

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Chester County

Honorable Brian M. Gibbons, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

ASHLEY MARIE MCKENZIE,

APPELLANT

APPELLATE CASE NO 2018-000114

---

RECORD ON APPEAL

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State of South Carolina)  
County of Chester )

In Circuit Court of the  
Sixth Judicial Circuit  
2016-GS-20-00428

The State, )  
Plaintiff, )  
vs. )  
Ashley Marie McKenzie, )  
Defendant. )  
\_\_\_\_\_ )

Transcript of Record

Dillon, South Carolina  
March 29, 2016

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Karen Fryar, Esquire  
Attorney for Plaintiff

Ms. Devon Nelson, Esquire  
Attorney for Defendant

Lisa Carter  
Circuit Court Reporter

I N D E X

WITNESSES

PAGE

(NO WITNESSES INTRODUCED DURING HEARING)

(NO EXHIBITS INTRODUCED DURING HEARING)

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1 (Whereupon, the judge gave constitutional rights at one  
2 time)

3 THE CLERK: Place your left hand on the Bible and  
4 raise right hand. Do you solemnly swear to tell the  
5 truth, the whole truth, and nothing but the truth so help  
6 you God.

7 MS. MCKENZIE: I do.

8 MS. FRYAR: We have Ms. Ashley Marie McKenzie who  
9 is pleading guilty to petty larceny. That indictment  
10 number is 2015-GS-12-080.

11 THE COURT: Thank you. All right. Ladies and  
12 gentlemen, the reason I have you brought in front of me is  
13 just to explain to you certain rights that you have. I'm  
14 not going to entertain your plea at this point in time but  
15 just as I said, explain your rights to you. I want each  
16 one of you to understand that you have the right to a trial  
17 by a jury. And if you elect to go forward with a trial by  
18 a jury you and your attorney can participate in the  
19 selection of that jury. In other words, you have some say  
20 so in who sits on your jury in judgment of you. If you  
21 decide you want a trial the State of South Carolina, who is  
22 represented by the solicitor's office, has the burden of  
23 convincing that jury of your guilt beyond a reasonable  
24 doubt, and the State would have to convince all twelve  
25 jurors of your guilt. In other words, the verdict would

1 have to be a unanimous one. If you decide that you want to  
2 go forward with a trial your attorney has the right to  
3 confront any witnesses that testify against you. In other  
4 words, your attorney can cross-examine or ask questions of  
5 anybody that testifies against you during the course of the  
6 trial. Further, you have the right to put forth a defense  
7 if you so desire and included in that defense is your right  
8 to testify on your own behalf. However, if you wish to  
9 remain silent throughout the entire trial you have that  
10 right as well. If you decide to remain silent you can do  
11 so without any repercussions. In other words, no one can  
12 hold that against you in any way whatsoever, if you decide  
13 not to say anything. Also, you have the right to what we  
14 call, discovery. Which means you have the right to obtain  
15 from the State any evidence or materials they might have in  
16 its possession which would benefit you in the preparation  
17 of your defense. Now, did you all hear my explanations of  
18 your rights. Answer me across the board one at a time?

19 (Whereupon, each defendant answered individually)

20 MS. MCKENZIE: Yes, sir.

21 THE COURT: Do you fully understand all of your  
22 rights as I have explained them to you?

23 MS. MCKENZIE: Yes, sir.

24 THE COURT: Do any of you have any questions  
25 concerning your rights?

1 MS. MCKENZIE: No, sir.

2 THE COURT: All right. Now, let me explain to you  
3 now and I will probably go over this again, do each one of  
4 you understand that during the course of your plea, you  
5 will be asked if you understand those rights, which you've  
6 have already told me, I'm going to ask you, do you  
7 understand that by pleading guilty, you give up your  
8 rights, do you understand that?

9 MS. MCKENZIE: Yes, sir.

10 THE COURT: You understand that you give up your  
11 right to a trial if you plead guilty, do you understand?

12 MS. MCKENZIE: Yes, sir.

13 THE COURT: Or if it's no contest plea or  
14 agreement?

15 MS. MCKENZIE: Yes, sir.

16 THE COURT: All right. We'll stand everybody aside  
17 for now.

18 (Whereupon, the judge takes the plea)

19 THE COURT: All right. Solicitor?

20 MS. FRYAR: Thank you. May it please, the Court?  
21 Your Honor, standing before you is Ms. Ashley Marie  
22 McKenzie who had been charged in warrants for the offense  
23 of petty larceny and falsely passing or forging or altering  
24 or uttering counterfeiting of lottery tickets. Your Honor,  
25 the State has entered plea negotiations with Ms. McKenzie

1           whereby the charge of counterfeiting or forgery, falsely  
2           using lottery tickets. That's going to be dismissed and  
3           she's going to plea to guilty to the offense of petty  
4           larceny. The State is recommending that she be made to pay  
5           \$600 to the South Carolina Education Lottery.

6           THE COURT:        What does petty larceny get, thirty  
7           days?

8           MR. NELSON:        Thirty days, Your Honor.

9           MS. FRYAR:         Thirty days.

10          MR. NELSON:        Yes, Your Honor.

11          MS. FRYAR:        And we would ask that she be given  
12          thirty days incarceration but that, that be suspended if  
13          you can pay the \$600 within thirty days.

14          THE COURT:        Okay. All right. Ashley Marie  
15          McKenzie?

16          MS. MCKENZIE:     Yes, sir.

17          THE COURT:        You're twenty-four years old?

18          MS. MCKENZIE:     Yes, sir.

19          THE COURT:        Are you a resident of Chester County?

20          MS. MCKENZIE:     Yes, sir.

21          THE COURT:        Okay. In this offense that you are  
22          charged with of petty larceny did it occur in Chester  
23          County?

24          MS. MCKENZIE:     Yes, sir.

25          THE COURT:        You understand it carries thirty days

1 in jail?

2 MS. MCKENZIE: Yes, sir.

3 THE COURT: All right. Knowing that, how do you  
4 wish to plea?

5 MS. MCKENZIE: Guilty.

6 THE COURT: Okay. You understand what petty  
7 larceny means, don't you?

8 MS. MCKENZIE: Yes, sir.

9 THE COURT: So you clearly understand what you're  
10 pleading guilty to?

11 MS. MCKENZIE: Yes, sir.

12 THE COURT: Okay. Now, I understand there has been  
13 a recommendation made that you pay \$600 back to the South  
14 Carolina Education Lottery?

15 MS. MCKENZIE: Yes, sir.

16 THE COURT: Okay. Other than that, has any  
17 promises been made to you to get you to plead guilty?

18 MS. MCKENZIE: No, sir.

19 THE COURT: Have you been threatened in any way to  
20 get you to plead guilty?

21 MS. MCKENZIE: No, sir.

22 THE COURT: Are you under the influence of alcohol  
23 or drugs today?

24 MS. MCKENZIE: No, sir.

25 THE COURT: You suffer from any kind of physical,

1 mental, or emotional problems that keep you from being able  
2 to understand things clearly?

3 MS. MCKENZIE: No, sir.

4 THE COURT: You were present when I explained your  
5 rights to you ---

6 MS. MCKENZIE: Yes, sir.

7 THE COURT: --- a little while ago, correct?

8 MS. MCKENZIE: Huh, huh. Yes, sir.

9 THE COURT: You said you understood that  
10 explanation, correct?

11 MS. MCKENZIE: Yes, sir.

12 THE COURT: Do understand that by pleading guilty  
13 you give up those rights?

14 MS. MCKENZIE: Yes, sir.

15 THE COURT: Are you telling me now that you are  
16 freely and voluntarily giving up all of your rights in  
17 order to plead guilty?

18 MS. MCKENZIE: Yes, sir.

19 THE COURT: You understand that I am not bound by  
20 any recommendation that has been made?

21 MS. MCKENZIE: Yes, sir.

22 THE COURT: Okay. All right. You are represented  
23 by Mr. Nelson? I'm sorry.

24 MR. NELSON: I'm sorry. She looked a little  
25 inquisitive. I just wanted to say something to my client,

1 Your Honor.

2 THE COURT: Okay. In other words, I could just  
3 basically give you a thirty day sentence in jail when I say  
4 I can sentence you in my discretion. I'm not bound by a  
5 recommendation. You understand that?

6 MS. MCKENZIE: Yes, sir.

7 THE COURT: All right. Now, you're represented by  
8 Mr. Nelson?

9 MS. MCKENZIE: Yes, sir.

10 THE COURT: You had enough time to talk to him  
11 about all of this?

12 MS. MCKENZIE: Yes, sir.

13 THE COURT: Has he answered all of your questions  
14 to your satisfaction?

15 MS. MCKENZIE: Yes, sir.

16 THE COURT: Are you fully satisfied with his  
17 services on your behalf?

18 MS. MCKENZIE: Yes, sir.

19 THE COURT: Do you believe he's done everything he  
20 can for you under the circumstances as your attorney?

21 MS. MCKENZIE: Yes, sir.

22 THE COURT: Okay. At this time I'm going to ask  
23 the solicitor you give me the facts which support this  
24 charge, once that statement of facts have been made, I'll  
25 have a couple more questions for you.

1 MS. FRYAR: Thank you, Your Honor. Your Honor,  
2 this incident was investigated by special Agent Keith  
3 O'Quinn from sled. On October 29,, 2014 the South Carolina  
4 Education Lottery Security Division received a complaint  
5 regarding some missing packs of lottery tickets. They were  
6 missing from the inventory of the 97 Express Convenience  
7 Store here in Chester County. Your Honor, subsequently  
8 some of the tickets were used by different parties and it  
9 came to be revealed that these packages of tickets had been  
10 stolen. Ms. McKenzie had worked at that store and is the  
11 person who had taken the tickets, Your Honor. There values  
12 were \$300 a piece making her restitution \$600 and that is  
13 the facts of the case.

14 THE COURT: Ms. McKenzie, do you agree with that  
15 statement of the facts is substantially correct?

16 MS. MCKENZIE: Yes, sir.

17 THE COURT: After hearing that statement and  
18 considering all of my other questions, is it still your  
19 desire to plead guilty to this charge?

20 MS. MCKENZIE: Yes, sir. I'm ready to get it behind  
21 me.

22 THE COURT: Mr. Nelson, do you fully understand  
23 that your client understands all of her rights?

24 MR. NELSON: I do, Your Honor.

25 THE COURT: And you also concur with her decision

1 to plead guilty based on the facts and circumstances  
2 presented?

3 MR. NELSON: I do, Your Honor.

4 THE COURT: All right. I find that the facts  
5 support the plea. I find that the plea has been made it  
6 freely and voluntarily and intelligently. She has done so  
7 upon the advice of competent counsel which whom she  
8 indicates she is satisfied. I'm going to accept your  
9 guilty plea. Ms. McKenzie, you'll have ten days to appeal  
10 any decision I render, do you understand that?

11 MS. MCKENZIE: Yes, sir.

12 THE COURT: All right. Mr. Nelson, I'll be glad to  
13 hear from you.

14 MR. NELSON: Yes, Your Honor, McKenzie -- Ms.  
15 McKenzie has been out of work basically since this happened  
16 for the most part, in and out of odd jobs but she's  
17 recently found good work. She's been working for one week  
18 at her present job where she makes about six or \$700 a week  
19 and she believes that within one month should'll be able to  
20 have enough money to pay, to pay the lottery back to what  
21 she's pleading guilty to today. She understands what she's  
22 doing. We talked extensively about what would have to  
23 happen with the trial between me and her and who the  
24 witnesses would be against her. I believe that a lot of  
25 people work at a store but it sounds like there were some

1 people that were willing to come forward to testify that  
2 she either gave them lottery tickets or other things that  
3 would've found her guilty. So she decided to come forward  
4 today and admit that this is what she wanted to do, to take  
5 this, to take this charge. I'd ask Your Honor not to give  
6 her any time in jail as that hamper her ability to pay the  
7 money back. Any additional time in jail other than what  
8 the solicitor's asking for and that you give her that  
9 thirty days to be able to pay this so that she doesn't have  
10 to go to jail. She understands that if she doesn't pay the  
11 \$600 back, she can be picked up and put in jail for a  
12 month. And I do not believe she did it and she did more  
13 than a day or two in jail when she was there.

14 THE COURT: Ms. McKenzie, do you agree with what  
15 Mr. Nelson just said?

16 MS. MCKENZIE: Yes, sir.

17 THE COURT: Do you want to say anything?

18 MS. MCKENZIE: I have never been in trouble before and  
19 I'm just ready to get it behind me. I'm willing to pay the  
20 money and you won't have no problem out of me no more.

21 MS. FRYAR: Ms. McKenzie has been through the PTI  
22 program that's why she's not going this time, Your Honor.

23 THE COURT: What was that for? What did you go  
24 through PTI for?

25 MS. MCKENZIE: It was for reckless driving.

1 THE COURT: Okay.

2 MS. FRYAR: It wasn't for reckless driving, Your  
3 Honor.

4 MS. MCKENZIE: It was failure to stop for blue light.  
5 They dropped it down to reckless driving.

6 MS. FRYAR: You can't go through the PTI, for --  
7 I'm sorry I don't know because her record has been  
8 expunged.

9 MS. MCKENZIE: I don't know.

10 MR. NELSON: But your original charge was failure to  
11 stop for blue light though?

12 MS. MCKENZIE: Yeah. Yeah.

13 MR. NELSON: It sound like she was a failure to stop  
14 for blue light but she was sent to PTI under something.

15 THE COURT: All right. Ms. McKenzie, the sentence  
16 of the court is you be committed to the County detention  
17 Center for a term of thirty days or pay \$600 to the South  
18 Carolina Education Lottery. You understand if you don't  
19 buy the money within thirty days, you said?

20 MS. FRYAR: Yes, Your Honor.

21 THE COURT: Thirty days, you will serve thirty  
22 days, do you understand?

23 MS. MCKENZIE: Yes, sir.

24 THE COURT: Okay.

25 (CONCLUSION OF THE HEARING ON MARCH 29, 2016)

CERTIFICATE

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I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Sixth Circuit Court for Chester County, South Carolina, on the 29th day of March, 2016.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Lisa S. Carter

Lisa S. Carter  
Circuit Court Reporter

May 6, 2018

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STATE OF SOUTH CAROLINA  
COURT OF GENERAL SESSIONS  
COUNTY OF FAIRFIELD

2016-GS-20-00428

State of South Carolina

Vs.

Ashley Marie McKenzie

Winnsboro, South Carolina

October 11, 2016

Before the Honorable Brian M. Gibbons

APPEARANCES

For the State: Croom Hunter

For the Defendant: Bob Fitzsimons

Reported by: Michael C. Watkins

Official Court Reporter

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NO EXHIBITS

1 MR. HUNTER: Standing before you is Ashley McKenzie  
2 represented by Mr. Fitzsimons on indictment number  
3 2016-GS-20-428 for grand larceny more than \$2,000 but less  
4 than \$10,000. The State's recommendation in this case is  
5 probation along with restitution and some drug counseling.

6 THE COURT: All right. Mr. Fitzsimons, do you agree  
7 with your client's decision to plead guilty to this charge?

8 MR. FITZSIMONS: I do, Your Honor.

9 THE COURT: Ms. McKenzie, how old are you, ma'am?

10 THE DEFENDANT: Twenty-five.

11 THE COURT: What do you do for a living?

12 THE DEFENDANT: Currently I'm not working. I got an  
13 interview today whenever I get out of here, if I make it  
14 out of here.

15 THE COURT: Where are you interviewing.

16 THE DEFENDANT: Country Omelet, waitressing.

17 THE COURT: Do you understand what you're doing in  
18 court today?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand what the charge is  
21 against you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: It carries up to five years in prison, do  
24 you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: How do you plead?

2 THE DEFENDANT: Guilty.

3 THE COURT: Ms. McKenzie, has anybody forced,  
4 pressured, coerced or made you do that against your will?

5 THE DEFENDANT: No, sir.

6 THE COURT: Has anybody promised you anything to get  
7 you to plead guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you satisfied with your attorney?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Has he answered all of your questions?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand what your grand jury  
14 rights and your jury trial rights are?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you been over those with your lawyer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You're giving those up when you plead  
19 guilty, do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is that what you want to do?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you under the influence of anything  
24 today that will make you not understand what's going on?

25 THE DEFENDANT: No, sir.

1 THE COURT: Listen carefully to what the State says  
2 you did and I will come back to you.

3 MR. HUNTER: Thank you, Your Honor. This incident  
4 occurred on February 20th of 2016 at Hertrig  
5 (phonetically) Road in the Blackstock area of Fairfield  
6 County. The victim, who is Ms. McKenzie's grandfather,  
7 reported multiple guns and coins were taken from his home.  
8 There were no signs of forced entry. The victim suspected  
9 that Ms. McKenzie was the perpetrator because she's the  
10 only one with a key, she had been seen outside leaving the  
11 house multiple times. On July the 12th of 2016  
12 Investigator Talbert spoke with Ms. McKenzie, or spoke with  
13 the victim. The victim then informed Investigator Talbert  
14 that his -- one of the guns that were stolen was a Stoeger  
15 handgun, it was returned to him by Carmen Latham, and Mr.  
16 Latham -- or excuse me, Ms. Latham stated her father bought  
17 the gun from the defendant. And then on July 13th of 2016  
18 a leads online check showed that the defendant had pawned  
19 multiple items that were missing from the victim's home in  
20 Lancaster. The victim gave a description of the items  
21 which matched those pawned items. A warrant was issued and  
22 Ms. McKenzie turned herself in. She gave a statement  
23 admitting to taking the items and stated she needed help  
24 for her addiction.

25 THE COURT: Ms. McKenzie, is that what happened?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What addiction do you have?

3 THE DEFENDANT: I was on meth.

4 THE COURT: The Court accepts your plea. Mr.

5 Fitzsimons?

6 MR. FITZSIMONS: Your Honor, as you have heard, Mr.

7 Ms. McKenzie is 25 years old. She has been a waitress off

8 and on. She has two small children, those children

9 currently live with her grandparents, including the victim.

10 Judge, it would appear that Ms. McKenzie is obviously in a

11 bad spot because the people she depends on most were the

12 people that were the victim for the misbehavior. I would

13 ask you to place her on probation, help her if you can,

14 Judge, to take care of her drug problem, and at some point

15 maybe the grandparents and she will be on better terms. I

16 think she's a good candidate for probation, I believe this

17 is a probation case.

18 THE COURT: Any prior record?

19 MR. HUNTER: 2016 petit larceny.

20 THE COURT: Ms. McKenzie, how long have you been on

21 methamphetamine?

22 THE DEFENDANT: I was on it for about a year.

23 THE COURT: When is the last time you used?

24 THE DEFENDANT: It has been a couple of months.

25 THE COURT: What would you test positive for if I were

1 to send you back for a drug test right now?

2 THE DEFENDANT: I'm not sure.

3 THE COURT: Did you smoke marijuana recently?

4 THE DEFENDANT: No, sir.

5 THE COURT: Done any cocaine recently?

6 THE DEFENDANT: No, sir.

7 THE COURT: Done any meth recently?

8 THE DEFENDANT: No, sir.

9 THE COURT: Pain pills?

10 THE DEFENDANT: No, sir. Well, yeah. I actually  
11 broke my tail bone so I went to the hospital and they gave  
12 me some pain medication.

13 THE COURT: How old are your kids?

14 THE DEFENDANT: Three and five.

15 THE COURT: DSS take them from you?

16 THE DEFENDANT: No, sir.

17 THE COURT: You voluntarily placed them with your  
18 grandparents?

19 THE DEFENDANT: It has been a family mess. I know  
20 they would be taken care of out there because I know I was  
21 messing up. I know I have done wrong, I'm trying to get  
22 them back, trying to get on my feet. I'm asking you -- I  
23 want to make things right with them because I know what I  
24 did was wrong.

25 THE COURT: How are you going to pay \$11,000 in

1 restitution?

2 THE DEFENDANT: I can work if I can get this job.

3 THE COURT: So what is your main problem?

4 THE DEFENDANT: The drugs is the problem and I'm  
5 trying to get --

6 THE COURT: What are you going to do to get back  
7 straight?

8 THE DEFENDANT: Stay clean, work, stay away from  
9 negative people.

10 THE COURT: So why haven't you done it on your own?

11 THE DEFENDANT: Stupid.

12 THE COURT: See, Ms. McKenzie, I've been doing this  
13 for a long time, and I've been -- I did it in family court  
14 for eight years, I've been doing it in circuit court now  
15 for, hard to believe, almost four years, okay? It's all  
16 the same. You're not ready to change until you are ready  
17 to change.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All of these programs that I can order  
20 that you attend through probation and do all of this, the  
21 best treatment is the treatment that you do voluntarily.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Not with the threat of jail over you,  
24 okay?

25 THE DEFENDANT: I'm willing to.

1 THE COURT: You know, if your kids -- if a three and  
2 five year old not being able to live with you isn't  
3 motivation enough for you I don't know what else I can do.

4 THE DEFENDANT: It kills me. I'm ready to get back  
5 home now.

6 THE COURT: I mean, it sounds to me like the -- what's  
7 your grandmother's name?

8 THE DEFENDANT: Emily.

9 THE COURT: They have the grounds available now to  
10 terminate your parental rights without you having to agree  
11 to it, I'm just telling you that as a former family court  
12 judge so that's why you need to motivate yourself. I don't  
13 have a problem with the probation, I want you to make sure  
14 you understand you're walking a tight rope with me  
15 monitoring your case. I want to help you and I want you to  
16 believe me that I want to help you. I see too many young  
17 people like yourself fall into this trap of drug abuse and  
18 its cycle, they lose the children, they have no hope, no  
19 future and, you know, next thing you know they're dead  
20 within ten days or they're in jail for a long time, okay?  
21 So I will max you out on this sentence, I will max you out  
22 on this probation, I want to get through to you that  
23 somebody believes in you.

24 THE DEFENDANT: Okay.

25 THE COURT: And that's why I'm doing it. I believe in

1 you, I want to motivate you. I'm sentencing you to five  
2 years of prison, I'm suspending that sentence upon five  
3 years of probation. The reason I'm giving you so long is  
4 you owe a lot of money on that restitution because I want  
5 to make sure you get clean now, okay? Substance abuse  
6 counseling, random drug and alcohol testing. Mr.  
7 Probation, I want her referred as soon as possible for  
8 substance abuse assessment and I wrote on here inpatient if  
9 necessary, because I'm thinking that's probably what is  
10 going to -- don't fight the inpatient. If they're  
11 recommending it, yeah, that means you have to put your job  
12 on hold, okay? But we've got to get you clean first, okay?  
13 Good luck to you.

14 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,  
2 Official Court Reporter for the Sixth Judicial  
3 Circuit of the State of South Carolina, do hereby  
4 certify that the foregoing is a true, accurate and  
5 complete transcript of the proceedings had and  
6 evidence introduced in the trial of the captioned  
7 case relative to appeal in the Court of General  
8 Sessions for Fairfield County, South Carolina, on  
9 the 16th day of October, 2016.

10 I do further certify that I am neither of kin, counsel,  
11 nor interest to any party hereto.

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January 9, 2019

Michael C. Watkins  
Court Reporter

1 STATE OF SOUTH CAROLINA  
2 COURT OF GENERAL SESSIONS  
3 COUNTY OF CHESTER  
4 2016-GS-20-00428

5  
6 State of South Carolina

7 vs.

8 Ashley McKenzie

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11 Chester, South Carolina

12 January 8, 2018

13 Before the Honorable Brian M. Gibbons

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15 APPEARANCES

16 For the State: Agent Joanna Wix

17 For the Defendant: Kay Boulware

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INDEX

Probation Violation Hearing: 3  
Sentencing: 5  
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NO EXHIBITS

1           AGENT WIX: Before you today is Ashley Marie McKenzie.  
2 She was placed on supervision by Your Honor on October 11th of  
3 2016. She's before you today on a warrant that she failed to  
4 follow the advice and instruction of supervising agent, having,  
5 failed to report since May 15th, 2017, she failed to follow  
6 direct instruction, having failed to report for a financial  
7 roll call on October 19th, 2017, she failed to pay her monetary  
8 obligations as ordered being \$560 in arrears on her supervision  
9 fees at the issuance of process. She failed to pay restitution  
10 as ordered being eight payments in arrears at the issuance of  
11 process, and she failed to notify her agent of an address  
12 change having moved to an unknown location thereby considered  
13 being absconded from supervision.

14           THE COURT: Any recommendations from your office?

15           AGENT WIX: We're recommending a revocation. She hasn't  
16 reported, just continues to fail to report and hadn't paid her  
17 restitution. And she moved to Blackstock, I believe, and had  
18 been there for about a year by the time we figured it out.

19           THE COURT: All right, thank you. Ms. Bowlware, I'll be  
20 glad to hear from you on behalf of your client?

21           MS. BOULWARE: Yes, sir, Your Honor. Ms. McKenzie, she's  
22 26 year old, has two children ages five and six, does not have  
23 any involvement from the children's father so she gets no child  
24 support on that. Honestly, her violation comes down to mostly  
25 just not being able to afford the restitution. The restitution

1 is pretty high, about according to the 1106 \$11,000. And I  
2 think that figured out to be about \$350 a month. She tells me  
3 she has moved around some because where she resides is actually  
4 still what she considers her residence but she could not afford  
5 the power bill in that residence, so the power doesn't work.  
6 In April of, I believe 2017 according to the report she stopped  
7 reporting in May, and in April of 2017 she did lose her job and  
8 she's been trying to do self employment up until that time, and  
9 basically it just mostly comes down to not being able to afford  
10 the restitution. I know we always tell folks even if you can't  
11 pay report. My understanding is this was her first time on  
12 probation, she got scared and just didn't report because she  
13 was afraid of not being able to pay the money back. Her mother  
14 Joanne Bingham, I believe, is here. I did talk with her  
15 earlier.

16 THE COURT: Who is Gerald McKenzie? Is that her father  
17 that she stole from?

18 MS. BOULWARE: It's her grandfather.

19 THE COURT: Grandfather? Think I remember this. All  
20 right, I'm listening, keep on going.

21 MS. BOULWARE: Yes, sir. She has expressed an interest to  
22 me in wanting to possibly be held for inpatient rehab and then  
23 to continue on her probation and try to restructure the  
24 payments if Your Honor would be willing to consider that.

25 THE COURT: All right. Thank you, ma'am. All right. Ms.

1 McKenzie, anything you wish to tell me based upon what you  
2 heard from probation and what your lawyer said on your behalf  
3 in mitigation?

4 THE DEFENDANT: It's my first time violating. Like I  
5 didn't have any money, I was doing all I could do. I got two  
6 kids and they need me. My grandma, she has got to have heart  
7 surgery at the end of this month so she needs me at home where  
8 I can take care of my kids. It has just been a rough time I  
9 would just ask for a second chance, please.

10 AGENT WIX: I would note, too, that she does have two  
11 pending charges for forgery and she tried to cash a bad check  
12 that was reported stolen out of Great Falls. She also did  
13 admit to the use of methamphetamine on her transport back from  
14 York County to Chester County so we would recommend ATU with  
15 any form of revocation.

16 THE COURT: All right. I'm going to revoke two years, I'm  
17 going to terminate your probation. Based upon the testimony  
18 and evidence presented I do find that you do not have the  
19 ability to pay this restitution, therefore I'm going to issue a  
20 civil judgment for the amount of money due to your grandfather  
21 for the money you stole from him.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you'll be in jail for the next two years.  
24 Good luck to you.

25 (End of the hearing.)

1 I, the undersigned, Michael C. Watkins,  
2 Official Court Reporter for the Sixth Judicial  
3 Circuit of the State of South Carolina, do hereby  
4 certify that the foregoing is a true, accurate and  
5 complete transcript of the proceedings had and  
6 evidence introduced in the trial of the captioned  
7 case relative to appeal in the Court of General  
8 Sessions for Chester County, South Carolina, on the  
9 8th day of January, 2018.

10 I do further certify that I am neither of kin, counsel,  
11 nor interest to any party hereto.


12

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March 30, 2018

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Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FAIRFIELD )

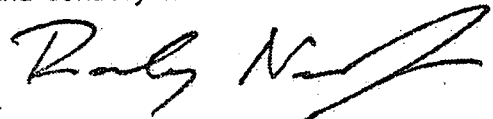
## INDICTMENT

At a Court of General Sessions, convened on October 4, 2016, the Grand Jurors of Fairfield County present upon their oath:

**Grand Larceny-More than\$2,000 but less than \$10,000**

That Ashley Marie Mckenzie did in Fairfield County between the dates of January 1, 2016 and June 30, 2016, take and carry away the personal property, to wit: multiple guns, tools and precious metals , of Gerald Mckenzie with the intent to deprive the owner of possession of the property and to convert the property to the use of the defendant, the value of the property being more than \$2,000.00 but less than \$10,000.00, in violation of §16-13-30(A), (B)(1), *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.



Randy E. Newman, Jr., SOLICITOR

**WITNESSES**

Castles-FCSO

Talbert

**ARREST WARRANT NUMBER/DOA**

2016A2010100320 (DOA-07/19/16)

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury

Date: 10/4/2016

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-20-428

**The State of South Carolina**

County of Fairfield

**COURT OF GENERAL SESSIONS**

OCTOBER TERM 2016

**THE STATE**

vs.

**Ashley Marie Mckenzie**

**Indictment for**

**Grand Larceny**

**More than \$2,000 but less than \$10,000**

SC Code: §16-13-0030(A), (B), (1)

CDR Code: 3420

Class: Felony, F

2016 OCT 4 AM 11 39

FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO BECKHAM

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

34 COUNTY OF Fairfield STATE VS. Ashley Marie Mckenzie AKA: Race: WHITE Sex: F Age: 25 DOB: SS#: Address: Chester Ave City, State, Zip: Great Falls, SC 29055-1701 DL#: SID#:

INDICTMENT/CASE#: 2016-65-20-428 A/W#: 2016A2010100320 Date of Offense: 3/5/2016 S.C. Code §: 16-13-0030(B) CDR Code #: 3420

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

in violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 3420 [X] NON-VIOLENT [ ] VIOLENT [ ] SERIOUS [ ] MOST SERIOUS [ ] Mandatory GPS(CSC w/minor 1st or Lewd Act) [ ] §17-25-45

The charge is: [ ] As Indicted, [ ] Lesser Included Offense, [X] Defendant Waives Presentment to Grand Jury. (defendant's initials) The plea is: [ ] Without Negotiations or Recommendation, [ ] Negotiated Sentence, [X] Recommendation by the State.

ATTEST: Hunter, Croom 10/25/16 SC Bar# [Signature] Defendant [Signature] Attorney for Defendant 78-14 SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [ ] County Detention Center, for a determinate term of 5 days/months/years or [ ] under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference. [ ] CONCURRENT or [ ] CONSECUTIVE to sentence on: [ ] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. [ ] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[X] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing [ ] Ordered PTUP Total: \$ plus 20% fee: \$ Payment Terms: [ ] Set by SCDPPPS

Table with columns for description, amount, and total. Includes items like Assessments 107.5%, DUI Surcharges, and Probation fees. TOTAL \$ 643.75

PTUP days/hours Public Service Employment Obtain GED [ ] Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling [X] Random Drug/Alcohol testing [X] Fine may be pd. in equal, consecutive weekly/monthly prmts. of \$ beginning \$ paid to Public Defender Fund Other: important to necessary

Clerk of Court/ Deputy Clerk [Signature] Court Reporter: [Signature] SCCA/217 (07/2016)

[X] Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees. Presiding Judge [Signature] Judge Code: 2168 Sentence Date: 10/11/16

STATE OF SOUTH CAROLINA

County of Chesler

IN THE CO. OF GENERAL SESSIONS 35

Indictment Number:

STATE VS.

2016 - GS - 20 - 428  
Probation C/W#s: W-12-17-0044

AKA: Ashley Marie McKeppie

Race: W Sex: F

DOB: [REDACTED]

SSN: [REDACTED]

SID#: 01837215

Name of Original Offense: Grand Larceny

Original A/W#: 2016A2010100320

Date of Original Offense: 3/5/2016

Conviction S.C. Code §: 16-13-0730(B)

Conviction CDR Code #: 3 1 4 1 2 1 0

Original Sentence: 5 Yrs. Bal. Susp. 5 Yrs. Prob.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 10/11/16 in the Court of General Sessions of Fairfield County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 11/9/2017, as set forth in the attached warrant(s) or citation(s) dated 11/9/2017. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 1, 2, 7, 9, 10, 11

Therefore, IT IS ORDERED that:

- the suspended sentence be revoked and the above named defendant be required to serve 2 months/years, the remainder of the original sentence, and/or pay \$ \_\_\_\_\_
- the suspended sentence be revoked and the above named defendant be required to serve \_\_\_\_\_ months/years of the original sentence and/or pay \$ \_\_\_\_\_; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first or third degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- Financial Obligations: Order satisfies:
  - Department fees (arrearage)
  - Fines and other fees (arrearage / balance)
  - Restitution (and 20%) (arrearage / balance)
- Civil Judgment:
  - Department fees
  - Fines and other fees
  - Restitution (and 20%)

Additional Conditions ordered by the Court:

Revoke 2 years, terminate probation. Recommend ATC while incarcerated. Civil judgment for restitution 3 court costs.

- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections. since 11/30/17
- The defendant is to be given credit for pretrial detention time served (N/A if defendant has served prior SCDC time).
- The defendant has served \_\_\_\_\_ days/months/years of prior revocations and/or initial SCDC time.
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 8 day of January, 2018  
Chesler, SC

Presiding Judge \_\_\_\_\_  
Judicial Circuit \_\_\_\_\_

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

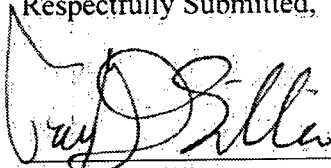
Offender's Signature [Signature]  
Signed this 8 day of Jan, 2018 at \_\_\_\_\_ SC.

Witnessed by [Signature]  
\_\_\_\_\_ City \_\_\_\_\_ SC.

## 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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam  
Appellate Defender

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

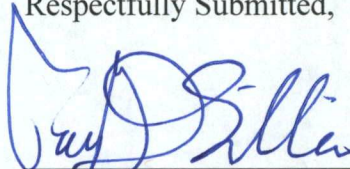
ATTORNEY FOR APPELLANT

This 11th day of February, 2019.

## 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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



---

Taylor D Gilliam  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 11th day of February, 2019.