

LAURENS COUNTY
CLERK OF COURT
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF LAURENS)
EIGHTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
Indictment No.: 2016-GS-30-757

-vs.-

RECEIVED

MOTION TO DISMISS CHARGES
OR IN THE ALTERNATIVE
GRANT A NEW TRIAL

STEPHEN TRASE FINCHER NOV 16 2017

DEFENDANT. SC Court of Appeals

Defendant above named, through the undersigned attorney, respectfully moves the Court to dismiss the above referenced indictment and charges pending against Defendant or in the alternative grant a new trial based on prosecutorial misconduct by the Assistant Solicitor during said trial. Defendant will show unto the Court as follows:

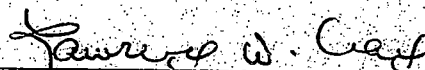
- 1) Defendant was tried in his absence on March 27, 28, and 29, 2017 for two counts of Burglary 1st Degree at the Laurens County Judicial Center. The trial Judge was The Honorable Benjamin H. Culbertson. Prosecuting the case for the State of South Carolina was Assistant Solicitor Dale Scott. Defendant was represented by Lawrence W. Crane.
- 2) Opening Statements and Testimony took place on March 27, 28, and 29, 2017. Just before lunch on March 29th, the State rested its' case and directed verdict motions were raised by Defense Counsel. Said Motions were denied.
- 3) The Defense did not present any Testimony and Judge Culbertson held a Charge Conference to determine what charges would be given to the Jury. The State requested that only Burglary 1st be charged and the Defendant requested that Burglary 2nd and Burglary 3rd also be charged. At the close of the charge conference Judge Culbertson determined and ruled that Burglary 1st, 2nd, and 3rd, would be charged to the Jury. The trial was recessed for lunch.

- 4) During the lunch break and unknown to Defendant or Defense Counsel, Assistant Solicitor Scott emailed the Judge on two (2) separate occasions trying to persuade the Judge to change his mind regarding the charges. Assistant Solicitor Scott included a case for the Judge to peruse regarding the charge for the Jury (Copies of emails and the case law is provided). Defendant and Defense Counsel were never told of the emails and the Defense Attorney only learned of them after the lunch break when Assistant Solicitor Scott was overheard asking Judge Culbertson's Law Clerk if the Judge received his emails. Upon return to the bench after lunch Judge Culbertson asked if there were any issues to discuss. Defense Counsel asked if Judge Culbertson had received emails from the Assistant Solicitor during lunch and Judge Culbertson acknowledged that he had. It is unclear to the undersigned attorney whether Judge Culbertson read those emails but Judge Culbertson changed his mind on the charges to be given to the jury and struck Burglary 3rd from the charges pertaining to the above referenced indictment and struck both Burglary 2nd and 3rd from a second indictment, for which Defendant was found not guilty.
- 5) It is a violation of Rule 18(a), SCRCrimP (attached) for a party to continue to argue after a Judge has made his ruling. It is apparent from the Assistant Solicitor's emails that he violated said rule as evidenced by the email dated March 29, 2017 at 12:50 p.m. which begins, "Judge, I just wanted to argue one more time...". In that email he offered a case (attached).
- 6) Defendant alleges it is a violation of Rule 20, SCRCrimP not to include Defendant and/or Defense Counsel in discussions regarding the appropriate charges to be given to a jury as Assistant Solicitor Scott attempted to do by sending the emails and the case law to Judge Culbertson.

- 7) Further, to communicate with a judge via email, or in any fashion, without including the opposition in said discussion is an Ex Parte Communication and is a violation of Rule 3.5, RPC, Rule 407, SCACR.
- 8) Assistant Solicitor Scott sent a second email to the judge, also ex parte and also in violation of Rule 18(a), SCRCrimP, noted March 29, 2017 at 1:12 p.m. and included more case law.
- 9) Defense Attorney was not fully aware of the contents of the emails or case law provided to Judge Culbertson until returning to his office in Greenville after the trial.
- 10) Defendant was sentenced on May 26, 2017, to an active sentence of twenty-five (25) years by the Honorable Donald B. Hocker.

Defendant submits that Assistant Solicitor Scott violated Rules 18(a) and 20, SCRCrimP, and Rule 3.5, RPC, Rule 407, SCACR. Said conduct arises to prosecutorial misconduct and Defendant respectfully moves the Court to dismiss said charge or in the alternative to grant a new trial.

Respectfully submitted,



LAWRENCE W. CRANE, ESQ.
ATTORNEY FOR DEFENDANT

Greenville, South Carolina

June 1, 2017