to me. I have no idea what his

1 intention was. I know what the result of it was.

2 Q Did Courtney hand you that?

3 A No.

4 Q Do you know if that was the right package you were to
5 get?

6 A I do not know what transpired other than what was on
7 the video between Mr. Bailey and Mr. Mitchell.

8 Q Is Courtney a giving sort, give away three phones?

9 A Not to my knowledge.

10 Q What did you and your co-workers call Courtney?

11 A Ray.

12 Q Is that all?

13 A I did not refer to Ray other than anything but Ray. I
14 didn't call him Courtney. I called him Ray.

15 Q Was the leaf blower a bomb?

16 A Not to my knowledge.

17 Q Were the phones in any way mechanisms of bombs?

18 A Not to my knowledge.

19 Q So did anybody else think these things but you?

20 A I have no idea. When Mr. -- when Mr. Bailey -- when
21 we went in the room and the concealed weapons permit, I
22 laid it on the table, Mr. Bailey looked at me and said,
23 "Should I be afraid?" So he obviously was unsettled. When
24 I took the package downstairs to HR and -- which is
25 Mr. Owens, when he emptied out the package on his desk,

Motion for Reconsideration of Denial of Appellant's Motion for Directed Verdict
Or in the Alternative Motion for New Trial (02/24/15)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

State of South Carolina,)

Plaintiff,)

vs.)

Courtney Ray Mitchell,)

Defendant.)

COURT OF GENERAL SESSIONS
IN THE ~~GREENVILLE MUNICIPAL COURT~~
THIRTEENTH JUDICIAL CIRCUIT

WARRANT NO.: 2013-A-23-20601706

) MOTION FOR RECONSIDERATION OF DENIAL OF
) MOTION FOR DIRECTED VERDICT OR; IN THE
) ALTERNATIVE, MOTION FOR A NEW TRIAL

TO: THE HONORABLE KEITH KELLY AND JAMES A. PRICE, ASSISTANT
SOLICITOR FOR THE THIRTEENTH JUDICIAL CIRCUIT:

YOU WILL PLEASE TAKE NOTICE THAT the undersigned will move before the
Presiding Judge of the ~~Greenville Municipal Court~~ *COURT OF GENERAL SESSIONS* for an order of the Court granting the following
relief: Defendant files this Motion for Reconsideration of the Denial of his Motion for Directed
Verdict; or, in the alternative, a Motion for a New Trial in the above-referenced matter. The
defendant, Courtney R. Mitchell, takes issue with the following:

ISSUES PRESENTED

1. Whether the charge of Intimidation of a Witness was Fruit of the Poisonous Tree based on the unconstitutional arrest of the defendant for Breach of Peace.
2. Whether the State and United Parcel Services, perverted the course of justice by willfully and wantonly giving false statements to tribunals.
3. Whether the defendant was erroneously prevented from subpoenaing third parties based on the fact that the probative value far outweighed any prejudice those subpoenaed.

FACTS

Courtney Mitchell worked in sales for United Parcel Services (hereinafter U.P.S.). He worked at the Halston Road address in Greenville, South Carolina. He began work with U.P.S. in the summer of 2012. He worked with a group that was fairly close knit, enjoying social events at each other's house on occasion. That changed in the spring of 2013 when Mr. Mitchell began to have anxiety from the stress of his position.

Mr. Mitchell had prior issues with stress before. In fact, he was previously diagnosed with Post Traumatic Stress Disorder. That diagnosis had been issued around 2007. Mr. Mitchell had managed to deal with his disorder from that time forward. However, the mounting stress from his position were weighing on him. As a result, he approached management with a request to be demoted. This request was summarily dismissed.

In June of 2013, he began to speak to his team leader, Velma Jones, about health issues that were causing him an inability to perform his job. He was concerned and wished to be demoted to his previous position of associate. When that was denied, he offered to take a security position, since he had been an M.P. in the National Guard. Once again his request was denied.

Human resources and management recognized Mr. Mitchell's vulnerability, and put him on short term disability. Mr. Mitchell's free time provided him with an opportunity to think about his time with U.P.S. He was disconcerted about his inability to work and a belief that he may not be being treated like everyone else. On or about June 19, 2013, Ray called Velma Jones and asked her to go lunch on Friday the 21st. Since she already had lunch plans with fellow co-workers, she asked if they would mind if "Ray" came along. They did not.

On June 21, 2013, Ray met his co-workers at the Olympian Restaurant for lunch. Velma Jones, Scott Brown, Mike Leonard and Dwight Inman all showed up that afternoon. The

conversation was fast and furious from Ray. He was engaged in conversations on variety of topics. The conversations ranged from him and his wife's potential business venture(s) to guns. Mr. Mitchell spoke like he was in the military at that function. He used language that was offensive, which simply wasn't like him. Ms. Jones, his team leader, said Ray was "raging". He bounced from conversation to conversation at a fever pitch. His dissatisfaction was never more clear than when he said about a member of management, Ken Baca, that he "would like to see him go out in a box". He immediately corrected himself and said that he would like to see his things go out in a box, with him walking next to him. He said that Sharon Mays, another member of management couldn't manage herself out of a wet paper bag. His comment about Dwight Inman was that he was a pussy and that his driving was like a New York cab driver named Sumeer. In fact, Ray said that he was going to put his foot up his ass. He told Scott Brown that he loved him, threw money on the table and left the restaurant without a second thought.

Upon return to U.P.S., conversation with those who weren't there resulted in the police being called. According to Detective Cothran, they called "in reference to some threats being made." (Preliminary Hearing Transcript, p.6, 10.11). Detective Cothran told the Judge that, "The short of it is that Mr. Mitchell had said that one of the managers and some of the other higher management at UPS would be carried out in a box." (Id., 16.19). It should be noted that none of the participants said anything about someone other than Mr. Baca going out in a box, or getting assaulted for that matter. Besides, Mr. Mitchell did not make mention of how he got in the box, just that his conduct was such that he wished he would move on to another workplace.

Mr. Mitchell was arrested for Breach of Peace. Breach of Peace in South Carolina is addressed in SECTION 22-5-140. Arrests by magistrates to preserve the peace.

"Any magistrate shall command all persons who, in his view, may be engaged in riotous or disorderly conduct to the disturbance of the peace, to desist therefrom and shall arrest any such person who shall refuse obedience to his command and commit to jail any such person who shall fail to enter into sufficient recognizance either to keep the peace or to answer to an indictment, as the magistrate may determine."

Mr. Mitchell was arrested at his home that evening. He had no idea what was happening. He was in a state of shock. He was distraught that this situation had taken place in front of his family. Mr. Mitchell was released from jail the following day based on the fact that he was charged with a ticketable offense. Mr. Mitchell spent the next month pondering his future. At some point, he recognized that he still had Darryl Bailey's leaf blower at his home. He worked with Darryl Bailey at U.P.S. He helped Mr. Bailey on a wood removal project at his house in early June. While he was helping Mr. Bailey, he recognized that the leaf blower could use a service. He offered to take the blower to one of his friends who was knowledgeable about leaf blower repair. Mr. Bailey was more than happy to have his leaf blower brought back to working order.

Based on his sudden banishment from the U.P.S. complex, Courtney was of the impression that he might want to return the things that he possessed to his former co-workers. He knew that he still had Mr. Bailey's leaf blower. He had also recognized that Velma Jones had left a hair barrette at his home the day she came for the barbeque. Since Mr. Mitchell had been put on Trespass Notice by U.P.S., he knew that he would not be able to return the items himself so he made some calls to friends to see if any of them could help him out.

One of those friends was Mike Thacker. Mike was available that morning and agreed to come over and return the items to their rightful owners. Mr. Thacker took the items to Darrell who then returned an envelope to Ms. Jones.

When Mr. Bailey came down to retrieve the leaf blower, the two men engaged in polite small talk about the blower and the incidental cost for its return. During this time, Mike asked Mr. Bailey if he would take the unsealed envelope to Ms. Jones. Mr. Bailey agreed to do so; at which time, Mike gave the envelope to Darrell Bailey and left the building. Mr. Bailey made the decision, without hesitation, to take the leaf blower out to his car to avoid having to carry it back to his office space and proceeded back to the building where he went to Ms. Jones and gave her the envelope Mr. Thacker had given to him. That is when it began. Ms. Jones shuffled him into an empty office space where she opened the partially sealed envelope and found it to contain what appeared to be junk.

Mr. Bailey stated that he was a reasonable man. He stated that he did not think about anything but getting the blower in his car and not having to deal with it for the rest of the day. Apparently, the July heat was getting back made it a distinct priority to get back in the building. Upon returning to the 6th floor, he sought out Velma Jones.

Mr. Bailey and Ms. Jones emptied the unsealed contents of the envelope on a table. Inside the worn, used envelope, they found the plethora of nondescript items. They found trespass notices to Ken Baca (the man to be carried out in a box) and Michael Batista, which said they were to stay off his property, away from him and his family, and that they were no longer his friends. There was a receipt for a 7-11 at a store in Greenwood, South Carolina. There was a scratch paper that had the details of \$80,000 dollars Blue Cross/Blue Shield 401(k) and another scratch paper with Mr. Bailey's address. There was a business card for a Whitten's Nursery Garden Center located in Anderson, South Carolina and Mr. Mitchell's expired gun permit from 2003, a check made out for \$50.00 to Ray Mitchell for cash, and three cell phones.

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Mr. Bailey and Ms. Jones emptied the unsealed contents of the envelope on a table. Inside the worn, used envelope, they found the plethora of nondescript items. They found trespass notices to Ken Baca (the man to be carried out in a box) and Michael Batista, which said they were to stay off his property, away from him and his family, and that they were no longer his friends. There was a receipt for a 7-11 at a store in Greenwood, South Carolina. There was a scratch paper that had the details of \$80,000 dollars Blue Cross/Blue Shield 401(k) and another scratch paper with Mr. Bailey's address. There was a business card for a Whitten's Nursery Garden Center located in Anderson, South Carolina and Mr. Mitchell's expired gun permit from 2003, a check made out for \$50.00 to Ray Mitchell for cash, and three cell phones.

She looked through the items and proceeded to tell Mr. Bailey that she knew Courtney was sending her a variety of messages. The expired gun permit meant that he had a gun, much like her 9 mm that she spoke to Ray and the rest of the table about at the lunch on June 21st. The nursery card meant that he knew where she lived, though she hadn't lived in that apartment in over 10 years. When she was asked if he knew where she lived, she stated, "I know where his mother lives." The 7Eleven receipt meant that he knew where her mother lived, despite the fact that he didn't admittedly didn't know where her mother lived. The cell phones were detonators for the bomb inside the leaf blower that was already safely in Mr. Bailey's vehicle in the parking lot. "You know, you see this on tv. You can activate a bomb with a cell phone. That's what I thought. That's what I thought was going on with the leaf blower." (Motion to Vacate 2 Transcript p.22, 12.16). Ms. Jones sent a tidal wave of anxiety to people who thought she knew what she was talking about. In trial, when she was asked whether he had ever said anything negative to her, she replied immediately that he had. She had to answer this question previously. The following is an exchange wherein she did her best to illustrate why the fear she had was reasonable. She failed miserably.

- 18 Q. Did he ever say anything negative to you, Ms. Jones?
19 A. To me, about me?
20 Q. Yes.
21 A. Could you clarify? What do you mean by saying 22 something negative?
23 Q. Yes.
24 A. Is that about other people? Is that about me, to me?
25 Q. Negative to you.
(Motion To Vacate Transcript p.23, 10.25).

- 1 A. Sir?
2 Q. Negative to you.
3 A. About what?
4 Q. Anything. He doesn't like the way you dress, your
5 hair, anything.
6 A. To me, about me, or to me about other people?

7 Q. To you, about you.
8 A. No.
(Id., p.24, 1.8).

ARGUMENT

1. **Whether the charge of Intimidation of a Witness was Fruit of the Poisonous Tree based on the unconstitutional arrest of the defendant for Breach of Peace.**

In South Carolina, Breach of Peace requires "any magistrate shall command all persons who, in his view, may be engaged in riotous or disorderly conduct to the disturbance of the peace." (South Carolina Code, SECTION 22-5-140). Courtney Mitchell did not breach the peace on June 21, 2013. It was a charge created to put him in jail.

The people at the table never said anything to Courtney about what he had to say. They never moved from the table. None of the patrons said anything to Courtney or the table for that matter. The charge of breach of peace was created not at the restaurant where this disturbance was allegedly going on, but after the U.P.S. had returned to work. Management helped them prepare statements.

Courtney Mitchell had placed fear I them all right. He told them that he had a file and that he was going to Atlanta to tell how things were being run in Greenville. He would tell them how he was had poor numbers, yet was salesman of the month for three consecutive months. He was going to tell them how they wouldn't accommodate him with regard to his disabilities.

2. **Whether the State and United Parcel Services, perverted the course of justice by willfully and wantonly giving false statements to tribunals.**

Beginning with the lunch on June 21, 2013, there have been a myriad of inconsistencies in the stories and statements provided by UPS and/or its employees. One thing has remained the same has been consistent, in the mind of Ms. Velma Jones she made herself the "target."

Initially, Velma Jones, Mike Leonard, Dwight Inman and Scott Brown all told the same story. Everyone was in agreement that Courtney was unhappy with UPS management. There was no dispute as to Courtney in an excited state initially said, "Have Ken Baca leave that place in a box," and then correct his misstatement saying, "I mean carrying his box of stuff walking out beside me." (See Statements dated, 6/21/2013).

The prosecution was aware of the inconsistencies yet presented their case as fact.

Jackson v. Brown, 513 F.3d 1057, 1076 n.12 (9th Cir. 2008):

"(noting that "the prosecution's knowing use of perjured testimony will be more likely to affect our confidence in the jury's decision, and hence more likely to violate due process, than will a failure to disclose evidence favorable to the defendant")."

3. **Whether the defendant was erroneously prevented from subpoenaing third parties based on the fact that the probative value far outweighed any prejudice those subpoenaed.**

Rule 17 of the South Carolina Rules of Criminal Procedure states the following:

"A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein; but the court, upon motion made promptly and in any event made at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that the books, papers, documents or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time the year offered in evidence, and may, upon their production, permit them or portions thereof to be inspected by the parties or their attorneys."

Mr. Mitchell was denied at every turn with regard to subpoenas that he issued to the true "victim" in this case. They refused to provide any of the personnel files for the victims thereby

insulating them with integrity. The materials that were subpoenaed were probative to illustrate bias. This case is a he said/she said case, with the credibility of the State's witnesses being the ultimate issue. By not having the subpoenaed materials, the defendant didn't have a chance. Defendant went on to say he had a file he was keeping on management approximately two inches thick that he was going to present to the corporate office of UPS in Atlanta to get Mr. Baca fired, thus fulfilling his goal.

Defendant was having problems with the management at the Greenwood UPS. They were giving him poor performance evaluations yet he was getting "Top Performer" awards by the corporate office in Atlanta. Defendant was intending on exposing the mismanagement at the Greenwood location. Defendant became disabled in June 2013. UPS has a history of punishing employees that are injured at work. UPS is self-insured so the expense is out of pocket. UPS will look for any reason to fire the injured worker. The police officer that filed the incident report also works part time at UPS. It was an abuse of discretion to deny the employment files to Defendant. The employment files could show a motive behind the actions of Jones and the Greenwood UPS. Jones may have some disciplinary problems or poor work performance that she is trying to deflect attention away by being a victim. The files would definitely show that the local UPS was out to get the Defendant. Defendant had a file on the local management that he was going to send to the corporate office. The local management was intentionally giving Defendant poor performance evaluations for no reason. Then Defendant gets injured at work. The local UPS needed to get rid of him. Filing the criminal charges was the best way of doing so. Defendant was threatening to expose the mismanagement in the local UPS. The police officer filing the incident report worked part time at UPS. It is doubtful another officer would have done

so in light of such fantasy. The evidence in the employment files was critical to the defense. "Evidence of bias is governed by Rule 608(c), SCRE, which states: "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Our courts have held that "anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded to his or her testimony." State v. Baker, 390 S.C. 56, 66, 700 S.E.2d 440, 444 (Ct.App.2010) (citing State v. Jones, 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2001))." See The State v. Burgess, 393 S.C. 396, 712 S.E.2d 1 (S.C. App., 2011). "Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the [394 S.C. 349] determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. All relevant evidence is admissible. Rule 402, SCRE." See The State v. Garriss, 394 S.C. 336, 714 S.E.2d 888 (S.C. App., 2011).

This Court abused its discretion by denying the employment files to Defendant. "The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion." State v. Swafford, 375 S.C. 637, 640, 654 S.E.2d 297, 299 (Ct.App.2007) (citation omitted). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." State v. Rice, 375 S.C. 302, 315, 652 S.E.2d 409, 415 (Ct.App.2007). "To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice." State v. Douglas, 367 S.C. 498, 508, 626 S.E.2d 59, 64 (Ct. App. 2006)." See State v. Howard, 682 S.E.2d 42, 384 S.C. 212 (S.C. App., 2009).

As stated previously, the defense hinged on the mental state of Jones. Was she trying to draw attention away from her poor job performance? We will never know. This is critical to a

motive behind her making up such a story. "To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof." White, 372 S.C. at 374, 642 S.E.2d at 611 (citing Fields v. Regional Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)); accord Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005). "Error is harmless when it 'could not reasonably have affected the result of the trial.'" State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (quoting State v. Key, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971)); accord State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991); Broaddus, 361 S.C. at 542, 605 S.E.2d at 583; State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct.App.2003); see also Chapman v. California, 386 U.S. 18, 22, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)." See State v. Lyles, 665 S.E.2d 201, 379 S.C. 328 (S.C. App., 2008).

CONCLUSION

Defendant Mitchell was charged with a breach of peace where there wasn't a disturbance sufficient enough to make any parties at the lunch table move or say anything to Mr. Mitchell. In fact, the spirited repartee continued until the lunch was completed. Based on the fruit of the poisonous tree. Thus, there shouldn't have been an intimidation of a witness charge.

Furthermore, Defendant Mitchell did not have the opportunity to defend himself based on the fact that he was unable to subpoena records pursuant the South Carolina Rules of Criminal Procedure. Defendant Mitchell has a constitutional right to due process which was not observed in this matter.

He is deserving of a new trial.

Respectfully Submitted,



Donald L. Smith

Attorney for the Defendant

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Anderson, South Carolina
February 29, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

State of South Carolina,

vs.

Courtney Ray Mitchell,

Defendant.

) IN THE COURT OF GENERAL SESSIONS

)

)

) THIRTEENTH JUDICIAL CIRCUIT

)

)

)

)

ORDER

)

) Case Number(s): 2013-GS-23-8607

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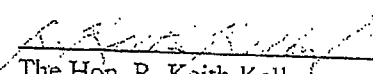
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NOW COMES BEFORE THE COURT Defendant's Motion for Reconsideration and Motion for a New Trial, dated February 23, 2015. The present action arises out of the Court sentencing the above mentioned Defendant to a period of 10 years in the Department of Corrections for Intimidation of a Witness.

NOW, THEREFORE, IT IS ORDERED that the Defendant's motions, dated February 23, 2015 are denied.

AND IT IS SO ORDERED.


The Hon. R. Keith Kelly
Seventh Judicial Circuit

February 24, 2015
Spartanburg, South Carolina

FORM 8
LETTER TO THE APPELLATE COURT CLERK
FILING MOTION FOR EXTENSION OF TIME AND MOTION TO FILE OUT OF
TIME FOR APPELLANT'S AMENDED DESIGNATION OF MATTER

June 7, 2016

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

RE: The State of South Carolina v. Courtney Ray Mitchell
Appellate Case No.: 2015-000517

Dear Ms. Kitchings:

Please find enclosed the following materials for filing in the above-referenced Appellate matter:

- (1) Appellant's Motion to File Out of Time, Amended Initial Brief and Amended Designation of Matter;
- (2) Appellant's Motion for Extension of Time to File, Amended Initial Brief Appellant's Amended Designation of Matter, and,
- (3) Proof of Service for same.

Sincerely,



Donald L. Smith, Esquire (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneyvdonaldsmith@gmail.com

Other Counsel of Record:

Jennifer Ellis Roberts
Assistant Attorney General
PO Box 11549
Columbia SC 29211

MOTION FOR AN EXTENSION TO FILE OUT OF TIME THE AMENDED
DESIGNATION OF MATTER

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517

The State of South Carolina,

Respondent,

v.

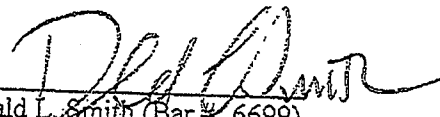
Courtney Ray Mitchell,

Appellant.

MOTION FOR EXTENSION TO FILE OUT OF TIME THE AMENDED DESIGNATION OF
MATTER AND THE AMENDED INITIAL BRIEF

Appellant respectfully moves to file late an Amended Initial Brief of the Appellant and an Amended Designation of Matter based on the need to address the matters previously designated by the Appellant, and objected to by Respondent. It is Appellant's belief that granting these respectful requests will not prejudice the State in any way.

Appellant prays that the Honorable Court grants the extension to file late the Amended Designation of Matter and Amended Initial Brief in the above-referenced Appellate matter.


Donald L. Smith (Bar #: 6699)

Attorney for Appellant

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

June 7, 2016

FORM 14
AMENDED DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In The Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Appellant.

AMENDED DESIGNATION OF MATTER TO
BE INCLUDED IN THE RECORD ON APPEAL

Appellate proposes the following be included in the Record on Appeal:

1. Motion to Quash dated February 9, 2015;
2. Transcript for Motion to Quash dated February 9, 2015
3. Motion to Dismiss with Prejudice date February 12, 2015;
4. Transcript of Record, p. 11, 6-22, 3 Motion to Dismiss with Prejudice dated February 12, 2015;
5. Motion for Stay dated January 14, 2015;
6. Motion to Stay
7. Transcript of Motion to Stay;
8. Transcript of Record, p. 51, 64, 71-73, 81-93;

I certify that this Amended Designation of Matter contains no matter which is irrelevant to this appeal.



Donald L. Smith, (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneyvdonaldsmith@gmail.com

June 7, 2016

Amended Initial Brief of the Appellant

FORM 13
AMENDED INITIAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517

The State of South Carolina,

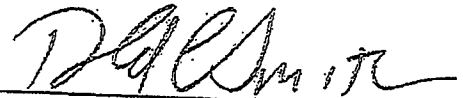
Courtney Ray Mitchell,

v.

Respondent,

Appellant.

AMENDED INITIAL BRIEF OF APPELLANT



Donald L. Smith, (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneyvdonaldsmith@gmail.com

June 7, 2016

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STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

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

Courtney Mitchell was initially arrested for Breach of Peace on June 21, 2013, hours after an incident that occurred when Mitchell was at lunch with four co-workers from United Parcel Service (UPS). The Breach of Peace that was alleged, occurred despite the fact that the reporters who took issue with Courtney's comments, *never* cautioned him that his conduct was breaching their peace. Furthermore, there were no witnesses, independent of those offered by UPS, that witnessed a breach of peace. He was put on trespass notice in conjunction with the Breach of Peace charge.

He had a couple of items delivered to UPS on July 25, 2013, one of which was a leaf blower he had gotten from a co-worker in an effort to have it repaired by one of his friends; and the other was a slightly torn envelope containing a number of nondescript items. Mitchell was arrested for Intimidating a Witness on July 29, 2013. This appeal stems from Mitchell's conviction for Intimidation of a Witness, and his receipt of the maximum sentence therefore, as a

result of jury trial on February 12, 2015. Mitchell's Motion for Reconsideration and Motion for New Trial were denied on February 24, 2015. Courtney Mitchell timely served his Notice of Appeal on March 5, 2015.

FACTS

On June 21, 2013, at around 12:30 p.m., Appellant Courtney Mitchell, who was on short term disability at the time, met four of his co-workers from UPS for lunch. At the lunch, Mitchell made a number of odd statements that were not the norm for him and were arguably the result of an episode caused by Mitchell's mental illness. His co-workers recognized that Mitchell was "not himself" during the incident. One comment that Mitchell made during the lunch was that he wanted to see Ken Baca, a manager at UPS, "leave in a box." He immediately corrected and rephrased his statement, and said that he wanted to see Baca "carrying his box of stuff walking out beside me."

Mitchell's breach of peace charge states that Mitchell threatened co-worker Ken Baca by saying that he wanted to see him being carried out in a box. It is understood that the coworkers at the lunch did not move, nor did they ask Mitchell to change his behavior or otherwise suggested that he was being disruptive. No other witnesses stepped forward (nor were any sought) to offer any supporting statements to the contentions of Mitchell's coworkers at UPS. The investigation began and ended at the UPS location on Halston Road. UPS called the police. The police came to UPS and took down the facts. At the direction of UPS, the police constructed a warrant for Breach of Peace. Courtney Mitchell was arrested based solely on the word of UPS (his co-workers).

On July 25, 2013, Mitchell, who had been put on a no trespass notice, had to return a co-worker's leaf blower that he had in his possession. He had recognized that the instrument was

not running smoothly; and, he had taken the leaf blower to a friend to have it repaired. He also dropped off a partially torn envelope containing three cell phones, and a number of other nondescript items. The envelope was to be given to Velma Jones, though there was nothing in the envelope that was her property. Moreover, there wasn't anything *within* the envelope directed to her, or with her name on it. The envelope, and its contents, formed the basis of the charge of Intimidation of Witness. The officer who brought the intimidation of a witness charge also worked for, and was paid by, UPS.

Jones, the purported victim of Intimidation of a Witness, had an obtuse explanation for every item in the package. Whereas, Darryl Bailey took the leaf blower that was returned to him and simply placed it in his car (Tr. Of Record 51:8), Jones believed the leaf blower was a bomb capable of being detonated with a cell phone. (Tr. Of Record, 82:4-5). Despite the fact that Mitchell did not know where her mother lived (Tr. Of Record 85:8-13), Jones believed that Mitchell was sending her the message because he went to a convenience store that was located in the same county as her mother's house. At trial, she told the jury that the receipt was a threat because it showed a purchase of her favorite beer. (Tr. Of Record 64:10-11). She said that a business card from a nursery in Anderson, South Carolina, was a threat against her well-being, because the nursery is near a house in which she had lived-over ten years ago. (Tr. Of Record, 72: 2-3). The fanciful explanations of the subject events concocted by Jones and the other purported "victims" has exposed Courtney Mitchell to a number of disastrous chain of events, as outlined below.

ARGUMENT

I. THE STATE FAILED TO PROVE THE ELEMENTS OF INTIMIDATION OF A WITNESS BEYOND A REASONABLE DOUBT

The trial court erred when it held that the State proved the elements of intimidation of a witness beyond a reasonable doubt. In South Carolina, intimidation of a witness is a statutory offense that consists of (1) an unlawful threat of force to (a) intimidate or impede a witness in the discharge of his duty, or to (b) destroy, impede, or attempt to obstruct or impede the administration of justice in any court. S.C. Code Ann. § 16-9-340(A); State v. Preslar, 364 S.C. 466, 613 S.E.2d 381 (2005). The term "threat" is defined as "a communicated intent to inflict harm or loss on another." Black's Law Dictionary 1519 (8th ed. 2004). Further, "intimidation" has been defined as "caused by an act knowingly and intentionally done or statement knowing and intentionally made by the defendant, which was done or made in such a manner or under such circumstances that would produce such a reaction or such fear of bodily harm in a reasonable person." U.S. v. Crosby, 416 Fed. Appx. 776 (10th Cir. 2011).

Intimidation in the constitutional sense is a type of true threat, where a speaker directs a threat to a person with the intent of placing the victim in fear of bodily harm or death; true threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. See Virginia v. Black, 538 U.S. 343, 360 (2003). To support a conviction under § 16-9-340, there must be evidence that a defendant's actions were an attempt to prevent the purported victim from continuing her activity. See Tucker v. Cherokee Cty. Veterans Affairs Office, No. 7:09-cv-193-HMH, 2009 U.S. Dist. LEXIS 66749, at *6 (D.S.C. 2009).

In the case at bar, Courtney Mitchell did not use any threat of force, nor did he intimidate Jones or attempt to impede her in the discharge of her duties as a witness. At the time the package was sent, Mitchell was unaware that Jones would be called as a witness to the breach of peace charge. Further, the State failed to establish that Mr. Mitchell made any threat to Jones.

There was no note or letter directed to Jones containing any threatening statement. The envelope which Jones received contained trash.

There was a 2003 handgun license that had been expired for some time. Mitchell had never told *anyone* the purpose of the envelope. The individual who delivered the leaf blower and envelope was not called as a witness and, therefore, did not offer anything regarding what he understood was to be delivered. The owner of the leaf blower put the leaf blower in his car without a second thought. He testified that he is a reasonable person. (Tr.49: 14-15). On the same token, Ms. Jones' belief that a receipt for beer from a convenience store in the county where her mother resided (even though it was undisputed that Mitchell did not know where she lived) and a nursery card from a nursery that she lived near over ten years ago, were not reasonable.

The State offered no evidence that Appellant threatened to physically injure the person or property of anyone, let alone Jones. No reasonable person could interpret receipts and a leaf blower as threatening or intimidating. Jones, the alleged victim, believed that the leaf blower was a bomb, and that three cell phones found in the envelope were detonators. Darryl Bailey, Jones and Courtney Mitchell's coworker and the owner of the leaf blower, did not believe the leaf blower was a bomb; he nonchalantly placed it in his vehicle. Jones had a theatrical explanation for each item in the package, and even stated that she felt the leaf blower was a bomb because of something she had seen in the news.

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

vehicle (Tr. of Record, 52:8); Jones believed that the leaf blower was a bomb capable of being detonated remotely using a cell phone. She based this belief on things she had seen in the news, not due to anything Mitchell had said or done. Basing one's purported fear of bodily harm on what is seen on television, as opposed to observations of the alleged intimidator, does not pass muster to get a conviction under § 16-9-340. There was never any evidence of the activity that Mitchell was attempting to prevent her from *continuing*, presented. For these reasons, the elements of the crime are not met; and, the conviction should be reversed.

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

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

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

breach of peace for making allegedly threatening statements against a member of management at UPS. Mitchell was at a lunch with four co-workers outside of UPS property. During the lunch, he expressed his displeasure with a member of management named Ken Baca. Mitchell said that he "would like to see him go out in a box." He immediately corrected himself and said that he would like to see his things go out in a box, with Baca walking next to it. Mitchell and the co-workers finished their lunch without any evidence of concern about Mitchell's behavior. Upon returning to work, the co-workers went to human resources at UPS and told them about what Mitchell had said. It was reported to police that Mitchell threatened an individual who was not present. It was reported that Mitchell threatened to kill someone for an offhand remark that was a mistake, with a subsequent contemporaneous correction.

To summarize, there is no basis in fact to establish that Mitchell's conversation with his co-workers was a breach of peace. No statement by Mitchell was intended to incite violence by any co-worker or any person at the restaurant. He simply made a statement that he wanted to see a manager take his belongings out in a box. Not one of the four co-workers ever expressed any discomfort regarding Mitchell's conduct to Mitchell. They did not move from the table. No independent third party was a witness to anything breaching anyone's peace, or at least the State never provided such an individual. Most importantly, Mitchell was not arrested at the scene of the alleged breach of peace, but at a later time and at a different location.

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

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

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

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

This Court should distinguish the holding in Nelson and hold that Courtney Mitchell's charge of intimidation of a witness was "fruit of the poisonous tree." Like in Nelson, where the police's initial attempt to stop the defendant was illegal, Courtney Mitchell's initial charge of

breach of peace was illegal, as detailed above. However, unlike Nelson, where running a stop sign and speeding were crimes independent of the attempted initial stop, Courtney Mitchell's charge for intimidation of a witness is not independent of the breach of peace charge. Whereas running a stop sign and speeding are crimes regardless of the circumstances, there can be no charge for intimidation of a witness charge without a prior charge. Without the illegal breach of peace charge, there would be no "witness" to "intimidate." Thus, without the illegal breach of peace charge, forwarding an envelope containing things traditionally found on a vehicle floorboard, and a borrowed leaf blower, would not constitute "intimidating a witness," as the individual receiving the package would not have been a "witness" to a crime.

This Court should distinguish the reasoning in Nelson, which essentially held that the crimes committed by the defendant subsequent to the attempted illegal stop were independent of said stop, and thus "purged the taint" of the stop, and hold that Mitchell's intimidation of a witness charge was by definition dependent upon the illegal breach of peace charge, and thus could not have "purged the taint" of the charge. Therefore, because Mitchell's intimidation of a witness charge did not "purge the taint" of the illegal breach of peace charge, this Court should hold that the intimidation of a witness charge was "fruit of the poisonous tree," and reverse Courtney Mitchell's conviction thereof accordingly.

In conclusion, this Court should hold that Courtney Mitchell's charge of intimidation of a witness was the "fruit of the poisonous tree." The initial charge for breach of peace of was illegal. The charge of intimidation of witness, by definition, is dependent upon the illegal breach of peace charge; without the illegal breach of peace charge, there would be no "witness" to "intimidate." The intimidation of witness charge was not independent of the illegal breach of peace charge, and thus did not "purge the taint" of the illegal charge. Therefore, the intimidation

of a witness charge was the "fruit of the poisonous tree," and Courtney Mitchell's conviction thereof should be reversed.

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

Courtney Mitchell contends that the trial court erred by denying him his right to due process, by failing to compel the discovery of Velma Jones' personnel file, which had previously been subpoenaed, on February 9, 2015. (Tr. Of Motion to Quash). In addition, the Court refused to dismiss the case against Mr. Mitchell due to the failure to adhere to Brady and its progeny. The motion was argued immediately prior to trial on Thursday, February 12, 2015. (Tr. Motion to Dismiss with Prejudice).

It should be noted that if the State should object to either of these issues as having been waived by not addressing them in trial, Mr. Mitchell puts forth the Futility Doctrine as justification. In particular, the Court was of the belief that discovery issues were not relevant if the issues were not going in front of the jury. The Futility Doctrine was applied in Higginbottom wherein, "the tone and tenor of the trial judge's remarks concerning her gender and conduct were such that any objection would have been futile." State v. Higginbottom, 344 S.C. 11, 542 S.E.2d 718 (2001). In the case at hand, the Court's dismissive remarks concerning Mr. Mitchell's objections to the manner in which the State provided discovery in light of Brady, were such that any further objection would have been futile.

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

The trial court granted UPS's Motion to Quash discovery of the personnel file of Velma Jones, sought by Mr. Mitchell. He had originally sought the personnel files of the co-workers that were present at the lunch, based on the fact that the Breach of Peace was not devised until the co-workers had returned to UPS and counseled with their superiors. Based on the fact that the State only intended to call Ms. Jones, the alleged victim in this intimidation charge, Mitchell moved only to acquire her personnel file. Mitchell believes that there is evidence that would show that Jones was being passed over for promotion at UPS, and initiated the Intimidation of a Witness to cause people to feel sorry for her and, perhaps give further thought to promoting her. Jones became a victim in order for UPS to overlook whatever it was that was preventing her advancement.

As discussed above, Jones likened the return of the leaf blower to a terroristic act, with an allegation that the leaf blower contained a bomb (despite the fact that she never saw it). She fed her co-workers' fear of potential terroristic acts, with baseless claims. Her vivid imagination provided an explanation for every useless piece of paper found in the envelope, ultimately relating them to herself. She created a furor by announcing that a leaf blower, that had been safely placed in a vehicle by its owner, was a bomb. She then stated that Mr. Mitchell purposefully put three cell phones in the envelope because they were detonators. None of the outrageous claims that she made proved to be true. It can logically be deduced that the claims were not made by a reasonable person because prior to her announcement of terrorist activities, everyone was moving forward without hesitation.

Based on the baseless claims, of Ms. Jones, it became necessary to look into what might be driving her to make such claims. Her failure to advance at UPS, demonstrated a possible motive for pursuing the charge. She maintained an employment relationship with UPS. She had

helped to get the original Breach of Peace charge against Mr. Mitchell, even though she did absolutely nothing to indicate to him that he was doing *anything* wrong during the course of the lunch. Without her personnel file, he was unable to review her employment history to derive whether there was something that illustrated bias. Based on the fact that her claims were not credible in any way, it was necessary to have her file.

It is Mitchell's belief that Jones's personnel file would shed some light on her motivation for concocting such wild allegations. Much like the plaintiff in Yoho v. Thompson, 336 S.C. 23, 518 S.E.2d 286 (2000), Courtney Mitchell deserved the opportunity to thoroughly cross-examine Ms. Jones to uncover any bias that she may have. Without her personnel file, the jury was only able to see an individual insulated from any true inquiry into a potential motive.

Mr. Mitchell was also denied the opportunity to get *his* personnel file. He is able to get his personnel file in a Workers' Compensation case involving money damages. However, the Court refused to allow him to show that the claims regarding his ineptitude by Ms. Jones—no less, were less than credible. It is not logical that an individual may collect his or her personnel file to perfect a Workers' Compensation claim, but is unable to collect the personnel file that may be the difference between freedom and a ten-year sentence.

Mr. Mitchell moved for a dismissal of the charge due to the State's failure to provide discovery in a manner that reflects the idealistic intention of Brady, to safeguard the ability to defend oneself, as extolled by the Constitution.

In addition, the State has a duty to disclose evidence favorable to a defendant. See generally Brady v. Maryland, 373 U.S. 83 (1963). Suppression of evidence favorable to an accused violates due process where the evidence is material. Id. At 87. There are three categories of Brady violations: (1) cases involving nondisclosed evidence or perjured testimony

about which the prosecutor knew or should have known; (2) cases in which the defendant specifically requested the nondisclosed evidence; and (3) cases in which the defendant made no request or only a general request for Brady material. State v. Moses, 390 S.C. 502, 516-17, 702 S.E.2d 395, 403 (S.C. 2010). Evidence considered favorable to the defendant includes both exculpatory and impeachment evidence, and extends to evidence that is not in the actual possession of the prosecution, but also to evidence known by others acting on the government's behalf, including the police. Id. To show prejudice resulting from the exclusion of evidence, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof. State v. Lyles, 379 S.C. 328, 334, 665 S.E.2d 201, 204 (S. C. Ct. App. 2008).

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

UPS gave Respondent what it wanted. In essence, UPS was given a deputy's badge, similar to the sheriff's auxiliary in some jurisdictions. It is suspect that so much evidentiary material was withheld from Mitchell. There is no reason for two blank areas in the video. Similar to the eighteen and one-half minute gap in the Nixon White House Tapes, Respondent appears to have been hiding something. Where there is smoke, there is fire.

In sum, Courtney Mitchell was deprived of evidence critical to his defense. Employee records of UPS personnel would have shed light on a possible conspiracy to oust Mitchell from the company. Particularly, Jones's records would have shed light on a possible conspiracy to oust Mitchell from the company, or to simply bolster her efforts to secure elevation within the company. Particularly, Jones's records would have shed light on the outlandish story that she told regarding the leaf blower.

Respondent entirely withheld some evidence, including portions of the video of the subject incident. Police statement(s) that were given to the State psychiatrist who was assessing Mr. Mitchell's competency, but not given to the defense. Part of the supplement to the Incident Report was withheld until February 10, 2015 (2 days prior to trial), when it had been signed off by the necessary supervisor in August of 2013. Other evidence was withheld for so long as to prevent Mitchell from incorporating it in his defense, such as the parts of the video that were actually provided and the supplement to the incident report. Mitchell was prejudiced by these illegal withholdings. Therefore, this Court should reverse his conviction for intimidation of a witness, based on the State's, in conjunction with UPS, willful and wanton failure to provide complete discovery at the time that it became available to the State, and/or its agent, UPS.

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

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

2009). The four factors must be considered along with any other relevant circumstances. Id. If the defendant shows actual prejudice, the court must consider the prosecution's reasons for the delay and balance the justification for delay with any prejudice to the defendant. State v. Brazell, 325 S.C. 65, 72, 480 S.E.2d 64, 68-69 (S.C. 1997). Showing actual substantial prejudice only requires a reasonable probability that, absent the delay, the result of the proceeding would have been different. Jones v. Angelone, 94 F.3d 900, 908 (4th Cir. 1996). An indictment should be dismissed if a delay was an intentional device by the State to gain a tactical advantage. State v. Brazell, 325 S.C. at 72. If a court concludes that a defendant's right to a speedy trial has been violated, dismissal of the charges is the only possible remedy. State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (S.C. 2012).

The basis for Mitchell's intimidation of a witness charge was the unlawful breach of peace charge. As discussed above, there was no basis for the breach of peace charge. It focused on Mitchell's statement that he would like to see UPS manager carrying his belongings in a box. Such a statement certainly would not tend to incite others to commit violence or any other illegal act. There was no reaction by the witnesses to Mr. Mitchell's conduct that day at lunch. Clearly, if the conduct did not produce a single objection from four people, there is no way that it could be considered as being conduct that tends to incite others to commit violence or other illegal acts.

Despite conceding that breach of peace is not a general sessions charge (See Mot. To Stay Tr., 5:1-3), the State removed the charge from the municipal court's jurisdiction. The State gave no further explanation for the interference. The State knew that the breach of peace charge was baseless, and did not want the charge to be tried before the intimidation of a witness charge. If Mitchell were exonerated of the breach of peace charge, the State's case for the intimidation of a witness charge would have fallen apart. The State was manipulating the docket to fit its own

end. It refused to prosecute, despite Mitchell's requests for a speedy trial. Mitchell was prejudiced by the denial of a speedy trial because he had to defend himself against a charge of intimidation of a witness which would have been without merit had he been exonerated of breach of peace.

In conclusion, Courtney Mitchell's right to a speedy trial was violated. The State maintained that Mr. Mitchell was attempting to intimidate a witness for a simple breach of peace charge, a charge that the defense believed would be dismissed prior to the empanelling of a jury. The State did not show that Mr. Mitchell was aware that Ms. Jones was a witness to anything given the fact that she did not make any direct or circumstantial statement regarding his conduct at the lunch. Additionally, the State did not show that Mr. Mitchell somehow knew that Ms. Jones met with the UPS hierarchy, along with her co-workers, to provide the impetus for the Breach of Peace charge. The police, who were being paid by UPS, manufactured a breach of peace charge from the lunch event, despite the fact that the lunch had disbanded hours before without incident.

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

CONCLUSION

Jones assumed that Mitchell was intending to deter her from testifying against him in the Breach of Peace case, by sending the envelope with the leaf blower. There is no way that he would have known that she was part of a quest to have him arrested. First, she (nor did anyone else at the table) did not say anything negative to him about his conduct at the lunch. In fact, she "may" have spoken to him about her 9 mm at the lunch, which invited him to continue to speak of guns. Second, and most importantly, Jones never corresponded with Courtney again, following the lunch.

Jones and the rest of team UPS went to Human Resources following the lunch, which is where the Breach of Peace charge was hatched. Courtney was not privy to anything that was said or done at the Halston Road location. When he was charged with the Breach of Peace, it was understood that carrying Ken Baca out in a box, and referring to Dwight Inman as a towel-head taxi driver, formed the basis for the charge. Hence, he sent them both trespass notices in which he said they were no longer his friends, and that they needed to stay away from him and his family.

His failure to send anyone else a like declaration indicates that he had no knowledge of anyone else's involvement. Gina "Velma" Jones was Courtney's friend. He had absolutely no reason to believe that she would attempt to have him prosecuted. Without the knowledge that Velma was instrumental in the creation of the Breach of Peace charge, there is *absolutely nothing* that supports him having a reason to intimidate her for a peace that she herself, with her inaction at the lunch, verified that he did not breach.

In summary, the State did not prove Courtney Mitchell's the elements of intimidation of a witness, with the use of hot phrases and catch words. Mitchell neither threatened nor intimidated

Jones. In determining whether a defendant's acts did in fact cause intimidation, courts employ a reasonable person standard, and determine whether the acts would produce a fear of bodily harm in a reasonable person. The alleged victim, Jones, stated that the borrowed leaf blower was a bomb, and three cellphones, or at least one of them, was a detonator. She subsequently said that she realized this scenario due to her television viewership. Such a belief was not based on Mr. Mitchell's statements (whether direct or circumstantial) or actions. A reasonable person would not have been overcome with fear of bodily injury with knowledge of the presence of a leaf blower, as evidenced by the owner summarily dismissing the leaf blower to his car upon receipt.

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

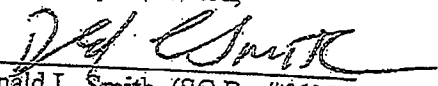
The intimidation of a witness charge that followed the unconstitutional breach of peace charge was "fruit of the poisonous tree." By definition, the intimidation of a witness is dependent upon the prior commission of a crime. As opposed to a new and distinct crime, which would be committed independently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

Finally, the trial court erred in denying Courtney Mitchell his right to due process. The trial court refused to enforce subpoenas and a Brady request that sought materials critical to Mitchell's defense. The subpoena sought UPS employee records of Jones, which may have shed light on issues such as the motive which drove Jones to concoct such imaginary suspicions of leaf blowers and cellphones. The State failed to produce the entire surveillance video of the drop-off of the leaf blower and envelope. Police statements which were given to Mitchell's psychiatric competency evaluator, were withheld by the State. Respondent withheld other crucial evidence, such as the supplemental incident report and snippets of the video, until it was too late to incorporate the materials in Mitchell's defense. Further, Mitchell was prejudiced by the denial of his right to a speedy trial. The State manipulated the dockets and removed the breach of peace charge from the municipal court's jurisdiction, knowing that Mitchell's exoneration of the charge would eliminate the grounds for the intimidation of a witness.

Therefore, for the reasons stated herein, this Court should hold that the trial court erred by: (1) holding that the State did not prove the elements of the Intimidation of a Witness; (2) failing to declare Courtney Mitchell's arrest for breach of peace unconstitutional; (3) failing to declare that Courtney Mitchell's intimidating a witness charge was "fruit of the poisonous tree" (4) denying Courtney Mitchell his right to due process; and, (5) denying Courtney Mitchell his right to a speedy trial.

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

Respectfully submitted,


Donald L. Smith, (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864)-642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
June 7, 2016.

Initial Brief of the Respondent

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2015-000517

THE STATE,

Respondent,

v.

COURTNEY RAY MITCHELL,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Appellant's argument that the State failed to prove his guilt of intimidation of a witness beyond a reasonable doubt is not a proper issue for appellate review and cannot be a trial court error because the trial court did not make such a holding during trial. However, to the extent the Court may construe Appellant's argument as one regarding the denial of his directed verdict motion, the trial court correctly denied that motion based on the evidence presented.

II.

Appellant's argument that the trial court erred by failing to declare that his arrest for breach of peace was unconstitutional is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court.

III.

Appellant's argument that the trial court erred by failing to hold that the intimidation of a witness charge was the "fruit of the poisonous tree" is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court.

IV.

The trial court provided Appellant his right to due process in regard to discovery and enforcing the State's obligation to disclose all material, exculpatory, and impeachment evidence to the defense.

V.

Appellant's argument that the trial court erred by denying his right to a speedy trial is not preserved for appellate review because, in regard to the charge for which he was convicted and challenges in this appeal, it was neither raised to nor ruled upon by the trial court.

STATEMENT OF THE CASE

A Greenville County Grand Jury indicted Appellant for intimidation of a witness. (R.* Indictment.) On February 12, 2015, Appellant proceeded to a trial before the Honorable R. Keith Kelly and a jury. Donald L. Smith, Esquire, represented Appellant, and Assistant Solicitor James Hardy Price, IV, Esquire, represented the State. The jury found Appellant guilty, and Judge Kelly sentenced him to ten years' imprisonment. (Feb. 12, 2015 Tr. 156.)

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On or about June 22, 2013, Appellant met with the team he used to work with at UPS for a lunch gathering. (Feb. 12, 2015 Tr. 56, lines 9–14; Tr. 58, lines 11–14.) He made erratic and derogatory statements and told the group he had a new military-grade sniper rifle with armor-piercing bullets. (Feb. 12, 2015 Tr. 56, lines 15–19.) He also told the group “his fixation was to carry—for the [UPS] director of inside sales to be—to leave that place in a box and corrected himself and said, ‘I mean with a box and me beside him.’” (Feb. 12, 2015 Tr. 56, lines 20–25.) His former team coach, Gina Jones, reported the incident to her Human Resources department at UPS and Appellant was arrested for breach of peace. (Feb. 12, 2015 Tr. 5, lines 13–23; Tr. 57, lines 19–24.) She was expected to testify against him. (Feb. 12, 2015 Tr. 58, lines 8–10.)

On July 26, 2013, before the breach of peace case was called for trial, a man dropped off a package at the UPS office for Derrill Bailey, an inside sales representative. The package contained Bailey’s leaf blower, which he had given to Appellant to have repaired. (Feb. 12, 2015 Tr. 44, lines 21–25; Tr. 46, line 14–Tr. 47, line 8.) Along with the leaf blower, the man gave Bailey an envelope for Gina Jones. He delivered it to Jones and they both looked through it, finding three cell phones; a check written to cash for \$50; two trespass notices; a concealed weapons permit (CWP); a Whitten’s Nursery business card; a note referencing an earlier text message Jones had received from Appellant, which was written on the letterhead of a hunting club; and a receipt from a 7-Eleven near Jones’s mother’s house. (Feb. 12, 2015 Tr. 44, line 21–Tr. 48, line 1; Tr. 58, line 15–Tr. 60, line 2; Tr. 104, lines 10–11; Tr. 106, lines 8–15.) After Bailey reported the incident to a police officer and Jones reported it to Human Resources, a warrant was issued for Appellant’s arrest on the charge of intimidation of a witness. (Feb. 12, 2015 Tr. 50, line 2–Tr. 51, line 23; 110, lines 14–25; R* Indictment.)

Appellant subsequently filed a motion to vacate orders of protection and a motion to compel and served them on UPS, and on February 9, 2015, Appellant's attorney and the attorney for UPS went before Judge Kelly regarding UPS's motion to quash these motions. (Feb. 9, 2015 Tr. 4, lines 2-17.) Judge Miller previously held a hearing on July 11, during which he denied Appellant's motion to compel information regarding 401(k) information. (Feb. 9, 2015 Tr. 4, lines 12-23.) Appellant again sent subpoenas asking for the same information, and UPS filed a motion to quash. (Feb. 9, 2015 Tr. 5, lines 3-11.) Appellant then sent two more subpoenas, including one for Gina Jones, seeking the exact same information Judge Miller denied. (Feb. 9, 2015 Tr. 5, lines 12-20.)

Appellant argued Judge Miller's earlier ruling used the word "it" and, thus, he did not know which of the motions Judge Miller was ruling on. (Feb. 9, 2015 Tr. 7, lines 9-19.) He also told Judge Kelly he had requested a speedy trial on the breach of peace charge. (Feb. 9, 2015 Tr. 7, lines 20-23.) Appellant then stated his understanding was that the breach of peace charge was not going to trial. (Feb. 9, 2015 Tr. 7, lines 23-24.) He argued the intimidation of a witness charge was based on a charge that was no longer there. (Feb. 9, 2015 Tr. 7, line 24-Tr. 8, line 3.) He then stated he had subpoenaed both his own and Jones's personnel files. (Feb. 9, 2015 Tr. 8, lines 14-19; Tr. 9, lines 12-23.) Judge Kelly asked Appellant and UPS to get anything to him by the next day so that he could review and consider it before the trial started. (Feb. 9, 2015 Tr. 11, lines 1-10.)

On February 12, 2015, Appellant proceeded to trial before Judge Kelly and a jury. Defense counsel did not mention the subpoenas or ask for a ruling on his motion to compel. He also did not mention the personnel files. Defense counsel argued pretrial that nothing connected the victim in this case to the breach of peace charge and, therefore, no evidence concerning the alleged breach of peace should be allowed. The State argued the breach of peace charge was part

of the *res gestae*. (Feb. 12, 2015 Tr. 5, line 13–Tr. 6, line 20.) After the State listed the evidence it would present and defense counsel argued about why it should not be admissible, the trial court ruled the evidence was admissible. (Feb. 12, 2015 Tr. 6, line 21–Tr. 7, line 23.) The trial court then asked whether the State would bring in the prior charge or just the facts of the incident. (Feb. 12, 2015 Tr. 8, lines 23–25.) The trial court determined the State could both mention that Appellant was charged with breach of peace and call witnesses to testify to the facts regarding that incident. (Feb. 12, 2015 Tr. 10, lines 3–19.)

Next, defense counsel argued a motion for dismissal based on alleged difficulties getting discovery from the State. (Feb. 12, 2015 Tr. 11, lines 8–17.) Specifically, he argued he was given a UPS security video on January 15 that had “gaps” in it. (Feb. 12, 2015 Tr. 11, lines 17–25.) The solicitor explained he had requested the video long ago but did not receive it until recently and gave a copy to defense counsel as soon as he got it from UPS. (Feb. 12, 2015 Tr. 12, lines 10–19.) After determining the State had the exact same video with gaps, and that the State had given defense counsel everything it had, the trial court denied Appellant’s motion to dismiss. (Feb. 12, 2015 Tr. 13, lines 5–25; Tr. 20, lines 10–21.)

The case then proceeded to trial. First, the State called Keith McNeel, the UPS supervisor responsible for facilities, safety, and security. (Feb. 12, 2015 Tr. 35, lines 4–25.) He verified the security cameras were working on July 26, 2013, and that he was able to obtain video from the security footage for that morning. (Feb. 12, 2015 Tr. 36, lines 11–25.) He identified State’s Exhibit No. 1 as the video, and it was admitted into evidence without objection and played for the jury. (Feb. 12, 2015 Tr. 37, line 19–Tr. 38, line 20.) On cross-examination, defense counsel asked if McNeel was concerned there were two gaps of forty-eight and forty-nine seconds in the four-minute video. (Feb. 12, 2015 Tr. 40, line 25–Tr. 41, line 2.) McNeel stated he was not concerned, that he did not have any control over the video, and that he could

not have cut out any portions; rather, he left it just as he received it from the security group. (Feb. 12, 2015 Tr. 41, lines 3–19.)

Next, the State called Wiley Derrill Bailey, an inside sales representative for UPS, who testified that on July 26, 2013, he saw a man in the lobby of UPS with the leaf blower he had previously given to Appellant to have repaired. (Feb. 12, 2015 Tr. 43, line 21–Tr. 46, line 11.) Bailey also testified the man had a manila envelope with him, which Bailey looked through with Gina Jones. (Feb. 12, 2015 Tr. 46, line 12–Tr. 47, line 21.) Inside the envelope were three cell phones, a concealed weapons card with Appellant's picture on it, a check for cash in the amount of \$50, and possibly some more items. (Feb. 12, 2015 Tr. 47, line 22–Tr. 48, line 1.) Bailey talked to a police officer about it, and Jones took the envelope to Human Resources. (Feb. 12, 2015 Tr. 50, lines 2–5; Tr. 51, line 20–Tr. 52, line 2.)

Gina Jones testified next, explaining she was a team coach at UPS on July 26, 2013, and that Appellant was previously an inside sales representative on her team. (Feb. 12, 2015 Tr. 53, line 3–Tr. 54, line 11.) She recalled that early that morning, around 1:00 a.m., she received a text message from Appellant concerning an \$80,000 offer from an attorney, in which he referred to Jones as his sister and told her to send his belongings to an address in Abbeville. (Feb. 12, 2015 Tr. 55, lines 11–25.) She testified that approximately a month before that date, she and her team had gone to lunch with Appellant, who was no longer working with them at the time. (Feb. 12, 2015 Tr. 56, lines 9–14.) During the lunch, Appellant behaved erratically, told everyone about owning a new military-grade sniper rifle with armor-piercing bullets and said his fixation was for the director of inside sales to leave that place in a box. (Feb. 12, 2015 Tr. 56, lines 15–22.) She testified Appellant had then corrected himself and said he meant leave with a box and beside him. (Feb. 12, 2015 Tr. 56, lines 22–23.) Appellant also made derogatory statements, used racial slurs, and called specific UPS employees names. (Feb. 12, 2015 Tr. 56, lines 23–25.)

Jones stated he was very loud and boisterous and that it was both embarrassing and scary. ((Feb. 12, 2015 Tr. 57, lines 8–12.)) She felt obligated to alert her management team because Appellant threatened the life of one of her managers, so she notified Human Resources when she returned to work from lunch. (Feb. 12, 2015 Tr. 57, lines 12–22.)

Jones then testified again regarding July 26, 2013, the day she received the envelope. (Feb. 12, 2015 Tr. 58, line 15–Tr. 59, line 2.) She testified that inside the envelope were three cell phones; two trespass notices for Dwight Inman (another inside sales representative at UPS) and Ken Baca (the director of inside sales); a CWP; a Whitten's Nursery business card; a note referencing the text message she had received from Appellant earlier that morning that was written on the letterhead of a hunting club; and a receipt from the 7-Eleven near her mother's house. (Feb. 12, 2015 Tr. 59, line 15–Tr. 60, line 2.) At that point, Appellant objected on the basis of relevancy, but the trial court advised him the contents had not been offered into evidence yet. (Feb. 12, 2015 Tr. 60, lines 3–5.) The solicitor then showed each item to Jones, had her identify it, and moved them all into evidence without objection by Appellant. (Feb. 12, 2015 Tr. 60, line 6–Tr. 63, line 19.) Jones testified that when she saw the items, and based on things Appellant knew about her from working closely together (such as her favorite beer which was listed on the receipt), she felt he was sending her a message that "he has a gun, and he knows where I live, he knows where my family lives." (Feb. 12, 2015 Tr. 63, line 22–Tr. 64, line 11.) She stated, "I was very upset that he took this method of trying to let me know that he knew these things and it all was in relation to the events that happened in June. He scared me. He scared my family." (Feb. 12, 2015 Tr. 64, lines 17–21.) When asked if she was afraid to testify against Appellant after receiving the items, she said she was. (Feb. 12, 2015 Tr. 64, lines 22–24.)

Lastly, the State called Detective Gregory Scott Wood of the Greenville Police Department, who was working at UPS on special assignment on July 26, 2013. (Feb. 12, 2015 Tr. 102, line 10–Tr. 103, line 25.) He testified he found out from Keith McNeel that Appellant had contacted Bailey by phone and Jones and another employee by text. (Feb. 12, 2015 Tr. 105, lines 20–25.) Detective Wood related that there was concern Appellant might make contact with current employees after the incident from the lunch. (Feb. 12, 2015 Tr. 106, lines 3–7.) Wood was notified that a package had been delivered so he went to Mr. Baca’s office to examine it and learn more about the situation. (Feb. 12, 2015 Tr. 106, lines 8–17.) He testified the package contained three cell phones, a CWP, a check for \$50, a receipt from the 7-Eleven, a nursery business card, and the letters to Inman and Baca for trespass notice. (Feb. 12, 2015 Tr. 106, lines 19–25.)

On cross-examination, Detective Wood testified he spoke to Jones and sensed fear in her. (Feb. 12, 2015 Tr. 108, lines 18–20.) He stated that he believed her fear was absolutely reasonable. (Feb. 12, 2015 Tr. 113, lines 17–22.) When asked if he knew of anything that would make Appellant want to intimidate Jones, he testified he knew Jones was part of the reason Appellant had been charged with breach of peace for the lunch incident. (Feb. 12, 2015 Tr. 114, lines 16–21.) When asked what force Appellant used to try to intimidate Jones, he testified, “Psychological force.” (Feb. 12, 2015 Tr. 115, lines 1–2.)

The State rested, and Appellant moved for a directed verdict arguing “there’s been no offering of threat” and “no showing of intent.” (Feb. 12, 2015 Tr. 115, line 22; Tr. 116, lines 22–25.) The State argued enough evidence existed between sending one’s CWP, along with the receipt and business card, combined with Appellant’s talking about killing a co-worker and having firearms and armor-piercing bullets. (Feb. 12, 2015 Tr. 117, line 21–Tr. 118, line 3.) The trial court denied the motion, reminding Appellant the court does not weigh the evidence but

rather is only concerned with whether any evidence exists. (Feb. 12, 2015 Tr. 118, lines 6–13.)

Defense counsel introduced various exhibits and then rested without calling any witnesses or having Appellant testify. (Feb. 12, 2015 Tr. 118, line 19–Tr. 125, line 18.)

After closing arguments and the jury charge, the jury found Appellant guilty and the trial court sentenced him to ten years' imprisonment. (Feb. 12, 2015 Tr. 149, lines 1–7; Tr. 156, lines 19–20.)

ARGUMENT

I.

Appellant's argument that the State failed to prove the elements of intimidation of a witness beyond a reasonable doubt is not a proper issue for appellate review and cannot be a trial court error because the trial court did not make such a holding during trial. However, to the extent the Court may construe Appellant's argument as one regarding the denial of his directed verdict motion, the trial court correctly denied that motion based on the evidence presented.

Appellant argues "[t]he trial court erred when it held that the State proved the elements of intimidation of a witness beyond a reasonable doubt." (App.Br.4.) However, the trial court made no such "holding." Rather, the trial court thoroughly charged the jury on the State's burden of proof, the presumption of innocence, and the elements of the offense (Feb. 12, 2015 Tr. 135–47), and *the jury* found the State had proved its case beyond a reasonable doubt when it found Appellant guilty. (Feb. 12, 2015 Tr. 149, lines 2–7.) To the extent Appellant's argument could be generously construed as one based on the denial of Appellant's directed verdict motion, the trial court properly denied that motion based on the existence of the evidence presented. Consequently, Appellant's stated issue is not proper for appellate review, and in any event the trial court correctly denied his directed verdict motion.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not with its weight. State v. Pearson, 415 S.C. 463, 469, 783 S.E.2d 802, 805 (2016). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. at 470, 783 S.E.2d at 806. The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id. at 469, 783 S.E.2d at 805. A defendant is

entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. (citations omitted).

Section 16-9-340 of the South Carolina Code provides:

(A) It is unlawful for a person by threat or force to:

(1) intimidate or impede a judge, magistrate, juror, witness, or potential juror or witness, arbiter, commissioner, or member of any commission of this State or any other official of any court, in the discharge of his duty as such; or

(2) destroy, impede, or attempt to obstruct or impede the administration of justice in any court.

(B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

S.C. Code Ann. § 16-9-340 (2015).

Appellant argues Appellant did not use any threat or force. He argues the State failed to establish Appellant made any threat to Jones and specifically points out “[t]here was no note or letter directed to Jones containing any threatening statement.” (App.Br.5.) However, the State elicited testimony from both Jones and Detective Wood that the combination of the previous threat regarding a coworker and the contents of the envelope, which included Appellant’s CWP and personal information about Jones and her family, were enough to cause Jones to feel threatened. Jones testified that when she saw the items, and based on things Appellant knew about her from working closely together (such as her favorite beer which was listed on the receipt), she felt he was sending her a message that “he has a gun, and he knows where I live, he knows where my family lives.” (Feb. 12, 2015 Tr. 63, line 22–Tr. 64, line 11.) She stated, “I was very upset that he took this method of trying to let me know that he knew these things and it all was in relation to the events that happened in June. He scared me. He scared my family.”

(Feb. 12, 2015 Tr. 64, lines 17–21.) When asked if she was afraid to testify against Appellant after receiving the items, she said she was. (Feb. 12, 2015 Tr. 64, lines 22–24.) When Wood was asked how Appellant threatened Jones, he testified that based on everything he knew about what happened the day of the lunch, combined with the package and the leaf blower, he sensed fear in Jones and found her fear to be absolutely reasonable. (Feb. 12, 2015 Tr. 113, lines 1–22.) When asked what force Appellant used to try to intimidate Jones, he testified, “Psychological force.” (Feb. 12, 2015 Tr. 115, lines 1–2.)

One tactic Appellant takes in his brief is to repeatedly claim that Jones is not a reasonable person and to offensively claim she gave theatrical explanations for the items in the envelope. However, Appellant’s sweeping generalization that “no reasonable person could interpret receipts and a leaf blower as threatening or intimidating” (App.Br.5.) ignores the most troubling items and Jones’s direct testimony that she interpreted the sending of the items as a message that “he has a gun, and he knows where I live, he knows where my family lives.” (Feb. 12, 2015 Tr. 63, line 22–Tr. 64, line 11.) Furthermore, even if Appellant believes a “reasonable person” would not have interpreted the items the way Jones did, that would be a decision for the jury, not Appellant or the trial judge. In any event, it is not a standard appearing anywhere in the language of the statute, nor for reviewing a directed verdict motion. The trial court could only base its directed verdict ruling on the existence of evidence from which a reasonable juror could find Appellant guilty, not on whether the victim’s reaction was reasonable. See Pearson (quoting State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016) (“[T]he court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.”)). Indeed, only the jury was tasked with determining whether Jones was reacting in a reasonable manner when it determined the State met its burden in proving the elements of the crime.

Because the State presented evidence Jones was intimidated by Appellant's implied threat to her and her family, and additionally feared testifying against Appellant after receiving the package, sufficient evidence did exist reasonably tending to prove the guilt of Appellant so that the case should go to the jury. The trial court properly denied Appellant's directed verdict motion, and this Court should affirm.

II.

Appellant's argument that the trial court erred by failing to declare that his arrest for breach of peace was unconstitutional is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court.

Appellant argues the trial court erred by failing to declare that his arrest for breach of peace was unconstitutional. However, this issue was neither raised to nor ruled upon by the trial court. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge."); see also State v. Langford, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012) ("Constitutional questions must be preserved like any other issue on appeal."). Therefore, it is not preserved for appellate review.

Appellant argues, for the first time in this case, that "there is no basis in fact to establish that [Appellant]'s conversation with his co-workers was a breach of peace." (App.Br.7.) He claims, "He simply made a statement that he wanted to see a manager take his belongings out in a box." (App.Br.7.) This statement is disingenuous, however, because Jones's testimony was that Appellant *first* said his fixation was for the director of inside sales to "*leave that place in a box*" and only then did he correct himself and say he meant "*with a box*" with him beside the director. Appellant admits he made the original statement but asks this Court to consider only the portion made after he "corrected" himself. (App.Br.7.) Appellant also claims none of the other co-workers expressed any discomfort regarding his statements at the lunch and that he did not say anything about or to the co-workers who were there. Finally, he claims he was not arrested at the scene of the incident.

None of the above claims, or the argument as a whole, in any way demonstrate an error by the trial court regarding a failure to declare the breach of peace arrest unconstitutional,

particularly where that arrest did not lead to the conviction that is the subject of this appeal.

Appellant never asked the trial court to make a determination that his underlying conviction was unconstitutional, so he cannot argue now that the trial court erred in failing to dismiss his current charge on that basis.

In any event, Appellant has failed to articulate any valid grounds to support the notion that his arrest for breach of the peace was in fact unconstitutional. His argument amounts to a challenge to the factual basis for the arrest, not a claim that any particular constitutional provision was violated. As such, it is without merit and must be denied and dismissed.

III.

Appellant's argument that the trial court erred by failing to hold that the intimidation of a witness charge was the "fruit of the poisonous tree" is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court.

Appellant argues the trial court erred by failing to hold that the intimidation of a witness charge was the "fruit of the poisonous tree." This issue was not raised to or ruled upon by the trial court and, thus, it is not preserved for appellate review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge."). Furthermore, the State submits Appellant has misconstrued the "fruit of the poisonous tree" doctrine.

"The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality." State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996) (citing Wong Sun v. United States, 371 U.S. 471 (1963)) (internal quotations omitted). "However, the challenged evidence is admissible if it was obtained from a lawful source independent of the illegal conduct." Id. (internal citations omitted).

Here, Appellant seems to equate the "fruit of the poisonous tree" doctrine, concerning the suppression of evidence, with an argument about the propriety of criminal charges. He argues the underlying breach of peace charge is unconstitutional and, therefore, the resulting intimidation of a witness charge cannot stand because "[w]ithout the illegal breach of peace charge, there would be no 'witness' to 'intimidate.'" (App.Br.9.) The rationale behind the "fruit of the poisonous tree" doctrine and the judicially created exclusionary rule is to penalize police who use illegal actions by suppressing evidence discovered as a result of those illegal actions. See State v. Adams, 409 S.C. 641, 653, 763 S.E.2d 341, 348 (2014) ("The exclusionary rule is a

judicially created remedy for a Fourth Amendment violation [and its] primary rationale is to deter police misconduct. Where there is no misconduct, and thus no deterrent purpose to be served, suppression of the evidence is an unduly harsh sanction.”). In this case, not only were there no illegal actions by police, but there is no articulated evidence Appellant was trying to suppress. Thus, in addition to being unpreserved for appellate review, this doctrine is inapplicable to the case at hand.

Appellant argues this Court should distinguish this case from the holding State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999), where the Supreme Court determined Nelson’s charges were not “fruits of the poisonous tree” but rather new and distinct criminal acts. In Nelson, a police officer was driving behind the defendant and flashed his high beam lights to get the defendant’s attention. The defendant drove through a stop sign and the officer conducted a traffic stop. After stopping the vehicle, the officer smelled alcohol, but the defendant refused to participate in field sobriety tests. On appeal, the Supreme Court held that even if the initial attempt to stop the defendant would have violated the Fourth Amendment, the officer was justified in making the stop after the defendant committed the subsequent traffic infractions, rationalizing that a strong policy reason exists for holding that “a new and distinct crime, even if triggered by an illegal stop, is a sufficient intervening event to provide independent grounds for arrest.” Id. at 194, 519 S.E.2d at 790.

Appellant argues this case is different from Nelson because intimidation of a witness is not a new and distinct crime but rather depends on the earlier crime of breach of peace. He urges this Court to find that Appellant’s intimidation of a witness charge did not “purge the taint” of the allegedly illegal breach of peace charge, consider it “fruit of the poisonous tree,” and reverse his conviction.

To the extent this Court finds Appellant has sufficiently articulated an argument about whether the intimidation of a witness charge can stand based on his understanding that the breach of peace charge was later dismissed, federal cases provide some guidance in this area. Generally, courts have determined intimidation of a witness to a pending charge is still a crime even if the charge is later dismissed. United States v. White, 256 F. App'x 333 (11th Cir. 2007). "Accepting [the] position [that it is not] would only encourage witness intimidation." Id. at 340. See also United States v. Griffin, 463 F.2d (10th Cir. 1972) (finding charge involving threats and force to intimidate witnesses applies to *prospective* witnesses, where witness is defined as one who knows, or is supposed to know, material facts and is expected to testify). Thus, even if the breach of peace charge was dismissed two days after this trial, it was an indicted charge at the time of trial and its subsequent dismissal has no impact on the validity of Appellant's conviction.

IV.

The trial court provided Appellant his right to due process in regard to discovery and enforcing the State's obligation to disclose all material, exculpatory, and impeachment evidence to the defense.

Appellant argues the trial court denied him his right to due process by failing to enforce his subpoenas and discovery requests. Specifically, Appellant argues that in violation of Brady v. Maryland, 373 U.S. 83 (1963), he was unconstitutionally deprived of three pieces of evidence that he claimed were in possession of the State: employee personnel records of witnesses and his own personnel record, portions of a security video consisting of two "gaps," and the supplement to an incident report.

Personnel Files

Pretrial, on February 9, 2015, defense counsel and counsel for UPS met. At that time, they discussed defense counsel's motion to compel and UPS's motion to quash subpoenas defense counsel had served in an attempt to compel UPS to produce personnel records. (Feb. 9, 2015 Tr. 3, lines 20–25; Tr. 4, line 1–Tr. 5, line 11.) UPS argued the subpoenas were not properly served. (Feb. 9, 2015 Tr. 5, line 12–Tr. 7, line 5; Tr. 10, lines 5–12; Tr. 11, line 25–Tr. 12, line 2.) Appellant argued he needed to see Jones's personnel file to see if she had been passed over or not promoted and that he also needed to see his own file. (Feb. 9, 2015 Tr. 8, lines 15–19; Tr. 9, lines 12–23.) Defense counsel claimed he served the subpoenas through certified mail and had a receipt that was not with him at the hearing but that he would bring to trial. (Feb. 9, 2015 Tr. 10, line 18–25.) The trial judge informed both parties they could give him anything they wanted him to review before trial and asked that they get it to him by the following day. (Feb. 9, 2015 Tr. 11, lines 1–10; Tr. 13, lines 8–16.) When the trial started three days later on February 12, 2015, defense counsel did not mention the motion to compel, the

subpoenas, or anything concerning UPS personnel records. Thus, the trial court made no ruling on the materiality of any personnel records and was never asked to make such a ruling by defense counsel.

Accordingly, any issue as to the personnel files is not preserved for appellate review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693 (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.”). Even if preserved, Appellant suffered no prejudice because the Rules of Evidence do not appear to support admission of the personnel records under the circumstances of this case. Although not articulated at trial, Appellant presumably would have sought to use the personnel records to attack Jones’s credibility under Rule 608, SCRE. In criminal cases, the appellate court sits to review errors of law only and is bound by the trial court’s factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The conduct of a criminal trial is left largely to the sound discretion of the presiding judge and the appellate court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way. State v. Commander, 396 S.C. 254, 262, 721 S.E.2d 413, 417 (2011) (quoting State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)). Thus, the admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 494-95 (2013).

Nothing in the record indicates that information in the personnel file would contain evidence of Jones’s bias, prejudice, or motive to misrepresent as to Appellant; therefore, the records would not have been admissible under Rule 608(c), SCRE. Also, Appellant has given no such explanation that anything in the personnel file would be relevant or show any bias toward him. His argument that the file could have shown bias on the part of Jones due to her being

passed up for a promotion is pure speculation, particularly where Appellant failed to show or even allege a nexus between Jones not being promoted and himself. Also, to the extent Appellant might claim he would have attempted to use specific instances of Jones's conduct for the purpose of attacking her credibility during cross-examination under Rule 608(b), SCRE, extrinsic evidence in the form of the personnel file could only be used as proof "in the discretion of the court." Thus, there is no way to know whether the trial judge would have admitted it if a Rule 608(b) argument had been made, and the judge would have certainly been within his discretion to exclude it even in that circumstance. The trial judge's failure to order full disclosure of the file suggests he also would have exercised his discretion by not allowing Appellant to introduce the records during cross-examination of Jones. Finally, any statements, opinions, or findings included in the personnel records would be hearsay as defined by Rule 801, SCRE, and therefore inadmissible. For all of these reasons, the State submits Appellant failed to demonstrate plausible admissibility, which undercuts any claim of prejudice from nondisclosure of the personnel records. This is particularly true in the broader context of the trial as a whole and Appellant's exercise of his right to cross-examine Jones.

As a general rule, a trial court's ruling on the proper scope of cross-examination will not be disturbed on appeal absent a manifest abuse of discretion. State v. Gracely, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012); State v. Quattlebaum, 338 S.C. 441, 450, 527 S.E.2d 105, 109 (2000). Pursuant to the Sixth Amendment of the United States Constitution, every criminal defendant has a right to "to be confronted with the witnesses against him" during trial. U.S. Const. amend. VI. Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses. State v. Aleksey, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000); State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). This right guarantees to a criminal defendant the opportunity to cross-examine the

witnesses against him concerning bias. State v. Gillian, 360 S.C. 433, 450, 602 S.E.2d 62, 71 (Ct. App. 2004), aff'd as modified on other grounds, 373 S.C. 601, 646 S.E.2d 872 (2007); see also Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced."). "This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination." Aleksey, 343 S.C. at 33-34, 538 S.E.2d at 255; see also State v. Whitner, 380 S.C. 513, 519, 670 S.E.2d 655, 659 (Ct. App. 2008) (finding the scope of cross-examination rests in the trial judge's sound discretion). "On the contrary, 'trial [courts] retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant.'" Aleksey, 343 S.C. at 34, 538 S.E.2d at 255 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)). "The limitation of cross-examination is reversible error if the defendant establishes he was unfairly prejudiced." State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). A criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness. State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (quoting Van Arsdall, 475 U.S. at 680).

Here, Appellant was given a thorough opportunity to cross-examine Jones. Thus, Appellant's constitutional right to confront her and to conduct a meaningful cross-examination of her concerning bias was fully protected. U.S. Const. amend. VI; Gracely, supra; Aleksey, supra; Gillian, supra. Since the records would not likely have been admissible even if they had been

disclosed, the trial court did not err in declining to order their disclosure. Additionally, to the extent Appellant contends the trial court's ruling impacted his ability to cross-examine Jones, it also was not error. "The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial." Gillian, 360 S.C. at 450, 602 S.E.2d at 71 (emphasis added). Here, the trial court simply did not interfere with Appellant's opportunity for effective cross-examination.

Security Video

As to the issue of the UPS security video, Appellant argued for dismissal based on the fact that he was not given a copy until January 15 and the copy had gaps in it. (Feb. 12, 2015 Tr. 11, lines 17–25.) The State explained it had requested the video long ago but did not receive it from UPS until close to trial and immediately gave a copy to defense counsel. (Feb. 12, 2015 Tr. 12, lines 10–19.) The State stated that the video with the gaps was the same one it received from UPS and that it would call a witness at trial to explain the gaps. (Feb. 12, 2015 Tr. 11, lines 8–25; Tr. 13, lines 2–25.) After determining the State had the exact same video with the gaps, and that the State had given defense counsel everything it had, the trial court denied Appellant's motion to dismiss. (Feb. 12, 2015 Tr. 13, lines 5–25; Tr. 20, lines 10–21.) This was the proper ruling. The Brady disclosure rule requires that the prosecution provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused **and** material to guilt or punishment. Hyman v. State, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012); State v. Anderson, 407 S.C. 278, 286, 754 S.E.2d 905, 909 (Ct. App. 2014). An individual asserting a Brady violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence, or was impeaching. Kyles v. Whitley, 514 U.S. 419 (1995); Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006). These requirements have not been

met here. Indeed, the State disclosed to Appellant all available portions of the security video. The trial court's ruling should be affirmed.

Supplemental Incident Report

Finally, Appellant complains he did not receive a supplemental incident report until February 10, 2015, eighteen months after the incident. The trial judge discussed the report with both parties and when the State informed the court it would not introduce the supplemental report, Appellant seemed to drop the issue. As with the personnel files, the trial judge did not make a ruling on the allegedly late disclosure and Appellant did not pursue such a ruling. Accordingly, the issue as to the supplemental incident report is not preserved. In any event, where Appellant was given the supplemental incident report before trial, he completely fails to make the requisite four-part showing to demonstrate a Brady violation in regard to the supplemental incident report.

In conclusion, Appellant's right to due process was provided by the trial court. The State committed no Brady violations in regard to the UPS personnel records, the security video, or the supplemental incident report. Appellant's conviction should be affirmed.

V.

Appellant's argument that the trial court erred by denying his right to a speedy trial is not preserved for appellate review because, in regard to the charge for which he was convicted and challenges in this appeal, it was neither raised to nor ruled upon by the trial court.

Appellant argues the trial court erred by denying him his right to a speedy trial, yet this issue was never brought before the trial court. The only mention in the record of a speedy trial motion was what Appellant told Judge Kelly on February 9, 2015, during the hearing with UPS counsel. Thus, this issue was not raised to or ruled upon by the trial court and is not proper for appellate review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

Furthermore, Appellant never argued either at trial or at the pretrial hearing with UPS that he was being denied a speedy trial on the charge now on appeal. Rather, he brought it up in the larger context of arguing to the court that because the breach of peace charge seemed not to be going forward, the intimidating a witness charge was based on nothing. Appellant stated, "So the breach of peace case that he spoke of earlier, they never brought that to trial because there's no breach of peace. And I've asked for speedy trials and everything all along, never given the opportunity to do that. Now I understand they're not going to bring that. So the case that he's allegedly intimidating a witness they're not even pursuing. . . . [T]here's nothing there." (Feb. 9, 2015 Tr. 7, line 20–Tr. 8, line 3.) (emphasis added.) Appellant continues this argument on appeal. (App.Br.14–16.)

Based on Appellant's statements above and in his appellate brief, it is clear that any speedy trial motions he may have made were in reference solely to the breach of peace charge, not the charge in this case. Nothing in this record indicates he made any such motion on the intimidation of a witness charge now on appeal before this Court. Thus, for an additional reason

this issue is not preserved for the Court's review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

CONCLUSION

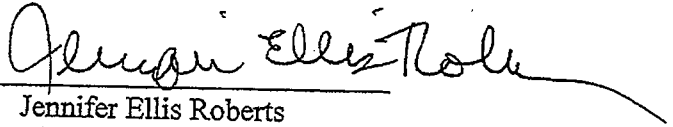
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Jennifer Ellis Roberts
Bar # 79818

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

ATTORNEYS FOR RESPONDENT

November 29, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2015-000517

THE STATE,

Respondent,

v.

COURTNEY RAY MITCHELL,

Appellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

(1) February 12, 2015 Transcript pages 5-8, 10-13, 20, 35-38, 40-41, 43-48, 50-64, 102-06, 108, 110, 114-25, 135-47, 149, 156; and

(2) True-billed indictment.

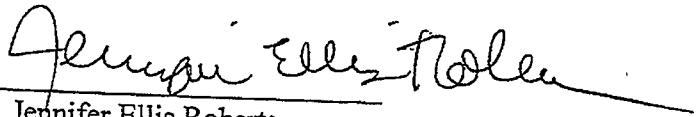
To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Jennifer Ellis Roberts
Bar # 79818

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

ATTORNEYS FOR RESPONDENT

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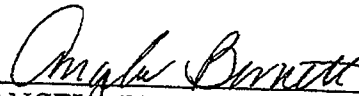
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Donald L. Smith, Esquire
122 N. Main Street
Anderson, SC 29621

I further certify that all parties required by Rule to be served have been served.
This 29th day of November, 2016.


ANGELA BENNETT
Legal Assistant

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

Appellant's Reply to Respondent's Initial Brief

FORM 8
LETTER TO THE APPELLATE COURT CLERK
APPELLANT'S REPLY TO RESPONDENT'S INITIAL BRIEF

December 12, 2016

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

RECEIVED

DEC 19 2016

SC Court of Appeals

RE: The State of South Carolina v. Courtney Ray Mitchell
Appellate Case No.: 2015-000517

Dear Ms. Kitchings:

Please find enclosed the following materials for filing in the above-referenced Appellate matter:

- (1) Appellant's Reply to Respondent's Initial Brief; and,
- (2) Proof of Service for same.

Sincerely



Donald L. Smith (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Other Counsel of Record:

Jennifer Ellis Roberts
Assistant Attorney General
PO Box 11549
Columbia SC 29211

FORM 13
APPELLANT'S REPLY TO RESPONDENT'S INITIAL BRIEF

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517

RECEIVED

DEC 19 2016

SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Appellant.

APPELLANT'S REPLY TO RESPONDENT'S INITIAL BRIEF


Donald L. Smith, (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284.
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
December 12, 2016

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STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

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

Courtney Mitchell was initially arrested for Breach of Peace on June 21, 2013, hours after an incident that occurred when Mitchell was at lunch with four co-workers from United Parcel Service (UPS). The Breach of Peace that was alleged, occurred despite the fact that the reporters who took issue with Courtney's comments, *never* cautioned him that his conduct was breaching their peace. Furthermore, there were no witnesses, independent of those offered by UPS, that witnessed a breach of peace. He was put on trespass notice in conjunction with the Breach of Peace charge:

Most importantly, Gina Jones, for whom this charge arose, never changed her seat, discontinued conversation, requested changes in Courtney's behavior, said that he was scaring her...until she returned to U.P.S. When she had returned to the post, she felt it was her duty to tell the brass all about the conversations in which he spoke. Oddly, she failed to explain the fact that she spoke of her 9mm at the table, inviting his input regarding guns. She also didn't

mention that she knew of his mental health issues. Her and her loyal companions at U.P.S. labeled Courtney, "shots fired". In fact, she said that he was "raging"

Mitchell was arrested for Intimidating a Witness on July 29, 2013. The arrest was based on Gina Jones' escape from reality. This appeal stems from Mitchell's conviction for Intimidation of a Witness, and his receipt of the maximum sentence therefore, as a result of jury trial on February 12, 2015. Mitchell's Motion for Reconsideration and Motion for New Trial were denied on February 24, 2015. Courtney Mitchell timely served his Notice of Appeal on March 5, 2015.

FACTS

On June 21, 2013, at around 12:30 p.m., it is undisputed that Courtney was not acting himself. It is readily apparent that At the lunch, Mitchell made a number of odd statements that were not the norm for him and were arguably the result of an episode caused by Mitchell's mental illness. His co-workers recognized that Mitchell was "not himself" during the incident. One comment that Mitchell made during the lunch was that he wanted to see Ken Baca, a manager at UPS, "leave in a box." He immediately corrected and rephrased his statement, and said that he wanted to see Baca "carrying his box of stuff walking out beside me."

Mitchell's breach of peace charge states that Mitchell threatened co-worker Ken Baca by saying that he wanted to see him being carried out in a box. It is understood that the coworkers at the lunch did not move, nor did they ask Mitchell to change his behavior or otherwise suggested that he was being disruptive. No other witnesses stepped forward (nor were any sought) to offer any supporting statements to the contentions of Mitchell's coworkers at UPS. The investigation began and ended at the UPS location on Halston Road. UPS called the police. The police came to UPS and took down the facts. At the direction of UPS, the police constructed

a warrant for Breach of Peace. Courtney Mitchell was arrested based solely on the word of UPS (his co-workers).

On July 25, 2013, Mitchell, who had been put on a no trespass notice, had to return a co-worker's leaf blower that he had in his possession. He had recognized that the instrument was not running smoothly; and, he had taken the leaf blower to a friend to have it repaired. He also dropped off a partially torn envelope containing three cell phones, and a number of other nondescript items. The envelope was to be given to Velma Jones, though there was nothing in the envelope that was her property. Moreover, there wasn't anything *within* the envelope directed to her, or with her name on it. The envelope, and its contents, formed the basis of the charge of Intimidation of Witness. The officer who brought the intimidation of a witness charge also worked for, and was paid by, UPS. It should be noted that he utilized the video from the

Jones, the purported victim of Intimidation of a Witness, had an obtuse explanation for every item in the package. Whereas, Darryl Bailey took the leaf blower that was returned to him and simply placed it in his car (Tr. Of Record 51:8), Jones believed the leaf blower was a bomb capable of being detonated with a cell phone. (Tr. Of Record, 82:4-5). Despite the fact that Mitchell did not know where her mother lived (Tr. Of Record 85:8-13), Jones believed that Mitchell was sending her the message because he went to a convenience store that was located in the same county as her mother's house. At trial, she told the jury that the receipt was a threat because it showed a purchase of her favorite beer. (Tr. Of Record 64:10-11). She said that a business card from a nursery in Anderson, South Carolina, was a threat against her well-being, because the nursery is near a house in which she had lived-over ten years ago. (Tr. Of Record, 72: 2-3). The fanciful explanations of the subject events concocted by Jones and the other

purported “victims” has exposed Courtney Mitchell to a number of disastrous chain of events, as outlined below.

ARGUMENT

I. THE STATE FAILED TO PROVE THE ELEMENTS OF INTIMIDATION OF A WITNESS BEYOND A REASONABLE DOUBT

The trial court erred when it held that the State proved the elements of intimidation of a witness beyond a reasonable doubt, when Courtney Mitchell moved for a directed verdict. In South Carolina, intimidation of a witness is a statutory offense that consists of (1) an unlawful threat of force to (a) intimidate or impede a witness in the discharge of his duty, or to (b) destroy, impede, or attempt to obstruct or impede the administration of justice in any court. S.C. Code Ann. § 16-9-340(A); State v. Preslar, 364 S.C. 466, 613 S.E.2d 381 (2005). The term “threat” is defined as “a communicated intent to inflict harm or loss on another.” Black’s Law Dictionary 1519 (8th ed. 2004). Further, “intimidation” has been defined as “caused by an act knowingly and intentionally done or statement knowing and intentionally made by the defendant, which was done or made in such a manner or under such circumstances that would produce such a reaction or such fear of bodily harm in a reasonable person.” U.S. v. Crosby, 416 Fed. Appx. 776 (10th Cir. 2011).

Intimidation in the constitutional sense is a type of true threat, where a speaker directs a threat to a person with the intent of placing the victim in fear of bodily harm or death; true threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. See Virginia v. Black, 538 U.S. 343, 360 (2003). To support a conviction under § 16-9-340, *there must be evidence that a defendant’s actions were an attempt to prevent the*

purported victim from continuing her activity. See Tucker v. Cherokee Cty. Veterans Affairs Office, No. 7:09-cv-193-HMH, 2009 U.S. Dist. LEXIS 66749, at *6 (D.S.C. 2009).

In the case at bar, Courtney Mitchell might have been suffering from a bi-polar episode-raging, if you will. An episode does not mean that he was unable to remember the players and their roles in the lunch festivities. Courtney's appreciation of law and order was never more on display than when he took the time to send trespass notices to the individuals that he believed had turned him into police.

He took the time out from "raging" to draft two trespass notices. Since his diatribe had focused on the staff at U.P.S., he forwarded a notice of trespass to Ken Baca and Michael Battista. Ken was the individual who he thought should leave U.P.S. in a box, or at least next to him with his things in a box. Michael Battista was Courtney's supervisor; and, he used to have Courtney "write himself up" for his failures in the workplace. The U.P.S. employees were unanimous in their alleged fear of "shots-fired". The fact that he wrote the individuals that rode him hardest at a job at which he had already asked to be "demoted" due to the overwhelming stress he was under, illustrated that he had a military appreciation for the chain of command. Management told him they were unable to demote him. The stress continued to increase.

The individual who delivered the leaf blower and envelope was not called as a witness and, therefore, did not offer anything regarding what he understood was to be delivered. The owner of the leaf blower put the leaf blower in his car without a second thought. He testified that he is a reasonable person. (Tr.49: 14-15). On the same token, Ms. Jones's contention that Courtney's message to her was to show that he knew where her and her mother were located was fantasy. She admitted that he didn't know where either of them lived. Thus, his location could not have been more irrelevant.

When the lunch crew returned to U.P.S. came with a bag full of embellishment. They had seen Courtney for the last time as less than public enemy 1. Their stories grew as they went from one person to the next. By the time they had finished, Courtney Mitchell had been elevated to serial killer, from the mentally fragile individual who he was. At the time the package was sent, Mitchell was unaware that Jones would be called as a witness to the breach of peace charge. Further, the State failed to establish that Mr. Mitchell made any threat to Jones. There was no note or letter directed to Jones containing any threatening statement. The envelope which Jones received contained trash.

Courtney Mitchell did not threaten to harm the person or property of any person, including Jones, nor did he attempt to impede the discharge of any witness's duties. Courtney Mitchell did not communicate an intent to "inflict harm or loss" upon Jones. There is still an intent element to this crime. The wrongdoer has to recognize a witness before he can attempt to intimidate said witness.

When Courtney Mitchell left the Olympia restaurant, it would be the last time that he would interact with the fellow employees. He would be degraded to the point of isolation by a condition that he was faultless in acquiring. There was one good thing about being away from the personnel from U.P.S. He no longer had to be fake like the rest of them. When Courtney and Gina Jones were talking about their inability to conceive a child, Courtney believed that Gina was his friend, and understood the struggle that exists for some to have a child. When that topic was broached at trial, Gina Jones made anyone understand who was listening that she was not Courtney's friend.

When Gina Jones and Courtney Mitchell went their separate ways after lunch that day in June of 2014, they would never speak again. Since Mr. Mitchell was U.P.S. enemy #1, he was

not privy to the meeting that took place after the uneventful lunch in which no one alerted him that he was speaking of improper conduct. He had absolutely no reason to believe that his "sister" had gone back to work to tell on him. He did not know that he had committed a crime. When the police came to get him for this "intimidation" charge, he knew it had to be Baca and Battista. Thus, he did not attempt to see up a duel at twenty paces, but rather he wrote them and made it clear that they were not welcome at his home, near his family, and had been disrobed of the friendship that he had previously bestowed upon them.

Courtney Mitchell's verdict should have been overturned by the Court when he moved for reconsideration of the Court's denial of motion for directed verdict. As the State stated so eloquently, "When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Pearson, 415, S.C. 463, 469, 783 S.E.2d 802, 806 (2016). "The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty." Id. at 469. 783 S.E.2d at 805.

Courtney had no idea that Gina Jones had turned him in to the management that he despised. Thus, there is absolutely no evidence whatsoever that he knew of Gina's potential task of testifying against him. The only evidence that exists are the trespass notices that were sent to Baca and Battista, wherein they were told they were no longer his friends because he knew that they had rolled on him. The intent element is something that is Courtney's alone. Regardless of what Gina Jones was seeing in her head, it could not affect Courtney's lack of intent to hurt his friend.

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

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

Appellant brought the question of the State withholding the municipal court offense by manipulating with the docket in the Pre-Trial Hearing held on February 9, 2015. In that hearing, the Court chastised the undersigned for requesting the sanction of dismissal for the fact that he received the discovery that had been available for one year and a half, two days before trial. The Court believed that since the discovery had been received, it had sanitized the year and a half the State had held it hostage.

No statement by Mitchell was intended to incite violence by any co-worker or any person at the restaurant. He simply made a statement that he wanted to see a manager take his belongings out in a box. Not one of the four co-workers ever expressed any discomfort regarding Mitchell's conduct to *Mitchell*. They did not move from the table. No independent third party was a witness to anything breaching anyone's peace, or at least the State never

provided such an individual. Most importantly, Mitchell was not arrested at the scene of the alleged breach of peace, but at a later time and at a different location.

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

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

Appellant argued the fruit of the poisonous tree doctrine would exclude the potential intimidation of a witness charge in his Motion to Reconsider the Court's denial of his Motion for Directed Verdict. The Court issued a blanket Order denying all requests for relief. If there is no crime, there is no witness. If there is no witness, there can be no intimidation. The "fruit of the poisonous tree" doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (S.C. 1996). The doctrine applies to both primary evidence obtained as a direct result of an illegality, and to evidence discovered and found to be derivative of an illegality. See Segura v. United States, 468 U.S. 796, 804 (1984). It extends as well to the indirect as the direct products of unconstitutional conduct. *Id.* Courtney Mitchell contends that the intimidation of a witness charge is but the "fruit of the poisonous tree" that is the breach of peace charge. As detailed above, Mitchell's arrest for breach of peace was unconstitutional. Mitchell contends that this case is distinguishable from cases such as State v. Nelson.

In Nelson, the Supreme Court of South Carolina held that the defendant's charges were not "fruits of the poisonous tree," but resulted from new and distinct criminal acts. State v. Nelson, 336 S.C. 186, 195, 519 S.E.2d 786, 790 (S.C. 1999). In that case, the court assumed,

arguendo, that the police's initial attempt to stop the defendant driver was unlawful. Id. At 194. After the police initially attempted to stop him, the defendant proceeded to run a stop sign and speed through a residential neighborhood. Id. At 189. The court reasoned, essentially, that running a stop sign and speeding were crimes committed independently of the attempted initial stop, and thus "purged the taint" of the attempted illegal stop. Id. At 195. Therefore, because running a stop sign and speeding "purged the taint" of the attempted illegal stop, the court held that those charges were not "fruit of the poisonous tree," but were new and distinct crimes. Id.

This Court should distinguish the reasoning in Nelson, which essentially held that the crimes committed by the defendant subsequent to the attempted illegal stop were independent of said stop, and thus "purged the taint" of the stop, and hold that Mitchell's intimidation of a witness charge was by definition dependent upon the illegal breach of peace charge, and thus could not have "purged the taint" of the charge. Therefore, because Mitchell's intimidation of a witness charge did not "purge the taint" of the illegal breach of peace charge, this Court should hold that the intimidation of a witness charge was "fruit of the poisonous tree," and reverse Courtney Mitchell's conviction thereof accordingly.

In conclusion, this Court should hold that Courtney Mitchell's charge of intimidation of a witness was the "fruit of the poisonous tree." The initial charge for breach of peace of was illegal. The charge of intimidation of witness, by definition, is dependent upon the illegal breach of peace charge; without the illegal breach of peace charge, there would be no "witness" to "intimidate." The intimidation of witness charge was not independent of the illegal breach of peace charge, and thus did not "purge the taint" of the illegal charge. Therefore, the intimidation of a witness charge was the "fruit of the poisonous tree," and Courtney Mitchell's conviction thereof should be reversed.

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

Courtney Mitchell contends that the trial court erred by denying him his right to due process, by failing to compel the discovery of Velma Jones' personnel file, which had previously been subpoenaed, on February 9, 2015. (Tr. Of Motion to Quash). In addition, the Court refused to dismiss the case against Mr. Mitchell due to the failure to adhere to Brady and its progeny. The motion was argued immediately prior to trial on Thursday, February 12, 2015. (Tr. Motion to Dismiss with Prejudice).

It should be noted that if the State should object to either of these issues as having been waived by not addressing them in trial, Mr. Mitchell puts forth the Futility Doctrine as justification. In particular, the Court was of the belief that discovery issues were not relevant if the issues were not going in front of the jury. The Futility Doctrine was applied in Higginbottom wherein, "the tone and tenor of the trial judge's remarks concerning her gender and conduct were such that any objection would have been futile." State v. Higginbottom, 344 S.C. 11, 542 S.E.2d 718 (2001). In the case at hand, the Court's dismissive remarks concerning Mr. Mitchell's objections to the manner in which the State provided discovery in light of Brady, were such that any further objection would have been futile.

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

The trial court granted UPS's Motion to Quash discovery of the personnel file of Velma Jones, sought by Mr. Mitchell. He had originally sought the personnel files of the co-workers

that were present at the lunch, based on the fact that the Breach of Peace was not devised until the co-workers had returned to UPS and counseled with their superiors. Based on the fact that the State only intended to call Ms. Jones, the alleged victim in this intimidation charge, Mitchell moved only to acquire her personnel file. Mitchell believes that there is evidence that would show that Jones was being passed over for promotion at UPS, and initiated the Intimidation of a Witness to cause people to feel sorry for her and, perhaps give further thought to promoting her. Jones became a victim in order for UPS to overlook whatever it was that was preventing her advancement.

As discussed above, Jones likened the return of the leaf blower to a terroristic act, with an allegation that the leaf blower contained a bomb (despite the fact that she never saw it). She fed her co-workers' fear of potential terroristic acts, with baseless claims. Her vivid imagination provided an explanation for every useless piece of paper found in the envelope, ultimately relating them to herself. She created a furor by announcing that a leaf blower, that had been safely placed in a vehicle by its owner, was a bomb. She then stated that Mr. Mitchell purposefully put three cell phones in the envelope because they were detonators. None of the outrageous claims that she made proved to be true. It can logically be deduced that the claims were not made by a reasonable person because prior to her announcement of terrorist activities, everyone was moving forward without hesitation.

Based on the baseless claims, of Ms. Jones, it became necessary to look into what might be driving her to make such claims. Her failure to advance at UPS, demonstrated a possible motive for pursuing the charge. She maintained an employment relationship with UPS. She had helped to get the original Breach of Peace charge against Mr. Mitchell, even though she did absolutely nothing to indicate to him that he was doing *anything* wrong during the course of the

lunch. Without her personnel file, he was unable to review her employment history to derive whether there was something that illustrated bias. Based on the fact that her claims were not credible in any way, it was necessary to have her file.

It is Mitchell's belief that Jones's personnel file would shed some light on her motivation for concocting such wild allegations. Much like the plaintiff in Yoho v. Thompson, 336 S.C. 23, 518 S.E.2d 286 (2000), Courtney Mitchell deserved the opportunity to thoroughly cross-examine Ms. Jones to uncover any bias that she may have. Without her personnel file, the jury was only able to see an individual insulated from any true inquiry into a potential motive.

Mr. Mitchell was also denied the opportunity to get *his* personnel file. He is able to get his personnel file in a Workers' Compensation case involving money damages. However, the Court refused to allow him to show that the claims regarding his ineptitude by Ms. Jones-no less, were less than credible. It is not logical that an individual may collect his or her personnel file to perfect a Workers' Compensation claim, but is unable to collect the personnel file that may be the difference between freedom and a ten-year sentence.

Mr. Mitchell moved for a dismissal of the charge due to the State's failure to provide discovery in a manner that reflects the idealistic intention of Brady, to safeguard the ability to defend oneself, as extolled by the Constitution.

In addition, the State has a duty to disclose evidence favorable to a defendant. See generally Brady v. Maryland, 373 U.S. 83 (1963). Suppression of evidence favorable to an accused violates due process where the evidence is material. Id. At 87. There are three categories of Brady violations: (1) cases involving nondisclosed evidence or perjured testimony about which the prosecutor knew or should have known; (2) cases in which the defendant specifically requested the nondisclosed evidence; and (3) cases in which the defendant made no

request or only a general request for Brady material. State v. Moses, 390 S.C. 502, 516-17, 702 S.E.2d 395, 403 (S.C. 2010). Evidence considered favorable to the defendant includes both exculpatory and impeachment evidence, and extends to evidence that is not in the actual possession of the prosecution, but also to evidence known by others acting on the government's behalf, including the police. Id. To show prejudice resulting from the exclusion of evidence, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof. State v. Lyles, 379 S.C. 328, 334, 665 S.E.2d 201, 204 (S. C. Ct. App. 2008).

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

UPS gave Respondent what it wanted. In essence, UPS was given a deputy's badge, similar to the sheriff's auxiliary in some jurisdictions. It is suspect that so much evidentiary material was withheld from Mitchell. There is no reason for two blank areas in the video. Similar to the eighteen and one-half minute gap in the Nixon White House Tapes, Respondent appears to have been hiding something. Where there is smoke, there is fire.

In sum, Courtney Mitchell was deprived of evidence critical to his defense. Employee records of UPS personnel would have shed light on a possible conspiracy to oust Mitchell from

the company. Particularly, Jones's records would have shed light on a possible conspiracy to oust Mitchell from the company, or to simply bolster her efforts to secure elevation within the company. Particularly, Jones's records would have shed light on the outlandish story that she told regarding the leaf blower.

Respondent entirely withheld some evidence, including portions of the video of the subject incident. Police statement(s) that were given to the State psychiatrist who was assessing Mr. Mitchell's competency, but not given to the defense. Part of the supplement to the Incident Report was withheld until February 10, 2015 (2 days prior to trial), when it had been signed off by the necessary supervisor in August of 2013. Other evidence was withheld for so long as to prevent Mitchell from incorporating it in his defense, such as the parts of the video that were actually provided and the supplement to the incident report. Mitchell was prejudiced by these illegal withholdings. Therefore, this Court should reverse his conviction for intimidation of a witness, based on the State's, in conjunction with UPS, willful and wanton failure to provide complete discovery at the time that it became available to the State, and/or its agent, UPS.

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

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

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

The basis for Mitchell's intimidation of a witness charge was the unlawful breach of peace charge. As discussed above, there was no basis for the breach of peace charge. It focused on Mitchell's statement that he would like to see UPS manager carrying his belongings in a box. Such a statement certainly would not tend to incite others to commit violence or any other illegal act. There was no reaction by the witnesses to Mr. Mitchell's conduct that day at lunch. Clearly, if the conduct did not produce a single objection from four people, there is no way that it could be considered as being conduct that tends to incite others to commit violence or other illegal acts.

Despite conceding that breach of peace is not a general sessions charge (See Mot. To Stay Tr., 5:1-3), the State removed the charge from the municipal court's jurisdiction. The State gave no further explanation for the interference. The State knew that the breach of peace charge was baseless, and did not want the charge to be tried before the intimidation of a witness charge. If Mitchell were exonerated of the breach of peace charge, the State's case for the intimidation of a witness charge would have fallen apart. The State was manipulating the docket to fit its own end. It refused to prosecute, despite Mitchell's requests for a speedy trial. Mitchell was prejudiced by the denial of a speedy trial because he had to defend himself against a charge-

intimidation of a witness-which would have been without merit had he been exonerated of breach of peace.

In conclusion, Courtney Mitchell's right to a speedy trial was violated. The State maintained that Mr. Mitchell was attempting to intimidate a witness for a simple breach of peace charge, a charge that the defense believed would be dismissed prior to the empaneling of a jury. The State did not show that Mr. Mitchell was aware that Ms. Jones was a witness to anything given the fact that she did not make any direct or circumstantial statement regarding his conduct at the lunch. Additionally, the State did not show that Mr. Mitchell somehow knew that Ms. Jones met with the UPS hierarchy, along with her co-workers, to provide the impetus for the Breach of Peace charge. The police, who were being paid by UPS, manufactured a breach of peace charge from the lunch event, despite the fact that the lunch had disbanded hours before without incident.

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

CONCLUSION

Jones assumed that Mitchell was intending to deter her from testifying against him in the Breach of Peace case, by sending the envelope with the leaf blower. There is no way that he

would have known that she was part of a quest to have him arrested. First, she (nor did anyone else at the table) did not say anything negative to him about his conduct at the lunch. In fact, she "may" have spoken to him about her 9 mm at the lunch, which invited him to continue to speak of guns. Second, and most importantly, Jones never corresponded with Courtney again, following the lunch.

Jones and the rest of team UPS went to Human Resources following the lunch, which is where the Breach of Peace charge was hatched. Courtney was not privy to anything that was said or done at the Halston Road location. When he was charged with the Breach of Peace, it was understood that carrying Ken Baca out in a box, and referring to Dwight Inman as a towel-head taxi driver, formed the basis for the charge. Hence, he sent them both trespass notices in which he said they were no longer his friends, and that they needed to stay away from him and his family.

His failure to send anyone else a like declaration indicates that he had no knowledge of anyone else's involvement. Gina "Velma" Jones was Courtney's friend. He had absolutely no reason to believe that she would attempt to have him prosecuted. Without the knowledge that Velma was instrumental in the creation of the Breach of Peace charge, there is *absolutely nothing* that supports him having a reason to intimidate her for a peace that she herself, with her inaction at the lunch, verified that he did not breach.

In summary, the State did not prove Courtney Mitchell's the elements of intimidation of a witness, with the use of hot phrases and catch words. Mitchell neither threatened nor intimidated Jones. In determining whether a defendant's acts did in fact cause intimidation, courts employ a reasonable person standard, and determine whether the acts would produce a fear of bodily harm in a reasonable person. The alleged victim, Jones, stated that the borrowed leaf blower was a

bomb, and three cellphones, or at least one of them, was a detonator. She subsequently said that she realized this scenario due to her television viewership. Such a belief was not based on Mr. Mitchell's statements (whether direct or circumstantial) or actions. A reasonable person would not have been overcome with fear of bodily injury with knowledge of the presence of a leaf blower, as evidenced by the owner summarily dismissing the leaf blower to his car upon receipt.

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

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

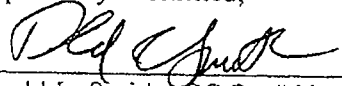
Finally, the trial court erred in denying Courtney Mitchell his right to due process. The trial court refused to enforce subpoenas and a Brady request that sought materials critical to Mitchell's defense. The subpoena sought UPS employee records of Jones, which may have shed

light on issues such as the motive which drove Jones to concoct such imaginary suspicions of leaf blowers and cellphones. The State failed to produce the entire surveillance video of the drop-off of the leaf blower and envelope. Police statements which were given to Mitchell's psychiatric competency evaluator, were withheld by the State. Respondent withheld other crucial evidence, such as the supplemental incident report and snippets of the video, until it was too late to incorporate the materials in Mitchell's defense. Further, Mitchell was prejudiced by the denial of his right to a speedy trial. The State manipulated the dockets and removed the breach of peace charge from the municipal court's jurisdiction, knowing that Mitchell's exoneration of the charge would eliminate the grounds for the intimidation of a witness.

Therefore, for the reasons stated herein, this Court should hold that the trial court erred by: (1) holding that the State did not prove the elements of the Intimidation of a Witness; (2) failing to declare Courtney Mitchell's arrest for breach of peace unconstitutional; (3) failing to declare that Courtney Mitchell's intimidating a witness charge was "fruit of the poisonous tree"; (4) denying Courtney Mitchell his right to due process; and, (5) denying Courtney Mitchell his right to a speedy trial.

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

Respectfully submitted,


Donald L. Smith, (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
December 12, 2016

FORM 7
PROOF OF SERVICE
APPELLANT'S REPLY TO RESPONDENT'S INITIAL BRIEF

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

Keith Ralph Kelly, Circuit Court Judge

Appellant Case No.: 2015-000517

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DEC 19 2016

SC Court of Appeals

The State of South Carolina,

Respondent,

v.

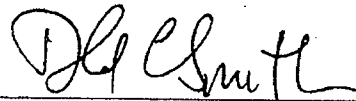
Courtney Ray Mitchell,

Appellant.

PROOF OF SERVICE

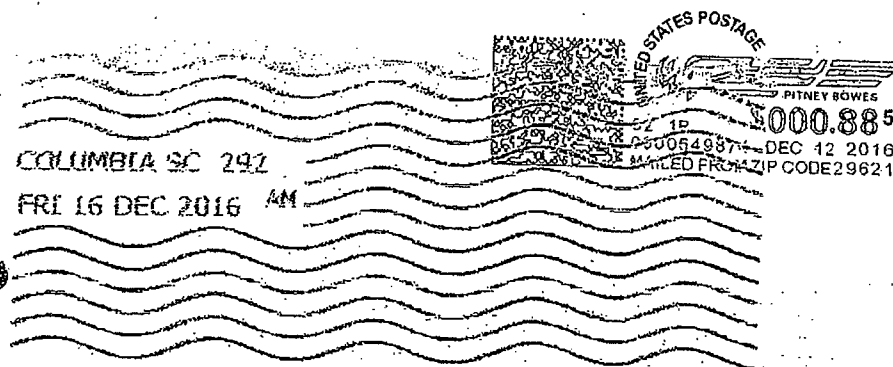
I certify that I have served a Form 8, a Reply to Respondent's Initial Brief, and a Form 7 on The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, PO Box 11629, Columbia SC 29211 and Office of the Attorney General, Attn: Jennifer Ellis Roberts, Assistant Attorney General, P.O. Box 1154 Columbia SC 29211 by depositing a copy in the United States Mail, postage prepaid, on December 12, 2016 to the addresses listed above.

December 12, 2016



Donald L. Smith, Esquire (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Attorney Office of Donald Smith
122 N. Main Street
Anderson SC 29621



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DEC 19 2016

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

Certification of Counsel

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517

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SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Appellant.

CERTIFICATION

I HEREBY CERTIFY that Appellant's Final Brief and Record on Appeal in the above-captioned matter contains all materials proposed to be included by the parties, and not any other material.


Donald L. Smith (SC Bar#6699)
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

March 16, 2017