

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Bamberg County

Honorable R. Lawton McIntosh, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

JUN 19 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HOMER ARTHUR JAMES,

APPELLANT.

APPELLATE CASE NO. 2016-002046  
\_\_\_\_\_

**MOTION TO HOLD APPEAL IN ABEYANCE**  
\_\_\_\_\_

Appellant Homer Arthur James, through undersigned counsel, moves this Court to place the deadline for filing the initial brief of appellant and designation of matter in abeyance pending receipt of a transcript of pre-trial hearings. Counsel for appellant states the following in support of this motion:

1. Appellant Homer Arthur James was convicted of armed robbery and sentenced to life without parole pursuant to South Carolina's recidivist statute.
2. In working on appellant's case, it unfortunately became apparent that the transcript is not complete. After jury selection, on page 48 (included as

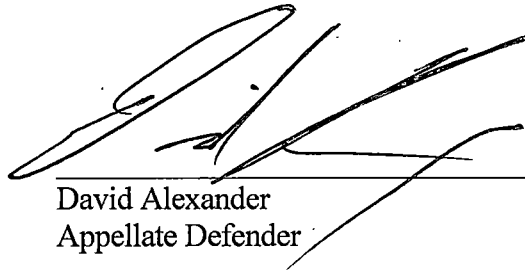
Exhibit A), the Honorable R. Lawton McIntosh begins ruling on various pre-trial motions, including a Jackson v. Denno, 378 U.S. 368 (1964), hearing. It is clear from Judge McIntosh's remarks that he took significant testimony on these motions.

3. Appellant's trial lawyer provided dates of the trial as August 9-11, 2016, and informed Appellate Defense that the pre-trial hearings were heard immediately prior to trial. Appellate Defense ordered the transcripts for August 9-11, 2016, assuming this would include the pre-trial hearings. After contacting the court reporter today, counsel learned the pre-trial hearings were held the day before—not immediately before trial—on August 8, 2016. Counsel for appellant has ordered the transcript and a copy of the transcript request is attached to this motion (Exhibit B).
4. Counsel for appellant regrets that this error in not obtaining the transcript of the pre-trial hearings was not discovered earlier and apologizes to the Court for the delay. Counsel reviewed this case using his normal procedures, which includes checking the correspondence between our staff and the trial lawyer to make sure all hearing dates were provided and transcribed and that the transcript includes jury selection and sentencing.
5. This case had multiple hearings before different judges and the trial attorney provided a comprehensive email listing these hearings (which were ordered and were transcribed).
6. The transcription of these hearings is necessary for a full evaluation of appellant's case for appeal. Considering that appellant is serving a life

sentence, counsel believes the necessity of ordering the transcription justifies the delay of placing this case in abeyance.

7. Counsel has conferred with J. Benjamin Aplin, Esq., who represents the State, and he has authorized me to inform the Court that he consents to this motion.

WHEREFORE, counsel for appellant Homer Arthur James asks this Court to place the deadlines for this case in abeyance pending receipt of the transcript of the pre-trial hearings.

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

David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of June, 2017.

# EXHIBIT A

1 MS. ALVES: That's good.

2 THE COURT: Okay. Let's do 1:30.

3 Ladies and gentlemen, we're going to excuse you  
4 for your lunch. We'll ask that you be back at your  
5 jury room at 1:25 and we'll begin with the trial of  
6 this case and you'll be sworn in and I'll give you a  
7 charge further on the law before we get started with  
8 opening statements. I'll excuse you now.

9 (The jury exits the courtroom at 12:13 PM.)

10 THE COURT: All right. Any additions from the  
11 State on my instructions?

12 MR. MILLER: Nothing from the State, Your  
13 Honor.

14 THE COURT: From the defense?

15 MS. ALVES: Nothing, Your Honor.

16 THE COURT: Okay. We'll be in recess until  
17 1:30. Thank you.

18 (Luncheon recess 12:15 PM - 1:35 PM.)

19 THE COURT: Let me do some housekeeping right  
20 quick. As to the motion -- various motions, mainly  
21 Jackson v. Denno motion, I reserve ruling on the  
22 testimony regarding there be a lot of snakes, big  
23 ones, the defendant being a boxer, the comment about  
24 top five people we've chased and the amount of time  
25 we spent running.

1           Looking at the case law, I don't believe that  
2           constitutes interrogation. I'm going to find it's  
3           admissible. It certainly wasn't expressed  
4           questioning. The questioning that I heard in the  
5           testimony had to do with those normally attempted to  
6           arrest and custody as to age, whether you need  
7           medical treatment, whether he wanted water.

8           It wasn't such that would be words or actions  
9           or conduct on the part of the police that they knew  
10          or should have known it was likely to elicit  
11          criminal response. I think it was just comments and  
12          they were voluntary statements by the defendant;  
13          albeit, he was in custody, clearly. So I'm not  
14          going through Jackson-Denno analysis because I'm  
15          going to find it's not interrogation, therefore,  
16          they're admissible.

17          With that being said, does either side, in  
18          their opening, intend to show any exhibits?

19          MR. MILLER: None from the State, Your Honor.

20          MS. ALVES: No, Your Honor.

21          THE COURT: All right. If you would, I had a  
22          case the other day where lawyers were throwing  
23          things up on the screen before they're admitted in  
24          evidence. Don't publish them in any form or fashion  
25          until they're admitted, unless y'all stipulate as to

# **EXHIBIT B**



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

**1C COPY**

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

June 19, 2017

Bethanie K. Creppon  
Circuit Court Reporter  
P.O. Box 85411  
Lexington, SC 29073

**RECEIVED**  
JUN 19 2017  
SC Court of Appeals

Dear Ms. Creppon:

Please provide us with the following transcript:

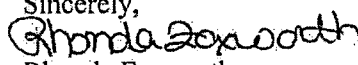
The State of South Carolina vs. Homer Arthur James      Case #:      2014-GS-05-00209  
Appellate Case No. 2016-002046  
County:      Bamberg      Date of Trial:      August 8, 2016  
Presiding Judge:      R. Lawton McIntosh

Pursuant to the SC Court Reporter's Manual, please number the lines on the paper from 1-25 and include any and all recorded motions (pretrial and post-trial). Consecutive numbering of pages must be used throughout all volumes regardless of the number of volumes involved. Additionally, please transcribe the **jury selection** and the State and defense counsel's **opening and closing arguments** and include the **jury strike sheet**. Please be sure to include **headers** and a **complete index** including a **listing of exhibits**.

If you are aware of any co-defendants, additional transcripts, or if the Attorney General's Office has already requested a transcript, please let us know.

SCCID prefers that all transcripts are sent via **certified mail**. If you would prefer the convenience of sending transcripts electronically, please use SCCID's file transfer servers found by navigating to <https://filexfer.sccid.sc.gov>. For further assistance or questions with this service, please contact Ryan Cole at [rcole@sccid.sc.gov](mailto:rcole@sccid.sc.gov) or by phone at 803-734-1239.

To ensure prompt payment, please sign and complete the enclosed form and include the original criminal case number (indictment number) where the space is provided.

Sincerely,  
  
Rhonda Foxworth  
Legal Services Coordinator

cc: S.C. Court of Appeals  
Attorney General's Office

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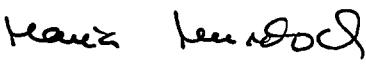
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Motion to Hold Appeal in Abeyance 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 this 19th day of June, 2017.

  
\_\_\_\_\_  
David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 19th day of June, 2017.

 (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.