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ANDERS

VOLUME TWO OF TWO

No Respondent's Brief Filed

NO DEFENDANT'S BRIEF

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TINA DOCKERY,

APPELLANT

Appellate Case No. 2011-183266

RECORD ON APPEAL

DAYNE C. PHILLIPS  
Appellate Defender

ALAN WILSON  
Attorney General

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

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211  
(803) 734-3727

Attorney for Appellant

Attorneys for Respondent

**RECEIVED**  
OCT 26 2012  
SC Court of Appeals

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1 criminal intent, he or she is legal -- legally  
2 responsible for all of the consequences that necessarily  
3 flow from the commission of that intentional act or acts  
4 that are a natural and a probable consequence of the act,  
5 even though the result was not actually intended as a  
6 part of the original design, so, long as it is proven  
7 that the result was reasonably known to be substantially  
8 certain to occur."

9 And proof of the existence of criminal intent may be  
10 satisfied by proof of intentional or deliberate conduct  
11 or by proof of criminal negligence.

12 Criminal negligence is a greater degree of  
13 culpability than is mere simple negligence or  
14 carelessness, that I have described with respect to the  
15 other criminal offense;

16 In the law, criminal negligence refers to the  
17 commission of a deliberate act or acts with a reckless  
18 disregard for the safety of others.

19 "Reckless disregard" refers to, "The commission of a  
20 deliberate or intentional act with a conscious disregard  
21 for the consequences of that act."

22 (Brief Pause)

23 THE COURT: And criminal intent may be proven by  
24 circumstantial evidence as well as direct evidence, the  
25 same way any other essential element of a crime may be

1 proven.

2 And, in your determination as to whether or not  
3 criminal intent has been proven, beyond a reasonable  
4 doubt, you may infer the existence of such intent from  
5 the declarations and the conduct of the Defendant as well  
6 as from any other circumstances established by the  
7 evidence in this case from which you might reasonably and  
8 logically infer the existence of such intent, so, long as  
9 you are satisfied with its existence beyond a reasonable  
10 doubt.

11 Now, that's the instruction with respect to 16-3-95.  
12 That's also the definition of a substantial risk of  
13 death.

14 So, we'll now re-hear the testimony of the  
15 radiologist and the pediatrician.

16 And, again, if you still need further instruction,  
17 be sure to let me know once you go back.

18 (Whereupon, the court reporter replayed the  
19 testimony of Dr. Robbie Robinson and Dr. Michael  
20 Thomason.)

21 (The jury exited to resume with their  
22 deliberations.)

23 THE COURT: Were there any exceptions taken to the  
24 additional instruction by the State?

25 MS. JORDAN: None for the State, Your Honor.

1 THE COURT: Defendant Dockery?

2 MS. PRICE: No, Your Honor.

3 THE COURT: Defendant Moore?

4 MR. RUDASILL: No, Your Honor.

5 THE COURT: We'll continue to be at ease.

6 (Off-the-Record Comments)

7 THE COURT: We'll be at ease while the jury  
8 continues their deliberations.

9 (Whereupon, Court's Exhibit Numbers 2 through 4 were  
10 marked for identification and admitted into evidence.)

11 (A verdict was reached at 11:28 a.m.)

12 (Off-the-Record Comments)

13 (The Defendants were brought back into the  
14 courtroom.)

15 (The Court entered the courtroom at 11:33 a.m.)

16 THE COURT: All right. I understand the jury has  
17 reached a decision. Are we ready to receive it?

18 MS. JORDAN: Yes, sir.

19 MS. PRICE: Yes, Your Honor.

20 MR. RUDASILL: Yes, sir.

21 THE COURT: Okay. Bring them in, please.

22 (The jury entered the courtroom at 11:34 a.m.)

23 VERDICT

24 THE COURT: Mr. Foreman, have you and your fellow  
25 jurors reached a unanimous decision?

1 MR. LOWNDES: We have.

2 THE COURT: And you reached that decision with  
3 respect to each Defendant and each charge contained in  
4 each indictment?

5 MR. LOWNDES: We have.

6 THE COURT: Have you indicated those decisions on  
7 the verdict form as requested?

8 MR. LOWNDES: I have.

9 THE COURT: And did you sign your name as the  
10 foreperson and date the verdict form?

11 MR. LOWNDES: I did.

12 THE COURT: Thank you. If you'll hand those up by  
13 way of the bailiff, please, sir.

14 (The forms were handed to the bailiff who, in turn,  
15 handed them up to the Court.)

16 THE COURT: All right. You may publish the verdict.

17 MADAM CLERK: "The State of South Carolina, County  
18 of Spartanburg, Court of General Sessions, *The State vs.*  
19 *Leonard Scott Moore*, indicted for unlawful conduct toward  
20 a child and child abuse with great bodily injury.

21 "Count, unlawful conduct toward a child, guilty.  
22 Signed by the foreperson, William Lowndes, and today's  
23 date. Count two, not guilty of child abuse with great  
24 bodily injury.

25 "The State of South Carolina, County of Spartanburg,

1           General Sessions, *The State vs. Tina Michelle Dockery*,  
2           Count one, unlawful conduct toward a child, guilty.  
3           Child abuse with great bodily injury, Count two, not  
4           guilty." Signed, again, by the foreperson, William  
5           Lowndes, signed this date 1/7/2011.

6           Ladies and gentlemen of the jury, is this your  
7           verdict and still your verdict? If so, please, raise  
8           your right hand.

9           (All jurors raised their right hand.)

10          MADAM CLERK: So say you all.

11          THE COURT: Does either Defendant wish to have the  
12          jury polled, Ms. Price?

13          MS. PRICE: Yes, Your Honor, please.

14          THE COURT: All right. Poll the jury, please,  
15          ma'am.

16          MADAM CLERK: Ladies and gentlemen of the jury, I'll  
17          be asking you a question. That question is, "Is this  
18          your verdict and still your verdict?" When I call your  
19          name and juror number, if you would, just answer "yes" or  
20          "no."

21          Juror number 79, Phillip Kerby?

22          JUROR: Yes.

23          MADAM CLERK: Juror number 5, Jason Beck?

24          JUROR: Yes.

25          MADAM CLERK: Juror number 175, Karen Wydeman?

1 JUROR: Yes.

2 MADAM CLERK: Juror number 105, James Medlock?

3 JUROR: Yes.

4 MADAM CLERK: Juror number 60, Karol Harvey?

5 JUROR: Yes.

6 MADAM CLERK: Juror number 89, William Lowndes?

7 JUROR: Yes.

8 MADAM CLERK: Juror number 157, Paul Taylor?

9 JUROR: Yes.

10 MADAM CLERK: Juror number 8, Kaye Blackwell?

11 JUROR: Yes.

12 MADAM CLERK: Juror number 131, Nathan Poteat?

13 JUROR: Yes.

14 MADAM CLERK: Juror number 38, Johnny Easler?

15 JUROR: Yes.

16 MADAM CLERK: Juror number 2, Rhonda Arnold?

17 JUROR: Yes.

18 MADAM CLERK: And juror number 70, Wayne Isler?

19 JUROR: Yes.

20 MADAM CLERK: The jury has been polled.

21 MS. PRICE: Thank you, Your Honor.

22 THE COURT: All right. Any other matters we need to

23 address with the jury present?

24 MS. JORDAN: No, sir.

25 MS. PRICE: No, Your Honor.

1 MR. RUDASILL: No, Your Honor.

2 THE COURT: All right. Thank you, ladies and  
3 gentlemen, for your participation as a juror this week  
4 and particularly for your participation in the trial of  
5 this case.

6 I do sincerely hope that your service this week has  
7 been an educational and beneficial experience for you. I  
8 do sincerely hope that it has not posed too much of a  
9 hardship on you.

10 You are excused for the balance of the week. So,  
11 you won't need to call back or come back any further.

12 You will receive a pay voucher for your service this  
13 week.

14 (Continued comments regarding jurors' pay vouchers.)

15 THE COURT: Again, thank you for your participation  
16 this week.

17 (Whereupon, the jurors were dismissed and exited the  
18 courtroom at 11:38 a.m.)

19 (Brief pause while paperwork is filled out.)

20 (Off-the-Record Comments)

21 MS. JORDAN: May I approach?

22 THE COURT: Yes, ma'am.

23 (Documents handed up to the Court.)

24 SENTENCING

25 THE COURT: All right. Any other matters to be

1 presented, on behalf of the State, as far as the  
2 disposition of sentence?

3 MS. JORDAN: No, sir.

4 THE COURT: Ms. Price, on behalf of Ms. Dockery?

5 MS. PRICE: Yes, Your Honor. At this time, we would  
6 move for a new trial based upon my previous objections  
7 and motions, Your Honor.

8 THE COURT: All right. That motion is denied.

9 MS. PRICE: Thank you, Your Honor.

10 THE COURT: Anything else you'd like to tell me on  
11 behalf of Ms. Dockery?

12 MS. PRICE: Yes, Your Honor. As you heard, Ms.  
13 Dockery is thirty-seven (37) years old. She is the  
14 mother of three (3) children, the two children you heard  
15 about in court today and also Gabriel, who is two years  
16 old.

17 That child does live with her at home. She has been  
18 accompanied in court today -- or excuse me -- this week  
19 by her future father-in-law and her fiancée also, who is  
20 that child's father.

21 Your Honor, she did spend some time in jail. She  
22 doesn't know how much, so, we'll just let the jail  
23 straighten that out if that's necessary. Thank you, Your  
24 Honor (phonetic).

25 THE COURT: Well, how much time did she spend in

1 jail?

2 (Off-the-Record Discussion)

3 MS. PRICE: Your Honor, she can't remember exactly.  
4 I just have in my notes that she did spend some time in  
5 jail.

6 THE COURT: All right. Well, I mean, was it a few  
7 days, a few months?

8 (Off-the-Record Discussion)

9 MS. PRICE: About thirty (30) days, Your Honor.

10 THE COURT: Okay. All right. Mr. Rudasill?

11 MR. RUDASILL: Your Honor, on behalf of Mister --  
12 Mr. Moore, I would renew -- renew my motion for a  
13 directed verdict for acquittal and also move for a new  
14 trial based on insufficiency of evidence.

15 THE COURT: All right. That motion is denied.

16 MR. RUDASILL: With regard to information concerning  
17 Mr. Moore's sentencing, as you have heard, he has one  
18 additional son, Derrick (phonetic) that -- that he had by  
19 his wife, Misty.

20 Your Honor, he has no prior record. He was in jail  
21 for approximately one (1) day I believe before he was  
22 released on bond regarding these charges.

23 He has some medical problems that he has testified  
24 to that you heard during the trial plus being able to  
25 observe him with regard to some of the limitations he has

1 as a result of those injuries.

2 (Brief Pause)

3 THE COURT: All right. Ms. Dockery, is there  
4 anything else you'd like to tell me?

5 MS. DOCKERY: No, sir, except I want to go home and  
6 get my son and see my son. I have a son at home and I  
7 hadn't seen him in a while and I'd like to get back to  
8 him. I want my kids in my life -- I want all my kids  
9 back in my life (phonetic).

10 THE COURT: All right. Mr. Moore, anything you'd  
11 like to add to what your lawyer told me?

12 MR. MOORE: Yes, sir. I got a dad that's in  
13 seriously bad condition. My mom is also, so, I always  
14 have to take care of them (phonetic).

15 I have a son who is thirteen (13) years old that I'd  
16 like to see again. So, I just let you know.

17 (Brief Pause)

18 THE COURT: All right. On indictment 2006-4482,  
19 that's the indictment against Tina Michelle Dockery,  
20 wherein a jury has found you guilty of the offense of  
21 unlawful conduct toward a child, the sentence of the  
22 Court is you, Tina Michelle Dockery, be confined to the  
23 South Carolina Department of Corrections for a period of  
24 ten (10) years.

25 That sentence is suspended upon the service of one

1 (1) year and placed on probation for three (3) years.  
2 Give her credit for any time she's entitled to pursuant  
3 to 24-13-40 (phonetic).

4 Conditions of probation, upon release from the  
5 active sentence, are you -- you must complete a substance  
6 abuse counseling course and you must submit to random  
7 drug and alcohol testing.

8 You must complete a parenting skills course and pay  
9 five hundred dollars (\$500) for your appointed lawyer in  
10 the case.

11 **MS. PRICE:** Thank you, Judge.

12 **THE COURT:** Indictment 2006-4481, The State vs.  
13 Leonard Moore, wherein you have been found guilty by the  
14 jury of unlawful conduct toward a child, the sentence of  
15 the court is you, Leonard Moore, be confined to the South  
16 Carolina Department of Corrections for a period of ten  
17 (10) years.

18 That sentence is suspended upon the service of one  
19 (1) year and placed on probation for three (3) years.  
20 Give him credit for any time he's entitled pursuant to  
21 24-13-40.

22 Conditions of probation, upon release from the  
23 active sentence, is submit to random drug and alcohol  
24 testing, complete a parenting skills course, and you were  
25 retained, Mr. Rudasill?

1 MR. RUDASILL: That is correct, Your Honor.

2 THE COURT: Okay. Each of you have the right to  
3 appeal the decision of the jury and the sentence of the  
4 Court. You must file any notice of your intentions to  
5 appeal those decisions within ten (10) days of today's  
6 date.

7 MR. RUDASILL: Your Honor, if I may advise the Court  
8 with regard to the conditions of probation. Mr. Moore,  
9 through a Family Court action, has been through parenting  
10 skills classes immediately following this, as well as  
11 some other things that were required by DSS. Will that  
12 qualify for the condition of probation?

13 THE COURT: It will. If he has -- if he has  
14 successfully completed the parenting skills course, since  
15 the time of his arrest on these charges, that will  
16 satisfy that requirement.

17 MR. RUDASILL: Thank you, Your Honor.

18 MR. PRICE: Does the same also apply to Ms. Dockery?

19 THE COURT: Yes, ma'am.

20 MS. PRICE: Thank you.

21 (Off-the-Record Comments)

22 MS. JORDAN: Thank you, Your Honor.

23 (Whereupon, the proceeding concluded.)

24

25

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 512, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

August 1, 2011



Pamela S. Faucette  
Official Court Reporter  
Seventh Judicial Circuit

WITNESSES

Spartanburg County Sheriff's Department

*TK Ullalston*

ARREST WARRANT NUMBER

Count I - K070498 Amended

Count II - Direct Amended

ACTION OF GRAND JURY

*True Bill*

Foreperson of Grand Jury

Date: *8-19-10*

VERDICT

COUNT I: *Guilty*

COUNT II: *Not Guilty*

Foreperson of Petit Jury

Date: ~~12-6-2010~~ *10-7-2011*

*514 Willie Lowmder IV*

DOCKET NO. 2006-GS-42-4482 (AMENDED)

The State of South Carolina

County of Spartanburg

*Trey Gowdy, Solicitor*

COURT OF GENERAL SESSIONS

AUG 23 2010

TERM

THE STATE

vs.

Tina Michelle Dockery

Indictment for

UNLAWFUL CONDUCT TOWARDS

A CHILD

SC Code: 20-7-50

CDR Code: 2481

Class FEL-E

Child Abuse with Great Bodily Injury

SC Code: 16-3-95(A)

CDR Code: 2766

FILED  
CLERK OF COURT  
2010 DEC 31 AM 9:56  
M. HOPE BLACKLEY



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

516 COUNTY OF SPARTANBURG VS. STATE

Tina Michelle Dockery

AKA:

Race: W Sex: F Age: 37

DOB: 07-23-1973 SS#: 247-45-8889

Address: 1165 Clark Circle

City, State, Zip: Spartanburg SC 29307

DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Unlawful Neglect of a Child 0-10 years

INDICTMENT/CASE#: 2006GS4204482

A/W#: K070498

Date of Offense: 6/22/2005 - 10/25/2005

S.C. Code §: 63-05-0070 (20-7-50)

CDR Code #: 2481

SENTENCE SHEET

in violation of § 63-05-0070 (20-7-50) of the S.C. Code of Laws, bearing CDR Code # 2481
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Jennifer Jordan 69423 SC Bar# Defendant Tina M. Dockery Attorney for Defendant Andrea P. Prier 75786 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 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 1 days/months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for 3

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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
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 § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUJ Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCJA Surcharge) \$5, § 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$ 18.90, TOTAL \$ 648.90

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: complete a parenting skills course

Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

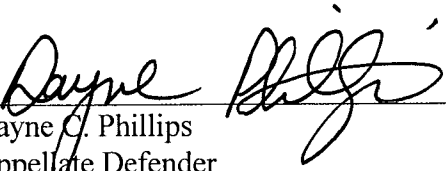
Clerk of Court/ Deputy Clerk: KG McKinney
Court Reporter: Pam Faucette
SCCA/217 (06/2010)

Presiding Judge: [Signature]
Judge Code: 2053
Sentence Date: February 7, 2011

## 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."

This 26<sup>th</sup> day of October, 2012

  
\_\_\_\_\_  
Dayne C. Phillips  
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