

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  

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APPEAL FROM HORRY COUNTY  
Court of General Sessions  
The Honorable Thomas Anthony Russo, Circuit Court Judge

RECEIVED

APR 10 2018

SC Court of Appeals

Appellate Case No. 2017-001229

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

DAVID HAROLD CAMPBELL,

APPELLANT.

**MOTION TO STAY DIRECT APPEAL**

NOW COMES the Appellant in the above captioned action, acting by and through undersigned Counsel (hereafter Counsel) asking that his pending direct appeal be stayed pending resolution of his Motion to Review Backup Recordings from his jury trial held on May 15-17, 2017, before the Honorable Thomas A. Russo. That General Sessions' motion was sent to the Horry County Clerk of Court for filing on April 5, 2018. The Initial Brief of Appellant is currently due for filing on today's date, April 9, 2018.

The trial transcript in this matter was originally ordered by an attorney in New York, New York, who was hired by Appellant's family. Appellant and his family subsequently began exploring hiring Counsel after discovering the attorney in New York, Arkady Bukh, was not a member of the South Carolina Bar and had not filed a Notice of Appearance in this matter. Before Counsel was retained, Trial Counsel, L. Morgan Martin, filed a Notice of Appeal on Appellant's behalf and forwarded his case to the Appellate Division of the South Carolina Commission on Indigent Defense. The South Carolina Commission on Indigent Defense ordered and received a



copy of the trial transcript. Counsel thereafter was retained and prepared a Consent Motion for Substitution which was signed by all parties, and filed with this Honorable Court. By Order of this Court entered on December 8, 2017, Counsel was substituted as counsel of record for this direct appeal.

Shortly after Counsel was substituted as counsel of record, Appellant notified Counsel that the trial transcript sent to him by South Carolina Commission on Indigent Defense was incomplete and inaccurate. Counsel wrote the Court Reporter in this case, Kay Richardson, on January 3, 2018, and requested that she place her backup recordings in the case of Desiree Allen, Court Reporter Manager at Court Administration, so that Counsel could make arrangements to listen to them at Court Administration.<sup>1</sup> When Counsel had not heard back from Ms. Richardson in response to this request, Counsel sent a follow-up request dated February 7, 2018, asking if she had turned her back-up recordings over to Court Administration for Counsel to review. On February 13, 2018, Counsel received a letter from Ms. Richardson advising her that she would require a Court order to give her access to review the back-up recordings. Counsel had previously sent to the two trial attorneys, L. Morgan Martin and Russell B. Long, copies of the portions of the trial record in dispute, and requested their input concerning the material the Appellate vehemently believed to be missing and/or inaccurate. Attorney Long subsequently sent Counsel an email indicating that, as far as he could tell, the transcript appeared to be complete. Counsel was not able to consult with the other attorney who actually was the one primarily making arguments on the issue in question, Attorney Martin, until April 3, 2018. Counsel mailed her Motion for Authorization to Review Back-up Tapes of Trial Proceedings to the Clerk of Court for Horry County on April 5, 2018. As that motion was filed in the Court of General Sessions reflects, Attorney Martin concurred with the Client that a

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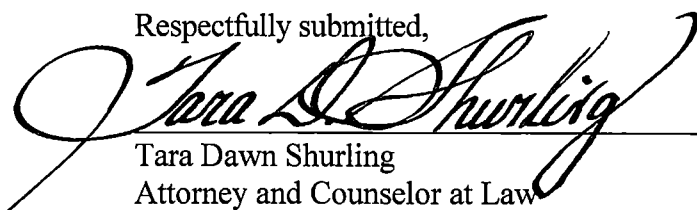
<sup>1</sup> Copies of this, and other communications concerning this matter were submitted as attachments to the General Sessions motion which is attached hereto.



portion of the transcript provided by the Court Reporter improperly referenced a *Motion for a Mistrial* made by him as a *Motion for a Trial*. Furthermore, Attorney Martin had retrieved his closed file, and reviewed his trial notes for the pre-trial motion portion of the trial record. Although he has no detailed recollection of that portion of the trial record, his notes are consistent with him either having made the motion Appellant says is missing from this record, *or*, having intended to make that motion. The matter is further complicated by the fact that Attorneys Martin and Long made other motions which are reflected in the trial record, and it is impossible to know, without listening to the backup audio recordings, exactly what motions were and were not made during this proceeding.

For all the above reasons, as well as those set forth in the General Sessions motion attached hereto, Appellant now respectfully asks that this Honorable Court stay his direct appeal in order that his General Sessions motion may be heard. He asks that his Appellate Counsel be given thirty (30) days from final resolution on Appellant's challenge to the accuracy of the trial transcript, to file the Initial Brief of Appellant in this appeal.

Respectfully submitted,



Tara Dawn Shurling  
Attorney and Counselor at Law  
S. C. Bar No. 5099

Attorney for Appellant

This the 9<sup>th</sup> day of April, 2018.



Reporter's back up audio recordings be put in the possession of Desiree Allen, Court Reporter Manager, South Carolina

Administration Court so that Counsel could personally listen to them and compare them with the trial transcript provided. When Counsel had not heard anything in response to this request, she wrote the Court Reporter on February 7, 2018, and inquired as to whether the backup recordings had been delivered to Desiree Allen at Court Administration for her review. In response to that inquiry, Counsel received a letter from court reporter Richardson dated February 13, 2018 advising that she had "reviewed the record, including the pretrial motion portion, and found that no portion was left out. Therefore, the transcript as prepared is accurate." **See, Attached letter dated February 13, 2018.**

Appellate Counsel subsequently provided the two trial attorneys in this matter, Morgan O. Martin and Russell B. Long, copies of the relevant portions of the trial transcript, and I asked that they review these excerpts from the transcript and advise Counsel of their opinion concerning their accuracy and completeness. Attorney Long subsequently advised Counsel that, to the best of his recollection, the record appeared to be complete. The portions of the trial record in dispute address a matter that was primarily argued co-counsel, Attorney Martin. Earlier this week, Counsel received a phone message from Attorney Martin and was able to have a lengthy telephone conference with him concerning this matter yesterday; April 4, 2018. Attorney Martin indicated that he concurs with Appellate Counsel's belief that at least one portion of the trial record appears to be inaccurate in that it does not properly reflect a Motion for a Mistrial made by him on page 248 of the trial transcript. In addition, Attorney Martin has reviewed with Counsel portions of the trial record that potentially support Defendant's assertion that a motion, discussion, and a trial court ruling, addressing the same subject matter as the



subsequent Mistrial Motion is missing from the pre-trial Motion section of this trial record. Attorney Martin has retrieved his trial file and has reviewed his trial notes. Counselor herein is advised by Attorney Martin that his notes from the pretrial hearing include his hand written references to a Motion to Dismiss and a Motion to Suppress. His notes , however, are limited and do not clearly indicate whether notes show his *intention* to make these motions or, whether his notes were intended to document that he did so. Furthermore, Attorney Martin has indicated that he has no clear recollection of what specific Motions were made during that proceeding, with the exception of his Motion to Dismiss based upon his position that his Client was unlawfully arrested inside the city limits of Myrtle Beach by officers from the Horry County Police Department where the State presented no clear authority for the State's claimed that this law enforcement agency had jurisdiction inside the city limits of Myrtle Beach. Attorney Martin has advised Counsel that he would have to hear to audio backup times to refresh his recollection concerning what exact issues he raised during the pre-trial motion portion of the trial. Furthermore, Appellate Counsel submits that trial counsel's notes are not particularly helpful inasmuch as there were actually two separate suppression issues mentioned before the Court, one involving a recording made by the arresting officer's patrol car camera and another dealing with potential testimony concerning an unrelated narcotics investigation that was ongoing at the time the Horry County Police Officers allegedly observed the Defendant commit a traffic violation and called in a uniformed officer and a marked patrol car to make a traffic stop.

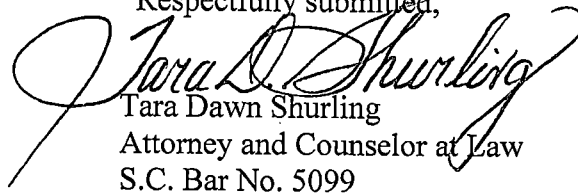
In light of the above, Defendant now requests this Honorable Court's order directing Circuit Court Reporter, Kay H. Richardson, to make her backup audio recordings of this trial available to appellate counsel for her review. Additionally, Defendant would request that Court Reporter Richardson be directed to supply Appellate Counsel a copy of the audio backup from

A handwritten signature in black ink, appearing to be the initials 'RS' or similar, located at the bottom center of the page.

this trial so that Appellate Counsel can review the audio backup with Defendant, who is incarcerated and Trial Counsel. Appellate Counsel submits that such a review is necessary to insure this record is in fact accurate and complete inasmuch as Appellate Counsel was not present at this trial and would be less able than Defendant and his Trial Counsel, to discern any portions of the backup recordings which might be difficult to hear and understand.

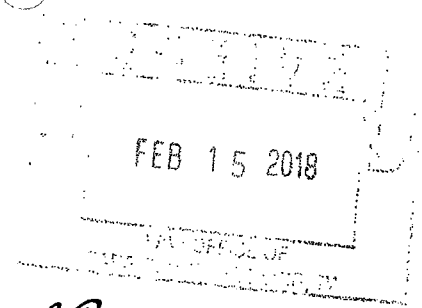
Appellate Counsel would note that she has been an appellate lawyer for 39 years and has requested access to backup recordings of proceedings in fewer than a dozen cases over her entire career. She submits, as an officer of the court, that she does not make this request lightly or for purposes of delay. Counsel asserts that she would not be making this request if she did not believe there was some evidence to suggest that at least a portion of this transcript might not be totally accurate and/or complete. Defendant submits that he should be able to have a direct appeal based upon a record he feels confident is accurate and complete. Furthermore, Defendant submits that affording Appellate Counsel the opportunity to review the backup recordings from his trial in no way prejudices Respondent. If the transcript is found to be accurate, the appeal can then move forward without any prejudice to Respondent. Appellate Counsel intends to file a Motion to Stay the direct appeal that has been filed in this case until such time as the questions about the trial record have been resolved.

Respectfully submitted,

  
Tara Dawn Shurling  
Attorney and Counselor at Law  
S.C. Bar No. 5099

3614 Landmark Drive, Suite A  
Columbia, South Carolina 29204  
(803)738-8622  
(803)738-1600 FAX

ATTORNEY FOR DEFENDANT



*State of South Carolina*  
*The Circuit Court of the Fifteenth Judicial Circuit*

Kay H. Richardson  
Court Reporter

Post Office Box 282  
Aynor, South Carolina 29511  
E-MAIL: [krichardson@scccourts.org](mailto:krichardson@scccourts.org)

February 13, 2018

Tara Dawn Shurling, Esquire  
3614 Landmark Drive – Suite A  
Columbia, SC 29204

Re: State v David Harold Campbell  
2017-GS-26-00942

Dear Ms. Shurling:

I am sorry for not responding to your January 3 email in a timelier manner. I was unsure of how to respond until I was contacted by Desiree Allen at Court Administration when she received a copy of your February 7, 2018 letter. I am responding to the email from January 3, 2018, and the letter dated February 7, 2018.

By way of history, the original transcript in this matter was requested by and delivered to Appellate Defense and Bukh Law Firm on August 22, 2017. A digital copy of the transcript was delivered to you on December 19, 2017.

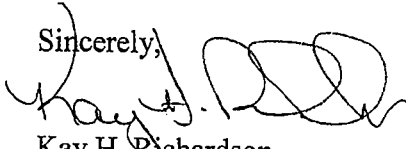
In the February 7, 2018 letter you ask if I have made arrangements to have backup tapes placed with Desiree Allen at Court Administration. I have not. When there is a challenge to the accuracy of a transcript, I have to respond to the challenger in writing. I am required to review the record and report the findings in writing to the challenger with a copy to all parties and Court Administration. Any inaccuracies have to be corrected and the pages forwarded to the challenger at no cost. I have reviewed the record, including the pre-trial motion portion, and found that no portion was left out. Therefore, the transcript as prepared is accurate.

The S.C. Court Reporter Manual states, "Further review of the record may be permitted by the presiding judge upon written request with good cause shown." If you decide to ask the presiding judge for a further review, kindly copy me on the judge's decision. The S.C. Court Reporter Manual also states, "In any proceeding which has been transcribed, the court reporter shall retain the primary and back-up tapes which have been transcribed for a period of at least one year after the original transcript is sent to the requesting party to allow any party to challenge

Tara Dawn Shurling  
February 13, 2018  
Page Two

the accuracy of the transcription." Therefore, these records will be preserved by me until **August 22, 2018**.

I am copying the Court of Appeals and Court Administration on this response. I do not have the address of David Harold Campbell or Jynere Friday which were copied on your letter. I would respectfully request that copies be provided to those individuals by your office, if you think it is necessary. Thank you.

Sincerely,  
  
Kay H. Richardson  
Circuit Court Reporter

CC: The Honorable Jenny A. Kitchings, Clerk, SC Court of Appeals  
Desiree Allen, Court Reporter Manager, SC Court Administration  
David Harold Campbell, #265686 (via Ms. Shurling)  
Jynere Friday (via Ms. Shurling)

THE STATE OF SOUTH CAROLINA )  
 )  
HORRY COUNTY )

IN THE COURT OF GENERAL SESSIONS

2016-GS-26-00536  
2017-GS-26-00942

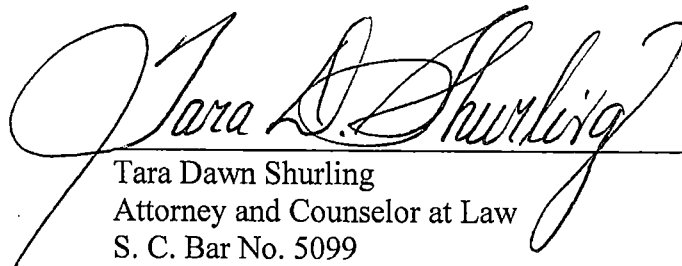
STATE OF SOUTH CAROLINA, )  
 )  
Plaintiff, )  
vs. )  
 )  
 )  
DAVID HAROLD CAMPBELL )  
 )  
Defendant. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

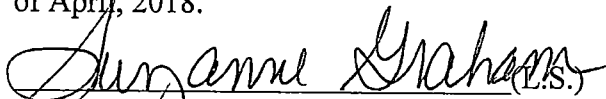
The undersigned attorney hereby certifies that a copy of the Motion for authorization to Review Backup Tapes of Trial Proceeding in the above-entitled case has been served upon opposing counsel by depositing in the U.S. Mail, postage prepaid, this 5<sup>th</sup> day of April, 2018 addressed as follows:

J. Benjamin Alpin  
Senior Assistant Deputy Attorney General  
Office of the Attorney General  
P o Box 11549  
Columbia, SC 29211

  
Tara Dawn Shurling  
Attorney and Counselor at Law  
S. C. Bar No. 5099

Attorney for Appellant

SWORN TO BEFORE me this 5<sup>th</sup> day  
of April, 2018.

  
Notary Public for South Carolina (L.S.)  
My Commission Expires: 2/28/24

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of General Sessions  
The Honorable Thomas Anthony Russo, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2017-001229

THE STATE OF SOUTH CAROLINA,

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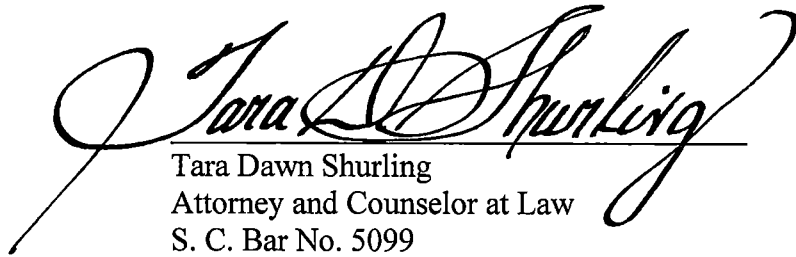
DAVID HAROLD CAMPBELL,

APPELLANT.

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a copy of the Motion to Stay Appeal in the above-entitled case has been served upon opposing counsel by depositing in the U.S. Mail, postage prepaid, this 9<sup>th</sup> day of April, 2018 addressed as follows:

J. Benjamin Alpin  
Senior Assistant Deputy Attorney General  
Office of the Attorney General  
P o Box 11549  
Columbia, SC 29211



Tara Dawn Shurling  
Attorney and Counselor at Law  
S. C. Bar No. 5099

Attorney for Appellant

SWORN TO BEFORE me this 9<sup>th</sup> day  
of April, 2018.

  
(L.S.)

Notary Public for South Carolina  
My Commission Expires: 2/28/24

LAW OFFICE OF



**TARA DAWN SHURLING, PA**

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April 9, 2018

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**

APR 10 2018

SC Court of Appeals

Re: State of South Carolina v. David Harold Campbell  
Appellate Case No. 2017-001229

Dear Ms. Kitchings:

Enclosed please find for filing the original and one copy of my Motion to Stay Direct Appeal and Certificate of Service in the above captioned matter. The Initial Brief of Appellant is due on today's date. In light of the Motion to Stay, I have asked that the due date for the brief be reset from the date the challenge to the transcript is resolved. I would appreciate your clocking and returning the clocked copies in the enclosed self-addressed, stamped envelope. With my best regards, I remain,

Yours sincerely,

A large, elegant handwritten signature in black ink, reading 'Tara Dawn Shurling'.

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: J. Benjamin Aplin, Senior Assistant Deputy Attorney General (w/enclosures)  
Desiree Allen, Court Administration (w/enclosure)  
Kay Richardson, Circuit Court Reporter (w/enclosure)  
David Harold Campbell, #265686 (w/enclosures)  
Jynere Friday (w/enclosures)