

Johnell Porter # 240208
Broad River Court Inst.
Moultrie Unit - # 1110
4460 Broad River Rd.
Columbia, S.C. 29210

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APR 05 2018

S.C. SUPREME COURT

April 3, 2018

The Honorable Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, S.C. 29211

In Re: Johnell Porter v. State
Appellate Case No. 2017-001605

Dear Honorable Clerk:

Enclosed, is the Pro Se petition
for writ of Habeas Corpus in regards to
Johnson v. State, 294 S.C. 310, 364 S.E. 2d
201 (1988). Whereas the petitioner was
given "45" days to submit his brief,
that April 10, 2018 is the deadline!!!

Sincerely,

Johnell Porter

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APR 05 2018

The State of South Carolina

In The Supreme Court

S.P. SUPREME COURT

Appeal from York County
Court of Common Pleas

LETIA VEJDEL, Circuit Court Judge

Appellate Case No. # 2017-001605

JOHNSON PETITION FOR WRIT OF HABEAS CORPUS

JOHNNEL FORNER, # 240208 PETITIONER,

✓

State of South Carolina, Respondent.

JOHNNEL FORNER # 240208, Pro Se
Broad River Court Inst.
4460 Broad River Rd.
Columbia, S.C. 29210

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The State of South Carolina
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS

LETTER VERDICT, CIRCUIT COURT JUDGE
APPELLATE CASE No. # 2017-001605

PRO SE 45 days RESPONSE TO THE
JOHNSON PETITION FOR WRIT OF HABEAS CORPUS

TOWELL PORTER # 240208, PRO SE ... PETITIONER

v.

State of South Carolina ... Respondent.

Now comes, Towell Porter, # 240208,
Pro Se, in response to the Honorable
Daniel E. Shearouse's "Order" dated
February 5, 2018. Whereas the petitioner

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(2.)

was given "45" days to file a pro se response to the Johnson Petition for Writ of Habeas Corpus filed by the Petitioner's Attorney, Taylor D. Gilliam, of the South Carolina Commission on Indigent Defense and is requesting to be relieved as Counsel.

Wherefore, the Petitioner states that Counsel has failed to bring the Issue that was ruled on (Newly Discovered Evidence) June 22, 2017, and filed with the Court on July 5, 2017.

The Petitioner asserts that "Order" signed by the Honorable Judge Leticia Verdin, on June 22, 2017, is a flagrant disregard to the Petitioner's Due Process and Equal Protection Rights, as well as the United States Constitution, and should be vacated because the Petitioner has never been in Court to argue his Newly Discovered Evidence Claim and shows the Court the following:

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(3.)

(1.) The Sixth Amendment right to counsel extends to all critical stages of a criminal proceeding. See e.g. MISSOURI v. FAYE, 132 S. Ct. 1399, 1405 (2012). Also, a defendant's Sixth Amendment right to assistance of counsel attaches at all critical stages of a criminal prosecution. State v. Clinkscles, 458 S.E. 2d 548.

(2.) The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that: In all criminal prosecutions, the accused shall enjoy the right to be confronted with witnesses against him. We have held that the Fourteenth (14th) Amendment makes the guarantees of this clause obligatory upon the States. JOHNER v. TEXAS, 380 U.S. 400, 85 S. Ct. 1065 (1965). One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial. LEWIS v. UNITED STATES, 146 U.S. 370, 13 S. Ct. 136, (1892).

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(4.)

(3) The Petitioner, at a Motion to Relieve Counsel Hearing, on April 19, 2017. Judge Cooper, granted the Motion and relieved appointed Attorney Mr. Nathan T. Sheldon, Esq., as Petitioner's Counsel. Please see Verdict attached Judge Cooper's Order, filed with the Court, on April 19, 2017. Counsel was relieved almost three (3) months prior to Judge Letitia Verdine's Order, filed July 5, 2017.

(4) Therefore, the hearing that was held on June 22, 2017, before the Honorable Judge Letitia Verdine. The only person that was present in the courtroom at the JUSTIN V. STATE HEARING, ... was S.C. Assistant Attorney General Justin James Hunter. The Petitioner was neither present or represented at a critical stage of his Court proceeding. Wherefore, the hearing and Order, signed on June 22, 2017 should be "vacated", because Petitioner's Due Process and Equal Protection and

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(5.)

Constitutional Rights were willfully violated under the Fifth (5th), Sixth (6th), and Fourteenth (14th) Amendments of the United States Constitution.

(5.) The Petitioner has never been afforded the Constitutional right to prove or present his newly discovered evidence claim. The United States Supreme Court ruled in MISSOURI v. FRIE, Supra, the Sixth (6th) Amendment right to counsel extends to all critical stages of a criminal proceeding.

Wherefore, the Petitioner asserts the June 22, 2017 AUSTIN v. STATE, TEXAS ... should be vacated, overturned, and remanded back to the Common Pleas Court. Because the Petitioner was not represented by counsel or his de representation, in-which was granted to him April 19, 2017, by the Honorable Judge Cooper. He granted a Constitutional right to prove his newly discovered claim ... the Petitioner can prove his claim !!!

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(6.)

"Newly Discovered Evidence"

(6) The Petitioner, asserts he is being held in custody in the State of South Carolina illegally, unlawfully, and the State of South Carolina was without legal or lawfully jurisdiction to arrest, try, convict, and sentence him. Because his crime is a federal offense and an offense against the laws of the United States Government.

(1) On December 22, 2006, the petitioner and three (3) other persons was charged with robbing the Bank of York, in York, S.C. In United States v. Vasquez, 2015 WL 1925820 Title 18 U.S.C. Sec. 3231 — grants the district courts of the United States Original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. And it is an offense against the laws of the United States to rob any institution the deposits of which are insured by the Federal Deposit Insurance Corporation. See e.g.

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(7.)

Title 18 U.S.C. sec. 2113 (A), (C).

(2.) ~~In United States v. Harris,~~
108 F.3d 1107 (1997) - "Federal Courts have
jurisdiction over a bank robbery offense
where the bank was a federally insured
institution." See United States v. Mohawk,
20 F.3d 1482, 11 (9th Cir. 1994). Also 18 U.S.C.
sec. 2113 (F) (For purpose of statute, "bank" means
any bank whose deposits are insured by
the Federal Deposit Insurance Corporation.)

Title 18 U.S.C. sec. 3231 (1994) (The District
Courts of the United States shall have
original jurisdiction . . . of all offenses
against the laws of the United States.) See
e.g. United States v. Campbell, 666 F.2d 1151,
CERTIORARI DENIED 180 S.Ct. 2998, 447 U.S. 910
(1980); United States v. Rowan, 518 F.2d 685 cert.
DENIED 96 S.Ct. 368, 423 U.S. 949. KANE v. United
States, 431 F.2d 172 (1970); United States v. Higgins,
507 F.2d 808 (1974); United States v. Cobb, 558
F.2d 486 (1977). And United States v. Mauer,
611 F.2d 107 (1980).

(3.) The Petitioner, asserts the
South Carolina Attorney General and the
Honorable Judge ~~John~~ Verdin's Order, filed
July 5, 2017. Clearly ARE IN ERROR IN RE-
GARDS to the fact that the F.D.I.C. (Federal

(8.)

Deposit Insurance Corporation) letters that shows the Bank of York was Federally Insured and was Federal Insured on the date of the robbery, on Dec. 22, 2006. However, proof that the robbed bank was Insured by the F.D.I.C. is an essential fact. Severgs v. United States, 450 F.2d 359, 360-361 (8th Cir 1971), cert. denied, 405 U.S. 1071, 92 S.Ct. 1521. Some competent evidence of insurance must be adduced at trial to sustain a conviction. Kane v. United States, 431 F.2d 172 (9th Cir 1970).

(4.) The defendant's trial, the Bank of York's vice president, along with several of its employees testified. None of them ever mentioned the Bank of York was a federally insured bank. United States v. Reed, 642 F.2d 77 (4th Cir. 1981), cert. denied, 451 U.S. 917, 101 S.Ct. 1996, 68 L.Ed.2d 310 (1981). Please note, Im Bryan v. United States, 338 U.S. 552, 70 S.Ct. 317. "... features to mention the Bank's National Character the conviction can not stand and is a reversible error." However, the F.D.I.C.'s letters, especially

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(9.)

The letter dated April 21, 2016, the
F.D.I.C. clearly states the Bank of
York, York, S.C. is F.D.I.C. INSURED
under Certificate # 15104 and has been
since April 24, 1935." Also, it was
federally insured on December 22,
2006 ... the date of the robbery!!

(5) At trial, petitioner
represented himself to say he
was housed in the York County
Detention Center ... where there
is no law library or any other
venues where he could have
known the Bank of York was a
federally insured bank. The
state knew ... and conspired
with the Bank of York's em-
ployees to violate his due process
and equal protection rights under
the Fifth (5th) and Fourteenth (14th)
Amendments of the United States
Constitution. Therefore, without any
access to a law library or anything
else to help prepare his case. All of

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(10.)

The (b.) F.C.'s letters is newly
and further discovered evidence and
based on the fact, that PETITIONER had
no access to legal material, etc. At
the York County Detention Center, the
could not by the exercise of due
diligence discovered it before
trial!!!

(c.) The fact that
PETITIONER was neither present or
represented by counsel at the
June 22, 2017 hearing. He has not
been afforded his rights under
HADDEN v. State, 278 S.C. 610, 611-12, 299
S.E.2d 854, 855 (1983). A prima facie
showing that he is entitled to re-
leaf can be shown if he is afforded
a legal and constitutional right to a
JUSTIN v. STATE, HEARING!!!

" CONCLUSION "

Wherefore, PETITIONER asserts
the State not only has violated his due
process and Equal Protection Rights under

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(11.)

both the fifth (5th) and fourteenth (14th) Amendments of the United States Constitution, as well as his sixth (6th) Amendment right to confront the state or any other witnesses against him.

WHEREAS the letters from the P.D.I.C. ARE PROPERLY AUTHENTICATED COPIES OF A DOCUMENT FROM A UNITED STATES AGENCY IS SELF INTRODUCING, SEE E.G. TITLE 28 U.S.C. SEC. 1733(b). SINCE THE P.D.I.C. IS AN AGENCY OF THE UNITED STATES GOVERNMENT, TITLE 12 U.S.C. SEC. 181 ET SEQ. CERTIFICATES BEARING ITS PURPORTED SEAL WOULD BE ADMISSIBLE UNDER THIS RULE !!!

NEVERTHELESS THE FACT THAT THE BANK OF YORK'S DEPOSITS HAS BEEN FEDERALLY INSURED BY THE P.D.I.C. SINCE 1935 AND WERE INSURED THE DATE OF THE ROBBERY, ON DEC. 22, 2006. CONSTITUTES AN OFFENSE AGAINST THE LAWS OF THE UNITED STATES GOVERNMENT AND IS A FEDERAL OFFENSE UNDER

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(12.)

TITLE 18 U.S.C. SEC. 2113 (A), (E). SEE E.G. United States v. Vasquez, 2015 WL 1925820. SINCE THERE WERE NO MENTION OF THE BANK OF YORK'S NATIONAL CHARACTER AT PETITIONER'S TRIAL AS AUTHORIZED BY THE UNITED STATES SUPREME COURT, IN BRYAN v. United States 338 U.S. 552, 70 S.Ct. 317. AGAIN, PROVE THAT THE ROBBED BANK WAS INSURED BY THE F.D.I.C. IS AN ESSENTIAL FACT SCRIGGS v. United States, Supra. SOME COMPETENT EVIDENCE OF INSURANCE MUST BE ADDUCED AT TRIAL TO SUSTAIN A CONVICTION. KANE v. United States, Supra !!!

THE PETITIONER... ASSERTS THAT HE WAS ARRESTED, TRIED, CONVICTED, AND SENTENCED BY THE STATE OF SOUTH CAROLINA ILLEGALLY, UNLAWFULLY, AND UNCONSTITUTIONALLY AND IS BEING DETAINED UNLAWFULLY BY THE STATE... FOR A CRIME AGAINST THE UNITED STATES GOVERNMENT AND IS ENTITLED TO A CONSTITUTIONAL HEARING, ON HIS NEWLY DISCOVERED EVIDENCE CLAIM !!!

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Exhibit-16.1

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-46- 1186

Johnell Porter 240208

State of South Carolina

FILED-RECEIVED
2017 APR 19 PM 3:01

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or	
	<input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Applicant Johnell Porter's Motion to Relieve Counsel is Granted. Court is not to appoint any other representation for Mr. Porter. Will proceed *Pro Se*

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

EXHIBIT No. 2



FDIC

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection

550 17th Street, N.W.
Washington, DC 20429

April 21, 2016

Ref. No.: SCC2016W-002073-0

Mr. Johnell Porter #240208
Moultrie Unit (1105) Broad River Corr. Inst.
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Porter #240208:

Thank you for contacting the Federal Deposit Insurance Corporation (FDIC). In your letter you asked the following:

“In Re: Ref. #SCC2014F-000652-1- Dear FDIC: In your June 9, 2014 letter you left out one important fact. How long has this Bank of York, York, SC been federally insured by the FDIC? Also, was it federally insured on December 22, 2006? Thank you kindly for your time!!!?”

In response to your question, the Bank of York, York, SC is FDIC insured under Certificate #15104 and has been since April 24, 1935. It was federally insured on December 22, 2006.

We hope this information is helpful. If you have any additional questions, please feel free to write back or contact us at 1-877-275-3342.

Sincerely,
Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
550 17th Street, N.W.
Washington, DC 20429

Exhibit No. 3



FDIC

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection

550 17th Street, N.W.
Washington, DC 20429

May 9, 2014

Ref. No.: SCC2014F-000652-0

Mr. Johnell Porter #240208
Perry Corr. Inst. (Q2B-111)
430 Oaklawn Road
Pelzer, SC 29669

Dear Mr. Porter:

Thank you for contacting the FDIC regarding your deposit insurance coverage. In your email, you asked a number of legal questions regarding federal jurisdiction over the Bank of York in York, South Carolina.

Your inquiry has been forwarded to the FDIC's Legal Division for review and response. You will receive a response directly from the FDIC's Legal Division.

While the FDIC's Legal Division responds to your inquiry, feel free to write back or contact our office directly at 877-275-3342 with any additional information or questions.

Thank you for your patience.

Sincerely,
Federal Deposit Insurance Corporation

Exhibit No. 4



FDIC

Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection

550 17th Street, N.W.
Washington, DC 20429

June 9, 2014

Ref. No.: SCC2014F-000652-1

Mr. Johnell Porter #240208
Perry Corr. Inst. (Q2B-118)
430 Oaklawn Road
Pelzer, SC 29669

Dear Mr. Porter #240208:

Thank you for contacting the Federal Deposit Insurance Corporation (FDIC). We have received your letter of May 18, 2014 in which you referenced our response of May 9, 2014 to you (#SCC2014F-000652-0) regarding referral to our Legal Division for review. In your letter dated December 2, 2013, you specifically requested answers to the following questions. Listed below are the responses to those questions.

“(1) Is the Bank of York insured by the FDIC?”

Yes, the Bank of York, York, SC is FDIC insured under FDIC Certificate #15104 and is a non-member of the Federal Reserve System.

(2) Are all banks insured by the FDIC under federal jurisdiction?”

No. State-chartered banks that are not members of the Federal Reserve System are regulated by the chartering state and the FDIC.

(3) Does the United States District Courts have exclusive jurisdiction over all banks insured by FDIC?”

No, federal jurisdiction for bank robbery is not exclusive – bank robbery can be charged and prosecuted in State courts.

(4) Is it mandatory for the FDIC certificate to be displayed or brought to trial as evidence? When a FDIC insured bank has been robbed and a jury trial is taken place?”

The federal bank robbery statute (18 USC § 2113) does require proof beyond a reasonable doubt of Federally-insured status. However, proof is not limited to display or entering into evidence of the certificate of Federally-insured status. For example, the proof can be accomplished by stipulation or the testimony of a witness.

The FDIC protects the depositors of insured banks against the loss of their deposits due to a bank failure up to the insurance limit. The FDIC does not cover bank losses due to fire, theft, or fraud. However, such losses may be covered by a bank's hazard and casualty insurance and fidelity bonds. The standard deposit insurance amount is \$250,000 per depositor, per insured bank, for each account ownership category.

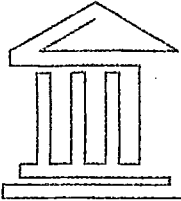
We hope this information is helpful.

Enclosure (1)

Sincerely,
Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection
550 17th Street, N.W.
Washington, DC 20429

As part of our ongoing efforts to improve our service to the public, we would appreciate it if you would complete a short consumer satisfaction survey on the level of service you received from this office. The survey is enclosed.

EXHIBIT No. 5



THE LAW OFFICE OF NATHAN J. SHELDON,
LLC
Working on your behalf

331 E. Main St., Suite 200
Rock Hill, SC 29730
www.nathansheldonlaw.com
(803)909-9343

October 17, 2016

Johnell Porter #240208
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

Re: PCR Case

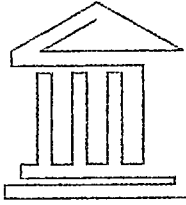
Dear Mr. Porter:

I am writing to clear up some of the confusion surrounding the order issued granting the Austin review. First, please see the letter I mailed to the Supreme Court enclosed. Second, please note that the order has been amended to reflect that you were not present, but that I entered into the agreement for Austin review on your behalf. I did this because your application specifically requested this relief. However, at the hearing we specifically put on the record that your claim to a full hearing on the after discovered evidence claim would be affected by the Austin petition being granted. I received your letter stating that all of your constitutional rights had been violated. I am not sure why you feel that way. You requested to separate and distinct grounds for review in your application. One, the after discovered evidence claim, is still pending before the lower Court. Two, the Austin review of the first PCR Order, was granted. I'm not sure how this leaves you in anything but a better position than you were in before. I have not heard back from the Supreme Court concerning the issue of interlocutory appeal. However, if the appeal is deemed to be interlocutory, then we will vacate the previous order and have the Austin issue heard at the same time as the after discovered evidence motion. Your presence was not necessary to consent to the Austin review since the AG was not contesting that issue. Your presence obviously will be required at the after discovered evidence hearing. Thank you and please write me with any additional questions or concerns. Either way, your right to the after discovered evidence is preserved. The Austin relief basically just implies that the previous order was not appealed, it should have been appealed, and it is now going to be appealed.

Sincerely Yours,

Nathan Sheldon
The Law Office of Nathan J. Sheldon

Exhibit No. 6



THE LAW OFFICE OF NATHAN J. SHELDON,
LLC
Working on your behalf

331 E. Main St., Suite 200
Rock Hill, SC 29730
www.nathansheldonlaw.com
(803)909-9343

February 12, 2017

Johnell Porter #240208
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

Re.: PCR

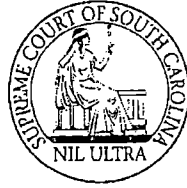
Dear Mr. Porter:

I received your Motion to Relieve Counsel. I sent the AG an email asking that this motion be heard at the next term of PCR Court in York County, South Carolina. That appears to be the week of April 17, 2017. I will make sure that your motion is heard at that time. If you need anything from me in the meantime, please write me and let me know what it is you need. Thank you.

Sincerely Yours,

Nathan Sheldon
The Law Office of Nathan J. Sheldon

Exhibit No. 7



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

August 21, 2017

Nathan James Sheldon, Esquire
PO Box 36682
Rock Hill SC 29732

Re: Johnell Porter v. State
Appellate Case No. 2017-001605
Lower Court Case No. 2015-CP4601186

Dear Mr. Sheldon:

I thank you for your letter of August 8, 2017. Since you were apparently relieved as counsel before the issuance of the order on appeal, you do not need to take any action in this matter.

Very truly yours,

CLERK

cc: Justin James Hunter, Esquire
Mr. Johnell Porter, #240208

Broad River Corridor Trust
Mountain Unit - #1110
4460 Broad River Road
Columbit, S.C. 29210

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APR 03 2018
BROU
MAILROOM

Attn: The Honorable DANIEL E. SHEARDORSE, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbit, S.C.

29211

REC. MAIL