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No Respondent's Brief Filed

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Doyet A. Early, III, Circuit Court Judge

ORIGINAL
NO DEFENDANT'S BR

THE STATE,

RESPONDENT,

V.

DOUGLAS CHEATHAM,

APPELLANT

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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(803) 734-1330

Attorney for Appellant

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Chief Legal Counsel
South Carolina Department of
Probation, Parole & Pardon Services
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Columbia, SC 29250

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Attorney for Respondent

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SC Court of Appeals

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State of South Carolina)	} Court of General Sessions 2005-GS-02-746,747
County of Aiken)	

State of South Carolina)	} Transcript of Record
Plaintiff)	
vs.)	
Douglas Cheatham)	
Defendant)	

October 20, 2011
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

C. David Hayes, Esq.
Attorney for the Defendant

Lisa H. Davenport, RPR
Official Court Reporter

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I N D E X O F W I T N E S S E S

Statement by the Probation Agent..... 3
Statement by Mr. Hayes..... 3

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(None offered)

1 (Whereupon, on October 20, 2011 the following
2 proceedings were held:)

3 DOUGLAS CHEATHAM, after being duly sworn,
4 testified as follows:

5 THE COURT: Present it. I can't talk.

6 THE PROBATION OFFICER: Yes, sir, Your Honor. This
7 is Douglas Cheatham. He is on probation for indictments
8 05-GS-02-746 and 747. It is malicious injury to personal
9 property and grand larceny five years suspended to 40 days
10 and five years of probation. Special conditions, he had
11 restitution 15,000 plus 20 percent surcharges. As far as
12 his reporting he's failed to report since November of 2010
13 and absconded supervision.

14 THE COURT: So he's been gone for about a year?

15 THE PROBATION OFFICER: Yes, sir. He has outstanding
16 arrearages on his surcharges, restitution. He's had seven
17 prior violations. I don't know how much you want me to
18 get into each of them.

19 THE COURT: No, sir, I can look at those.

20 THE PROBATION OFFICER: Yes, sir. Most of those
21 dealt with financial violations, but then there were
22 several failing to reports along in there.

23 THE COURT: Mr. Hayes?

24 MR. HAYES: May it please the court. Your Honor, in
25 talking with Mr. Cheatham he's been telling me that he

1 worked with the union and worked with them for six years
2 as a union carpenter with the 273. After he was convicted
3 it substantially hindered his job ability because he was
4 no longer eligible to go out to Plant Vogtle or SRS or
5 anywhere that required a clearance and essentially became
6 unemployed.

7 Then of recent he's been trying to find jobs -- that
8 he's been going to the unemployment office and trying to
9 get applications -- that he stays with his aunt. I know
10 that they're also alleging that he changed his address.
11 He tells me that the situation with that was that his aunt
12 owns a corner property. The front house that was facing
13 the address they have the aunt was redoing and there was a
14 home behind it. At the time he talked with Ms. Lyons who
15 is no longer at the office and talked to her about that
16 and that she was aware of that change, but the issue with
17 the reporting was an issue of not being able to find
18 transportation and that he had talked with Ms. Lyons
19 several times about it.

20 Judge, he tells me that he graduated from Aiken High
21 in 1988. He went to mortuary school in '89 to '91. He
22 got an associates degree in mortuary science. He has an
23 OSHA certification -- that he went into the Navy right
24 after that and was a VM3 and had an honorable discharge.
25 He is single and he has two children that he pays child

1 support on and is currently doing time for child support
2 because he does not have the funds. He tells me that he's
3 willing to do whatever it takes, but the transportation
4 issue is his main thing and he's having a hard time with
5 that.

6 THE COURT: I'm sorry.

7 MR. HAYES: I explained to him that it wasn't his job
8 to -- probation's job to make him happy, but his job to
9 make them happy and I think that he was expecting a
10 phonecall from Ms. Lyons who is no longer at the agency.

11 THE COURT: What does he want her to do? Go back and
12 hold his hand? Walk him up there? Ride him on the
13 bicycle?

14 MR. HAYES: No, sir.

15 THE COURT: He failed to report back in December of
16 '08.

17 MR. HAYES: Yes, sir.

18 THE COURT: Again, November of '09; again, July of
19 2010; again, November 2010. Now he hadn't reported.

20 MR. HAYES: Yes, sir.

21 THE COURT: Revoke him in full. Convert it.

22 THE PROBATION OFFICER: Convert to civil judgment?

23 THE COURT: Yes, sir. Give him whatever time he's
24 done.

25 MR. HAYES: Judge, I would ask if it could run

1 concurrent to the child support?

2 THE COURT: I don't know if you can run child support
3 together. I'll do it if they can.

4 THE PROBATION OFFICER: Run it concurrent?

5 THE COURT: With the child support.

6 (End of Transcript of Record.)

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CERTIFICATE OF REPORTER

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State of South Carolina)

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County of Aiken)

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I, Lisa H. Davenport, Official Court Reporter for the

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Second Judicial Circuit of the State of South Carolina, do

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hereby certify that the foregoing is a true, accurate and

11

complete Transcript of Record of the proceedings had and

12

evidence introduced in the trial of the captioned case,

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relative to appeal, in the Court of General Sessions for

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Aiken County, South Carolina, on the 20th day of October,

15

2011.

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I do further certify that I am neither of kin,

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counsel nor interest to any party hereto.

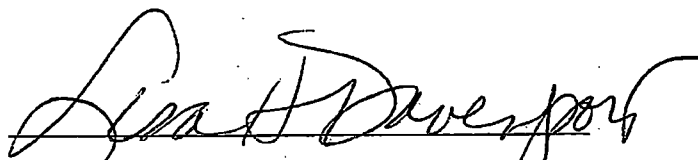
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January 11, 2012

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Lisa H. Davenport, Court Reporter

23

24

25

RETURN

STATE OF SOUTH CAROLINA
COUNTY OF
AIKEN

THE STATE
against

DOUGLAS CHEATHAM, Douglas Cheatham

ARREST WARRANT

Offense: Violation of Conditions of Probation Supervision

Offense Section: 24-21-450

Date: 1/27/2011

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Angela Lyons

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name DOUGLAS CHEATHAM
Address AIKEN, SC
Phone
Sex Male Race Black Height 510
Weight 185 Birth date 8/27/1969
Social Security Number

INFORMATION ON WITNESSES

Name
Address
Phone
Name
Address
Phone
Name
Address
Phone
Name
Address
Phone

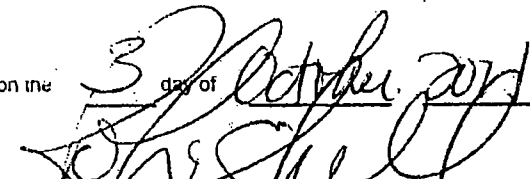
PRELIMINARY HEARING held by

Magistrate
on
with
Attorney for the Defendant.

Decision
BAIL
Date Set 10-3-11
Magistrate DL HATCHER
Amount \$5000 c/s
Surety

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

on the 3 day of October 2011

Constable or Law Enforcement Officer

This warrant is certified for service in [County of warrant Certification] County. The accused is to be arrested and brought before me to dealt with according to law.

(L.S.)
Signature of Judge

Probation

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

ORIGINAL

ARREST WARRANT

Indictment Number 05-GS-02-00746, 05-GS-02-00747

Warrant Number W-02-11-0012

State Identification No. (SID) 00780997

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF AIKEN, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that DOUGLAS CHEATHAM, Douglas Cheatham, did on the 27 day of January, 2011 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Douglas Cheatham has violated conditions 1,2,5,10 and 11 of his probationary sentence as imposed by the Honorable Judge Russo in the June 29, 2007 term of General Sessions Court Aiken County Aiken South Carolina.

Now, therefore, you are empowered and directed to arrest the said defendant and bring DOUGLAS CHEATHAM, Douglas Cheatham before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at AIKEN, S. C. this 2 day of January, 2011.

Angela Lyons
Signature of Probation and Parole Agent

(L.S.)

County of **AIKEN**

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Angela Lyons, who, first being duly sworn, deposes and says that DOUGLAS CHEATHAM, Douglas Cheatham did within this County and State on the 2 day of January, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

Douglas Cheatham has violated conditions 1,2,5,10 and 11 of his probationary sentence as imposed by the Honorable Judge Russo in the June 29, 2007 term of General Sessions Court Aiken County Aiken South Carolina.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Douglas Cheatham has failed to follow the advice and instructions of his agent in the following particulars: By failing to report 12/7/10 and 01/04/10 and 1/25/11 as notified through a phone call with the offender on 1/20/11 in which he was instructed to report-Having last reported 11/9/10; By failing to notify agent of a change in address from 1599 Wire Rd Aiken SC as verified through a home visit conducted by his supervising agent on 1/19/11 in which the house was determined to be vacant and through a phone call with the offender on 1/20/11 in which he advised that he had moved; By failing to notify agent of a change in employment status as verified through a phone call with the offender who stated he had stopped working in early December 2010; By being \$9 in arrears on surcharge leaving an unpaid balance of \$53.75; By being \$4765 in arrears on court ordered restitution leaving an unpaid balance of \$14253.77. The above does constitute a violation of the standard conditions of supervision as agreed to in writing by the offender.

Sworn to and Subscribed before me
this 27 day of January, 2011.

Angela Lyons
Affiant

John D. Smith
Signature of Notary Public

(L.S.)

6-31-15
My Commission Expires

Address: P.O. BOX 2194
AIKEN, SC 29802-2194
AIKEN
USA

(803) 641-7600

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on May 23, 2005, the Grand Jurors of Aiken County present upon their oath:

MALICIOUS INJURY TO REAL PROPERTY

That DOUGLAS CHEATHAM did in Aiken County on or about December 9, 2004, wilfully, unlawfully and maliciously cut, mutilate, deface, or otherwise injure a tree or commit any other trespass upon the real property of Valerie Nesbitt and Wesley Bryant in an amount in excess of Five Thousand Dollars.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

WITNESSES

Eric Owenby, A.C.S.O.

FILED

May 19 2005

Liz Godard

C.C.P. & G.S.

Pauline Finney EA

Deputy Clerk

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

Patricia B. Derry
Foreperson of Grand Jury
Date: May 19, 2005

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2005-GS-02- 746

CM
6/29/07

The State of South Carolina
County of Aiken

COURT OF GENERAL SESSIONS

MAY 23, TERM 2005

THE STATE
vs.

DOUGLAS CHEATHAM

Indictment for
MALICIOUS INJURY TO REAL
PROPERTY

SC Code: 16-11-520(B)(1)
CDR Code: 416
Class FEL-E

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on May 23, 2005, the Grand Jurors of Aiken County present upon their oath:

GRAND LARCENY

That DOUGLAS CHEATHAM did in Aiken County on or about December 9, 2004, feloniously take and carry away timber valued at Five Thousand Dollars or more and belonging to Valerie Nesbitt and Wesley Bryant with intent to deprive the owners permanently of such property. All in violation of §16-13-30 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

WITNESSES

Eric Owenby, A.C.S.O.

FILED

May 19 2005

Jim Hodard

C.C.P. & G.S.

Pauline Tringler

Deputy Clerk

ARREST WARRANT NUMBER

H-931174

ACTION OF GRAND JURY

True Bill

Patricia B. Denny

Foreperson of Grand Jury

Date: May 19, 2005

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-02

747

6/29/07

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

May 23, TERM 2005

THE STATE

vs.

DOUGLAS CHEATHAM

Indictment for

GRAND LARCENY

SC Code: 16-13-30(B)(2)

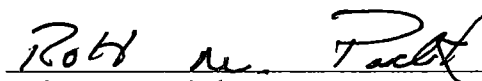
CDR Code: 479

Class FEL-E

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 5th, 2012



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOUGLAS CHEATHAM,

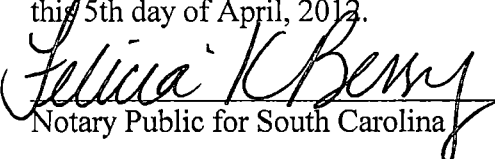
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250 this 5th day of April, 2012.


Emily Bryson
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 5th day of April, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: June 21, 2020.

RECEIVED
APR 05 2012

SC Court of Appeals