

 ORIGINAL

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

v.

ARSENIO D. COLCLOUGH,

APPELLANT

APPELLATE CASE NO. 2016-000724

RECORD ON APPEAL

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1 have a motion to have his 13 years reduced. And I
2 would hand up to Your Honor.

3 UNIDENTIFIED PERSON: Shut up, don't say
4 nothing.

5 THE COURT: All right.

6 (Woman from gallery leaves courtroom.)

7 MR. DERIEG: Your Honor, all this stuff
8 that I just told you that Mr. Colclough told me, he
9 asked me on the 15th when I went and spoke with him
10 if I would type up an affidavit for him and bring it
11 back for him to sign. I brought it back to him on
12 October the 20th. He read over it. He actually in
13 his own handwriting made an additional part because
14 I actually left out the part about the death
15 penalty. He wrote in his own handwriting at the
16 bottom of his affidavit the stuff about —

17 THE COURT: Who is this affidavit of, by?

18 MR. DERIEG: John Colclough, Junior. And
19 I would hand a copy of it up to the Court. I give
20 one to Mr. Donald.

21 (Document tendered to the Court and Mr. Donald.)

22 THE COURT: Okay, go ahead, Mr. Derieg.

23 MR. DERIEG: As you can see, Your Honor,
24 he — Mr. John Colclough felt like he was coerced
25 into saying whatever was said. There was no written

1 statement memorializing anything that was said. To
2 my knowledge there was no recording of anything
3 because Mr. Colclough tells me he was not informed
4 that there was either audio or video recording of
5 this meeting. I know Melissa Addison was present at
6 this meeting. I'm unsure as to whether or not
7 Mr. Donald was present. But I know that he told me
8 that what it is the solicitor's office is telling
9 you today that Mr. John Colclough is willing to
10 cooperate to testify against not only against
11 Arsenio Colclough, his first cousin, but also Juan
12 Francis is not true; he will not testify. And that
13 the fact that he went along with what the State was
14 saying initially was that, was because he was
15 worried that he was gonna get — he was saving his
16 cousin from the death penalty. As soon as I
17 informed Mr. Colclough, Mr. John Colclough, that
18 this was not a death penalty case he immediately
19 told me that everything that's in that affidavit,
20 Your Honor.

21 THE COURT: All right. Okay.

22 MR. DERIEG: So there's no — if they
23 wanted to talk to John Colclough they had from
24 September 21st until when they finally did it on
25 October 15 to do so, and they chose to wait until

1 the day after Your Honor put the October the 23rd
2 deadline in place in which Mr. John Colclough says
3 essentially that he was coerced. There's still
4 evidences that we have not been given that the two
5 primary witnesses in the case against my client say
6 exist. The DNA as Your Honor has heard, the State
7 has had the DNA reports back from since at least
8 August of this year, and I'm glad that I brought an
9 extra copy of that DNA report because Mr. Donald
10 just tried to stand here and tell you that my
11 client's DNA was linked to that car when, in fact,
12 he was explicitly excluded from the swabs of that
13 car, a car that was not in police custody from the
14 time of the incident, but rather, was out on the
15 streets with anybody being in that car until
16 December of 2013, some eight months after this
17 incident. And again, with that red cap it was in
18 the victim, one of the victim's mother's possession
19 for seven months. And if Your Honor will notice on
20 that DNA report, when my client's DNA is potentially
21 one out of 16 people in the world could have
22 contributed, been one of the minor contributors to
23 that DNA, the major contributor to that hat is the,
24 one of the victims himself. And it will be my
25 position at trial, Your Honor, that the swabs from

1 the car and the swabs from the hat would be
2 inadmissible even if there -- but even if I'm wrong
3 and they are admissible, the swabs from the car come
4 from an unidentified third person and my client
5 isn't conclusively linked to that hat. Rather, the
6 victim is the major contributor of that hat.

7 THE COURT: Well, obviously we're not
8 trying the case today and I'm sure that your version
9 of the facts and the State's version of the facts is
10 somewhat different and that's what trials are for.
11 My concern is that it hadn't been brought up for
12 trial to be for the truth to be sorted out. That's
13 my concern, that we've been sitting, we've had a
14 murder that was committed in April of 2013, an
15 arrest made in October of 2013 and all these factors
16 have not been brought forward before the Court or
17 before a jury for a determination as to what is or
18 is not the truth in this case. I certainly am not
19 the finder of fact and the finder of the truth. I'm
20 just concerned about the speedy trial situation and
21 that a defendant is being required to or is staying
22 in jail and the State wants to keep him in jail
23 until they feel like they're ready to go to trial.
24 And the question is whether they could have been
25 ready long before now.

1 I'll hear from you, Mr. Donald, if
2 anything you'd like to say in addition to what, in
3 reply to what Mr. Derieg has said.

4 MR. DONNARD: Your Honor, I don't care to
5 reply to any of his recitation of the facts, just I
6 think you were sufficient on what my position would
7 be and that we have a different version of the facts
8 than what Mr. Derieg has relayed to you to. Only
9 additional thing that I can tell you --

10 THE COURT: When does the State intend to
11 dispose of this matter?

12 MR. DONNARD: Your Honor, I've spoken to
13 Katherine Lacey. She tells me that the earliest
14 that the DNA that was collected and submitted to
15 them can be analyzed and peer review would be
16 December. We would intend to bring it to trial at
17 the term following that, those results, which will
18 be January.

19 THE COURT: January?

20 MR. DONNARD: Yes, sir.

21 THE COURT: Three years nine months after
22 the commission of the crime.

23 MR. DERIEG: Your Honor, if I may.

24 THE COURT: Yes, sir.

25 MR. DERIEG: If Your Honor is so inclined

1 to grant my motion for PR bond we would not be
2 opposed to house arrest or GPS monitoring, any other
3 conditions that the Court felt.

4 THE COURT: That's what I'm already
5 putting down here. You need a copy of DNA report?

6 MR. DERIEG: That's fine.

7 THE COURT: I said y'all need a copy?

8 MR. DERIEG: No, sir.

9 THE COURT: You have another copy?

10 MR. DERIEG: I made that specifically for
11 Your Honor.

12 THE COURT: All right.

13 MR. DERIEG ATTORNEY: I would not be
14 opposed to making that a Court exhibit.

15 THE COURT: That's what I'm doing.

16 MR. DERIEG: For this hearing.

17 THE COURT: How about the affidavit? Is
18 that the only copy you have of that?

19 MR. DERIEG: No, Your Honor, that is a
20 copy. I have the original. And I've given Mr.
21 Donald a copy today as well.

22 THE COURT: All right. As I say, the
23 issue of guilt or innocence or the true facts of
24 this case are really not before the Court today. It
25 is a matter that is best determined at trial.

1 That's what trials are for is to determine the
2 truth. The concern of this Court is the fact that
3 this matter is a murder that happened two-and-a-half
4 years ago with an arrest over two years ago; and
5 despite the efforts of this Court to push the State
6 into moving forward with a trial, it has not
7 happened. I'm now advised that it would not happen
8 until January of 2016. In my view the State could
9 have moved forward with more diligence to bring this
10 matter to a trial, and it has only been because of
11 the Court's pressing that it's moved as far as long
12 as it has, some of the actions being taken by the
13 State after this Court has basically told the State
14 to move forward.

15 Mr. Derieg, how you spell your last name?

16 MR. DERIEG: D-E-R-I-E-G.

17 THE COURT: As a result of which and upon
18 the motion of Mr. Derieg for a reconsideration of
19 the bond for two counts of murder, I'm not gonna
20 grant an absolute personal recognizance sanction on
21 this matter, Mr. Derieg, because I really want
22 somebody will be looking out for him but, and make
23 sure that they've got some stake in him coming to
24 court. And that's really the main thing is to make
25 sure that he is not a danger to the community or

1 risk of flight and that he will be, come forward
2 when this matter is called for trial, at the same
3 time maintain the peace of the community and I think
4 I can do that with certain conditions. Bond is set
5 at five thousand dollar surety with house arrest
6 with GPS monitoring. No contact with members of the
7 victim's family, no contact personally with
8 potential witnesses, and no one other than the
9 defendant's attorney, that is Mr. Derieg, to have
10 contact with any of the witnesses. Nothing herein
11 is to prevent Mr. Derieg or his attorney from any
12 investigation of contact with the personal witnesses
13 but the defendant does not need to be making any
14 contact with these witnesses.

15 The case is to be called at the
16 January 2016 term of court or the Court will revisit
17 the matter. Jurisdiction is retained. The DNA
18 report dated June 17th, 2015, is made a part of this
19 order as exhibit 1 and the affidavit of John
20 Colclough, Jr., dated October the 20th, 2015, is
21 made part of this order as exhibit 2. Hearing is
22 concluded.

23 (Court's Exhibit Numbers 1 and 2 were
24 marked and made a part of the record.)

25

1 **C E R T I F I C A T E O F R E P O R T E R**

2
3
4 STATE OF SOUTH CAROLINA)
5 COUNTY OF FLORENCE)

6
7 I, FRANCES B. RAY, Registered Professional
8 Reporter (RPR), court reporter for the State of
9 South Carolina, Third Judicial Circuit, do hereby
10 certify that the foregoing proceeding is a
11 stenographic report and was transcribed through
12 computer-aided transcription; that the foregoing
13 transcript contains a true record of the
14 proceedings.

15 I further certify that I am neither
16 counsel for, nor related to nor employed by any of
17 the parties connected to the action, nor am I
18 financially interested in the action.

19 Witness my hand at Florence, South
20 Carolina, this 26th day of January, 2016.

21
22 *Frances B. Ray*

23 _____
24 FRANCES B. RAY, RPR
25

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

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
14-GS-43-0896

v.)

ARSENIO COLCLOUGH,)

DEFENDANT.)

February 11, 2016
Sumter, South Carolina

BEFORE :

THE HONORABLE HOWARD P. KING, JUDGE

APPEARANCES:

ERNEST "CHIP" FINNEY, III
EDGAR R. DONNARD, JR., ESQ.
Assistant Solicitor

LIR P. DERIEG, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 THE COURT: All right, I am somewhat with
2 this. I am somewhat familiar with this matter as
3 it's been before me several times. The matter does
4 concern the State versus Arsenio Colclough. Go
5 ahead and put the case numbers on the record for the
6 court reporter, Mr. Donald.

7 MR. DONNARD: Yes, Your Honor. The State
8 versus Arsenio Colclough. It is indictment number
9 2014-GS-43-0896. And just for the record, Your
10 Honor, there are various members of the victims'
11 families in here; but for purposes of this, I won't
12 list them by name.

13 THE COURT: All right. If I recall, this
14 was a indictment for murder, two counts; is that
15 correct, Mr. Donald?

16 MR. DONNARD: That's correct, Your Honor.

17 THE COURT: Okay.

18 MR. DONNARD: There are also two
19 accompanying gun charges, possession of a weapon
20 during a violent offense. It's two deceaseds,
21 Willie Chapman and Rashawn Holmes.

22 THE COURT: All right. Give me a little
23 background on it, Mr. Donald, as far as when the
24 offenses occurred and the basic facts from the State
25 standpoint.

1 MR. DONNARD: Your Honor, these offenses
2 occurred on April the 13th of 2013. DNA was taken
3 at the time the case was unindicted and un-arrested
4 for some period of time until a statement was made
5 to Melissa Addison by a gentleman by the name of
6 Jawan Francis that resulted in the arrest of
7 Mr. Colclough who was arrested on October the 1st,
8 2013. Basically the statement from Mr. Francis was
9 that Arsenio Colclough had confessed to him that he
10 had committed these murders. We knew there -- we
11 know or think that there were two people involved in
12 the murders; but Mr. Colclough is the only one at
13 the time that we knew, or that Ms. Addison believed
14 there was probably cause to make an arrest.

15 THE COURT: Has anybody else been charged
16 now?

17 MR. DONNARD: No, Your Honor.

18 THE COURT: Okay. So he was arrested on
19 October the 1st, 2013, and the case was indicted
20 when?

21 MR. DONNARD: I'll look at the indictment
22 itself if you'll give me your indulgence, Your
23 Honor. Your Honor, Ms. Haynesworth tells me it was
24 on October 23rd, 2014.

25 THE COURT: All right. He's also charged

1 with burglary, I believe?

2 MR. DONNARD: No, Your Honor, there were
3 two burglary cases that were unrelated to this.
4 Those cases have been disposed of.

5 THE COURT: There's two burglary cases
6 that are related?

7 MR. DONNARD: The burglary cases are
8 unrelated.

9 THE COURT: Are they still outstanding?

10 MR. DONNARD: They're no longer pending.

11 THE COURT: No longer pending, okay. By
12 that I guess you mean that they've been dismissed?

13 MR. DONNARD: That's correct, Your Honor.
14 There was insufficient evidence on one of them; and
15 on the other one, there was fingerprints taken from
16 the same and the fingerprints came back to somebody
17 other than Mr. Colclough so it took a little bit of
18 time to inform the victims and have discussion with
19 that and to find out who the fingerprints did match
20 to, and they have been disposed of.

21 THE COURT: All right, Mr. Derieg, your
22 motion, I'll be glad to hear from you.

23 MR. DERIEG: Thank you, Your Honor. As
24 you've stated, we have been in front of Your Honor
25 several times on this case, and I made a motion to

1 dismiss several times on this case. Your Honor
2 issued or granted a speedy trial motion that was
3 made on April 17th of 2015. On April 17th of 2015
4 the State was ordered to try my client within 180
5 days. 180 days from April 17th, 2015, was
6 October 14th of 2015. We came before Your Honor on
7 day 180 and made another motion, made a motion to
8 dismiss. That motion was denied, and the State was
9 ordered to try my client the very next week. Now
10 the day after October the 14th, 2015, is when the
11 State first attempted to go and talk to a potential
12 witness back then that they were talking about a man
13 by name of John Colclough that had been, that you
14 heard all about when we were in Kingstree last time,
15 Your Honor, and who is, whose signature is on the
16 affidavit that was handed up to the Court last time.
17 And last time we were in Kingstree, Your Honor was
18 told that my client -- well, he wasn't tried the
19 week of October 19th. We go to Kingstree the week
20 of October the 28th. I renew my motion to dismiss
21 and in the alternative ask Your Honor to further
22 reduce my client's hundred thousand dollar bond. A
23 motion to dismiss was denied and my client's bond
24 was reduced to five thousand dollars, and Mr.
25 Donald stood before Your Honor in Kingstree, told

1 you that the State would be ready to try
2 Mr. Colclough by the end of January, that he would
3 be tried in January. And as your order reflects, if
4 he wasn't tried by the end of January we would be
5 able to come back before Your Honor and renew our
6 motion.

7 Your Honor, next week is the trial term in
8 February. Mr. Colclough's name appears nowhere on
9 the trial list. The very earliest that Mr.
10 Colclough could be tried would be the week of
11 March 21st, some 11 months over 300 days after Your
12 Honor issued an order on April 17th, 2015, of last
13 year saying my client had to be tried within 180
14 days. Today we're approximately 120 days since
15 October the 14th. Come middle of March will be
16 roughly 150 days since my client was supposed to
17 have been tried within 180 days. Your Honor ordered
18 this thing tried within 180 days. Your Honor
19 ordered this thing tried the week of October 19th,
20 and Your Honor ordered this case tried by the end of
21 January. All three of your orders have been
22 violated by the State regarding my client's right to
23 speedy trial.

24 I think this type of case is exactly what
25 the court in Langford was so troubled by and why our

1 South Carolina supreme court in Langford found that
2 it was unconstitutional for this solicitor's office
3 to control the docket. And unfortunately, we
4 haven't found our way into a new system, but that
5 ruling is still good law.

6 Your Honor, I don't think that -- well, I
7 know for certain that in the five years that I've
8 been in private practice and had worked for the
9 Solicitor's Office since 2004, I've personally never
10 seen a judge's order violated three times, certainly
11 without any sort of repercussions for that. I know
12 my client has been able to have his bond reduced and
13 get out of jail, and he's been free since just a
14 couple of days after October the 28th. Since then
15 he's gotten a job. He's got engaged. He has
16 children. He's attempting to move on with his life,
17 and in fact, he has job prospects that are in
18 Georgia that he's prevented from trying to go and
19 better himself for his family and his children and
20 his fiance and himself to become a upstanding member
21 of the community. He was arrested ---

22 THE COURT: I understand the timeline and
23 I've got all that. Let me hear from the State as to
24 why they've given me dates when they would dispose
25 of this case and have not met those dates and have

1 missed every one of them and, in fact, never come
2 back to me and given me a reason why. Mr. Donald?

3 MR. DONNARD: Your Honor, first of all, my
4 recollection was not that -- two things, was not
5 that the case was ordered to be tried within a
6 certain date, but that it would be tried or that it
7 would be revisited and I think that's ---

8 THE COURT: Why did -- okay.

9 MR. DONNARD: And that's the purpose for
10 this hearing is to revisit. I don't recall telling
11 the Court that it would absolutely be tried in the
12 January term this year. I recall telling the Court
13 that I've been informed by SLED that I could expect
14 the DNA evidence to have been returned by January
15 and I did expect the DNA evidence to be returned by
16 January, but it has not been returned, Judge. And I
17 can -- with regard to that I'd like to hand up a
18 email I received yesterday from Katherine Lacey of
19 SLED who is the DNA -- permission to approach, Your
20 Honor -- who is the DNA analyst on this case,
21 detailing why the DNA has not been returned yet.
22 And I can summarize if the Court wishes for me to.

23 (Document tendered to the Court.)

24 THE COURT: All right, wait just a minute.

25 (Pause.)

1 THE COURT: All right, go ahead,
2 Mr. Donald.

3 MR. DONNARD: Your Honor, I also have Ron
4 Solomon here who is with the Sheriff's Office and
5 the evidence technician who can explain to the Court
6 if he wishes to hear about why it was submitted with
7 the wrong lab number, which has caused me not to get
8 the DNA by January as Captain Lacey told me I would
9 have when I spoke to you in November in Kingstree.
10 Your Honor ---

11 THE COURT: Well, it wasn't even submitted
12 even under the wrong lab number until October of
13 2015.

14 MR. DONNARD: That's correct, Your Honor.

15 THE COURT: So what happened between the
16 time that it was indicted in October of 2014 for one
17 year?

18 MR. DONNARD: Your Honor, what happened
19 with this case is that the gun that was used, one of
20 the guns that was used in this case was also used in
21 another shooting. In July, at the end of July John
22 Colclough pled guilty to using that gun in the other
23 shooting, and at that point I had direct evidence as
24 to where I could -- that was the first time that I
25 could put that particular gun into somebody's hand.

1 I knew before that time that the same gun had
2 been — or bullets coming from the same gun had been
3 used in both offenses, but I didn't have any way to
4 put it in somebody's hands until John Colclough came
5 in court and pled guilty using the gun on earlier
6 date.

7 THE COURT: Which was when, when Colclough
8 appeared in court?

9 MR. DONNARD: That was July the 20-- the
10 end of July. It was in the 20s---

11 THE COURT: Of 2015?

12 MR. DONNARD: 2015, that's correct.

13 THE COURT: And then it's still October
14 before the thing is submitted to SLED?

15 MR. DONNARD: Your Honor, Mr. Colclough
16 was brought back over here to discuss with me where,
17 to discuss potential where Arsenio Colclough might
18 have gotten the gun. Mr. Colclough told me along
19 with Ms. Addison — and this was in October of 2015.

20 THE COURT: Well, if he pled guilty in
21 July of 2015 and it's still three months after that
22 before the weapon is submitted, or whatever it is
23 submitted to SLED for analysis and then under the
24 wrong lab number, what happened in that three month
25 period?

1 MR. DONNARD: Well, it was at the end of
2 July that he pled guilty.

3 THE COURT: Right.

4 MR. DONNARD: And in October he was
5 brought over and had a conversation with me. That
6 was in preparation for the trial for Mr. Arsenio
7 Colclough. But it's DNA evidence that was, that has
8 been resubmitted and that had to be taken. It was
9 voluntarily given actually by a guy named Juan
10 Francis. And the reason for that is because John
11 Colclough told me that Juan Francis and Arsenio
12 committed this together. And the reason, one of the
13 reasons that's important is the reason that it was
14 submitted at that time, Your Honor, is not only
15 because the State at that point thought we that we
16 had a duty to look into what Mr. Colclough was
17 telling me -- may I approach, Your Honor.

18 THE COURT: Yes.

19 MR. DONNARD: But it also complies with
20 the email that I received from Mr. Derieg asking for
21 that DNA to be submitted to SLED and then to be
22 returned and that email came on September 15th of
23 2015. So the DNA we're waiting on is not only DNA
24 the State wants, that DNA that Mr. Derieg himself
25 has asked to have analyzed.

1 THE COURT: Well, what I don't understand
2 is you were waiting, you tell me, on Mr. Colclough
3 because you had the crime Mr. Colclough had pending.
4 Colclough pleads guilty in late July and then you
5 don't get around to talking to Colclough until right
6 before you get ready to try this case for trial.

7 MR. DONNARD: Your Honor, I had no idea
8 what Mr. Colclough, that he was going to tell me
9 that Mr. Arsenio Colclough confessed to him that he
10 committed this murder---

11 THE COURT: Why didn't you talk to him as
12 soon as he pled guilty? That was the only
13 impediment that kept you from talking to that
14 witness.

15 MR. DONNARD: His attorney told me that he
16 wasn't ready to talk to me on the day of his plea.

17 THE COURT: He told you he wasn't ready to
18 talk to you.

19 MR. DONNARD: The day he was sentenced.
20 He pled on the eve of trial.

21 THE COURT: Yeah.

22 MR. DONNARD: I had no idea that he was
23 gonna plead guilty on the day he plead guilty.

24 THE COURT: All right, so he pleads guilty
25 and then he's nothing more than a witness.

1 MR. DONNARD: That's correct.

2 THE COURT: And there's nothing to prevent
3 you from talking to him. No ethics reason you can't
4 talk to Colclough to find out, I mean, talk to,
5 yeah, talk to him and find out what he's gonna say.

6 MR. DONNARD: John Colclough, yes, sir.

7 THE COURT: John Colclough. No reason.

8 MR. DONNARD: Other than having him
9 transported back over from the Department of
10 Corrections, no reason.

11 THE COURT: And you didn't do that until
12 when?

13 MR. DONNARD: The middle of October.

14 THE COURT: The middle of October?

15 MR. DERIEG: Yes, sir. Your Honor, I can
16 give you —

17 THE COURT: No, sir, you sit down.

18 At that point you found out what,
19 Mr. Donnard?

20 MR. DONNARD: I found out from Mr. John
21 Colclough that Arsenio Colclough — I found out they
22 had bought the gun together from the pawn shop along
23 with another individual. I found out that Arsenio
24 had, according to Mr. John Colclough, that Arsenio
25 Colclough had come to the house, that they kind of

1 shared this gun between the two of them.

2 THE COURT: So you would agree with me
3 that you could have gotten that information.
4 There's no reason you couldn't have gotten that
5 information right after Mr. John Colclough pled
6 guilty, and you sat on the matter for the three
7 months.

8 MR. DONNARD: I can't agree with that
9 timeline because I think it's only a
10 month-and-a-half, but I'm not trying to say that
11 makes it acceptable. I should have talked to him,
12 tried, attempted to talk to him immediately. I did
13 talk to his attorney ---

14 THE COURT: You knew this matter was under
15 a deadline, that I've had all kind of motions before
16 me. And you know, then I come up and it comes
17 before me in October and I finally have to reduce
18 the gentleman's bond down because he's been in jail
19 for so long upon your representation that the case
20 would be ready for trial in January.

21 MR. DONNARD: And I anticipated it would
22 be, Your Honor.

23 THE COURT: And when you get a situation
24 like that where you know that you're under a
25 deadline to try a case, you can't request SLED to

1 get you the information so you can go forward?

2 MR. DONNALD: I have requested to SLED, so
3 has Sheriff Dennis.

4 THE COURT: Why didn't you move then
5 before me to, for them to show cause why they
6 shouldn't furnish you with that information? You
7 didn't do anything except sit and wait for it to
8 come in, and it hadn't come in so, so what? What's
9 your schedule now, Mr. Donald?

10 MR. DONNALD: Your Honor, as outlined in
11 the email from Ms. Lacey, where she says she expects
12 it to be completed early March, 2016.

13 THE COURT: Well, in my view, Mr. Donald,
14 what you should have done is put this case down for
15 trial when I put the deadline on it of January and
16 if you had reason you couldn't try it come before me
17 and move for continuance because of that reason.

18 MR. DONNALD: Your Honor, I appreciate
19 that. I mean no disrespect to this Court. I didn't
20 think---

21 THE COURT: But the solicitor controls the
22 roster. I know, Langford doesn't mean anything.

23 MR. DONNALD: I don't think it'd be proper
24 to put something on the trial list until I intended
25 to try it. I don't think it's proper to put it on

1 there and then for the purposes of ---

2 THE COURT: Well, just don't put it on the
3 trial roster but come before me and move for
4 continuance to be relieved from that deadline. You
5 don't want to put it down for trial, then move it
6 before the court judge, I'm not gonna be able to
7 meet that deadline, SLED can't give me the
8 information ---

9 MR. DONNARD: Yes, sir.

10 THE COURT: ---I'd like to have that
11 deadline extended. But, no, you sit back and wait
12 and do nothing and make the defense move again
13 because you haven't met the other deadlines of the
14 Court. I didn't know anything about these problems.
15 You could have brought that to my attention. Do you
16 have a statement or an affidavit from Mr. James
17 Colclough?

18 MR. DONNARD: Do I, Your Honor?

19 THE COURT: Yes, sir.

20 MR. DONNARD: No, sir, it was a verbal
21 interview.

22 THE COURT: Sir.

23 MR. DONNARD: James Colclough, you mean
24 John Colclough?

25 THE COURT: John Colclough.

1 MR. DONNARD: It was a verbal interview.
2 Myself, Officer Addison was there along with two
3 officers from the South Carolina Department of
4 Corrections.

5 THE COURT: Didn't I see something in here
6 about an affidavit of Mr. Colclough?

7 MR. DONNARD: Mr. Derieg went and spoke
8 with Mr. Colclough and got an affidavit from
9 Mr. Colclough that he submitted to the Court when we
10 were before you in November basically recanting
11 everything he had told me, myself, and Sergeant
12 Addison.

13 THE COURT: Well, the object of a trial
14 would be to find out which is the true statement;
15 but the only way you can do that is put, is have the
16 matter come up for trial. If it doesn't come up for
17 trial you never get to the truth.

18 Mr. Solicitor, you want to add anything?

19 SOLICITOR FINNEY: Your Honor, I just
20 think it is important for you to know that Mr.
21 Derieg gave a very eloquent presentation to the
22 Court a few minutes ago; but he failed to mention
23 that he had requested Mr. Donnard to get that DNA
24 tested because he wanted to know the results. I
25 think that's important to know that we were both

1 trying to get to the bottom of this. Obviously it's
2 a fact finding mission and we can't do the lab test
3 ourself so we had some stumbling block. It was
4 submitted under the wrong number and now it's on
5 track to be tested, but we are moving and we're not
6 dilly dallying about it.

7 THE COURT: What happens if I put this
8 thing and say, okay, he's tried on such a X date,
9 and X date in March comes up and you still don't put
10 the thing down for trial? I mean, at some point in
11 time I've got to draw a line in the sand and say,
12 you've ignored every date I've put down to it. And
13 it hadn't been just a question of not getting to it,
14 Mr. Finney; it's been a question of ignoring those
15 dates and not coming to me with the problems.

16 SOLICITOR FINNEY: Your Honor, I
17 understand completely what you're saying and I
18 agree. Mr. Donald thought that ethically he could
19 not put the case on the trial list if the report had
20 not been submitted to him from SLED. And you are
21 correct, that as a judge who has taken jurisdiction
22 of the case you should have been informed that we
23 had a report that was missing that we hadn't
24 received yet, and so that's the dilemma we find
25 ourselves in.

1 THE COURT: And the dilemma I find myself
2 is, is I find my orders being ignored without any
3 reason set forth by the Court until the Defense
4 counsel schedules the matter for a hearing by filing
5 a motion and that the State takes no steps to tell
6 why they can't comply with the Court's orders.

7 And I think, Mr. Finney, y'all -- the
8 State ought to be able to understand my concerns.
9 We've got a case here, any way you look at it, where
10 the incident giving rise to these charges arose in
11 April of 2013. That's 34 months ago. The case was
12 indicted in October of 2014. Arrest made in October
13 of -- there was enough evidence to indict it in
14 October of 2013. He was arrested in October of
15 2013. He was indicted in October of 2013 -- or
16 2014, I'm sorry.

17 SOLICITOR FINNEY: '14 offense.

18 THE COURT: He was arrested in 2013 and
19 indicted in 2014.

20 SOLICITOR FINNEY: That's correct, Your
21 Honor.

22 THE COURT: So it's been about 28 or 30
23 months since arrest and 15 or 16 months since
24 indictment. The rules are not followed in the
25 presentation of the grand jury between the time of

1 arrest and the time of indictment because it was a
2 year between that. And now I'm told that the State
3 won't be ready in February but will be ready in
4 March, and I'm supposed to put stock in that
5 representation. All right, counsel, I hadn't
6 decided what I'm gonna do with it. I'll take the
7 matter under advisement and I'll be in touch in ten
8 days.

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10 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 13th day of August, 2016.

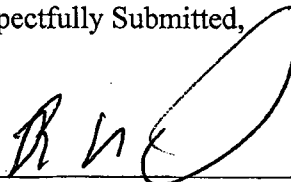
Frances B. Ray

FRANCES B. RAY, RPR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
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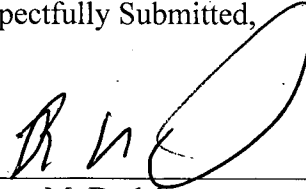
ATTORNEY FOR APPELLANT

This 28th day of April, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



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ATTORNEY FOR APPELLANT

This 28th day of April, 2017.

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