

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BERKELEY COUNTY  
Court of General Sessions

Kristi Lea Harrington / Trial Judge, Sentencing Judge

---

Appellate Case No. 2017-001704

---

State of South Carolina

Respondent,

v.

Devar T. Ravenell

Appellant.

---

APPELLANT'S REPLY BRIEF

---

Eric B. Laquiere  
Laquiere Law, Inc.  
3674 Old Charleston Hwy  
Johns Island, SC 29455  
843-556-2958  
[eric@laqlaw.com](mailto:eric@laqlaw.com)

ATTORNEY FOR THE APPELLANT

**RECEIVED**  
JAN 02 2018  
SC Court of Appeals

TO THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON  
SERVICES; and CLERK OF THE COURT OF APPEALS:

## TABLE OF CONTENTS

1. Cover Page	1
2. Table of Contents	2
3. Table of Authorities	3
4. Reply to Respondent's Arguments	4
5. Conclusion	10
6. Amended Designation of Matter	12
7. Certification	13

TABLE OF AUTHORITIES

Cases

Brady v. Maryland,  
373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)..... 6

Estelle v. Smith,  
451 U.S. 454, 101 S. Ct. 1866, 68 L. Ed. 2d 359 (1981)..... 7

Gagnon v. Scarpelli,  
411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973)..... 5

Morrissey v. Brewer,  
408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)..... 5

State v. Archie,  
322 S.C. 135, 470 S.E.2d 380 (Ct. App. 1996)..... 7, 8

State v. Hill,  
368 S.C. 649, 630 S.E.2d 274 (2006) ..... 5, 6

State v. White,  
218 S.C. 130, 61 S.E.2d 754 (1950) ..... 8

Statutes

S.C. Code Ann. § 24-21-220..... 8

S.C. Code Ann. § 24-21-430..... 7

SC Code 56-01-1100..... 4

SC Code 56-05-1220..... 4

## **REPLY TO RESPONDENT'S ARGUMENTS**

In its Brief, the Respondent re-characterized the issues raised by the Appellant in a manner which avoids addressing several issues altogether. In this Reply Brief the Appellant will address the arguments of the Respondent; but first, the Appellant will bring to the Court's attention the issues that were ignored by the Respondent.

### **ISSUES IGNORED BY THE RESPONDENT**

- I. The Respondent did not address the unconstitutionality of the sentencing judge:
  - a. Interrogating the Defendant regarding his drug use during the sentencing hearing for violations of the habitual offender act SC Code 56-01-1100 and leaving the scene of an accident SC Code 56-05-1220;
  - b. Ordering the Defendant be drug tested during his sentencing hearing for violations of the habitual offender act SC Code 56-01-1100 and for leaving the scene of an accident SC Code 56-05-1220.
  - c. Utilizing the results of the drug test and responses to interrogation regarding drug use as a basis for determining the appropriate length of a sentence for violations of the habitual offender act SC Code 56-01-1100 and for leaving the scene of an accident SC Code 56-05-1220.

Rather, the Respondent only addressed whether these actions were constitutional violations in the context of a probation violation hearing. The Appellant challenged the legality of the three (3) year sentence rendered upon the charges of habitual offender, and the one (1) year sentence for leaving the scene of an accident; in addition, the Appellant challenged the legality of the four (4) year sentence rendered upon the probation violation. The Respondent has only elected to address the

Appellant's appeal as to the sentencing judge's actions as they effect the revocation of probation; apparently conceding the sentencing judge's actions were improper with respect to the sentencing on the underlying charges of habitual offender and leaving the scene of the accident.

II. The Respondent did not address the Appellant's argument that his right to due process was violated in the context of the probation revocation proceeding as a result of the probation violation notice's failure to allege drug use as a basis for probation revocation. The Respondent concedes that the Appellant did not have notice that his drug use would be considered as a basis for revoking his probation. In State v. Hill, 368 S.C. 649, 659–60, 630 S.E.2d 274, 280 (2006) the Supreme Court of South Carolina re-affirmed that “Morrissey and Gagnon outline the boundaries beyond which the scope of discovery in these “limited liberty” cases may not be restricted. Specifically, these cases indicate that minimal due process requires that a probationer be given notice of the alleged violations and disclosure of the evidence against him.” Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973); Morrissey v. Brewer, 408 U.S. 471, 488–89, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). This is a violation of procedural due process requiring the probation revocation be vacated.

## REPLY TO ISSUES ADDRESSED BY RESPONDENT

1. **The Respondent argues that the Appellant does not have the benefit of Fifth Amendment protections (or those of Section 12 of the SC Constitution) in the context of a probation violation hearing as a probation violation hearing is not a criminal trial.**

The Respondent ignores the fact that the Appellant was being sentenced for two criminal offenses to which he had plead guilty. Those pleas were not drug related. As discussed at length in the Appellants initial brief; Fifth Amendment protections apply to both the guilt and sentencing phases of a criminal trial. The Respondent falsely states in its Brief that the sentencing occurred on March 18, 2016 and that the Court was not sentencing the Appellate in a criminal case on May 4, 2017. This is incorrect. The Appellate was sentenced to probation on March 18, 2016 in Charleston County, but that is unrelated to this Appeal. The Appellant's plea of guilty to offenses of habitual offender and leaving the scene of an accident were accepted on March 10, 2017 in Berkeley County and sentencing was deferred until May 4, 2017. This appeal arises out of the sentencing judge's conduct during the May 4, 2017 sentencing proceeding.

4 EHL

Additionally, the Fifth Amendment privilege applies in the context of a probation revocation hearing. In denying this fact, the Respondent misplaces its reliance upon Hill, 368 S.C. 649. The holding in Hill, Id. was limited, it only held that the right to discovery under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) was inapplicable to a probation revocation hearing. There is no South Carolina precedent which holds that a person on probation loses the right against self-incrimination, nor the

right of due process. An admission of actions relating to a crime, made while under oath, in court, can be used against the speaker in a future criminal case; whether or not the present proceeding is a criminal trial. The Appellant attempted to remain silent but the sentencing judge did not allow him to do so. If he had continued to refuse to answer, he risked being held in contempt of court or receiving an increased sentence due to angering the sentencing judge. “The Fifth Amendment privilege is as broad as the mischief against which it seeks to guard and the privilege is fulfilled only when a criminal defendant is guaranteed the right to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty... for such silence.” Estelle v. Smith, 451 U.S. 454, 101 S. Ct. 1866, 68 L. Ed. 2d 359 (1981).

**2. The Respondent argues that the Court has statutory authority to order probation agents to conduct investigations, therefore the Court’s request for a drug test is permitted.**

The Respondent has misconstrued the statutes delegating authority over probationers between the Judicial and Executive branches of government. S.C. Code Ann. § 24-21-430 grants the Courts the authority to “impose by order” conditions of probation. A Court may also “at any time modify the conditions of probation”. In the present case, the Court did not issue an order modifying the conditions of probation. The Court, in the middle of a sentencing hearing, instructed law enforcement to administer a drug test to the Appellant. The existing probation conditions provided for random drug testing. The Court may only establish conditions of probation. The Department of Probation and Parole is charged with administering the probation program. In State v. Archie, 322 S.C.

135, 470 S.E.2d 380 (Ct. App. 1996), the Court of Appeals held that the separation of powers doctrine applied to the administration of probation. In Archie, 322 S.C. 135, the Department violated the separation of powers doctrine by adding probationary requirements not expressly ordered by the Court. In the present case, the Court violated the separation of powers doctrine by administering the probation program rather than simply setting requirements as is the limit of its power. S.C. Code Ann. § 24-21-220 vests with the Department the “proper care, assessment, treatment, supervision, and management of offenders under its control.” Scheduling random drug tests of probationers constitutes “assessment, treatment, supervision, and management”; and is therefore exclusively the purview of the executive branch.

**3. The Respondent argues that the Court has discretion to revoke a suspended sentence in full upon a finding of violations of probation.**

The Respondent asks the we overlook the clear violation of procedural due process; whereby the Appellant was not given notice that his drug use would be presented as a basis for revocation, or for the purpose of deciding the extent of that revocation. This is in direct contradiction of the law. In Archie, the court opined “This court will not disturb the circuit court’s decision to revoke probation unless the decision was influenced by an error of law, was without evidentiary support, or constituted an abuse of discretion. State v. White, 218 S.C. 130, 61 S.E.2d 754 (1950). However, we conclude the revocation, based at least in part on Archie’s failure to comply with conditions imposed by the Department, was error.” In the present case, it is undisputed that the Appellant received no notice that his drug use would be considered with regard to his probation revocation.

The transcript reflects that the decision to revoke in full was impacted by the drug test results and testimony regarding drug use.


## CONCLUSION

The three (3) year sentence for the offense of habitual offender and the one (1) year sentence for leaving the scene of an accident resulted from errors of law and abuses of discretion because the sentence was based in whole or in part on the failed drug test and interrogation of the Appellant regarding drug use in violation of the Fourth and Fifth Amendments of the United States Constitution. The arguments of the Respondent only address the revocation of probation and concede through omission the error of law as to the three (3) year sentence and the one (1) year sentence.

As to the revocation of probation; the existing precedent holds that minimal due process in probation cases requires that a probationer be given notice of the alleged violations and disclosure of the evidence against him. Consistent with Code 24-21-450, this requires, at a minimum, that a probation agent prepare and submit a pre-hearing report showing how the probationer has allegedly violated his probation. No such report included drug use as a basis for probation revocation. The revocation in full, and resulting four (4) year sentence, is in violation of the Appellant's rights of due process. The Respondent concedes the lack of notice but argues the constitutional violation should be overlooked.

The three (3) year sentence and the one (1) year sentences resulting from the criminal plea and the four (4) year sentence resulting from the probation revocation are unlawful; this Court should vacate them and remand all three matters to the Circuit Court for re-sentencing; with the Appellant to receive credit for time served.

Respectfully submitted.



---

Eric B. Laquiere  
Laquiere Law Inc.  
SC Bar No.: 71177  
3674 Old Charleston Hwy  
Johns Island, SC 29455  
843-556-2958  
eric@laqlaw.com  
Attorney for Defendant/Appellant

*December 28, 2017*





December 29, 2017

**Via USP Overnight**

SC Court of Appeals  
Calhoun Building  
Attn: Clerk of Court  
1220 Senate St.  
Columbia, SC 29201

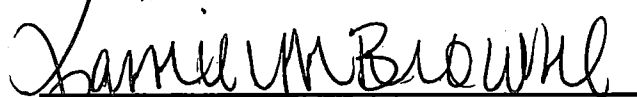
File Name: Ravenell // LLF File No.: 16110  
Appellate Case Number: 2017-001704  
RE: Record on Appeal, etc.

**RECEIVED**  
JAN 02 2018  
SC Court of Appeals

Dear Clerk of Court:

Enclosed, please find one (1) original and one (1) copies of each: Record on Appeal, Appellant's Reply Brief, Consent Order Granting Appellant Extension of Time to File Reply Brief and/or Record on Appeal and Certificate of Service. Please return a time-stamped copy in the self-addressed stamped envelope we have provided for the Court's convenience

Sincerely,

  
\_\_\_\_\_  
Jamie M. Browne, Paralegal  
Laquiere Law Firm, Inc.

EBL

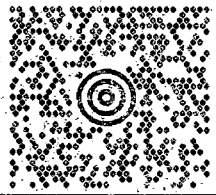
Cc: South Carolina Department of Probation, Parole and Pardon Services, Attention: Matthew Buchanan, 2221 Devine St., Suite 600, Columbia, SC 29250 [matthew.buchanan@ppp.sc.gov](mailto:matthew.buchanan@ppp.sc.gov)

SOUTH CAROLINA COURT OF APPEALS  
1220 SENATE ST  
COLUMBIA SC 29201-3769

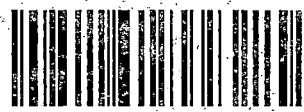
P: GREEN S: BOTORG I: GR1  
424-1096  
3739  
1030  
974FBX019251  
Jan 02 07:02:17 2018  
Zebra ZPL428

8435562956  
LAQUIERE LAW FIRM  
3674 OLD CHARLESTON HWY  
JOHNS ISLAND SC 29455

SHIP TO:  
SOUTH CAROLINA COURT  
8037341890  
1220 SENATE ST.  
CALHOUN BLDG.  
COLUMBIA SC 29201-37



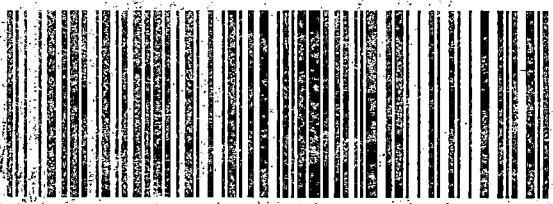
SC 292 9-01



UPS NEXT DAY AIR

1

TRACKING #: 1Z 974 F8X 01 9251 3739



BILLING: P/P

Reference#1: Ravenell Appeal

UIS 19.5.48. WNTNV50 93.0A 10/2017



RECEIVED

JAN 02 2018

SC Court of Appeals

www.ups.com/uis/create?ActionOriginPair=default... PrintWindow/PageKey=labelWindow&type=html&loc=en\_US&instr=A&doc=shipment\_18

551