

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

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Appeal from Orangeburg County

MAY 05 2017

Honorable R. Knox McMahon, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

COURTNEY LEOLA PRICE,

APPELLANT

APPELLATE CASE NO. 2016-000528

**MOTION TO REMAND TO THE CIRCUIT COURT FOR A RULING ON
APPELLANT'S MOTION FOR PAROLE ELIGIBILITY PURSUANT TO S.C.
CODE ANN. § 16-25-90 AND MOTION FOR CREDIT FOR TIME SPENT ON
HOME DETENTION PURSUANT TO S.C. CODE ANN. § 24-13-40 AND TO HOLD
TIME LIMITS IN ABEYANCE**

Pursuant to Rule 240, SCACR, appellant moves this Court for a remand to the circuit court and to hold this appeal in abeyance pending the remand. Counsel for appellant has consulted with J. Benjamin Aplin, Esq., Senior Deputy Attorney General, and he has authorized me to inform the Court that he does not oppose appellant's motion. In support of this request, counsel shows:

(1) Appellant Courtney Leola Price ("Price") was tried before the Honorable R. Knox McMahon and a jury in Orangeburg County for murder. Tr. 1. Ashley Cornwell represented the State. Tr. 1. Carl B. Grant represented Price. Tr. 1.

(2) The jury convicted Price of the lesser-included offense of voluntary manslaughter. Tr. 1262, l. 21 – 1263, l. 10. The jury reached its verdict at 10:32 PM on a Friday night. Tr. 1261, ll. 16 – 17.

(3) During the sentencing colloquy, Price moved for early parole eligibility after serving 25% of her sentence pursuant to S.C. Code Ann. § 16-25-90 because she presented substantial evidence during the trial that she was the victim of domestic abuse at the hands of the decedent. Tr. 1278, l. 12 – 1281, l. 7. The relevant portions of the transcript from the sentencing hearing are attached as Exhibit A.

(4) The trial judge initially found that the decedent met the definition of “household member” as used in section 16-25-90 and as defined in S.C. Code Ann. § 16-25-10(3)(c) because Price and the decedent had “a child in common.” Tr. 1280, l.11 – 1281, l. 7.

(5) Judge McMahan then stated, “I’m going to take the issue of 16-25-90 and its application under advisement. I want to do some more research on that particular issue.” Tr. 1281, ll. 10 – 15.

(6) During his ruling after the immunity hearing, Judge McMahan reviewed the above-described evidence of domestic abuse and commented favorably on appellant’s witnesses. Tr. 402, ll. 7 – 22. Regarding Price’s testimony about the abuse, Judge McMahan said, “I do find much of her testimony being very credible and corroborated concerning various instances of abuse.” Tr. 405, ll. 9 – 13.

(7) In addition to appellant’s request for early parole eligibility, appellant also asked Judge McMahan to give her credit for time she spent on home detention pursuant to S.C. Code Ann. § 24-13-40. Tr. 1284, l. 11 – 1285, l. 6.

(8) Judge McMahon also took the request for credit for home detention under advisement. Tr. 1285, ll. 22 – 25. The court stated, “I will look at the other sentencing statute and see if I have discretion as far as the home detention act is concerned and if so, I will take it under advisement.” Tr. 1285, ll. 22 – 25.

(9) On March 4, 2016, within the ten days allowed by Rule 29 of the Rules of Criminal Procedure, appellant filed a written “Motion for Finding of Parole Eligibility.” (Exhibit B). On the same day (two minutes later), appellant filed a Notice of Appeal (Exhibit C). It is apparent trial counsel wanted a ruling on his motions but did not realize that Rule 29 stayed the time limit for filing the Notice of Appeal while the motions were pending.

(10) In State v. Blackwell-Selim, 392 S.C. 1, 4, 707 S.E.2d 426, 428 (2011), the Supreme Court held that a circuit judge must make specific findings of fact to support a ruling on parole eligibility under section 16-25-90. The Court remanded the case to the circuit court to make such findings. Id. This Court, albeit in an unpublished opinion, has also remanded a case where the trial court failed to make a finding under section 16-25-90. State v. Lou Ann Robinson, 2012-UP-574 (S.C. Ct. App. Oct. 24, 2012).

(11) In this case, Judge McMahon clearly indicated his intention to rule on parole eligibility and credit for home detention, but took the matters under advisement after a jury verdict at 10:30PM on a Friday night. The trial judge prudently wanted to study the relevant statutes and make a decision. However, before Judge McMahon could make a decision, the Notice of Appeal was filed, giving this Court jurisdiction.

(12) This Court has the authority to remand appellant’s case so that Judge McMahon can exercise his discretion and rule on appellant’s sentencing motions.

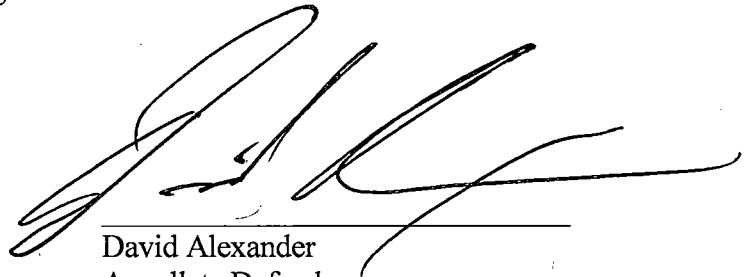
Blackwell-Selim at 4, 707 S.E.2d at 428. Price presented many witnesses about the decedent's abuse. Nothing legally disqualifies appellant from consideration under either section 16-25-90 or section 24-13-40.

(13) A remand will be an efficient use of judicial resources. A remand now will result in one appeal where a remand after consideration of any other issues on appeal may result in two appeals.

(14) A remand will also be an efficient use of taxpayer resources. If Judge McMahan grants appellant's motions, she will likely be eligible for parole before the conclusion of her appeal, which could result in saving the state the cost of her incarceration if the parole board determines she should be released.

(15) A remand also serves the interests of justice. Otherwise, Price may not get a judicial determination that she is entitled to early consideration of parole or credit for time spent on home detention until after the time when she could first be considered for parole. Appellant was sentenced to fifteen years' imprisonment, one-fourth of which is 3.75 years. She spent sixteen months on home detention. Appellant could be eligible for parole in 2018. The State would suffer no prejudice from Price having these statutory rights adjudicated now.

WHEREFORE, appellant respectfully requests that this Court hold this case in abeyance and remand this case to the Honorable R. Knox McMahon for a ruling on appellant's parole eligibility pursuant to S.C. Code Ann. § 16-25-90 and credit for home detention pursuant to S.C. Code Ann. § 24-13-40. Appellant also requests that this Court hold its deadlines in abeyance pending its resolution of this motion.

A handwritten signature in black ink, appearing to read 'D. Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

May 5, 2017

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

COURTNEY LEOLA PRICE,

APPELLANT

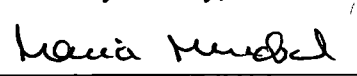
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the motion to remand to the circuit court for a ruling on Appellant's motion for parole eligibility pursuant to S.C. Code Ann. § 16-25-90 and motion for credit for time spent on home detention pursuant to S.C. Code Ann. § 24-13-40 and to hold time limits in abeyance and attached exhibits in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the motion have been served on Courtney Leola Price, #367248, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29205, this 5th day of May, 2017.


David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 5th day of May, 2017.



Notary Public for South Carolina
My Commission Expires: July 3, 2023.

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SC Court of Appeals

EXHIBIT A

1 herself.

2 So this record is indeed replete with all type of
3 mitigating circumstances. I would ask the Court to take
4 judicial notice also of the fact and for the record that
5 whatever sentence you impose -- and, of course, I'm asking
6 that it be a suspended sentence and if not completely
7 suspended for the minimum amount of time allowed -- minimum
8 amount of time that you can give her. And I'll talk about
9 what range I'm talking, if there's going to be active kind
10 of sentences when it comes to what's going on here with
11 Courtney today.

12 She has a history, as you know of being abused.
13 And because of that, the law says any active sentence, the
14 parole time, I think is reduced statutorily to 25 percent,
15 something like that. I'll look at the law, but there's a
16 judicial requirement that the Court is to consider when it
17 comes to somebody convicted of manslaughter in a situation
18 where there's evidence of domestic abuse. I got to tell
19 you, I didn't do all the exact research and there will be
20 time to apply it if I had to because I didn't expect that
21 she was going to be convicted. But I just want to make
22 sure that the Court is aware of that.

23 Your Honor, here's our argument. Considering all
24 that you've heard -- and these families they were very
25 close at some point; but considering all that you've heard,

1 I'm asking the Court to consider a sentence no more than
2 five years in prison. No more than that and the reason why
3 I think that is appropriate, Judge, is because number one,
4 it is what the law allows. It is indeed a legal sentence
5 and based upon all the mitigating circumstances that you've
6 heard, all the evidence in this case, we think that it
7 would be a fair and a just sentence.

8 This is not the case, not the fact pattern where my
9 client should be given anything even relatively close to
10 the max numb punishment allowed by law, regardless of the
11 fact that the family has asked for it. This is not that
12 particular case at all.

13 You know, Ms. Price, she said a lot and she spoke
14 from her heart and told the Court what she thought and her
15 feelings. We know the Court can't just turn everything
16 around now, you've already made your rulings on all that
17 and I want you to understand that's just a mother speaking
18 from her heart.

19 THE COURT: I do understand. I understand,
20 Mr. Grant.

21 MR. GRANT: Yes, sir.

22 And I would ask, Judge, that you show mercy upon
23 this young lady. She's got some health issues. And I
24 think it's genetic. Her father died of diabetes. She's
25 been a juvenile diabetic and she's insulin dependent. So I

1 ask that you show mercy upon her and give her a sentence
2 that amounts to no more or know higher than five years
3 active time and with the judicial requirement, of course,
4 that parole will come in consideration of that statute that
5 I talked about when someone has a history of being abused
6 in a domestic situation, when there's evidence in the
7 record of it.

8 THE COURT: Thank you. Thank you very much,
9 Mr. Grant.

10 MR. GRANT: Yes, sir.

11 THE COURT: The section you're referring to is
12 16-25-90 parole eligibility is affected by evidence of
13 domestic violence suffered at the hands of a household
14 member. It's under the domestic violence chapter of title
15 16, which I know it well.

16 I do not think that Sam Simmons would qualify as a
17 household member.

18 MR. GRANT: And I don't have the statute before me.
19 Is there a definition on that screen about what household
20 member is.

21 THE COURT: I would go back up to 16-24 -- there
22 may be. Let's look at that. 16-24 -- excuse me, 16-25 --

23 MR. GRANT: I'm just thinking out loud as I'm
24 standing before you.

25 THE COURT: It may be because they have a child --

1 MR. GRANT: Child together.

2 THE COURT: -- in common.

3 MR. GRANT: Yes, sir.

4 THE COURT: Household member means spouse or former
5 spouse, persons who have a child in common or a male and
6 female who are cohabitating or formerly have cohabitated,
7 so it would fall under that with a child in common, Carter.

8 Anything further, Mr. Grant?

9 MR. GRANT: No, Your Honor.

10 THE COURT: As an initial matter, I'm going to take
11 the issue of 16-25-90 and its application under advisement.
12 I want to do some more research on that particular issue.
13 As far as the statute is concerned, it refers me back also
14 to 16-25-20, a very lengthy statute and I want to study
15 that some more.

16 MR. GRANT: Yes, sir.

17 THE COURT: It is a tragedy. It was a -- obviously
18 a toxic situation. I -- as Ms. Garvin and of course,
19 Ms. Thomas stated to the Simmons family, they lost a son, a
20 brother, a friend. And I've seen the support of both the
21 Simmons family over here and obviously support -- the
22 family support for Ms. Price.

23 None of us -- nobody wants to outlive their
24 children. It's just not natural. That's not the circle of
25 life. That's not the way the circle of life should go.

1 Ms. Price talks about and I understand -- I don't
2 understand a mother's heart, I don't have one. I
3 understand a father's heart. I have one. I think I
4 understand. She called Sam a monster. And none of us are
5 perfect. I don't think he's a monster no more than I think
6 this young lady is a monster. I think there was fault on
7 both sides. I'm not talking about that night, I'm
8 talking relationship itself.

9 And she -- she could have made other choices and
10 Sam could have too, of course, that would not lead to Sam
11 losing his life and her losing her freedom. And the
12 tragedy continues because I know the Price family loves
13 Carter and I know the Simmons family loves Carter and
14 that's a real tragedy. You know, I volunteered for this
15 job, Mr. Grant.

16 MR. GRANT: Yes, sir.

17 THE COURT: And it's tough to take parents from
18 their children. It's tough for Carter to lose his father
19 and I know it's tough on a mother to lose her freedom and
20 not be able to raise her baby. But behavior has
21 consequences. I disagree, of course, with Ms. Price that
22 the system didn't work. I don't think you can get a
23 better, more hard working jury. I don't think you can get
24 a better, more hard working defense attorney that did a
25 magnificent job for his client, nor a better or hard

1 working solicitor. And that's -- y'all tried your case and
2 left it all at the feet of the jurors and they did what
3 they thought, based on their findings of the fact ins the
4 case.

5 All right. 2014-GS-38-443, Courtney Leola Price,
6 is jury having convicted Ms. Price of voluntary
7 manslaughter, the range of sentencing under 16-3-50 is not
8 less than two years nor more than thirty years. Wherefore
9 the defendant is committed to the State Department of
10 Corrections for a determinate term of 15 years.

11 Good luck to you, Ms. Price. She's in custody of
12 the Orangeburg County Sheriff's Office.

13 Sheriff, is there any particular way you want the
14 gallery to exit.

15 THE OFFICER: The front door is good.

16 THE COURT: All right. If everyone would remain in
17 place momentarily.

18 (Victim's family left the courtroom.)

19 MR. GRANT: Your Honor, there was one other thing
20 that I forgot.

21 THE COURT: Yes, sir. Well -- your client is not
22 in here.

23 MR. GRANT: Sir?

24 THE COURT: Your client is not in here.

25 MR. GRANT: Yeah, but she's -- Counsel is still

1 here even though the family is not, you know, they asked
2 for it, I simply forgot it.

3 Can you get the client back out? She's still here
4 right.

5 THE OFFICER: Yes, sir.

6 THE OFFICER: Your Honor.

7 MR. GRANT: There's one more thing I need to ask
8 for the record.

9 (The defendant entered the courtroom.)

10 THE COURT: Yes, sir.

11 MR. GRANT: There is a statute that, since October
12 6, 2014, Courtney has been out of jail on electronic
13 monitoring. And I'm going off my memory now, sir, because
14 I don't have the order and what she's just reminded me of,
15 on house arrest. There is a statute that when it comes to
16 any active sentence, the Court has discretion -- and I
17 think it's discretion, it may be mandatory, but I know it's
18 at least discretionary, to give the defendant credit toward
19 any time served while they're out on house arrest. And I
20 think that I would have been remiss -- I simply forgot. I
21 would be remiss if I didn't ask you to do that and give her
22 credit for that amount of time served towards that
23 accident considering she's been out on house arrest --
24 again, she's had this bracelet on, Judge, since we went to
25 her bond hearings and I've got to tell you. She's been

1 absolutely cooperative and shown up every place and done
2 everything that she's supposed to do and hadn't had any
3 issues reported to my office or reported to court.

4 So I'm asking you to give her credit forward the
5 sentence for time served from October 6, 2014 until today
6 as well.

7 THE COURT: Solicitor, are you familiar with the
8 home detention statute?

9 MS. CORNWELL: I apologize, Your Honor, I didn't
10 hear you.

11 THE COURT: Are you familiar with the home
12 detention act?

13 MS. CORNWELL: I am, Your Honor. I believe it is
14 discretionary in Your Honor's discretion as to whether or
15 not to apply that.

16 THE COURT: All right. I'm checking the box on the
17 sentencing sheet that she shall be given credit for time
18 served pursuant to South Carolina Code Section 24-13-40 to
19 be calculated and applied by the State Department of
20 Corrections.

21 MR. GRANT: Yes, sir.

22 THE COURT: I will look at the other sentencing
23 statute and see if I have discretion as far as the home
24 detention act is concerned and if so, I will take it under
25 advisement.

1 MR. GRANT: Yes, sir. Thank you, Judge.

2 THE COURT: Thank you. Thank you very much. Thank
3 you, Sheriff.

4 All right. Sheriff, may the gallery exit the
5 courtroom now.

6 THE OFFICER: Yes, sir.

7 THE COURT: All right. Thank you. Thank you very
8 much. As far as court is concerned, court will be in
9 recess. Thank you solicitor, thank you, Mr. Grant.

10 * * * * * END OF TRANSCRIPT * * * * *

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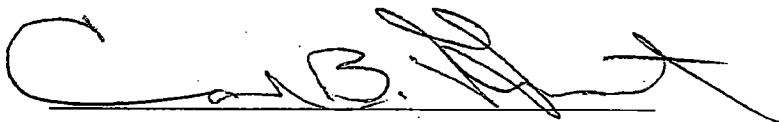
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EXHIBIT B

trial. Furthermore, in addition to the incidents of domestic abuse that were directly observed by the defendant's witnesses, the defendant testified that all of the unknown and suspected bruises, marks and black eyes observed on her body by the corroborating witnesses came from separate incidents of domestic abuse suffered at the hands of Samuel Simmons, the father of her child. Also, the defendant testified that she was choked and assaulted by Samuel Simmons, the decedent victim, when she was five months pregnant with his child. Additionally, the defendant called Dr. Lois Veronen, a licensed clinical psychologist, as an expert who testified that at the time of the incident the defendant was suffering with battered woman syndrome, post-traumatic stress disorder, and anxiety, all stemming from the defendant being physically abused by Samuel Simmons, her household member. The court found this testimony credible and charged the jury on battered woman syndrome and self-defense.

ACCORDINGLY, the defendant moves for an order of this HONORABLE COURT finding that the defendant presented credible evidence of a history of criminal domestic violence, as provided in S.C. Code section 16 – 25 – 20, suffered at the hands of a household member, and she is therefore entitled to the parole eligibility benefits that are outlined in S.C. Code Section 16 – 25 – 90. For purposes of this motion, the defendant incorporates by reference the entire record of trial in this case as evidence to support this motion. The defendant also moves that an evidentiary hearing and oral argument is scheduled by the court on this motion as expeditiously as possible. The defendant desires to be personally present at the hearing on this motion.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Carl B. Grant", written over a horizontal line.

Carl B. Grant

Attorney for Defendant

March 4, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
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STATE OF SOUTH CAROLINA,)
)
VS.)
)
COURTNEY PRICE,)
)
DEFENDANT.)

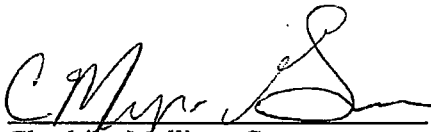
IN THE GENERAL SESSIONS COURT
FOR THE FIRST JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

I, Claedrika Mulligan-Green, the undersigned employee of The Law Firm of Carl B. Grant, P.A. hereby certify that, on March 4, 2016, a copy of the following document have served on the following individual by depositing a copy of the following document in the United States Postal Service, Next Day Delivery, postage pre-paid, properly addressed to them as follows:

DOCUMENT(S): Notice of Motion and Motion For Finding of Parole Eligibility Pursuant to S.C. Code Section 16-25-90

SERVED ON: The Honorable R. Knox McMahon
205 E. Main Street
Lexington, SC 29072


Claedrika Mulligan-Green
Legal Assistant
The Law Firm of Carl B. Grant, P.A.

March 4, 2016
Orangeburg, South Carolina

FILED FOR RECORD
MAR 4 2016
P 2:12
CLERK OF COURT
ORANGEBURG, SC

LFM

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
STATE OF SOUTH CAROLINA,)
)
VS.)
)
COURTNEY PRICE,)
)
DEFENDANT.)
_____)

IN THE GENERAL SESSIONS COURT
FOR THE FIRST JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

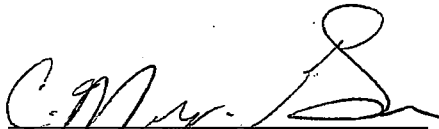
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WINNIE A. B. CLARK
2016 MAR - 4 P 2:42
CLERK OF COURT
ORANGEBURG

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I, Claedrika Mulligan-Green, the undersigned employee of The Law Firm of Carl B. Grant, hereby certify that a copy of the following document has been served on the following individual by hand delivery:

DOCUMENT(S): Notice of Motion and Motion For Finding of Parole Eligibility Pursuant to S.C. Code Section 16-25-90

SERVED ON: Ashley Cornwell, Assistant Solicitor
190 Gibson Street
Post Office Box 1525
Orangeburg, South Carolina 29116


Claedrika Mulligan-Green
Legal Assistant
The Law Firm of Carl B. Grant, P.A.

March 4, 2016
Orangeburg, South Carolina

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No. 2014A3810200258
Indictment No. 2014GS3801443

The State,

Respondent,

v.

Courtney L. Price,

Appellant.

NOTICE OF APPEAL

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MAR 04 2016

SC Court of Appeals

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2016 MAR -4 P 2:44
CLERK OF COURT
ORANGEBURG, SC

Courtney L. Price appeals the denial of her motion for immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act, and she appeals her conviction and sentence in this case. The sentence was imposed by the Honorable R. Knox McMahon on February 26, 2016.

March 4, 2016



Carl B. Grant
The Law Firm of Carl B. Grant, P.A.
Post Office Box 1203
Orangeburg, South Carolina 29116
(803) 536-4011
Attorney for Appellant

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MAR 4 2016
SC OFFICE OF
APPELLATE DEFENSE

Other Counsel of Record:
Ashley Cornwell, Assistant Solicitor
Post Office Box 1525
Orangeburg, South Carolina 29116
(803) 533-6252
Attorney for Respondent

ATTEST: TRUE COPY

Winnifra B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
STATE OF SOUTH CAROLINA,)
)
VS.)
)
COURTNEY PRICE,)
)
DEFENDANT.)
_____)

IN THE GENERAL SESSIONS COURT
FOR THE FIRST JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

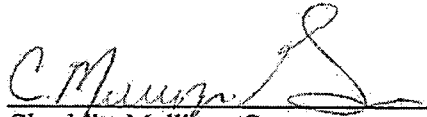
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CLERK OF COURT
ORANGEBURG, SC

I, Claedrika Mulligan-Green, the undersigned employee of The Law Firm of Carl B. Grant, hereby certify that a copy of the following document has been served on the following individual by hand delivery:


DOCUMENT(S): Notice of Appeal

SERVED ON: Ashley Cornwell, Assistant Solicitor
190 Gibson Street
Post Office Box 1525
Orangeburg, South Carolina 29116

RECEIVED
MAR 04 2016
SC Court of Appeals


Claedrika Mulligan-Green
Legal Assistant
The Law Firm of Carl B. Grant, P.A.

March 4, 2016
Orangeburg, South Carolina

ATTEST: TRUE

CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
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STATE OF SOUTH CAROLINA,)
)
VS.)
)
COURTNEY PRICE,)
)
DEFENDANT.)
_____)

IN THE GENERAL SESSIONS COURT
FOR THE FIRST JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

I, La'Asia Graham, the undersigned employee of The Law Firm of Carl B. Grant, hereby certify that a copy of the following document has been served on the following individual by hand delivery:

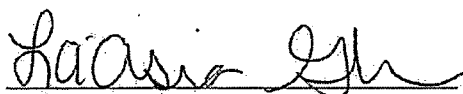
DOCUMENT(S): Notice of Appeal

SERVED ON: The Office of Appellate Defense
1330 Lady Street
Columbia, South Carolina 29201

RECEIVED

MAR 04 2016

South Carolina Attorney General's Office **SC Court of Appeals**
1000 Assembly Street
Columbia, South Carolina 29201



La'Asia Graham
Legal Assistant
The Law Firm of Carl B. Grant, P.A.

March 4, 2016
Orangeburg, South Carolina